Public companies in Australia

Raising Capital

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Hamilton Locke

Overview

This guide summarises the key components of each of the main secondary capital raising options available in the Australian public market. It is specifically designed to assist market participants and the management team of ASX listed entities to understand the capital raising options available to them, and to set out some of the key considerations for determining the most appropriate capital raising method in a particular circumstance.

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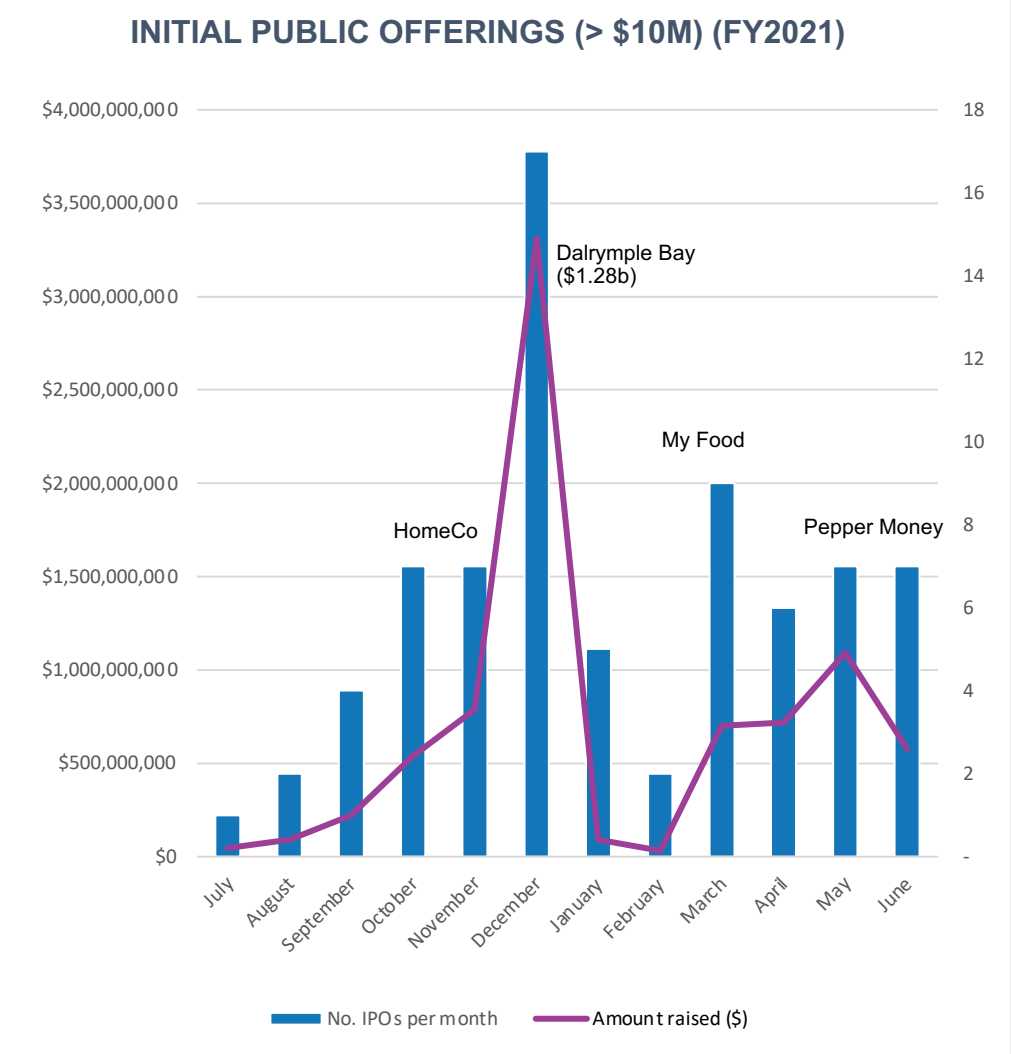
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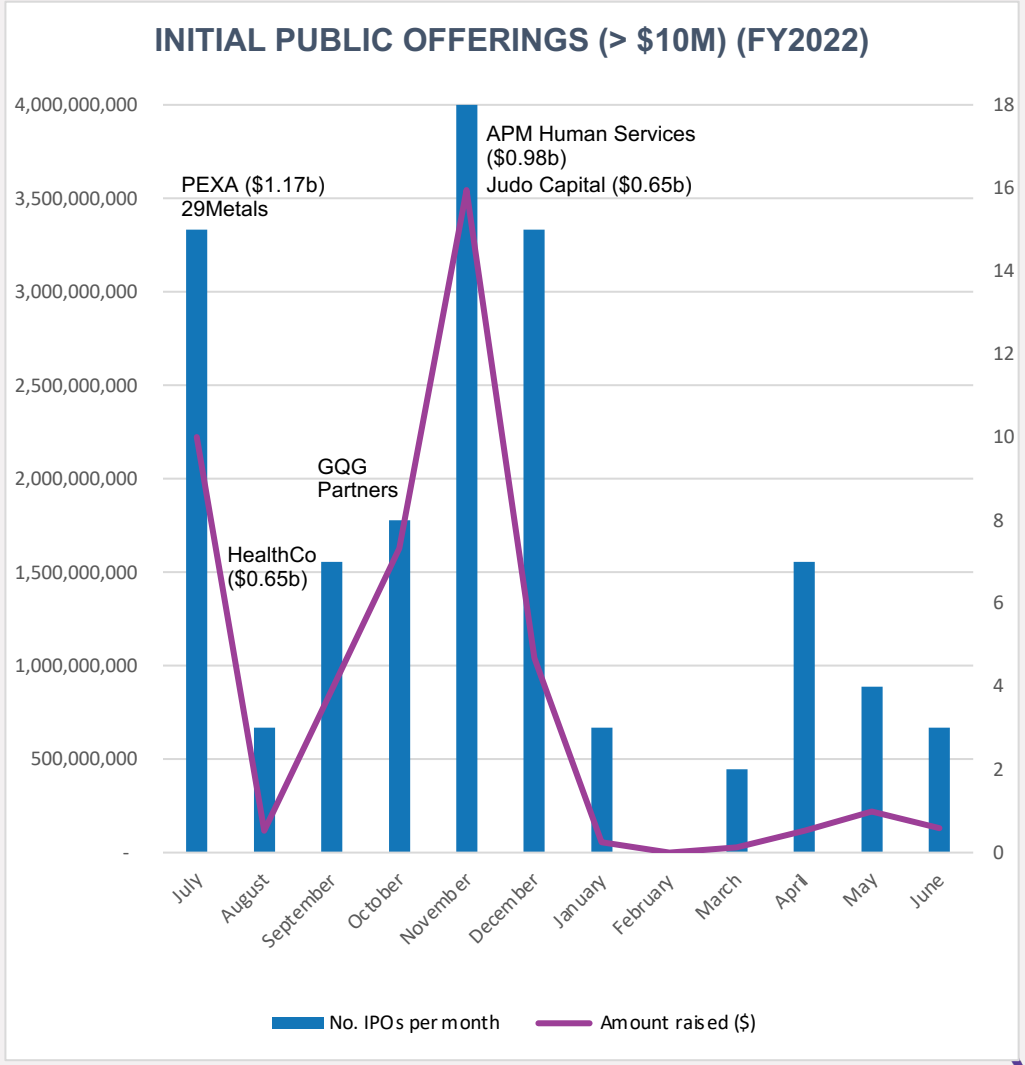


1. Market snapshot

Initial Public Offerings

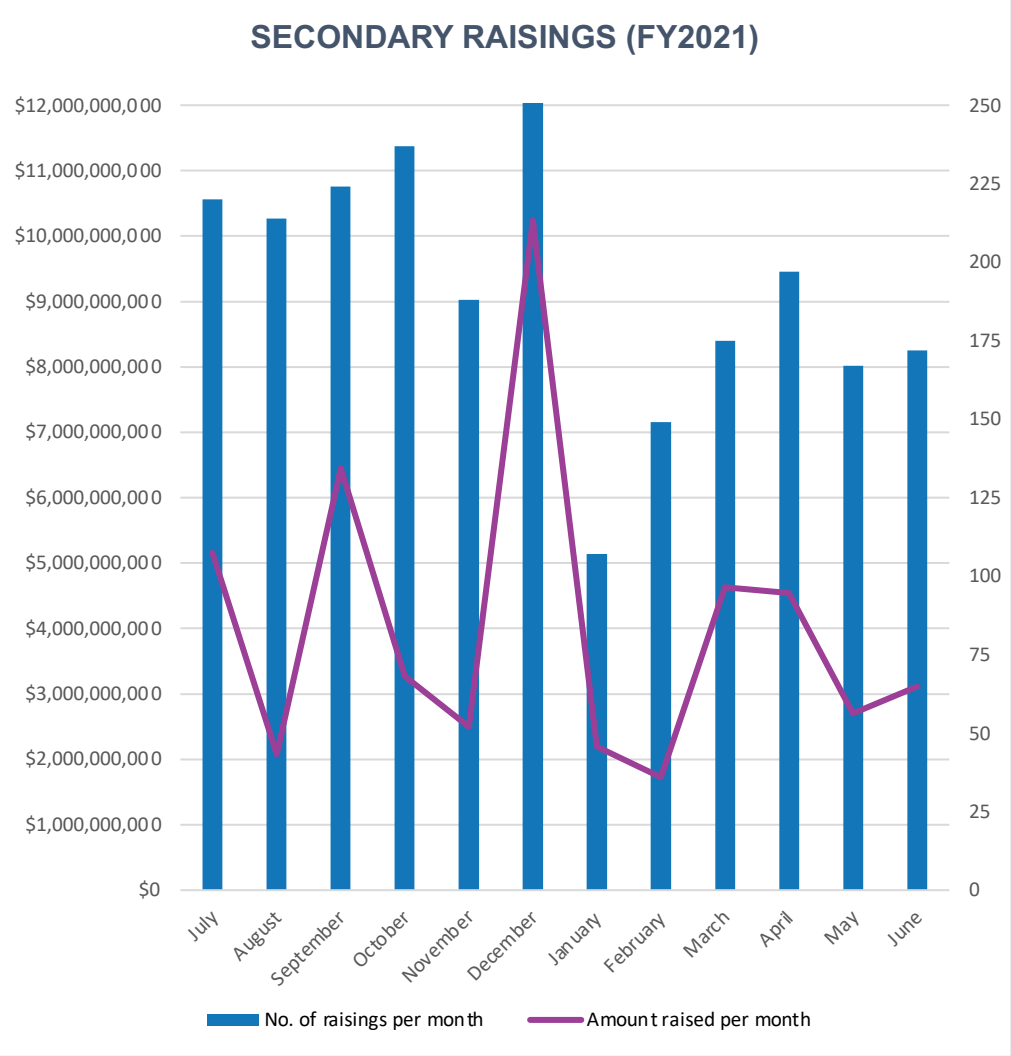
(FY2021 and FY2022)

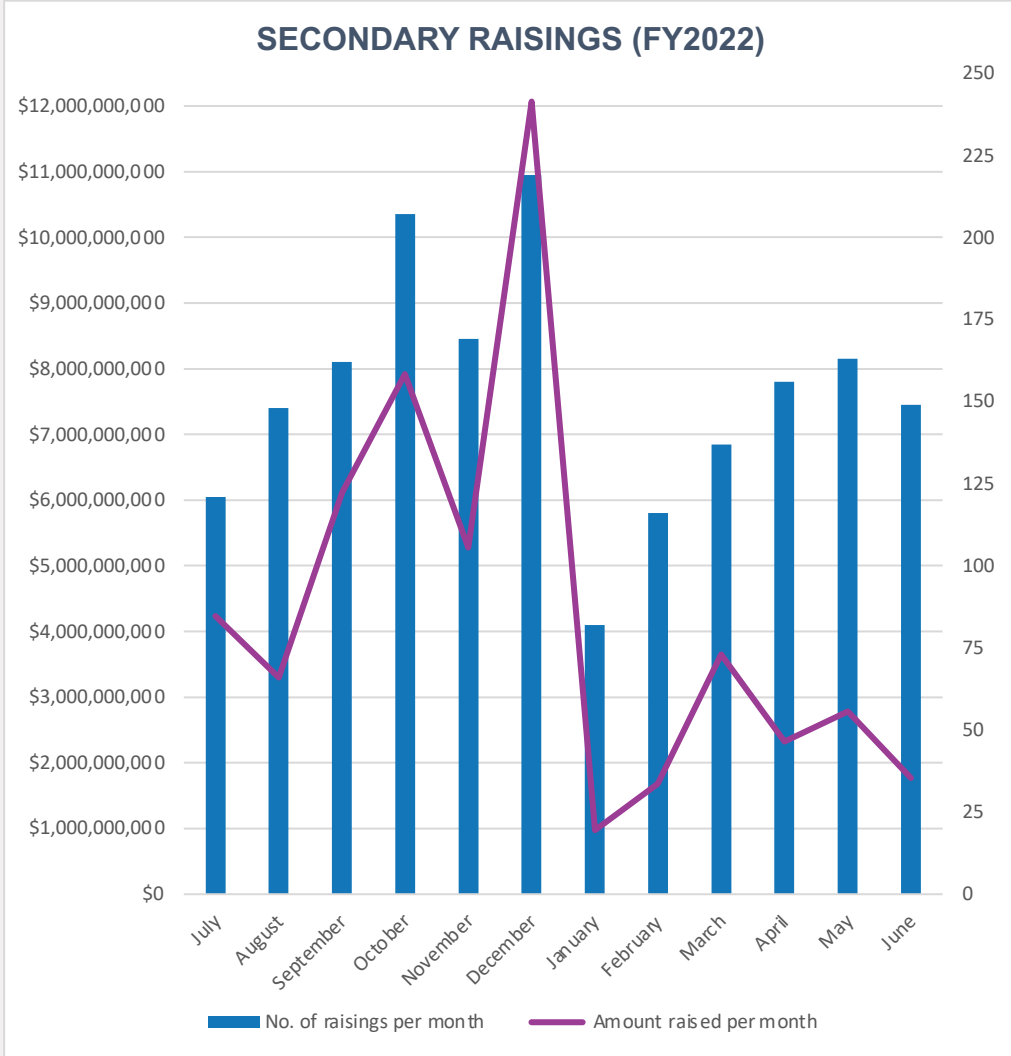




Secondary Raisings

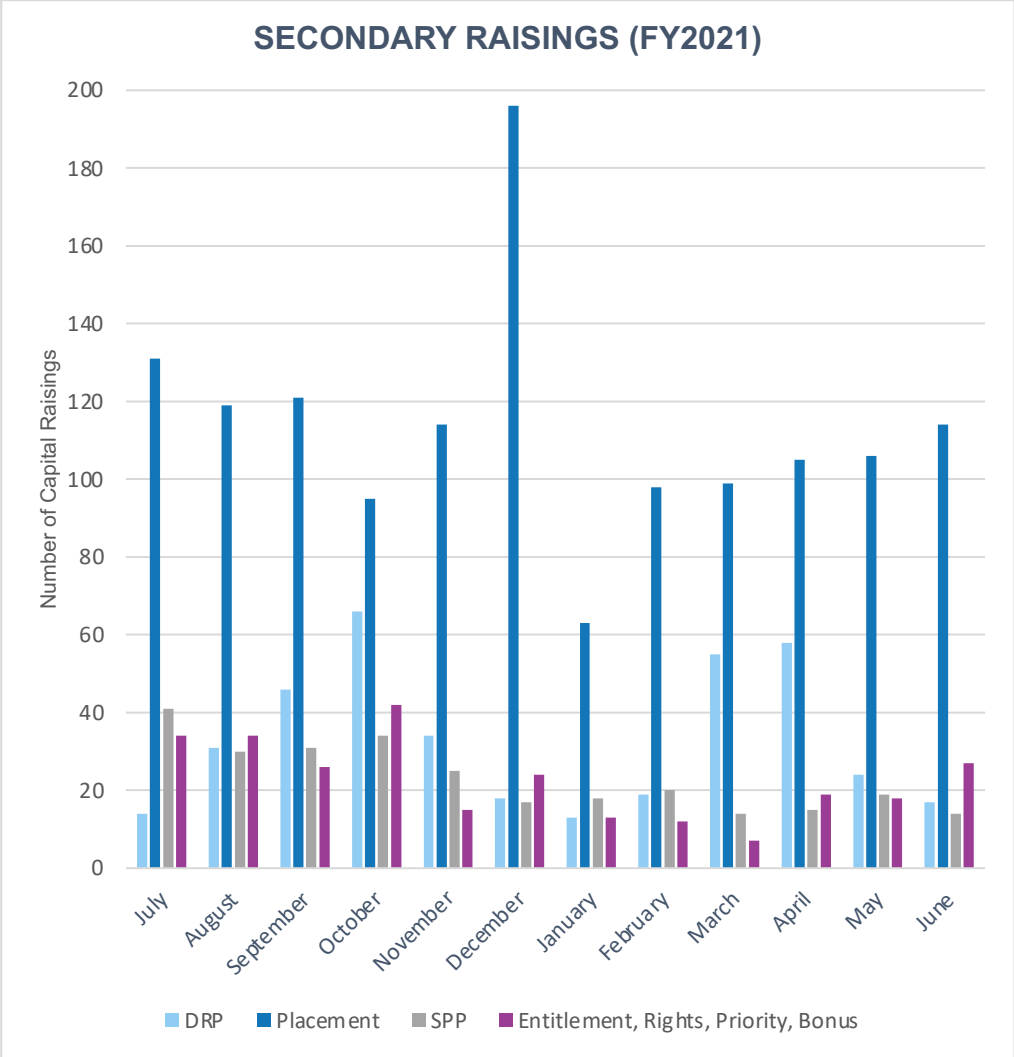
(FY2021 and FY2022)

