

fladgate

M&A Trend Tracker



Foreword

We are delighted to publish the inaugural edition of our M&A trend tracker.

This publication analyses data from a sample of 20 M&A transactions on which Fladgate advised during the first half of 2019 (H1 2019) and the first half of 2020 (H1 2020).

Our analysis highlights how some deal terms remain consistent, whereas other terms have evolved over time. The analysis considers both commercial and legal terms of deals, and in a number of incidences suggests that buyers are leveraging a stronger negotiating position, at least in relation to certain deal points.

This publication will be of interest to anyone engaged in or considering M&A activity, including funds, HNWs, entrepreneurs and corporates; as well as intermediaries including corporate finance advisers and reporting accountants.

If you would like to discuss this publication further, please get in touch with us or your usual Fladgate contact.



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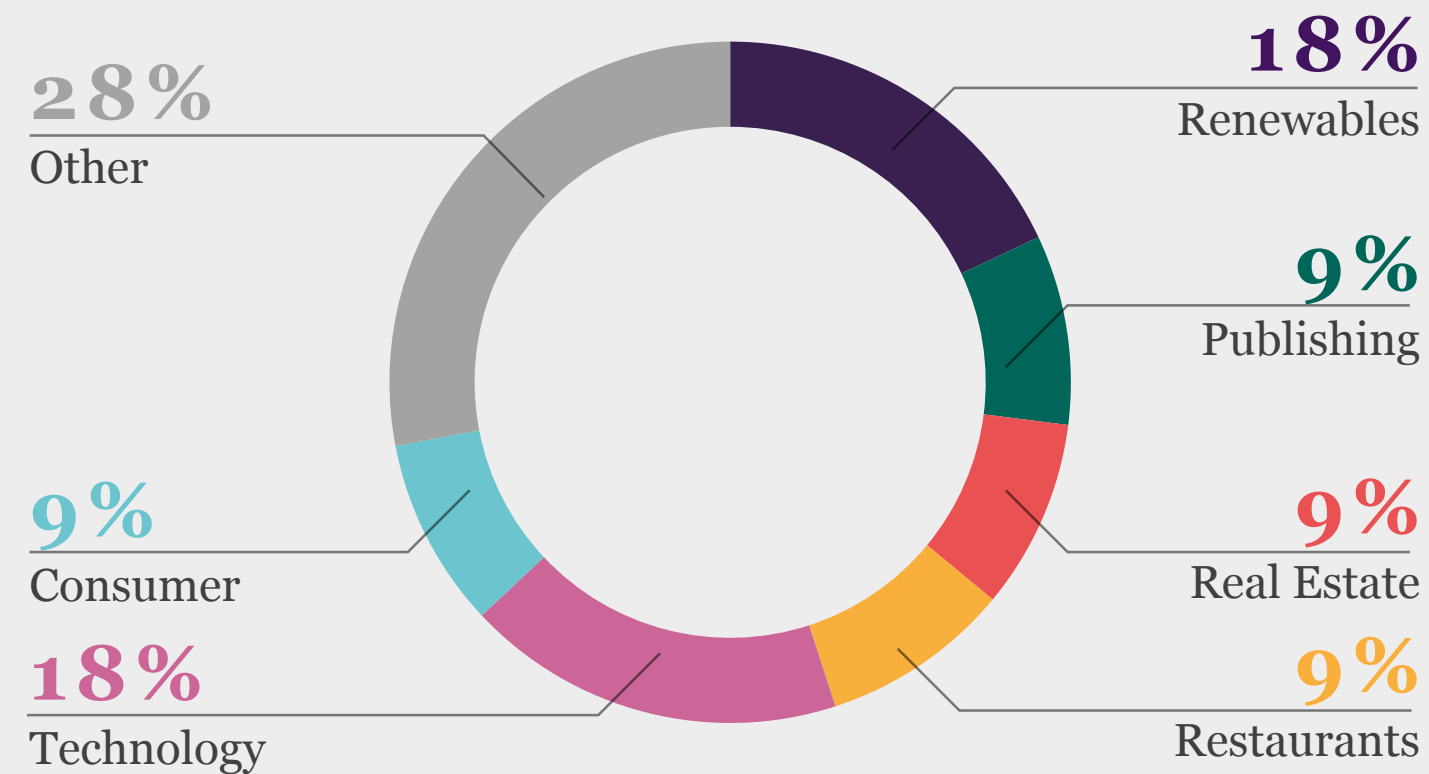
Fladgate is top ranked in the legal directories for M&A deals up to £50 million.



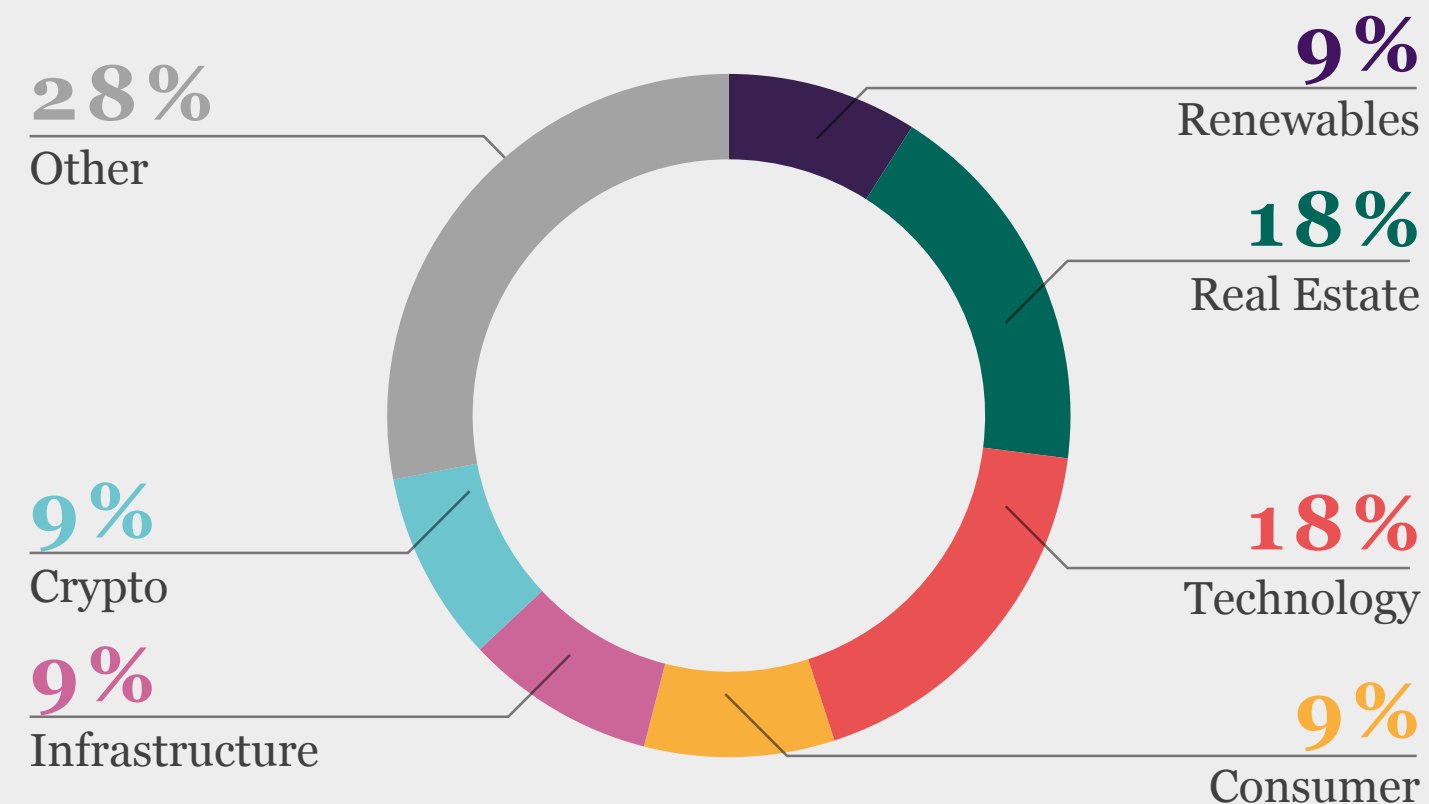
01 Sectors

The deals analysed for this publication broke down into the following sectors:

PERCENTAGE OF DEALS BY SECTOR (H1 2019)



PERCENTAGE OF DEALS BY SECTOR (H1 2020)



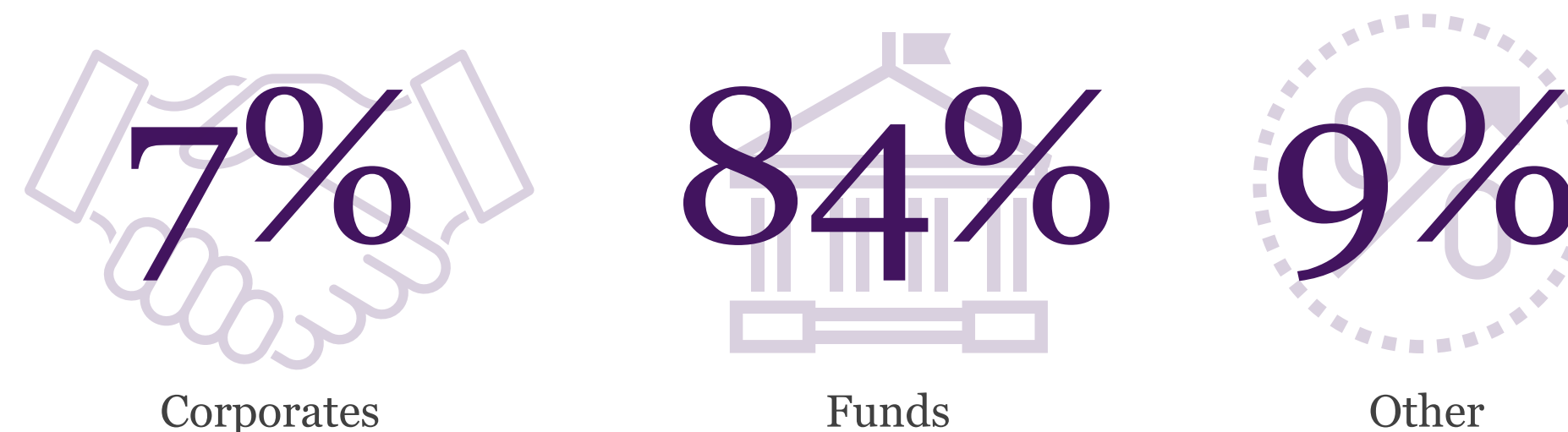
02 Buyer and Seller Profiles by Deal Value

Funds, as opposed to other types of buyer (for instance corporates or family offices), accounted for 84% of deal value in H1 2020, up from 30% in H1 2019. This is not surprising, given the ever increasing amount of “dry powder” controlled by funds with diverse investment strategies.

