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2018 AUSTRALIAN IPO REVIEW: SOME KEY IPO THEMES

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Legal Briefings – By **Philippa Stone**

Reflections on 2018

The 2018 IPO pipeline looked promising, but volatile markets and a complicated regulatory and political backdrop saw a number of highly anticipated listings postponed, including Latitude Financial Services and Prospa Group. Other IPO prospects such as Colonial First State Global Asset Management and PEXA were instead agreed to be sold via trade sale.

On the upside, successful listings of larger mining companies – including the second largest float of 2018, coal miner Coronado Global Resources, manganese miner Jupiter Mines and nickel miner Nickel Mines – suggests that issuers see Australian investors as receptive to new large resources stocks once more.

A number of the prominent listings were of companies incorporated outside Australia and/or with significant offshore operations, including Coronado Global Resources, Marley Spoon and Pivotal Systems, showing that ASX is continuing to attract a diversity of foreign issuers, with over 140 foreign incorporated entities now listed on ASX. See 2018 Australian IPO Review: IPOs by the numbers for further details of the geographic spread in 2018.

Public M&A leaves the field open

2018 saw the acquisition and delisting of a number of large ASX listed entities including Westfield, Investa Office Fund, Sirtex Medical, Aconex, Mantra Group and APN Outdoor Group.

By some accounts, this has the market hoping for prominent new listings to fill the gap in the diminished top end of the market.

Regulatory focus on capital raising practises

Capital raising practises were under scrutiny in 2018 with ASIC's new guidance on sell-side research coming into effect and ASIC releasing the results of its survey on allocation practices.

ASIC's Regulatory Guide 264 on sell-side research came into force on 1 July 2018 following a six month transition period, requiring investment banking staff and research divisions to implement new rules of engagement. We observed that, as with anything new, practical application of new procedures raised some challenges, but that overall investment banking and research divisions had spent a lot of time preparing for the guidance to come into effect and had house views (although not necessarily all the same) on how to best approach it.

In December 2018 ASIC released the results of its survey of allocation practices in equity raising transactions and also made comments on them to the Australian Financial Review. ASIC's message was in substance that issuers' interests must, and may not always be being, put first. ASIC also made a range of observations about best practice, so it is reasonable to expect that we will be hearing more on this topic in 2019.

Capital raising practises have also been in the spotlight following the ACCC announcing allegations that cartel conduct had taken place following an ANZ institutional share placement in August 2015.

See 2018 Australian IPO Review: regulatory developments for details of the regulatory developments in 2018.

The Banking Royal Commission's impact on financial services issuers

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**) dominated the press in 2018. As it unfolded, prospective and existing issuers in the financial services and FinTech industries looking to raise capital had to grapple with what, if anything, should or could be said about potential implications for the entity, its prospects and the industry. This was a very difficult task against the backdrop of the ongoing hearings.

In ASIC Report 589, which surveyed regulation of corporate finance from January to June 2018, ASIC provided its view that if a financial services entity raised funds through an IPO over the coming period it should give investors candid information about how the business may be affected by the issues being raised in the Banking Royal Commission. Depending on the business model, ASIC considered this could include relevant historical and current interaction with regulators, possible outcomes and specific regulatory risks that the business may encounter, including risks relating to treatment of customers.

The publication of the Banking Royal Commission's report in February 2019 and the swift responses of the Coalition and Labor are useful for issuers as, taken together, they give a measure of clarity as to the range of possible implications for entities operating in the industry, and to the market more broadly.

However, the extent to which the recommendations of the Banking Royal Commission will be acted on by regulators and litigated by class action applicants, as well as the timing for the introduction of flagged legislative changes, remains unknown. This means that determining the appropriate disclosures in this area of intense focus remains challenging for existing and prospective issuers raising capital in 2019.

ASX Listing Rule refresh

In November 2018 ASX released a public consultation paper with a range of proposed changes to the ASX listing rules for existing and prospective issuers with the objective of simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules. Consultation concludes on 1 March 2019 and the changes are anticipated to take effect on 1 July 2019.

The changes cover a wide range of areas and in particular, enhance ASX's powers to monitor and enforce compliance with the listing rules, revise a number of timetables (including changes to shorten and standardise deferred settlement trading periods), streamline the escrow regime, incorporate new requirements aimed at more consistent disclosures for underwriting agreements, expand the 'good fame and character' requirement in the conditions for admission to cover an entity's CEO, proposed CEO, directors and proposed directors, clarify the working capital requirement for assets test listings, update the placement capacity rules and provide new guidance on spin-outs and acquisitions and disposals of substantial assets involving a person in a position of influence, among other new or revised requirements. See 2018 Australian IPO Review: regulatory developments for details of these proposed changes.

2019 launch pad

We can expect another year of volatile markets in 2019, with ongoing trade tensions between the US and China, Brexit, state and federal elections and the fallout of the Banking Royal Commission to name only a few of the events to unfold in the coming months.

The IPO pipeline for 1H 2019 is not currently strong. However 2H 2019 is looking better, and with some macroeconomic commentators saying the market is being too pessimistic about the global picture and strong M&A activity in the last few years resulting in a dwindling number of larger listings on the ASX, the market may become receptive to opportunities to invest in IPOs of established businesses with a sound and sustainable model.

Issuers and lead managers will need to plan to be ready for the limited windows for launches available in 2019 and retain flexibility in deal structures to respond rapidly to market conditions.

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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

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