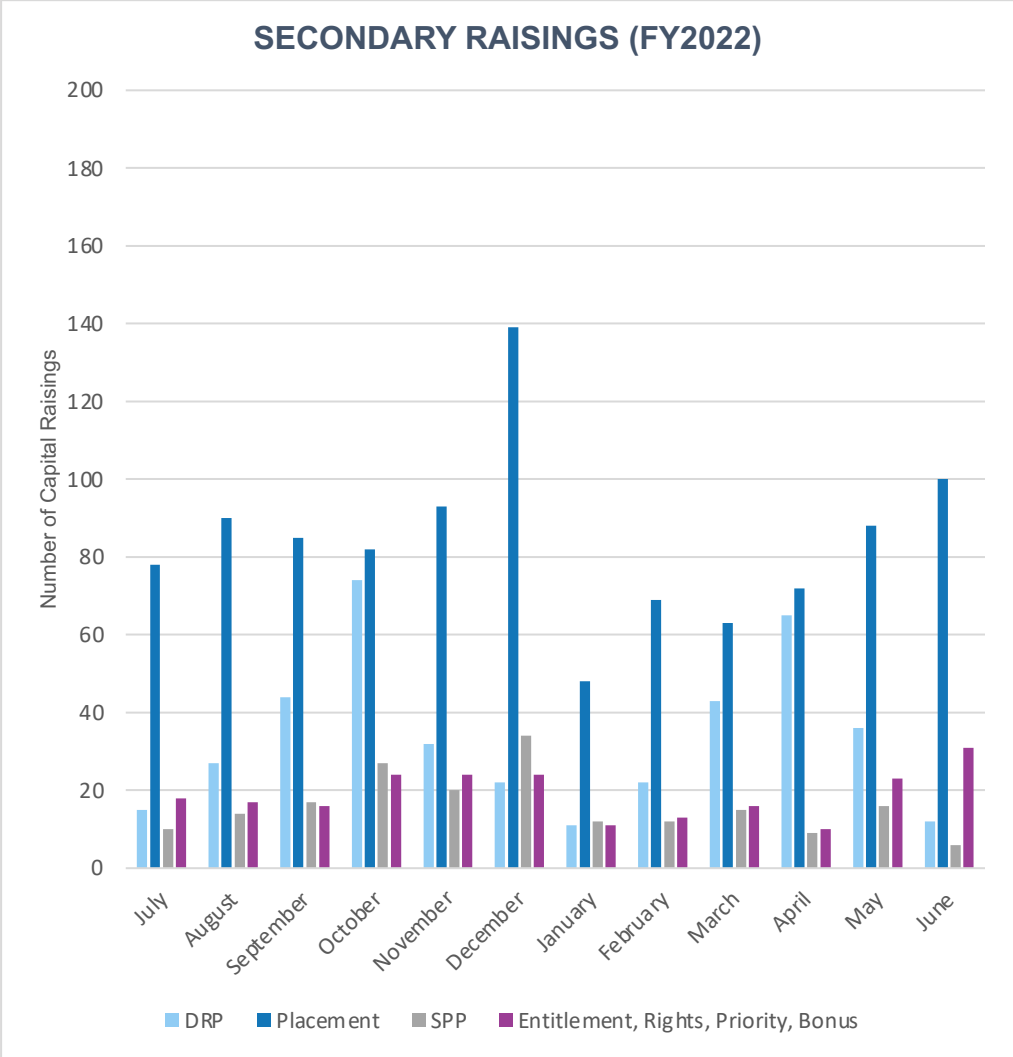




Split of capital

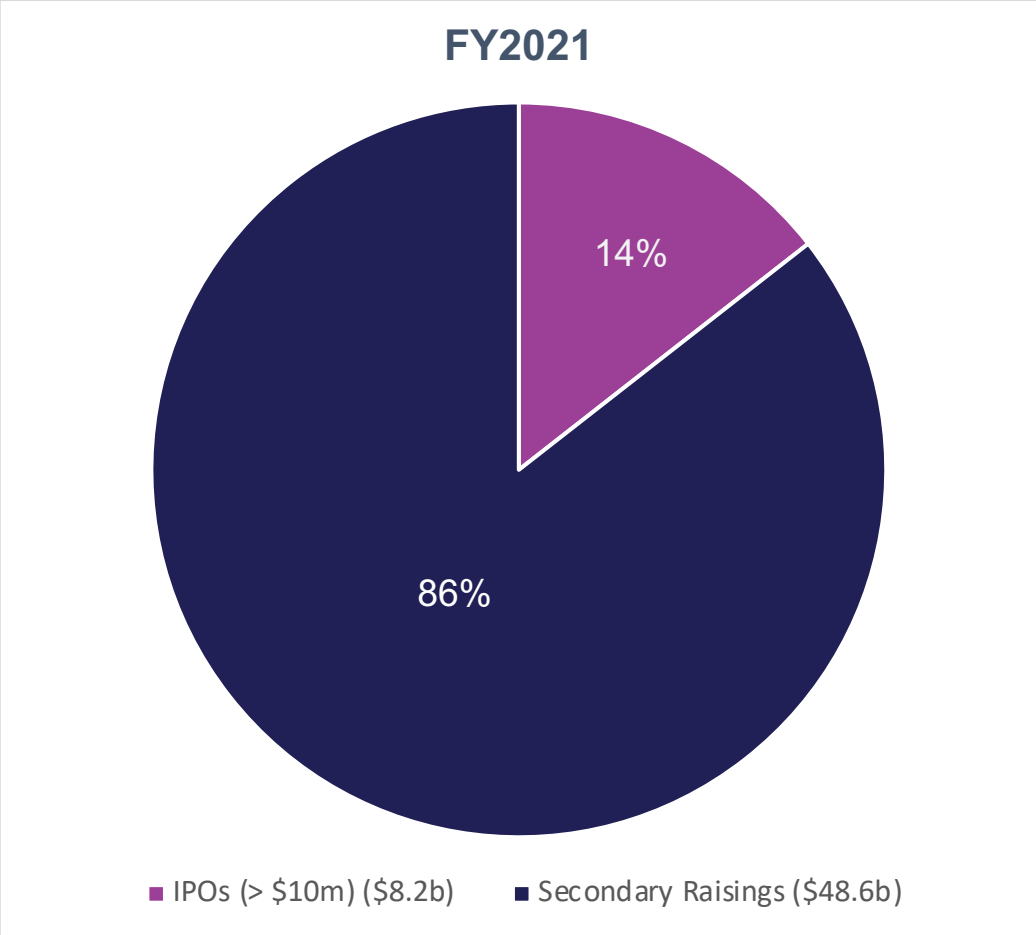
(FY2021 and FY2022)

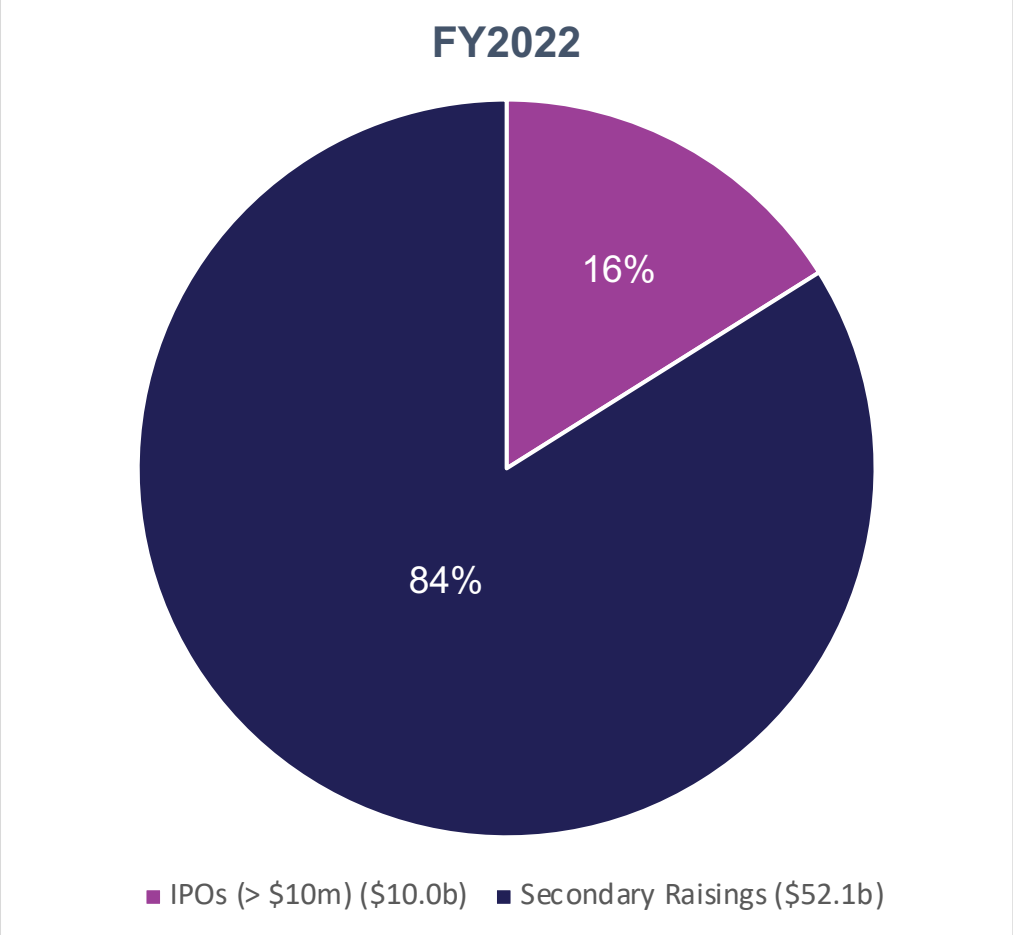




IPOs (>$10m) vs Secondary Raisings

(FY2021 and FY2022)





Market

Key observations (CY2022)

Market discontent

In 2022, global ECM went from bad to worse as issuers kept to the sidelines due to fears of a global economic slowdown, inflation and central bank interest rate rises.

USD 115bn worth of global issuance in Q2 is the worst quarterly tally for ECM since Q4 2011.

2022 global IPO issuance for Q2 was down 33% compared to Q1 and down 92% versus Q2 2021.

Inflation

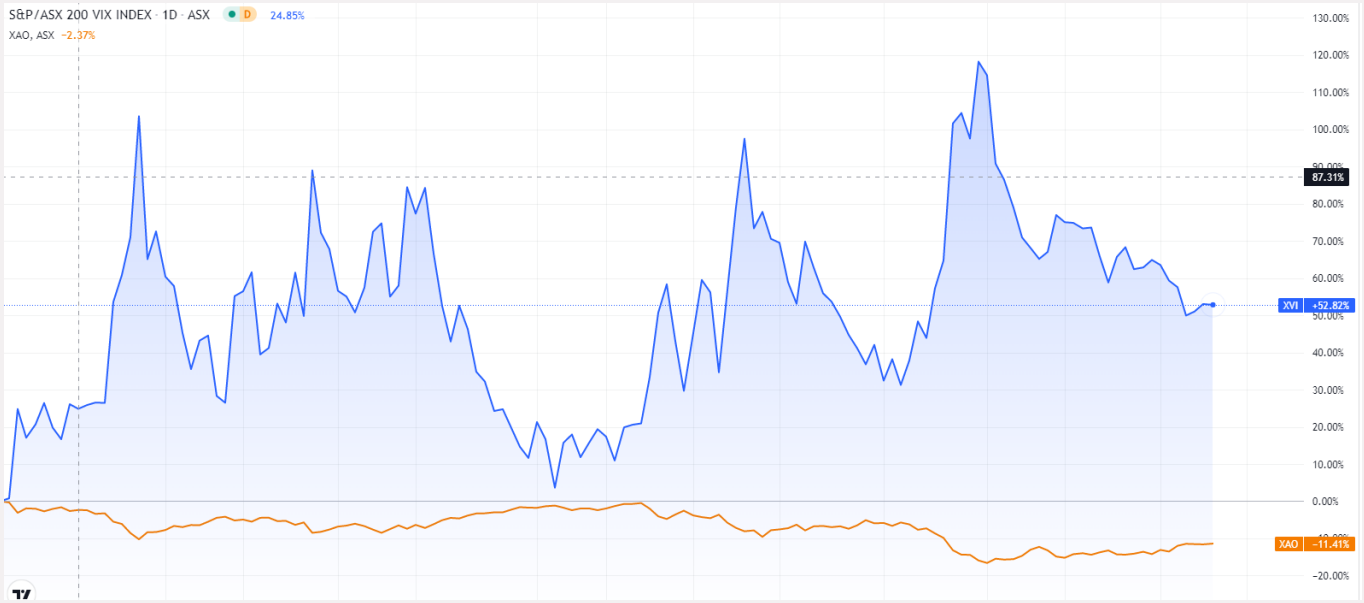
The war in Ukraine has damaged global trade leading to sharply rising commodity prices.

Wage and price pressures expected to rise given an already tight labour market and strains on global supply chains are contributing to the rise in inflation.

In response to inflationary pressures, the RBA raised its cash target rate by 25 basis points to 0.35 in May, the first rate rise in over a decade, and then by 50 basis points in each of June and July to 1.35.

S&P/ASX200 Volatility Index (XVI)

ASX All Ordinaries (XAO)



2. Capital Raising Options

Placements

Frequently asked questions

What is it?

Placements involve an offer of securities to selected institutional investors, which may include existing security holders and new institutional, strategic or cornerstone investors.

Who can participate?

Institutional placements are typically marketed to institutions in Australia (and New Zealand) and selected other jurisdictions including, for example, Singapore, Hong Kong, the European Economic Area and the UK. With appropriate legal input, larger placements can include offers in the US market.

What is the timing?

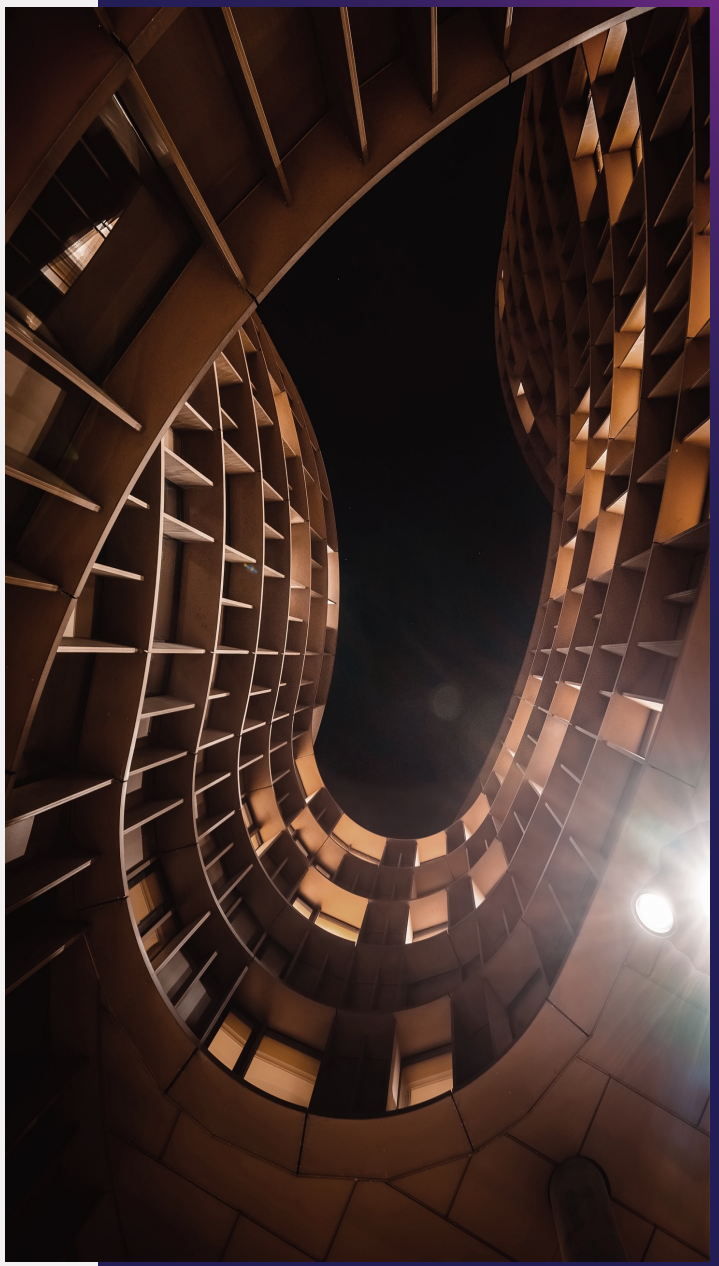
Execution timeframes for placements are still the shortest of all the types of equity capital raisings. The timing from a trading halt/public announcement to settlement can be as short as 3-4 business days.

