HERBERT SMITH FREEHILLS

READY FOR LAUNCH

THE 2018 AUSTRALIAN IPO REVIEW

Introduction

It gives us great pleasure to present *Ready for Launch: The 2018 Australian IPO Review.*

In this publication we cover:

- some key IPO themes of 2018;
- IPO activity across the Australian market;
- insights on the choice between an IPO and demerger;
- Australian regulatory developments;
- key US securities developments; and
- predictions for 2019.

We trust you will find value in it.

Should you have any questions in relation to IPOs in Australia, please contact our ECM partners who are listed on page 22.

The Herbert Smith Freehills ECM Team

2018: Some key themes

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 page 7 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 page 11 for details of the regulatory developments in 2018.

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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 page 12 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.

2018: IPOs by the numbers

Lift off?

2018 was a better year for mid to large cap IPOs than 2017, which saw the withdrawal of almost all the high profile IPO candidates for various reasons, but was not as successful as 2016 which benefited from a number of family and private equity backed partial exits. Whilst there were fewer listings than 2017, the IPOs in 2018 raised over $3 billion more in capital than the previous year.

Now in our third year of writing the Australian IPO Review, we have this year included charts to show some of the trends over the last three years. Over this period, IPO windows with appropriate conditions for launch have been tight with a minefield of market moving events that intensified in 2018 with the dawning of the realisation that there could be a no-deal Brexit, increasing trade tensions between the US and China, US mid-term elections, the US-North Korea summit and changing Australian prime ministers. See page 14 for details of the impact of the US political environment on US securities law regulation in 2018.

One trend worth noting is the relative consistency of the amount raised as a proportion of market capitalisation. For the last three years, the average amount raised by floats as a proportion of market capitalisation was in the 35-55% range. This is potentially indicative of the level of comfort that the Australian market has with founders and previous owners exiting their investments on IPO, that is that an escrow period alongside a partial exit is generally required.

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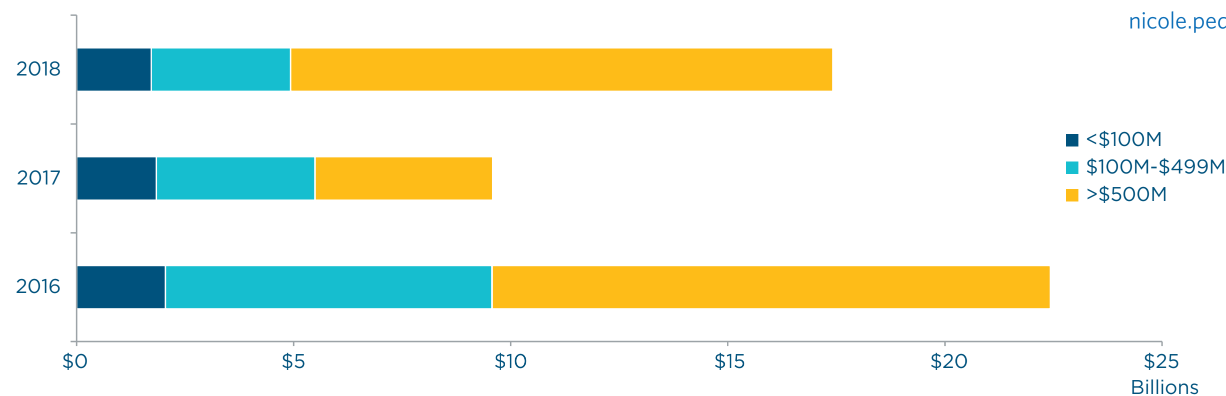
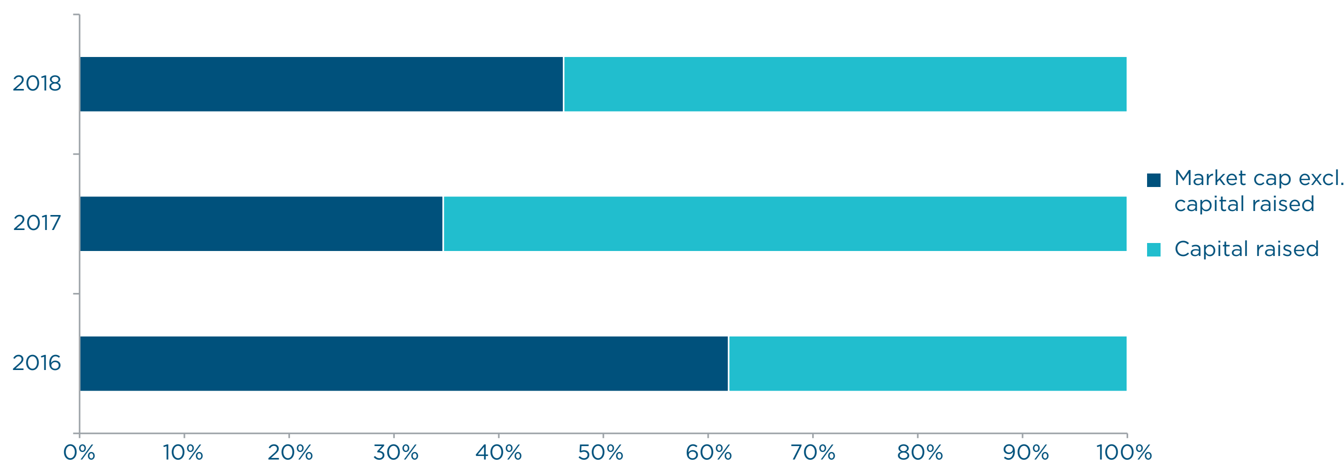
Total market capitalisation on listing (2016-2018)

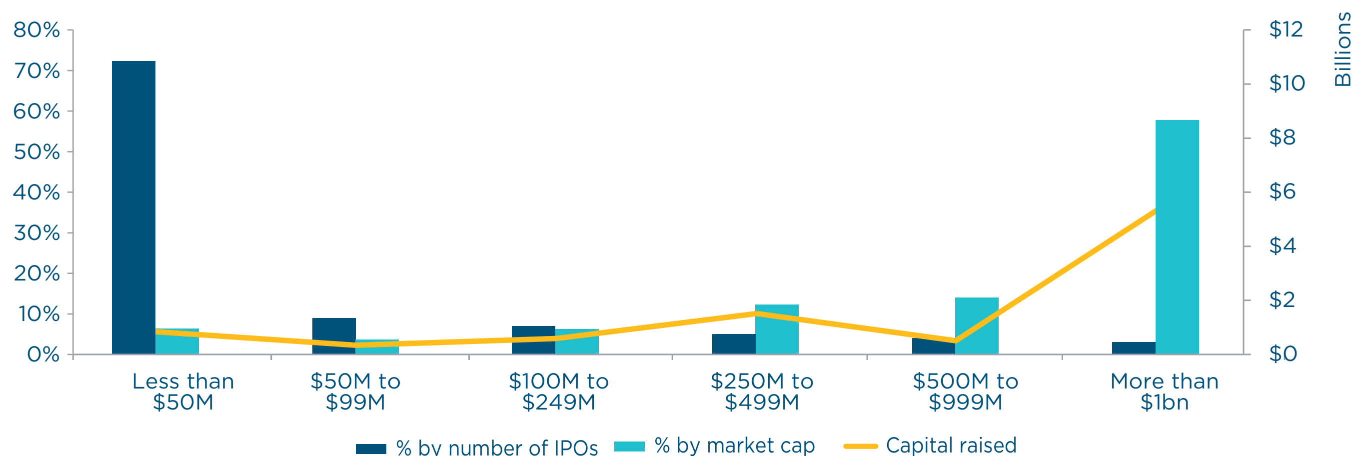


Capital raised as a proportion of market capitalisation (2016 – 2018)



Market capitalisation and capital raised on listing (2018)

In 2018, consistent with trends in previous years, over two thirds of the capital raised by IPOs on the ASX was by the few listings with a market capitalisation of over $500 million, while over two thirds of the listings by number raised less than $50 million per float and less than a tenth of the overall capital raised by IPOs on the ASX in 2018.

