



INSIGHTS



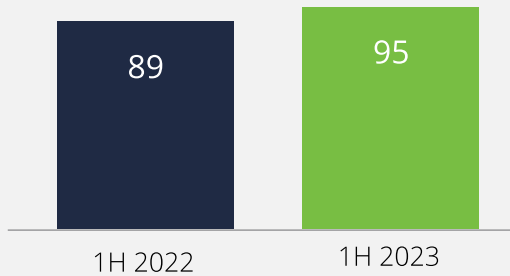
D&O NOTEBOOK | JULY 25, 2023

2023 Mid-Year D&O Databox™ Report

Securities class action activity in 2023 reflects the environment the business community is experiencing: Economic activity has slowed as companies deal with the high costs of doing business. In the first half of 2023, the composition of companies being sued has changed, but settlement activity and dollars remain high. Here are our insights for 1H 2023, as compared to 2022 and previous years.

Securities Class Action Filing Activity: Slightly Ahead of Last Year

Filing Activity 1H 2022 vs. 1H 2023
A 7% Increase



Projected Number of Cases for 2023: **190**
A 13% Increase from 2022*

*168 cases filed in 2022

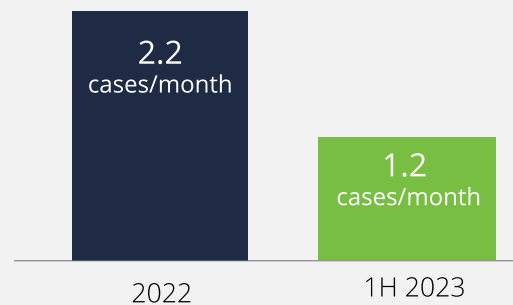
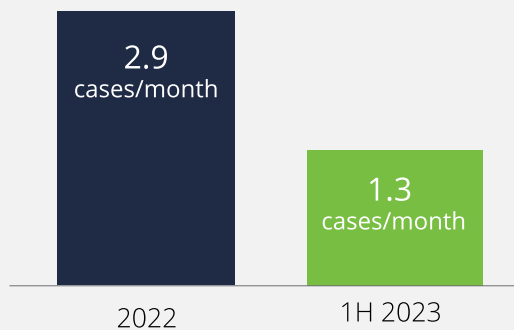
Filing activity in 1H 2023 has been steady and slightly ahead of 1H 2022. Typically, 51% of the annual filings are made in the first half of the year (the past five-year average). We do not expect to see a surge in filing activity in the second half of the year. This means we project that filings in 2023 will not be anywhere near the 10-year peak in 2019 of 268 cases. Filings for all of 2023 could, however, be as much as 13% higher compared to 2022. Our projected 190 cases filed in 2023 would be close to the 10-year average of 193 cases filed per year (2013 to 2019).