What are the costs?

Generally, a placement involves lower transaction costs - management/underwriting fees are the single biggest expense.

What are the demands on management?

Typically, less management time is involved with placements than the alternatives, particularly where advisers/underwriters are familiar with the issuer.



Placements

Frequently asked questions continued

What offer materials are required?

A 'cleansing notice' must be released to ASX for the securities to be freely on sold in the 12 months following the issue without the need for a prospectus or product disclosure statement (PDS).

The cleansing notice must confirm the issuer is in compliance with its continuous disclosure obligations and certain financial reporting obligations and that it has no "excluded information" i.e. non-public price sensitive information (e.g. information being withheld from disclosure to the market under a carve-out from ASX Listing Rule 3.1) – if such information does exist, it is generally disclosed to the market in a market announcement or investor presentation prior to release of the cleansing notice. There are a number of technical requirements for an issuer to satisfy in order to be eligible to use a cleansing notice, including a requirement that its securities must not have been suspended from trading for more than 5 days in the last 12 months.

Further, where material information has been selectively given to potential investors (e.g. in seeking preliminary views / interest for the capital raising), that information may need to be disclosed to avoid potential contravention of the insider trading provisions.

What is the offer price?

The offer price under a placement is typically set at a discount to the closing price the day before announcement of the offer.

What are some examples of common structuring?

Placements are often conducted alongside a share purchase plan (see pages 16 to 20) or an accelerated entitlement offer (see pages 29 to 35). Combining a placement with a retail offer is often considered to be a more equitable structure and can help to reduce dilution experienced by retail securityholders.

Who is involved?

It is common for an issuer to retain one or more investment banks to manage a placement and to "sell" the offer to existing and new investors. Investment banks may agree to underwrite all or part of the placement or alternatively offer settlement support (settlement support is where the investment bank agrees to pay funds owing by an accepting investor who fails to settle).

Placements

Frequently asked questions continued

What are some of the legal and regulatory considerations?

ASX listed entities can conduct placements (and other non pro-rata offers) of up to 15% of the issuer's fully paid ordinary securities each 12-month period.

An 'eligible entity' is one that is not included in the S&P/ASX300 Index and has a market capitalisation of less than the amount prescribed by ASX from time to time (A$300 at the time of publication) and has obtained the approval of securityholders by special resolution at its AGM, may issue an additional 10% (subject to certain conditions).

Placements to individuals must observe takeover thresholds and foreign participants must observe FIRB thresholds as well as any applicable industry-specific legislation.

Placements to directors and other related parties and certain other persons in a position of influence, require securityholder approval.

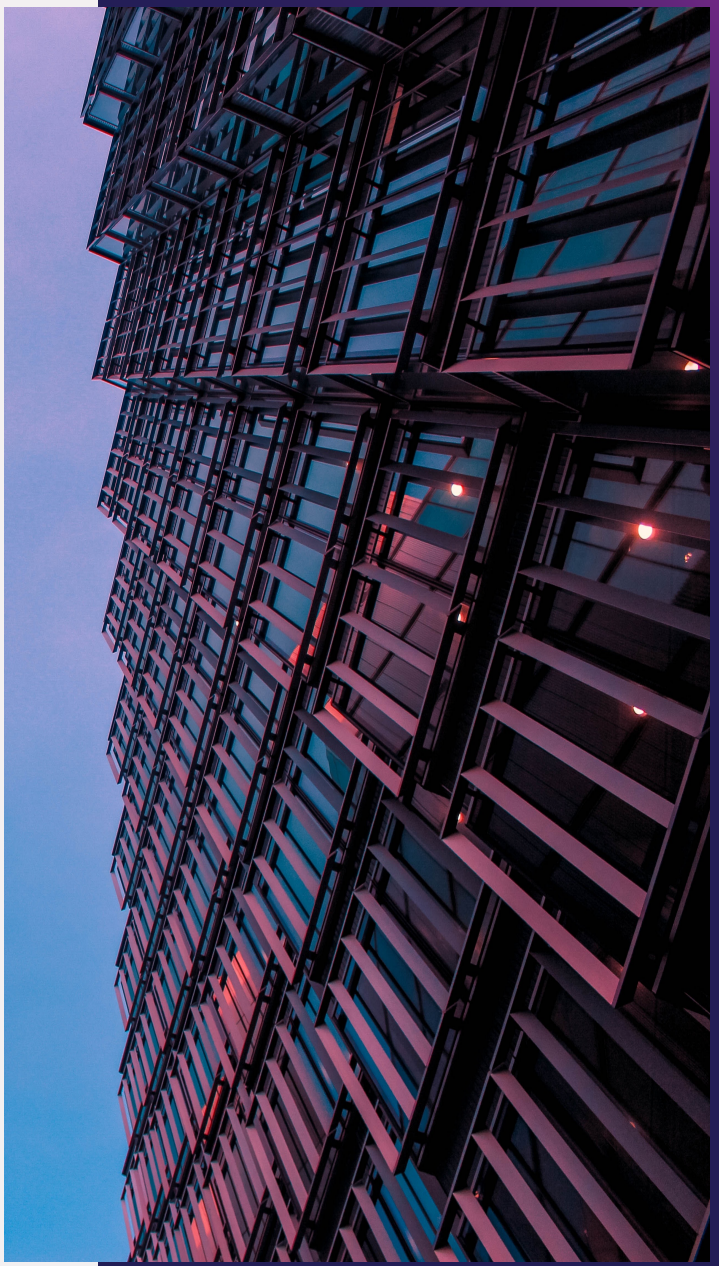
What is the liability regime?

Liability potentially arises if investors are misled. No statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around a management questionnaire).

What regulatory approvals are required?

If a trading halt is sought (e.g. because a bookbuild process is expected to take place over the course of a trading day), ASX approval is required. Although not automatically granted, it is common market practice for trading halts to be granted in the context of a material placement.

However, the general principle ASX applies when it receives a request for a trading halt is that interruptions to trading should be kept to a minimum. ASX will not grant a trading halt in all circumstances.



Placements

Pros and Cons

Pros

- Quick execution and settlement.
- Typically, no prospectus or PDS.
- Typically, lower transaction costs than other alternatives.
- Discount attractive to institutions.
- Opportunity to attract new investors.
- Flexibility to upsize/downsize depending on market reaction.

Cons

- No due diligence defence if investors misled by statements made.
- Discount may impact amount that can be raised (i.e., the 15% placement capacity limit).
- Post-placement market price may move towards or below discount offer price.
- Dilution for investors not participating (e.g., retail investors).

Placements

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount Listed	Discount
CSL	CSL Limited	21-12-21	Ords	$273.00	$6,300,000,252	8.2% discount to closing price of A$297.27 (13/12/21)
MQG	Macquarie Group Limited	04-11-21	Ords	$194.00	$1,499,999,852	1.9% discount to closing price of $A197.83 (28/10/21)
EBO	EBOS Group Limited	15-12-21	Ords	$32.76	$639,658,361	5.5% discount to closing price on NZX of NZ$36.50 (8/12/21)
LTR	Liontown Resources Limited	07-12-21	Ords	$1.65	$450,000,000	14.1% discount to closing price of A$1.92 (30/11/2021)
EVN	Evolution Mining Limited	28-07-21	Ords	$3.85	$400,000,000	5.4% discount to closing price of A$4.07 (21/07/21)
CIP	Centuria Industrial REIT	29-09-21	Ords	$3.80	$300,000,002	5.2% discount to closing price of A$4.01 (22/09/21)
BCI	BCI Minerals Limited	29-12-21	Ords	$0.43	$240,000,000	10.4% discount to the closing price of $0.48 (16/11/21)
ABP	Abacus Property Group	23-03-22	Stapled	$3.38	$200,000,001	5.1% discount to the closing price of A$3.56 (17/03/22)
PDN	Paladin Energy Ltd	8-04-22	Ords	$0.72	$200,000,000	8.9% discount to closing price of A$0.79 (30/03/22)

Share purchase plans*

Frequently asked questions

What is it?

Share Purchase Plans (SPPs) are a useful method of raising equity capital from existing investors without the need for a prospectus or PDS provided certain requirements are satisfied.

Whilst an SPP is sometimes undertaken on a standalone basis, it is often conducted in conjunction with a placement.

Who can participate?

Existing securityholders who hold shares/units the business day before the issuer announces the SPP.

What is the timing?

ASX has mandated a timetable for an issue of securities under an SPP, which is set out in Appendix 7A of the ASX Listing Rules. The length of time the SPP may be kept open is at the discretion of the Board of Directors. Commonly, an SPP may be kept open for between 3 and 6 weeks.

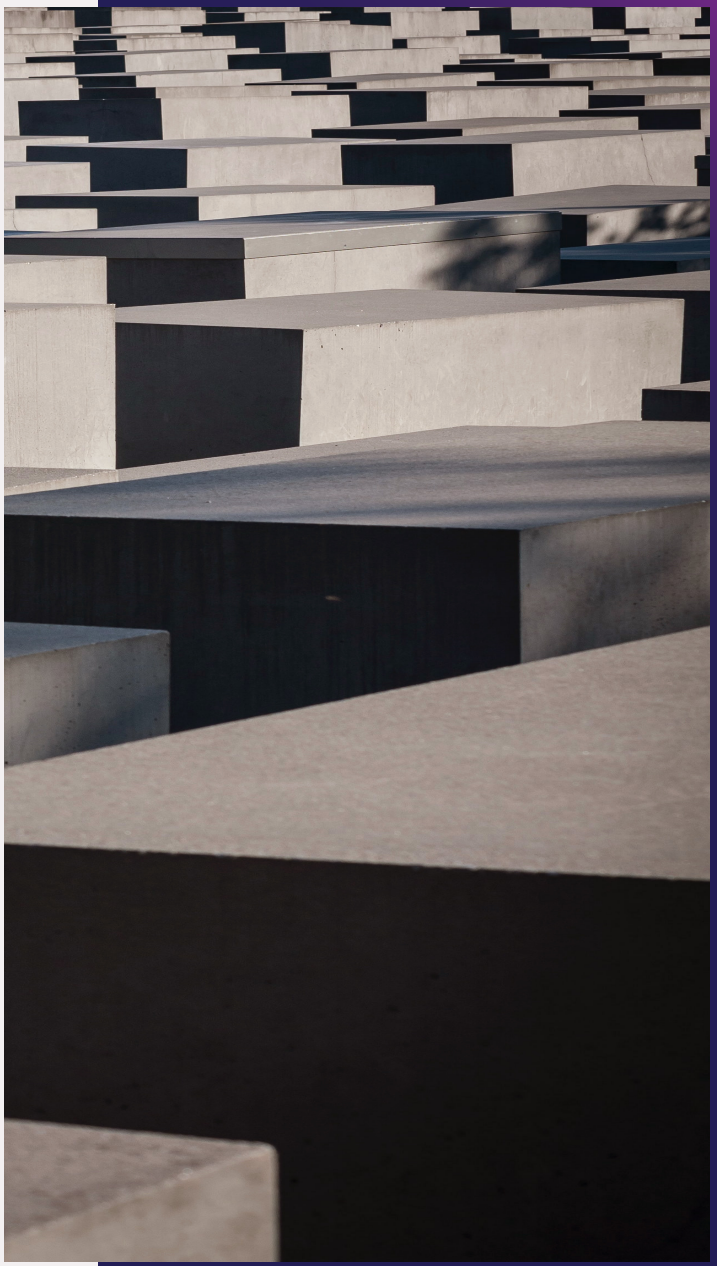
What are the costs?

Generally, an SPP involves lower transaction costs. Where it is non-underwritten and therefore there are no management/underwriting fees, the fees are primarily limited to legal costs associated with preparation of a short SPP booklet, and liaison with ASX.

What are the demands on management?

Typically, less management time is involved compared with alternative structures.

* *For simplicity, the term share purchase plan or SPP includes interest purchase plans (being the equivalent form of offer of interests to existing members of a managed investment scheme listed on ASX.*



Share purchase plans

Frequently asked questions continued

What offer materials are required?

A short SPP booklet and a cleansing notice (refer to page 12 for a description of what is required in a cleansing notice).

The SPP booklet must include certain disclosures including: (i) the method used to calculate the issue price; (ii) the relationship between the issue price and the market price; and (iii) the risk that the market price may change between the date of the offer and the date when the securities are issued.

What is the offer price?

ASIC requirement - The issue price must be less than the market price during a specified period determined by the issuer in the 30 days before either the date of the offer or the date of the issue.

ASX requirement (to not count towards an entity's 15% placement capacity) - Issue price is at least 80% of the volume weighted average market price for securities in that class (calculated over the last 5 days on which sales in the securities were recorded, either before the announcement date or the issue date).

What is the offer size?

Up to a dollar cap of $30,000 per securityholder in any 12-month period, irrespective of the size of an individual securityholder's stake. Directors may determine a minimum application size (e.g., at least $1,000, or an overall cap for the SPP, or a cap per eligible securityholder).

Who is involved?

Unless the SPP is underwritten (which is uncommon), generally the only third-party adviser involved in an SPP is the issuer's legal counsel.

What regulatory approvals are required?

The issuer will need to agree the SPP timetable with the ASX prior to launch of the SPP.

Share purchase plans

Frequently asked questions continued

What are some of the legal and regulatory considerations?

There are a number of conditions imposed by ASIC that an issuer must satisfy in order to undertake a purchase plan without a prospectus or product disclosure statement (ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547):

- securities being offered must be in a class quoted on ASX;
- issuer must not have contravened the financial reporting, continuous disclosure or prospectus disclosure rules in the Corporations Act 2001 (Cth) (**Corporations Act**) in the last 12 months;
- offer must be made to all securityholders in jurisdictions in which it would be lawful and practical to make the offer;
- each securityholder must receive an offer on similar terms and conditions and on a non-renounceable basis; and
- the issue price must be less than the market price during a specified period determined by the issuer in the 30 days before either the date of the offer or the date of the issue.

An issue of securities under an SPP is exempt from the standard 15% placement capacity limit (ASX Listing Rule 7.1) and the restriction on offering securities to persons in a position of influence (e.g. related parties, persons holding (or who held in the last 6 months) 30% or more in the issuer and persons holding (or held in the last 6 months) 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) (ASX Listing Rule 10.11) provided:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the volume weighted average market price for securities in that class calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.

The ASX exceptions noted above (ASX Listing Rule 7.2, Exception 5 and ASX Listing Rule 10.12, Exception 4) do not apply to an issue of securities under an agreement to underwrite the shortfall on an SPP.

What is the liability regime?

Liability potentially arises if investors are misled. Provided the issuer satisfies the conditions imposed by ASIC under the ASIC instrument noted above and can conduct the SPP without a prospectus or product disclosure statement, no statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around a management questionnaire).

Share purchase plans

Pros and Cons

Pros

- Typically, no prospectus or PDS, however cleansing notice must be issued.
- Typically, lower transaction costs than other alternatives.
- Can be used when an issuer has conducted an institutional placement to allow retail securityholders a simple way to participate at the same price as the institutional placement.
- Simple way for small securityholders to increase their securityholding without brokerage cost.
- Exception from ASX Listing Rule 7.1 - 15% (and if applicable 7.1A – additional 10%) placement capacity limit.

Cons

- Longer timetable to execution and settlement.
- No due diligence defence if investors misled by statements made.
- Not pro-rata as the amount to be raised is fixed at a particular dollar figure per securityholder (and not by reference to the size of a securityholders holding).
- Potentially dilutionary for some securityholders.
- There is a limit on the aggregate amount that can be raised by reference to the number of securityholders an entity has on its register.