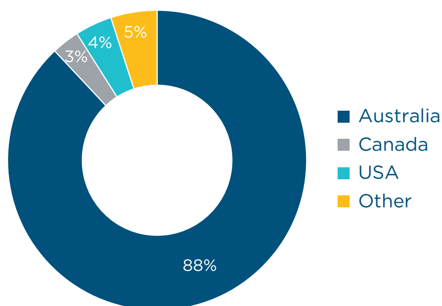


Geographic spread

There was less diversity of countries in which listing issuers were incorporated this year. However, Coronado Global Resources, the second largest IPO of 2018, is a US Delaware company and its choice of listing on the ASX, given that it has US and Australian based mines, is notable. ASX updated its practises for Reg S Category 3 listings in connection with this IPO to allow greater US investor access in the after market.

In addition to Coronado, German company Marley Spoon and Delaware company Pivotal Systems Corporation showed that the ASX is a viable option for substantial foreign incorporated companies.

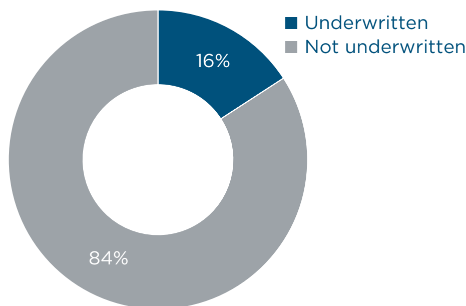
Jurisdiction of issuer incorporation (2018)



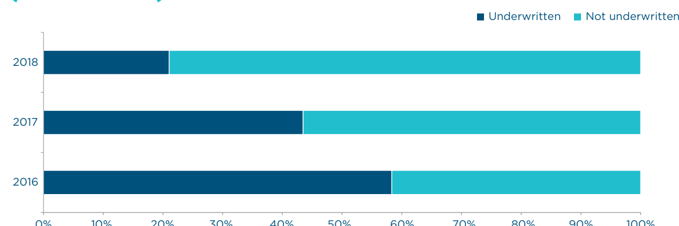
Underwriting

A higher proportion of IPOs were not underwritten in 2018 as compared with previous years. The three year trend shows a reduction in underwriting of IPOs with a market capitalisation of over $100 million.

Number of all IPOs underwritten vs not underwritten (2018)



Number of IPOs underwritten vs not underwritten with a market capitalisation of over $100 million on listing (2016 – 2018)



2018: IPOs by the numbers

Sector spotlights

The prominent floats for 2018 spanned a range of industries from the largest float of the year, downstream petroleum company Viva Energy Group, to large-scale mining companies led by metallurgical coal producer Coronado Global Resources with operations in Australia and the United States, followed by manganese mine part-owner Jupiter Mines and Nickel Mines (as the name suggests) and a mix of known and emerging brands including financial services and advisory group Evans Dixon, semi-prepared meal kits supplier Marley Spoon, gas flow control solutions provider to the semi-conductor industry Pivotal Systems and Redcape Hotel Group.

The Viva Energy float is responsible for the bulk of the energy sector's prominence in this year's data.

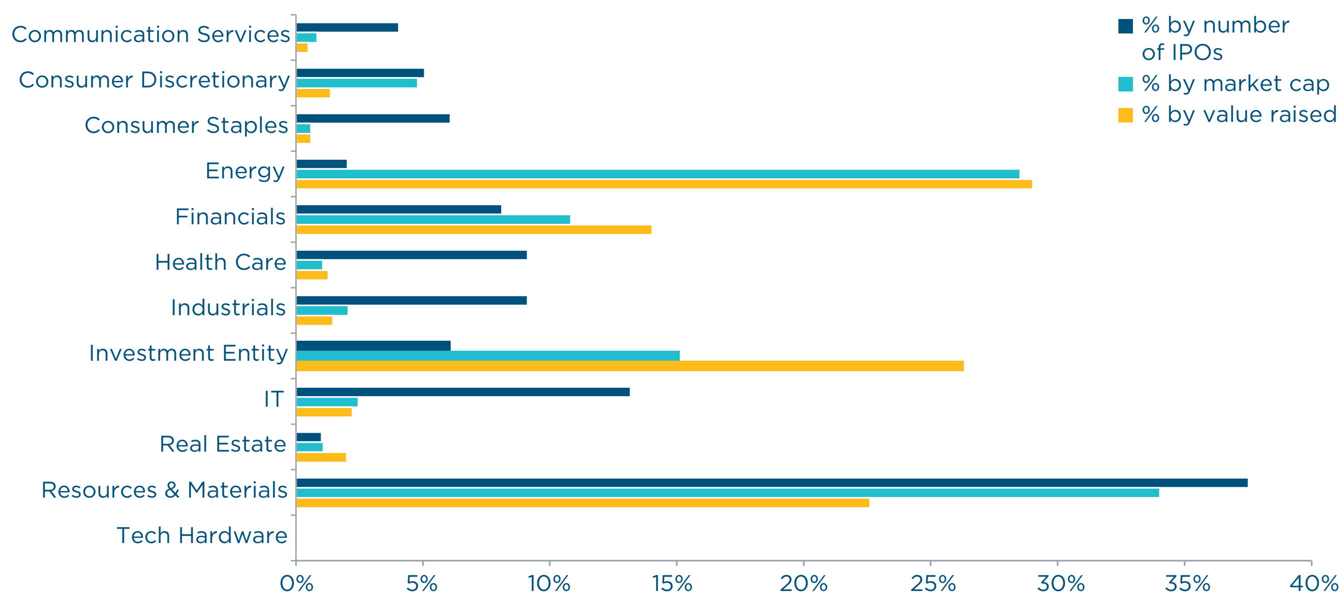
The resurgence in IPOs of prominent mining sector companies marks a return to a traditional strength for the ASX, with the Australian market having a sophisticated understanding of mining investments. Whilst each listing turns on its own facts, a resurgence in stocks that provide the basic materials from which practically everything from infrastructure to consumer goods are built may be indicative of underlying strength in global economic demand that is sometimes masked by headline-grabbing political turbulence.

In 2018 the second most prominent industry sector was small cap IT listings. Following the increase in profits and assets test thresholds for admission to the ASX in 2016, in late 2018 ASX commenced consultation about the introduction of requirements for start-up entities that currently lodge a quarterly cash-flow report to also lodge with ASX a quarterly activities report, similar to the one required by mining, oil and gas exploration entities. ASX's focus on increasing the robustness of the disclosure framework for start-up entities is admirable, and given the popularity of ASX as a home for start-up listings, it is good to see these kinds of measures being taken.

As with previous years, listed investment entities continued to have a number of listings, raising a significant proportion of the overall capital raised by IPO on the ASX in 2018.

Note on methodology: All data in this '2018: IPOs by the numbers' section excludes ASX Foreign Exempt Listings and debt IPOs unless otherwise stated. Market capitalisation is based on the issue price of securities multiplied by the number of quoted securities.

Top industry sectors for IPOs



IPO or demerger?

A divestment of a business division can be structured in a number of ways, including by way of a demerger or initial public offering. There are some key considerations to keep front of mind when deciding on the preferred form of divestment.

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Introduction

A listed company considering divesting a business division has a number of options open to it, including a trade sale, a demerger or an IPO.

A trade sale may not be a viable option for a number of reasons, including if the natural acquirers of the business face competition law or other impediments to undertaking the acquisition, or if the business being divested is too large to be acquired by a single buyer.

A demerger and an IPO both involve separating the divestment business and listing it on the public markets, but there are important differences that need to be considered, that are summarised below.

What is the difference between a demerger and IPO?

A demerger involves the parent company distributing equity in the demerged entity on a pro rata basis to existing shareholders of the parent company and separately listing that entity on the stock exchange. Parent company shareholders essentially receive a direct shareholding in an entity that owns the business in which they previously held an indirect interest.

An IPO involves retail and institutional shareholders acquiring shares in the entity that owns the business being divested, and the listing of that entity on the stock exchange. This can be effected by the parent company selling existing shares in the IPO entity, or the new IPO issuing new shares, or a combination of each.

