



# International Bar Association

the global voice of the legal profession

March 13, 2023

## **21st Annual International Conference on Private Investment Funds**

Key Trends: Private Equity, Real Estate and Other Closed-ended Funds

Andrew Ahern – Debevoise & Plimpton LLP

Jamie Bull – Brookfield Asset Management

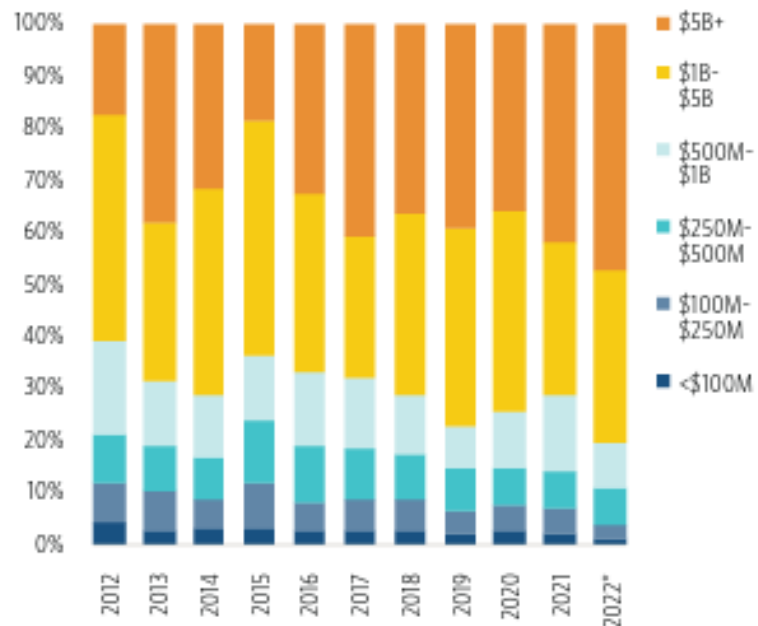
Matthew Goldstein – Paul, Weiss, Rifkind, Wharton & Garrison LLP