Share Purchase Plan

Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount Listed	Discount
MQG	Macquarie Group Limited	6-12-21	Ords	$191.28	$1,300,000,000	1.9% discount to closing price $197.83 (28/10/21), adjusted for the 1H22 dividend A$2.72
ARG	Argo Investments Limited	1-04-22	Ords	$9.30	$191,846,492	2.0% discount to closing price of A$9.49 (7/03/22)
MXT	Metrics Master Income Trust	6-12-21	Units	$2.00	$97,187,500	3.19% discount to 5-day VWAP of $2.066 (27/10/21)
EBO	EBOS Group Limited	25-01-22	Ords	$32.56	$161,360,197	5.5% discount to closing price on NZX of NZ$36.50 (8/12/21)
PL8	Plato Income Maximiser Limited	2-12-21	Ords	$1.10	$68,200,000	14.2% discount to closing price of $1.282 (2/11/21)
FFX	Firefinch Limited	29-11-21	Ords	$0.58	$51,364,810	10.8% discount to 5-day VWAP of A$0.65
MIR	Mirrabooka Investments Limited	12-04-22	Ords	$3.01	$42,100,888	10% discount to 5-day VWAP of $3.344 (4/04/22)
BGL	Bellevue Gold Limited	19-11-21	Ords	$0.85	$36,637,087	10% discount to 10-day VWAP of $0.94 (1/09/21)
RAC	Race Oncology Limited	22-12-21	Ords	$3.00	$29,700,000	17.4% discount to 5-day VWAP of $3.63 (22/11/21)
CTD	Corporate Travel Management Limited	28-01-22	Ords	$21.00	$25,000,017	8.3% discount to 5-day VWAP of $22.91 (14/12/21)
ZIP	Zip Co Limited	11-04-22	Ords	$1.90	$23,986,302	2.0% discount to 5-day VWAP of $1.939 (1/04/22)
FDV	Frontier Digital Ventures Limited	24-01-22	Ords	$1.50	$18,943,779	5.1% discount to closing price of $1.58 (14/12/21)

Traditional / standard rights issues

Frequently asked questions

What is it?

A rights issue is an offer of securities to existing holders in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand). A rights issue may be renounceable or non-renounceable.

Renounceability involves the quotation on ASX of the rights to subscribe for securities in the rights issue so that there is in theory a market for existing securityholders to sell and realise value for their rights if they don't wish to take them up.

Who can participate?

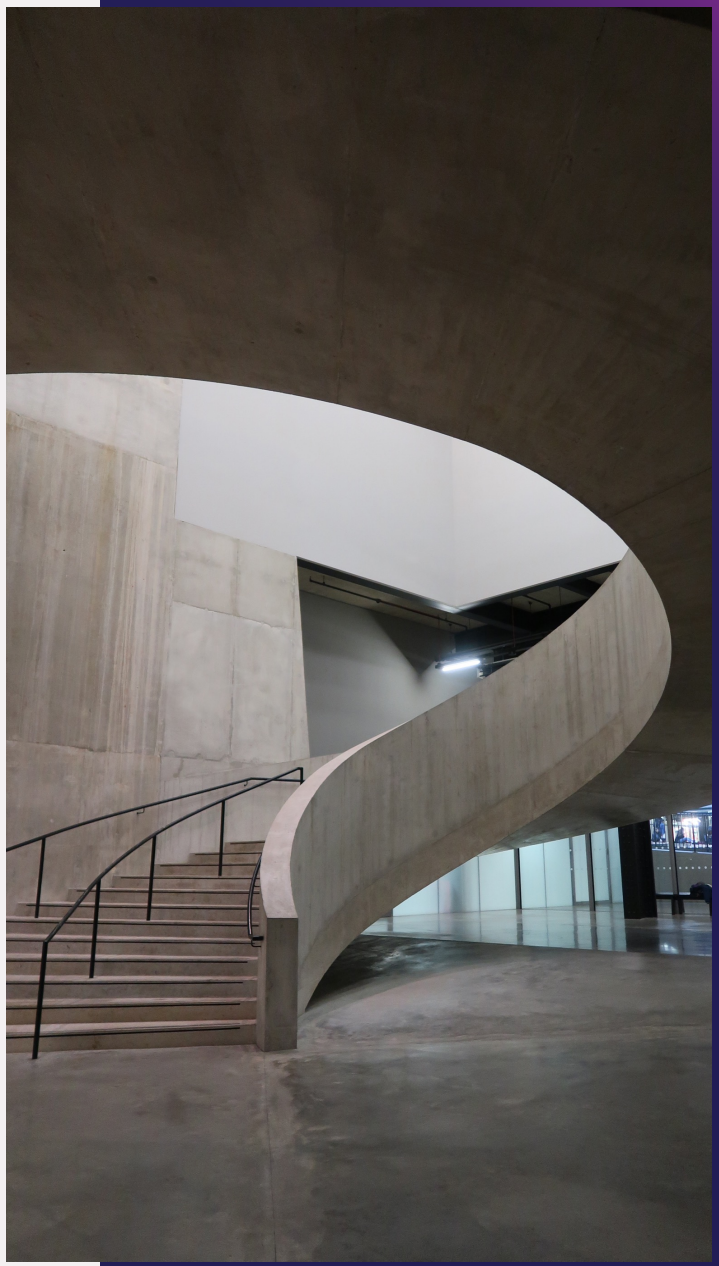
Existing holders of securities in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand).

What offer materials are required?

Typically undertaken with an ASX announcement, an offer booklet, and a cleansing notice, however if an issuer is unable to use a cleansing notice, a prospectus or PDS must be prepared. In addition to the points noted on page 12 as to what a cleansing notice must contain for a placement, in the context of a rights issue / entitlement offer, the cleansing notice must describe the effect of the offer on control of the issuer.

What is the timing?

Time necessary to prepare and verify the offer materials, plus at least 18 days from announcement of the offer to trading (but can be longer if there is a longer offer period). ASX has mandated offer timetables, which are set out in Appendix 7A of the ASX Listing Rules. Prior to launching an offer, issuers will need to agree the timetable with ASX (even if the ASX mandated timetable is strictly adhered to).



Traditional / standard rights issues

Frequently asked questions continued

What are the costs?

Legal, accounting and underwriting fees can be significant, although legal and accounting fees will be less where a prospectus or PDS is not required.

What are the demands on management?

Typically, more demanding than a placement. Preparation for the offer typically involves the conduct of a due diligence committee (DDC) process. The DDC is usually comprised of members of management/directors only. Unless the rights issue involves the issue of a prospectus or PDS, advisers typically do not sit on the DDC as members but attend DDC meetings as observers.

What is the offer price?

The ASX Listing Rules provide that generally the offer price must not contain a fraction of a cent. The ASX Listing Rules also require that the ratio of securities must not be greater than one security for each security held unless the offer is renounceable, and the issue price is not more than the volume weighted average market price for securities in that class calculated over the last 5 days on which sales in the securities were recorded before the day on which the offer is announced.

Who is involved?

It is common for an issuer to retain one or more investment banks to manage the rights issue and to "sell" the offer to existing and new investors. Investment banks may agree to underwrite all or part of the placement or alternatively offer settlement support. The issuer's lawyers will typically design and implement the due diligence process for the offer and attend DDC meetings as observers. Depending on the financial disclosures, the issuer may appoint an investigating accountant who may conduct financial due diligence and/or produce a private report.

Traditional / standard rights issues

Frequently asked questions continued

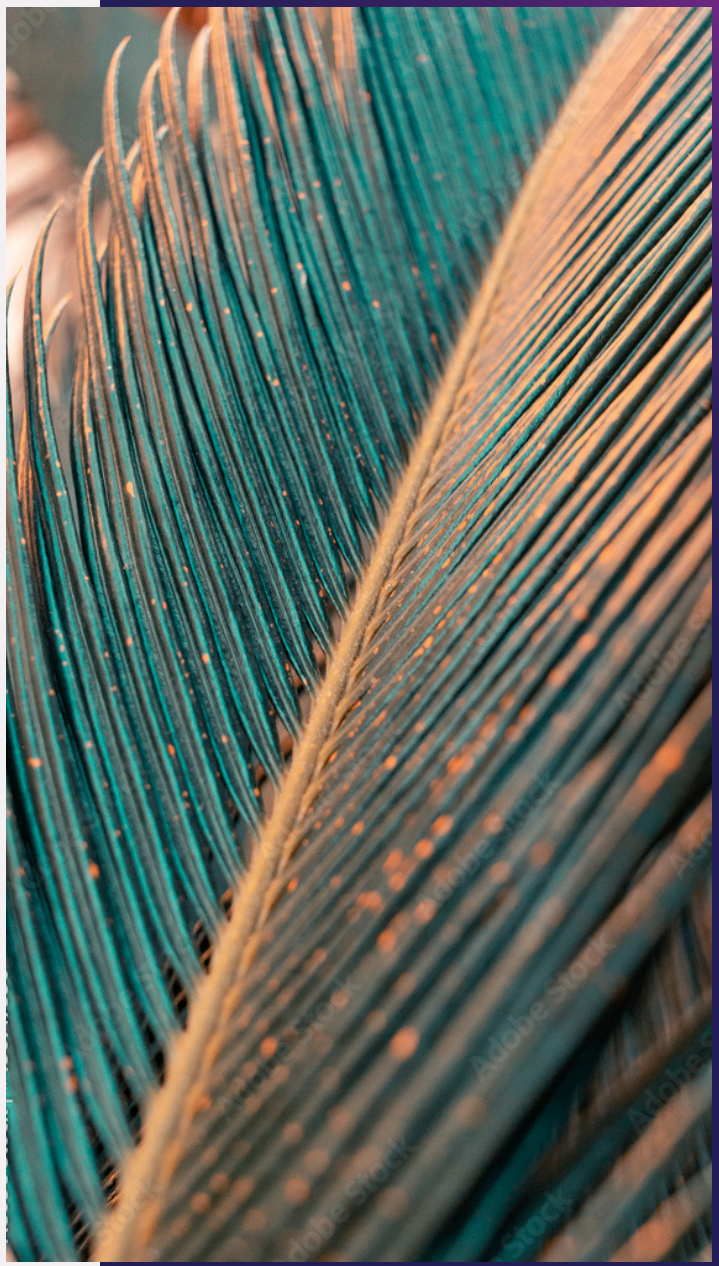
What are some of the legal and regulatory considerations?

If an entity is undertaking more than one corporate action, it must not have a record date to identify holders entitled to participate in a subsequent one until it has updated its register in relation to the preceding one (see ASX Listing Rule 7.13). An entity must not have a record date for any purpose until at least 3 business days after its last record date (see ASX Listing Rule 7.14).

An offer of securities to holders of ordinary securities under a rights issue is exempt from the ASX Listing Rule 7.1 – 15% (and if applicable 7.1A – additional 10%) placement capacity limit. In addition, the exception extends to an issue of securities to make up the shortfall provided the directors of the entity have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall. The issuer must complete the issue to make up the shortfall no later than 3 months after the close of the offer and the price must not be less than the price at which the securities were offered under the rights issue.

Persons in a position of influence (e.g., related parties, persons holding (or who held in the last 6 months) 30% or more in the issuer and persons holding (or who held in the last 6 months) 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) may not participate in the shortfall of a pro rata issue without securityholder approval.

An issue of securities under an agreement to underwrite the shortfall (including by a person in a position of influence – see ASX Listing Rule 10.12, Exception 2) in a rights issue/entitlement offer is also exempt from the ASX Listing Rule 7.1 – 15% (and if applicable 7.1A – additional 10%) placement capacity limit provided specific details of the underwriting have been disclosed in the Appendix 3B or other market announcement, and the issue is made no later than 15 business days after the close of the offer.



Traditional / standard rights issues

Frequently asked questions continued



What 'CONTROL' considerations should an issuer keep in mind?

- It is not unexpected that in times where capital is harder to obtain, a number of rights issues/entitlement offers have involved "control" issues. Most typically this has been where an offer has been underwritten or sub-underwritten by a significant securityholder, cornerstone or strategic investor and, depending on the level of shortfall, the party concerned may move to a point where it controls the entity or consolidates pre-existing control.
- In some cases, a professional underwriter might be prepared to underwrite an offer only if the underwriting risk is wholly or substantially sub-underwritten away. In such cases, the only sub-underwriters available may be an existing securityholder or a related party (such as a board member or an entity controlled by or associated with a director) or a strategic or cornerstone investor.
- Such sub-underwriting has been necessary to provide the certainty of an underwritten rights issue and that certainty has in turn improved the prospects of existing holders, particularly institutions, participating in the rights issue.
- Normally for an investor to move beyond the 20% threshold (or increase a holding which is already over 20%) it would need to make a takeover bid for all securities, unless the acquisition was within the 3% in six months creep exception, or unless non-associated target securityholders approved the acquisition in a general meeting.
- However, the Corporations Act creates a specific exception to the takeover rules for securities taken up by holders, underwriters and sub-underwriters in rights issues, and, with ASIC modifications, accelerated entitlement offers.
- There is also a separate exception to the 20% threshold for securities taken up by underwriters in fundraisings generally (not only rights issues) where there is a formal prospectus or PDS lodged with ASIC.
- In the case of most rights issues, the rights issue exception mentioned above will apply so long as an ASIC approved nominee is appointed to sell the "rights" of ineligible foreign securityholders.
- It is recognised that rights issues could be deliberately structured and used as a mechanism to effect a change of control without having to make a takeover bid for all securities or, alternatively, obtain securityholder approval. Indeed, the Takeovers Panel has determined that some rights issues that have come before it, which technically fell within specific Corporations Act exceptions, nevertheless gave rise to "unacceptable circumstances".
- The Takeovers Panel has issued Guidance Note 17 which sets out the indicators of when it will be concerned about control impacts and the factors an entity should consider when proceeding with a rights issue that could have an effect on control or the acquisition of a substantial interest in the issuer (see page 25).

Traditional / standard rights issues

Frequently asked questions continued



What does the Takeovers Panel say about rights issues? (see Takeovers Panel Guidance Note 17)

- Issuers should have regard to Takeovers Panel Guidance Note 17 where a rights issue has or is likely to have an effect on control or involve the acquisition of a substantial interest in the issuer.
- Many rights issues will not affect control. Further, in the absence of other issues, if the rights issue is structured appropriately and there is an appropriate dispersion strategy in place, then a rights issue that results in a control effect will not generally be unacceptable where there is a clear need for funds.
- Issuers may rely on specific exceptions set out in section 611 of the Corporations Act (i.e., item 10 – Rights issues, item 10A – Accelerated rights issues and item 13 – Underwriting of fundraising), or alternatively may seek informed approval by non-associated securityholders of acquisitions in accordance with item 7 of section 611 of the Corporations Act.
- Directors should carefully consider whether there is potential for a rights issue to affect control and what reasonable options are available to mitigate the effect. In Guidance Note 17, the Takeovers Panel has provided guidance as to certain mitigation measures an issuer may undertake, for example making a rights issue renounceable where an active market for the rights is likely, offering a shortfall facility, or using a similarly effective shortfall dispersion strategy. Additionally, an appropriate dispersion strategy may include using several non-associated sub-underwriters, the underwriter and sub-underwriters only receiving securities after all other applications have been satisfied, sufficient time being given to securityholders and other investors to assess the offer and external investors being able to take up securities under the dispersion strategy.
- In considering whether a rights issue gives rise to unacceptable circumstances, the Panel looks at the effect of the rights issue taking into account the following:
  - the issuer's situation – e.g., the need for funds (the amount needed may influence what is reasonable for it to accept as a potential control effect), methods of raising funds that are available and whether alternatives were considered, and market factors before and during the rights issue;
  - the structure of the rights issue – e.g., size, price, discount, underwriting/sub-underwriting, renounceability, and existence of a dispersion strategy;
  - the effect of the rights issue – e.g., any effect on control or the acquisition of a substantial interest, the steps taken by the board to minimise the potential control effects.
- Disclosure is of critical importance. Where a rights issue has a greater potential control effect (e.g., an increase in a persons voting power from 10% to 40%) then an issuer is expected to provide more disclosure than a lesser effect (e.g., an increase in voting power from 51% to 55%).
- Should the Takeovers Panel determine that a rights issue is not appropriate or contravenes any requirements, then it has wide powers to make orders, for example to prevent the rights issue from proceeding, to require further disclosure, divest securities acquired under the rights issue, require securityholder approval or require different underwriting arrangements.

Traditional / standard rights issues

Frequently asked questions continued

What is the liability regime?

Liability potentially arises if investors are misled. Provided the issuer satisfies the conditions set out in section 708AA or section 1012DAA of the Corporations Act, and can conduct the rights issue without a prospectus or product disclosure statement, no statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around the DDC process and the production of a management questionnaire).

What regulatory approvals are required?

The issuer will need to agree the rights issue timetable with the ASX prior to launch of the rights issue. If the issuer needs to appoint a nominee in accordance with s611 item 10 then it will need ASIC's approval to the nominee prior to launch of the offer.