Key considerations

When deciding between a demerger and an IPO, these are some considerations to keep front of mind:

Does the parent company need to raise cash?

- An IPO can generally be structured so that the parent company receives some or all of the proceeds of the IPO. This may be important, for example, if one of the objectives of the divestment is to reduce the parent company's leverage or to raise cash for the parent to invest in acquisition or development opportunities.
- In a demerger, unless a capital raising is built in to the process, no money is raised. Notwithstanding this, in a demerger, it is possible for some of the parent company's debt to be allocated to the demerging entity (either directly or via the demerging entity raising new debt as part of the demerger and applying the proceeds to acquire assets/entities from the parent company). So the removal of a business that contributes to the parent company's earnings can be coupled with a commensurate reduction in the parent company's debt levels.

Does the parent company want to crystallise the value of the underlying business?

- An IPO involves the parent company selling its underlying business to new investors for cash, and so crystallises the value of the underlying business (subject to any shareholding that is retained by the parent company). In a demerger, shareholders in the parent company retain equity in the underlying business, and there is no sale to external parties.
- A demerger may therefore be preferred if there is a concern that the divestment is occurring at the bottom end of a commodity price cycle for example, or if there is significant upside for the business being divested (especially if that upside is difficult to quantify and "sell" to new investors in the context of an IPO). It avoids the risk of directors of the parent company being criticised later on for selling the relevant business too cheaply.

IPO or demerger?

How will market volatility impact the divestment?

- As recent experience demonstrates, execution of an IPO involves significant exposure to market risk and equity market conditions. Generally the outcome of an IPO (including whether it proceeds and its pricing) is not known until relatively late in the process and volatile markets can cause significant disruption.
- By contrast, because a demerger does not involve raising capital, it can generally be executed even in difficult market conditions, provided those market conditions do not undermine the fundamental viability of the demerged entity. In assessing a demerger, the focus is on whether the demerged entity is better off being separated from the parent company and likely to perform better as an independent company, rather than the absolute trading value of shares in the demerged entity.

Who is best placed to own the underlying business?

- In a demerger, existing shareholders in the parent company automatically receive shares in the demerged entity if the demerger is implemented – they don't need to pay for those shares or take other action. In an IPO, only those investors that are attracted to the entity and investment characteristics of the relevant underlying business will apply for and receive shares in the IPO entity.
- There are two main issues to consider in this context. First, there is a risk of a demerger giving rise to flow-back, ie shareholders choosing (in the short term) to sell shares in the demerged entity. Flow-back will be more significant if the demerged entity is small relative to the parent company (and so is not included in key stock exchange indices) or its business is not part of the core business of the parent company. Second, in an IPO, especially a large scale IPO, there is a risk of inefficient recycling of capital if there is large degree of overlap between the shareholders in the parent company and the investors to whom the IPO is being marketed.

Is capital gains tax relief available?

- Generally speaking, capital gains tax relief is likely to be available in a demerger where a number of tests are satisfied (for example, the parent company must distribute at least 80% of its holding in the demerged entity). No similar relief is available for an IPO.
- Demerger relief provides roll-over for the Australian parent company shareholders, but also exempts the parent company from Australian capital gains tax on the divestment of the demerged entity.

Is a full exit important?

- In most Australian IPOs, the vendor retains a shareholding in the IPO entity, which is typically escrowed for the period of the financial forecast included in the prospectus for the IPO. Typically an escrow is not required under the ASX Listing Rules, but is considered desirable for the purposes of marketing the IPO, as new investors look for the vendor to keep some "skin in the game". Therefore a full exit may not be possible in an IPO.
- On the other hand, most demergers in Australia have involved a full exit by the parent company (the recent demergers of Coles from Wesfarmers was an exception – in that case, Wesfarmers retained a 15% shareholding in Coles).

Is shareholder approval required?

- A demerger may be effected in a number of ways, including by capital reduction, dividend or scheme of arrangement. Most large scale Australian demergers have involved a capital reduction and/or a scheme of arrangement (although the 2015 demerger of South32 by BHP was an exception), and therefore parent company shareholder approval has been required.
- On the other hand, it is generally possible to effect an IPO of an underlying business without shareholder approval, provided that business is not the main undertaking of the parent company. The ASX Listing Rules do regulate divestments of businesses by way of public listings, but usually the relevant rules can be accommodated relatively easily (eg by including in the IPO a priority offer for parent company shareholders).

Transaction spotlight

Herbert Smith Freehills recently acted on the demerger of Coles from Wesfarmers. The transaction was the largest demerger in Australian corporate history. Key features of the demerger included the following:

- the demerger was effected by way of scheme of arrangement, and was overwhelmingly supported by Wesfarmers shareholders;
- Wesfarmers retained a 15% shareholding in Coles, and has a nominee on the Coles board; and
- Coles is an ASX top 30 company and employs over 100,000 team members.

Summary

- A demerger involves a parent company giving shares to existing shareholders, while an IPO involves selling shares to new investors.
- There are a range of considerations to take into account to determine whether an IPO or demerger is the preferred transaction.
- It is possible to pursue both an IPO and a demerger in parallel, and it is also possible to undertake a transaction that includes both IPO and demerger elements.

Regulatory developments

Whilst the Banking Royal Commission has attracted the most attention, in 2018 both ASIC and ASX continued to focus on improving listing practices of issuers, advisers and market participants, with ASIC issuing new guidance regarding the allocation of securities and ASX proposing amendments to its listing rules and guidance notes. 2018 also saw the formal commencement of ASIC's regulatory guidance of sell side research, Regulatory Guide 264: Sell-side research (**RG264**).

ASIC

Allocations of securities

Continuing ASIC's focus on conflicts of interest, ASIC has provided timely guidance to Australian financial services licensees and issuers in relation to improving their processes for allocating securities in IPOs and other equity raising transactions. In December 2018, ASIC published *ASIC Report 605: Allocations in equity raising transactions* (**REP605**). REP605 supplements ASIC's other recent guidance on allocations in equity raising transactions and managing conflicts of interest,[1] and follows similar reports from other regulators including the FCA in the UK in October 2016 and IOSCO in September 2018.

Over a 12 month period, ASIC examined the allocation practices adopted across 16 fundraising processes, ranging in size and structure, as well as the policies, procedures and practices of a range of large and mid-sized licensees. The focus of its review was how licensees make allocation recommendations to issuers and manage conflicts of interest. ASIC observed that even where licensees have allocation policies and procedures in place (which was generally true of the larger licensees surveyed), market practice varied greatly and conduct did not always reflect what ASIC regards as 'better practice'.

REP605 details a number of suggestions for improving allocation practices, including that licensees engage with the issuer throughout the transaction to better understand the issuer's objectives (and ensure such objectives take priority over the licensee's interests and business relationships), disclose to the issuer and manage any potential conflicts of interest (for example proposed allocations to related investment managers or employees/principal accounts of the licensee – the latter of which should only be done if an offer is undersubscribed), ensure messaging to investors is consistent across all investors, accurate, and updated if previous communications become inaccurate, and keep detailed records of reasons for making allocation recommendations. REP605 also strongly encourages issuers to actively engage in the allocation process, for example by requesting a copy of the licensee's allocation policy, and asking the licensee to explain the basis for its allocation recommendations and how those allocations reflect the issuer's objectives. Issuers are also cautioned to take care when reviewing and releasing ASX announcements summarising the outcome of a fundraising to ensure that the market is given an accurate, and not exaggerated, snapshot of the success of the offering.

There are clearly commercial imperatives and realities that underpin the interaction between licensees and issuers in the context of allocations. ASIC's key message appears to be that the issuers' interests must always be put first, and that licensees should review their policies and procedures to ensure that they are consistent with ASIC's recommendations.