Lindsay Pierce – Bain Capital

Ryan Toteja – Platinum Equity

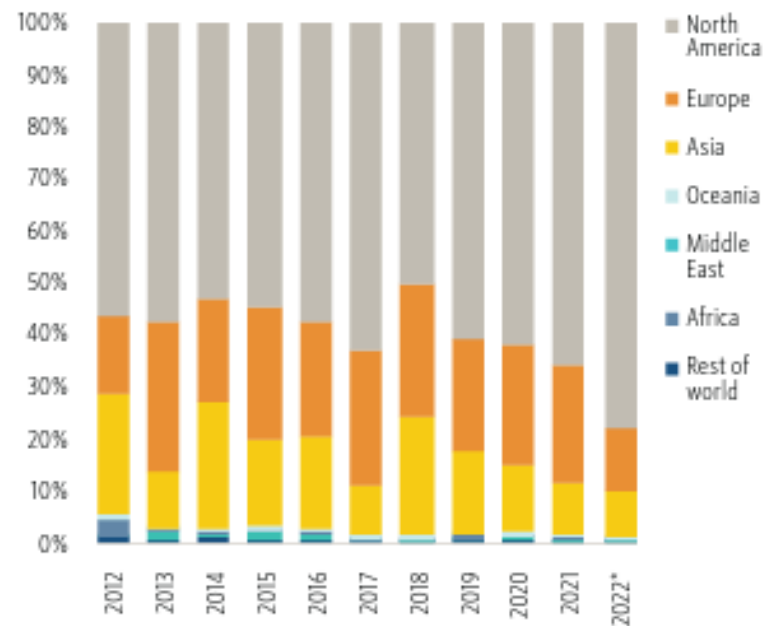
# Fundraising Environment

Share of PE capital raised by size bucket



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

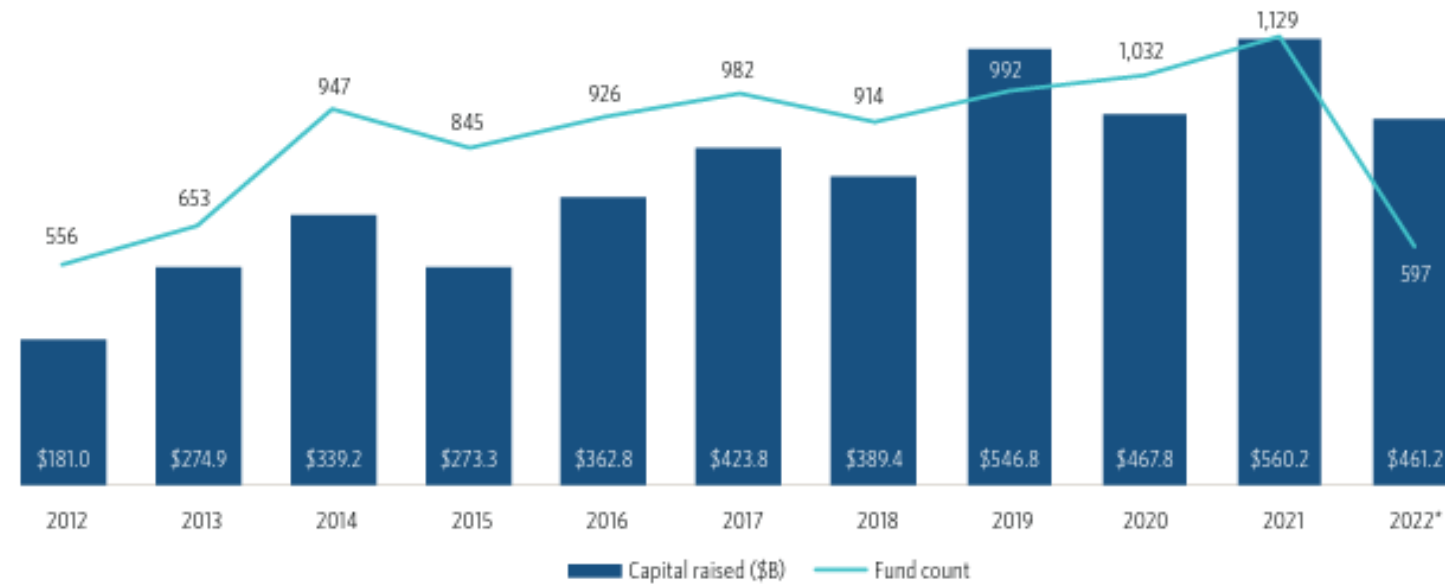