	Prospectus offer	'Low doc' offer
Statutory due diligence defences potentially available?	Yes	No
Potential civil liability if documents misleading/deceptive (including by omission)?	Yes (defences potentially available)	Yes (no defences potentially available)
Potential criminal liability?	Yes (strict liability if misleading / deceptive (including by omission) and materially adverse – defences potentially available)	Yes (for materially misleading statements where failure to take reasonable steps/ought reasonably to have known of the defect – no defences potentially available)
Liability position for issuer / directors / underwriters?	Same for each (deemed liability)	Differs (liability position of issuer directors / underwriter is different to issuer. Only liable if personally mislead or deceive or are "involved" in conduct of another)
Potential liability for conduct outside the offer documents?	Yes (same as 'low doc' offer)	Yes (same as prospectus offer)

Traditional / standard rights issues

Pros and Cons

Pros

- Typically, the discount is attractive to securityholders.
- Typically, no prospectus or PDS, however cleansing notice must be issued.
- Enables all securityholders (apart from ineligible securityholders from certain foreign jurisdictions) to participate, avoiding dilution impacts associated with a placement or, if conducted in conjunction with a placement, lessening that dilution impact.
- If it is renounceable, the rights trading enables holders to realise value for rights should they not wish to take them up.
- Exception from ASX Listing Rule 7.1 – 15% (and if applicable 7.1A - additional 10%) placement capacity limit, including the additional placement of shortfall securities to new or existing investors (excluding Listing Rule 10.11 parties), and no securityholder approval required.
- No brokerage or transaction costs for securityholders who participate.

Cons

- Timetable longer than placement.
- Typically, more costly to conduct than a placement and more management time involved.
- Raising when market prices are depressed can be unattractive to issuers.

Traditional / standard rights issues

Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount listed	Discount
AIZ	Air New Zealand Limited	9-05-22	Ords	A$0.49 NZ$0.53	A$1,100,353,843	61.5% discount to closing price on NZX of NZ$1.373 (30/03/22)
WLE	WAM Leaders Ltimited	24-08-21	Ords	$1.44	$241,212,446	8.0% discount to the closing price of $1.565 (12/07/21)
QRI	Qualitas Real Estate Income Fund	5-11-21	Units	$1.60	$171,627,486	3.15% discount to the 5-day VWAP of $1.65
NZK	New Zealand King Salmon Investments Limited	13-05-22	Ords	A$0.14 NZ$0.15	$55,286,925	82.6% discount to closing price NZ$0.86 (12/04/22)
ACQ	Acorn Capital Investment Fund Limited	19-11-21	Ords	$1.60	$27,060,490	4.8% discount to the closing price of $1.64 (19/10/21)
SNC	Sandon Capital Investments Ltd	12-12-21	Ords	$1.01	$22,397,604	15.2% discount to the pre-tax NTA of $1.1915 (31/08/21)
BRU	Buru Energy Limited	8-06-22	Ords	$0.16	$8,856,015	23.8% discount to closing price $0.21 (29/04/22)
ANO	Advance Nantek Ltd	5-07-21	Ords	$3.94	$4,729,332	3.0% discount to the 30-day VWAP of $4.06 (30/04/21)

Accelerated entitlement offers

Frequently asked questions

What is it?

An accelerated entitlement offer is an offer of securities to existing holders in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand). The difference between a standard rights issue and an accelerated entitlement offer is that in an accelerated entitlement offer, the offer to institutional / sophisticated investors is "accelerated" and the proceeds from that component are received on an accelerated timeframe.

There are 4 main types of accelerated entitlement offers summarised below (see also page 33 for some of the key differences between the various structures):

- **ANREO (or JUMBO)** – Accelerated non-renounceable entitlement offer. "Non-renounceable" means that the securityholders have no ability to trade their rights or seek to otherwise obtain value for them. The non-renounceable nature of an ANREO encourages holders to take up their entitlements (to avoid dilution and take advantage of the discount offered because there is no possibility of receiving value from the rights to make up for dilution).
- **AREO (or RAPIDS)** – Accelerated renounceable entitlement offer. "Renounceable" in the context of an AREO does not refer to ASX rights trading but means that securityholders who do not accept their entitlement or who are ineligible to do so may realise value for their rights. The potential value in the renounceable offer is realised through bookbuilds of renounced entitlements and ineligible entitlements conducted after both the institutional and retail components of the entitlement offer, by one or more investment banks appointed to the offer. Any premium achieved in the bookbuild over the offer price, if any, is paid to the renouncing/ineligible holder.
- **SAREO** – Simultaneous accelerated renounceable entitlement offer. A SAREO is a variation of the AREO structure in that the rights which have been renounced are sold through a single bookbuild (open only to institutional/sophisticated investors) after both the institutional and the retail offers have completed.
- **PAITREO** – Accelerated renounceable entitlement offer with retail rights trading. A PAITREO is a combination of an AREO and a traditional renounceable rights issue.

In difficult underwriting conditions, ANREO's with only the institutional component underwritten have been preferred over fully underwritten AREO structures. Where sufficient sub-underwriting support emerges in the institutional offer of an ANREO, underwriters may be willing to then underwrite the retail component of the offer.

An ANREO can deliver greater certainty of outcome for a sub-underwriting cornerstone investor than a renounceable entitlement offer since there is typically no retail shortfall bookbuild in a non-renounceable structure and the cornerstone investor may therefore receive an allocation of securities directly from the retail shortfall (rather than that shortfall being put into a bookbuild and allocated to general institutional investors, as is customary in renounceable structures). A retail bookbuild does not guarantee that a sub-underwriting cornerstone investor will acquire any retail shortfall, and in some instances that might deter a cornerstone investor from participating.

Accelerated entitlement offers

Frequently asked questions continued

Who can participate?

Existing holders of securities in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand).

What offer materials are required?

Typically undertaken with an ASX announcement; an investor presentation; a retail offer booklet; and a cleansing notice, however if an issuer is unable to use a cleansing notice, a prospectus or PDS must be prepared. See page 12 which describes the eligibility to use a cleansing notice. See page 26 for an outline of the pros and cons of the prospectus versus the 'low doc' approach.

What is the timing?

Time necessary to prepare and verify the offer materials, plus 2-3 business days from announcement to trading for the institutional component of the offer, and approximately 18-22 days from announcement to normal trading under the retail component of the offer (but can be longer if there is a longer retail offer period). The ASX has mandated timetables set out in Appendix 7A of the ASX Listing Rules. Prior to launching an offer, issuers will need to agree the timetable with ASX (even if the ASX mandated timetable is strictly adhered to).

What are the costs?

Legal, accounting and underwriting fees can be significant, although legal and accounting fees will be less where a prospectus is not required.

What are the demands on management?

Typically more demanding than a placement. Preparation for the offer generally involves the conduct of a due diligence committee (DDC) process. The DDC is typically comprised of members of management/directors only. Unless the rights issue involves the issue of a prospectus, advisers do not sit on the DDC as members, but attend DDC meetings as observers.

Accelerated entitlement offers

Frequently asked questions continued



What is the offer price?

The ASX Listing Rules provide that generally the offer price must not contain a fraction of a cent. The ASX Listing Rules also require that the ratio of securities must not be greater than one security for each security held unless the offer is renounceable and the issue price is not more than the volume weighted average market price for securities in that class calculated over the last 5 days on which sales in the securities were recorded before the day on which the offer was announced.



Who is involved?

It is common for an issuer to retain one or more investment banks to manage the rights issue and to "sell" the offer to existing and new investors. Investment banks may agree to underwrite all or part of the entitlement offer or alternatively offer settlement support. The issuer's lawyers will typically design and implement the due diligence process for the offer and attend DDC meetings as observers. Depending on the financial disclosures, the issuer may appoint an investigating accountant who may conduct financial due diligence and/or produce a private report.



What are some of the legal and regulatory considerations?

If an entity is undertaking more than one corporate action it must not have a record date to identify holders entitled to participate in a subsequent one until it has updated its register in relation to the preceding one. An entity must not have a record date for any purpose until at least 3 business days after its last record date.

An offer of securities to holders of ordinary securities under an entitlement offer is exempt from the ASX Listing Rule 7.1 – 15% (and if applicable 7.1A – additional 10%) placement capacity limit. In addition, the exception extends to an issue of securities to make up the shortfall provided the directors of the entity have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall. The issuer must make the issue to make up the shortfall no later than 3 months after the close of the offer and the price must not be less than the price at which the securities were offered under the entitlement offer.

Persons in a position of influence (e.g. related parties, persons holding (or who held in the last 6 months) 30% or more in the issuer and persons holding (or who held in the last 6 months) 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) may not participate in the shortfall of a pro rata issue without securityholder approval.

An issue of securities under an agreement to underwrite the shortfall (including by a person in a position of influence – see ASX Listing Rule 10.12, Exception 2) in an entitlement offer is also exempt from ASX Listing Rule 7.1 – 15% (and if applicable 7.1A – additional 10%) placement capacity limit provided specific details of the underwriting have been disclosed in the Appendix 3B or other market announcement and the issue is made no later than 15 business days after the close of the offer.

See also "Control" considerations and Takeovers Panel Guidance described on pages 27 and 28.

Accelerated entitlement offers

Frequently asked questions continued

What is the liability regime?

Liability potentially arises if investors are misled. Provided the issuer satisfies the conditions imposed by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84 and can conduct the rights issue without a prospectus or product disclosure statement, no statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around the DDC process and the production of a management questionnaire).

What regulatory approvals are required?

The issuer will need to agree the rights issue timetable with ASX prior to launch of the rights issue. If the issuer needs to appoint a nominee in accordance with s611 item 10 then it will need ASIC's approval to the nominee prior to launch of the offer.



Accelerated entitlement offers

Key differences between structures

	ANREO	AREO	SAREO	PAITREO
Issuer receives institutional proceeds quickly	Y	Y	Y	Y
Renounceable (i.e., bookbuild premium returned to renouncing / ineligible holders)	N	Y	Y	Y
Sometimes combined with a placement	Y	Y	Y	Y
Can be conducted without a prospectus or PDS (assuming the issuer satisfies the relevant cleansing notice criteria)	Y	Y	Y	Y
Commonly undertaken at a discount	Y	Y	Y	Y
Ability to accept oversubscriptions	Y	Y	Y	Y
Ability to offer at a ratio of more than 1:1	N	Y	Y	Y
Can be used by listed managed investment schemes and stapled entities	Y	Y	Y	Y
Involves ASX rights trading	N	N	N	Y
Securityholders incur brokerage	N	N	N	N
ASX waivers or confirmations required Note: if an issuer wants to 'supersize' a placement that is being undertaken at the same time as the entitlement offer (ie where the placement exceeds the pre-entitlement offer "15%" or "25%" placement capacity limit set out in ASX Listing Rule 7.1) an ASX waiver will be required	N	N	N	N
ASIC relief or modifications Note: if there are control issues, an ASIC application may be required	N	N	N	N

Accelerated entitlement offers

Pros and Cons

Pros

- Typically, the discount is attractive to securityholders.
- Typically, no prospectus or PDS, however cleansing notice must be issued.
- Accelerated timetable means that the issuer can manage risk and receive institutional proceeds quickly.
- Accelerated timetable benefits institutions who come off risk more quickly and similar benefit to underwriters if the institutional component is the only component underwritten.
- Enables all securityholders (apart from ineligible securityholders from certain foreign jurisdictions) to participate, avoiding dilution impacts associated with a placement or, if conducted in conjunction with a placement, lessening that dilution impact.
- If it is renounceable, including where there is retail rights trading, holders may be able to realise value for rights should they not wish to take them up.
- Exception from ASX Listing Rule 7.1 - 15% (and if applicable 7.1A - additional 10%) placement capacity limit, including the additional placement of shortfall securities to new or existing investors (excluding Listing Rule 10.11 parties), without securityholder approval.
- No brokerage or transaction costs for securityholders who participate.

Cons

- Timetable longer than placement.
- Typically, more costly to conduct than a placement and more management time involved.
- More complicated to execute than a traditional rights issue or placement.
- Retail securityholders are not offered the ability to take up securities on an accelerated basis.
- Raising when market prices are depressed can be unattractive to issuers.

Accelerated entitlement offers

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount listed	Discount
TCL	Transurban Group	4-10-21 (I) 19-10-21 (R)	Ords	$13.00	$3,966,041,326	8.3% discount to closing price of $14.18 (17/09/21)
ALL	Aristocrat Leisure Limited	30-10-21 (I) 18-11-21 (R)	Ords	$41.85	$1,300,662,176	8.6% discount to closing price of $45.79 (15/10/21)
SFR	Sandfire Resources Limited	6-10-21 (I) 21-10-21 (R)	Ords	$5.40	$962,557,198	13.2% discount to closing price of $6.22 (22/09/21)
SMR	Stanmore Resources Limited	17-03-22 (I) 1-04-22 (R)	Ords	$1.10	$694,071,679	12.0% discount to closing price of $ (2/03/22)
AUB	AUB Group Limited	19-05-22 (I) 6-06-22 (R)	Ords	$19.50	$279,247,820	12.8% discount to closing price of $22.36 (6/05/22)
JRV	Jervois Global Limited	6-08-21 (I) 2-09-22 (R)	Ords	$.044	$226,429,126	22.8% discount to closing price of $0.57 (16/07/21)
PBH	PointsBet Holdings Limited	13-08-21 (I) 1-09-21 (R)	Ords	$8.00	$185,015,096	26.5% discount to TERP of $10.88 based on closing price of $11.29 (28/07/21)
DHG	Domain Holdings Australia Limited	14-04-22 (I) 6-05-22 (R)	Ords	$3.80	$180,095,163	5.2% discount to closing price $4.01 (31/03/22)
SYR	Syrah Resources Limited	18-02-22 (I) 8-03-22 (R)	Ords	$1.48	$125,097,232	10.3% discount to closing price of $1.65 (4/02/22)
		(I) Institutional component (R) Retail component				

Dividend reinvestment plans

Frequently asked questions

What is it?

If an entity is paying dividends or distributions, a dividend or distribution reinvestment plan (DRP) presents another way for the listed entity to retain equity.

Who can participate?

Existing securityholders who hold securities in the issuer and who have elected to participate in the DRP by the record date for the DRP. Note that eligibility of foreign securityholders to receive securities under a DRP can be an issue, and generally all foreign securityholders (apart from securityholder residents in New Zealand) are excluded from participation.

What offer materials are required?

Offers of securities to securityholders under a DRP do not require a prospectus or PDS. The key document is the rules of the DRP which set out the necessary terms and conditions including how pricing is determined; logistics of operation of the plan; and how securityholders elect to participate.

Before the launch of an entity's initial DRP offer, it is normal practice for an entity to send to each eligible securityholder a letter inviting their participation, setting out a summary of the rules and attaching the rules themselves.

Unless the DRP is underwritten there is no requirement to publish a "cleansing notice", however issuer's must be careful that the market is fully informed to avoid insider trading offences.

What is the timing?

ASX needs to be informed if a DRP is established, amended, deactivated or reactivated. ASX Appendix 6A includes a timetable for dividends/distributions that also covers issues under a DRP.



Dividend reinvestment plans

Frequently asked questions

What is the offer size?

The final amount "raised" through a DRP will be dependent on: (a) the number of participating securityholders; (b) the price at which securities are offered under the DRP; (c) the size of the dividend/distribution declared by the issuer; and (d) the extent of the underwriting (if any).

What are the costs?

The costs of implementing a DRP can be relatively minimal; without the potential prospectus/PDS and roadshow costs associated with many other types of capital raisings.

What are the demands on management?

Minimal demands on management.

Can it be underwritten?

Having a DRP underwritten can provide an entity with certainty and significantly boost the amount of capital ultimately raised. Typically, the underwriter will take up an agreed portion of the securities that are not nominated by securityholders to participate in the DRP. If necessary, proceeds from the underwritten portion can then be used by the issuer to fund the cash dividend/distribution to be paid to securityholders.

Where the underwriter has signed the underwriting agreement before the pricing period has run (and so only the dollar value of the underwrite is known), the underwriter can manage its underwriting risk by borrowing existing stock and selling the underwritten amount progressively over the pricing period at or better than the per security underwritten price under the underwriting agreement. On the issue date the underwriter then applies the funds received from the sales of borrowed stock during the pricing period to subscribe for the DRP shortfall securities and disposes of those securities by returning them to the original stock lenders. In times of volatility, an underwriter may insist on the DRP price being determined before it signs any underwriting agreement.

The issue of securities to an underwriter of a DRP will require the issuer to release a cleansing notice on ASX.

Some issuers / institutional investors disapprove of underwritten DRPs. Some of the criticisms include that underwriting a DRP can result in the price of the securities being pushed down dramatically; that it is dilutive or that it signals that an issuer is unable to afford its dividend/distribution.