Observations from corporate finance regulation, including learnings following the Banking Royal Commission

In August 2018, ASIC released its biannual report on corporate finance regulation, *ASIC regulation of corporate finance: January to June 2018* (**REP589**), in which ASIC discusses its key observations from its oversight of transactions during the period. In the report, ASIC touches on a few areas where it can see room for improvement of IPO practices. ASIC notes that it issued significantly more interim stop orders over the six months to June 2018 (24 in total – being the outcome of 26% of reviews) and it extended 27 exposure periods (being the outcome of 40% of reviews). ASIC's top disclosure concerns were: inadequate disclosure of the business model, unclear disclosure around use of funds, misleading or deceptive disclosure, inadequate or insufficiently tailored risk disclosure and inadequate disclosure of substantial holdings and capital structure.

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[1] See Report 486: Sell-side research and corporate advisory: Confidential information and conflicts (August 2016) and Regulatory Guide 264: Sell-side research (December 2017), the latter of which was discussed in our 2017 Australian IPO Review.

Regulatory developments

ASIC also raised concerns about promotion of IPOs outside formal disclosure documents, including advertisements made by the issuer and investor education reports being leaked to the media. Initial coin offerings continue to experience considerable teething problems as industry participants muddle through how they are regulated.

In the wake of the release of the Banking Royal Commission final report on 4 February 2019, ASIC encourages financial services companies seeking to undertake an IPO to disclose to potential investors how their business may be affected by the issues raised by the report. This would include any relevant historical and current interaction with regulators and possible outcomes of those interactions, as well as any specific regulatory risks that the business may encounter. With the government confirming that it is likely to act on most of the report's recommendations, financial services companies seeking to undertake an IPO should be aware of any findings and recommendations that may affect expectations of what they should disclose to potential investors. As an example, financial services companies receiving grandfathered commissions should disclose how the abolishment of this conflicted remuneration, which the government has indicated it intends to implement from 1 January 2021, will affect future profits. It would also be worthwhile for financial services companies to disclose any changes they have made in response to the Commission's findings and recommendations, such as to remuneration practises that contribute to misconduct, or removal of conflicts of interest that were to the detriment of the customer.

Guidance on sell-side research now in effect

As flagged in our 2017 Australian IPO Review, ASIC published RG264 in December 2017 with the aim of improving the practices of licensees in the handling of material, non-public information and management of conflicts of interest. Readers should be aware that RG264 has now taken effect as at 1 July 2018, and should ensure their compliance measures conform to the standards set out in the guidance.

Whilst market practice in respect of pre-deal research in the post RG264 landscape continues to evolve, we have observed that, whilst generally issuers and licensees continued to see value in preparing pre-deal research, many licensees have moved away from including formal valuation ranges in pre-deal research. Furthermore, the type and extent of other valuation information included in pre-deal research tends to vary on a case-by-case basis, having regard to the nature of the issuing company and its business.

ASX

Amendments to Guidance Note 1

Guidance Note 1 (Applying for Admission) was amended in March and July 2018 to:

- identify brokers from which ASX will accept overseas criminal history or bankruptcy checks for persons who will be directors of a company once listed, and to clarify that statutory declarations will only be accepted where such checks are not available from the country in question;
- expand the meaning of security holdings obtained by "artificial means" in the context of achieving minimum spread;
- enable ASX to request a report confirming the number of applications received from verified persons to ensure that the minimum spread has been met without artificial means; and
- require the prospectus or PDS of a company established outside Australia seeking to list on the ASX to summarise any taxes or duties that an investor will be required to pay in the company's place of incorporation, registration or establishment (as applicable) or, if there are no such taxes or duties, a statement to that effect.

Proposed amendments to ASX Listing Rules and Guidance Notes

In November 2018, ASX released a consultation paper titled *Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules*, which proposes and seeks feedback on a range of amendments to the ASX Listing Rules (**Listing Rules** or **LR**) and its appendices, and Guidance Notes. The proposed amendments are intended to improve market disclosures and other market integrity measures, simplify the Listing Rules, improve efficiency of the listing process and ongoing compliance with the Listing Rules, and enhance ASX's powers to enforce compliance.

Some of the key proposed changes to the Listing Rules and Guidance Notes that may be relevant for companies seeking to undertake an IPO include the following:

- companies seeking to list under the assets test can no longer include budgeted revenue and budgeted administration costs for the first full financial year following listing in their working capital calculations (LR 1.3.3);
- CEOs will need to satisfy the good fame and character requirements that directors are currently required to satisfy as a condition for admission (LR 1.1 condition 20);
- persons appointed by a company to communicate with ASX on Listing Rule issues must complete and pass an approved Listing Rule compliance course (LRs 1.1 condition 13 and 12.6);

- companies that are required to lodge quarterly cash flow reports (such as mining companies and start ups) need to disclose their actual use of funds since listing against the intended use of funds disclosed in the listing disclosure document in respect of the quarter, and explain the reason for any material differences (LR 4.7C);
- companies may rely on a provision in their constitution that only requires certain significant holders of securities (for example substantial holders, related parties, service providers and their associates) to execute mandatory (ie ASX imposed) escrow agreements, while such restrictions may be imposed on other security holders with notice provided by the company without executed escrow agreements (Chapter 9, Appendix 9A); and
- ASX will only waive the requirement for security holders to approve acquisitions and disposals of substantial assets, or issues of equity securities, involving certain persons in a position of influence, in exceptional circumstances where there is no reasonable prospect of such persons (either themselves or through their connections) influencing the transaction, with ASX noting that "the bar in this regard is high" (LRs 10.1, 10.11, Guidance Note 24, Guidance Note 25).

Feedback on the consultation package is due by 1 March 2019. ASX proposes to implement the changes on 1 July 2019.

Key US securities developments

The US capital markets continue to provide a valuable source of funding for Australian companies. Larger Australian IPOs and capital raisings continue to be structured to access US investors and our securities practice has enabled us to act for issuer and underwriter clients on both the Australian and US law aspects of equity and debt offerings in 2018. Despite market disruptions resulting from the recent US government shut-down, we anticipate that US capital markets will continue to provide Australian companies with a valuable source of liquidity throughout 2019.

Developments in US federal securities law and regulation and, more generally, the policy direction of US lawmakers and the US Securities and Exchange Commission (the **SEC**) have significant implications for securities offering execution practices around the world, both in the context of IPOs and other offerings registered with the SEC, as well as offerings exempt from SEC registration undertaken pursuant to Rule 144A and as traditional private placements. All of these offering structures are used by Australian issuers.

The past year has seen the SEC continue its efforts to strike a balance between encouraging capital formation and protecting investors:

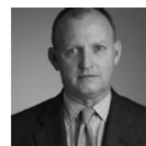
- the SEC sustained its razor sharp focus on initial coin offerings (**ICOs**) and offerings involving other digital assets in 2018, intensifying its enforcement activity against issuers and other market participants;
- the SEC released interpretive guidance and undertook cybersecurity-related enforcement actions, highlighting its expectation that companies implement appropriate internal accounting controls to mitigate cyber-related risks and protect company assets in compliance with US federal securities laws; and
- as part of its ongoing disclosure effectiveness initiative, the SEC finalised a series of amendments to disclosure standards that had become redundant, duplicative, overlapping or outdated, and addressed several specific topics where, in its view, disclosure to investors should be improved. Both staff guidance and SEC enforcement activity highlight the SEC's focus on enhancing the utility of corporate disclosures for the investing public – and willingness to take action where company disclosures fail to comply with SEC standards and related staff guidance.

While the SEC has maintained its focus on regulatory compliance and enhancing investor protection, the launch of the SEC's Strategic Hub for Innovation and Financial Technology (**FinHub**) has underscored the SEC's additional commitment to working with fintech developers, entrepreneurs, investors and other market participants on new approaches to capital formation, market structure and financial services. Recognition by SEC staff that digital assets functioning on "sufficiently decentralised" networks may no longer constitute securities for purposes of the US federal securities laws has been welcomed by fintech developers. The roadmap for compliance by unregistered ICOs identified through recent settlement orders is also anticipated to assist entrepreneurs and developers in navigating the regulatory landscape. Further, potential expansion of the "testing the waters" relief (currently available only to emerging growth companies) may also incentivise corporates with significant revenues to undertake SEC registered IPOs and list their equity securities on a US exchange.