BUYER PROFILE BY DEAL VOLUME (H1 2019)



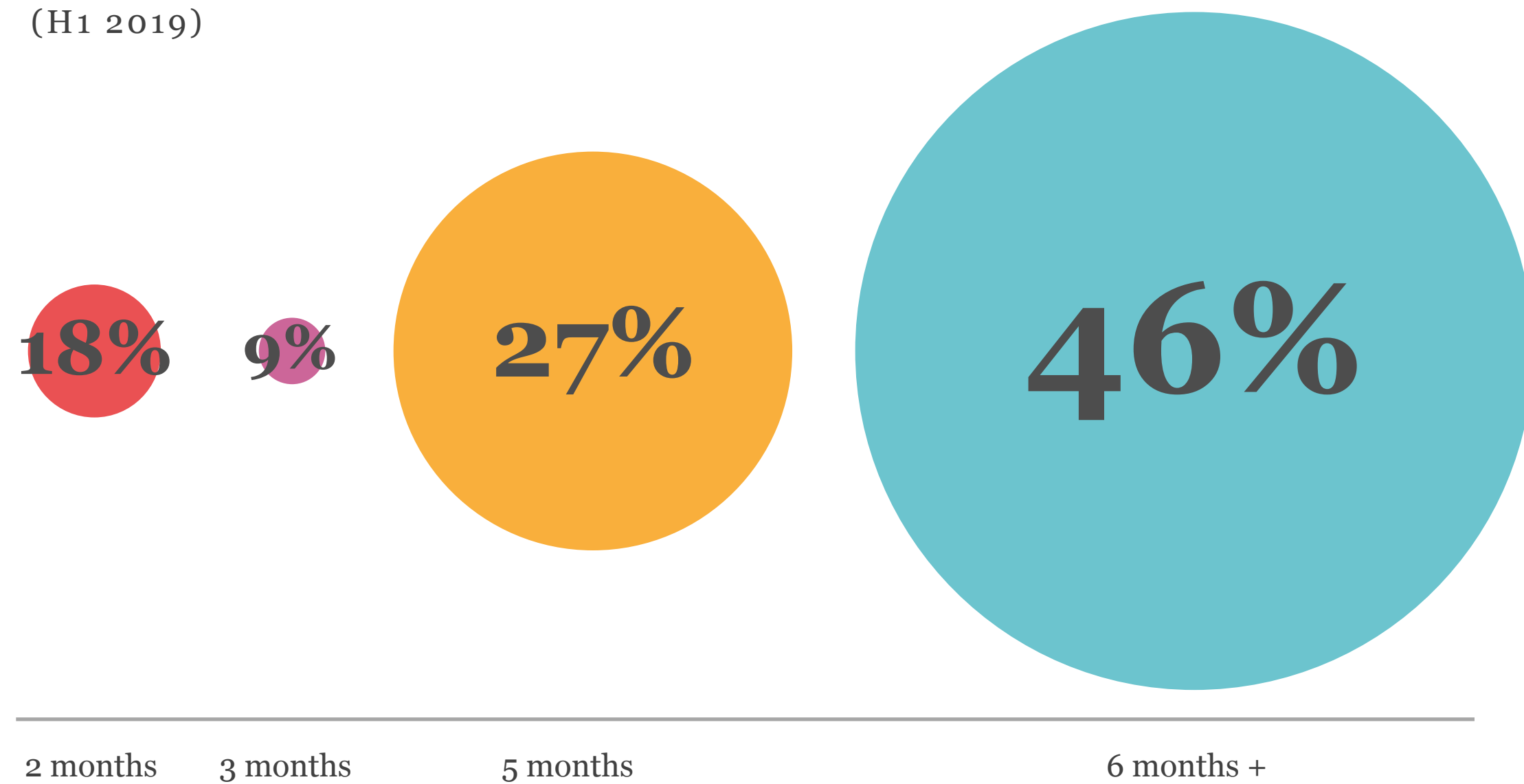
BUYER PROFILE BY DEAL VOLUME (H1 2020)



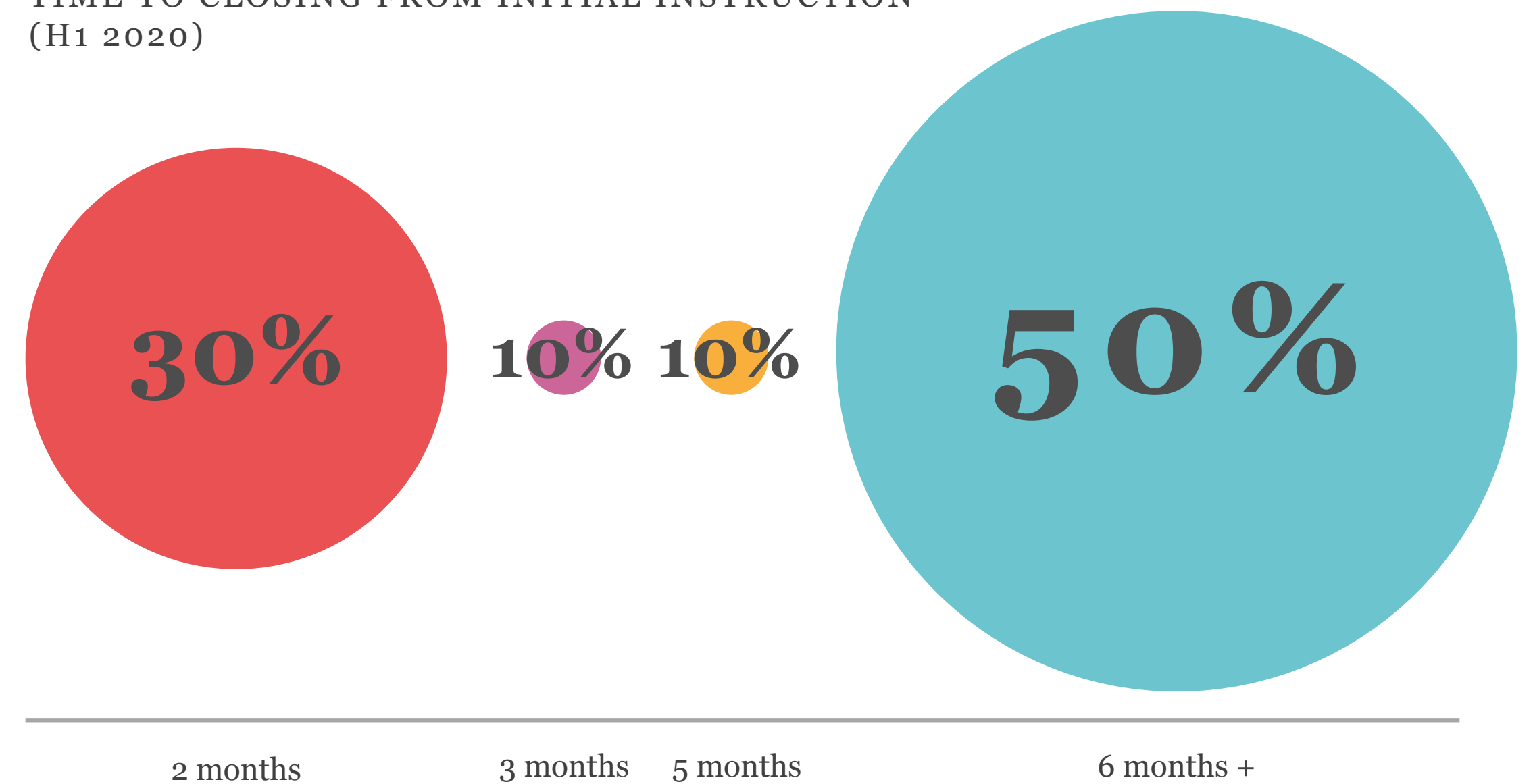
03 Time to closing

The percentage of transactions that took two months or less to close increased from 18% in H1 2019 to 30% in H1 2020. This appears to provide empirical evidence of an anecdotal trend in the market that deals which eventually close are in fact getting done quicker. That said, in both reference periods, a significant proportion of the deals still took six months or more to complete.

