



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	027
Date	26 November 2021
Topic	IPO regulation in foreign markets
Reference	Spoken, 26 November 2021, Hansard page 53
Committee member	Senator O'Neill

Question

Senator O'NEILL: I don't think I had enough time in the last hearing to get to the bottom of the differentiation of the approach with regard to an IPO in Australia as opposed to other jurisdictions. Can you give us a comparator with a jurisdiction where risk is less likely for people who might engage with an IPO, and how that has affected, in any positive or negative way, capital raising in that context? I'm concerned about this issue, clearly.

Mr Longo: I'm happy to provide on notice some material about the experience in the UK and the US.

Senator O'NEILL: Which has a different kind of regime, doesn't it? Can you give me a general response on the record today?

Mr Longo: It's certainly disclosure based. Then investors decide whether they want to invest based on what's disclosed in a prospectus or a document that serves the same purpose as a prospectus.

Senator O'NEILL: What's the difference between those jurisdictions and Australia?

Mr Longo: I suppose one potential difference—I'm just trying to remember how it works in the US—is that we don't pre-vet prospectuses in Australia, as we discussed last time.

Senator O'NEILL: That's the critical factor, isn't it?

Mr Longo: Yes. I'd have to be refreshed on the SEC approach; that varies a little bit. The US market is different to our market. Essentially it's all disclosure driven, and the role of the regulator, generally speaking, is to promote transparency and disclosure and to let investors make their own decisions. I would prefer to take that on notice. These days every subject and regulation seems to be a big one, and it's always changing and developing. I might leave it at that for today, if that's alright.

Answer

To assist the Committee, we have provided:

- a high-level comparison of the US, UK and Australian prospectus review regimes;
- an analysis of the performance of recent IPOs in these jurisdictions; and
- two examples of poorly performing high profile IPOs in the US and UK.

Based on the information provided, we believe it is important to highlight that:

- Australian IPOs on average have performed well compared to the US and UK.
- Neither the US or UK financial regulators take any form of responsibility for the offer documents, even though they have 'approved' the documents.
- Forecasts are not included in prospectuses in the UK and USA but are regularly included in Australia. There are concerns in the UK and US as to how forecasts make their way into the market. The UK is currently consulting on changing this position to encourage forecasts in prospectuses.
- Despite the lack of forecasts, and 'pre-vetting' regimes being in place, some major IPOs have had large negative movements in share price shortly after listing in the US and UK.



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Jurisdiction	Prospectus Review Regime	Time taken for review	Are forecasts included in prospectuses?
US	<p>The Securities and Exchange Commission (SEC) pre-vets registration statements and they only become effective after their review.</p> <p>The general policy is for Staff to “full review” every IPO. Each review team consists of four members, comprised of a legal examiner (junior attorney) and a legal reviewer (senior attorney), and an accounting examiner (junior accountant) and an accounting reviewer (senior accountant)¹.</p> <p>Comment letters and correspondence are published publicly.</p> <p>The Division of Corporate Finance does not evaluate the merits of any transaction or determine whether an investment is appropriate for any investor. The Division’s review process is not a guarantee that the disclosure is complete and accurate — responsibility for complete and accurate disclosure lies with the company and others involved in the preparation of a company’s filings².</p>	<p>The typical timeframe for the SEC review is between 90 to 150 days³</p>	<p>No. Due to the lack of availability of a ‘safe harbor’ for forward looking statement liability under the Private Securities Litigation Reform Act of 1995.</p> <p>While issuers do not directly provide this information to IPO investors (due to liability concerns), they do convey their forecasts to analysts with the knowledge that the analysts will then convey information about their forecasts to select potential IPO investors in private conversations⁴</p> <p>A number of commentators believe that the liability regime should be changed to permit forecasts in prospectuses. They believe the market requires this information and this information should therefore be included in regulated documents⁵.</p>
UK	<p>The Financial Conduct Authority (FCA) approves (or pre-vets) prospectuses and are also the listing authority that approve the listing.</p> <p>As part of the process of allocating a prospectus for review, an allocations manager will carry out a high-level review. This review is to assess the level of complexity and risk, to identify any omissions from the circular that will need to be addressed before allocation, and to assign the appropriate staff to review the document⁶.</p>	<p>On average the approval process takes 6 – 8 weeks⁷</p>	<p>No</p> <p>The existing prospectus liability regime deters the inclusion of forecasts. Instead of providing forecasts formally in prospectuses companies seeking to list are advised to rely on so-called ‘connected research’, equity research notes published by analysts from the investment banks in the underwriting syndicate, in order to signal to market participants the company management’s views of</p>

¹ *IPO Insights: Tips for Successful SEC Staff Review of Your IPO*: [IPO Insights: Tips for Successful SEC Staff Review of Your IPO \(orrick.com\)](https://www.orrick.com)

² <https://www.sec.gov/divisions/corpfin/cffilingreview.htm#YaRkTic1VE.mailto>

³ Ibid 1

⁴ Rose, Amanda M., SPAC Mergers, IPOs, and the PSLRA's Safe Harbor: Unpacking Claims of Regulatory Arbitrage (October 19, 2021). Available at SSRN: <https://ssrn.com/abstract=>. Page 50.

