

HaRe Group newsletter: 7 July 2004

Subject: Executive pay update

From time to time, there are media reports that provide worthwhile information on executive pay. This email summarises and comments on selected reports in recent weeks.

ASX may name rule dodgers (AFR, 6 July)

The ASX is increasing its surveillance of company information on executive pay - ie. the structure and objectives of remuneration policy (including its relationship to company performance), as well as the quantum of total remuneration.

Board directors have now had 15 months to respond to ASX corporate governance guidelines that aim for more consistency in executive pay reporting. The guidelines are non-prescriptive, but they ask "*have you done this?*" and "*if not, why not?*" which still allows companies to design their own strategies, rather than conform to a mandatory requirement (like the much stricter US legislation, known as Sarbanes-Oxley).

If an Australian listed company fails to meet the guidelines, the ASX will initially enquire about the lapse and may request further disclosure. The worst cases of intentionally flouting the requirements will be referred to the Australian Securities and Investments Commission (ASIC). These companies may be publicly exposed for their deliberate shortcomings.

New ASIC rules (AFR, 29 June)

ASIC has warned directors that they face legal action if they do not fully disclose all executive payments, including the value of share options. In 2004 annual reports, this applies to the 5 highest paid executives. From 1 July, disclosure statements must include the top 10 executives.

Disclosure of option values has been required since 1998, but many companies have claimed to not know how to determine option values, so nothing has been disclosed in many annual reports. Last year, after ASIC had issued option valuation guidelines, there were still 22 companies that did not initially disclose option values in their directors' reports.

Revised ASIC guidelines issued on 18 June 2004 clearly state that disclosure being "too difficult or onerous" does not relieve directors of their statutory obligation. The new guidelines refer to AASB 1046 (paras 6.2 to 6.5.3) for determining the amount to be included in an individual's emoluments.

CLERP 9 (AFR, 25 June)

Few amendments have affected corporate law legislation under CLERP 9. The only major change is the requirement for companies to include in their remuneration reports some additional data on financial performance and shareholder returns over the previous 4 years. Other agreed changes include:

- disclosure of performance hurdles and contingent payments to executives, and
- an explanation of why these hurdles were chosen and how they were satisfied.

The Business Council of Australia doesn't support charting past company performance against current executive pay. BCA policy director, Steve Munchenberg, said this approach "does not recognise the strategic direction of the company... (or) what executives are having to do now to achieve future success."

Comment

The new financial year has brought a rash of governance regulations and guidelines into the media spotlight. Generally, investors are pleased that their concerns about executive pay have been addressed. The coincidence of few recent media stories about "exorbitant" pay levels must also be pleasing - however, bad stories seem difficult to find when the markets are performing well. In the past, a stockmarket fall or a corporate collapse has tended to expose the worst executive pay decisions. Investors will be hoping that better corporate governance will help prevent the bad stories.

To keep investors on side, board directors will need to ensure that they are well schooled on all their corporate governance obligations.

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