TIME TO CLOSING FROM INITIAL INSTRUCTION
(H1 2019)



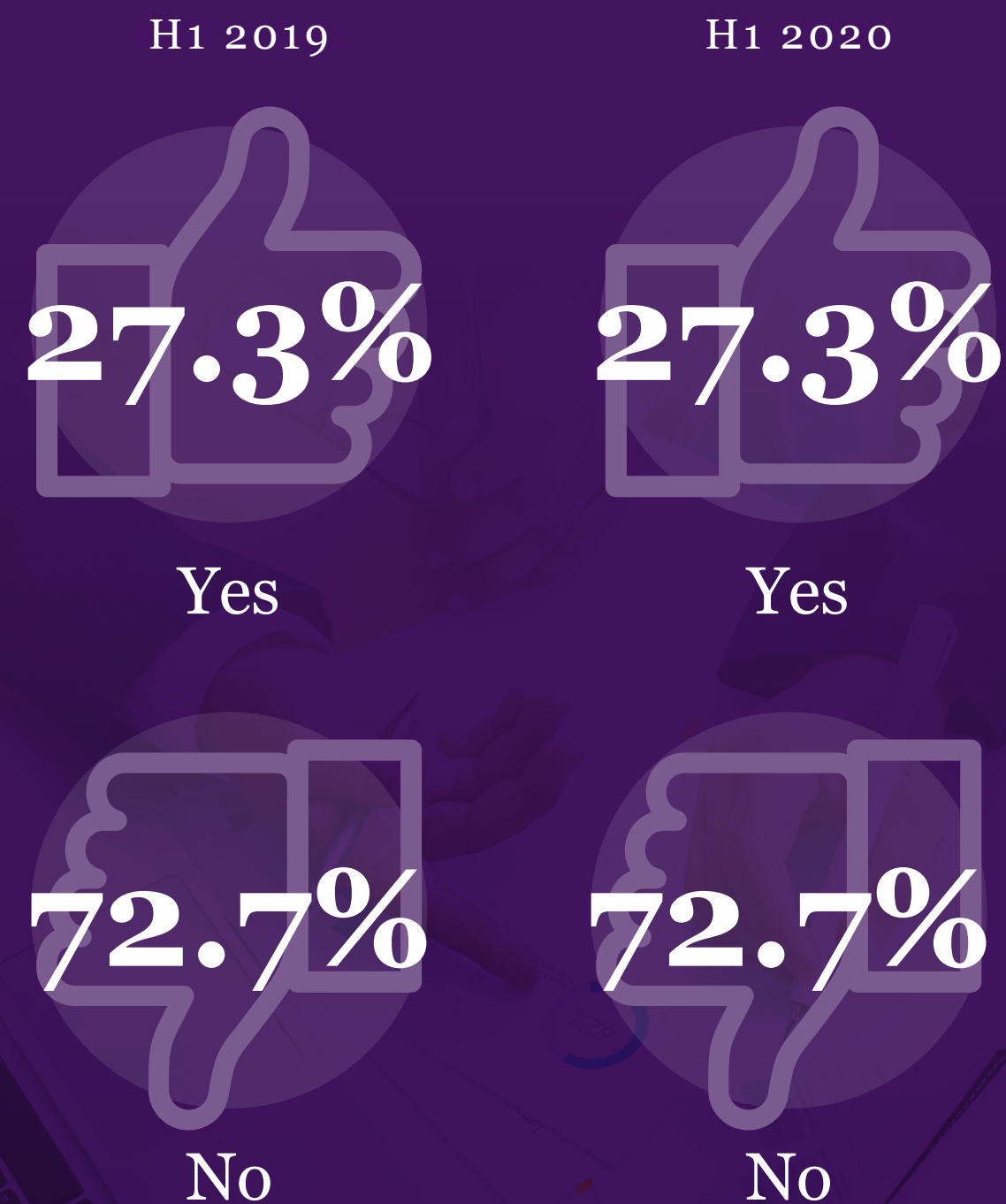
TIME TO CLOSING FROM INITIAL INSTRUCTION
(H1 2020)



04 Leverage

Deals involving third party leverage remained consistent between H1 2019 and H1 2020, which is not surprising.

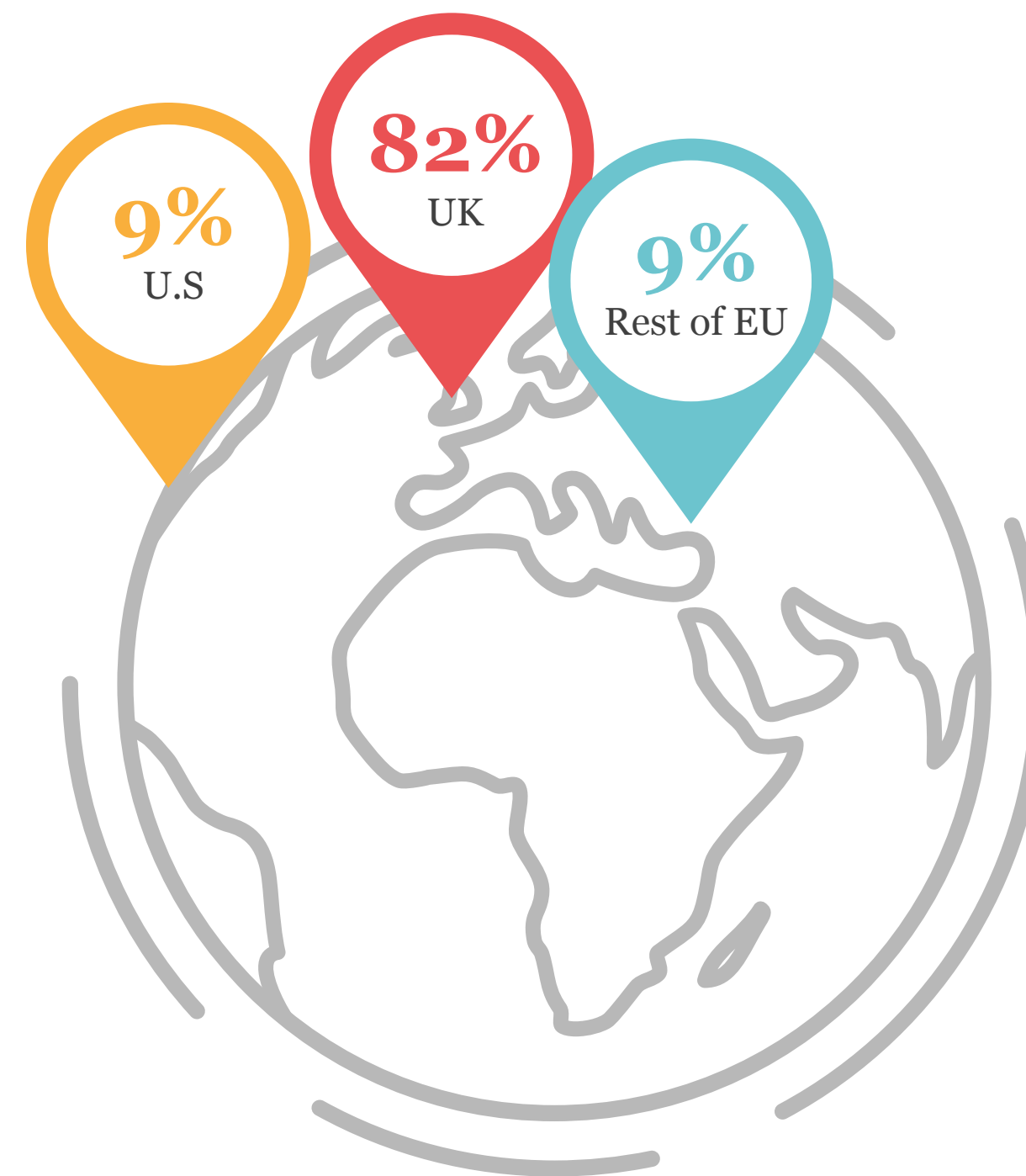
PERCENTAGE OF DEALS WITH THIRD PARTY LEVERAGE (H1 2019 v H1 2020)