Initial coin offerings remain in sharp focus

The SEC continued its razor sharp focus on ICOs and offerings involving cryptocurrencies in 2018, undertaking enforcement action against issuers and various other market participants, both in respect of fraudulent transactions and violations of the registration requirements under the US federal securities laws. In a major speech in June 2018, the Director of the SEC Division of Corporation Finance, William Hinman, articulated the SEC staff's approach to evaluating whether a digital asset constitutes a security.

The SEC has re-emphasised the applicability of the US federal securities laws to virtual organisations and entities that use distributed ledger or blockchain technology to facilitate capital raising and/or investment, and related offers and sales of securities. Amplifying prior guidance – that "by and large" ICOs involve the offer and sale of securities and directly implicate the registration requirement under the US Securities Act (the **Securities Act**) and the anti-fraud provisions of the US federal securities laws – SEC Chairman Jay Clayton confirmed in testimony before the United States Senate in February 2018, "I believe every ICO I've seen is a security".



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In particular, the SEC has broadly condemned structuring approaches under which tokens are asserted to provide investors with certain "utility" characteristics as elevating "form over substance". The SEC has explicitly warned that it has not endorsed the approach under the Simple Agreement for Future Tokens (**SAFT**) framework, which seeks to distinguish (i) the initial stage private funding by accredited investors pursuant to the SAFT investment contract (which is acknowledged to be a security), from (ii) the tokens offered to investors once the network is functional (which are asserted under the SAFT framework to not constitute securities).

Director Hinman's June 2018 speech – since endorsed by Chairman Clayton as reflecting the approach taken by the SEC staff in evaluating whether a digital asset is a security – identifies two non-exhaustive sets of factors to be considered in assessing whether a particular digital asset transaction will be subject to the US federal securities laws, each focusing on whether the value received for the digital asset is invested in a common enterprise with a reasonable expectation of profit derived from the efforts of others. Expressly acknowledging that the digital asset itself may not be a security (as is the case for Bitcoin and Ether), Director Hinman highlighted that the primary issue in determining whether a digital asset is offered as an investment contract (and thus constitutes a security) is "whether a third party . . . drives the expectation of a return". When the network on which a digital asset functions becomes sufficiently decentralised that investors do not have an expectation of profits based on the efforts of others (and are purchasing the digital asset for consumption, as compared to investment), the digital asset may no longer constitute a security.

At the time of finalisation of this article, the "plain English" guidance that will assist developers in determining whether their cryptocurrency and token offerings constitute the offer and sale of securities under US federal securities laws (as promised by Director Hinman in November 2018) had not yet been released.

During 2018 the SEC undertook enforcement action against issuers engaged in unregistered ICOs, celebrity promoters of ICOs, an unregistered cryptocurrency exchange, unregistered crypto investment funds and hedge funds and unregistered investment advisers. A November 2018 joint statement by the SEC Division of Corporation Finance, the SEC Division of Investment Management and the SEC Division of Trading and Markets also highlighted the applicability of the US Investment Company Act and the US Investment Advisers Act to investment vehicles engaged in investing in digital assets and their service providers.

However, the launch of the FinHub in October 2018 reflects the SEC's commitment to working with fintech developers, entrepreneurs, investors and other market participants on new approaches to capital formation, market structure and financial services, while maintaining its focus on regulatory compliance and enhancing investor protection. Indeed, November 2018 settlement orders against CarrierEQ Inc. (**AirFox**) and Paragon Coin Inc. (**Paragon**) pave a path to compliance for unregistered ICOs. In addition to imposing civil penalties, these orders required Airfox and Paragon to register their tokens as securities under the US Securities Exchange Act, to file periodic reports with the SEC and to compensate token purchasers. Specifically, Airfox and Paragon were required to notify each token purchaser of its rescission rights (ie to be reimbursed for its original purchase or to sue for recovery or damages if such purchaser no longer owned the tokens). We believe that the compensation and registration requirements included in the AirFox and Paragon settlements are likely to be imposed in future settlements in respect of unregistered ICOs that did not qualify for an exemption from registration. The settlement framework is also instructive for issuers of unregistered ICOs seeking to comply with the US federal securities laws.

Our take

We expect the SEC to continue to vigorously police the cryptocurrency markets in 2019. In view of the roadmap for remediation of non-compliance provided by the AirFox and Paragon actions, we anticipate that enforcement activity against unregistered ICOs will intensify during the coming year, with the SEC likely to be unsympathetic to issuers whose ICOs failed to qualify for an exemption from Securities Act registration, irrespective of whether some attempts to qualify were made. Recent statements by the SEC and the launch of FinHub reflect the SEC's efforts to encourage technological innovations that benefit investors in the fintech space, while ensuring adherence by all market participants involved in the issuance and trading of digital assets with the requirements of the US federal securities laws.

We envisage that the promised "plain English" guidance will provide market participants with further clarity as to the circumstances under which digital asset transactions constitute an offer and sale of securities under US federal securities laws. We also expect further legislative initiatives in relation to the regulation of digital assets during the coming year. We anticipate that any comprehensive statutory regime will seek to clarify the scope of the regulatory powers of the SEC, the US Commodity Futures Trading Commission, the US Department of the Treasury, the US Federal Reserve and other US federal regulators, and to bridge existing jurisdiction gaps between federal agencies.

Key US securities developments

Cybersecurity continues to be a key priority area, as evidenced by enhanced SEC guidance and increased enforcement activity

Recognising the increasing frequency of cybersecurity-related threats and misconduct, and the heightened impact of cyber violations on investors and the capital markets, the SEC has identified cyber threats as "among the greatest risks facing investors and the securities industry". During 2018, the SEC released further interpretive guidance to assist companies in preparing disclosure in relation to cybersecurity risks and incidents, and issued a report of investigation highlighting the need for issuers to design and maintain internal accounting control systems that adequately address cybersecurity risks. Following the formation of the Cyber Unit within the SEC Division of Enforcement in late 2017, cybersecurity enforcement activity increased during 2018, with the SEC bringing its first disclosure-based cybersecurity enforcement action, while continuing to focus on cyber-related misconduct used to gain unlawful market advantage and failures by registered entities to take appropriate steps to safeguard information or ensure system integrity.

New interpretive guidance released by the SEC in February 2018 consolidates and builds upon the principles-based guidance issued by the staff of the SEC Division of Corporation Finance in 2011 in relation to cybersecurity disclosure. The 2018 interpretive guidance reinforces cybersecurity considerations relevant to a company's disclosure of risk factors, operating and financial review and prospects/management's discussion and analysis of financial condition and results of operations (**MD&A**), business operations, legal proceedings, financial statements, and disclosure controls and procedures. The guidance highlights that disclosures should provide specific information that is useful to investors (rather than generic or boilerplate language) and that, when preparing risk factor disclosure, companies should consider, among other issues:

- the occurrence of prior cybersecurity incidents, including their severity and frequency;
- the probability of the occurrence and potential magnitude of cybersecurity incidents, and the adequacy of preventative actions taken to reduce cybersecurity risks;
- the aspects of the company's business and operations that give rise to material cybersecurity risks, the costs associated with maintaining cybersecurity protections and the potential for reputational harm; and
- litigation, regulatory investigation and remediation costs associated with cybersecurity incidents.

The 2018 interpretive guidance emphasises that, to meet their disclosure obligations, companies may need to disclose previous cybersecurity incidents or threatened cyber incidents in order to place discussions of these risks in the appropriate context. A company should also address cybersecurity risks and cyber incidents in its MD&A if the costs of cybersecurity efforts, the costs or other consequences associated with one or more known incidents or the risk of potential incidents represent a material event, trend or uncertainty that is reasonably likely to have a material effect on the company's results of operations, liquidity or financial condition or would cause reported financial information not to be necessarily indicative of future operating results or financial condition. Further, the 2018 interpretive guidance emphasises the importance of disclosure controls and procedures that enable companies to make accurate and timely disclosures about material cybersecurity incidents, as well as policies that protect against corporate insiders trading in advance of company disclosures of material cybersecurity incidents.

