BLACKROCK

Level 43, Grosvenor Place
225 George Street, Sydney NSW 2000
Tel +61 (0) 2 9272 2200 Fax +61 (0) 2 9272 2566
www.blackrock.com.au

Client Services Tel 1300 366 100
Client Services Fax 1300 366 107
Client Services Email clientservices.aus@blackrock.com

Manager
Financial Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

15 March 2013

Dear Manager

Re: Corporations Legislation Amendment (Remuneration Disclosures and Other Measures) Bill 2012

BlackRock welcomes the opportunity to respond to proposed amendments to the Corporations Act.

Please find our submission enclosed. We look forward to discussing the contents with you. I can be contacted on 02 9272 2252 or 0466 747 337.

Yours sincerely

pp.

Pru Bennett
Director - Head of Asia Pacific
Corporate Governance and Responsible Investment

BLACKROCK
TEL +61 2 9272 2252
MOB +61 466 747 337
FAX +61 2 9278 2252
pru.bennett@blackrock.com
Level 43, 225 George St
Sydney NSW 2000

Improving the disclosure requirements for listed companies

Introduction

BlackRock welcomes the opportunity to comment on ASIC's exposure draft.

BlackRock is a leader in investment management, risk management and advisory services for institutional and retail clients worldwide. At March 31, 2012, BlackRock's AUM was US$3.684 trillion. Throughout this evolution, BlackRock has maintained its focus on managing assets on behalf of its clients, and providing them with risk management and advisory services. Clients of the firm include corporate, public and multi-employer pension plans, governments, insurance companies, official institutions, endowments, foundations, charities, corporations, banks, sovereign wealth funds, mutual funds, and individuals around the world.

BlackRock's assets under management (AUM) include cash, fixed income, equity, alternatives and multi-asset class mandates. In addition, the reported AUM reflects $147 (or €104) billion in advisory assignments, which include monitoring, hedging, and liquidating troubled portfolios. BlackRock is a global firm that combines the benefits of worldwide reach with local service and relationships.

BlackRock is an independently managed public company with no single majority stockholder. The firm has been listed on the New York Stock Exchange under the symbol "BLK" since 1999. In April 2011, BlackRock was added to the S&P 500 Index, reflecting both the valuation of the company and the broad ownership of its stock. The PNC Financial Services Group, Inc. and Barclays PLC have minority ownership stakes in BlackRock with the remainder owned by institutional and individual investors, as well as BlackRock employees. Independent directors comprise a majority of the BlackRock Board of Directors.

Current disclosure requirements

Currently remuneration is required to be disclosed under AASB 2. The application of AASB 2 has led to a high level of inconsistency as follows:

- Short term incentives (STI) – some companies disclose as short term incentives the amount settled form the previous financial year ie the short term incentive awarded for FY 2011 is disclosed as the STI settled for FY 2012. Other companies accrue the current year STI ie the STI disclosed for FY 2012 is the STI awarded for performance is FY 2012. Further if an STI is settled wholly or partly in deferred shares then, the expense of the equity component is amortised over the vesting period. Consequently under the current reporting regime there is no consistency relating to the disclosure of STI's.
- Long term incentives (LTI) – Under AASB 2 the value of equity granted is amortised over the vesting period. Further, pay vehicles subject to different performance conditions are subject to different valuation methodologies. For example, the value at grant date of options which have a performance measure based on a market conditions such as relative total shareholder return (RTSR), take into account the impact of the performance measure ie RTSR, whereas the value at grant date of options which have a performance measure which is not based on market conditions such as earnings per share (EPS), do not take into account the impact of the performance measure ie EPS. The differing approach to valuing instruments at grant date adds confusion to the information disclosed in respect of executive remuneration.
- Further the disclosure of the accounting expense ignores the fair value at grant date and also vesting date. Where markets have moved significantly over the performance period (ie significantly up or down) the figure currently shown as "total remuneration" has little or no correlation with the value of remuneration granted and actually received.
- In BlackRock's assessment the current disclosure regime does not provide clarity or consistency in respect of disclosure of executive remuneration.