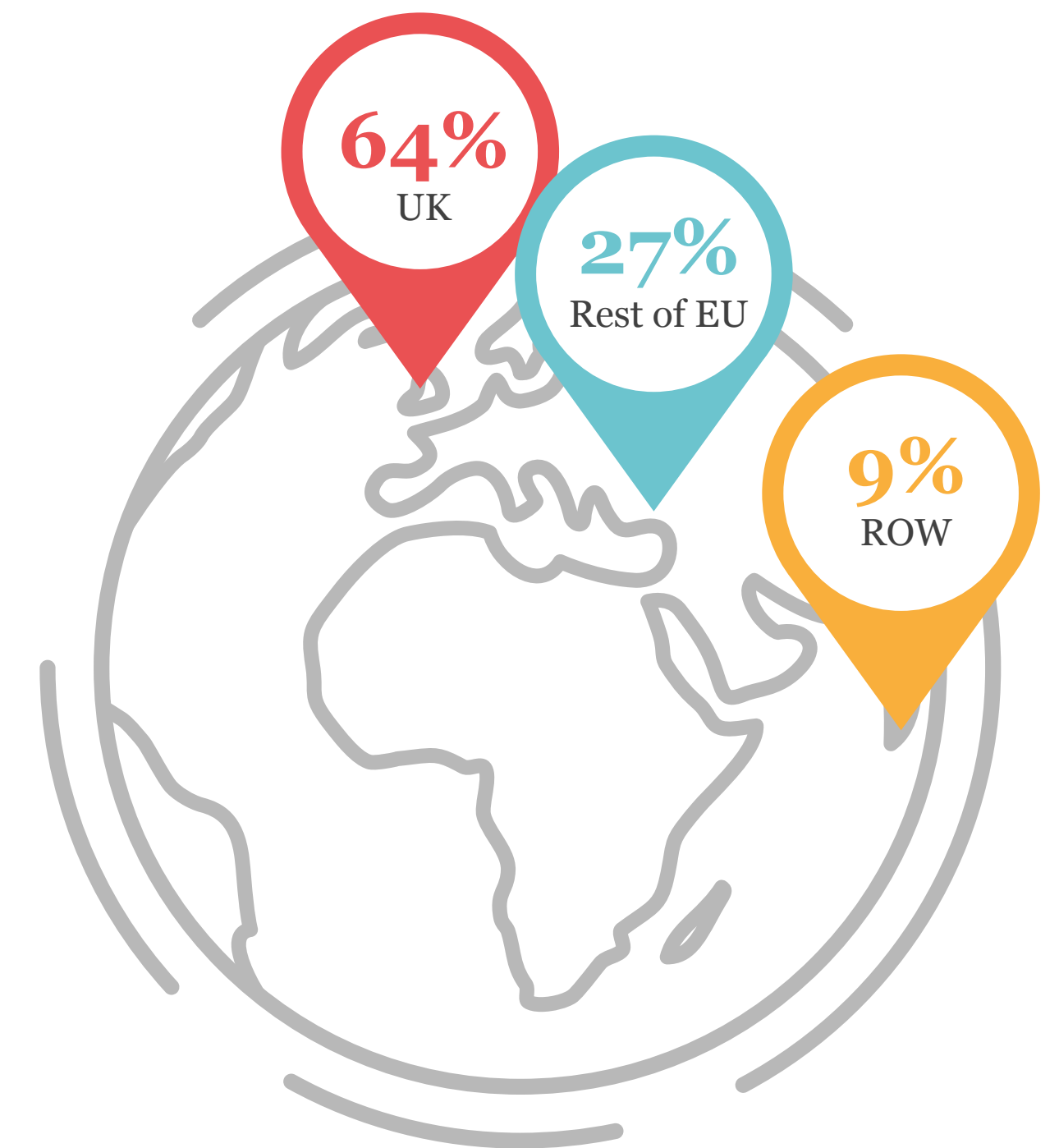
05 Geographic location of buyers

Buyers from Europe increased from 9% in H1 2019 to 27% in H1 2020, which is an interesting trend notwithstanding the expiry of the Brexit transition period and the entry into a new relationship between the UK and the EU.

GEOGRAPHY: LOCATION OF BUYER (H1 2019)



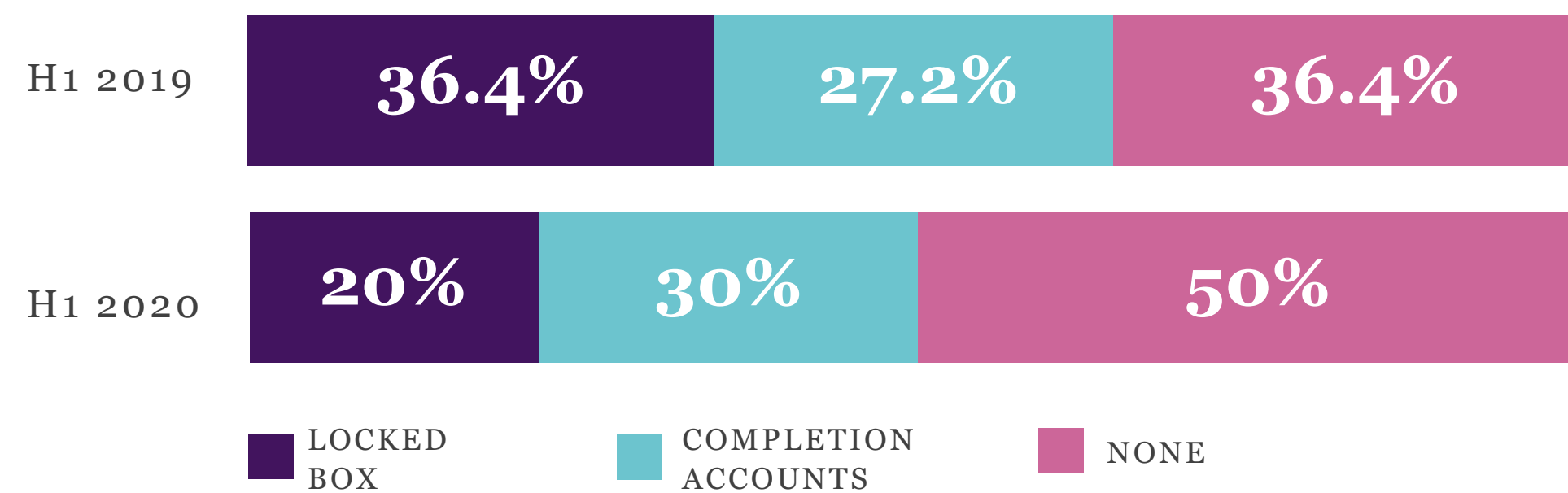
GEOGRAPHY: LOCATION OF BUYER (H1 2020)



06 Price adjustment mechanisms

Between H1 2019 and H1 2020, there was a shift away from locked box mechanisms towards completion accounts.

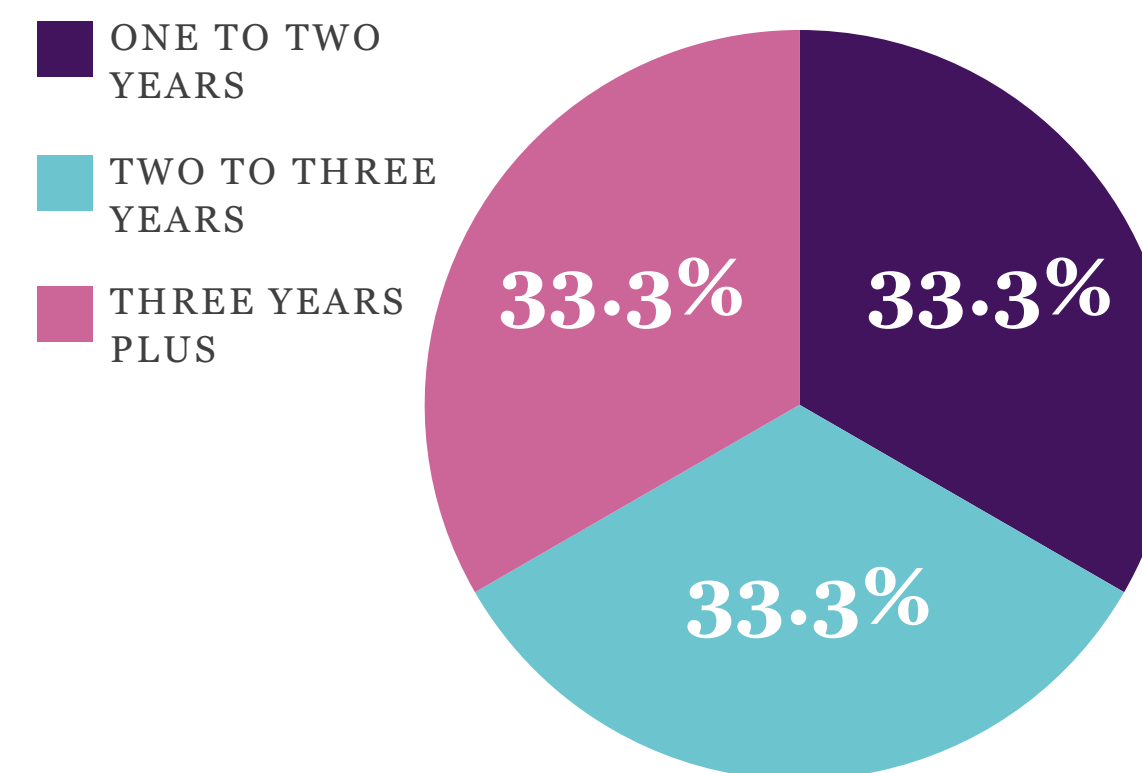
PRICE ADJUSTMENT MECHANISMS (H1 2019 V H1 2020)



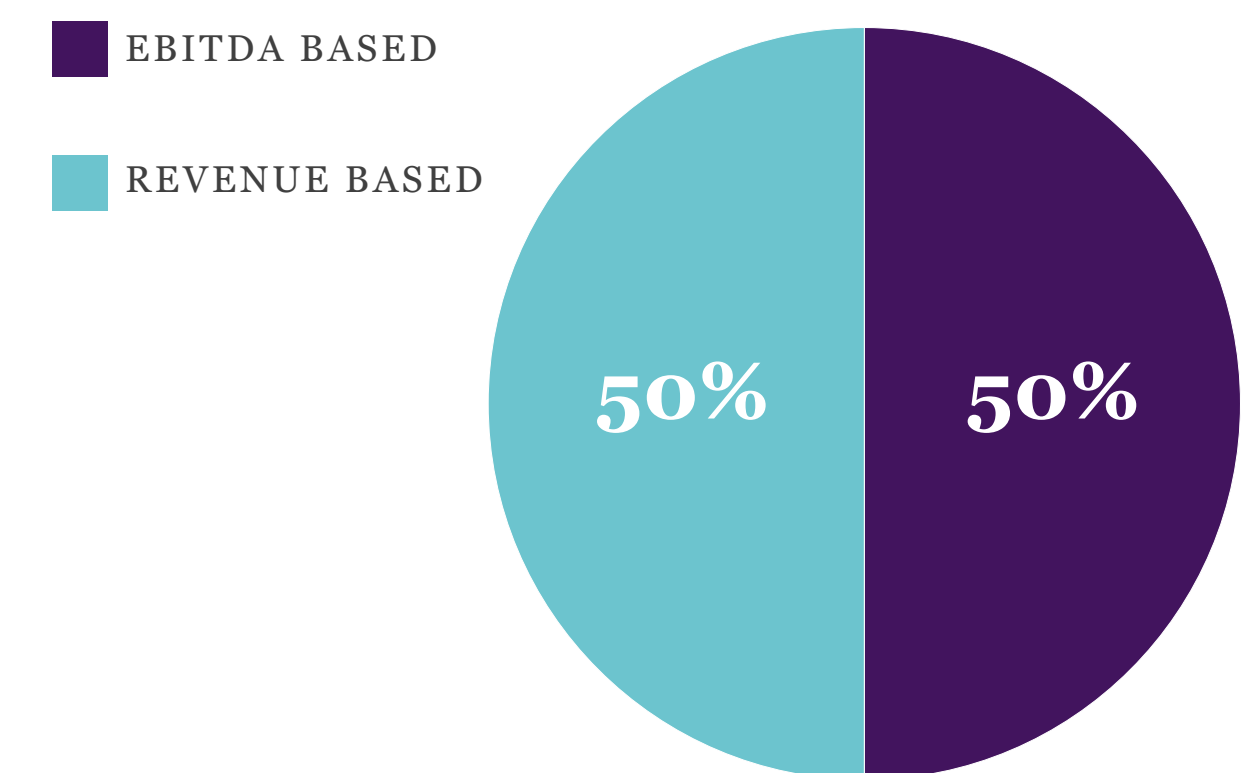
07 Earn-outs

Interestingly, for deals with earn-outs, there was an even distribution as between duration of earn-outs; and the methodology for calculating earn-outs.