Dividend reinvestment plans continued

Frequently asked questions

What is the offer price?

Careful consideration must be given in respect of the appropriate pricing period. The price is determined by taking the average of the daily VWAP over a period between the announcement date and the dividend/distribution payment date. The issuer has the flexibility to choose a pricing period that is short or long (i.e., the pricing period could be 3 business days or it could be 20 business days – it is entirely flexible) and occur before or after the record date (i.e., when the securityholder elections for the DRP must be submitted).

Issuers may consider offering a discount to the price determined by the pricing period. Typically discounts range from 0-5 %.

Who is involved?

A professional underwriter (if underwritten).

What are some of the legal and regulatory considerations?

If an entity's constitution expressly disallows a DRP, securityholder approval will be required to alter the constitution.

An offer of securities under a DRP is exempt from ASX Listing Rule 7.1 - 15% (and if applicable 7.1A – additional 10%) placement capacity limit, provided the DRP does not impose a limit on participation. In addition, an issue of securities under an agreement to underwrite the shortfall of a DRP is also exempt from the placement limitations provided details of the underwriting agreement are disclosed prior to the date for payment of the dividend or distribution and the entity makes the issue within 15 business days after the date for payment of the dividend or distribution.

An offer of securities under a DRP may also be made to people in a position of influence (e.g. related parties, persons holding (or who held in the last 6 months) 30% or more in the issuer and persons holding (or who held in the last 6 months) 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) without securityholder approval, provided the DRP does not impose a limit on participation and the person in a position of influence is not underwriting the shortfall (see ASX Listing Rule 10.12, Exception 3).

Securityholders participating in a DRP are exempt from the 20% takeover threshold with respect to securities acquired under the DRP, so long as the DRP is available to all Australian resident securityholders. Unlike the rights issue exception, the DRP exception does not extend to acquisitions by persons as underwriters. ASIC may grant case-by-case relief for underwriters of a DRP, where they may breach the 20% threshold with respect to securities acquired under the DRP, provided the underwriter is acting as a bona fide underwriter and on the condition that at the time the DRP is announced, securityholders have received adequate information about: (a) the key terms of the underwriting; (b) the identities of any sub-underwriters; (c) any associations between the underwriter or sub-underwriter and a controller or one or more substantial holders. ASIC's policy in this regard is set out in ASIC Regulatory Guide 6 Takeovers: *Exceptions to the general prohibition.*

Dividend reinvestment plans

Pros and Cons

Pros

- Allows an issuer to retain capital whilst remaining attractive to investors as a dividend/distribution payer and can improve debt to equity ratios.
- The use of a DRP by an issuer can be flexibly managed. For example, it can be suspended at the discretion of the issuer and reactivated at a later date.
- Allows an issuer to raise equity in circumstances where credit markets are constrained.
- No brokerage or other transaction costs.
- Securityholders who participate derive dividends/distributions on new securities at the next dividend/distribution payment date.
- DRP may be structured with a small discount to the market price.
- Exception from ASX Listing Rule 7.1 - 15% (and if applicable 7.1A - additional 10%) placement capacity limit.

Cons

- A growing equity base may lead to a deterioration of the issuer's earnings per security and a dilution of holdings for some securityholders.
- Can sometimes signal issues over health of the issuer.
- A reinvested dividend is subject to tax but without the benefit of any attaching franking credits.
- The amount that can be "raised" is ultimately limited by the size of the dividend/distribution and the number of securityholders who agree to participate.

Dividend reinvestment plans

Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount Listed
WDS	Woodside Energy Group Ltd	25-03-22	Ords	$31.2691	$448,680,222
WOW	Woolworths Group Limited	19-04-22	Ords	$35.8417	$69,025,451
QBE	QBE Insurance Group Limited	21-04-22	Ords	$11.12	$36,089,838
BOQ	Bank of Queensland Ltd	30-05-22	Ords	$7.2881	$34,486,524
ARG	Argo Investments Limited	14-03-22	Ords	$9.60	$22,501,459
WAM	WAM Capital Limited	21-06-22	Ords	$1.89989	$10,514,850
CLW	Charter Hall Long WALE REIT	16-05-22	Stapled Sec	$5.2929	$10,704,223
MFF	MFF Capital Investments Limited	17-05-22	Ords	$2.5043	$5,270,878
UOS	United Overseas Australia Limited	7-06-22	Ords	$0.5887	$5,960,731



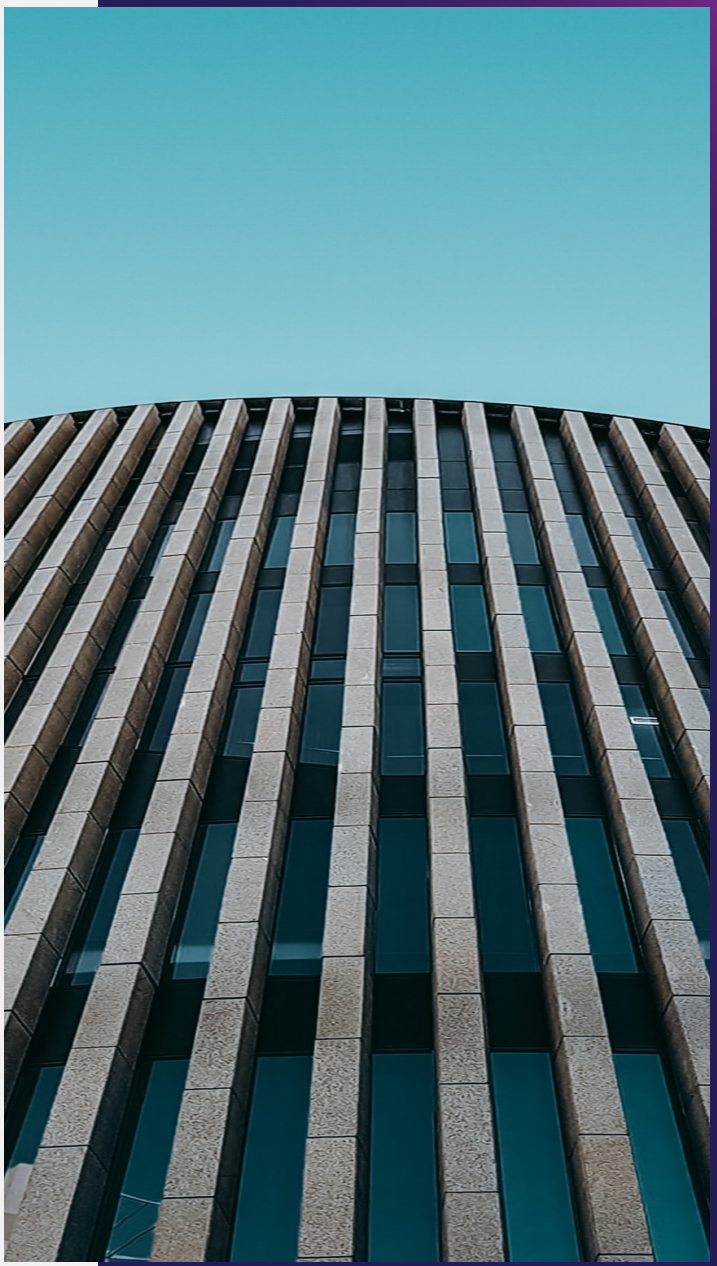
Hybrids and retail notes

Frequently asked questions

Overview

ASX listed entities can offer debt or hybrid securities and in certain scenarios, these offers can be extended to retail investors with the securities quoted on ASX. More commonly, debt securities and hybrid securities are offered only through the international debt capital markets to institutional investors and the securities are not quoted on ASX.

Because hybrid securities and retail notes may be commercially considered an alternative to the equity offers discussed previously in this booklet, we have included a brief overview of them.



What is it?

Retail notes is a term that covers a subset of interest rate securities offered by ASX listed entities to the public for quotation on ASX. They primarily involve a debt in the form of a loan from investors to an entity in return for periodic interest payments, and eventually repayment of the principal. They can also involve other features or enhancements. Interest may be calculated using a fixed rate (e.g., corporate bonds) or using a variable rate that is calculated as a base rate plus a margin that moves in line with the general level of interest rates.

Retail notes may have a term or be perpetual and, in some cases, they may convert into underlying securities of the issuer (i.e., convertible notes), and/or the interest rates may be deferrable or discretionary. These additional features that make the retail notes more 'equity' like, are typically referred to as 'hybrid securities'.

Who can participate?

Typically all Australian public investors that participate in ASX securities investments, including retail investors.

Hybrids and retail notes

Frequently asked questions continued

What offer materials / advice / approvals are required?

Prospectus or PDS, note / hybrid security terms and conditions, trust deed (in the case of a debenture), tax advice (including private rulings), rating agency ratings and ASX confirmations in relation to terms.

Issuers can have regard to the nature of the securities when determining what matters must be included in the offering document. In the case of a company issuing a retail note, for example, investors would reasonably expect to be told different information than if they were investing in that entity's securities. For example, an investor may be less interested in an issuer's growth prospects when the investor is investing in retail notes.

What is the timing?

The time to prepare for an offer of retail notes or hybrid securities is similar to the time taken to prepare for a typical initial public offering and can take upwards from 2 months. If an issuer is seeking a credit rating or private tax ruling, or has engaged a trustee that requires ASIC approval, this typically will extend the preparation timetable. Once launched, offers are typically open for 2-4 weeks after close of the exposure period.

What are the demands on management?

Typically imposes relatively high demands on management as may be the case in an initial public offering.

What is the offer price?

Typically 1 note or preference share is $100 and minimum investments start at $5,000, although this can differ from offer to offer.

Who is involved?

Issuers engage lawyers, investment banks, accountants, tax advisers and trustees (in the case of a debenture) and often engage with rating agencies.

What are some of the legal and regulatory considerations?

Retail notes are typically classified as "debentures" under the Corporations Act, and an authorised trustee company is appointed to act as trustee for investors, and a trust deed is prepared.

Preference shareholders rank ahead of ordinary shareholders but behind creditors in the event of a winding up of a company. As holders of retail notes are creditors, their claims will rank ahead of shareholders in a winding up scenario. Retail notes are often subordinated to other creditors.

Hybrids and retail notes

Frequently asked questions continued

What is the liability regime?

The liability regime and defences for offers of debentures is the same as for offers of other securities. The due diligence process is therefore typically the same for an offer of retail notes or hybrid securities and emulates the due diligence committee process common in an initial public offering of securities.

What regulatory approvals are required?

ASX will need to approve the terms of the notes or securities, and ASIC will consider the form of the prospectus or PDS and in some circumstances, the terms, during the exposure period.

Recent example deal terms:

- **Offer -** listed $1 face value convertible note to raise $32million via a institutional placement (15% placement capacity + conditional component) and traditional rights issue.
- **Rights issue ratio -** 1 note for every 4.39 shares held, with ability (capped at 50%) to apply for oversubscriptions.
- **Term -** 3 year maturity date unless converted, redeemed or cancelled early.
- **Security -** notes were secured but subordinated to existing bank debt.
- **Interest -** interest rate 8% (plus additional 6% in case of default).
- **Interest calculation / payment**
  - interest calculated quarterly in arrears and cash interest not payable until permitted under senior debt obligations (at time no cash interest was expected to be paid for at least 6 months). Interest not paid in cash was capitalised.
  - payment of cash interest was always subject to issuer's compliance with senior debt covenants.
- **Conversion mechanics**
  - notes were convertible after initial 12 months until maturity, conversion price was lower of: (a) $0.515; (b) a 15% discount to 30 day volume weight average price of shares prior to conversion date; and (c) a 15% discount to the price of any equity capital raising undertaken by the company in the 30 day period prior to the conversion date (subject to a floor conversion price of $0.25).
- **Early redemption by issuer -** company able to redeem early on 30 days notice within which time the noteholder can elect to convert.

Comparison between ordinary shares, subordinated notes, convertible preference shares and bonds

	Ordinary shares	Subordinated Notes	Convertible Preference Shares	Bonds
Legal form	Shares	Unsecured, subordinated debt	Preference share	Notes or debentures
Ranking	Rank behind all other securities and obligations	Rank ahead of ordinary shares, equally with equal ranking obligations and behind all creditors	Ranks lower than subordinated notes and all creditors but higher than ordinary shares	Typically unsubordinated, meaning that they rank ahead of all subordinated creditors and all classes of shares
Term	Perpetual (unless bought back)	Flexible, depends on terms (e.g. can be 60 years)	Perpetual (subject to scheduled conversion into ordinary shares)	Typically 3 to 15 years
Call date(s)	Not applicable	Flexible, depends on terms (e.g. from year 5)	Flexible, depends on terms (e.g. from year 5)	Typically none
Payment amounts	Based on issuer's level of profitability and boards dividend policy	Flexible, depends on terms (eg a floating interest rate equal to the sum of the Bank Bill Rate plus a margin)	Flexible, depends on terms (e.g. a floating interest rate equal to the sum of the Bank Bill Rate plus a margin)	Based on a floating or fixed interest rate
Payment accumulation	None	Depends on terms (e.g. any deferred interest payments may be cumulative and compounding)	Depends on terms	Any unpaid interest payments are cumulative and compounding
Participation in issuer's profits on issuer's winding up	Yes	No	Yes	No
Rights to be repaid at end of term	Not applicable	Yes	Not applicable	Yes
Voting rights at a general meeting of the issuer's shareholders	Yes	No	No except in certain limited circumstances	No
Transferability and liquidity	Yes, quoted on ASX – likely to be more liquid than notes and bonds	Yes, quoted on ASX – likely to be less liquid than ordinary shares	Yes, quoted on ASX – likely to be less liquid than ordinary shares	Yes, although typically not quoted – likely to be less liquid than ordinary shares

Hybrids and retail notes

Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Security type	Issue Price	Amount listed
WBC	Westpac Banking Corporation	16-09-21	Capital notes	Unsecured	$100.00	$1,750,000,000
ANZ	Australia and New Zealand Banking Group Limited	9-07-21	Capital notes	Unsecured	$100.00	$1,500,000,000
ANZ	Australia and New Zealand Banking Group Limited	25-03-22	Capital notes	Unsecured	$100.00	$1,310,000,000
MBL	Macquarie Bank Limited	30-08-21	Capital notes	Unsecured	$100.00	$654,848,000
SUN	Suncorp Group Limited	24-09-21	Capital notes	Unsecured	$100.00	$405,000,000
LFS	Latitude Group Holdings Limited	29-09-21	Capital notes	Unsecured	$100.00	$150,000,000
MOZ	Mosaic Brands Limited	23-11-21	Convertible notes	Second-ranking	$1.00	$32,017,808
FSI	Flagship Investments Limited	4-10-21	Convertible notes	Unsecured	$2.70	$20,000,000
CAM	Clime Capital Limited	10-12-21	Convertible notes	Unsecured	$1.00	$16,268,995
MVT	Mercantile Investment Company Ltd	2-07-21	Unsecured notes	Unsecured	$100.00	$15,000,000
ECP	ECP Emerging Growth Limited	19-04-22	Convertible notes	Unsecured	$1.43	$10,824,434
GFL	Global Masters Fund Limited	29-11-21	Convertible notes	Unsecured	$3.10	$10,000,000

PIPEs

Frequently asked questions

Overview

Other capital raising options for listed entities include private equity or other private capital investment in a listed entity's securities by way of structured PIPES transactions.

What is it?

Private investment in public entities (PIPE) transactions provide opportunities for cashed up institutions and sponsors with appropriate mandates to invest in public entities. They can take various forms including institutional placements, entitlement offers underwritten by the private investor, preferred security issues or convertible notes. In volatile markets, it is more common to see them structured as convertible notes because investing by way of convertible notes provides downside.

Key legal considerations?

1. Chapter 6 of the Corporations Act – 20% takeovers rule: limits a person acquiring a relevant interest that leads to voting power exceeding 20% of a listed entity without obtaining securityholder approval or complying with another exception, such as launching a takeover or scheme of arrangement. This rule limits the size of the private investment that may be made without launching a takeover bid.
2. ASX Listing Rule 7.1 placement capacity limit – listed entities are prohibited from issuing new equity securities representing more than 15% of their fully paid ordinary securities in any 12-month period without securityholder approval or otherwise satisfying an exception. A PIPE transaction can be structured to permit a larger equity holding if the convertibility element of the instrument is conditional on securityholder approval.
3. Related parties and substantial holders – the Corporations Act and ASX Listing Rules may include additional restrictions on the issue of securities to private investors who are related parties of the issuer or already substantial holders.



