HERBERT SMITH FREEHILLS

# READY FOR TAKEOFF:

## THE AUSTRALIAN ECM REVIEW 2024

# Contents

# Introduction

## It gives us great pleasure to present *Ready for Takeoff: The Australian ECM Review 2024*

In this publication we cover:

- the key themes of capital markets in 2024;
- a review of IPO and secondary raising data across the Australian market;
- some of the innovative solutions to come to market in 2024;
- a review of activity in the resources sector;
- key governance issues and ESG;
- Australian regulatory developments;
- key US securities developments; and
- predictions for 2025.

We trust you will find value in it.

Should you have any questions in relation to capital markets in Australia, please contact our ECM partners who are listed on page 44.

**The Herbert Smith Freehills ECM Team**

# 2024: Key themes

## 2024 in review

IPO activity in 2024 continued to be very low, affected by persistent elevated interest rates, high inflation, geopolitical events and ongoing economic uncertainty, as well as simply downbeat market sentiment, without the change of mindset that a series of successful IPOs would have provided. The downturn in IPOs has now persisted for three years in a row, with the total number of IPOs remaining below long-term averages at 26 for the year.

However, the volume of capital raised presented a happier picture, with more than $1.1 billion in capital raised through the 2024 IPOs, the highest volume of IPO capital raised since 2021, both per IPO and in aggregate.[1] In particular, the significant listings of Guzman y Gomez and DigiCo Infrastructure REIT (each with market capitalisation exceeding $2 billion), and the $30 billion 'reverse takeover' of Chemist Warehouse by Sigma Healthcare, provided some hope for and excitement about a return of listings at scale.

## Outlook for 2025

These trends are anticipated to continue as IPOs prepare for take-off in 2025.

While the market has not yet bounced back to its peak in 2021, with interest rates stabilising, together with a stronger second half of listings in 2024, there is a level of optimism as we head into 2025. Tempering this confidence somewhat is the heightened geopolitical instability and global tensions including following the US election and the potential for a global trade war.

See **page 39** for further details of the 2025 outlook.

## Secondary raisings

Following the expansion of our remit to the Australian ECM Review (formerly the Australian IPO Review), we have again examined secondary raisings of ASX-listed issuers in our 'Secondary raisings by the numbers' section. This year, to capture a larger segment of the market and broader underlying trends, we have lowered the threshold for inclusion in our data set to all secondary raisings of $10 million or more. Of course, when making comparisons against 2023 transactions, we have only compared transactions over the $50 million threshold used in 2024 to ensure an 'apples with apples' comparison.

In 2024, the standalone placement was the most commonly utilised offer structure for deals exceeding $50 million (33%), followed by the combined placement and SPP (32%) and the combined placement and rights issue (23%).

The largest secondary raising for the year was NEXTDC's $1.32 billion ANREO, reflective of the popularity of data centre and other AI-thematic industries in 2024. The offer proceeds were used to accelerate the development and fit out of NEXTDC's leading digital infrastructure platform in its core Sydney and Melbourne markets. Remarkably, NEXTDC followed up this first raise in October (having first raised in May) with a second large raise – this time an institutional placement and share purchase plan to raise up to $750 million. Herbert Smith Freehills acted for NEXTDC on both these raisings.

Secondary raisings over $50 million in the past year were often undertaken for M&A reasons, with 22% of transactions in 2024 being used to fund M&A activity (an increase from 17% in 2023).

See **page 13** for further details of secondary raisings in 2024.

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1. Consistent with past practice, our data does not include REIT, ETF or LIT transactions. If these transactions were included, the figure would be significantly higher, in particular because of the DigiCo Infrastructure REIT IPO which raised just short of $2 billion.

## Key regulatory updates

In 2024, Australian regulators have reinforced a number of matters as areas of focus in the Australian ECM landscape.

Consistent with ASIC's focus in previous years, ASIC remains vigilant in its use of enforcement powers to address greenwashing claims and secure significant penalties. In 2024, ASIC was successful in securing considerable civil penalties against Mercer ($11.3 million), Vanguard ($12.9 million) and Active Super[2] in the Federal Court.

Entities covered by the financial reporting provisions in Chapter 2M of the Corporations Act (and certain companies limited by guarantee) are now required to include climate-related financial information and disclosure in a sustainability report. This includes a climate statement about the entity's material financial risks and opportunities relating to climate, its emissions metrics and targets, and its governance and strategy in respect of those risks, opportunities, metrics and targets.

The ASX has signalled a potential shift to T+1 trading to follow the approach taken in 2024 by a number of global securities markets, including the US, Canadian, Indian, Mexican, Argentinian and Jamaican markets. These markets have shifted to T+1 settlement to compress corporate action timeframes, so that the ex-date and record date can occur on the same business day.

The year also marked the beginning of the end for hybrid Additional Tier 1 (**AT1**) capital instruments with APRA confirming its intention to replace AT1 in the prudential framework.

See **page 24** for further details of the regulatory developments affecting ECM in 2024.

## News Flash

On 26 February 2025, ASIC released a discussion paper titled *Australia's evolving capital markets*, addressing the shifting dynamics between public and private markets in Australia. The paper covers:

- the current state of public equity markets in Australia (for example, public listings are their lowest in 10 years, and market cap is becoming increasingly concentrated in fewer companies; conversely ASIC's view is that secondary capital raising remains strong);
- whether the shift in public markets is cyclical or structural (with ASIC's view being that it is too soon to conclude that fewer net listings in Australia is a sustained trend, but ASIC is "concerned");
- the rapid increase in size and value and the importance of private markets along with superannuation funds to the future of Australian capital markets (such as through private equity and private credit); and
- proposed regulatory responses to changing market dynamics (for example, by refining the IPO pathway and listing rules, and increased regulation of private markets).

ASIC is seeking feedback by April 28, 2025, and will provide an update on the feedback and ASIC's future priorities which they will release in late-2025.

2. As of 31 January 2025, no formal orders in relation to penalties for Active Super have been handed down so the penalties payable by Active Super are not yet known.

# 2024: IPOs by the numbers


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## A continuation of 2023 and global trends for IPOs

With 26 IPOs in 2024, a low since we started collecting IPO data in 2016, it might seem overly optimistic that we have titled this publication *Ready for Takeoff*. With persistent high inflation, geopolitical events and ongoing economic uncertainty, the Australian IPO market as a whole was muted for a third year in a row.

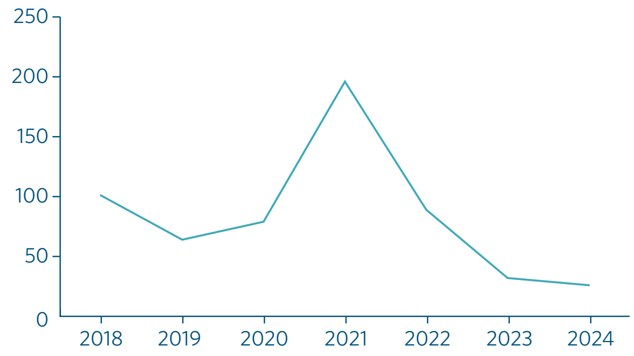
However, whilst still below long-term averages, capital raised on listing bounced back strongly in 2024 and is now at its highest level since 2021, both per IPO and in aggregate. The aggregate market capitalisation of new listings also recovered in 2024, almost doubling 2023's total. These figures were assisted by what we are hopeful is the beginning of a recovery in new listings with a market capitalisation of more than $1 billion on listing.

Further, the raw figures do not include the year's biggest listing, DigiCo Infrastructure REIT (as REITs are excluded from our data set). DigiCo Infrastructure REIT raised close to $2 billion, the most raised through an IPO since 2018. Herbert Smith Freehills acted for DigiCo Infrastructure REIT on this IPO. If included in our data set, capital raised by market capitalisation and capital raised per IPO would be higher than or on par with 2019 and 2020 levels.

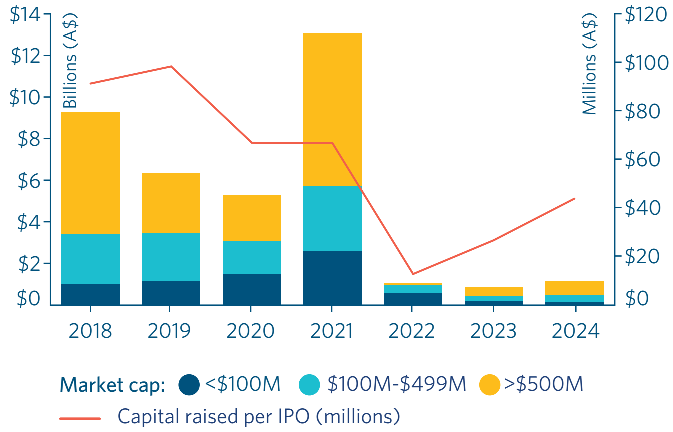
The figures also obscure the excitement that followed the listing of Guzman y Gomez, solid sector representatives in Tasmea (engineering services), MAC Copper (metals and mining) and Cuscal (payments and regulated data services) and the spate of sought after private credit listings (LITs and ETFs are excluded from our data set).

Ultimately, stronger aggregate results despite a decrease in the total number of IPOs in 2024 together with the success at the top end of the market have given us enough hope to believe that IPOs are ready for takeoff.

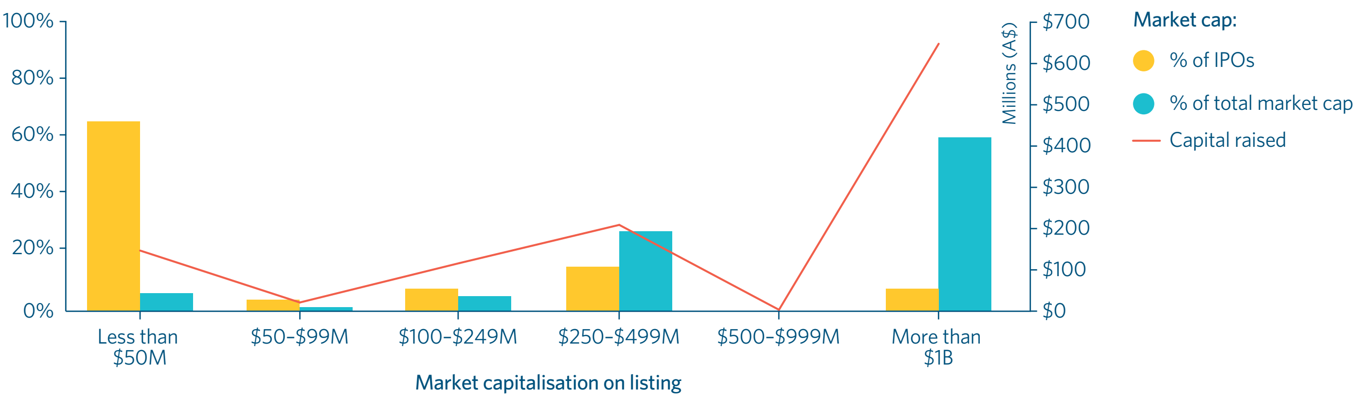
### Number of IPOs 2018-2024




### Capital raised by market capitalisation and per IPO 2018-2024




### Market capitalisation, capital raised and number of IPOs in 2024



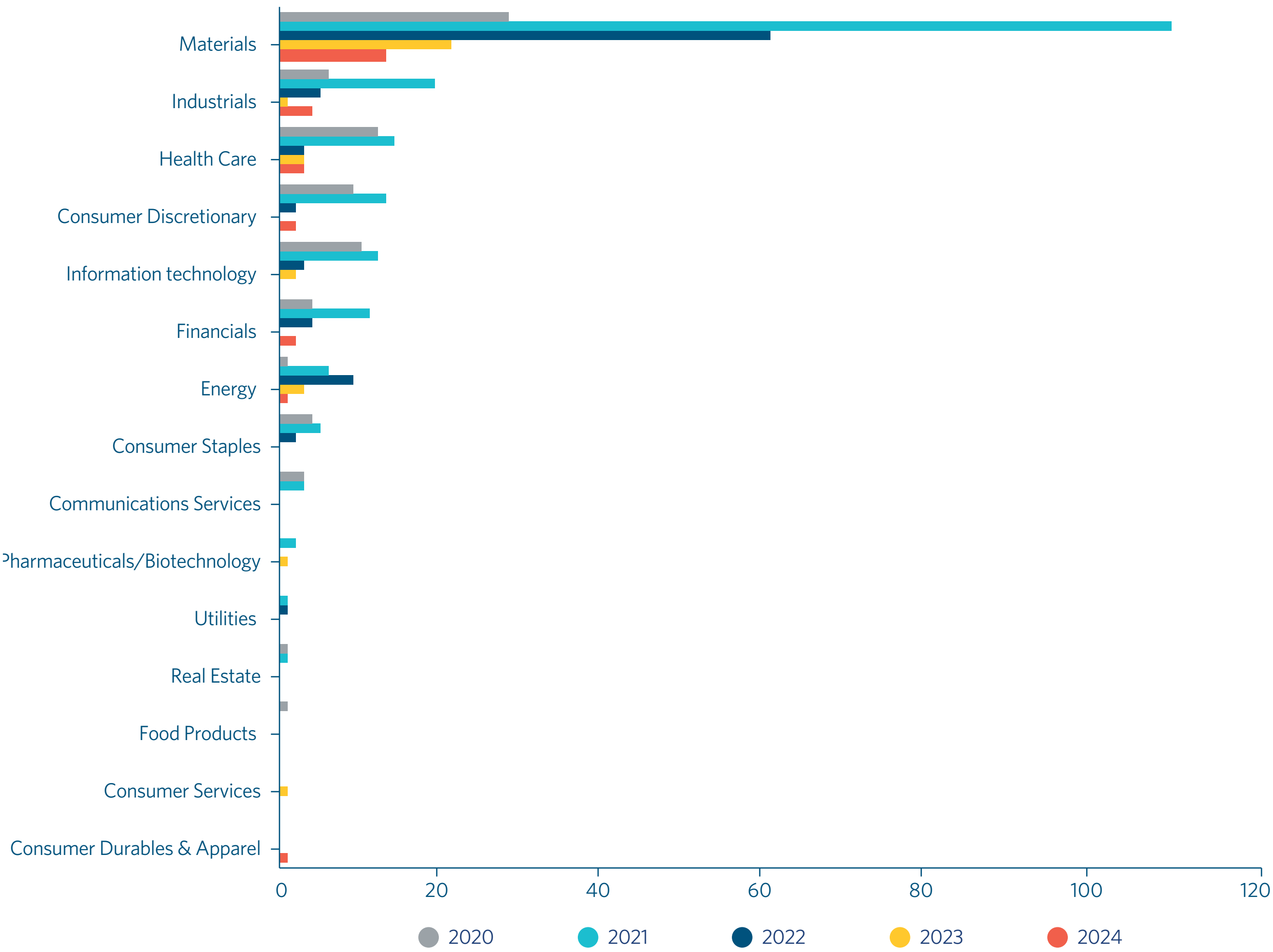

## Sector spotlights

Whilst the materials sector was once again the dominant sector for new entrants to the ASX (approximately 50%), a significant contributor to the low number of IPOs in 2024 was the continued decline in materials IPOs.

Industrials-based listings comprised the next most represented sector by number (~15%). These included construction company Symal Group, mining equipment firm Alfabs Australia, maintenance specialist Tasmea and marine services company Bhagwan Marine.

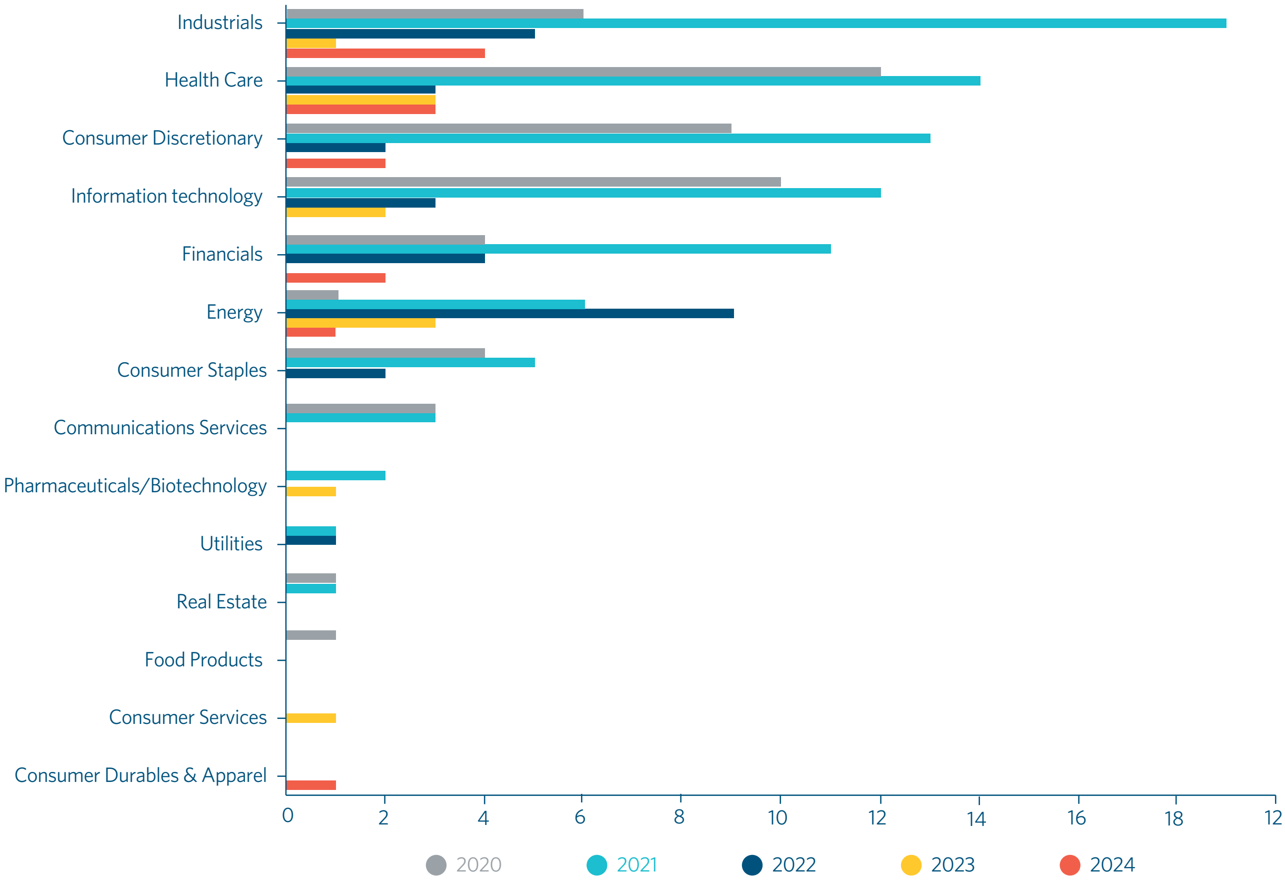
IPOs in the Consumer Discretionary and Financials sectors returned to the charts in 2024 following absence in 2023, and the Merino & Co IPO heralded the first listing by a Consumer Durables & Apparel-based company in several years. There were no IPOs in the Information Technology sector in 2024.