EARN-OUT DURATION



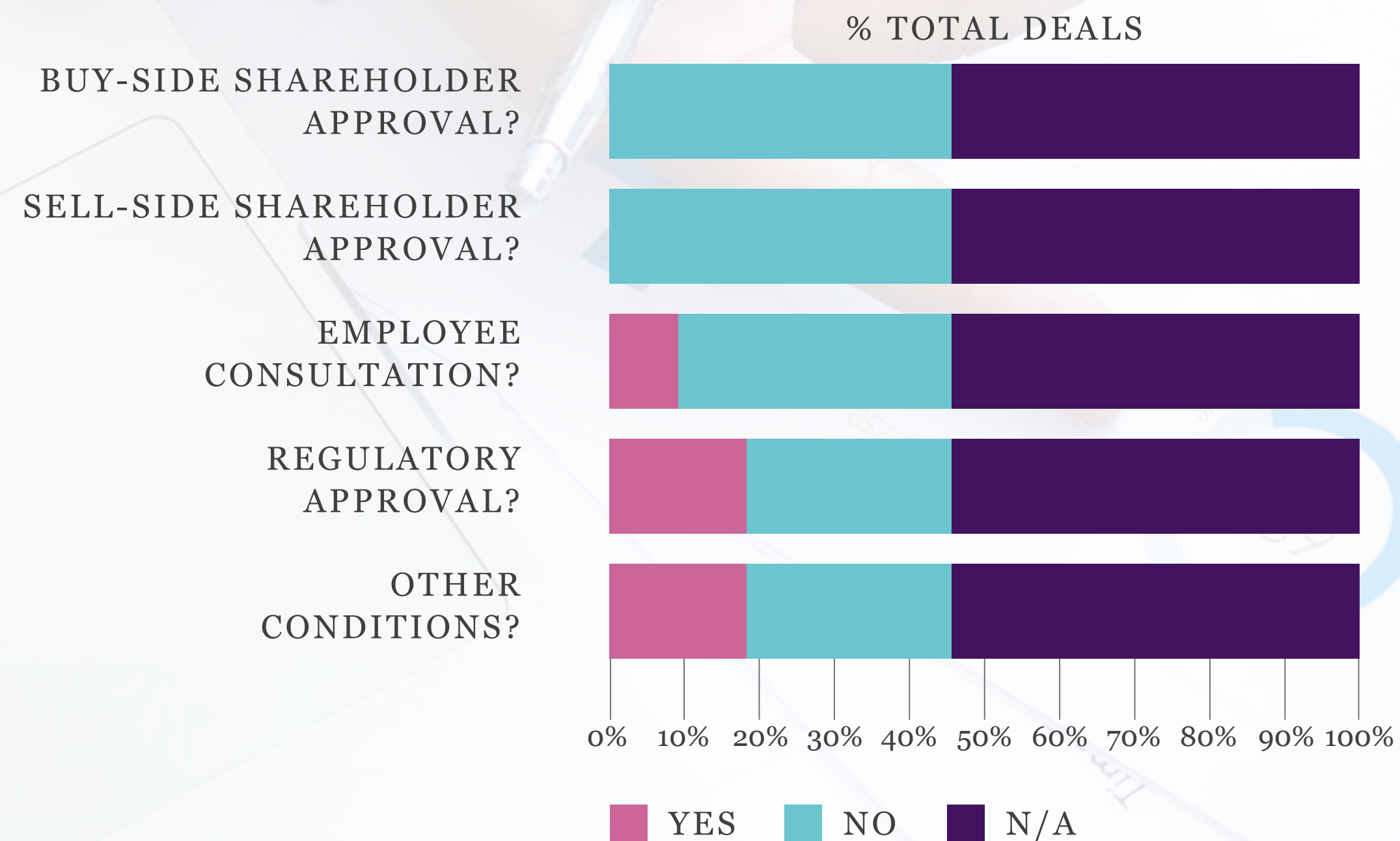
EARN-OUT TYPE



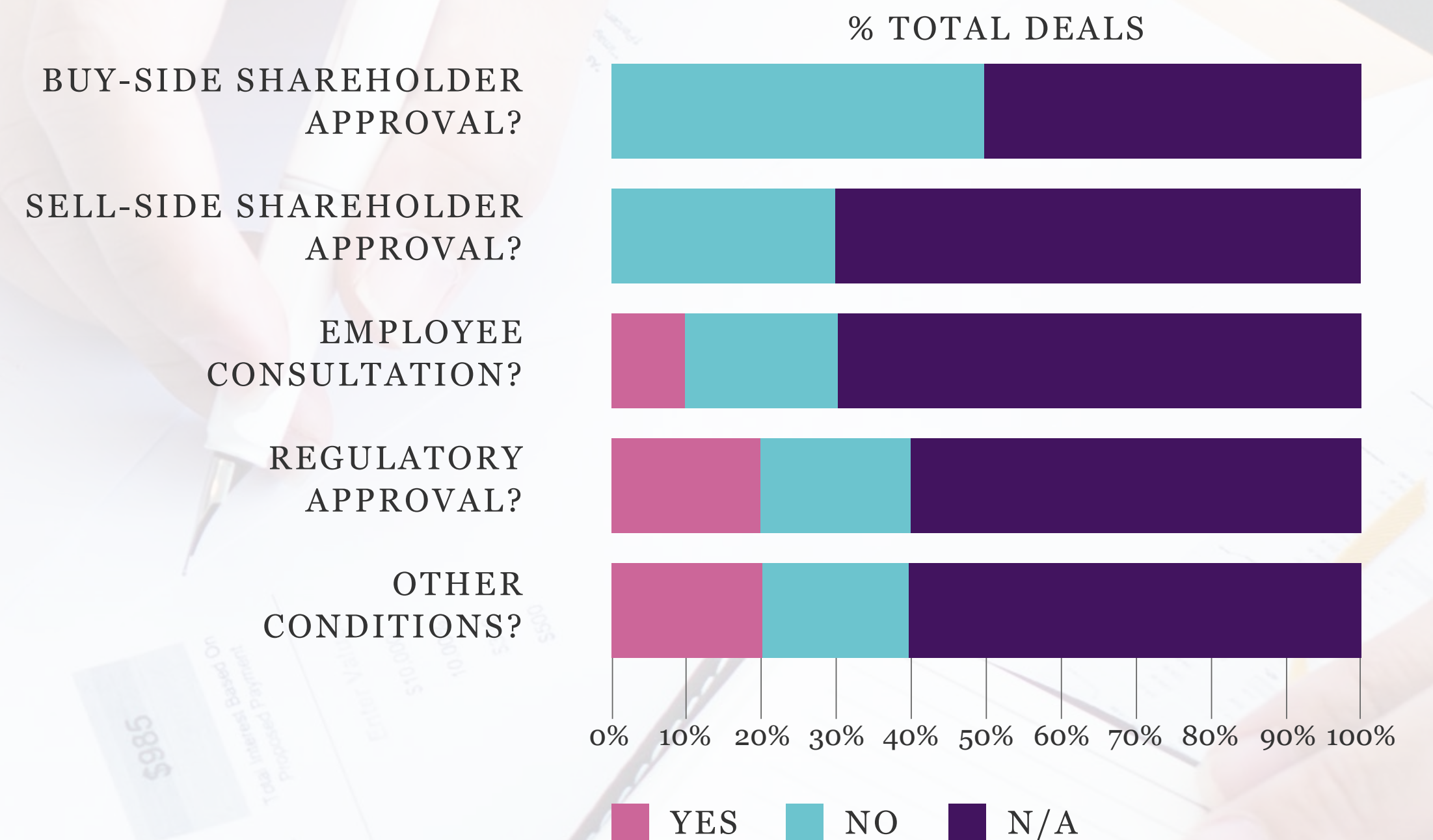
08 Conditions to completion

Ultimately, it is difficult to discern any specific trends from these charts. Conditions to closing will be different for each transaction, and will be a function of the terms of each deal and specific legal requirements. That said, approximately half of the deals in each reference period were structured with no conditions to closing.