PIPEs

Pros and Cons

Pros

- Permits a rapid capital raise from a single investor when access to equity placement at an attractive price is more challenging, for example, due to price volatility.
- Can be structured as a hybrid to permit more capital to be raised than traditional equity (in excess of the placement capacity limit) where the conversion is conditional on securityholder approval, however this may not always be commercially practical as (absent a waiver) the underlying securities must be issued within 3 months of the relevant approval being obtained.
- Can be structured to protect the downside (for example, as a convertible note) which also may permit pricing to avoid excessive dilution in times of volatility – a PIPEs capital raising is often used as a 'bridge' to a later equity raising when better equity pricing can be achieved.
- The source of private capital that provides the PIPE may provide other benefits, such as industry expertise or access to other markets and additional capital for growth.

Cons

- The PIPE instrument is more complex than a traditional placement, that makes for a more difficult and more lengthy negotiation of terms than an equity placement.
- A PIPEs instrument is less well understood by the market and requires more explanation than a traditional equity raising.
- If it is structured as a convertible note, it is debt (though will be treated as equity for Listing Rule purposes as it is convertible) and increases the notional leverage ratios for the listed entity, which may require waivers or consents from the entity's bank.
- If it is structured as convertible preference equity, it is not debt, but the coupon is less likely to be deductible.
- A hybrid structure often involves more debt-like control features than traditional equity, such as covenants (although typically less than bank debt).

3. ASIC's Corporate Plan for 2021-25

ASIC Corporate Plan 2021-25 (2021-22 focus)

ASIC's strategic priorities focus on addressing the most significant threats and harms in Australia's regulatory environment and bolstering its capabilities to achieve this by implementing the following:

External Priorities

1. **Promoting economic recovery –** Promoting economic recovery – including through better and more efficient regulation, facilitating innovation, and targeting regulatory and enforcement action to areas of greatest harm

2. **Reducing risk of harm to consumers –** specifically to consumers exposed to poor product governance and design, and increased investment scam activity in a low-yield environment.

3. **Supporting enhanced cyber resilience and cyber security among ASIC's regulated population -** in line with the whole-of-government commitment to mitigating cyber security risks.

4. Driving industry readiness and compliance with standards set by law reform initiatives - including the Financial Accountability Regime, reforms in superannuation and insurance, breach reporting, and the design and distribution obligations.

ASIC Corporate Plan 2021-25 (2021-22 focus)

ASIC's strategic priorities focus on addressing the most significant threats and harms in Australia's regulatory environment and bolstering its capabilities to achieve this by implementing the following:

Internal Priorities

1. Enhancing communication and engagement with its stakeholders and other regulatory agencies, to ensure its actions and achievements have a real and tangible impact

2. Improving its infrastructure and systems to strengthen its key internal operations, processes and governance frameworks to effectively support its regulatory work

3. Enhancing and effectively utilising its data and cyber resilience capabilities in fulfilling its regulatory mandate and organisational priorities

4. Continuing to nurture a workplace environment that promotes a culture of speaking up, challenge, accountability and a 'whole-of-ASIC' lens, underpinned by a sound system of risk management and compliance.

4. ASIC's Current Priorities

ASIC Current Priorities 2021-22

Key priorities

- Working with other regulators, industry and social media platforms to combat and disrupt financial scams.
- Addressing the deceptive promotion of riskier asset classes such as crypto.
- Disrupting investment 'gamification' on digital platforms.
- Protecting financially vulnerable consumers impacted by predatory lending practices or high-cost credit.
- Addressing misleading and deceptive conduct relating to investment products, including advertising through digital means that obscures the risk.
- Ensuring that consumers receive the benefits of the new design and distribution obligations (in operation since October 2021).

Key priorities/ topics in corporate governance

- Governance failures relating to non-financial risk that result in significant harm to consumers and investors, including:
  - directors failing to identify and manage the risk attaching to a company's business activities;
  - failing to ensure that appropriate resources are allocated to deal with risks;
  - or failing to respond to indicators that risks are not being properly managed.
- Cyber governance and resilience failures
  - companies ensuring they have adequate policies, systems and resources to appropriately manage risk in respect of cyber security and cyber resilience.
- Egregious governance failures or misconduct resulting in corporate collapse
  - including instances where company money, or money belonging to company creditors, is misapplied for misappropriated.

5. ASX's Current Focus

ASX focus 2022 – Updated rules & guidance

Admission and quotation requirements

Communications Person – listing rules compliance course	Effective 1 July 2022, for entities that lodge an application to be admitted to the official list on or after that date, the person (or persons) appointed as the person(s) responsible for communication with ASX on listing rule matters will be required to undertake and obtain an acceptable pass mark in an approved listing rule compliance course. A copy of the completion certificate is required to be emailed to the ASX listings adviser for the entity prior to its admission. This requirement also applies to existing listed entities that appoint a new nominated ASX contact on or after this date (Listing Rule 12.6). They will need to email a copy of the completion certificate to the ASX listings adviser for the entity prior to their appointment as a nominated ASX contact. The course if free and can be accesses at: https://www2.asx.com.au/about/regulation/asx-compliance/listings-compliance/asx-listing-rules-compliance-course.html To allow transition to the new regime, ASX will apply a 'grace period' between 1 July 2022 and 30 September 2022. For newly nominated ASX contacts for existing listed entities and for any nominated ASX contact for entities applying for admission, the nominated ASX contact will have until 14 October 2022 to complete the course and email a copy of their completion certificate to the listings adviser for their entity. The current nominated ASX contacts for existing listed entities do not need to complete the course in order to remain the nominated ASX contact for that entity. Existing nominated ASX contacts will only need to complete the course if they are appointed as the nominated contact for another listed entity on or after 1 July 2022.
US Entities – Regulation S Offerings on ASX	An updated version has been released of ASX Guidance Note 7 *US Entities - Regulation S Offerings on ASX* (GN 7). GN 7 has enhanced guidance in: • section 5 on the role of ASX market circulars declaring an issuer's securities to be "FOR US" for the purposes of ASX's Foreign Ownership Restriction ("FOR") facility and expanding on the contribution expected from the issuer's US legal counsel to the drafting of those market circulars; • • sections 8 and 9 on the legal opinions ASX requires from the issuer's US legal counsel to apply and dis-apply the "FOR US" restriction to its securities; and • a new Annexure with a pro forma market notice applying the FOR US restriction to any "U.S. Person" who is not a "Qualified Institutional Buyer".
US-incorporated entities	ASX has released updates to Guidance Note 17 *Waivers and In-Principle Advice* (GN 17) and Guidance Note 23 *Quarterly Reporting* (GN 23) with details of a new standard waiver from Listing Rules 4.2A.3, 4.3A, 4.7B and 4.7C available to US-incorporated entities admitted to the ASX official list as an ASX Listing. The relief will allow the entity to lodge certain periodic SEC filings with ASX in lieu of certain ASX-required periodic reports, provided the entity meets the conditions outlined in GN 17.
CDIs	ASX has added to the Annexure to Guidance Note 17 *Waivers and In-Principle Advice* (GN 17) the standard waiver from Listing Rule 1.1 condition 6 and Listing Rule 2.4. ASX has for some time now provided this waiver to foreign entities applying for admission as an ASX Listing that have their primary listing on an overseas exchange other than the NZX and that intend to use CHESS Depository Interests (CDIs) to facilitate the holding and transfer of their ASX-quoted securities. That waiver allows the entity to apply for quotation of the portion of its securities that will be represented by CDIs instead of having to apply for quotation of all the securities in its main class.

ASX focus 2022 – Updated rules & guidance

Disclosure requirements

Oil and Gas Reporting	Effective 1 July 2022, the following amendments to Chapter 5 of the Listing Rules announced by ASX in its Consultation Response: *Proposed changes to the oil and gas reporting requirements in the ASX Listing Rules* dated 22 October 2021 are due to come into effect, as follows: • Listing Rules 5.25 – 5.36 (reporting of initial and material changes to petroleum resources) will apply to all reports of initial and material changes to petroleum resources issued on or after 1 July 2022; and • Listing Rules 5.37 – 5.40 (reporting of petroleum resources in an entity's annual report) will apply to an entity's annual report for the first full financial year commencing on or after 1 July 2022 (ie for entities with a 30 June balance date, their annual report for the year commencing 1 July 2022 and ending 30 June 2023, and for entities with a 31 December balance date, their annual report for the year commencing 1 January 2023 and ending 31 December 2023).
Quarterly reporting – commitments test entity	The initial period of eight quarters for which a commitments test entity must provide quarterly reports under Listing Rules 4.7B and 4.7C is a minimum reporting period. The obligation of a commitments test entity to provide quarterly reports continues for as long as ASX requires – in effect, until ASX advises the entity that it is no longer required to provide quarterly reports. ASX has updated the guidance in section 14 of ASX Guidance Note 23 Quarterly Reporting on ASX's discretion to extend the requirement for commitments test entities to provide quarterly reports beyond the first 8 quarters after their admission or re-admission to the official list to reflect current ASX practice.

Simplification and efficiency measures

ASX Online Forms - FAQs	A new ASX Online Forms Frequently Asked Questions document has been published on the Help page of the ASX Online Companies website, in addition to the existing recorded training and help material for online forms. ASX has prepared this FAQ document to assist issuers with common queries they may have in relation to the usage of the ASX Online forms that were updated or came into effect on 5 June 2021, including Appendices 3B (Proposed issue of securities), 2A (Application for quotation of securities), 3G (Notification of issue, conversion or payment up of unquoted equity securities), 3H (Notification of cessation of securities), 3C (Notification of buy-back), and 4A (Statement of CDIs on issue). ASX will update this document periodically, to include any new FAQs or additional guidance. ASX Guidance Note 30 Annexure A, provides a very useful summary of the various notification obligations under the Listing Rules to notify ASX of changes in issued securities and applying for quotation of new or additional securities applicable to common corporate actions and events.

ASX Public Consultation - Potential listing rule changes

Proposed enhancements to the ASX Listing Rules

On 5 April 2022, ASX released a consultation paper entitled *Proposed enhancements to the ASX Listing Rules: Continually improving the reputation and integrity of the ASX market*.

The consultation paper seeks feedback from stakeholders on proposed enhancements to the ASX Listing Rules dealing with:

- the issuance of securities by listed entities, including the rules relating to security purchase plans (SPPs), pro rata issues and material placements
- the financial reporting framework for listed entities
- the admission of an entity to the official list and the quotation of its securities
- transactions by listed entities with persons in a position of influence
- the lodgment of documents by listed entities with ASX for release to the market, and
- other miscellaneous matters.

Submissions on the consultation paper closed on Friday 27 May 2022.

ASX will consider all submissions it received in response to the consultation paper before finalising the proposed rule amendments with ASIC.

Subject to the receipt of the necessary regulatory approvals, it is envisaged that the final rule amendments will be released in the third quarter of 2022 and take effect on 1 December 2022.

ASX Public Consultation - Potential listing rule changes

Admission and quotation requirements

Minimum spread test	In order for a security holder to count towards spread, they must be a resident of Australia or of another jurisdiction that is acceptable to ASX. ASX Guidance Note 1 will be updated to provide guidance on what jurisdictions might not be acceptable to ASX.
Communications person	The person appointed to be responsible for communication with ASX on Listing Rules matters must be acceptable to ASX. ASX Guidance Note 1 will be updated to provide guidance on when a person might or might not be acceptable to ASX.
Assets test – commitments test	Where an entity applies for admission under the Assets Test and is able to demonstrate to ASX that it has a track record of profitability or revenue acceptable to ASX such that mandatory ASX escrow does not apply, it will no longer be required to meet the commitments test in Listing Rule 1.3.2 and it will also not be required to produce quarterly activities and cash flow reports.
First quotation date	The note to Listing Rule 2.10 will be amended to clarify the intended operation of that rule as to how and when quotation occurs.
ASX's discretion concerning admission and quotation	Amendments to rules 1.19 and 2.6 making it clear that ASX's decision on whether to admit an entity to the official list and to quote its securities is final and that ASX may refuse admission or quotation without giving any reasons to the entity and without being obliged to afford the entity the opportunity to make further submissions on why it should be admitted, or its securities quoted.

False market	The addition of a note to Listing Rule 3.1B explaining the meaning of "false market"
Voluntary escrow	A new rule 3.10.10 requiring the immediate disclosure of any agreement to a material change to the escrow arrangements for securities subject to voluntary escrow.
CEO and director employment terms	The addition of a note to rule 3.16.4 stating that if an executive is appointed to its board as an executive director and it does not enter into a new employment, service or consultancy agreement in connection with that appointment, the entity should disclose the material terms of the current employment, service or consultancy agreement it or any child entity has with that executive.

ASX Public Consultation - Potential listing rule changes

Security issuances

Material Placements	A new rule 7.10 requiring an entity conducting a material non-pro rata offer of ordinary securities to: • disclose in the offer document whether existing security holders will be entitled to participate in the offer, and if so, on what basis • within 5 days of completing the offer, announce to the market: ○ the results of the offer, and ○ details of the approach the entity took in identifying investors to participate in the offer and how it determined their respective allocations in the offer (including, but not limited to, the key objectives and criteria adopted by the entity in the allocation process). • provide to ASX within 5 business days of being requested to do (not for release to the market) a detailed allocation spreadsheet showing: ○ details of the persons to whom securities were allocated in the offer; and ○ details of persons who applied for securities at or above the final price and who did not receive an allocation in the offer. It has been suggested to ASX that an offer should be regarded as 'material', if it comprises more than 10% of the number of ordinary securities on issue immediately prior to the offer or for an aggregate issue price of more than $50 million (whichever is the lesser).
Pro-rata offers shortfall allocation arrangements – Exception to Listing Rules 7.1 and 7.1A	For an issue of securities to make up the shortfall on a pro rata issue to not count towards its placement capacity under Listing Rule 7.1 (or if applicable 7.1A), the shortfall allocation policy must provide that in the first instance the shortfall will be offered to all holders who participated in the offer and indicated that they wished to apply for more than their entitlement. The offer of the shortfall must be made to them on a pro rata basis, based on either: • the size of their existing holdings on the record date for the offer or an earlier date selected by the entity; or • the number of securities they have applied for in excess of their entitlement under the offer.
SPPs scale-back arrangements – Exception to Listing Rules 7.1, 7.1A and 10.11	For an issue of securities under an SPP to not count towards its placement capacity under Listing Rule 7.1 (and if applicable 7.1A) or to require security holder approval under Listing Rule 10.11, the offer document for the SPP must disclose any scale-back arrangements, and those scale-back arrangements must be applied on a pro rata basis to all holders who participated in the SPP, based either on: • the size of their security holdings on the record date for the SPP offer or an earlier date selected by the entity; or • the number of securities they have applied for under the SPP. The scale-back arrangements may include measures to address security holders who have acquired nominal holdings so as to receive an offer, or split their existing holdings so as to receive multiple offers under the SPP.
Issue of securities on conversion of convertible securities	The exceptions in Listing Rule 7.2 (exception 9) and 10.12 (exception 7) will only apply where the entity has not altered the terms of the convertible securities in any material respect since they were issued unless it did so with the approval of ordinary security holders. This effectively requires the conversion of convertible securities to take place in accordance with their original terms, unless any material changes have been approved by security holders.

ASX Public Consultation - Potential listing rule changes

Security issuances – cont'd

Issue of securities made in accordance with agreements to issue	The exceptions in Listing Rules 7.2 (exceptions 16 and 17) and 10.12 (exceptions 10 and 11) will only apply where the entity has not altered the terms of the agreement in any material respect since it was entered into unless it did so with the approval of ordinary security holders. This effectively requires the issue of securities under the agreement to take place in accordance with the original terms of the agreement, unless any material changes have been approved by security holders.

Financial reporting

Quarterly cash flow reporting	A new rule 19.11 providing that: Where an entity is required to give a quarterly cash flow report under Listing Rules 4.7B or 5.5, the following rules will apply: • if the entity controls a child entity or is the holding company of another entity, the report must be a consolidated statement of cash flows • the report must be prepared to Australian accounting standards or, if a foreign entity and ASX agrees, other accounting standards acceptable to ASX (for example, the use of International Financial Reporting Standards) • the report must include a statement by the entity's board, audit committee, CEO, CFO or another authorized officer that it has been prepared to the standards referred to in this rule and gives a true and fair view of the matters disclosed
Accounts given to ASX	If a Listing Rule requires an entity to give ASX accounts, unless ASX agrees otherwise, a listed entity's accounts must be Tier 1 general purpose financial statements or, if a foreign entity and ASX agrees, the equivalent under those other accounting standards. This applies even where the applicable accounting standards permit the entity to prepare special purpose financial statements.
Non-compliant documents – suspension of securities	A new rule 17.5A providing that: If an entity is required to give ASX accounts under rule 4.2A, 4.3A, 4.4A or 4.5 or a quarterly cash flow report under rule 4.7B or 5.5, and that document is not compliant: • the entity must tell ASX, at the time it gives the accounts or report to ASX, that the accounts are, or the report is, not compliant; and • ASX will suspend the entity's securities from quotation on or as son as practical after the date on which ASX is told or ASX otherwise determines that the accounts are, or the report is, not compliant. ASX will not waive this rule.
Compliant definition	A new definition of compliant in rule 19.12 • accounts are regarded as "compliant" if they meet the requirements of rule 19.11A and they are not subject to a disclaimer of opinion or adverse opinion by the auditor who audited or reviewed them • a quarterly cash flow report under rule 4.7B or 5.5 is regarded as "compliant" if it meets the requirements of rule 19.11.