Share of PE capital raised by region



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

# Fundraising Environment

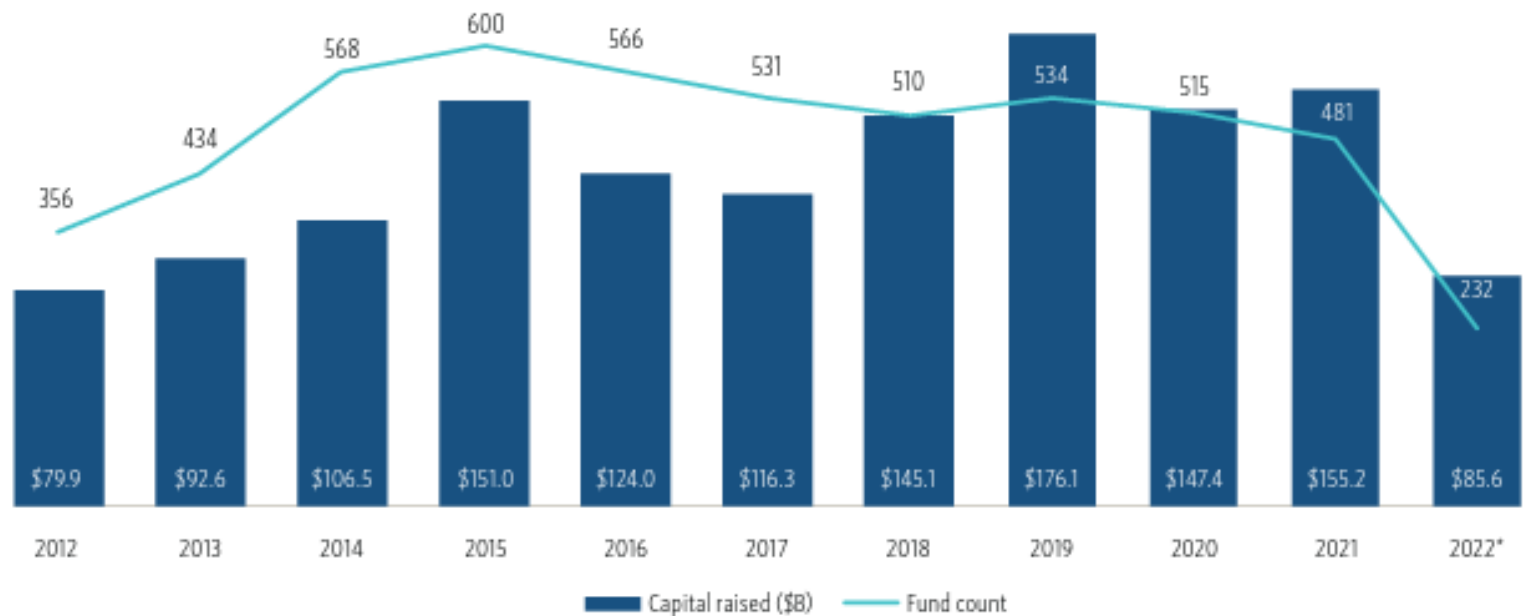
PE fundraising activity



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

# Fundraising Environment

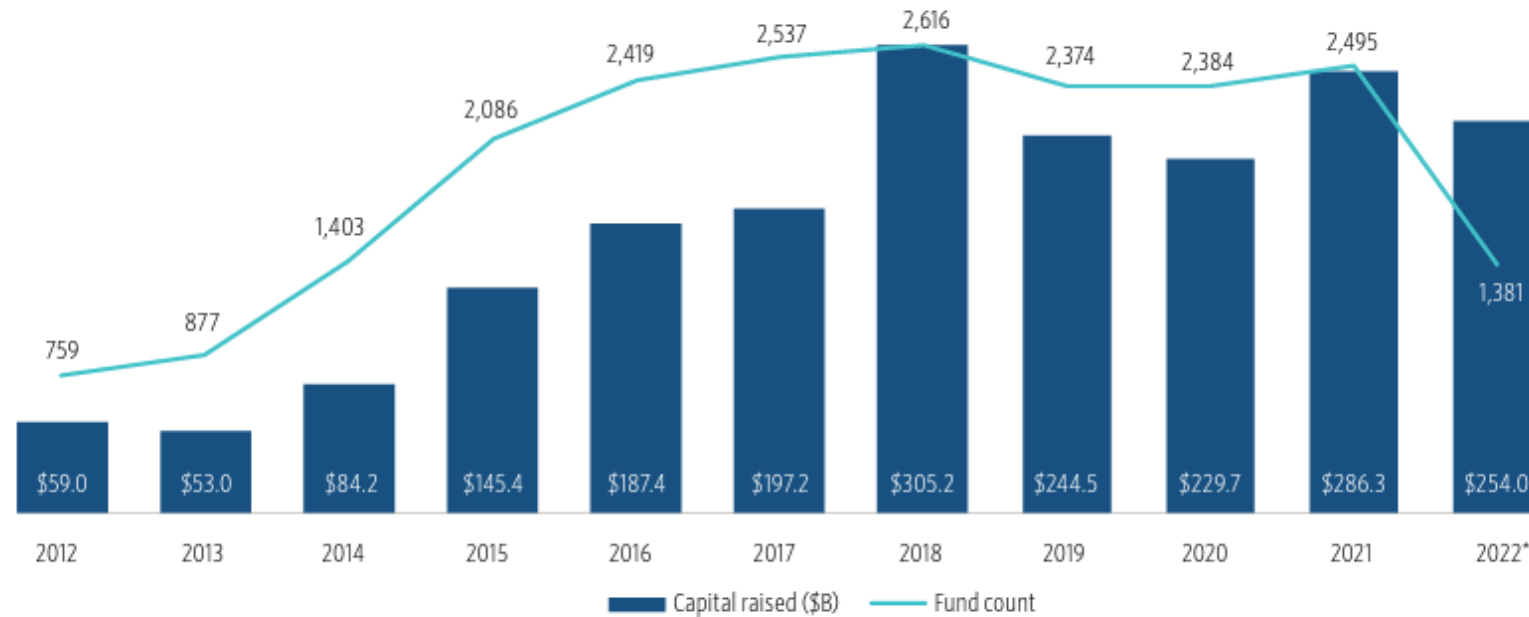