BlackRock recommends that the disclosures required under AASB 2 be part of the notes to the financial statements and do not have to be disclosed in the remuneration report.

Proposed legislation

BlackRock welcomes and supports any move to make disclosure of remuneration more consistent between companies and more understandable. Investors want consistency and clarity with respect to remuneration reporting.

BlackRock is supportive of Treasury's approach to the concept of disclosure of past, present and future pay. However, the legislation as proposed does not identify remuneration that is performance based. This is important as without such information it is difficult to determine if there is alignment between the performance based remuneration and shareholder interest.

If the proposed legislation is amended so that performance based remuneration is disclosed we believe that such legislation should replace the existing statutory disclosure. To have two forms of disclosure of remuneration is likely to cause more confusion and not provide any further clarity or consistency, which are the key aims of the proposed legislation.

BlackRock makes following comments with respect to the proposed legislation:

Proposed paragraph 300A (1)(aa)

BlackRock supports the provision of a description of companies' remuneration governance framework for determining remuneration in relation to key management personnel (KMP).

In BlackRock's view it is preferable for such disclosure to be made in the remuneration report itself. Where the disclosure occurs in another section of the financial report a reference to where it is disclosed should be made in the remuneration report.

Proposed paragraph 300A (ca)

The proposed legislation refers to remuneration that has been "paid". BlackRock has concerns regarding the use of the word "paid" as this is likely to create confusion.

When remuneration is settled in cash it is considered "paid" when the cash is received. The problem occurs when the remuneration vehicle used is options. Options vest on a specified day, but do not necessarily have to be exercised. The exercise period remaining after the vesting date can be a number of years. So does "paid" refer to the vesting date or the exercise date?

Further based on the table below, disclosure will include various aspects of remuneration and it will be difficult to determine which components related to particular performance conditions.

Further, our interpretation of this proposed paragraph will result in disclosure of remuneration as per the table below.

Proposed section	Prior years	Current years	Future years	Remuneration captured
(i)	Granted	Paid		LTI's vesting in current year, STI paid from prior year, STI deferred from prior years vesting is current year
(ii)		Granted and paid		Fixed pay only
(iii)		Granted	Paid	STI from current year including amounts deferred*, LTI's granted in current year, any sign on or retention equity grants

Alternative approach

As discussed above the current reporting requirements do not achieve a level of consistency and clarity which allow investors to determine the fairness or otherwise of executive remuneration.

While the proposed legislation has merits with its recommendations that remuneration is disclosed as past, present and future, it does not identify the different elements of performance based pay.

Therefore, from an investor perspective disclosure of executive remuneration should reflect the manner in which companies manage their remuneration. It is also important to understand the components of remuneration that are not based on performance conditions and those components which are subject to meeting performance conditions

The proposed legislation seeks to disclose present, past and future remuneration. BlackRock supports this concept but believes the legislation as proposed be re-worked slightly to deliver the following disclosure.

In order to understand how a board manages remuneration the following elements of remuneration need to be disclosed:

- Fixed remuneration granted and/or received during the reporting year ie not subject to any performance conditions ***(present pay** - non-performance based remuneration).*
- Performance based remuneration received and or subject to vesting in respect of annual performance relating to the reporting year with the fair value at vesting date disclosed ***(present pay** - performance based remuneration).*
- Performance based remuneration that has vested during the reporting year with a performance period of greater than 12 months. (***past pay -***_performance based remuneration)_
- Performance based remuneration granted during the reporting year with a performance period in excess of one year with the fair value at grant date disclosed for threshold performance and full vesting. ***(future pay** – performance based remuneration).*

The above components of remuneration are consistent with the objectives being sought be Treasury. Disclosure would take the form of four simple tables. This would allow investors to assess each component of pay and make conclusions regarding the board's effectiveness in managing remuneration. For any table disclosing performance based remuneration, all performance conditions that have been met or are to be met should be disclosed beneath the relevant table. The proposed disclosure would lead to greater consistency with respect to disclosure of executive remuneration and also allow for more meaningful comparison of remuneration between companies.