## IPOs by sector 2020-2024



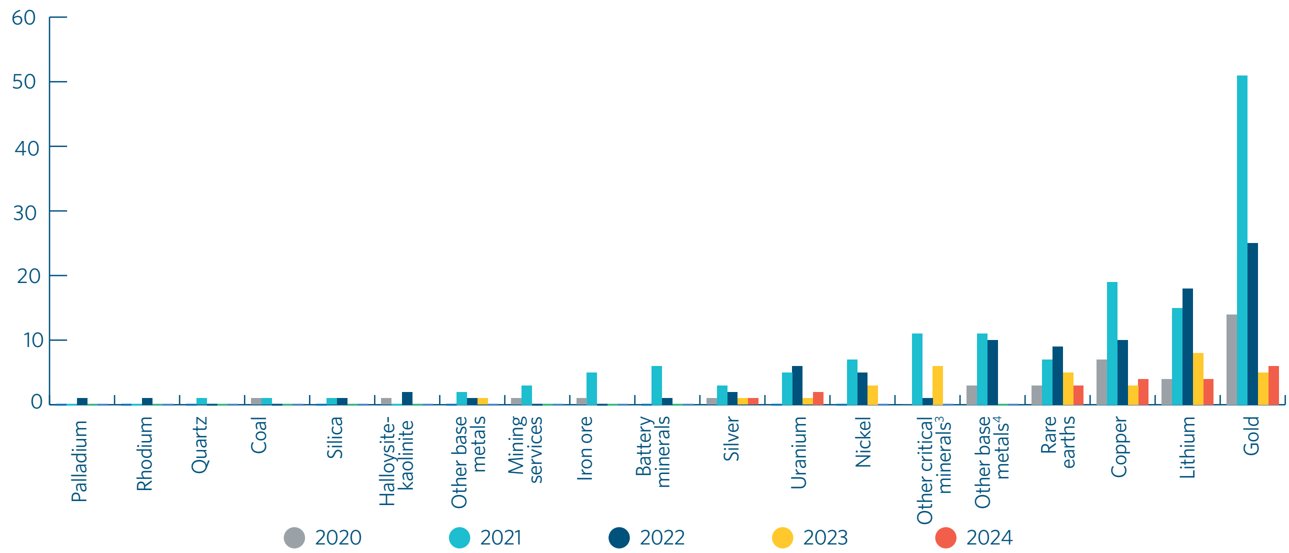

Given the dominance of the materials sector, we have also replicated the graph on the following page which excludes the materials sector to more clearly show the trends in other sectors from 2020 to 2024.

## IPOs by sector 2020-2024 (excluding materials)




## IPOs from the 'materials' sector 2020-2024

Within the materials sector, IPOs were once again spread across a number of metals, including strong representation from gold (30%), copper (23%) and lithium (23%) miners/explorers. We have charted below the breakdown of IPOs from the materials sector from 2020 onwards.




3. The figures for 'other critical minerals' excludes copper and lithium IPOs, which are separately shown on the graph despite being considered critical minerals.
4. The figures for 'other base minerals' excludes copper and nickel IPOs, which are separately shown on the graph despite being considered base minerals.

## Escrow

Reflective of the continued headwinds for IPOs in 2024, the average number of ordinary securities subject to escrow remained higher than long-term averages at 43% of total outstanding ordinary securities, whether imposed by the ASX or voluntarily restricted by the issuer. Although marginally lower than in recent years for issuers with a market capitalisation of over $250 million, we are hesitant to draw conclusions from this change as two of the larger IPOs in our data set were Webjet Group (the result of the demerger of Webjet, an entity listed on ASX) and Metals Acquisition (an entity listed on NYSE), both of which did not impose any form of escrow (as is more typical for entities with established trading histories).

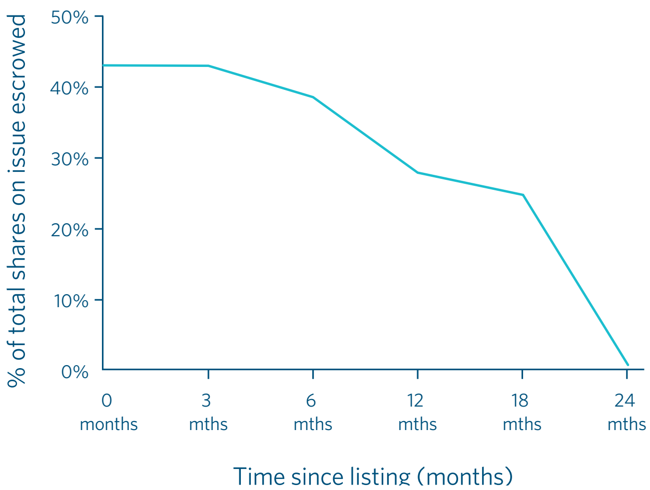
Issuers with a market capitalisation of less than $100 million most frequently escrowed 20-40% of their ordinary securities, while issuers with market capitalisations of $100 million or more tended to adopt higher ranges of escrow, from 40-80%. Guzman y Gomez, the largest listing of the year, had approximately 55% of its ordinary securities in escrow. Escrow was typically released in two tranches. See below in relation to escrow periods and release.

### Timing of Escrow Release

Every IPO in this segment scheduled the release of restricted securities in between one to four tranches. Those tranches were most commonly timed from the date of quotation, but in some circumstances expired in line with the release of subsequent financial results. In one case, Kali Metals, some of the escrowed securities had an early release mechanism if the daily volume weighted average price of Kali Metals shares exceeded a certain price for a period of ten consecutive trading days. Kali Metals is a lithium focused exploration company that listed on ASX with a market capitalisation of $36 million. All restricted securities were scheduled to become unrestricted within 24 months of the listing date.

The average release profile of IPOs is set out below.

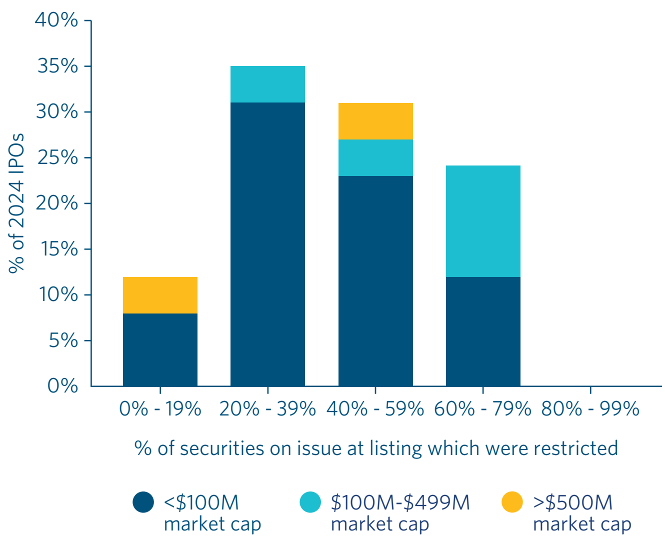
### Average restricted security release profile 2024 IPOs




The release of Guzman y Gomez's shares was scheduled to occur in two tranches – one after six months (which represented ~14% of total shares on issue), and another after 12 months (which represented ~41% of shares on issue).

Among the seven other issuers with a market capitalisation of $100 million or more, as referenced above, two did not escrow any securities (Metals Acquisition and Webjet Group), and three are scheduled to release their escrowed securities in one large tranche (Cuscal, Symcal Group and Bhagwan Marine). Vitrafy Life Sciences had the largest volume of restricted securities on issue, at ~68.1%. These were released in 4 tranches: ~19% after 6 months, ~3% after 12 months, ~51% after 18 months and ~22% after 24 months.

### Restricted securities by market capitalisation

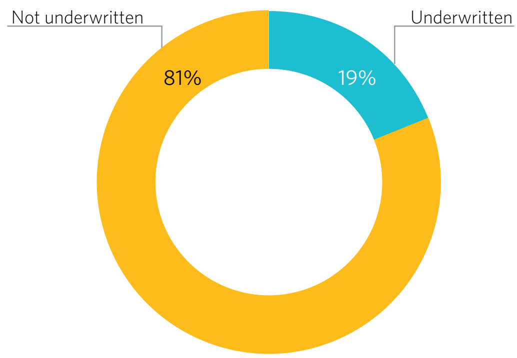


## Underwriting

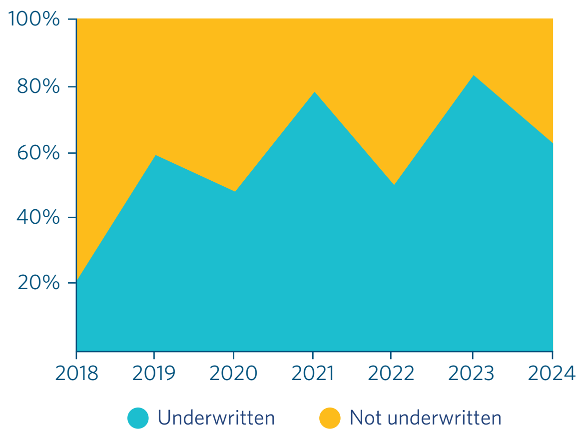
The percentage of underwritten IPOs fell slightly in 2024 as compared to 2023, decreasing from 25% to 19% of all IPOs. For issuers with market capitalisations over $100 million, the percentage underwritten fell from 75% to 62.5%.

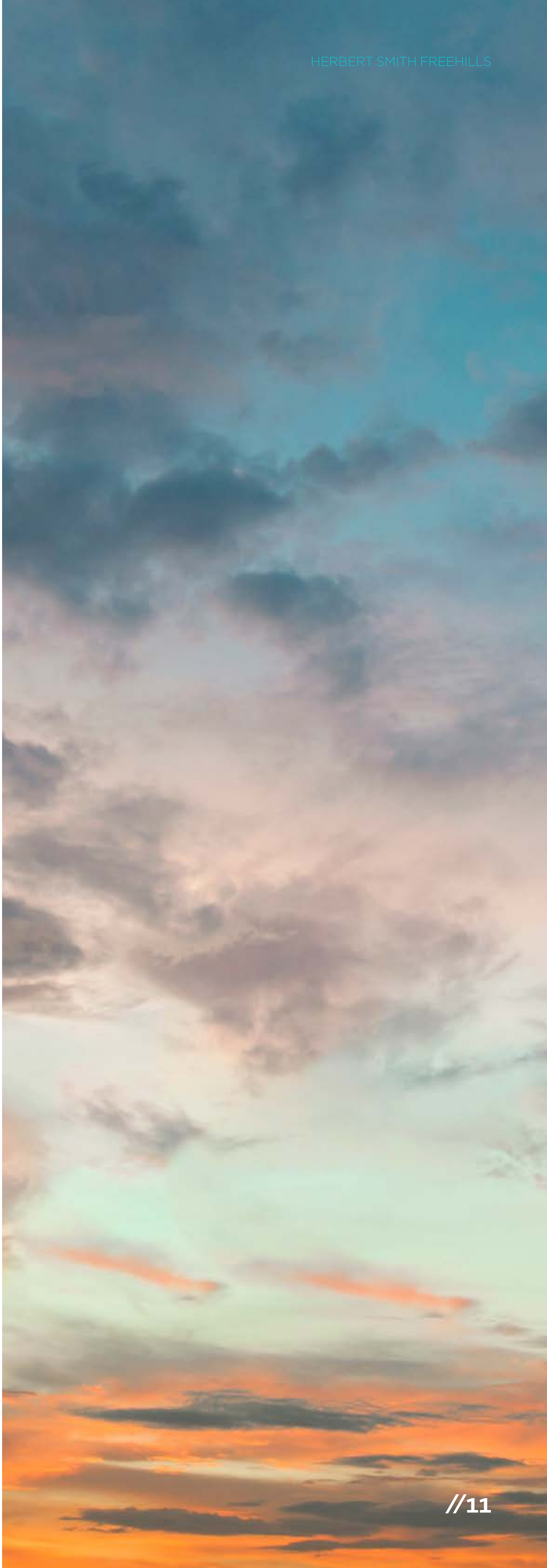
These figures are within the longer term expected range for underwritten amounts and consistent with our findings in relation to escrow, the inclusion of Webjet Group and Metals Acquisition in our data set (both non-underwritten) has influenced these figures.

### Percentage of all IPOs underwritten 2024




### Percentage of underwritten IPOs over $100M market capitalisation 2018-2024



## Geographic spread

2024 was dominated by Australian-incorporated issuers, with 88% of IPOs by number coming from the domestic market. Canada (Golden Horse Minerals and Resouro Strategic Metals) and Jersey (Metals Acquisition) represented the only foreign jurisdictions to contribute new listings to the ASX. While Metals Acquisition, the second largest IPO of 2024, is incorporated under the laws of Jersey, it owns and operates CSA Copper Mine in Cobar, New South Wales.

### Jurisdiction of issuer incorporation 2024


**Note:** this figure does not include issuers incorporated in Australia which have significant strategic, commercial or investor links outside Australia, in which case the non-Australian component would be higher.

**Note on methodology:** all data in this '2024: IPOs by the numbers' section excludes ASX Foreign Exempt, AQUA, debt and PDS (including REIT) listings unless otherwise stated. Market capitalisation is based on the issue price of securities multiplied by the total securities on issue on that date.

# 2024: Secondary raisings by the numbers

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The Australian secondary raising landscape has experienced notable shifts in 2024 compared to 2023. This article expands on our inaugural review of secondary raising data in 2023 (**2023 Review**) and analyses key trends in secondary raisings, offering insights into offer types, sizes, discounts, purposes, underwriting, and industry participation. We have also compared secondary raising activity in 2024 to 2023, with the data generally showing increased activity in secondary raisings both by number and value in 2024 (82 transactions raising $17.54 billion) as compared to 2023 (44 transactions raising $12.77 billion).[5]

Readers of the 2023 Review will recall that the 2023 Review covered transactions in excess of $50 million (**$50 million Threshold**). In the 2024 review, our threshold has been lowered to $10 million to capture a larger segment of the market and generate a broader data set. This article now analyses data collected on well over 200 secondary raises that occurred in 2024. Comparisons between 2024 and 2023 in this article are only performed for those transactions in 2024 over the $50 million Threshold to ensure an 'apples with apples' comparison.

In addition to the transactions considered for the 2023 Review, the transactions analysed for the purposes of this article were transactions listed on Connect4 as at 17 January 2025 as having occurred in 2024. We supplemented Connect4 data with analysis of the relevant transaction announcements. We have excluded non-share/non-CDI secondary raisings, capital notes transactions and strategic placements on the basis that these contain features not normal to a 'standard' equity capital raising which would skew our data set.

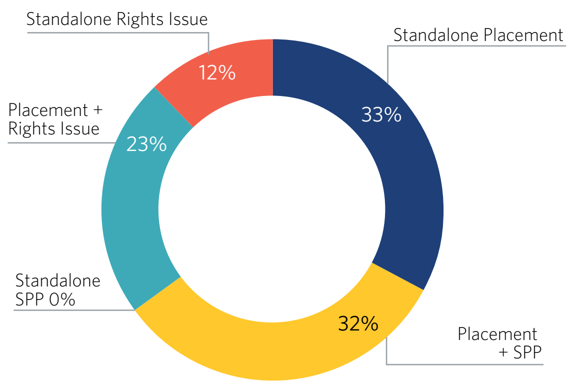
5. This data only compares the transactions over the $50 million Threshold (as defined in-text above).