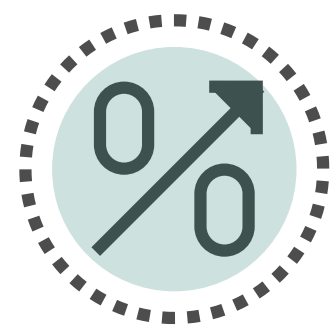
CONDITIONS TO COMPLETION: H1 2019



CONDITIONS TO COMPLETION: H1 2020



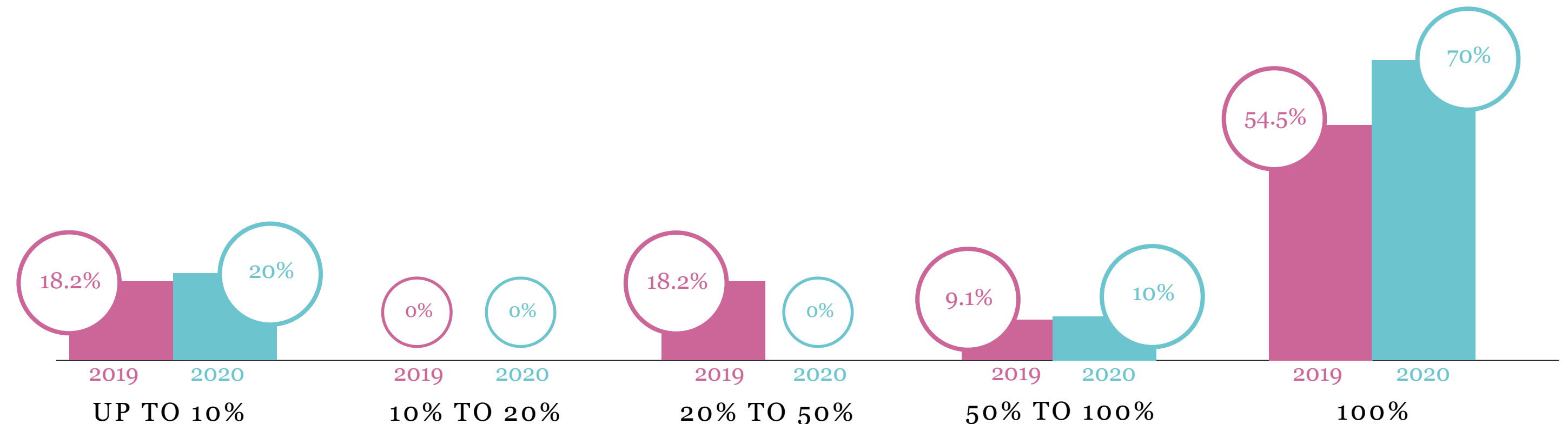
09 Liability caps for warranty claims



Caps on liability are trending upwards, which suggests buyers are gaining the upper hand in negotiations.

In particular, the number of deals with a 100% liability cap increased from 54.5% in H1 2019 to 70% in H1 2020.

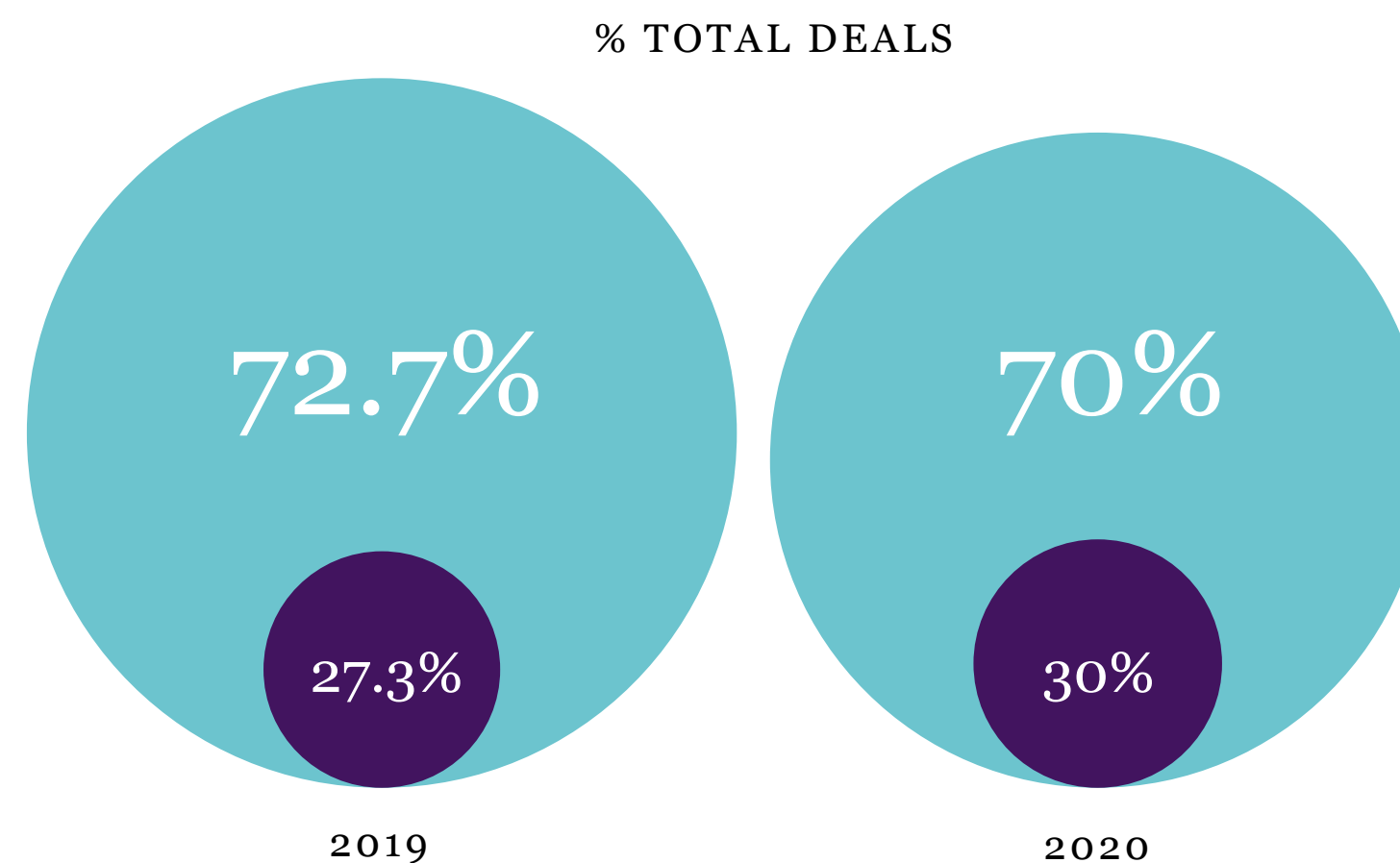
DOWNSIDE PROTECTIONS: TOTAL CAP ON LIABILITY AS % OF CONSIDERATION (H1 2019 v H1 2020)



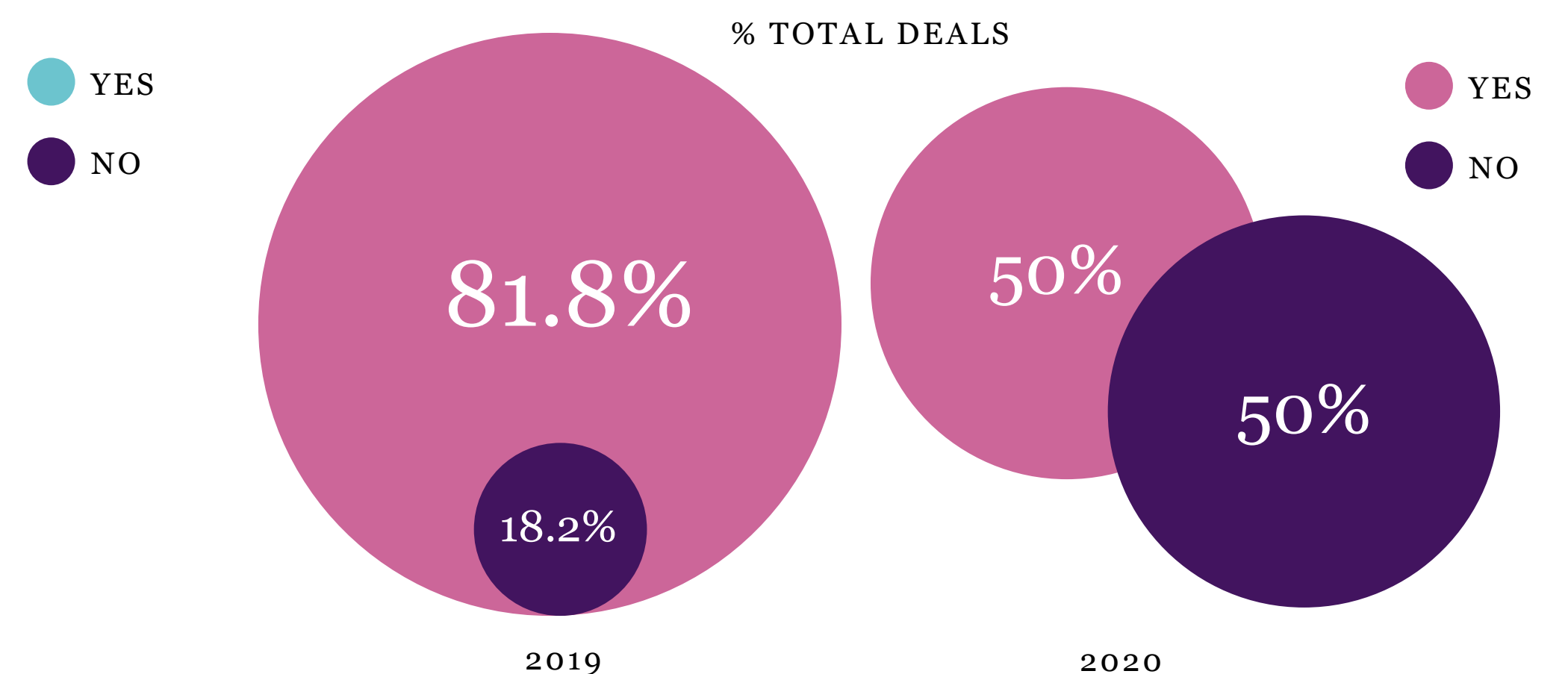
The incidence of “basket” thresholds for bringing warranty claims were broadly the same across H1 2019 and H1 2020.

However, the incidence of “de minimis” thresholds actually declined from 81.8% of deals in H1 2019 to 50% of deals in H1 2020, which is surprising given that a “de minimis” threshold is typically expected to feature in UK M&A transactions.