The executive information could be disclosed in four tables containing the following information:

Table 1: Present pay – Nonperformance based

This table would disclose any remuneration granted during the year that the receipt of which is not based on any performance conditions. Such remuneration may include:

- Salary and superannuation
- Non cash benefits
- Sign on bonuses whether or not vesting in the reporting period
- Retention payments equity and or cash based whether or not vesting in the reporting period.

Table 2: Current pay – performance based in respect of performance in the current reporting year and received and or subject to non-performance based vesting. Such remuneration would include:

- Cash remuneration received or receivable in respect of annual performance relating to the current reporting year;
- Equity based remuneration received or receivable in respect of annual performance relating to the current reporting year;

- Equity based remuneration receivable in respect of annual performance relating to the current reporting year but subject to further non-performance based vesting conditions.

Table 3 Past pay – Performance based pay with a performance period of more than 12 months that has vested during the year. Such remuneration would include:

- Cash or equity settled remuneration subject to a performance period greater than 12 months and vesting in the current reporting period.
- The table would disclose the fair value of the vested equity at both vesting and grant dates.

Table 4 Future pay – Long term incentive opportunity granted during the reporting year. Such remuneration would include:

- the fair value of the award at target performance irrespective of any performance requirements and,
- the fair value of the award at full vesting irrespective of performance requirements.

There would not however, be a single figure for "remuneration received" in a particular year. This is due to the complex nature of the components of remuneration. BlackRock notes that in the UK the Financial Reporting Lab (FRL) has recommended the disclosure of a single figure showing actual pay. The work undertaken by the FRL relates to large listed UK entities and may have unintended consequences for the sections of the Australian market that use market exercise price options as a remuneration vehicle. These market sections include early phase biotechnology companies and resource companies in an exploration/development phase. Such companies were not within the scope of the work undertaken by the FRL.

BlackRock requests that Treasury consider the above disclosure model for executive remuneration. A working example of the above alternative approach is contained in Appendix 1.

Proposed sub paragraph 300A(1)(e)(iv)

BlackRock is supportive of this amendment.

Proposed section 300A(1)

The proposed legislation refers to "material misstatements or omission in the financial statements in relation to the company in any previous 3 financial years". "Material misstatements or omission in the financial statements" would by definition, be required to be disclosed to the ASX as part of a company's continuous disclosure requirements. Based on BlackRock's experience, we do not recall any such notices to the ASX. Therefore we are concerned that the proposed legislation will have no impact on executive remuneration structures.

Where we believe that companies should consider clawing back pay is when there has been a significant expense item reported in the financial statements. AASB 101 requires separate disclosure in the notes to the financial statements of material expense items such as write-downs of inventory, major assets, restructuring costs and losses on disposal of assets. BlackRock recommends that where a company reports a significant expense, it is required to report if a claw back provision has applied in respect of the significant expense and where a claw back provision has not applied an explanation why a claw back provision did not apply.

Examples of proposed disclosure of remuneration

Fixed remuneration received during the year ended 30 June 2013

Executive director	Cash	Equity	Total
John Smith	$1,000,000	$1,000,000*	$2,000,000

*On 1 July 2012, Mr. Smith was granted 1,000,000 shares valued at $1 each (based on the VWAP 10 days prior to the grant date) as a retention bonus. The shares will vest on 30 June 2015 if Mr. Smith remains employed as CEO.

Performance based remuneration received and or subject to vesting in respect of annual performance for the year ended 30 June 2013.