## Offer structures

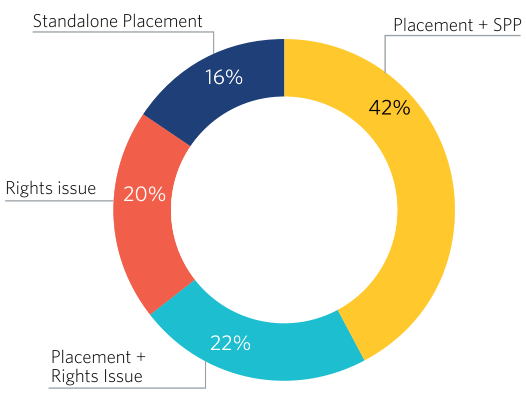
In 2023, the combined placement and SPP was the most popular offer structure by number of transactions (42%), followed by the combined placement and rights issue (22%) and standalone placement (16%). In 2024 for deals over the $50 million Threshold, the standalone placement was the most popular offer structure (33%), followed by the combined placement and SPP (32%), then the combined placement and rights issue (23%).

Of the rights issues analysed, all adopted an accelerated non-renounceable entitlement offer (**ANREO**) structure, excluding four renounceable offers undertaken by Hastings Technology Metals Ltd, AMA Group Ltd (both a combined AREO and placement) and Energy Resources of Australia Ltd and Legacy Iron Ore Ltd (both a standalone AREO).

### Offer type (over $50 million Threshold in 2024)

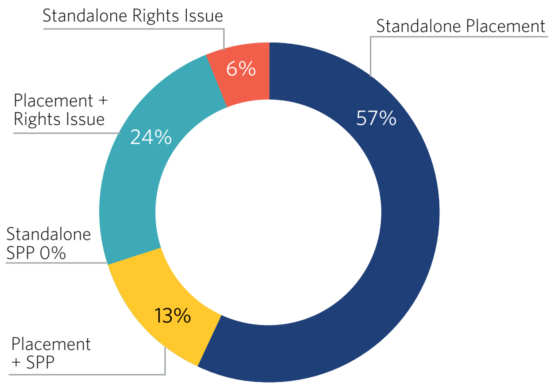



### Offer type (over $50 million in 2023)




As expected, standalone placements were the dominant form of offer structure for transactions below the $50 million Threshold, making up 57% of transactions. While we did not gather data on these transactions for the 2023 Report, this is consistent with our experience - issuers at the lower end of the market tend to require more immediate and lower cost equity funding, may have a lower retail component on their register and can often rely on the enhanced placement capacity under listing rule 7.1A.[6] Inclusion of a retail component in their offers may increase the cost of undertaking the offer substantially for little additional capital raised with the result that it is less economical than inclusion of a retail offer for larger issuers. Looking at it with a different lens, whereas in larger transactions a placement is often accompanied with an SPP, this is not the case for transactions below the $50 million Threshold.

### Offer type (between $10 and $50 million)

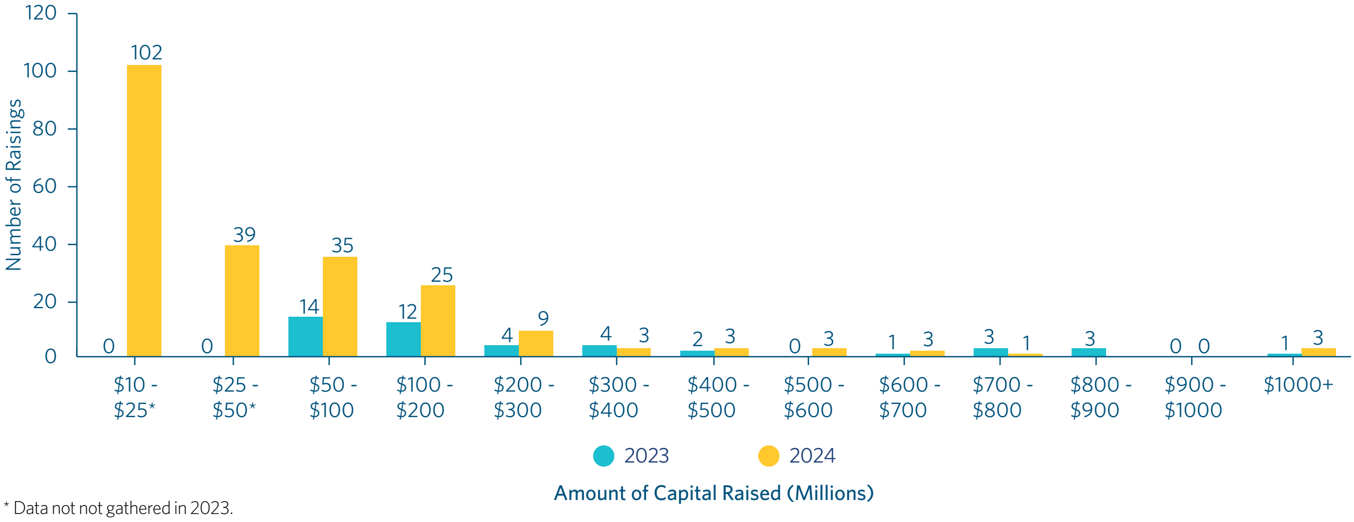



6. This is supported in the data, with 87.9% of transactions raising less than $50 million being undertaken for working capital or to accelerate growth; as compared to 76.47% for transactions raising equal to, or more than $50 million. For more information see 'Purpose of Raising' below.

## Offer size

The distribution of offer sizes in 2024 indicated an increased appetite for deals in general when compared to 2023, with more transactions occurring in 2024 in most of the size categories set out below. While not surveyed in 2023, in 2024, as expected the highest proportion of transactions occurred in the $10 million to $50 million range.

### Offer size



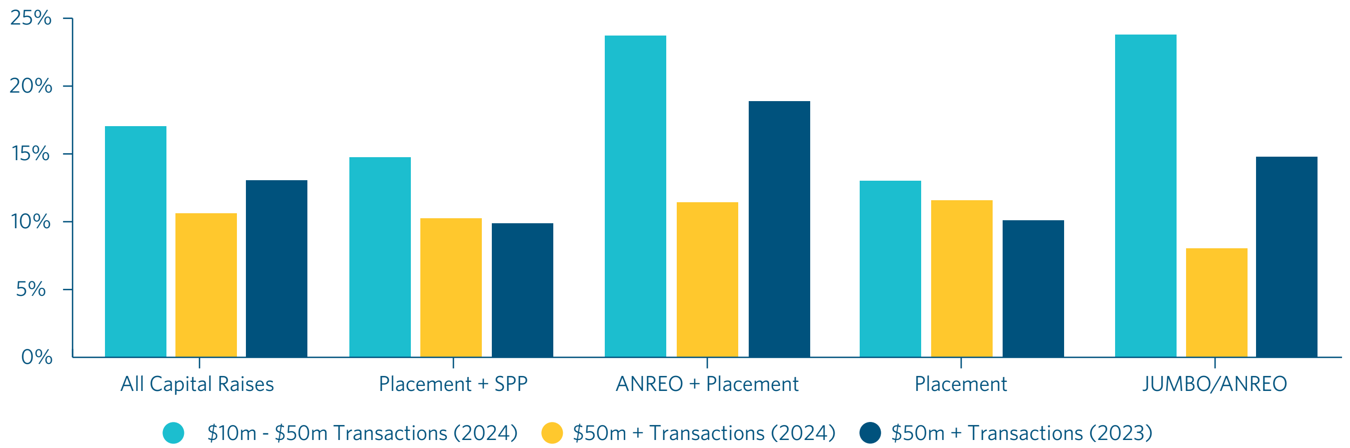

* Data not not gathered in 2023.

## Discounts

Discount levels contracted slightly in 2024, reflecting a more bullish market relative to 2023. The average discount to the last closing price decreased from 13.04% in 2023 to 10.60% in 2024 for transactions over the $50 million Threshold. This possibly is reflective of the greater proportion of transactions in 2024 that were undertaken by placement (as discussed further above).

Among specific offer types, ANREO and Placement deals saw the highest average discount across the board, with a 23.73% average discount in the sub-$50 million category, while above the $50 million Threshold this offer structure recorded a 11.41% average discount, a decrease from the 18.87% seen in 2023. JUMBO/ANREO transactions exhibited the most significant variation, with transactions below the $50 million Threshold exhibiting an average discount of 23.80%, whereas transactions above the $50 million threshold had a much lower discount of 8.03%,[7] a significant drop compared to the 14.79% average for comparative transactions in 2023. Interestingly, average discounts for Placement and SPP transactions remained relatively stable between 2023 and 2024, with an average discount of 10.24% for transactions over the $50 million Threshold, closely aligned with the 9.87% observed in 2023 (for transactions below the $50 million Threshold, the average discount was 14.73%).

### Average discount to last close




7. This average figure is skewed by several heavily discounted transactions under $50 million, namely Dubber Corporation Ltd (48.30% and 77.30%), Income Asset Management Group Ltd (62.00%), Top Shelf International Holdings Ltd (43.00%), City Chic Collective Ltd (50%) and Genmin Ltd (44.7%) among others. These transactions are not excluded from the average figure as higher discounts are a feature of this segment of the market.

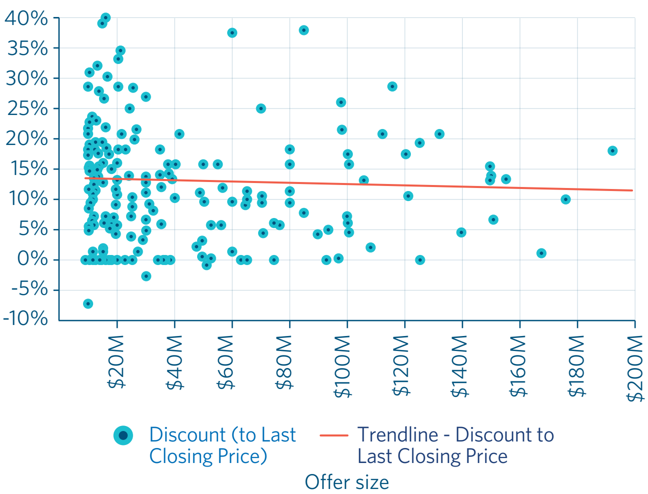
One of the findings we were surprised by in our 2023 Review was the lack of correlation between transaction value and the discount, as in our experience the size of a transaction can be indicative of the strength and size of the underlying business and stronger businesses are usually able to command tighter discounts from investors. It is worth noting that this is a general observation and the discount of a given transaction is ultimately determined by a range of considerations in addition to the financial position of the underlying business, such as market dynamics and the structure of a raise.

By contrast to our findings in the 2023 Review, a clear distinction emerged in the data between discount rates for smaller and larger transactions, predominantly due to lowering of our threshold to capture transactions raising under $50 million. Transactions in the $10 million - $50 million range exhibited higher average discounts across all offer types, with an overall average discount of 17.04%, compared to 10.60% for transactions exceeding $50 million in 2024.

The tighter discounts in 2024 in our review of were also reflected in discounts to the theoretical ex-rights trading price (**TERP**) for rights issues, with discounts again contracting from 13.11% in 2023 to 9.85% in 2024 for transactions over the $50 million Threshold.

### Offer price (discount to TERP)


### Offer price (discount to last closing price)

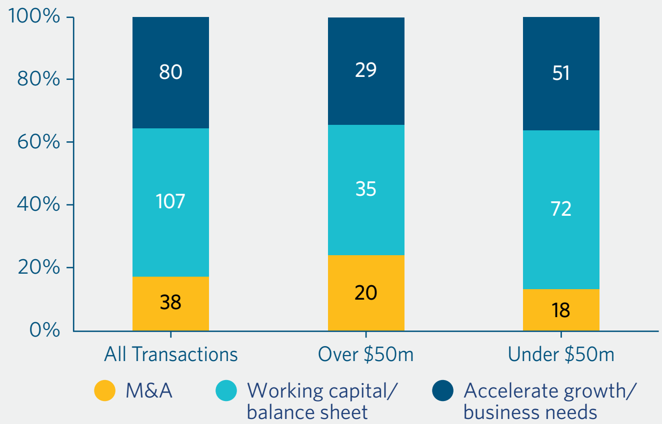



## Purpose of Raising

Interestingly, the proportion of transactions being undertaken for M&A vs non-M&A purposes increased for transactions above the $50 million Threshold when comparing 2023 to 2024, with 23.8% of transactions in 2024 being undertaken to fund M&A transactions,[8] as compared to 17% in 2023. This is consistent with our predictions in the 2023 Review of the market being supportive of M&A transactions.

Practically, these transactions need to be funded either by cash or scrip, and where cash is the preferred option, either by equity or debt issuance. Given the high interest rate environment – at least relative to the historic COVID lows – we are unsurprised in the increased use of equity raisings to support M&A transactions and expect this trend to continue into 2025, subject to further declines in interest rates.

### Purposes of capital raising by transaction size



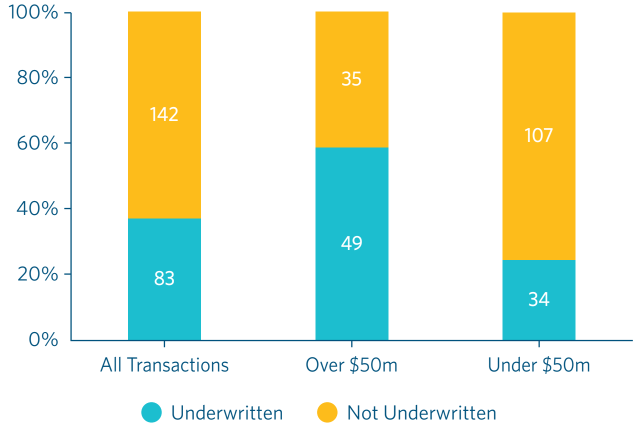

When comparing the data on offer pricing relative to offer purpose (including for transactions under the $50 million Threshold), we observed that, on average, issuers offered a smaller discount to last closing price when seeking to fund an acquisition (10.01%) in contrast to raising for non-acquisition purposes (15.50%). This is consistent with our findings in 2023.

8. We excluded from our analysis transactions where shares were placed directly to vendors in an M&A transaction.

## Underwriting

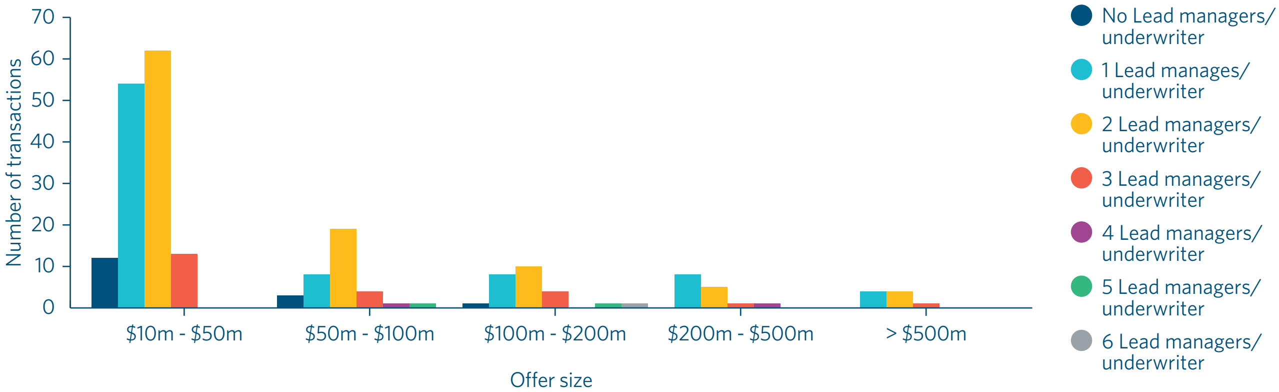
2024 showed a slight decline in fully underwritten deals compared to 2023. The data suggests that issuers are increasingly opting for partially underwritten or non-underwritten structures to reduce costs. In 2023, 80% of offers over the $50 million Threshold were underwritten, compared to 58% in 2024. This may be because of the increased prevalence of placements in 2024 as compared to 2023 (placements tend to be underwritten less often than entitlement offers due to the increased level of certainty that issuers have over pricing and the amount of capital that will be raised). The lower prevalence of underwriting was seen particularly in the lower end of the market, as expected, with only 24.1% of the transactions below the $50 million Threshold being underwritten.

### Underwritten vs. Non-Underwritten transactions




Consistent with our data set for 2023, we did not notice any particular correlation between raise size and number of lead managers / underwriters on the transaction.[9]

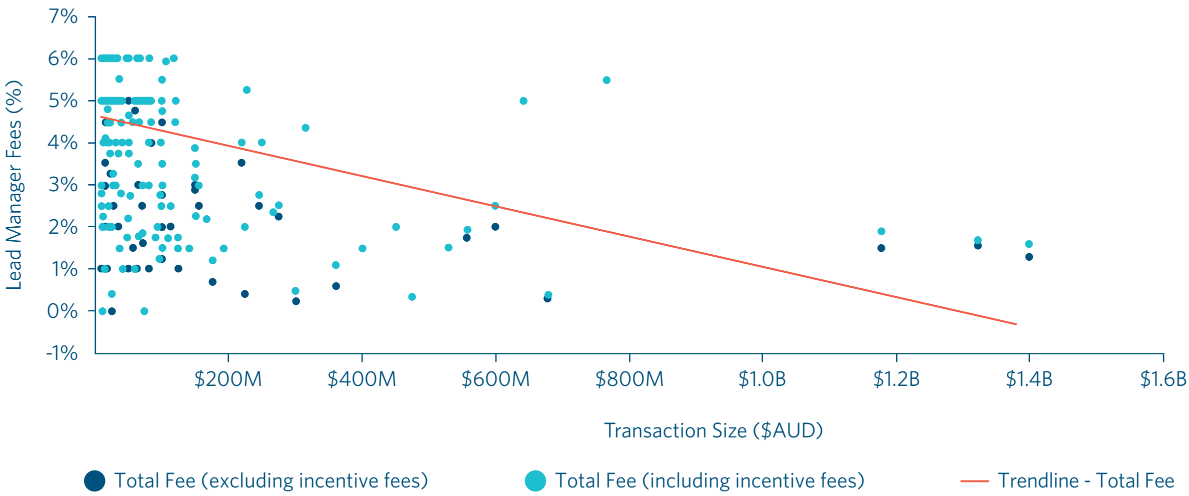
### Number of Lead managers/underwriters per transaction relative to offer size 2024




Also consistent with our findings in 2023, for combined placements and SPPs, generally only the placement was underwritten, consistent with our observation of usual market practice. This is likely because issuers are usually not particularly reliant on funds raised via SPPs (which as mentioned above are capped at $30,000 per shareholder under relevant law and are usually used as a fairness measure to retail shareholders) and due to the enhanced underwriting risk for an SPP (given the length of time an SPP is open and the nature of the investors).