DOWNSIDE PROTECTIONS: BASKET THRESHOLD (H1 2019 v H1 2020)



DOWNSIDE PROTECTIONS: DE MINIMIS THRESHOLD (H1 2019 v H1 2020)



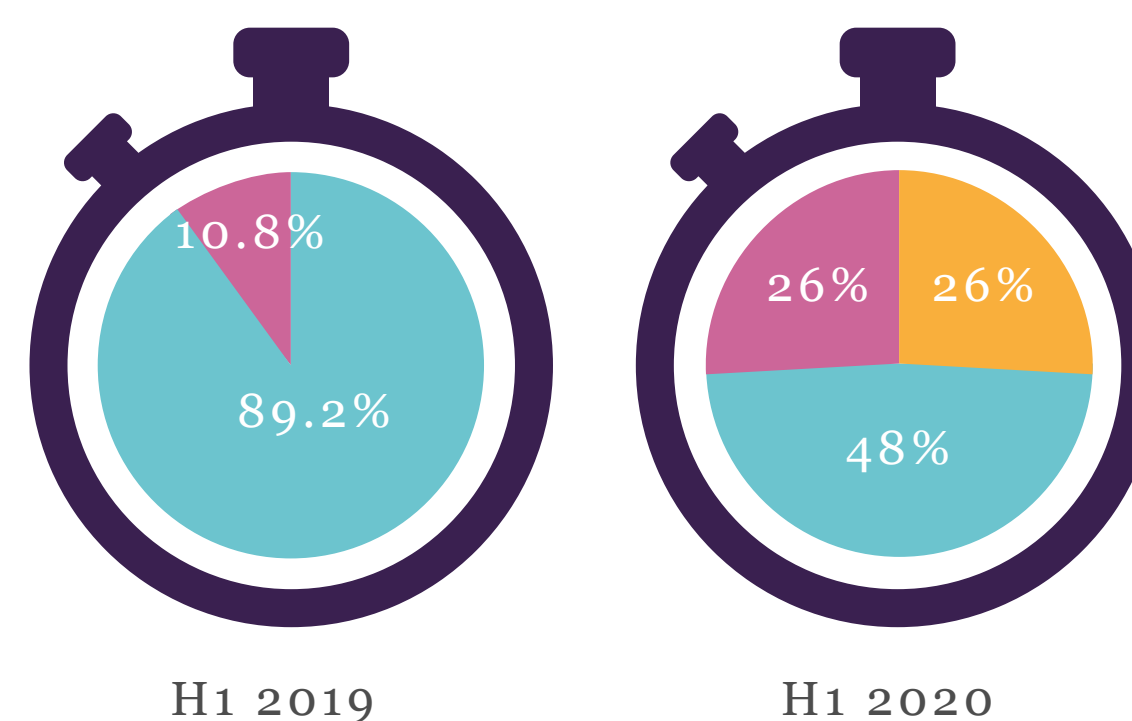
10 Time limits for warranty claims

In relation to the time limit for bringing claims for breach of non-tax warranties, there has been a move away from the standard two year period towards the period expiring on publication of the first accounts of the target following closing. In fact, the percentage of deals with a two year time limit fell from 89.2% in H1 2019 to 48% in H1 2020.

Conversely, the time limit for bringing claims for breach of tax warranties remained broadly consistent across the two reference periods.

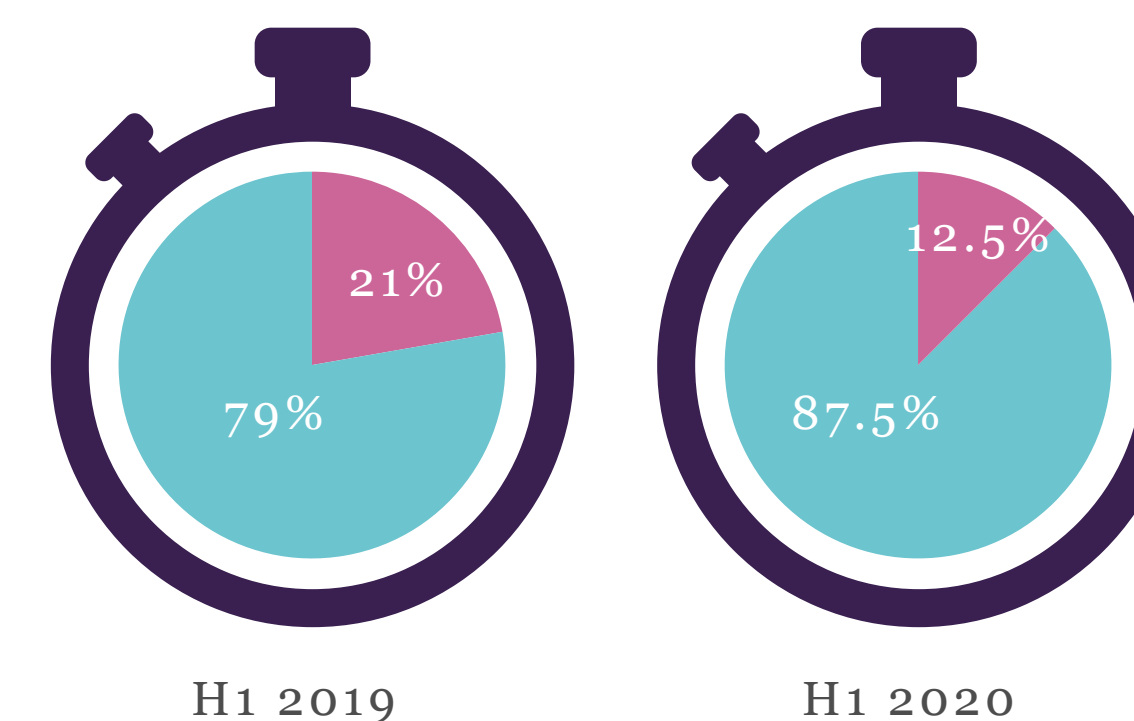
DOWNSIDE PROTECTIONS: TIME LIMIT FOR NON-TAX WARRANTIES (H1 2019 v H1 2020)

■ ONE YEAR ■ TWO YEARS ■ ONE YEAR'S ACCOUNTS



DOWNSIDE PROTECTIONS: TIME LIMIT FOR TAX WARRANTIES (H1 2019 v H1 2020)

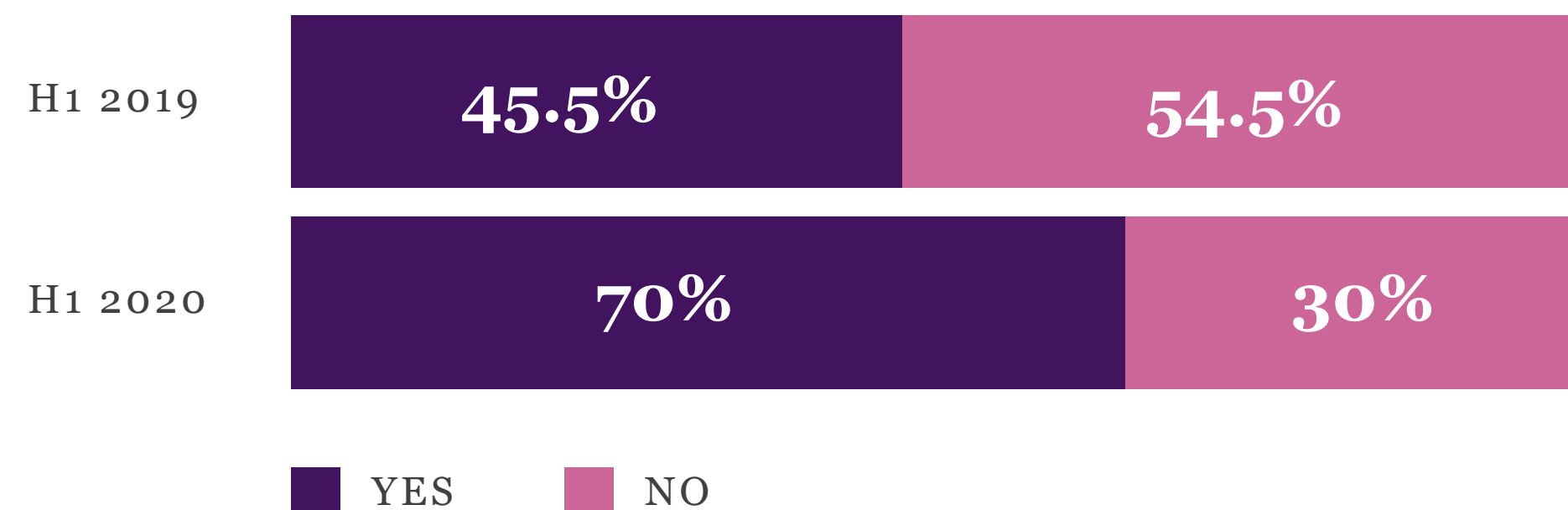
■ LESS THAN SEVEN YEARS ■ SEVEN YEARS



11 Non-Tax Indemnities

There was an increase in deals where the seller gave non-tax related indemnities (as opposed to warranties) to the buyer, with the percentage of such deals increasing from 45.5% in H1 2019 to 70% in H1 2020.