ASX Public Consultation - Potential listing rule changes

Miscellaneous

Termination benefits on a change of control	Subject to the receipt of security holder approval, an officer of a listed entity or any of its child entities will be entitled to termination benefits (or any increase in them) if a change occurs in the securityholding or control of the entity or child entity.
Constitution – inclusion of enforceable provisions	An entity's constitution will only be able to include provisions in its constitution limiting the number of securities in the entity a person may own or control (takeover provisions) or requiring a person to disclose to the entity the number of securities in the entity they own or control (substantial holder notification) where: • the provisions are required to be included by law; • the provisions are required so the entity does not suffer a material adverse consequence under any law; or • the entity is established in a jurisdiction that does not have any laws equivalent to Chapters 6 or 6C of the Corporations Act
Voting	Voting exclusions: Amendments with respect to resolutions under Listing Rules, 6.23.4 (options), 7.2 exception 9 and 10.12 exception 7 (change to the terms of convertible securities), 7.2 exceptions 16 and 17, and 10.12 exceptions 10 and 11 (changes to the terms of an agreement to issue securities), 10.3(e) (changes to the terms of an agreement to acquire/dispose of a substantial asset from/to a 10.1 party) and 10.18 (termination benefits).
Documents for release to the market	If an entity amends (or replaces) its constitution or any other document setting out the terms of issue of its securities, it must give a copy to ASX immediately after the amendment is made. ASX may also request a consolidated copy incorporating all previous amendments is given to ASX.
Granting waivers	An amendment to rule 18.1 to make it clear that: • ASX has an absolute discretion in deciding whether to grant or refuse a waiver and its decision in that regard is final, and • ASX may refuse a waiver without giving any reasons to the entity and without being obliged top afford the entity the opportunity to make further submissions on why it should be granted a waiver. These proposed changes are to reflect that "the rules are the rules" and a listed entity should have no right or expectation to be granted a waiver.

ASX Public Consultations

Enhancing the ASX Investment Product Offering

On 26 April 2022, ASX Limited ("ASX") released a consultation paper entitled *Enhancing the ASX Investment Product Offering*.

The consultation paper is phase one of a two-stage consultation process intended to ensure that ASX's investment product offering is supported by a clear and consistent rule framework that safeguards the interests of investors, while at the same time providing issuers with the flexibility to innovate and bring new products to market, and without imposing undue compliance costs or burdens.

ASX's investment product offering currently comprises the following product sets regulated by three different rule books:

- exchange traded funds (ETFs), managed funds and structured products quoted on ASX under schedule 10A of the ASX Operating Rules
- listed investment companies (LICs), listed investment trusts (LITs), real estate investment trusts (REITs) and infrastructure funds listed and quoted on ASX under the ASX Listing Rules, and
- warrants quoted on ASX under schedule 10 of the ASX Operating Rules.

ASX can see merit in bringing these different rules into closer alignment for the benefit of both investors and issuers.

After considering the submissions it receives on the policy issues raised in the phase one consultation paper, ASX will proceed to draft proposed changes to its rules, procedures and guidance for investment products.

Phase two of the consultation will then seek feedback on the specific changes proposed to ASX's rules, procedures and guidance for investment products. The consultation paper for phase two is likely to issue in early 2023.

Subject to the receipt of the necessary regulatory approvals, it is envisaged that the final changes to ASX's rules, procedures and guidance for investment products will be released in mid-late 2023, with a view to them coming into effect no earlier than 1 January 2024.

Submissions on the phase one consultation paper are now closed.

ASX Public Consultations

Corporate Collective Investment Vehicles (CCIVs)

On 1 February 2022, ASX Limited ("ASX") released a consultation paper entitled *Proposed ASX rule amendments to facilitate the listing of CCIVs and certain other collective investment vehicles on the ASX market and the quotation of their products on the ASX AQUA market*.

A CCIV is a new type of funds management vehicle to be introduced by the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 that will operate via one or more sub-funds. The target date for the implementation of that Bill is currently 1 July 2022. ASX wants to be able to offer CCIV sub-funds access to the distribution available on the ASX and AQUA market platforms and to offer investors access via the ASX and AQUA markets to the investment opportunities that CCIV sub-funds will provide. To do this requires changes to the ASX Listing Rules and the ASX Operating Rules.

The consultation paper seeks feedback on changes ASX is proposing to:

- the ASX Listing Rules to facilitate the listing on the ASX market of:
  - CCIV sub-funds
  - notified foreign passport funds ("NFPFs") and
  - NZ registered managed investment schemes making a recognised offer of securities under Chapter 8 of the Corporations Act ("recognised NZ schemes"), and
- the ASX Operating Rules to facilitate the admission of products issued by the entities listed above to trading status on the ASX Quoted Assets ("AQUA") market or for settlement through the ASX Managed Funds Settlement Service ("mFund").

Submission on the consultation paper are now closed. ASX will consider all submissions it receives in response to this consultation before finalising the proposed rule amendments.

Subject to the receipt of the necessary regulatory approvals, ASX is aiming to have the amended rules in force on, or as soon as practicable after, 1 July 2022, the Government's target date for the introduction of its CCIV legislation.

6. About Hamilton Locke

About Hamilton Locke

As Australia's fastest growing law firm, Hamilton Locke is a law firm with a difference. We are focused on transforming the traditional approach to corporate and commercial legal counsel. We react quickly to change while continuously driving maximum value for clients, and we hire and develop the best talent from across the globe. By making use of modern systems and technology, our team is freed up from bureaucracy and administration to really focus on doing what they do best – solving complex client problems.

With our main offices in Sydney, Melbourne, Brisbane and Perth, our clients are located across Australia and internationally. We are able to look after our clients, no matter where they are located, in an efficient and seamless manner.

We are also consistently recognised by clients and leading legal research publications for our legal expertise and service. We have been recognised as one of Australia's top 40 law firms by the *Australian Financial Review*. We have also received over 80 awards and recognitions, including *MergerMarket, Doyle's, Australasian Lawyer, Best Lawyers, Chambers and Partners, and Legal 500.*



We are true industry experts focused on solving complex client problems. We create an environment that attracts and retains the best legal experts who work smart and have interests aligned with clients.



We have invested in state-of-the art systems, including automation, process mapping and outsourcing to deliver the most efficient and effective service and create products tailored to the unique needs of our clients.



We develop the best pricing approaches with our clients to strike the right balance of fairness, certainty and risk-sharing.



We invest time at our cost to understand our clients' objectives, risk appetites and operating styles.

Areas of expertise

Our expertise spans the corporate and commercial legal sphere and for each representation we build a team to best to serve the needs of our client. Our areas of expertise include:

- Corporate, M&A and Private Equity
- Capital Markets
- Funds and Financial Services
- Real Estate and Projects
- Litigation and Dispute Resolution
- Restructuring and Insolvency
- Banking and Finance
- Intellectual Property and Technology
- Workplace and Employment

We also have experience in a broad spectrum of industry sectors including agribusiness, financial services, new energy, carbon, real estate, natural resources, technology, and health, care and education.



Best Lawyers rated for Corporate, Distressed Investing and Debt Trading Practice, Private Equity, Venture Capital, Banking and Finance, Occupational Health and Safety and Commercial, Information Technology



Chambers and Partners rated for Private Equity, Investment Funds, Restructuring and Insolvency

Our senior team



Nick Humphrey
Managing Partner



Hal Lloyd
Deputy Managing Partner



Brett Heading
Chairman of Partners



Gordon McCann
Partner, Corporate



Brent Delaney
Partner, Corporate



Zina Edwards
Partner, Head of Finance



Patricia Paton
Partner, Corporate



Brad Allen
Partner, Finance



John Frangi
Partner, Property



Brendan Ivers
Partner, Funds Management



Marcus Cutchey
Partner, Property



Nicholas Edwards
Partner, Restructuring and Insolvency



Brit Ibanez
Partner, Litigation and Dispute Resolution - Practice Lead



James Delesclefs
Partner, Corporate



Cristín McCoy
Partner, Corporate



Eric Braun
Partner, Litigation



Veno Panicker
Partner, Construction and Infrastructure



James Simpson
Partner, Workplace and Employment



Guy Sanderson
Partner, Capital Markets



Matt Baumgurtel
Partner, Renewable Energy



Sarah Gilkes
Partner, Intellectual Property



Alex Ninis
Partner, Intellectual Property



Adam Jeffrey
Partner, Banking and Finance



Peter Williams
Partner, Corporate



Mark Schneider
Partner, Insolvency and Litigation



Benny Sham
Partner, Corporate



Jo Ruitenberg
Partner, Corporate



Lauren Cloete
Partner, Finance



Tricia Moloney
Partner, Finance



Grant Parker
Partner, Construction



Shaun Hardcastle
Partner, Corporate



Deanna Carpenter
Partner, Corporate



Michael Boyce
Partner, Corporate



Jeremy Newman
Partner , Corporate



Erik Setio
Partner, Funds and Financial Services



Trent Thorne
Partner, Litigation and Dispute Resolution



Chris Hood
Partner, Litigation



Margot King
Partner, Property



Michael Lishman
Partner, Corporate

Awards and recognition

Australasian Lawyer

Fast Firms Report 2021

Employer of Choice 2020 - 2021

Innovative Firms 2019 - 2020

Best Lawyers

Best Lawyers (Australia / Global Edition) Ranked for:

Agriculture and Rural Affairs
Alternative Dispute Resolution
Banking and Finance Law
Corporate Law
Distressed Investing & Debt Trading Practice
Equity Capital Markets Law
Insolvency and Reorganization Law
Information Technology
Mergers and Acquisitions Law
Mining Law
Natural Resources Law
Occupational Health and Safety Law
Private Equity Law
Structured Finance Law
Venture Capital Law

2020 -2023

Lawyers Weekly Partner of the Year Awards

Winner – Innovator of the Year
NICK HUMPHREY | 2020
Finalist – Construction and Infrastructure
VENO PANICKER | 2018-2019

Australasian Law Awards

Excellence Award

Employee Health and Wellbeing 2021

Law Firm of the Year (1-100 lawyers) 2020

DOYLES

DOYLES

Leading Corporate Lawyer
BRETT HEADING | 2022

Recommended Leading Business and Commercial Lawyer
BRETT HEADING | 2022

Preeminent Leading Business and Commercial Lawyer
HAL LLOYD | 2021

Leading Business and Commercial Lawyer
NICK HUMPHREY|2021

Recommended Leading Corporate Lawyer
PETE WILLIAMS | 2022
NICK HUMPHREY and HAL LLOYD | 2020 – 2021

Recommended Leading Energy and Resources Lawyer
MATT BAUMGURTEL|2021

Recommended Leading Corporate Law Firm | 2019 - 2021

Recognised Corporate & Commercial Law Rising Star
GRACE KAGGELIS | 2022

FT Innovative Lawyers 2021 Asia-Pacific Shortlisted

Financial Times Innovative Lawyers Asia-Pacific Awards

Finalist, Law Firm Leader 2021
NICK HUMPHREY

Finalist – Law firm: Strategy 2020

The Legal 500

Legal 500 Asia Pacific

Ranked (Tier 6) Corporate and M&A 2022

Ranked (Tier 5) Restructuring and Insolvency 2021 - 2022

Firm to Watch Banking and Finance 2022

Ranked Partner Corporate and M&A
NICK HUMPHREY 2014 - 2017

Chambers and Partners

Global Guide
Ranked Practice (Band 6)
Corporate M&A | 2022

Asia Pacific Guide
Ranked Practice (Band 5)
Corporate M&A | 2022

Ranked Practice (Band 6, 5)
Restructuring and Insolvency | 2021 - 20222

Investment Funds (Band 2)
BRENDAN IVERS |2014 – 2022

Restructuring and Insolvency (Band 4)
ZINA EDWARDS | 2022
NICHOLAS EDWARDS | 2022

Private Equity (Band 4)
NICK HUMPHREY |2012 – 2021

ACQ Law Awards

M&A Law Firm of the Year and M&A Lawyer of the Year
NICK HUMPHREY

2019

ACQ Global Awards

M&A Law Firm of the Year, Private Equity Law Firm of the Year and M&A Lawyer of the Year
NICK HUMPHREY

2016 – 2019

Australasian Lawyer Rising Stars

Recognised Lawyer
MONTY LOUGHLIN

2021

Lawyers Weekly Australian Law Awards

Finalist - Employee Program of the Year | 2019
Finalist - Wellness Initiative of the Year | 2019

Mergermarket M&A Awards

Mergermarket Australian M&A Awards
Winner - Boutique Legal Adviser of the Year | 2019

Finalist - Business Services M&A Legal Adviser of the Year | 2019

Financial Review

AFR Law Partnership Survey

Top 50 Australian Law Firm 2021

Australasian Law Awards

Australasian Law Awards

Law Firm Leader of the Year (≤200 lawyers)
NICK HUMPHREY

2020 -2021

IFLR1000

IFLR1000 Guide to the world's leading financial and corporate law firms

Ranked (Tier 4) 2021 – Private Equity

Leading individual 2008 to 2016 – NICK HUMPHREY

Awards Programs



The Australian Growth Company Awards were launched in 2012 by Hamilton Locke's managing partner Nick Humphrey to celebrate excellence in the mid-market. The awards recognise companies that demonstrate high rates of growth, as well as innovation, integrity, contribution to community and sustainable growth.

The awards are proudly co-sponsored by Hamilton Locke, Moelis Australia, Grant Thornton, Ansarada, Source, 2020 Exchange and Willis Towers Watson, as well as media partner, MergerMarket.

Nominations open in July each year for eligible Australian companies. Participating in the awards gives you and your company the opportunity to:

- Gain industry recognition for high growth rates, innovation, integrity, contribution to the community and sustainable growth
- Raise your business profile through positive media exposure and publicity
- Network with the leaders of the award partner sponsors
- Attract interest from potential investors and business partners

Visit our website for more information:
hamiltonlocke.com.au/agca



The Technology Scale-up Awards celebrate disruptive Australian technology businesses that demonstrate high rates of growth and industry-leading innovations, while making a significant impact in their industry sectors.

The awards are proudly co-sponsored by Hamilton Locke, Moelis Australia, Grant Thornton, Ansarada, Source and MacMillan Trade Marks.

Nominations open in April each year for eligible Australian companies. Participating in the awards gives you and your company the opportunity to:

- Attract interest from potential investors and business partners
- Become part of the Technology Scale-Up Awards ecosystem, including access to exclusive industry events throughout the year
- Gain industry recognition for high growth rates, innovation, integrity, contribution to the community and sustainable growth
- Raise your business profile through positive media exposure and publicity

Visit our website for more information:
hamiltonlocke.com.au/technology-scaleup-awards

Hamilton Locke

Powerful Together.

SOURCE

Hamilton Locke and **Source** come together to provide the most practical and effective combination of professional services in the market, no matter your business size or need.

Highly regarded for their commercially-minded approach, **Source** provides a different approach to essential day-to-day professional services. The team can provide a whole team, or supplement your current team with additional legal, HR, governance, IP and compliance specialists. Source adds specialist expertise to our depth and breadth of experience at **Hamilton Locke**.

The result is a team and business model unlike any other.

We know our clients need flexibility, the highest quality service and an unmatched depth of experience to do their best work, and we don't want to just deliver – we want to deliver differently.

Thank you.

SYDNEY
Australia Square
Level 42, 264 George Street
Sydney NSW 2000

BRISBANE
Riverside Centre
Level 28, 123 Eagle Street
Brisbane QLD 4000

MELBOURNE
Level 13, 461 Bourke Street
Melbourne VIC 3000

PERTH
Central Park
Level 27, 152-158 St Georges Terrace
Perth WA 6000

hamiltonlocke.com.au

Disclaimer: this capability statement is confidential. The transactions and rewards referred to herein may have been completed at a previous firm.
Hamilton Locke is an incorporated legal practice, and not a partnership. References to 'partners' of Hamilton Locke are references to title only.
Hamilton Locke Pty Ltd (ACN 621 047 247)

Hamilton Locke is an incorporated legal practice (which is a corporation for the purposes of the Corporations Act 2001), and not a partnership. The use of the title 'Partner' by a lawyer of Hamilton Locke is used to denote seniority, and does not and is not intended to signify that Hamilton Locke is a partnership.

Hamilton Locke