In terms of fees, the average underwriting/management fees as a percentage of offer size remained broadly stable at 3.20% in 2023 and 3.30% in 2024 for transactions over the $50 million Threshold, with slight variations depending on deal size and complexity.

### Underwriting/Lead manager fees plotted against transaction size




9. In some transactions, we have excluded non-professional lead managers/underwriters in the figure.

## Sector performance

As anyone familiar with the ASX would expect, the Metals & Mining sector maintained dominance in our data set both by number of transactions (100) and total capital raised ($4.93 billion). Metals & Mining transactions exceeding the $50 million Threshold accounted for 30.49% of all deals in 2024, with 25 transactions raising $3.55 billion in aggregate, compared to 18 transactions in 2023 (raising $3.385 billion), highlighting sustained investor interest in resources stocks, including those exposed to critical minerals and energy transition projects.

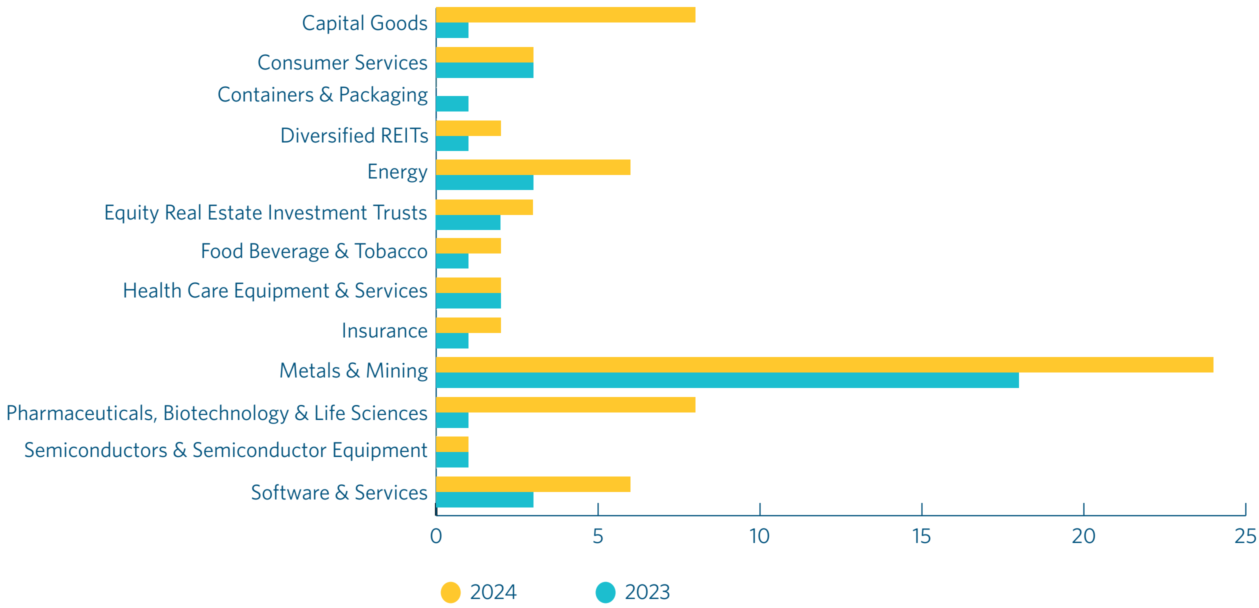
The Software & Services segment experienced notable growth, securing $2.28 billion across six deals, a significant increase from three deals in 2023, driven by demand for digital transformation and enterprise software. The size of these transactions was somewhat skewed by two secondary raisings undertaken by NextDC, which combined accounted for 90% of the total capital raised ($1.99 billion) in this sector.

The Pharmaceuticals & Life Sciences sector saw a substantial uptick, with eight transactions raising $973 million in 2024, compared to just one deal in 2023, signalling growing interest in healthcare innovation and life sciences.

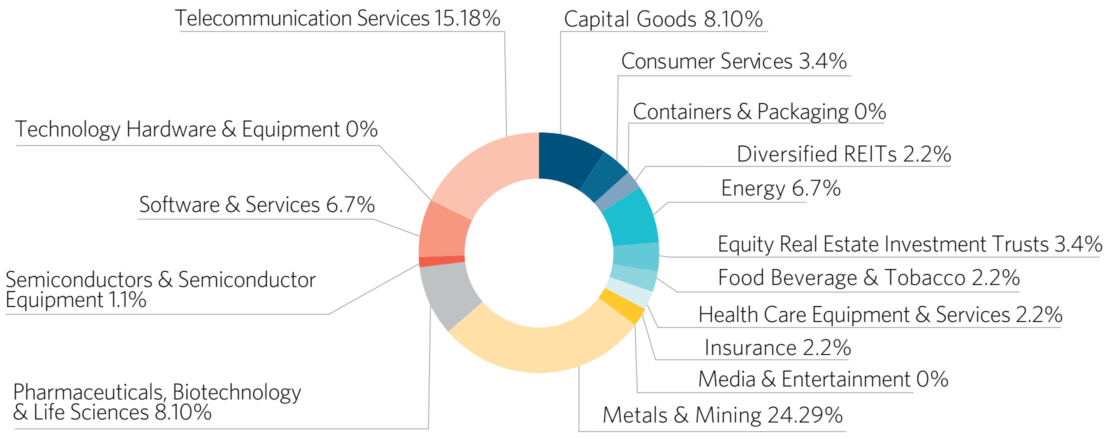
The Energy sector remained strong, raising $1.46 billion across six deals in 2024, up from three deals in 2023, reflecting continued investment in renewables and traditional energy projects.

Overall, 2024 saw a shift toward larger transactions across diverse sectors.

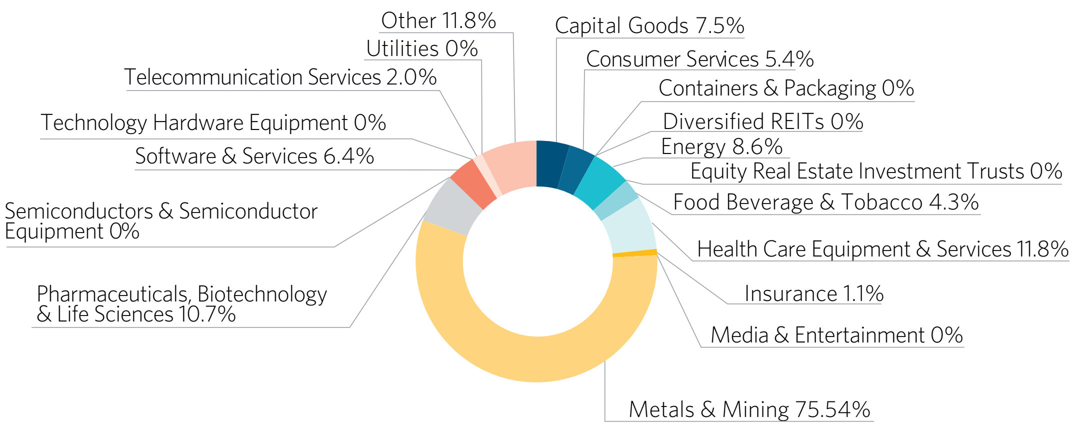
### Sector analysis - number of transactions over $50 million (2023 vs 2024)



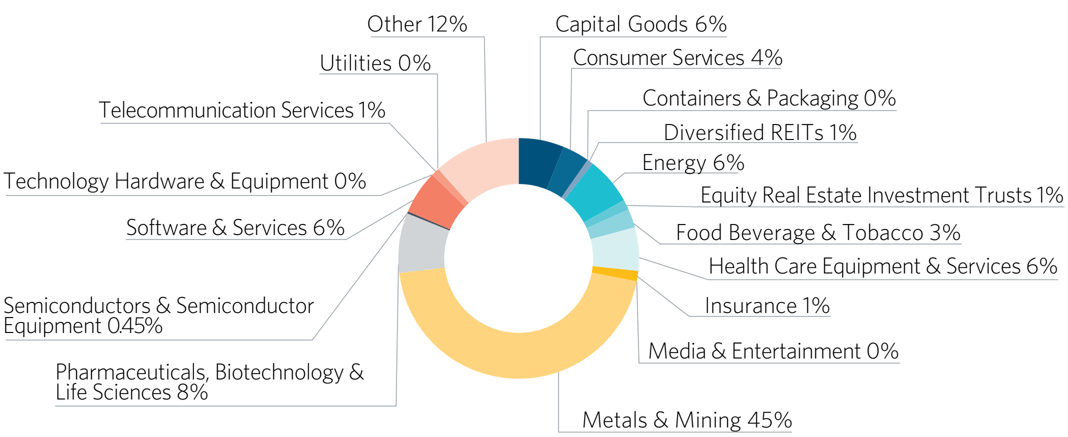
## Transactions over $50 million (2024)




## Transactions between $10 million and $50 million (2024)




## All transactions (2024)

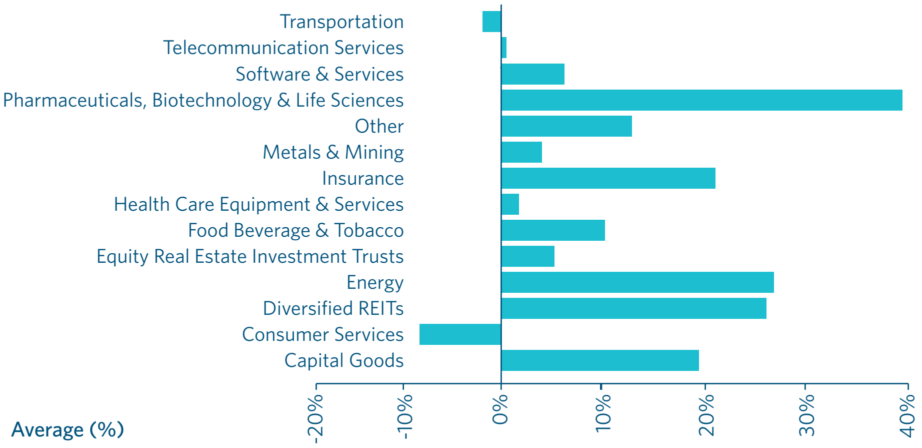


## Share price performance

This year, share price performance 30 days post-allotment[10] was captured as a new data point. Post-raise performance varied significantly across industries, with certain sectors outperforming while others faced downward pressure. Sectors such as pharmaceuticals and energy showed strong returns, which may have been driven by continued investor confidence and favourable market conditions. In contrast, sectors like consumer services and transportation struggled post-raise, which may reflect broader economic challenges and sector-specific headwinds.

The strong performance in pharmaceuticals and biotechnology stocks can be attributed to sustained demand for innovation and healthcare solutions, whereas energy sector growth was likely driven by favourable commodity prices and ongoing global demand. On the other hand, consumer services faced challenges due to inflationary pressures and increased cost of living, while transportation struggled with rising operational costs.

### Post-raise share price performance by industry

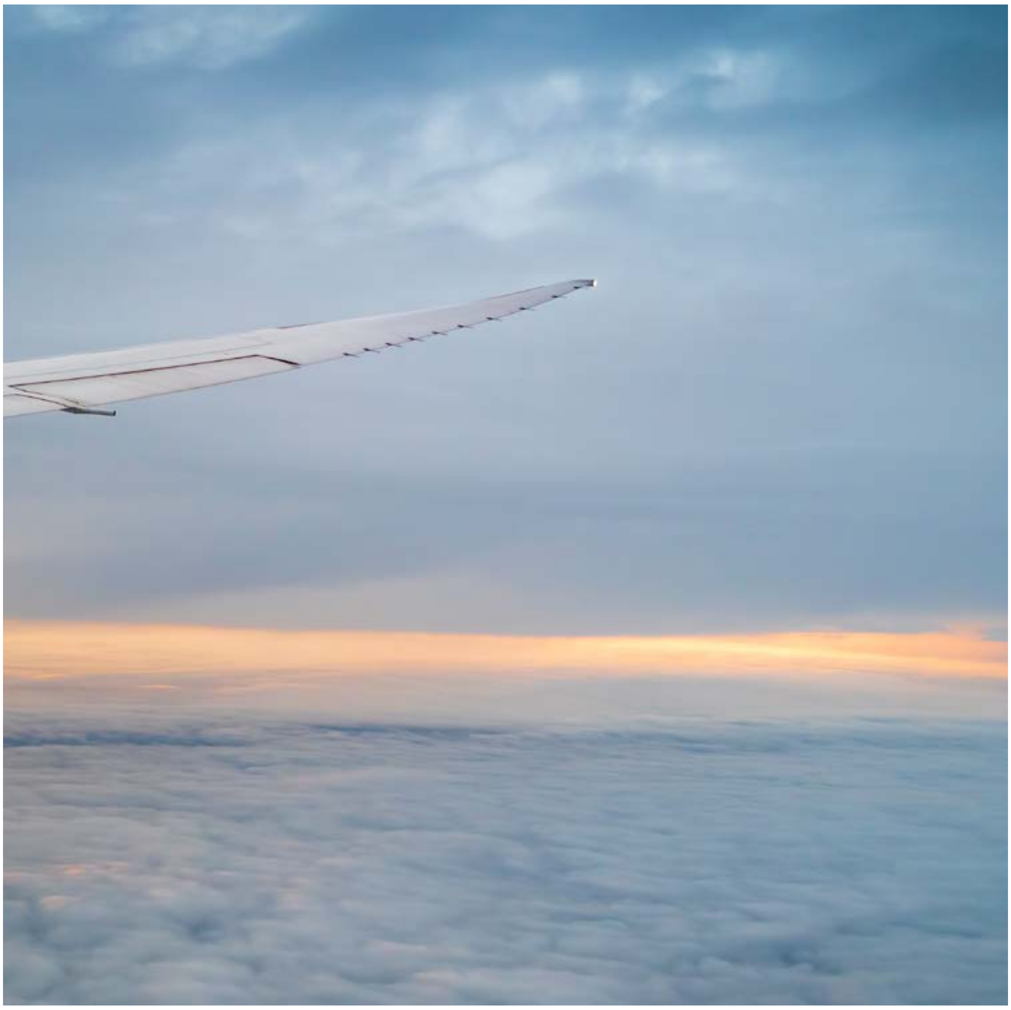



## Conclusion

Overall, 2024 has presented a dynamic ECM environment, with increased activity across all areas of the market, a decrease in average discount levels, larger offer sizes and evolving underwriting trends. Companies have continued to leverage capital markets to fuel expansion, restructure debt, and pursue strategic growth. Additionally, shifts in sector focus and underwriting strategies provide further insights into changing market sentiment. As market conditions evolve, issuers and investors alike must remain agile in navigating the changing landscape.

10. Issue of shares under the final component of the offer.

# Innovative solutions in challenging markets

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As outlined earlier in this review, 2024 showed an improvement in IPO and broader ECM activity from the subdued markets in 2022 and 2023. Three of the landmark 2024 transactions, all of which Herbert Smith Freehills advised on, were the initial public offering of Guzman y Gomez (**GYG**), Chemist Warehouse's reverse take-over of Sigma Healthcare and listing on ASX (which actually spans 2023-2025 but saw the disclosure documents lodged in 2024) and the initial public offering of DigiCo Infrastructure REIT.

## Guzman y Gomez

### Overview

GYG is a founder-led quick service restaurant with a focus on delivering clean and fresh Mexican-inspired food in Australia and the United States. GYG also has franchises in Japan and Singapore. The offer size was originally set at $242 million, and comprised $200 million of primary issuance of shares and $42 million secondary sell-down. Following the launch of the Offer, due to strong institutional demand, the offer size was increased to $335.1 million, and comprised $200 million of primary issuance and $135.1 million secondary sell down. GYG listed on the Australian Securities

Exchange on 20 June 2024, with a market capitalisation at the $22 issue price of $2.2 billion. At the time, this was the largest IPO by market capitalisation since 2021.

Herbert Smith Freehills acted for Morgan Stanley and Barrenjoey Markets, the joint lead managers and underwriters of the GYG IPO.

### Pre-commitments

The GYG IPO involved a non-traditional and bespoke pre-marketing approach. As part of the pre-marketing process, GYG received pre-commitments to subscribe for shares from certain cornerstone investors including Aware Super. The final allocations to the cornerstone investors were subject to scale back based on demand from other institutional investors received in the scale back bookbuild as well as the level of demand from other components of the offer (subject to minimum allocations to the cornerstone investors). This upfront commitment from the cornerstone investors removed the need for GYG and the joint lead managers to undertake a formal pre-lodgement institutional marketing or investor education campaign, which assisted GYG in maintaining confidentiality throughout the IPO process and to accelerate the IPO timetable.

