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IPO Experts Speak:

Sizing Up the IPO Market In 2013

2/19/13 - The IPO market got off to a healthy start in the first quarter of 2012, but then struggled against market volatility for much of the rest of the year. Activity slowed late in the year, with only 13 IPOs completed over the final two months, seemingly leaving the market with little momentum heading into 2013.

The good news early in 2013 is that it was the busiest January for IPOs since 2008. Twelve deals were completed, including the largest IPO in the U.S. since Facebook's debut in May 2012. However, new registrations continued to be filed at a relatively slow pace. Eight new companies filed in January, compared to 19 in January 2012.

In 2012, only 23 non-U.S. companies completed IPOs in U.S. markets, down from 34 in 2011 and 60 in 2010. For the first time in many years, China was not the top Issuer location for non-U.S. IPOs. The U.K. claimed top spot in 2012 with six IPOs, and China was second with three (17 China-headquartered companies had gone public in the U.S. in 2011). Israel was third with two. Two of 2013's 21 IPO companies to date are incorporated outside the U.S., so it appears the downward trend may continue for non-U.S.-headquartered IPO filers.

It remains to be seen whether the macroeconomic environment will continue to drag on the IPO market, and whether non-U.S. issuers will continue to stay away from U.S. markets in 2013. We asked David Alan Miller, managing partner of Graubard Miller, to discuss the state of the market at the moment and what the rest of 2013 might bring for IPOs.



David Alan Miller is the managing partner of **Graubard Miller** and head of its Corporate and Securities Department. He joined the firm in 1982 and became a partner in 1987. Mr. Miller's practice includes representing domestic and international clients, including many broker-dealers, in a variety of corporate transactions such as public and private offerings of equity and debt securities, mergers and acquisitions, and restructurings. He has been practicing securities law for over 30 years, during which time he has represented clients in over 250 public offerings and many more private offerings of securities. Mr. Miller helped to

create the financial product called a SPAC, or Specified Purpose Acquisition Company, in 1993. As a result, Graubard Miller has handled more SPAC IPOs and SPAC business combinations than any other law firm in the world.

The IPO market was front-loaded in 2012 with nearly one-third of the year's deals coming in the first quarter. Only 13 IPOs were completed in November and December combined, and the market has not seen a high-profile company go public for some time. What are the factors contributing to the slowdown in the IPO market in recent months?

The slow down in the IPO market in recent months was caused by concerns over the fiscal cliff, the presidential election and the uncertainty over the budget negotiations. However, it appears as though these concerns have been somewhat alleviated. IPOs in 2013 are off to a strong start, well ahead of 2012 YTD volume. Last week, Zoetis priced the largest U.S. IPO since Facebook, raising \$2.2 billion and seeing a 20% price jump on the first day of trading, and Tri Pointe Homes priced the first IPO by a homebuilder since 2004, raising \$230 million and enjoying a first day price increase of 12%. On February 5, 2013, Boise Cascade priced its offering at \$1.00 above the estimated price range and saw a 25% increase in price on the first day of trading. These high-profile deals and their performance bode well for a stronger 2013.

The most startling statistic from the 2012 IPO market was the drop in number of new registrants to 151 from 289 in 2011. Is this attributable only to the JOBS Act confidential filing process, or are there other factors at work?

There are several provisions of the JOBS Act that likely had an impact on the number of new registrants during the year. The confidential filing process is definitely one significant factor. Additionally, the "test the waters communications" provisions of the JOBS Act (which allow emerging growth companies, *prior to filing*, to engage in written or oral communications with qualified institutional buyers and accredited institutions to determine whether such investors might have an interest in a contemplated securities offering) may have resulted in some companies deciding not to proceed to an initial filing as a result of the communications they had with investors, thereby reducing the number of new registrants. However, the drop could also simply be attributed to the economic and political turmoil we experienced in 2012.

The number of U.S. IPOs by non-U.S. issuers fell for the second year in a row. Overall, 23 deals were completed by non-U.S. issuers in 2012, down from 34 in 2011 and 60 in 2010. Why are non-U.S. companies reluctant to go public in the U.S., and do you expect that trend to continue in 2013?

The same factors that led to a decrease in the number of U.S. registrants also led to a decline in the number of foreign registrants. Additionally, many companies in foreign jurisdictions, such as China, were forced to postpone offerings due to the high-profile accounting issues that surrounded prior offerings of companies in those jurisdictions. However, I don't believe this trend will continue. Recent legislative initiatives and reforms have made it more advantageous for foreign issuers to file IPOs in the United States than overseas and the JOBS Act affords the same benefits to foreign private issuers as domestic ones. This builds on the already less stringent SEC compliance requirements for foreign private issuers. Moreover, securities litigation reforms have dramatically reduced lawsuits in the United States over the last ten years. Lastly but significantly, unlike foreign markets, U.S. exchanges still allow issuers to have a dual class of stock providing insiders the ability to maintain voting control even after a large IPO. It is widely believed that this is why Manchester United went public in the United States instead of overseas.

The energy industry has made a strong showing over the past two years, as have blank check companies. In 2012, prepackaged software and pharmaceutical prep companies were among the busiest sectors for IPOs. Are there any particular industries that you believe will perform well in 2013?

As the economy continues to rebound consumers are regaining confidence and this should lead to a robust IPO market in the consumer discretionary industries. Additionally, there is now increased interest ahead of a potential real estate rebound which should bolster the demand for IPOs in the real estate sector. Lastly, healthcare has made and will continue to make a strong showing in the IPO market, as evidenced by the fact that almost 50% of the IPOs in the last two weeks have been in the healthcare sector.

What do you foresee for the remainder of the year for IPOs? What factors will contribute to, or detract from, the new issues market for the rest of 2013?

The improving economy, political stability and the rebound in the housing market bode well for a robust 2013 for IPOs. Additionally, over the last 12 months, new issues have provided a significant double-digit source of out performance for investors (over the major indexes) so buy-side demand should continue... and approximately 75% of 2013's IPOs to date have priced at or above their estimated price ranges, giving issuers that are thinking about going public some positive feedback. Lastly, the JOBS Act should have a positive impact on the 2013 IPO market for two reasons: (i) the confidential filing process and test the waters communications provisions continue to make it easier for companies to go public in the United States and (ii) companies which have previously taken advantage of the confidential filing process in 2012 will soon be coming to market.



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