⁵ Ibid 4

⁶ <https://www.fca.org.uk/publication/ukla/pn-903-3.pdf> - page 3

⁷ <https://docs.londonstockexchange.com/sites/default/files/documents/guide-main-market-pdf.pdf>

	Prospectuses include warnings that FCA approval should not be considered as an endorsement of the Company or the quality of the securities that are the subject of the prospectus. Investors should make their own assessment as to the suitability of investing in the securities.		the potential profitability of the company. This process is opaque and adds to the time and cost of IPOs ⁸ . In the recent consultation paper on the UK Prospectus Regime, it was recommended that liability for forecasts be relaxed such that their inclusion in prospectuses is encouraged. In the recent UK Listings Review by Lord Hill, it was identified that ‘forward-looking information’ – projections of future profitability of a company – as ‘a key, if not the key, category of information that investors ask for when a company is carrying out private funding rounds’ ⁹ .
Australia	<p>Prospectuses are lodged with ASIC but ASIC is not required to ‘register’ or ‘approve’ them prior to lodgement. Offers can be made at the end of a 7 day exposure period after lodgement, which can be extended to 14 days. ASIC has the power to ‘stop’ the offer if the prospectus is misleading or deceptive.</p> <p>A pre-vetting regime was in place prior to 1999. As described in Ford, Austin & Ramsay’s Principles of Corporations Law¹⁰:</p> <p><i>‘the Corporations Law replaced the previous prescriptive list of prospectus contents with a general “reasonable investor” standard, which had the effect of requiring the issuer and its advisers to take sole responsibility for the quality of disclosure. Once that change had been assimilated by the corporate and investment communities, and it became apparent that the quality of prospectus disclosure had by and large improved, there seemed to be no point in the Commission continuing to register prospectuses at all. During the decade from 1989 to 1999 the climate of public opinion consequently turned against retention of registration and pre-vetting in any form. Therefore the 1999 Act removed the registration requirement entirely’</i></p>	7-14 days	<p>Yes. Forecasts are a common feature of IPOs with market capitalisations in excess of \$100m.</p> <p><i>Section 728(2) of the Corporations Act</i>, deems statements about future matters to be misleading unless they have a reasonable basis. <i>Regulatory Guide 170: Prospective financial information</i> sets out ASIC’s view on when companies will have reasonable grounds to include forecasts in a prospectus. In summary, it describes that prospective financial information based on hypothetical assumptions (rather than reasonable grounds) is likely to be misleading and provide little information value to investors.</p> <p>Market practice, based on the guidance, is for forecasts in prospectuses to be less than 2 years in duration.</p>

⁸ HM Treasury: UK Prospectus Regime Review July 2021- page 20

⁹ Ibid 8, page 20

¹⁰ Ford, Austin & Ramsay’s Principles of Corporations Law – see para 22.220

	<p>In practice, all prospectuses are subject to a high-level examination by senior staff members before deciding if they require full post-lodgement reviews. Two to three staff will generally perform the full reviews drawn from a pool of experienced staff with both legal and financial backgrounds.</p> <p>Section 711(7)(b) of the Corporations Act requires that issuers include a statement in a prospectus that ASIC take s no responsibility for prospectus content.</p>		
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Analysis of IPO markets by jurisdiction for period from 1 July 2020 to 30 November 2021

Jurisdiction	Number of successful IPOs	Funds Raised	Day 1 average performance	Day 90 average performance ¹¹
Australia- ASX ¹²	240	A\$ 17.346 billion	27%	24%
US - NYSE ¹³	343	USD \$171.3 billion	6%	9%
US – NASDAQ	915	USD \$245.7 billion	20%	19%
UK - LSE	136	GBP 31.2 billion	14%	20%

Recent poorly performing major IPOs from the US / UK

UK - Deliveroo – April 2021- GBP 2.07 billion fundraise

Shares in the food delivery app closed 26 per cent down, wiping almost £2 billion (\$2.6 billion) from its opening £7.6 billion market capitalisation¹⁴. It is now down approximately 39% from IPO.

NYSE – Didi Chuxing – July 2021 – US\$4.4 billion fundraise

Shares in Didi (a Chinese ride sharing platform) fell 30% in the first two days after IPO, due to an investigation launched by Cyberspace Administration of China¹⁵. Didi will now de-list, only a few months after listing on the NYSE and seek a listing on HKSE¹⁶

¹¹ This average does not include companies that have not been listed for 90 days at 30 November 2021

¹² Source: Connect 4 data 1 July 2020 to 30 November 2021 – analysed by ASIC

¹³ Source: All US and UK data sourced from Bloomberg data 1 July 2020 to 30 November 2021 – analysed by ASIC

¹⁴ [Disaster strikes as Deliveroo becomes 'worst IPO in London's history' \(afr.com\)](https://www.afr.com/news/technology/deliveroo-worst-ipo-in-london-history-20210709)

¹⁵ <https://fortune.com/2021/07/09/didi-ipo-stock-data-crackdown-china-wall-street-investors/>

¹⁶ <https://www.npr.org/2021/12/03/1061219965/a-top-chinese-tech-company-delists-from-the-nyse-just-months-after-its-ipo>