The SEC also initiated its first disclosure-based cybersecurity enforcement action in 2018. In April 2018, Altaba Inc. (formerly, Yahoo! Inc. (**Yahoo**)) agreed to pay US$35 million in penalties for its failure to disclose a data breach in 2014 affecting more than 500 million of its user accounts. Although information relating to the data breach was reported to members of Yahoo's senior management and legal department in late 2014, Yahoo "failed to properly assess the scope, business impact, or legal implications of the breach" and to adequately consider whether the breach needed to be disclosed to investors. Yahoo did not disclose the data breach or its potential business impact and legal implications in its public filings for more than two years. Instead, the company's risk factor disclosures in its SEC filings for the period from 2014 to 2016 were materially misleading in suggesting that Yahoo faced only the risk of, and negative effects that might flow from, potential future data breaches. Moreover, the MD&A disclosure included in these SEC filings was also misleading to the extent that it omitted known trends or uncertainties with regard to liquidity or net revenue presented by current or future expenses or losses related to the 2014 data breach.

Various enforcement and investigative actions initiated by the SEC over the last year have reinforced the importance of comprehensive cybersecurity risk management policies and procedures. The SEC's cease and desist order against Altaba found that the company failed to maintain disclosure controls and procedures designed to ensure that reports from the company's information security team concerning cyber breaches, or the risk of such breaches, were properly and timely assessed for potential disclosure. A September 2018 cease and desist order against broker-dealer Voya Financial Advisers highlights that cybersecurity procedures must be reasonably designed to fit a company's specific business model. The SEC's October 2018 report of investigation – examining whether certain SEC reporting companies that were victims of cyber-related frauds may have violated the US federal securities laws by failing to have sufficient systems of internal accounting controls – further highlighted the need for companies to reassess their controls in view of the current cybersecurity risk environment. In particular, the SEC emphasised the importance of taking into account both

cybersecurity threats and related human weaknesses when designing and maintaining internal accounting controls, as well as the critical role of personnel training in implementing controls that serve their purpose and protect company assets in compliance with US federal securities laws. While the SEC concluded that enforcement action was not warranted against the nine SEC reporting companies investigated, the report of investigation serves as a warning that the SEC will proactively scrutinise whether an issuer has implemented appropriate internal accounting controls to mitigate cyber-related risks, and that a company that falls victim to a future data breach or cyber-fraud may be subject to enforcement action as a result of inadequate controls.

Our take

In view of the Altaba cybersecurity disclosure enforcement action and the warning sounded by the October 2018 SEC report of investigation, we expect the SEC to vigilantly examine companies' cybersecurity disclosures, whether companies' internal accounting controls are adequate to mitigate the risk of cyber-incidents and safeguard company assets, and whether companies' disclosure controls and procedures facilitate timely assessment of appropriate disclosure in relation to cyber breaches and threats. In view of the SEC's focus on this area, we anticipate an increase in enforcement activity in response to cybersecurity incidents, as well as potentially in private litigation related to cyber breaches. We would advise issuers:

- to ensure that their cybersecurity disclosure is tailored to their specific business and operations, and industry context;
- to consider whether their insider trading policies protect against corporate insiders trading in advance of company disclosures of material cybersecurity incidents;
- to reassess their cybersecurity risk management policies and procedures in light of emerging cyber-related risks and threats, to implement internal controls tailored to address cybersecurity risks relevant to their particular business and operations, and to prioritise the training of employees on those policies and procedures; and
- to involve outside advisors early in the process when analysing and responding to any cybersecurity incident.

Continued focus on disclosure of material information to investors

Continuing its focus on improving disclosure effectiveness, in August 2018 the SEC adopted a series of amendments to disclosure standards that had become redundant, duplicative, overlapping or outdated in light of other SEC disclosure requirements, US GAAP, International Financial Reporting Standards or changes in the information environment. The final rules, which largely enact the proposals released by the SEC in July 2016, eliminate requirements to provide business disclosure in relation to segment financial information, research and development expenditures and financial information by geographic area. The amendments also update certain disclosure standards in relation to market information, trading prices for equity securities and dividend history.

At the time of finalising this article, the SEC's October 2017 proposals to modernise and simplify disclosure standards under Regulation S-K (and corresponding requirements applicable to non-US issuers, as set out in Form 20-F) remain pending. These proposed rules would, among other things:

- revise MD&A disclosure requirements – in certain circumstances, permitting an issuer to omit discussion of the earliest year of the three year period covered by the financial statements if such disclosure is not material to an understanding of the company's financial condition, changes in financial condition and results of operations – with the intent of encouraging companies to take a "fresh look" to re-evaluate whether prior year MD&A disclosures remain material;
- eliminate risk factor examples currently enumerated in Regulation S-K, to encourage issuers to focus on their own risk identification processes;
- remove certain restrictions on incorporation by reference; and
- permit the omission of certain immaterial, competitively sensitive information that has not been made public.

Rule amendments proposed in July 2018 that would simplify financial disclosure requirements in respect of guarantors and issuers of guaranteed securities, as well for affiliates whose securities collateralise an issuer's securities, also remain pending at the time of finalising this article.

In furtherance of its disclosure effectiveness reform agenda, in October 2018, the SEC adopted final rules modernising industry-specific disclosure requirements applicable to companies with mining operations that are material to their business or financial condition. Replacing SEC Industry Guide 7 (which, prior to the reforms, had not been updated in over 30 years), the final rules more closely align US disclosure requirements with current industry and global regulatory practices and standards, including the mining disclosure standards based on the Committee for Mineral Reserves International Reporting Standards. For each fiscal year beginning on or after 1 January 2021, SEC registrants with material mining operations will be required to disclose (i) mineral resources (disclosure of which was generally prohibited under previous SEC disclosure standards, which did not provide for the reporting of estimates other than proven reserves (ie measured mineral resources) or probable reserves (ie indicated mineral resources)), (ii) mineral reserves and (iii) material exploration results, as confirmed by a relevant mining industry professional providing a technical report. Closer alignment of the SEC's mining property disclosure requirements with the Australasian

Key US securities developments

Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the **JORC Code**) and other foreign mining codes is anticipated to facilitate access to US capital markets.

In a November 2018 speech, Chairman Clayton further reinforced that companies should tailor their disclosures in relation to market risks – in particular, in respect of Brexit and the transition away from LIBOR as a benchmark reference for financial contracts – and review and revise their disclosures on an ongoing basis to ensure that they accurately and specifically disclose the key risks that a company may face as a result of Brexit and/or the transition from inter-bank offered rates to alternative measures. Specifically, Chairman Clayton has confirmed that he would like to see "robust disclosure on how management is considering Brexit and the impact it may have on the company and its operations". Similarly, companies with significant exposure to instruments based on LIBOR (or other reference rates) should consider disclosing (i) what happens to the interest rates due under the instrument if LIBOR (or such other reference rate) is no longer published, (ii) whether the instrument includes any "fall-back" language for the determination of interest rates following LIBOR phase-out after 2021 and, if so, how such language would work in practice and (iii) whether consents would be required to amend the terms of the instrument and, if so, whether there are risks that such consents would not be able to be obtained in a timely or cost-effective manner.

Recent enforcement activity also confirms the SEC's focus on enhancing the utility of corporate disclosures for the investing public, including through the vigilant monitoring of company disclosures for compliance with SEC standards and related staff guidance. Reflecting the SEC Division of Corporation Finance's efforts to curb non-compliant use of non-GAAP financial measures, in December 2018 the SEC ordered an SEC registrant to pay civil penalties and to cease and desist from further violations of Regulation S-K's "equal or greater prominence" standard, which requires a company disclosing a non-GAAP financial measure to include a presentation, with "equal or greater prominence", of the most directly comparable financial measure calculated and presented in accordance with generally accepted accounting principles. Further, recent investigations and enforcement actions by the SEC in relation to executive compensation disclosures (particularly in view of its December 2018 adoption of disclosure rules for hedging practices and policies with respect to equity securities) similarly highlight the SEC's focus on ensuring that investors have access to material information – and its willingness to initiate enforcement activity where company disclosures fail to comply with SEC disclosure standards.