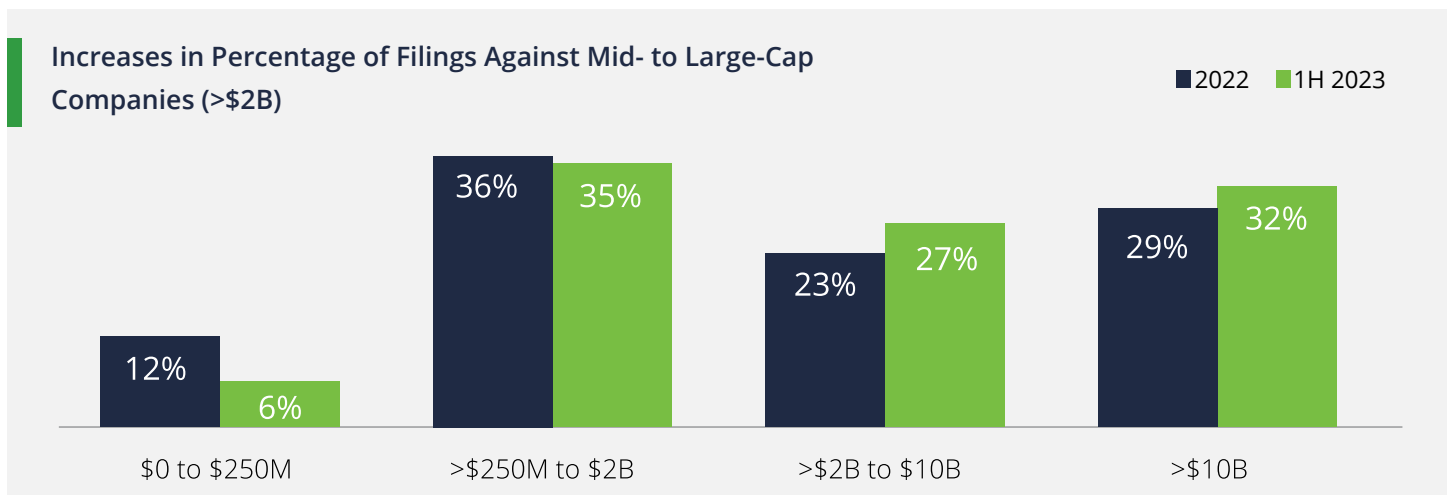
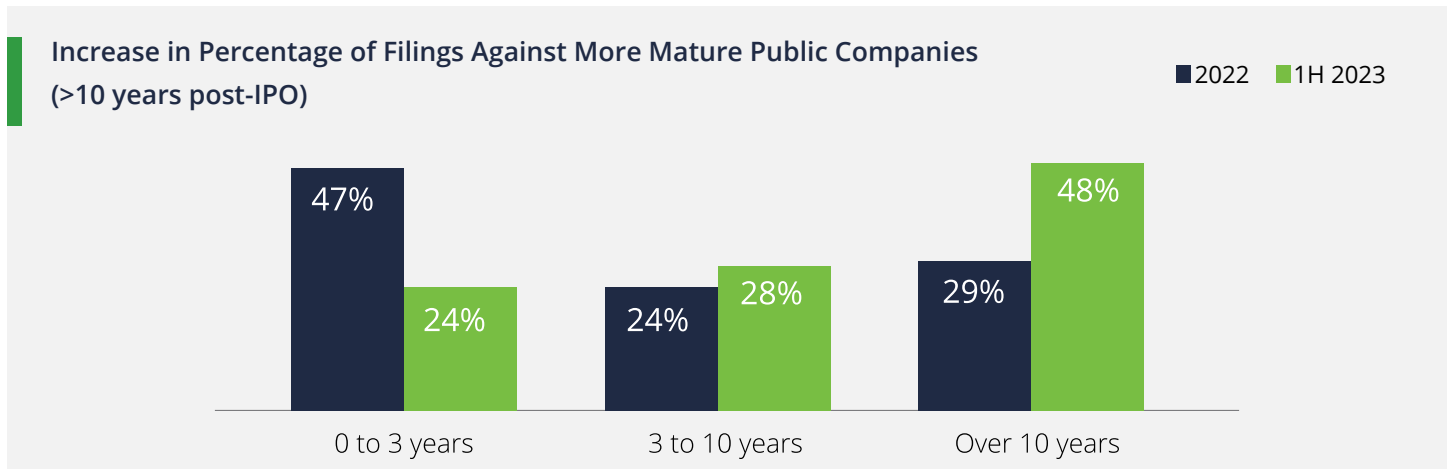
A Few Differences to Note in 1H 2023 Filing Activity versus 2022

Decrease in Rate of Filings Against Newer Public Companies

IPO Cases: 8 in 1H 2023

De-SPAC Cases: 7 in 1H 2023





These movements are not surprising. In our [Databox™ 2022 Year-End Report](#), we forecasted such decreases due to the significant slowdown in IPO, SPAC IPO, and de-SPAC activity in 2022.

The increase in filings against larger, more established companies inevitably means that we are seeing filings against high-profile, large-cap companies such as:



Turning to the industry breakdown, we have seen a marked increase in filings against financial institutions. The bump in suits against financial institutions reflects the impact of the current inflationary economic environment, in which five of the companies sued were dealing with the fallout from rising interest rates and the post-pandemic economy. Below is a review of filings by industry.

Technology Companies Lead in Filings

Industry	2018 to 2022 (5-yr Average)	1H 2023	Percentage Point Difference
Technology	31%	30%	-1%
Financial	10%	17%	+7%
Manufacturing	13%	17%	+4%
Biotechnology	19%	13%	-6%
Services	11%	10%	-1%
Trade/Retail	8%	7%	-1%
All Other*	8%	5%	-3%

*Basic materials, construction, energy, transportation, and utilities

The drop in biotechnology companies being sued could be attributed to less successful outcomes by the plaintiffs' bar. For example, in cases involving developmental or post-development companies, between 52% to 57% of motions to dismiss that were being adjudicated in 2022 were granted, according to the [2022 Dechert Life Sciences Survey](#).

