FINANCIAL REVIEW

HD **ASIC gets tough on market manipulation**

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The corporate regulator is certain to use its recent run-in with National Australia Bank over trading in share-price index futures to push hard for tougher penalties for market manipulation.

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NAB was pinged by the Australian Securities and Investments Commission for having no oversight or knowledge of premarket trading activity by a third-party contractor.

The bank entered into an enforceable undertaking with ASIC and also agreed to donate $2 **million** to the body formed to help lift Australia's financial literacy.

NAB never admitted to any of the allegations about market manipulation put by ASIC in the enforceable undertaking but it did agree to review its monitoring of the filing of orders before markets open.

It agreed to this despite having pulled out of the business of index arbitrage trading and dispensing with the services of the unnamed third-party contractor.

NAB took the run-in with ASIC very seriously, as is shown by the fact that Paul Rizzo, a director and head of the risk committee, signed the enforceable undertaking.

However ASIC has not let the matter rest there. It is still pursuing inquiries into the activities of the contractor's staff.

More important, it is going to use the NAB case in its call to the government for tougher rules for market manipulation.

ASIC does not have the power to fine market participants. All it can do is pursue them through civil action. But civil action is expensive and time-consuming.

Also, civil actions can only ever result in maximum penalties of $1 **million** and that sort of penalty has never been awarded.

The second leg of ASIC's push for reform is the demand that it be given disgorgement powers.

It wants to have the same powers that are at the disposal of the Securities Exchange Commission in the United States: it can order parties to disgorge profits, which are then placed in government coffers.

That system does not help those on the wrong side of a market-manipulated trade, but it does ensure that the perpetrators of market manipulation cannot walk away with profits.

These proposed reforms will, hopefully, be discussed at the Senate inquiry into ASIC's affairs.

The weakening Australian dollar and the shift to sub-trend economic growth in Australia are two good reasons for **energy** multinationals Royal Dutch Shell and BP to reconsider their commitment to Australia.

The falling dollar impacts negatively on **oil** refining margins, while lower economic growth dampens the outlook for the marketing and distribution side of the petrol industry.

Counter-balancing these negative reasons for exiting Australia are the continued strong demand for assets among private **equity** players and the likely reopening of the window for initial public offerings.

The only publicly listed integrated **oil company**, Caltex, provides a good example of both the good and bad of the petrol industry.

Its share price has performed strongly over the past five years thanks to the rerating of the **company** as an industrial stock rather than a volatile refiner.

Marketing is the focus of the Caltex strategy for good reason. Demand for premium fuels is soaring on the back of annual vehicle sales in excess of 1 **million**.

Blackstone's appointment of James Carnegie as senior managing director responsible for the day-to-day **operations** of its Australian office comes at an interesting time in the cycle for private **equity** capital.

The boom in initial public offerings has made it very hard for private **equity** to compete for assets.

Vendors have found it relatively easy to shift assets from private hands into the hands of institutional and retail investors.

December was a huge month for the Australian Securities Exchange with 33 new listings. The total capital raised in December from new listings was $11.78 **billion**, according to the ASX monthly activity report published on Monday.

That boom in listings has led to a certain degree of capital markets fatigue. This can be seen in the share prices of several high-profile stocks that have not traded at a premium to their listing prices.

It would be fair to say that **equity** capital market bankers are holding their breaths before the next round of listings.

However, the IPO window is likely to reopen in the first quarter of 2014 thanks to positive sentiment from some pretty bullish forecasts for **equity** markets in the United States and Europe.

A continuation of the IPO resurgence will pose some challenges for Carnegie at Blackstone, but he remains unfazed.

The Blackstone model is a well-tried and proven one. It tends to focus on deals with an enterprise value in excess of $500 **million**.

That means that there are probably only a handful of opportunities coming across the Blackstone desk in Australia each year.

That, in turn, brings a sharp focus to the analysis and due diligence of whatever opportunities are being examined.

An obviously fertile area for Blackstone to look for opportunities is **mining** services. It is a sector in transition because of the tapering of the **mining** boom.

Financial services is another obvious sector in transition. It is being hit with stronger capital requirements for banks and new remuneration models in financial advice.

Blackstone will be looking for inflection points, whether in companies or industries.

Carnegie's appointment should extinguish any doubts about the **company**'s commitment to Australia following the sudden resignation last year of former Future Fund general manager Paul Costello as chairman of Blackstone's local **operations**.

Costello is likely to continue his association with Blackstone, but the precise terms of that relationship are yet to be defined.

Carnegie's appointment says a lot about Blackstone's understanding of the meaning of competitive advantage. It is clear that the **company** does not think it can be taken seriously or function effectively with a head of Australian **operations** based in **Hong Kong** or Singapore.

The truth is that competitive advantage is all about people, contacts, networks and context. The other obvious advantage that a global **firm** brings is scale, which Blackstone has in spades.

The competition regulator is not by any means the fount of all wisdom but its latest assessment of the Australia media market will reinforce the view that media companies with print assets should keep the print products alive as long as possible.

That is the clear message to come out of a statement of issues published by the Australian Competition and Consumer Commission in relation to the proposed **purchase** by iSentia of the media monitoring business of Australian Associated Press.

AAP is owned by Fairfax Media, News Corp, Seven West Media and Associated Newspapers.

The deal would create a monopoly in the national market for monitoring print, broadcast and online media. The ACCC is concerned that the proposed **acquisition** would result in a substantial lessening of competition.

Market inquiries by the ACCC have found that the major corporate and government customers of the media monitoring companies place a great deal of importance on keeping track of what is in print.They do not regard online media monitoring as being substitutable for the national media monitoring services offered by iSentia and AAP.

Despite the growth in online media, the decline in print media and the growing preference of consumers for online media over traditional print media, many industry participants expressed a strong preference for monitoring the print media and material published behind newspaper paywalls.

The clear message is that what the print media says is of importance to corporate and government organisations wanting to be adequately informed about how they are perceived. Major customers of the media monitoring companies told the ACCC that their preference for keeping track of what was published in print was not expected to change over the next two to three years.

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