Real estate fundraising activity



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

# Fundraising Environment

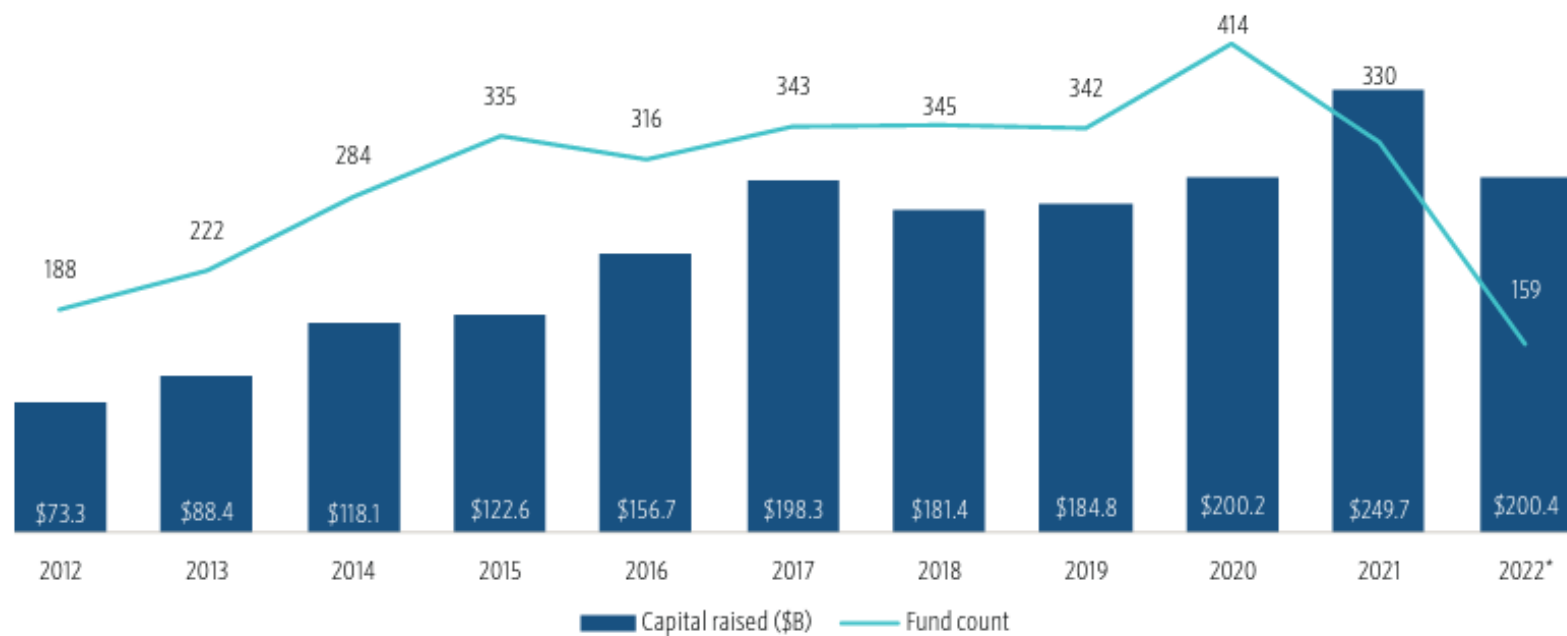
VC fundraising activity



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

# Fundraising Environment

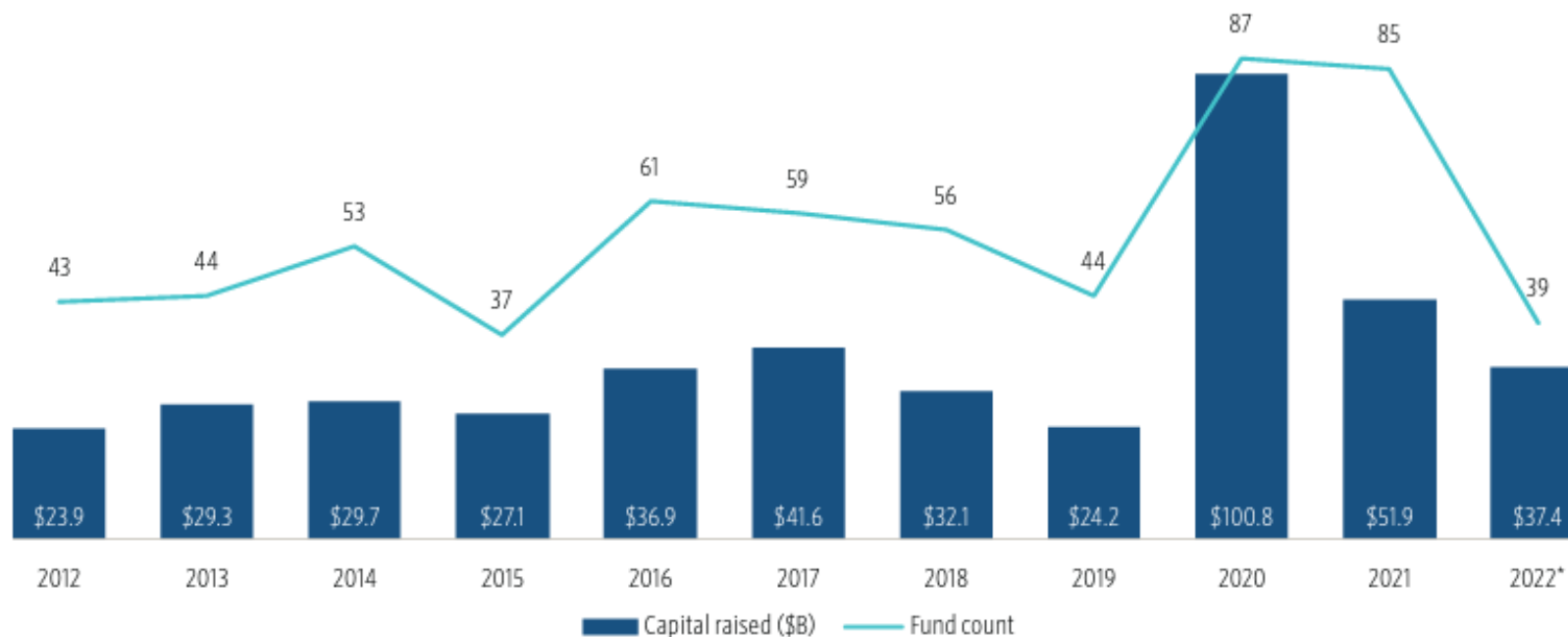