Our take

Reforms proposed and adopted by the SEC in 2018 continue to modernise the disclosure framework, consistent with the SEC's disclosure effectiveness initiative – which we have previously described as "evolution, not revolution". With the SEC focused on enhancing the readability and navigability of disclosure documents, discouraging repetition and the disclosure of immaterial information, and reducing the cost and burden of compliance, we anticipate that a form of the Regulation S-K reforms proposed in October 2017 will be adopted during the course of 2019. Following its adoption of revised disclosure requirements for SEC registrants engaged in mining in October 2018, we also expect the SEC to progress its reform of the industry-specific disclosure requirements applicable to bank holding companies (as currently reflected in SEC Industry Guide 3) during the course of 2019.

The SEC's willingness to engage in modernisation and enhancement of the disclosure framework while also addressing, through formal and informal guidance, particular disclosure topics that it believes will materially impact investors is a helpful approach for investors and promotes the efficiency of the securities markets and capital formation.

Proposed extension of "testing the waters" provisions to non-emerging growth companies

In February 2019, the SEC proposed amendments to extend the "testing the waters" procedures adopted pursuant to the Jumpstart Our Business Startups Act (**JOBS Act**) enacted in 2012 to non-emerging growth companies. Under the JOBS Act, emerging growth companies (ie companies with annual gross revenues of less than US$1.07 billion during the most recently completed fiscal year) and persons authorised to act on their behalf may "engage in oral or written communications with potential investors…to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following" the filing of a registration statement under the Securities Act. Pre-filing communications are limited to investors that are qualified institutional buyers pursuant to Rule 144A under the Securities Act or institutional accredited investors pursuant to Regulation D under the Securities Act.

Under the current statutory regime, companies that do not constitute emerging growth companies are not permitted to utilise the "testing the waters" procedures – and are consequently unable to assess investor interest in a potential IPO before incurring the substantial costs associated with preparing a registration statement. Consistent with its commitment to facilitating capital formation and in an effort to encourage more companies to go through the US IPO process; the proposed expanded "testing the waters" provision would provide non-emerging growth companies with increased flexibility in their pre-IPO communications, as well as a cost-effective means of evaluating market interest before determining to proceed with an IPO.

Our take

While the majority of IPOs by Australian issuers that are directed to the US capital markets are structured to be exempt from SEC registration, US listings offer particular attractions for sector-specific and significantly-sized Australian issuers. An extension of the "testing the waters" provision to larger companies would enable more Australian companies to assess investor interest – and potential valuation – prior to undertaking preparations for a US IPO. We believe that the availability of this relief will incentivise more companies with significant revenues to consider SEC registered IPOs and listing of their equity securities on a US exchange.

Review of the private offering framework to ensure harmonisation, effectiveness and accessibility

In August 2018, Chairman Clayton indicated that the SEC intends to evaluate the level of complexity of the current framework of private offering exemptions, and consider whether changes should be made to rationalise and streamline what he described as an "elaborate patchwork" of regulation.

The SEC plans to consider:

- whether there are currently overlapping private offering exemptions that create confusion for companies trying to navigate the most efficient path to raise capital;
- whether the current rules that limit who can invest in certain offerings should be expanded to focus on the sophistication of the investor, the amount of the investment, or other criteria rather than just the wealth of the investor; and
- if more can be done to allow issuers to transition from one exemption to another and, ultimately, to a registered IPO, without undue friction.

The SEC staff is currently working on a concept release that will bring to the forefront these and other topics relevant to this issue. The SEC is hoping for significant input from companies, banks and investors on the concept release.

Our take

Given the frequent use by non-US issuers (including Australian issuers) of the private offering exemptions under Section 4(a)(2) of the Securities Act and pursuant to Rule 144A (when raising capital from large institutional investors in the United States), the concept release is likely to be important reading for Australian issuers and financial intermediaries.

Once the concept release has been issued, Herbert Smith Freehills will circulate a client memorandum on the implications of the review for non-US issuers looking to access the US capital markets. There will also be a public comment period and we expect to submit a comment letter to the SEC. We would welcome your views as part of this process.

2019: Predictions

Impact of Brexit, federal election and China on the markets

In last year's edition we had almost the same heading. This year we have replaced the US election with our federal election as a key influence on the markets in the first half of CY2019.

Brexit's uncertainty continues, in fact it is likely to have a greater dampening impact on markets than last year up to and past 29 March, as there is no obvious end in sight. The ongoing trade tensions between the US and China are testing the global markets. The ongoing consequences of the US election continue to be felt in the markets with concern about what else may be to come both at a political level and the impact on the US economy.

Confidence breeds confidence – be ready

In our view, 2019 is shaping as a classic IPO year where the IPOs occur in the second half, after some of the first half volatility has abated. Some IPOs will still try to time the market perfectly, however that will be challenging, particularly in the first half. Ultimately the issuers and investors may need to accept that these transactions will have to be undertaken in volatile markets and each have a greater focus on the long term rather than the short.

The market may be keen for opportunities to invest in sound and sustainable businesses, and we expect that such businesses will be able to get their IPOs done. Issuers, lead managers and investors will need to be flexible and ready for the windows in the IPO market that will inevitably open. Once the window cracks open, we expect it will open properly for a solid end to the IPO year.

The global IPO narrative is technology

The global predictions for large IPOs are technology related with Uber, Lyft, Zoom, Slack, Palantir and Cloudflare all subject of speculation.

With the Australian technology market continuing to grow and investors becoming more sophisticated, this may be a year where investors are prepared to look closely at Australian technology IPOs and provide opportunities for some home grown talent on the ASX.

Tougher regulators

ASIC and ASX have both foreshadowed a tougher regulatory stance in 2019, in particular ASIC. ASIC's response to the Banking Royal Commission will play out for existing financial services companies and any financial services companies proposing to IPO in 2019 with an intense focus on appropriate disclosure. We expect that ASIC's regulatory stance generally will harden, including in relation to IPOs and capital raisings. As noted on page 11, ASIC has already flexed its regulatory muscle with an increase in interim stop orders and extensions of exposure periods in the first half of 2018. ASIC will continue to be under pressure to be seen as a tough and more pre-emptive regulator.

ASX is seeking amendments to the Listing Rules to enhance its powers to monitor and enforce its rules. This includes a power to formally censure companies that breach the Listing Rules or other conditions or requirements of the ASX. This is a power which most major exchanges, including the LSE, HKSE, SGX and JSE, already have. From an IPO perspective, ASX has already made it clear that listing is at its absolute discretion.

Quality IPOs will successfully navigate tougher regulatory scrutiny and we agree that a tough, albeit sophisticated, regulator is critical for the confidence of markets and investors. As such, IPO issuers and advisers should plan for, and pre-emptively address, key regulatory concerns.

Globalisation of regulation

If there was any doubt about the increasing global nature of regulation and the global themes of regulators, 2018 demonstrated that ASIC's areas of focus, such as allocations in equity raisings in REP605, are areas of global interest with REP605 appending information about approaches taken by IOSCO, FINRA in the US, the FCA in the UK, the European Union with MiFIDII, HKSE and SGX. The ACCC's allegations that cartel conduct had taken place following an ANZ institutional share placement has also gained worldwide attention and MiFIDII has had a global impact on financial research. As the financial markets continue to truly globalise, 2019 is likely to see further regulatory globalisation.

