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Going dark not due to compliance burdens: report

FEW EXCEPTIONS

WHILE LISTED COMPANIES globally continue to 'go dark' or delist due to burdensome compliance mandates, Australian firms are not following suit, according to governance experts.

In the US, the advent of the Sarbanes-Oxley Act (SOX) in 2002 caused some commentators to predict that there would be mass desertions from the US markets. While 44 out of the 114 US firms that delisted in 2005 did so because of compliance costs, the mass exodus some predicted has not materialised.

The highest profile Australian delist since SOX was retailing giant Coles Myer, which exited the US markets in January 2006. While it did not specifically blame SOX, the company said that the cost of listing on the NYSE, the London Stock Exchange and the New Zealand Stock Exchange, coupled with relatively low trading volumes, had prompted the move back to the Australian Stock Exchange.

However, a major research project from the Centre for Corporate Law and Securities Regulation at the University of Melbourne focusing on delistings from the Australian Stock Exchange (ASX) has found cost is one of the least cited reasons for delisting in Australia.

Professor Ian Ramsay and Nicholas Lew analysed nearly 6,000 delistings from the ASX from 1975-2004 and found that while a small number – 23 – delisted due to the costs of listing, there were several other major reasons for going dark. The major reason for delisting was name changes, which accounted for 40 per cent of the total followed by being acquired (19 per cent) and failing to pay listing fees, usually due to financial difficulties (8 per cent).

While the Australian study gives some cause for comfort, the situation regarding delisting is much worse elsewhere. A global study from European accountancy firm Mazars, found that close to 20 per cent of European companies are planning to delist from the US markets to avoid complying and more than half feel the costs outweigh the benefits. The UK-based bank HSBC, for example, spent $38 million in its most recent financial year just complying with one section of the Act.

The majority of delistings studied by Ramsay and Lew were accounted for by the banking, investment and financial sectors, miscellaneous industrials and resources. The remaining industries listed on the ASX accounted for just five per cent or less of delistings.

While SOX has attracted much controversy and has been the subject of heated debate in US political and business circles, many organisations are learning to live with the legislation and some are in fact reaping business benefits.

"Despite the debate and constant complaints surrounding the Act and compliance implementation, the legislation has brought about positive change in many organisations," said US governance expert and practice leader at Parson Consulting in the US, Anne Marchetti, writing in *Risk Management* last year. "There is now a heightened focus on corporate ethics and governance, and increased awareness of internal controls. SOX compliance has facilitated approval of valuable initiatives that had previously been denied, such as the implementation of reporting and analysis tools. In addition, many other business process improvement projects have been completed as a result of analysis of prepared process documentation. This has resulted in increased efficiency and cost reduction. There has also been amplified attention on overall risk and risk management and a focus on the derivation of value through enhanced ability to respond to challenges and opportunities, reduction in operational surprises and losses, improvement of competitive position, and adoption of a more proactive as opposed to reactive approach to risk." RM

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