Once the prospectus was lodged, this approach also enabled GYG and the joint lead managers to quickly build momentum in the institutional marketing process, which enabled GYG to upsize the IPO to $335.1 million.

### Reviews of prospectus disclosures continues to be a key focus for ASIC

During the disclosure period, two replacement prospectuses were lodged, the first replacement prospectus primarily addressing the increase in offer size and clarifications relating to certain key offer metrics, while the second replacement prospectus primarily addressed additional clarifications relating to the key offer metrics and the challenges faced expanding the business into the United States. As a result of the exposure period being extended, the retail offer period was shortened in order to maintain the 20 June 2024 listing date.

### ASX spread attestation

In 2024, ASX introduced a regulatory requirement that all entities applying for admission to ASX must provide an attestation from the principal of the law firm acting for the company in meeting the minimum spread. The attestation is required to confirm, amongst other things, that the lawyer has:

- read and understood Listing Rule 1.1 Condition 8 and Guidance Note 1 (in particular section 3.9 and footnotes)
- reviewed the information provided in support of the minimum spread requirement; and
- satisfied themselves that the security holders presented in the spread register can be counted for spread in accordance with ASX's Listing Rules and guidance.

## Chemist Warehouse/Sigma

In this transaction, ASX listed Sigma acquired Chemist Warehouse (an unlisted company) via a scheme of arrangement in exchange for Sigma scrip and cash. The transaction was a reverse takeover and alternative method for CW to come to market, which resulted in existing Chemist Warehouse shareholders receiving approximately $700 million in cash and obtaining an 85.75% stake in the listed entity (which has been described as the largest placement in ASX history). The transaction is expected to unlock synergies of approximately $60 million per annum, and created a leading healthcare wholesaler, distributer and retail pharmacy franchisor with a market capitalisation of more than $34 billion.[11]

Further information on the background to this transaction, reverse takeovers and 'backdoor listings' can be obtained by reading our **2023 ECM Review**.

As we noted in that review, the reverse takeover has become a relatively uncommon mechanism to achieve an ASX listing, so the Chemist Warehouse transaction is notable not just for its size but the novel way that Chemist Warehouse has come to market.

### Unique challenges

2024 saw both approval of the transaction from the ACCC as well as despatch of disclosure documents, comprising a scheme booklet for Chemist Warehouse shareholders, a notice of meeting for Sigma shareholders and a prospectus, the latter being a requirement imposed by ASX in connection with the transaction.

The preparation of three disclosure documents, all of which required content from both Chemist Warehouse and Sigma and needed to be consistent, presented some unique challenges. This was particularly so given the competition overlay. Until implementation, Chemist Warehouse and Sigma were competitors and as such the sharing of information and discussions about future plans needed to be carefully managed or could not occur. This created a tension with the normal drafting process and content requirements.

This was part of the reason why no forecast was included in the disclosure documents, and instead some qualitative disclosure on prospects was provided (the other reason being the difficulty in reliably forecasting the financial performance of a combined business with no trading history) along with estimated synergies from the tie up (this being a point of interest for ASIC during engagement on the disclosure documents). Whilst not having a forecast is commonplace in M&A transactions (including those offering scrip consideration), it is highly unusual where an IPO style prospectus is involved and the listed company is of the nature of the combined group.

The normal approach to due diligence and the operation of due diligence committees also required revisiting given the multiple disclosure documents and parties involved, with the approach taken of running one core due diligence process for the common

11. Based on the Sigma share price on 14 February 2025.

disclosures, with subsidiary due diligence committees considering disclosure issues specific to a particular disclosure document. Similarly, escrow arrangements, the likelihood of index inclusion and possible selldown intentions of the large number of non-escrowed CW shareholders presented novel issues which required detailed consideration.

The transaction also presented complex issues on an M&A front – including the ACCC approval process, the timeline that this dictated for the deal (impacting the approach taken to drafting the merger implementation agreement), the involvement of two independent experts (one opining on the transaction for Chemist Warehouse shareholders and the other opining on related party arrangements for Sigma shareholders) and issues related to alignment of balance dates (the combination of Sigma and CW reporting to different year ends and the interaction of the accounting rules with the Corporations Act necessitating some novel ASIC and ASX relief).

Finally, the transaction also broke new ground in terms of the scope of related party arrangements in place for a listed entity. Whilst early media speculation was that the transaction may lead to a 'governance Frankenstein', there was an overwhelmingly positive response from the market (including proxy advisors) on seeing the proposed governance arrangements to deal with related party governance issues and we expect the transaction to establish a high water mark for related party governance frameworks going forward.

## DigiCo Infrastructure REIT

The IPO of DigiCo Infrastructure REIT involved HMC Capital Limited acquiring 13 data centre assets in Australia and the United States as part of the IPO. On its listing, DigiCo REIT became the diversified owner, operator, and developer of these assets, with an enterprise value of $4.3 billion. Due to significant demand from institutional and retail investors, the underwritten IPO achieved a raise of $1.9 billion and a market capitalisation of $2.4 billion on admission to the Official List of the ASX, the largest IPO by capital raise on ASX since 2018.

Entities seeking to list on the ASX are typically established businesses. This is particularly true for large IPOs. However, as DigiCo REIT was newly established and a significant proportion of the IPO proceeds were used to acquire its assets, there were several interesting issues that arose in the IPO:

- **Timing** – HMC Capital lodged the disclosure document with ASIC approximately two months after beginning the IPO process, a remarkably short timeframe given the scale and complexity of the transaction.
- **Pre-IPO placement** – In parallel with the IPO process, HMC Capital conducted a $300 million institutional placement to fund certain pre-IPO costs of establishing DigiCo REIT (including to underwrite the acquisition of Global Switch Australia). The capital raising required the deal team to balance competing considerations, including HMC Capital's continuous disclosure obligations, the pre-prospectus/PDS publicity restrictions and the need to ensure HMC Capital shareholders were investing on the understanding that the relevant assets were being acquired to form part of DigiCo REIT rather than for the purpose of being held by HMC Capital.
- **Financial disclosure** – DigiCo REIT did not have an operating history or statutory historical financial accounts. As such, we had to consider the appropriate historical financial information both for the disclosure document and for pre-quotation disclosure purposes.
- **Corporate governance** – DigiCo REIT is a stapled group comprising shares in a company and units in a managed investment scheme. The managed investment scheme has an external responsible entity (being Equity Trustees). This structure required HMC Capital and Equity Trustees to collaborate in the design of a bespoke corporate governance framework as well as policies and procedures to govern the interaction between Equity Trustees and the corporate side of the stapled group.
- **FIRB** – The acquisition of Global Switch Australia (the largest asset acquired by DigiCo REIT in connection with the IPO) required a non-traditional FIRB approval whereby the vendor was required to obtain FIRB approval in connection with the disposal of the asset. FIRB approval was obtained after the disclosure document was lodged with ASIC. To accommodate this, the disclosure document disclosure needed to balance the fact that the timing of completion of the Global Switch Australia acquisition was uncertain while still presenting a clear picture of what the combined DigiCo REIT business was expected to look like once FIRB approval was obtained (which ultimately occurred shortly after listing).
- **Regulator engagement** – The IPO required a number of regulatory waivers and confirmations, including a waiver such that HMC Capital did not require shareholder approval under Listing Rule 11.4 in respect of the data centre assets that were acquired on behalf of DigiCo REIT, and a confirmation that ASX mandatory escrow would not apply.

# Regulatory developments

Australian regulators continued to direct their attention toward several key areas in 2024. ASIC has remained vigilant in its enforcement actions against greenwashing, securing significant penalties in several high-profile cases mentioned in the 2023 edition of the Australian ECM Review. It has also seen expanded enforcement powers (both actual and proposed) through the introduction of new climate reporting requirements and significant proposed changes to Australia's takeovers regime. ASX was, relative to previous editions of this publication, relatively quiet, but has signalled a potential transition to T+1 trading, continued its focus on the governance implications of cyber risks and confirmed the staged implementation of the CHESS replacement.

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## ASIC

### Greenwashing Enforcement

In the last several editions of the Australian ECM Review, we have discussed ASIC's continued and heightened focus on disclosure documents containing statements relating to "net zero" emissions and other climate commitments, as well as ASIC's consistent focus on potential greenwashing.

This trend continued in 2024, with significant developments in the Mercer, Vanguard and Active Super greenwashing claims referred to in the 2023 ECM Review. ASIC brought proceedings against each of these entities, alleging that they had made false and misleading statements and engaged in conduct that could mislead the public in relation to:

- in the case of Mercer, several of its sustainable investment options;
- in the case on Vanguard, certain environmental, social and governance (**ESG**) exclusionary screens applied to investments in a Vanguard index fund; and
- in the case of Active Super, the exclusion of various investments based on ESG considerations.

In 2024, ASIC was successful in the Federal Court in each instance, with considerable civil penalties awarded by the Federal Court against Mercer ($11.3 million), Vanguard ($12.9 million) and Active Super[12] respectively.

ASIC has remained focused on this area in 2024, issuing infringement notices to a variety of market participants for alleged greenwashing, including against Morningstar, Northern Trust and MSC.

### Enhanced Disclosure of Ownership in Listed Entities

On 14 November 2024, Treasury released for consultation the *Treasury Laws Amendment (Enhanced Disclosure of Ownership of Listed Entities) Bill 2024* (the **Bill**), which contains reforms that propose amendments to the Corporations Act to increase the disclosure of ownership information for listed companies and to broaden ASIC's regulatory enforcement powers.

The current legislation is, at this stage, only an exposure draft. It has been the subject of a consultation process that concluded on 13 December 2024. The Bill, if passed as drafted, would mark a considerable departure from the existing position and have broad implications for the takeovers provisions in Chapter 6 of the Corporations Act (**Chapter 6**).

#### Treatment of Derivatives

The most significant changes proposed by the Bill would have the effect that derivative interests referable to securities of a listed entity will be deemed to confer a 'relevant interest' in those securities, regardless of whether the derivative counterparty has control over the underlying securities and regardless of whether the derivative is physically or cash settled. Under the current regime, the interest held by a taker of an equity derivative generally only constitutes a 'relevant interest':

- where the writer of the derivative already has a relevant interest in the underlying securities (with this interest generally consisting of the hedged position of the writer); and
- only to the extent that the derivative is physically (and not simply cash) settled.

While existing Takeovers Panel guidance generally means that derivative interests will need to be disclosed when the combined relevant interests and derivative interests of a person and its associates reaches the 5% substantial holder disclosure threshold, this is framed as guidance on what conduct may be 'unacceptable' within the Panel's jurisdiction to address unacceptable circumstances, rather than blackletter law, allowing the Panel to take a common sense approach in terms of how to 'count' derivative interests, including taking into account both short and long positions. The Panel is also not prescriptive in how it would treat derivative interests for the purposes of the 20% takeovers threshold in section 606.

By contrast, the proposed changes would treat all derivatives, whether physically or cash settled, and whether or not the derivative writer holds a hedge, as conferring a relevant interest. This is a significant change and could result in a person's deemed relevant interests, both for the purposes of substantial holder disclosure and the 20% threshold, extending to situations well beyond the current control-based test. The new test would also apply for responses to tracing notices and for notification of director relevant interests, and there are also other proposed changes to the substantial holder disclosure rules requiring more segmented breakdown of disclosure between the new categories of relevant interest.

In the context of ECM transactions, the expansion of the relevant interest concept may also increase the instances in which a secondary capital raising may result in shareholders exceeding the 20% takeover threshold, or shareholders already above the 20% threshold further increasing their stake. Where this is the case, this will affect matters such as determinations as to whether an ASIC nominee is required for the transaction in order to fall within items 10 or 10A of section 611 of the Corporations Act and disclosures as to the control effects of an entitlement offer. It may also be relevant to a shareholders' analysis as to whether they are able to rely on the 'creep' exception in item 9 of section 611 in certain circumstances.

12. As of 31 January 2025, no formal orders in relation to penalties for Active Super have been handed down so the penalties payable by Active Super are not yet known

The changes also propose that ASIC may develop principles, which are not yet available, for determining the number of underlying securities that cash settled equity derivatives would be deemed to confer a relevant interest in. These will obviously be very important, as the terms of cash settled equity derivatives can vary widely.

### Other Proposed Amendments

In addition to the changes to the relevant interest concept, the following changes are also proposed:

1. **Tracing notices:** The Bill would significantly broaden the persons to whom tracing notices can be issued under section 672A of the Corporations Act to include persons suspected on reasonable grounds of having relevant interests in, or having given instructions about, securities (including associates of such persons).
2. **Foreign entities:** The Bill would also extend the substantial holding and tracing notice provisions to cover ASX-listed foreign entities not incorporated under the Corporations Act.
3. **Enforcement powers:** The Bill also proposes to grant freezing order powers to ASIC, enabling it to freeze securities where, in the regulator's opinion, a person has failed to comply with its substantial holding notice or tracing notice obligations.

## Climate Disclosures and New Reporting Regime

On 17 September 2024, the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* (Cth) (**Act**) received Royal Assent. The Act requires entities already covered by the financial reporting provisions in Chapter 2M of the Corporations Act (and certain companies limited by guarantee) to include climate-related financial information and disclosure in a sustainability report.

Entities who fall within one of the three reporting groups will need to deliver their first report as follows:

- **Group 1 entities:** in respect of their financial year commencing during the period 1 January 2025 – 30 June 2026.
- **Group 2 entities:** in respect of their financial year commencing during the period 1 July 2026 – 30 June 2027.
- **Group 3 entities:** in respect of their financial year commencing during the period 1 July 2027 – 30 June 2028.

The requirements introduced by the Act came into force for Group 1 entities on 1 January 2025. The reporting obligations for Group 2 and Group 3 entities will be phased-in progressively in accordance with the dates above.

The Act will require entities to disclose information including:

- a climate statement containing:
  - the entity's material financial risks and opportunities relating to climate;
  - any metrics and targets of the entity relating to scope 1 emissions (being direct emissions from business operations), scope 2 emissions (being indirect emissions from the generation of purchased or acquired electricity, heat, cooling or steam) and scope 3 emissions (being indirect emissions occurring either upstream or downstream in an entity's supply chain); and
  - further information about the entity's governance and strategy in respect of the risks, opportunities, metrics and targets required above.
- notes to the climate statement;
- statements prescribed by the Minister (and notes to those statements); and
- a directors' declaration.

This disclosure set out in the climate statement will be supplemented by disclosure required by AASB S1 and AASB S2, which were both formally pronounced by the Australian Accounting Standards Board on 20 September 2024. While both standards cover sustainability-related disclosure, AASB S1 is a voluntary standard and AASB S2 is a mandatory standard. Generally speaking, AASB S1 and AASB S2 require disclosure of information (or provide guidance in the case of AASB S1 given its voluntary status) about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term.

In November 2024, ASIC released Consultation Paper 380 (**CP380**) along with draft regulatory guidance to provide some initial guidance to entities that must prepare a sustainability report under Chapter 2M of the Corporations Act. CP380 indicates that issuers of disclosure documents under Chapter 6D should consider whether sustainability disclosures need to be included in the disclosure document to ensure that the general disclosure test in section 710 is satisfied, including considering:

- providing an overarching narrative and analysis in the investment overview explaining the significance of sustainability related financial information within the broader context of the issuer's corporate strategy, business model and prospects; and
- disclosing sustainability related financial disclosures in the business model and investment risk sections.

ASIC has noted that it will consider updating Regulatory Guide 228 (including undertaking consultation if required) in due course. Final responses to CP380 and its draft regulatory guide were received on 19 December 2024. While this consultation is ongoing, our concern with the guidance provided in CP380 and the proposed regulatory guide is that it may generate an expectation that all issuers will include sustainability related disclosure in a disclosure document, regardless of whether this disclosure is relevant, or in fact whether it would be information that investors and their professional advisers would reasonably require to make an informed assessment of the prospects of the entity. We are concerned that this may lead to some issuer's including more generic disclosure to "tick the box". We look forward to ASIC releasing further information on this developing issue.

### Changes to Continuous Disclosure Laws

On 12 August 2024, the government released its independent review of amendments made to Australia's continuous disclosure regime by the *Treasury Laws Amendment (2021 Measures No 1) Act 2021* (**2021 Amendments**). The 2021 Amendments introduced a fault element requiring proof that a listed entity or its officers had acted knowingly, recklessly, or negligently in connection with a breach of the entity's continuous disclosure obligations. The review assessed the impact of this change, in particular, the impact on ASIC's enforcement capabilities and shareholder class actions.

The review made six recommendations, and the government will implement four of them, including to amend the Corporations Act to:

- remove the requirement (introduced by the 2021 Amendments) for ASIC to prove that the listed entity acted knowingly, recklessly or negligently in civil penalty proceedings for a breach of continuous disclosure laws (while retaining that proof requirement for private litigants and, by extension, for shareholder class actions); and
- address more fully how knowledge, recklessness and negligence are to be attributed to the disclosing entity.

While not yet formalised, these changes will mean that disclosing entities should continue their vigilance surrounding compliance with the continuous disclosure regime, as ASIC's ability to prosecute breaches of the regime will be materially increased.

### ASIC Discussion Paper: Australia's evolving capital markets

On 26 February 2025, ASIC released a discussion paper examining the dynamics between public and private markets in Australia. Read more about this discussion paper here.