Private debt fundraising activity



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

# Fundraising Environment

## Secondaries fundraising activity



Source: PitchBook | Geography: Global  
\*As of December 31, 2022

# Fundraising Environment

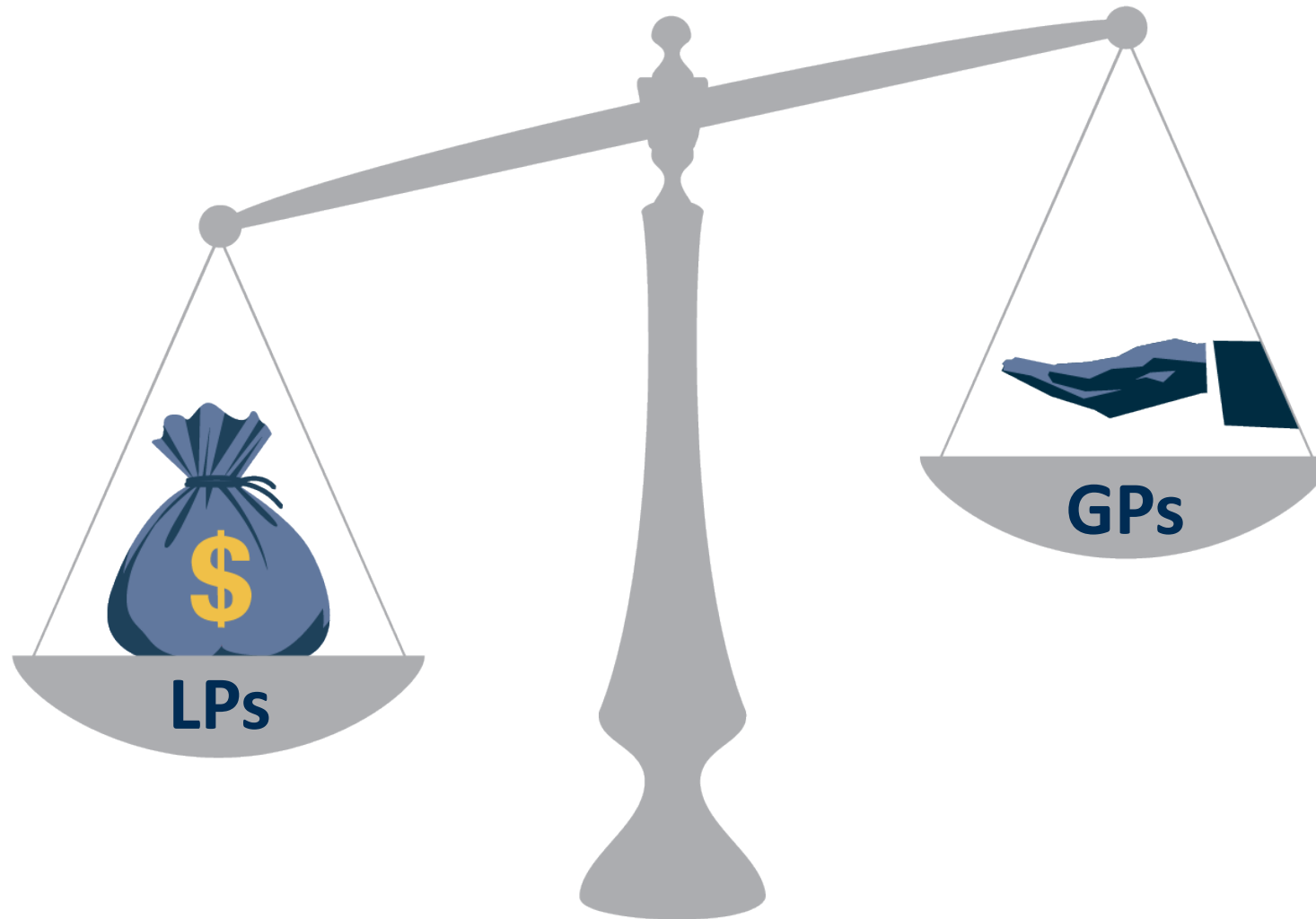
## CONSEQUENCES OF LONGER FUNDRAISES





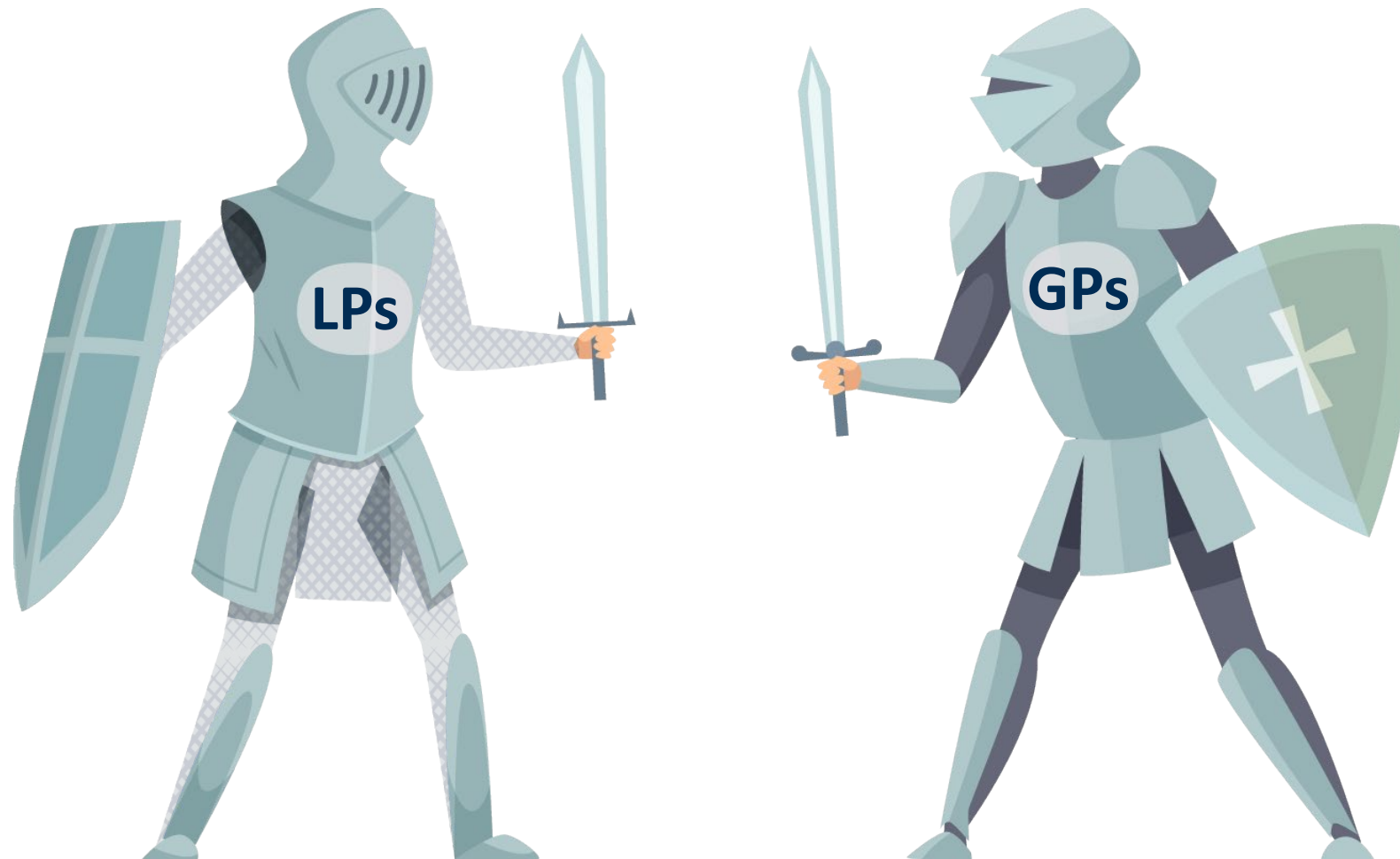
# Fundraising Environment

## MARKET OF PROCESS & TERMS



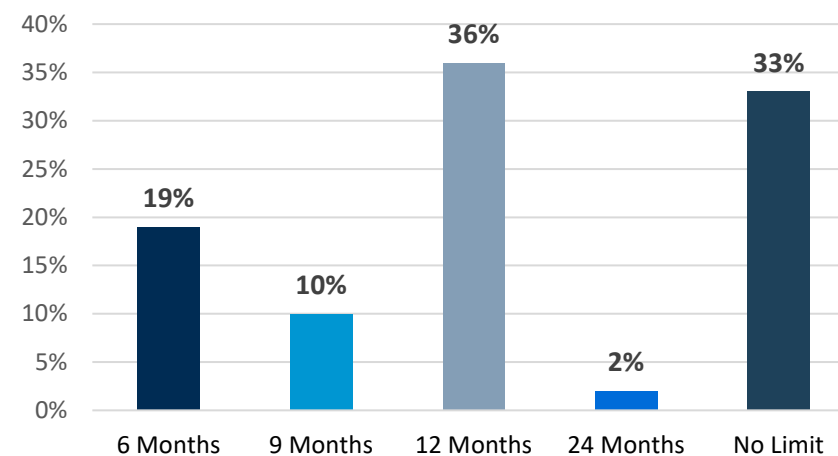
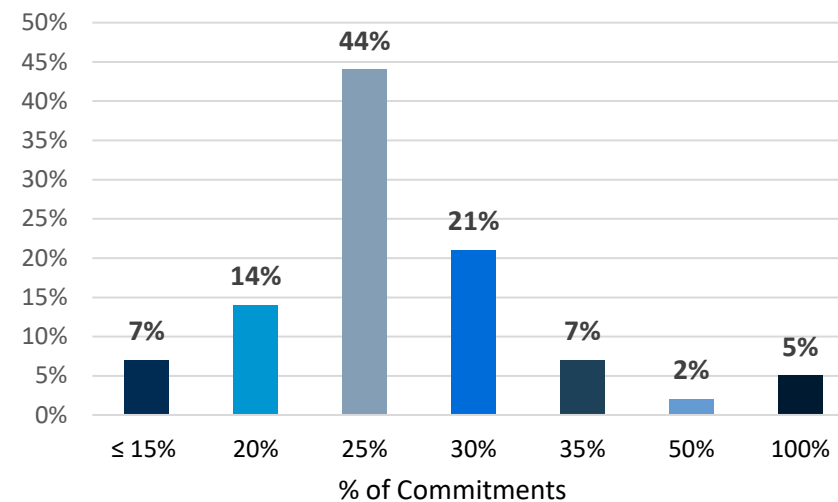
# Fundraising Environment