DOWNSIDE PROTECTIONS: NON-TAX INDEMNITIES FROM THE SELLER (H1 2019 V H1 2020)

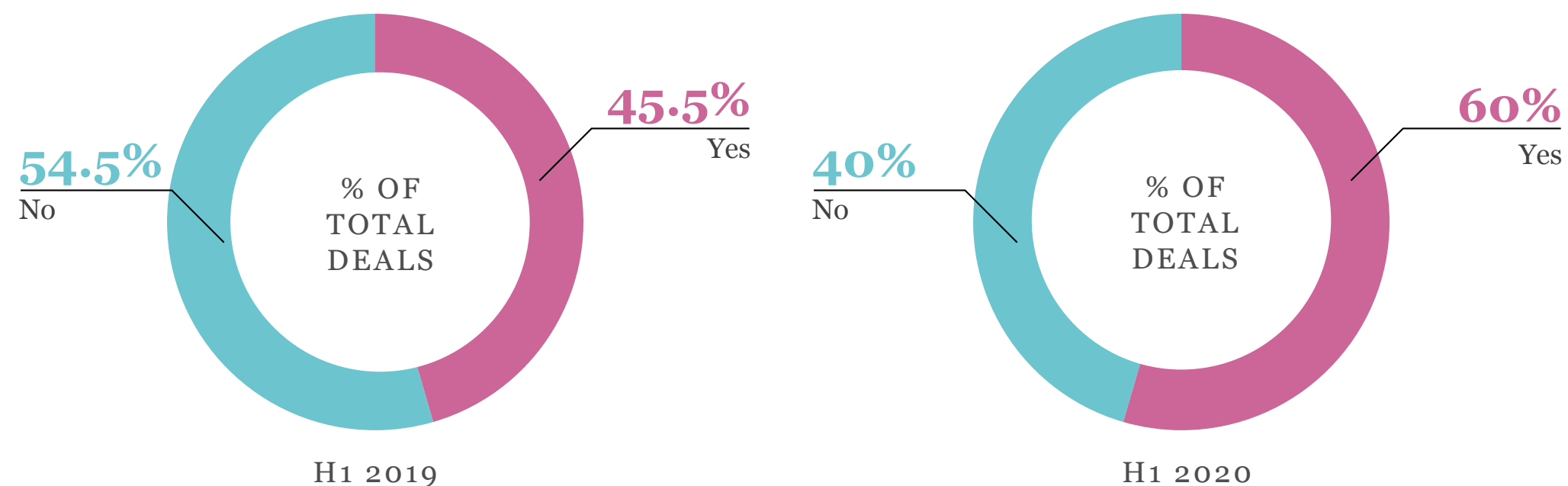


12 Disclosure of data room



The number of deals where the contents of the data room were automatically disclosed to the buyer for warranty purposes increased from 45.5% in H1 2019 to 60% in H1 2020.

DOWNSIDE PROTECTIONS: DISCLOSURE OF DATA ROOM
(H1 2019 v H1 2020)

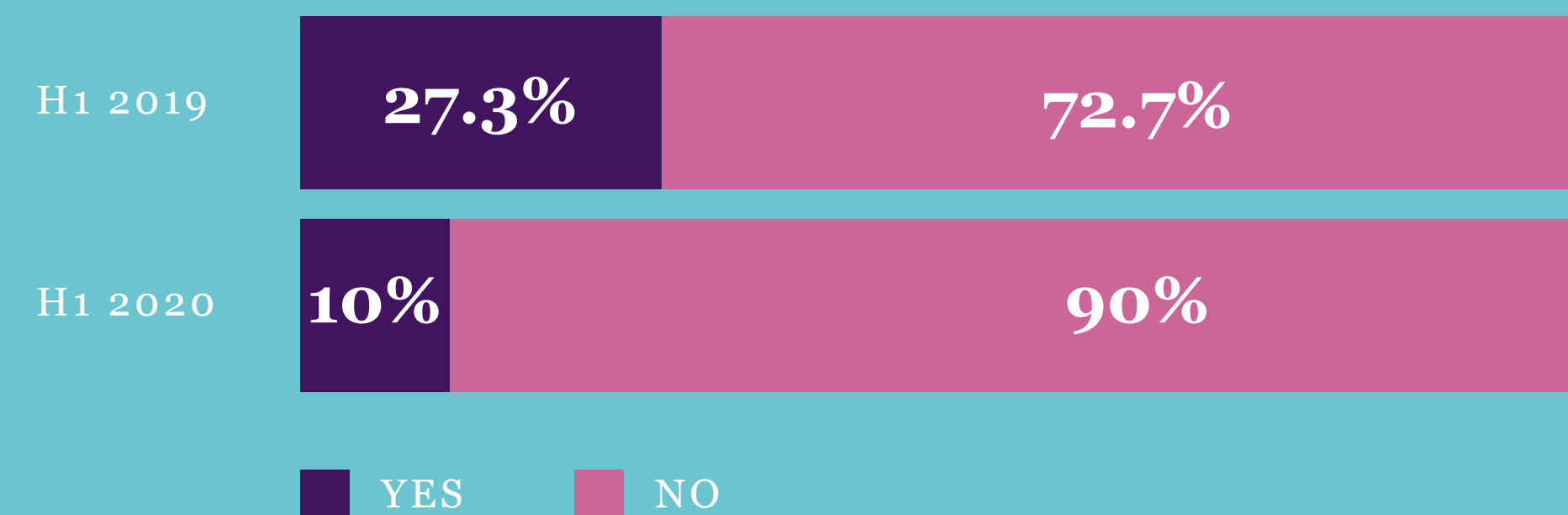


13 Warranty and indemnity insurance

Counter-intuitively, the number of deals which featured warranty and indemnity insurance actually declined across the two reference periods, notwithstanding a broader trend towards such insurance policies, particularly in private equity buyouts.

Where such policies featured on deals, there was a tendency towards buyer sourced as opposed to seller sourced policies.

DOWNSIDE PROTECTIONS: W&I POLICY ON DEAL (H1 2019 v H1 2020)



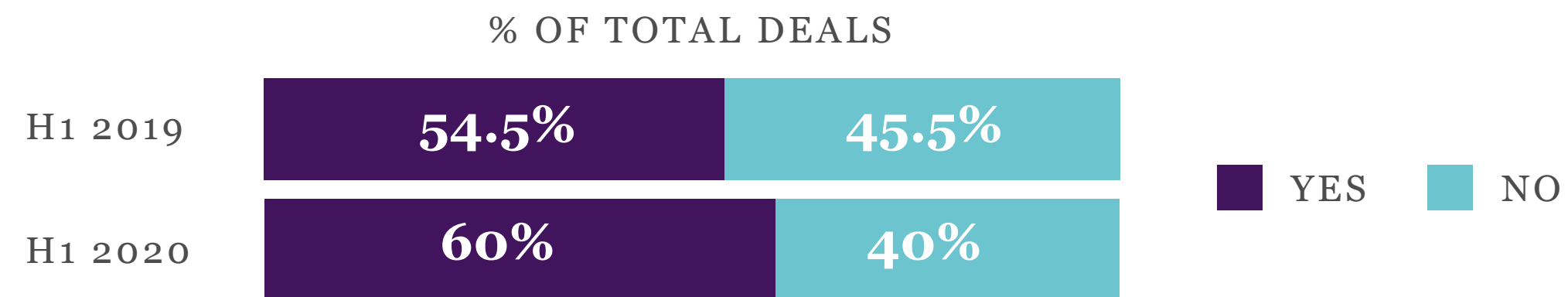
14 Tax



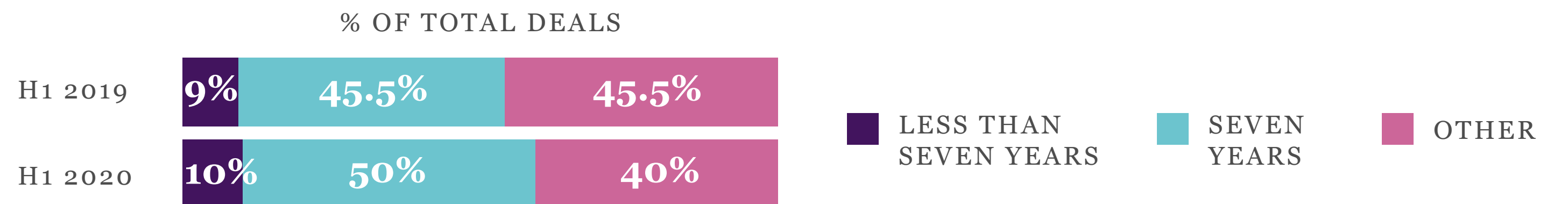
As expected, tax deeds from the seller in respect of pre-closing tax liabilities continue to feature (other than in relation to business as opposed to share sales); and the seven year time limit for bringing tax claims remained relatively constant.

However, reverse tax covenants from the buyer to the seller decreased between H1 2019 and H1 2020 from 54.5% to 37.5%.

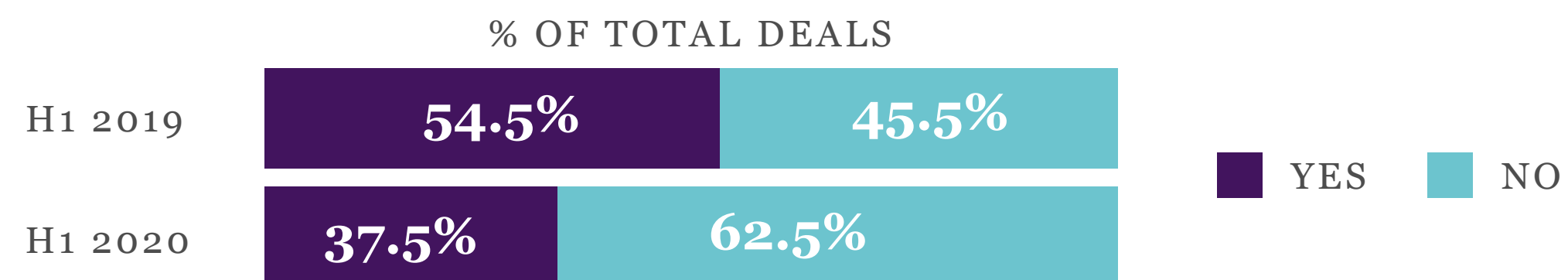
TAX DEEDS (H1 2019 v H1 2020)



TIME LIMIT FOR CLAIMS UNDER TAX DEED (H1 2019 v H1 2020)



COVENANT FROM BUYER (H1 2019 v H1 2020)



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