Relevantly for ongoing regulatory developments in public markets, ASIC disclosed that it was exploring opportunities with the ASX to refine the listing pathway and listing rules.

ASIC further confirmed an increased focus on targeting leaks and media reporting ahead of fundraising, merger and takeover activities.

## ASX

### Potential Shift to T+1 Trading

ASX currently follows a T+2 settlement timeframe, meaning securities transactions complete two 'business days' after the trade date. Corporate action timetables therefore include a 2-day 'ex period', with the ex-date and record date occurring on consecutive business days. In 2024, a number of global securities markets, including the US, Canadian, Indian, Mexican, Argentinian and Jamaican markets shifted to T+1 settlement, compressing corporate action timeframes so that the ex-date and record date occur on the same business day. The effect of this compression is that investors can acquire a security on-market up until the day before the record date and still own the security on the record date. A number of other securities markets around the world (including the UK, other European markets and Asian markets including Hong Kong, Singapore and Japan) have expressed an intention to transition to T+1 settlement in the next 1-3 years.

In line with this global shift, ASX has also signalled a potential movement from T+2 to T+1 trading for cash equities settlement. In April 2024, ASX published an industry Whitepaper seeking feedback from a range of stakeholders on the potential move and published the results of that feedback in August 2024.

We anticipate further updates from ASX during 2025.

### Other Developments

Other ASX initiatives in 2024 included:

- continuing its focus on cyber risks and the governance implications for listed entities, in particular through amendments in Guidance Note 8 to include a detailed example on a theoretical data breach and ransomware attack to guide listed entities on best practice to ensure compliance with the entity's continuous disclosure obligations; and
- confirming it will adopt a staged implementation of the CHESS replacement system and that it intends to proceed with its overarching approach of implementing a CHESS replacement across two main releases, with Release 1 delivering the clearing services and Release 2 focusing on settlement and sub-register functionality.

# 2024: Resources deals

The resources sector[13] continued to be a major contributor to activity in Australia's equity capital markets in 2024. Just over half (54%) of IPOs by number in 2024 were undertaken by resources companies and approximately half (50%) of the secondary raisings over $10 million were by resources companies.

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**Note on methodology:** This article uses the same methodology as that used for IPOs (see page 12) and secondary raisings (see page 13).

13. For the purposes of this article the resources sector includes metal and mining companies and energy companies.

## Gold shines in resources sector ECM deals

### IPOs

Although the 2024 Australian IPO market remained comparatively quiet by historical standards, resources sector companies continued to seek capital from the Australian public markets - with 14 of the 26 IPOs in Australia (54%) being undertaken by resources sector companies, accounting for 39% of the total capital raised by IPOs for the year.

The vast majority (13 out of the 14) of these resources IPOs were by exploration companies and 60% of the 2024 resources IPOs were by early-stage exploration companies raising $10 million or less. The largest resources IPO was by Metals Acquisition Corp, the owner of the operating CSA Copper Mine in NSW, which was to provide a secondary listing on the ASX and raised $325 million.

With continued strong gold prices, 2024 saw seven IPOs from companies that included gold as a focus of their exploration efforts (often along with other minerals). The continuing investor interest in critical and strategic minerals was also reflected in the 2024 IPO market with six of the IPOs involving companies that include lithium or rare earths as a focus and four of the IPOs involving companies that include copper as a focus.

### Secondary raisings

Turning to secondary raisings in Australia over $10 million in 2024, approximately half (45%) of the raisings by number were by companies in the resources sector and those secondary raisings contributed to approximately 32% of the total capital raised.

A number of secondary raisings by resources companies were to support the development of near-term, gold opportunities such as Spartan Resources Ltd, De Grey Mining Ltd and Meeka Metals Ltd.

Consistent with previous years, and a feature of the industry's ongoing need for capital during the pre-revenue stage, the vast majority of secondary raises were to provide further liquidity and general working capital, including for the exploration and/or development of existing projects.

There were also a smaller number of secondary raisings to fund acquisitions including Boss Energy's acquisition of a uranium project in the US.

Looking at the commodities involved in these secondary raisings, approximately 47% involved companies that include gold as a focus, 19% involved companies that include a copper focus and 13% involved companies that include a lithium focus. With the uranium price performing well relative to longer term prices during 2024, there were also a large number of raisings by uranium companies (10%).

The vast majority of resources sector secondary raisings included a placement component, providing the issuers with rapid access to funds, with 58% of secondary raisings being structured as a placement, 20% as a placement and accelerated non-renounceable entitlement offer and 18% as a placement and share purchase plan.

### Reflections and what 2025 may bring

We observed last year that in 2024 we expected to see continued IPO activity for small cap exploration companies bringing new assets to the public markets across all commodities as well as further capital raisings targeted at a specific purpose by critical minerals focused companies in particular. These predictions largely eventuated in 2024 - IPOs undertaken by resources sector companies in 2024 were predominately by exploration companies and involved a range of commodities including gold, copper, lithium, rare earths, uranium, titanium and silver. In addition, critical minerals focused companies continued to undertake secondary raisings in 2024.

But it must be said, we were not really going out on a limb in our prediction for 2024. Over time, the Australian capital markets have shown that they are a reliable source of capital for resources companies. Despite volatility in commodity prices, investors are prepared to support exploration and then provide the equity required to fund development following exploration success. In 2025 we expect to see more of the same with continued IPO activity in the resources sector across a broad range of commodities, predominantly by exploration companies. We also expect to see secondary raisings by gold focused companies whilst the gold price remains strong as well as continued support for critical and strategic minerals companies as investors deepen their exposure to the ESG thematic in a resources context.

# Governance issues and ESG

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## Governance

While governance has always been a core area of focus for stakeholders, 2024 provided further examples of the adverse consequences that can flow for companies that don't invest in strong corporate governance processes. In particular, 2024 demonstrated the importance of getting disclosure right, both in prospectus disclosure and through ongoing periodic and continuous disclosure.

### Getting disclosure right

Listing on public markets comes with increased expectations regarding corporate governance from stakeholders, which goes hand in hand with more fulsome disclosures about business practices and compliance with the law, regulations and company policies. This means that your "business as usual" processes may have an additional layer of scrutiny – particularly if you have an unusual corporate structure or your post-listing BAU involves ongoing conflicts of interest or material transactions with key management personnel and related parties.

Prior to listing, it may be difficult to anticipate the importance of disclosure (including periodic and continuous disclosure) and the step change involved in transitioning from a private company to a listed company. Disclosure and shareholder engagement may be one of the most challenging aspects of being a listed company and the reporting footprint for many companies (listed and unlisted) is going to increase with the introduction of climate reporting.

2024 demonstrated that disclosure missteps, including at the time of listing, can come back years later to cause issues – not only can this be reputationally damaging, but also a significant distraction for management with the risk of regulatory investigations and shareholder class actions. The key takeaway? Getting your governance ducks in a row, before listing, is vital. Prior to listing, entities should go through a process of "maturing" governance structures and getting into the "groove" of their obligations as a listed company. Entities looking to list should review their obligations, market practice and seek advice about a governance structure that is fit for purpose and will add value to the business rather than simply being seen as 'window dressing' or a 'tick the box' exercise.

### Companies, stapled entities, listed trusts ... ASX has a spot for you

We continue to see a range of corporate structures being utilised by newly listed entities, which in turn come with more bespoke governance structures. Typically, the choice of corporate structure is driven by the commercial benefits, and the governance structure then needs to be 'tailored to fit' the chosen corporate structure. While the ASX Corporate Governance Council (**ASX CGC**) Corporate Governance Principles and Recommendations are drafted with a primary focus on a standard listed company structure, they contemplate adaptations to other structures such as listed trusts and various stapled structures.  For listings involving registered schemes and/or multiple boards of directors, there may be a need to engage more closely with ASX and ASIC during the listing process and enhanced disclosure in some circumstances (i.e. more detailed disclosure in the prospectus to explain the division of responsibilities and how decision-making will work in practice).

## Social

### Setting the right tone on DEI

The ESG talking point of the moment is the 'pushback' against DEI initiatives, which has been brewing for a while but has reached fever pitch with President Donald Trump's return to the White House. Closer to home, the ASX Corporate Governance Council has failed to achieve a broad consensus on the draft 5th edition of its Corporate Governance Principles and Recommendations (**ASX CGC Recommendations**) due to the divergence of views among its members. The 5th edition was expected to come into effect within the next 12 months, but instead the current 4th edition of the ASX CGC Recommendations will remain in effect without amendment. Key changes that had been proposed to the ASX CGC Recommendations in the 5th edition included diversity recommendations that extended beyond gender, an increased focus on stakeholders (not just shareholders), and enhanced disclosure regarding board skills and the process for determining skills on the board.

The 4th edition ASX CGC Recommendations still require 'if not, why not' reporting for any listed entity (as well as entities seeking listing in their IPO prospectus) against recommendations linked to gender diversity and inclusion, including requirements to have a diversity policy and to set measurable objectives for achieving gender diversity. With DEI commitments and initiatives facing resistance from stakeholders and segments of in the investment community, boards will need to think carefully about how they set and articulate their approach to DEI.

It seems futile to try and reconcile the views of stakeholders given the current divergence and heat in the debate. A better approach is to laser in on whether and how diversity, equity and inclusion supports and unlocks sustained financial performance, and focus the board's policy and initiatives around those areas where a clear 'best interests of the company' can be articulated.

## Environment

### Climate reporting

2024 marked the passage of legislation which requires companies to report on their sustainability performance, metrics, targets, risks and opportunities against newly created climate accounting standards in a "Sustainability Report" each year. While this applies to both listed and non-listed entities, as with any reporting, we expect that there will be increased attention on listed companies.

Importantly, ASIC has released draft regulatory guidance which outlines how ASIC will enforce the new regime[14]. Paragraphs 125 to 127 of the draft regulatory guidance outline ASIC's view that where disclosure of climate related information is needed to comply with prospectus disclosure requirements, any such climate information should comply with the newly created climate accounting standards – which requires an entity to disclose information about climate related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long-term. ASIC has also indicated that issuers should include an overarching narrative and analysis explaining the significance of sustainability related information within the broader context of the strategy, business model and prospects of the company. This is in addition to existing ASIC guidance that companies should consider whether climate change should be included as a potential risk to an entity's business and more broadly whether it is an external threat to the industry an entity operates within[15].

We expect that ESG will continue to be of core interest to Australian regulators. In our experience, regulators have paid particularly close attention to ESG related risks and opportunities throughout transaction processes. While there are certainly examples of some jurisdictions and companies rethinking their ESG commitments, we consider that Australian entities will not be exposed to a "relaxing" of ESG commitments, especially due to increased regulatory attention.  As noted above, we expect Australian entities will realign and integrate their ESG commitments with the broader commercial strategies and focus on ESG matters which are core to their business.

14. Attachment 1 to ASIC Consultation Paper 380: Draft regulatory guide 000 Sustainability Reporting, dated November 2024
15. ASIC Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors, dated August 2019

# Key US securities developments

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## Changing of administration, SEC Leadership and Priorities

The time of drafting of the ECM review this year in late January, mere days after the inauguration and start of the second Trump administration, is a particularly perilous time to make predictions about the shape of securities law regulation and SEC priorities for 2025. We therefore intend be prudent for the time being, and say that priorities will be very different from those of the outgoing Biden administration and former SEC Chair Gary Gensler, with a likely element of unpredictability as we make our predictions.

Areas of difference notwithstanding, it is worth noting that (i) the SEC is a bipartisan Commission, led by five Commissioners with equal votes and a Chair who has the ability to set a collaborative agenda, (ii) a large majority of decisions taken by SEC Commissioners are unanimous and (iii) the large majority of enforcement cases are settled. We hope that this cohesiveness will continue to characterise SEC decision-making as a strong and united SEC has been very important for US capital markets to grow, lead and thrive and in enabling the SEC to execute its core mission of investor protection.

But based on past statements and the long experience (at the SEC and otherwise) of former Commissioner and new nominee Chair Paul Atkins, and on the record of dissenting Republican Commissioners, some direction of travel is likely to emerge and to emerge very quickly.

The immediate market backdrop for 2025 is a roaring fourth quarter of 2024, with banking and trading revenue increasing substantially on the back of the election and the expected impact of taxes and deregulation on M&A, debt and equity underwriting and on markets generally. CEO confidence is high, and business leaders are in the mood to do deals. Investment banking revenue jumped 35% in Q4 across the five largest

US banks, and banks expect the same direction of travel for 2025, albeit uncertainties surrounding the new administration's trade policies and global tensions having dampened activity at the beginning of the year. That is to say that when market conditions are such that deals are ready to be done, there is capital formation that can be facilitated by deregulation, reducing compliance costs and streamlining enforcement.

Yet, there will be differences in important areas. The incoming administration appears to have very different views on climate change and on the need and appropriateness of standardising and regulating climate-related disclosures through the SEC disclosure review process and more generally less of a focus on environmental, social and corporate governance issues. The prior SEC's ambitious rule-making efforts regarding carbon emissions and climate-related risks, already paused among legal challenges in the US courts, are likely to be scrapped or at least significantly scaled back with primary regulators in this area more likely to be found in Europe or US states such as California.

Chair Atkins' nomination to lead the SEC has also been hailed by cryptocurrency advocates, as they hope for a more favourable regulatory environment. The SEC under former Chair Gensler, building on past SEC practice, targeted many of the biggest crypto companies with lawsuits and declined to promulgate rules for digital assets, stating that many tokens were, under the Howey test, securities that were already regulated by clear, existing laws. The SEC under Chair Atkins is widely expected to adopt a friendlier approach, including a reduction in enforcement actions.

Major changes may also be in store for the main audit watchdog in the United States, the Public Company Accounting Oversight Board, or PCAOB, of which Chair Atkins has been critical. This could lead to a softer regulatory touch, including scaled back PCAOB jurisdiction, diminished penalties, slower rulemaking and a smaller budget, as well as changes in leadership. Prior proposals to consolidate the PCAOB into the SEC may be reinvigorated.

The capital markets in the United States have repeatedly demonstrated resilience and the ability to innovate over the years, whether the topic be the regulation of digital assets, the commercial use of artificial intelligence or a range of other issues, as the securities markets change and adapt constantly. Sound and sensible regulation fostering capital formation while protecting investors has long been key to the vibrancy of US capital markets, which we expect to continue, irrespective of changes in administration, approach and priorities.

## SEC Enforcement Priorities

While, as discussed above, priorities will undoubtedly shift with the new administration, some sense of the Commission's plans for enforcement and examination in 2025 can nevertheless be reasonably predicted.

A more pro-business stance is likely to emerge from the Trump administration broadly, including at the SEC, as can be seen from an examination of both the actions of the SEC during the first Trump administration and in the actions of Republican commissioners during the Biden administration. President Trump's nominee to chair the SEC, former commissioner Paul Atkins, was viewed as having a conservative ideology during his time on the Commission, with a broadly free-market view. The SEC's shift in position can be expected to be evident in a number of areas, including: (i) a reduction in cryptocurrency-related enforcement actions; (ii) a rollback of ESG and DEI-related enforcement actions and rulemaking, particularly with respect to the SEC's 2024 climate disclosure rule; and (iii) a likely shift in emphasis in cybersecurity enforcement to focus on material financial impacts to companies and investors. It is also likely that the SEC will dial back its push under the prior regime for ever higher civil penalties – especially with respect to issuers where the penalties are ultimately borne by shareholders – and a return to a corporate benefit analysis. One thing will not change. The SEC will continue to devote substantial resources to traditional areas of enforcement involving harm to investors and illicit gains to fraudsters. These include, among others: (i) public company reporting, accounting, and disclosure; (ii) insider trading; (iii) fraud in the offer or sale of securities; and (iv) market manipulation.

The SEC's Division of Examinations additionally recently released its Fiscal Year 2025 Examination Priorities, including as regards a variety of types of entities. Specifically, the SEC's announcement emphasizes the impact that emerging technologies have had on new and existing risks to the industry and its customers. Among the areas that the SEC's report chose to highlight are: (i) investment advisers' adherence to fiduciary standards; (ii) the importance of compliance programs; (iii) examination of broker-dealers under Regulation Best Interest, concerning recommendations to retail investors; (iv) cybersecurity procedures and practices, including the safeguarding of customer records and information; (v) the use of automated investment tools, generative AI, and trading algorithms, including whether the use of such technologies comports with disclosures made to investors and the controls and procedures surrounding their use; and (vi) activities involving crypto or related products. These announced priorities for FY 2025 are similar to those that the Commission announced (and acted upon) for FY 2024.

### Our Take

These announcements are taking shape against the backdrop of changing leadership at the SEC. While the overall aims of the Commission remain broadly consistent across administrations, some change is inevitable when a new administration takes over, particularly where there is a broad shift in the ideology of the governing administration. Companies should pay careful attention to statements from SEC leadership and staff in the early days of the new administration as areas of focus are illuminated and refined, particularly in the areas of enforcement and examination.

## Disclosure trends and considerations for the annual reporting season

As SEC registrants, including foreign private issuers, gear up for the publication of their annual reports on Form 10-K or Form 20-F, disclosure topics that have attracted the attention of the SEC via public statements and recent comment letters should be considered.