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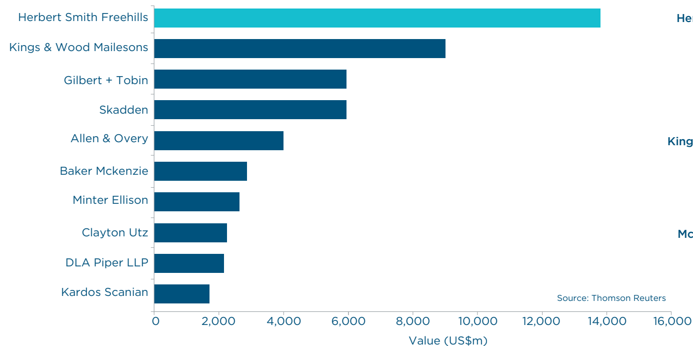
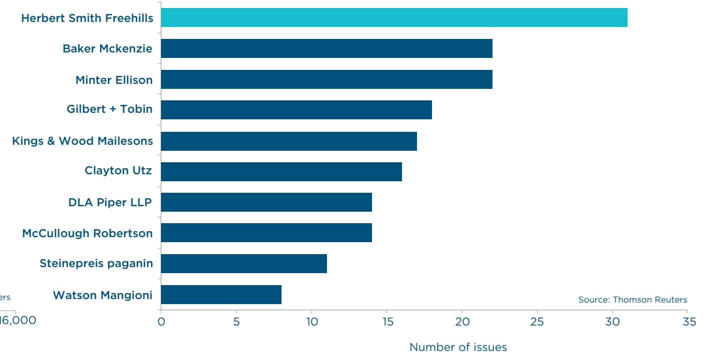
About Herbert Smith Freehills

Herbert Smith Freehills is recognised as Australia's leading law firm for IPOs by value, and we have acted on more IPOs by number since 1998 than any other top tier law firm (according to Thomson Reuters). In 2018, we were ranked as Australia's number one capital markets team and were ranked the number one equity and equity related issuer legal adviser for both value and deal count (Thomson Reuters - Equity & equity – related Issuer Advisers). Described as 'unmatched in quality as they have a team of giants' (IFLR 1000), Herbert Smith Freehills has been awarded the highest possible ranking in the area of Equity Capital Markets by Chambers Global, Asia Pacific Legal 500, IFLR 1000 and PLC Which Lawyer? every year from 2004.





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

- Coronado Global Resources on its $773 million IPO and listing with market capitalisation of $3.87 billion
- Macquarie Capital (Australia) Limited and Canaccord Genuity (Australia) Limited as joint lead managers of Marley Spoon AG's $70 million IPO and listing with a market capitalisation of $199.5 million
- New Energy Solar Fund on its $205 million IPO and listing with a market capitalisation of $489.5 million
- Netwealth Group Limited on its $264 million IPO and listing with a market capitalisation of $879 million
- Moelis Australia Limited on its $59 million IPO and listing with a market capitalisation of $294 million
- Inghams Group Limited on its $596 million IPO and listing with a market capitalisation of $1.2 billion
- Autosports Group Limited on its $159 million IPO and listing with a market capitalisation of $482 million
- Reliance Worldwide Corporation Limited on its $919 million IPO and listing with a market capitalisation of $1.3 billion
- Propertylink Group on its $503.5 million IPO of triple-stapled securities and listing with a market capitalisation of $536 million
- Frontier Digital Ventures Limited on its $30 million IPO and listing with a market capitalisation of $108 million
- Adairs Limited on its $220 million IPO and listing with a market capitalisation of $400 million
- Mitula Group Limited its $27 million IPO and listing with a market capitalisation of $154 million
- Murray Goulburn on the establishment and listing on ASX of the MG Unit Trust and its $500 million capital raising
- Integral Diagnostics on its $133.7 million IPO and listing with a market capitalisation of $275 million
- Shriro Holdings Limited on its $50 million IPO and listing with a market capitalisation of $95 million
- Aventus Retail Property Fund on its $303 million IPO and listing with a market capitalisation of $687 million
- Gateway Lifestyle Group in relation to its pre-IPO restructure and consolidation, and aspects of its $500 million IPO
- Pepper Group Limited on its $145 million IPO and listing with a market capitalisation of $471 million
- Australian Finance Group Ltd in connection with the $122 million IPO and listing with a market capitalisation of $258 million
- IVE Group Limited on its $76 million IPO and listing with a market capitalisation of $178 million
- the Australian Government on Medibank Private's $5.9 billion IPO

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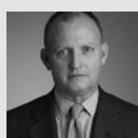

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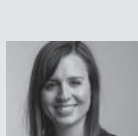

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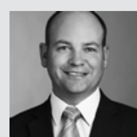

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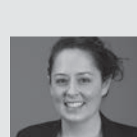

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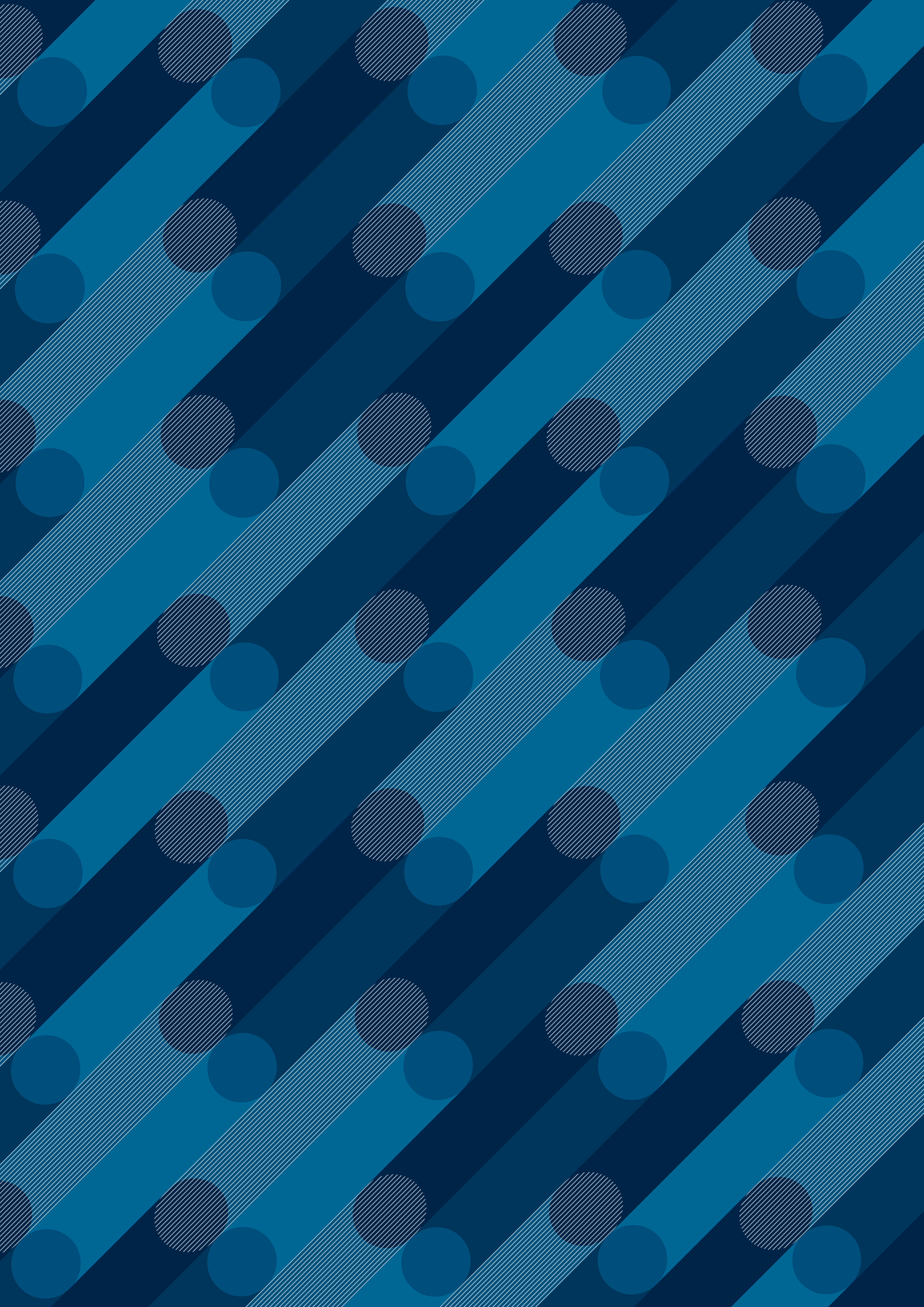

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