Additional Notes about Filing Activity:

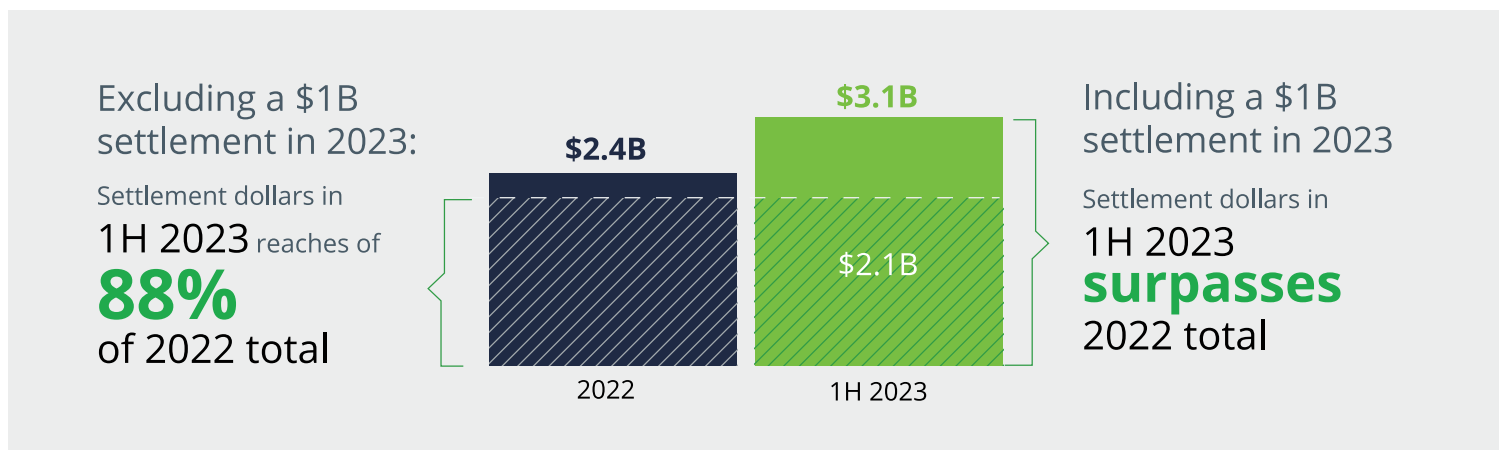
- Cases involving COVID-19 continue to be filed in 2023:
 - 6 cases filed (1 case/month in 1H 2023 versus 1.8 cases/month in 2022)
- Cases filed against foreign-domiciled companies are slightly up in 2023:
 - 24% of 1H 2023 filings as compared to 21% in 2022

Foreign Locations

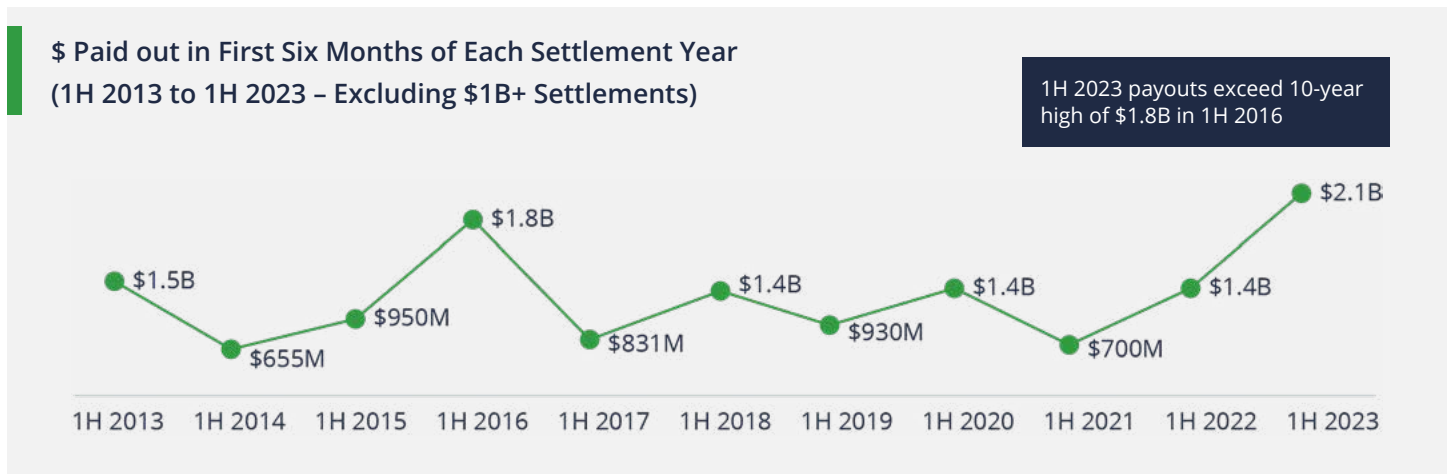
- Brazil
- Canada
- China
- France
- Germany
- Israel
- Japan
- Philippines
- Switzerland
- United Kingdom
- Uruguay