### Economic conditions

While inflationary pressures have eased and interest rates have decreased compared to their peak in 2022, companies should continue to consider whether their disclosures regarding inflation impacts and risks and uncertainty regarding inflation or future rate changes are adequately disclosed. In June 2024, Director Erik Gerding, the then SEC Corporation Finance Division Director, emphasised that material ongoing impacts of inflation should be disclosed, and companies should discuss more particularised risks instead of simply noting high-level trends. In recent comment letters, SEC Staff have focused on the need for companies to provide detailed disclosures about the impact of inflation on their operations, including specific factors contributing to these pressures and actions being taken, and to align their verbal and written statements, particularly in relation to inconsistencies between disclosures in earnings calls and official filings.

### Artificial intelligence

As artificial intelligence ("**AI**") becomes increasingly prevalent in businesses, companies should assess whether they have adequate AI disclosure. Director Gerding noted in an announcement that SEC Staff will consider how companies are describing AI-related opportunities and risks, including, to the extent material, whether a company: (i) clearly defines what it means by AI and how the technology could improve the company's results of operations, financial condition and future prospects; (ii) provides tailored, rather than boilerplate, disclosures about material risks and the impact the technology is reasonably likely to have on its business and financial results; (iii) focuses on the company's current or proposed use of AI technology rather than generic disclosure not relating to its business; and (iv) has a reasonable basis for its claims when discussing AI prospects.

### Cybersecurity

Following the adoption of the SEC cybersecurity disclosure final rules, most SEC reporting companies provided the required disclosure in their annual report for the first time in 2024. The SEC Staff recent comments on such disclosure has focused on inconsistent statements regarding the use of third parties in cybersecurity risk management, inadequate disclosure regarding the relevant expertise of members of management or management committees, and whether and how the company's process for assessing, identifying, and managing material risks from cybersecurity threats has been integrated into its overall risk management system.

### Our Take

On 21 January 2025, Mark T. Uyeda was designated as Acting Chairman of the SEC pending the confirmation of proposed Chair Paul Atkins. Companies should carefully evaluate the impacts of high interest rates, including on interest expense, investment strategy, liquidity and cost of funding. Given the rapid development of AI, companies should refresh their disclosure regularly. Even if AI is not a significant aspect of their business, their assets or operations may be impacted in a way that results in an exposure to some material risk. At the same time, companies need to also be mindful of the risks of AI-washing and ensure that any disclosure of the importance of AI to their strategy and prospects have a reasonable basis. We expect cybersecurity to be an area of continued focus for the SEC, as evidenced by the actions taken against several companies in 2024 for making materially misleading disclosures regarding cybersecurity risks and breaches.

## ESG: a growing gulf between the US and the rest of the world; a diverging discourse among US states

### SEC final rules on climate-related disclosures

On 6 March 2024, the SEC adopted final rules on climate-related disclosures. These long-awaited rules set out what climate-related information US-listed companies, including foreign private issuers, are required to disclose in their annual reports and registration statements filed with the SEC. This broadly includes disclosure of material climate-related risks and impacts on strategy, business model and outlook, board and management oversight of climate-related risks, risk management, climate-related targets and goals, Scopes 1 and 2 greenhouse gas ("**GHG**") emissions, and financial statement disclosures. Notably, the key differences from the proposed rules include the elimination of Scope 3 GHG emissions disclosure requirements, limitation of Scopes 1 and 2 GHG emissions disclosure to certain filers and only if such emissions are material, and elimination of climate-related board of directors' expertise disclosure requirement.

On 4 April 2024, the SEC voluntarily stayed the rules pending the completion of judicial review by the US Court of Appeals for the Eighth Circuit, where legal challenges to the rules brought by several interested stakeholders have been consolidated. Pursuant to the SEC's order staying the rules, the effective date of the rules is delayed indefinitely. However, the SEC's order does not delay the compliance dates under the rules and absent additional guidance by the SEC or the Eighth Circuit, the compliance dates would remain the same if the Eighth Circuit were to uphold the rules, under which reporting would first begin in 2026 by large accelerated filers for the 2025 fiscal year.

### Climate reporting developments at state level

Amid uncertainty with respect to the fate of the SEC climate disclosure rules, certain individual states have continued pushing forward on climate-related disclosures.

On 27 September 2024, California Governor Gavin Newsom signed into law Senate Bill 219 ("**SB 219**"), which makes certain amendments to Senate Bills 253 ("**SB 253**") and 261 ("**SB 261**") introduced in 2023. The third California climate bill, Assembly Bill 1305 ("**AB 1305**") was not amended. SB 219 does not substantively change the climate disclosure framework set out under SB 253 and SB 261, but rather clarifies questions regarding those laws, including by granting the California Air Resources Board until 1 July 2025 to adopt implementing regulations relating to the disclosure of GHG emissions.

SB 253 requires US companies with more than $1 billion in annual revenue that do business in California to report Scopes 1 and 2 GHG emissions annually beginning in 2026, and Scope 3 GHG emissions beginning in 2027. SB 261 requires US companies with more than $500 million in annual revenue that do business in California to biennially prepare and disclose a climate-related financial risk report beginning in 2026. AB 1305 mandates disclosures about emissions reduction claims and voluntary carbon offsets by any company that makes emissions claims within California or that purchases, uses, markets or sells voluntary carbon offsets within California and first disclosures must be made by 1 January 2025.

SB 253 and SB 261 are currently subject to an ongoing legal challenge in the US District Court for the Central District of California. On 5 November 2024, the District Court denied the plaintiffs' motion for summary judgment for impermissibly compelling speech in violation of the First Amendment. While the litigation continues to discovery, the implementation of the rules is not stayed pending the outcome of the litigation. In December 2024, the California Air Resources Board exercised enforcement discretion to not take enforcement action against companies for incomplete reporting of Scopes 1 and 2 GHG emissions for the first report due in 2026, as long as they make a good faith effort to retain all data relevant to emissions reporting.

New York and Illinois are also in the process of developing their own mandatory climate disclosure laws. New York's Senate Bill S897A would require any business entity that does business in New York with more than $1 billion in annual revenue to annually disclose Scopes 1, 2 and 3 emissions. Similarly, Illinois' House Bill 4268 would require US entities doing business in Illinois with more than $1 billion in annual revenue to annually disclose and verify their Scopes 1, 2 and 3 GHG emissions.

On the other hand, Florida Governor Ron DeSantis announced in 2024 that Florida will begin enforcing violations of its anti-ESG legislation, HB 3, that was adopted in 2023. Under HB 3, among other requirements, any asset manager that invests Florida public funds must make investment decisions based solely on "pecuniary factors", which does not include the consideration of "social, political, or ideological interests." Meanwhile, in Texas, a nonprofit organization, the American Sustainable Business Council, has filed a lawsuit against the state to block a state law that restricts Texas from investing in or contracting with businesses that support reducing reliance on fossil fuels.

### Diversity disclosure rules

With regards to the "G" in ESG regulation in the US, the Nasdaq's board diversity rules were vacated by the US Court of Appeals for the Fifth Circuit in December 2024. The Fifth Circuit held that the SEC exceeded its statutory authority when it approved the rules, which required Nasdaq-listed companies to (i) publish a matrix reflecting company boards' gender and racial/ethnic composition and (ii) have a minimum number of women and diverse directors or explain why such diversity is not present. Nasdaq notified listed companies that it respects the Fifth Circuit's decision and does not intend to seek further review.

### Our Take

At the federal level, we do not expect the SEC climate disclosure rules to survive under the Trump administration. President Trump had previously mentioned reversing his predecessor's climate policies and indicated that his administration will rescind the SEC climate disclosure rules. We may also see anti-ESG efforts at the federal level and accordingly may see proposals that proactively make ESG practices more difficult to adopt across a wide range of contexts. While we await the policies and priorities of the new Trump administration to be unveiled throughout 2025, companies should continue their overall preparations for other climate-related disclosure requirements, to the extent applicable, such as legislation enacted by California and introduced in other US states as well as regulatory requirements in other jurisdictions, such as the EU's Corporate Sustainability Reporting Directive. In relation to diversity disclosure, while disclosure under Nasdaq's diversity rules is no longer required, companies should be mindful of investor expectations and diversity disclosure and board composition policies of proxy advisory firms and institutional investors, which could lead companies to continue providing board diversity disclosures.

## The turbulent journey of crypto regulation

2024 was marked by a lack of clarity on the regulation of cryptocurrencies and related digital assets. The SEC continued its aggressive approach to enforcement by bringing civil actions against cryptocurrency intermediaries while encountering some headwinds from federal judges and Congress.

The SEC enforcement action principally targeted unregistered broker-dealers and exchanges rather than alleged fraudulent activity. The SEC consistently rejected numerous calls to adopt a new set of rules tailored to crypto, instead suggesting that existing federal securities laws can be applied to digital assets. The SEC and federal judges implemented the "Howey test" to several high-profile cases in 2024, which is the US Supreme Court's framework to determine whether a transaction qualifies as an investment contract and therefore be considered a security.

Federal judges have held divergent views on the application of the "Howey test" to digital currencies, including within the same district court. When implementing the "Howey test", courts have examined whether the test should consider the "manner-of-the-sale" of the crypto assets or the "ecosystem" theory as favoured by the SEC. The District Court for the Southern District of New York (SDNY) and the District Court for the Northern District of California in two noteworthy decisions upheld the SEC's "ecosystem" theory in enforcement actions against Coinbase and Kraken, under which courts examined whether there was an ecosystem around a digital token to assess whether such token was a security. It is worth noting that the SDNY in a previous occasion favoured the "manner-of-sale" approach, which was also followed by the District Court for the District of Colombia against the crypto platform Binance. That court also clarified that Binance's stablecoin was not inherently a security as the defining feature of a stablecoin is to maintain a pegged value.

Further developments are expected in these instances, as a federal judge recently granted Coinbase's motion for an interlocutory appeal which in effect pauses the SEC's registration suit against the platform until the Second Circuit examines the application of the "Howey test" to Coinbase. This will in turn have without any doubt precedential value in other pending and future litigation.

Revisions to the Securities Exchange Act of 1934, including amendments to the definitions of "dealer" and "government security dealer" which would have applied to cryptocurrency intermediaries were vacated by a federal court. A bipartisan bill that rescinded controversial SEC Staff Accounting Bulletin 121 ("**SAB121**") was voted by the Congress, before being vetoed by President Biden. SAB 121, which was recently rescinded by the newly appointed SEC Acting Chairman Mark T. Uyeda, required custodians of crypto assets to report them as liabilities in their balance sheet and imposes additional disclosure requirements. This was together with other pushback to SEC rulemaking.

Cryptocurrency players have expressed their frustration over oversight by litigation, which has no doubt led in part to inconsistent results and much regulatory uncertainty. The House of Representatives has tried to add some clarity in the form of the Financial Innovation and Technology for the 21st Century Act ("**FIT 21**"), which has not been enacted but has received bipartisan support. If enacted, FIT 21 would provide a welcome clarification to crypto regulation by setting a new framework to determine whether a cryptocurrency would fall within the jurisdiction of the SEC or the CFTC. Under this new set of rules, centralised assets (designated as "restricted digital assets") would qualify as securities, over which the SEC would have regulatory authority. This would subject such cryptocurrencies to regulation under federal securities laws. Decentralised assets, which would capture most cryptocurrencies, are referred to as digital commodities and would be regulated by the CFTC. While the Senate has not voted on the FIT 21, we believe it will most likely be used as a starting point by the new administration.

Announcements made by the new administration signal further developments to crypto regulations in the upcoming months. An executive order signed by President Donald Trump shortly following the change in administration established a President's Working Group on Digital Assets Markets under the National Economic Council. The Working Group must issue a report within 60 days identifying rules and regulations affecting the digital asset sector that may be amended, and subsequently issue a second report within 180 days suggesting regulatory and legislative proposals. The Working Group will include, among others, the Secretary of the Treasury, the Attorney General, the Chairman of the SEC and the Chairman of the CTFC. This presidential order follows the recent announcement by Acting Chair Uyeda of the creation of a crypto task force "dedicated to developing a comprehensive and clear regulatory framework for crypto assets". The task force will also coordinate with the CFTC, which reflects the fact that the desire for increased collaboration between the SEC and the CFTC is high on the agenda of the new administration.

### Our Take

Cryptocurrencies will without a doubt be a priority for each of the new administration, the new Congress and the new Chair of the SEC Paul Atkins, all of whom are viewed by industry groups as generally more favourable to crypto and advocates for less regulation. The SEC under its new Chair will most likely change course and adopt a friendlier approach to enforcement and rulemaking.

Cryptocurrency players are hopeful for some long due clarity in this ever-changing landscape.

## T+1 settlement cycle live in the US

The SEC amendments to Rule 15c6-1 of the US Securities Exchange Act of 1934 which shortened the standard settlement cycle to "T+1" for most securities transactions went into effect on 28 May 2024.

Parties in a firm commitment underwritten offering that is priced after 4:30 p.m. Eastern Time now have two business days to settle, unless otherwise expressly agreed to by them at the time of the transaction. If a T+1 settlement is not practicable, the parties may agree to an alternative settlement cycle pursuant to the exception under Rule 15c6-1(d). This exception should be considered in transactions such as: (i) debt refinancings that require redemption notices; (ii) capital markets transactions by non-U.S. companies involving U.S. dollar net proceeds that are to be converted into foreign currency; and (iii) certificated, restricted or pledged securities, whereby a longer period may be needed to obtain the requisite documentation to enable free transfer of the shares.

### Our Take

We expect parties in the debt and preferred equity market to continue agreeing to alternate settlement cycles, and in such cases, it is important that parties communicate their expectations early on regarding any intention to rely on Rule 15c6-1(d) for a longer settlement cycle to avoid any settlement issues. Generally, market participants can expect settlement periods to shorten over time as the market becomes accustomed to T+1 settlement. Under the T+1 settlement cycle, legal counsels would need to ensure closing documentation and other closing arrangements are in place in advance of pricing to avoid any settlement issues at closing. Beyond the US, Canada and Mexico also moved to a T+1 regime on 27 May 2024. In the UK, the Accelerated Settlement Taskforce, which was created by HM Treasury to explore the potential for faster settlement of securities trades in the UK, has recommended the UK to move to a T+1 regime on 11 October 2027 in line with the EU and Switzerland. In the meantime, we understand that different markets with different settlement cycles are largely operating as normal, and that the move to T+1 in the United States has had little impact on cross border trades in markets with different settlement cycles, since most cross border trades are actually completed in less than 24 hours in practice. Where brokers may be more risk adverse, structures like stock borrows and loans out of inventory may be considered.

# 2025: Predictions


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## How did we do on our 2024 predictions?

As we noted last year, predicting any market is particularly hard and it appears on that point we were correct – predicting the capital markets is particularly hard. From our 2024 predictions we consider that we correctly picked some of the thematics:

- capital raising in support of M&A continued and, as set out in '2024: Secondary raisings by the numbers', increased as a proportion of secondary capital raisings;
- with larger IPOs for the most part emerging later in the year, the theme of IPOs being predominantly in the September to November window continues; and
- the ongoing rise of private capital and what that means for public markets was a constant theme in the media and the market, in particular, the focus on the need for regeneration of the ASX as established companies have de-listed.

## 2025 predictions – and a request

### IPOs 1

There will continue to be an industry focus on the state of the IPO market as an outsized indicator of the health of the Australian capital markets. While we would like to see the IPO market build on the momentum from last year, we note that another appropriate indicator of the health of capital markets is the capital raising activity in the secondary markets, which, as we have noted in '2024: Secondary raisings by the numbers', reflects positively on the market with growth in 2024 as relative to 2023.

For IPOs, we still consider that there is pent up demand from investors and pent up supply from companies and their vendors and founders who want to IPO, albeit there remains wariness from both sides in relation to value. Anecdotally, we have more inbound IPO inquiries than we have had in recent years and we have heard the same from others. With the growing availability of private capital as an alternative, we consider that investors and importantly regulators need to play a more active role in encouraging the IPO market. Which brings us to our request, ASIC (and the Commonwealth Government to the extent that ASIC considers that it requires legislative change) and the ASX should be actively considering the various suggestions put to them by capital markets lawyers, investment banks, fund managers and potential IPO companies about how the IPO process could be made more efficient. This is particularly so, given ASIC's focus on the changing dynamics between public and private markets noted in its Key issues outlook 2025.

ASIC in its discussion paper *Australia's evolving capital markets* released on 26 February 2025, notes that it does not see regulatory settings as the dominant factor driving listed equity activity in Australia, but there may be opportunities to adjust to improve the attractiveness of our markets. ASIC also notes that it is exploring opportunities with the ASX to refine the listing pathway and listing rules.

We suggest that the regulatory focus should be on increasing the certainty for the IPO company and the investors once an IPO is launched, without impacting disclosure (the key investor protection), by:

- pro-active engagement with IPO companies including pre-vetting prospectuses prior to lodgement – ASIC could achieve significant improvements in disclosure having regard to its focus issues such as ESG, greenwashing and financial disclosure by engaging with the IPO company and its advisers earlier in the process. Improvements in the quality of disclosure would assist the market; and
- significantly shortening timetables between the launch of the IPO and trading of shares.

To the extent that ASIC requires more funding or expertise to undertake pro-active engagement that should be sought.

Improvements in the process will not outweigh the need for appropriate market and economic conditions and good quality IPO candidates but it should assist in closing the gap between the confidence of the IPO supply side and demand side.

From an investor and IPO selling shareholder perspective greater consideration should be given to supporting IPOs with a smaller number of shares being offered in the IPO and recognising that future sell downs once the company has been listed for a period may be a good compromise and bridge the concerns that investors may have in comparison to the information that they have from already listed peers.