PICK YOUR BATTLES



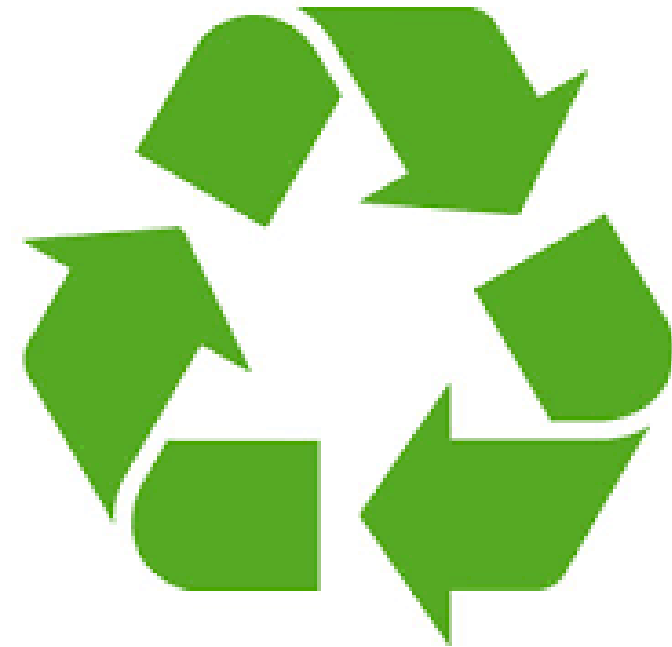
# Borrowings

- ▶ Closed-ended funds often include a limitation on borrowings — and guarantees of portfolio company obligations — typically expressed as a percentage of the aggregate size of the fund
- ▶ Most closed-ended funds typically limit borrowings and guarantees that are recourse to the fund to 20% to 30% of the fund's commitments
- ▶ Closed-ended funds typically provide specific limits on the time period during which borrowings may remain outstanding (6-12 months)
- ▶ Is the borrowing recourse or non-recourse?
- ▶ Is the cap based on the lesser of a percentage of commitments and unfunded commitments?
- ▶ Aside from bridging capital calls, are funds using NAV facilities, margin loans or other forms of borrowings to facilitate distributions?
- ▶ Are funds using alternative forms of permanent financing/back leverage given the current state of the debt markets?
- ▶ Are funds seeking greater flexibility with regards to cross-collateralization?



# Recycling

- ▶ Closed-ended funds typically permit the GP to retain or recall for reinvestment the invested capital portion of any proceeds received by the fund from the disposition of an investment that is realized within a specified number of months after the investment was originally made. The time period for recycling of capital (including whether such recycling is only permitted during the commitment period) may vary based on the size or strategy of the particular fund
- ▶ Some closed-ended funds permit recycling and many recycle where capital is returned within 12-18 months of investment, while some funds permit recycling throughout the term of the fund and cap the amount subject to recycling at the capital portion of proceeds received
- ▶ Some closed-ended funds limit the cumulative amount of capital that may be invested (including as a result of recycling) to a specified percentage of commitments. This cap is typically 110-130% of commitments
- ▶ Recycling continues to be the most flexible in credit funds given the nature of investing and sources of income
- ▶ Is there an increase in recycling both during and after the commitment period?
- ▶ Are more GPs recycling principal (including fees and expenses) and profit?
- ▶ Are GPs seeing an increase in the use of a percentage cap rather than a defined time period?
- ▶ Do the recycling trends apply equally to follow-on investments?