Securities Class Action Settlement Activity: Settlement Dollars Rise

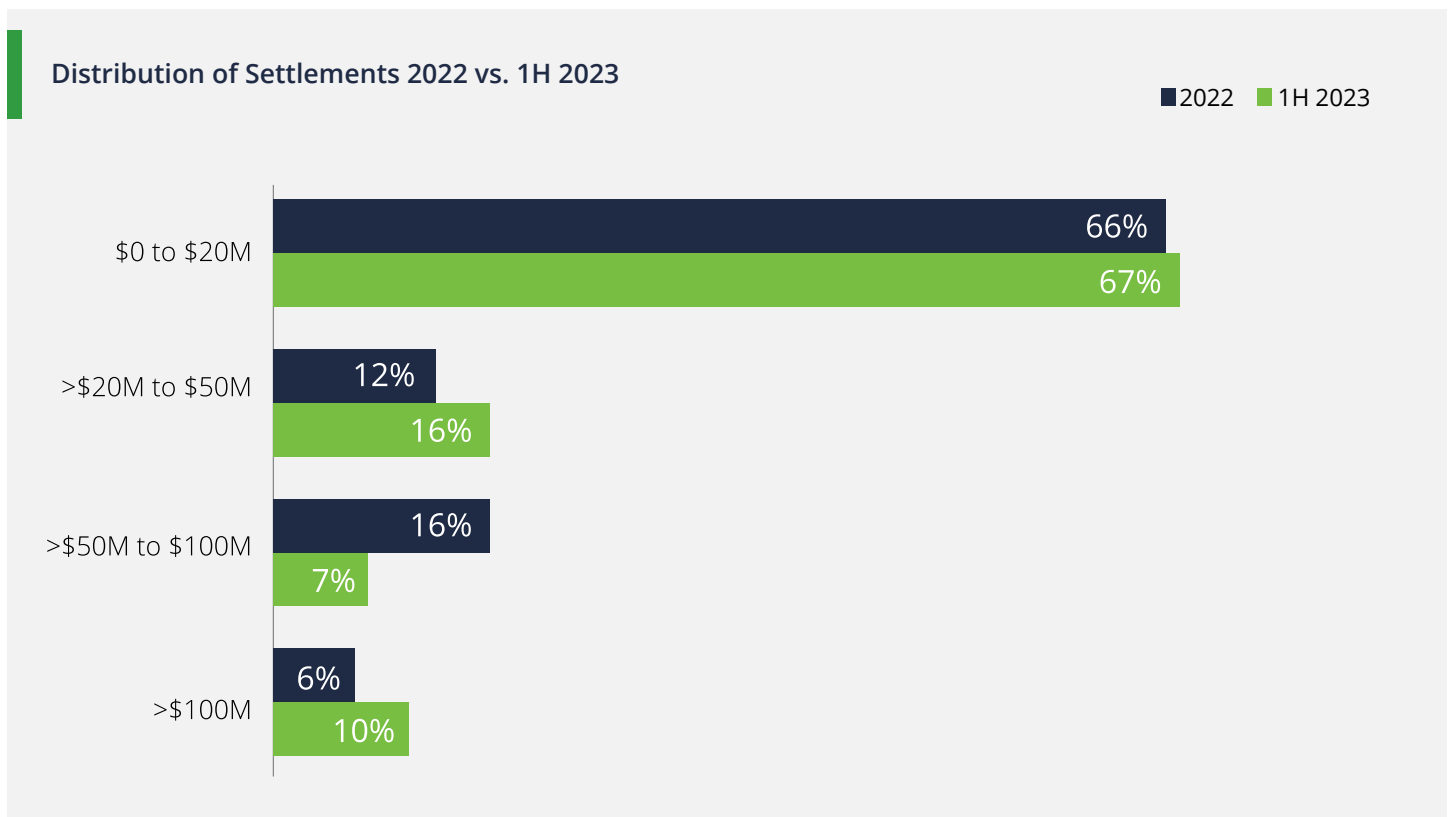
At the halfway point of the year, total settlement dollars are up significantly:



This is an unprecedented amount paid out in the first half of the year as compared to a review of dollars paid out in the first six months of each year over the past decade, as illustrated in the following table:

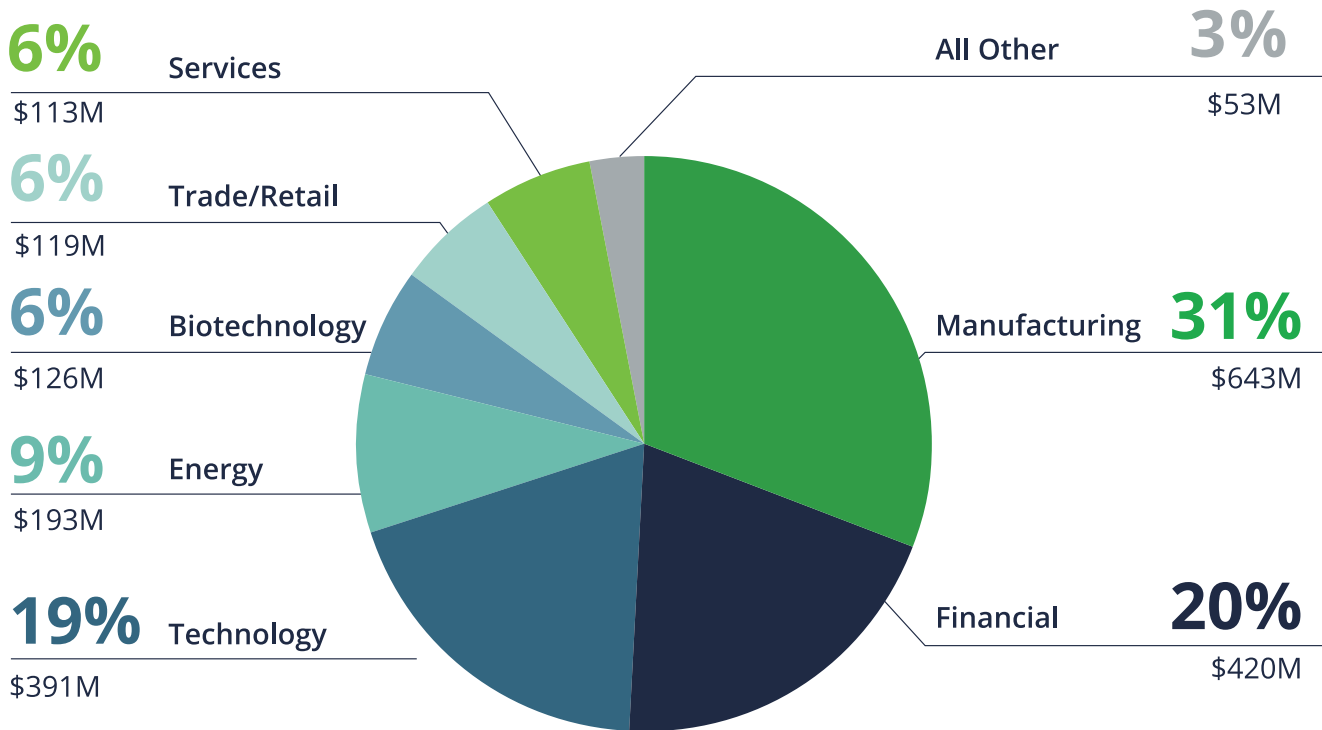


One-third of the settlements in 1H 2023 are over \$20 million, which is tracking closely with 2022 settlements. Currently, there are fewer settlements in the >\$50 million to \$100 million range, but as the table indicates below, half of the drop in that range shifted into the >\$100 million and over settlements.