### IPOs 2

With the world adjusting to a new US President and a Commonwealth Government election in the first half of the year, we again expect that the primary IPO window will be September to early December 2025. Overall, we consider that this being the most popular timing for IPOs is a structural reality of the Australian market. If Australian inflation and interest rates ease as currently expected, we expect that the start of the September IPO window would be a good time to launch an IPO to 'beat the rush'. We are optimistic that the large IPOs which were successfully undertaken last year will embolden others to bring their company to market in 2025.

### Private capital

As noted above in IPOs 1 we consider that the availability of private capital will continue to present a challenge to public capital markets as an alternative to the IPO process and as a buyer of existing listed companies. However, private capital should also present opportunities to public capital markets, firstly through IPOs of existing businesses held in private equity and venture capital funds which we consider to be a potentially significant part of the IPO supply side (in particular given the well publicised fact that a lot of funds are reaching end of life and need to realise investments), and secondly through the sale of such businesses to already listed companies. The latter still assists with the expansion of the value of the ASX and supports secondary capital raisings – see further below. It also means PE and VC vendors can deal with a trade buyer who may feel more comfortable valuing an asset rather than capital markets investors.

### Secondary markets

We expect to see an increase in secondary capital raisings throughout 2025 albeit with a bias towards the period after the Commonwealth Government election and dependent on the easing of the inflation and interest rate cycle.

These secondary capital raises will be driven by:

- M&A from listed companies supporting the expected growth in M&A generally in 2025 with listed companies being more confident in their outlook. The potential to acquire assets from private capital may provide good opportunities for disciplined M&A that will be supported by shareholders, although we note that existing shareholders will need to be provided with confidence around the valuation and quality of such acquisitions; and
- an increase in confidence for existing listed companies to raise capital and invest in growth. We had noted in our 2024 predictions the potential for balance sheet support capital raisings and the right sizing of capital structures. Most listed companies balance sheets held up well through 2024 without the need to raise capital, however, in 2025 the opportunity to undertake more positive capital raisings may arise.

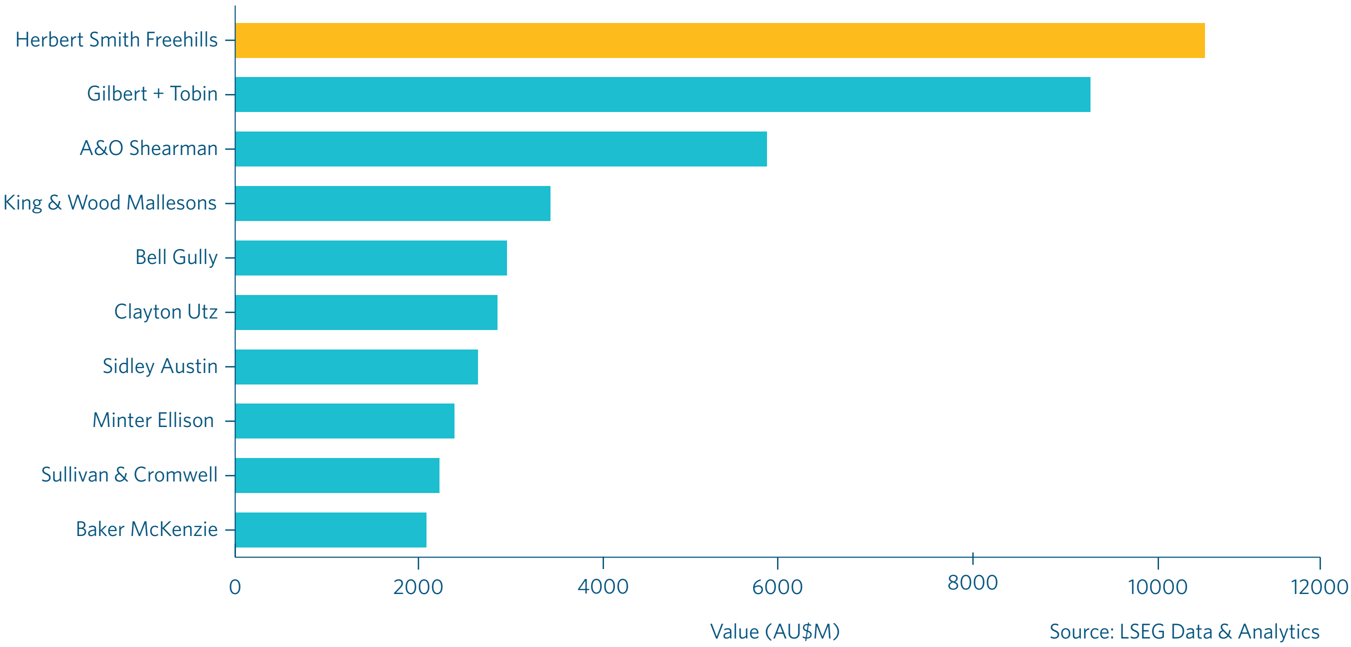
### Sectors

We expect the sectors which will show strength in 2025, both for secondary raises and IPOs, to be materials (given the nature of the ASX) but with a focus on those which support the energy transition, energy stocks and healthcare/pharmaceuticals, given some of the broader themes that are playing out across the Australian economy. That said, strong companies in other sectors who have a good 'equity story' as they conduct their raise should find strong support from Australian investors.

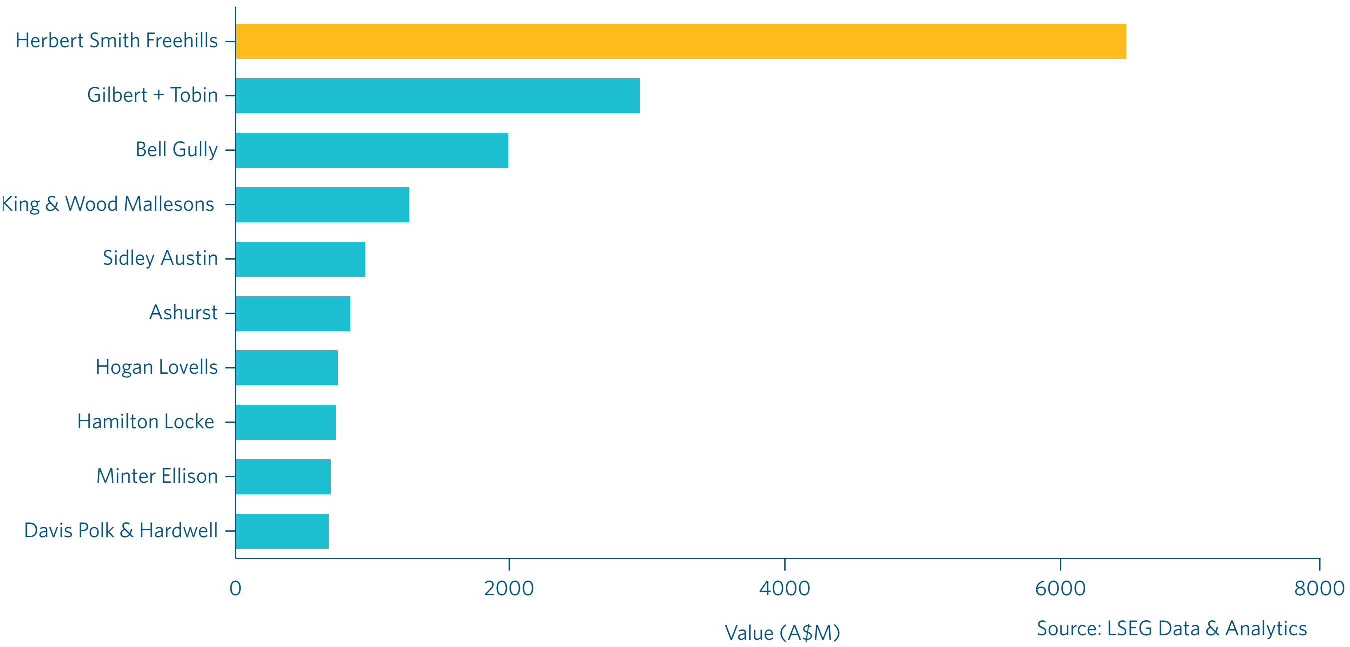
# About Herbert Smith Freehills

Herbert Smith Freehills is recognised as Australia's leading law firm for IPOs and Equity deals by value in 2024, and we have acted on more ASX IPOs by number since 1998 than any other top tier law firm (LSEG Data & Analytics). Described as "*the best by a very long distance*" and as having "*top-quality assistance available across any area that a transaction may require*" (Chambers Asia Pacific), Herbert Smith Freehills has been awarded the highest possible ranking in the area of Australian Equity Capital Markets by Chambers Global, Asia Pacific Legal 500 and IFLR 1000 every year since 2004.

### 2015 – 2024 Australian IPOs (issuer Australian advisers) by deal value




### 2024 Australian Equity deals (issuer Australian advisers) by deal value



**Some of the Herbert Smith Freehills team's recent IPOs include advising:**

- HMC Capital on establishing a global digital infrastructure platform, DigiCo Infrastructure REIT, and its $1.9 billion IPO with a $2.4 billion market capitalisation on admission to ASX's official list (the largest IPO by capital raise on ASX since 2018)
- Barrenjoey and Morgan Stanley as joint lead managers and underwriters of the Guzman y Gomez $335.1 million IPO with a market capitalisation of $2.2 billion
- Vitrafy Life Sciences on its IPO, raising $35 million for a $117.5 million listing on the ASX
- MA Financial on the establishment, IPO and listing of its $330 million private credit investment trust
- Telix Pharmaceuticals on its proposed US public offering of American Depository Shares and listing on the Nasdaq Global Market
- ANZ Securities Limited, Citigroup Global Markets Australia Pty Limited, Commonwealth Bank of Australia, E&P Capital Pty Limited, Morgans Financial Limited, Macquarie Capital (Australia) Limited, Morgan Financial Limited, National Australia Bank Limited, Ord Minnett Limited, Shaw and Partners Limited, Westpac Institutional Bank as joint lead managers in relation to the $1.5 billion IPO of Macquarie Group Capital Notes 7 and the reinvestment offer for ANZ Capital Notes 3
- Bell Potter Securities Limited as APAC lead manager on the Anteris Technologies Global Corp listing on Nasdaq
- ANZ Securities Limited, Bell Potter Securities Limited, Commonwealth Bank of Australia, E&P Corporate Advisory Pty Limited, Morgans Financial Limited, Morgan Stanley Australia Securities Limited, National Australia Bank Limited, Ord Minnett Limited, Shaw and Partners Limited, UBS AG, Australia Branch and Westpac Institutional Bank, a division of Westpac Banking Corporation as joint lead managers in relation to the $1.7 billion IPO of ANZ Capital Notes 9 and the reinvestment offer for ANZ Capital Notes 4
- Redox Limited on its IPO, raising $402 million for a $1.34 billion listing on the ASX
- GQG Partners Inc. on its $1.2 billion IPO and listing with a market capitalisation of $5.9 billion
- Ventia Services Group Limited on its $438 million IPO and listing with a market capitalisation of $1.45 billion
- Step One Clothing Limited on its $81.3 million IPO and listing with a market capitalisation of $283.6 million
- Tulla Resources Plc on its $78.3 million IPO and listing with a market capitalisation of $243.8 million
- Scientific Games Corporation on its proposed IPO and dual track process to dispose of its US$6.05 billion lottery services business
- UBS AG, Australia Branch, Merrill Lynch Equities (Australia) Limited and Credit Suisse (Australia) Limited on their role as underwriters and joint lead managers of the $982.1 million APM Human Services International Limited IPO with a market capitalisation of $3.3 billion
- Credit Suisse (Australia) Limited and UBS AG, Australia Branch on their role as underwriters and joint lead managers of the $376.1 million Vulcan Energy Resources Limited IPO with a market capitalisation of $933 million
- Macquarie Capital (Australia) Limited, Credit Suisse (Australia) Limited and Morgan Stanley Australia Securities Limited on their role as underwriters and joint lead managers of the $527.8 million 29Metals Limited IPO with a market capitalisation of $960.9 million
- Dalrymple Bay Infrastructure Limited on its $1.286 billion IPO and listing with a market capitalisation of $1.286 billion
- Booktopia Group Limited on its $43.1 million IPO and listing with a market capitalisation of $315.8 million
- Coronado Global Resources on its $773 million IPO and listing with a market capitalisation of $3.87 billion
- Netwealth Group Limited on its $264 million IPO and listing with a market capitalisation of $879 million
- Inghams Group Limited on its $596 million IPO and listing with a market capitalisation of $1.2 billion
- Reliance Worldwide Corporation Limited on its $919 million IPO and listing with a market capitalisation of $1.3 billion
- Propertylink Group on its $503.5 million IPO of triple-stapled securities and listing with a market capitalisation of $536 million
- Adairs Limited on its $220 million IPO and listing with a market capitalisation of $400 million
- Aventus Retail Property Fund on its $303 million IPO and listing with a market capitalisation of $687 million
- The Australian Government on Medibank Private's $5.9 billion IPO

**Some of the Herbert Smith Freehills team's recent secondary raisings in 2024 alone include advising:**

- NEXTDC Limited in relation to its $1.321 billion fully underwritten accelerated non-renounceable entitlement offer
- Independent Board Committee of Energy Resources of Australia Ltd as issuer on ERA's IBC's $880 million entitlement offer
- Telix Pharmaceuticals Limited on the issue of $650 million 2.375 per cent convertible notes due in 2029
- NEXTDC Limited in relation to its $550 million placement and $200 million share purchase plan
- Goldman Sachs Australia Pty Ltd as sole lead manager, bookrunner and underwriter to Orica Limited's $400 million placement and share purchase plan to raise up to $65 million
- Metcash Limited in relation to its $300 million placement and share purchase plan to raise up to $60 million
- HMC Capital Limited in relation to its fully underwritten $300 million institutional placement
- Spartan Resources Limited on its $220 million institutional placement
- Australian Unity in relation to its entitlement offer and accompanying placement of mutual capital instruments to raise approximately $153 million
- Macquarie Capital (Australia) Limited, Canaccord Genuity (Australia) Limited and UBS Securities Australia Limited as joint lead managers as underwriters, joint lead managers and bookrunners on Bellevue Gold Limited's $150 million institutional placement
- Bell Potter as sole underwriter, and Bell Potter, Wilsons and Canaccord Genuity as joint bookrunners and joint lead managers in relation to the Immutep Limited approximately $100.2 million placement and entitlement offer
- Barrenjoey Markets Pty Limited and Macquarie Capital (Australia) Limited as joint lead managers and underwriter to IPH Limited's $100 million placement and share purchase plan to raise up to $25 million
- HMC Capital Limited in relation to its $100 million placement and share purchase plan to raise up to $30 million
- Bell Potter Securities Limited and Shaw and Partners Limited as joint lead managers and underwriter to DroneShield Limited's $120 million placement and $15 million share purchase plan
- Bowen Coking Coal Ltd on its partially-underwritten $70 million equity raising by way of renounceable entitlement offer
- Dubber in relation to its $25 million fully underwritten equity raise comprised of an institutional placement and an accelerated non-renounceable entitlement offer
- Highfield Resources Limited on its US$250 million placement and acquisition of a Canadian potash project for US$286 million worth of shares in Highfield Resources Limited, as well as its US$15 million short term funding and US$1.5 million share purchase plan
- 29Metals Limited in relation to its $180 million placement and entitlement offer
- Macquarie Capital (Australia) Limited and Bell Potter Securities Limited as joint lead managers to Alpha HPA Limited's $175 million placement
- Spartan Resources Limited in relation to its $80 million fully underwritten equity raising comprised of a placement an accelerated non-renounceable entitlement offer
- SRG Global Limited on its placement and share purchase plan to raise approximately $66 million
- Ashburn Pty Ltd as trustee of Dorman Family Trust on the $68.25 million selldown of shares in Regis Healthcare Limited by way of block trade underwritten by Merrill Lynch Equities (Australia) Limited
- Bell Potter Securities Limited and Barrenjoey Markets Pty Limited as joint lead managers on Select Harvests Limited's $30 million placement and $50 million entitlement offer
- Barrenjoey Markets Pty Limited as sole lead manager and underwriter of Appen Limited's $50 million placement
- Macquarie Capital (Australia) Limited as lead manager to Nick Scali Limited's $46 million placement and $4 million conditional placement and non-underwritten share purchase plan
- Sayona Mining Ltd on its $40 million institutional placement
- Bell Potter Securities Limited, E&P Capital Pty Ltd and Morgans Corporate Limited as joint lead managers on EBR System, Inc's $37.4 million placement and $12.6 million entitlement offer
- Bell Potter and Canaccord Genuity as joint bookrunners, joint lead managers and underwriters in relation to the Electro Optic Systems' $35 million placement and share purchase plan of up to $5 million
- Dubber Corporation Limited in relation to its fully underwritten $3.14 million placement and $20.92 million entitlement offer
- NEXTDC Limited as major shareholder providing a pre-commitment and sub-underwriting up to $30 million to Sovereign Cloud Holdings Limited's partially underwritten accelerated non-renounceable entitlement offer
- Genmin Limited in relation to its two tranche placement and non-renounceable entitlement offer to raise a total of $28.3 million
- CIMIC Group Limited on its €25 million participation in a placement by Vulcan Energy Resources Limited
- Seeing Machines Ltd on the strategic placement of £26.2 of issued share capital to Mitsubishi Electric Mobility Corporation, amounting to 15% of Seeing Machines' issued share capital

# Our team

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# Notes

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