# Co-investments

- ▶ Co-investments continue to be an important part of the overall fund formation market
- ▶ As the co-investment market continues to mature, the terms, offering process and documentation are becoming more elaborate and increasingly resemble small fundraises
- ▶ Types of co-investment structures
- ▶ Key considerations relating to participation alongside main fund (and other funds)
- ▶ Trends in co-investment terms
- ▶ Trends regarding overflow and dedicated co-investment accounts and programs



# Capital Stacking and Solutions to Address Capital Structure Conflicts of Interest

- ▶ Investments by multiple funds managed by the same adviser in different levels of an issuer's capital structure can give rise to conflicts of interest when the interests of holders at various levels of the capital structure conflict (e.g., in bankruptcy)
- ▶ This may require a sponsor to take actions on behalf of a fund holding securities at one level of the capital structure that would have an adverse effect on a fund that has an interest elsewhere in the capital structure
- ▶ Internal policy position limits / notification thresholds / use of walls
- ▶ Contractual covenants
- ▶ Controlled vs. non-controlled portfolio company
- ▶ LPAC consent vs. LPAC disclosure
- ▶ Recourse debt vs. non-recourse debt



# Secondaries Effect on Fund Documents

- ▶ Are GPs seeking to proactively address in fund documents any of the following with respect to single- or multi-asset continuation fund processes?
  - Continuation fund process
  - Ad Board approval or not?
  - Allocation of expenses
  - Carry roll
  - Third-party investor participation
- ▶ What is the market consensus on this topic after this roaring period of secondaries growth?



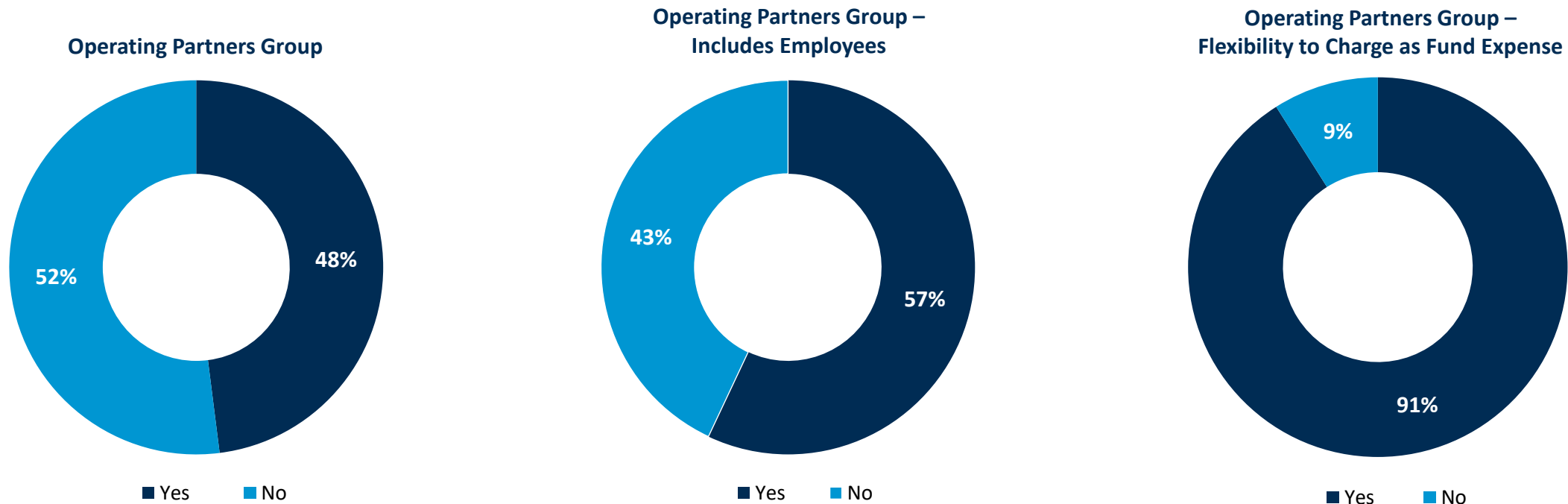


## Annex: Other Topics



# Operating Partners Group

- ▶ Some private equity firms establish a dedicated group of professionals (which may include employees of the firm or an affiliated entity) to provide operational expertise and related services to the fund's portfolio companies. Typically, compensation and expenses of these operating professionals are borne by the portfolio companies and/or the fund
- ▶ Almost half of closed-ended funds have a dedicated group of operating partners. Among these funds, many include certain employees of the firm in the group, and the vast majority provide the flexibility to charge the fund for expenses relating to such operating partners (although some may not in practice)



# LP Regulatory Issues

- ▶ Do fund documents address the excuse, exclusion and similar mechanics in an adequate manner?
- ▶ How do GPs deal with sanctioned LPs or LPs whose presence or ownership could present deal or regulatory approval issues?
- ▶ How to deal with reallocating investments/expenses, calling capital, etc.
- ▶ Effect on reps/covenants in side letters/counterparty/transaction documents