The industry breakdown is as follows (excluding the \$1 billion settlement):

% of Settlement \$ by Industry (1H 2023) – Excluding \$1B+



The current average, median, and 75th percentile in 2023, which are exceeding the 10-year average, are shown in the table below.

Settlement Numbers in 1H 2023 Already Exceed 10-Year Results

	10 Years* (2013–2022)	2022	1H 2023*
Settlement \$	\$23B	\$2.4B	\$2.1B
Average	\$29M	\$26M	\$36M
Median	\$9M	\$13M	\$12M
75 th Percentile	\$24M	\$24M	\$30M

*Excluding settlements \$1B and higher

Below are the top 10 settlements of 1H 2023. Excluding the \$1 billion settlement by Wells Fargo & Company, the remaining nine settlements comprised 67% of total settlement dollars (\$1.4 billion).

Top 10 Settlements in 1H 2023: Average Time to Settlement Is 4.1 Years

Entity	Suit Year	Industry	Amount	Case Notes
Wells Fargo & Company	2020	Finance	\$1B	Failure to satisfy the terms of Consent Orders entered into in 2018 due to a series of scandals plaguing the bank since 2016 in which they were to establish safeguards necessary to protect consumers
The Kraft Heinz Co.	2019	Manufacturing	\$450M	Post-acquisition accounting issues that led to a restatement of financials and a \$15.4B write-down of certain company trademarks
Wells Fargo & Company	2018	Financial	\$300M	Forced sales of over 800,000 auto insurance policies to consumers who financed their car loans through Wells Fargo
Exelon Corporation	2019	Energy	\$173M	Bribery scheme involving its lobbying practices in Illinois to obtain support for utility rate increases
Cardinal Health, Inc.	2019	Trade/Retail	\$109M	Post-merger integration issues pertaining to inventory controls about unsellable or expired medical devices that led to a \$1.4B goodwill impairment charge, weaker quarterly earnings, and a reduction in 2018 guidance
Micro Focus International plc (State – CA)	2018	Technology	\$107.5M	Section 11 M&A claim—misrepresentation of potential revenue growth regarding the acquisition of HP Enterprise assets for \$8.8B
Zuora, Inc.	2019	Technology	\$75.5M	New product rollout and integration issues
Arconic, Inc.	2017	Manufacturing	\$74M	Safety issues with its cladding product for high-rises, which contributed to the catastrophic fire of the Grenfell Tower in London in which 80 lives were lost
Nutanix, Inc.	2019 & 2020	Technology	\$71M	Misrepresentation of revenue growth while the company overspent on expansion plans and provided guidance that it fell far short of
Mohawk Industries, Inc.	2020	Manufacturing	\$60M	Misrepresentation of revenue growth and allegations of “channel stuffing”

With settlements in the first half of 2023 surpassing dismissals (58 settlements versus 38 dismissals) and over 450 open cases yet to be resolved, this year will be another high-dollar year for settlements.

D&O Insurance

As has been widely reported, including by Woodruff Sawyer in our [2022 Databox Year-End Report](#), the market for D&O insurance is softening rapidly. This does reflect the lower rate of litigation. One wonders, however, where the floor for these rate decreases will be, given the very large settlements that insurance carriers are now paying. We look forward to sharing our views on how the market is developing in the September release of our annual *D&O Looking Ahead Guide*. Of particular interest will be the results of our annual Underwriters Weigh-In™ Survey.

In addition, check out the D&O Notebook blog, "[Public D&O Insurance Pricing Trends: What Happened in 2022. Why, and Implications for 2023](#)" which features great D&O insurance pricing data as well as information about the dynamics driving the market.

Stay Informed

Shareholder class action trends, SEC enforcement actions, corporate governance, and the issues impacting the personal liability of your directors and officers. Priya Huskins addresses it all in the D&O Notebook.



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Additional Resources



D&O Notebook

D&O Insurance, Corporate Governance, IPOs, Board Issues



D&O Looking Ahead 2023

(2024 Guide Coming in September)



Guide to D&O Insurance for IPOs and Direct Listings



SPAC Notebook

IPOs, Transactional Insurance, SPACs, de-SPACs, Mergers & Acquisitions



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