Executive Director	Vested		Unvested		Total STI awarded	% of ST potential maximum (if any)award
	Cash	Shares	Deferred Cash	Shares		
John Smith	$250,000	$0	$0	$250,000*	$500,000	50%

*Deferred for two years and subject to claw-back in the event of a misstatement of accounts for the year ended 30 June 2013

Performance based pay that has vested during the year ended 30 June 2013 with a performance period of 12 months or less

Performance based remuneration measured over the year ended 30 June 2013 used the following performance measures:

- Underlying EPS
- Safety
- Personal performance

The board has assessed the performance of the CEO against these performance measures as follows:

- Underlying EPS[1] for the year increased by 10% on the previous year which was in line with budget.
- LITFR rate continued to decrease during the year.
- In the opinion of the board Mr. Smith continued to build a strong culture within the group. A new diversity and inclusivity program was introduced. Further, the results of the annual employee survey showed a significant increase in employee satisfaction.

Based on that assessment, the CEO was awarded 50% of his maximum entitlement. The award is settled by way of 50% cash which vests immediately and the remaining 50% in shares which vest after two years and are also subject to claw-back in the event of a misstatement of accounts for the year ended 30 June 2013.

[1] The difference between underlying EPS and statutory EPS related to the sale of certain assets. The profit from the sales of these assets was excluded from the calculation of underlying EPS.

The maximum amount of STI that could have been awarded to the CEO in respect of the year ended 30 June 2013 was $1,000,000.

[*If there is no cap on the STI then an "if not, why not" statement should be provided as to why such a structure is in the best interests of shareholders.*]

Performance based pay that has vested during the year ended 30 June 2013 with a performance period of greater than 12 months

Executive director	Grant date	Performance period	Vesting date	% of securities vesting	No. of securities vesting	Value of vested securities based on the value of the award at grant date	Value of securities vesting based as at vesting date
John Smith	20/10/2010	01/07/2010 - 30/06/2013	31/07/2013	75%	750,000	$375,000[2]	$750,000

Performance conditions that applied to securities that have vested during the year ended 30 June 2013 that had a performance period of greater than 12 months

Performance based pay measured over a period exceeding 12 months was measured on [date]. The performance measure was compound growth in earnings per share. The threshold performance condition was 5% with maximum vesting occurring when compound annual growth was equal to or exceeded 10%. The compound annual growth for the period from 20/10/2011 to 30/06/2013 was 7.5%. This resulted in the vesting of 750,000 securities.

The value of the shares at vesting date was calculated by taking the VWAP of shares in the 10 days up to the vesting date, 31/07/2013. This gave a value of $1 per share.

The difference between the market value of securities at grant date and vesting date is due to the fact that the share price increased by 50% over the performance period from $0.50 to $1.00.

[2] The valuation at grant date should correlate to disclosure in the year the securities were granted

Long term Incentive Opportunity granted during the year ended 30 June 2013

Performance based pay with a performance period in excess of one year

Executive Director	Grant date	Performance period	Value of award at threshold vesting	Value of award at target vesting	Value of award at full vesting
John Smith	20/10/2012	01/07/2012- 30/06/2015	$500,000	$750,000	$1,000,000

Performance conditions applying to the long term incentive opportunity

A total of 1,000,000 performance rights were granted on 20/10/2012. Vesting of performance rights are subject to the following performance conditions:

Relative TSR Performance measure

> 50% of performance rights are subject to relative TSR measured against the ASX 200 index. Where performance is at the median, 50% of the performance rights (25% of the maximum number of securities issued) vest, with the remaining securities vesting on a straight line basis with 100% vesting at the 75th percentile.

Earnings per share performance hurdle

> 50% of performance rights are subject to meeting an EPS performance hurdle. 50% of the performance rights (25% of the maximum number of securities issued) subject to the EPS performance hurdle vest when compound annual growth in EPS for the period 1 July 2013 to 30 June 2016 equals 7.5%. 100% of performance rights subject to the EPS performance hurdle vest when compound annual growth in EPS for the performance period 1 July 2013 to 30 June 2016 equals or exceeds 15%. Performance rights vest on a straight line basis between compound earnings per share growth of 7.5% and 15% over the performance period.

Rationale for the selection of performance measures

> The board selected a combination of relative TSR and compound growth in earnings per share because [insert rationale].

Value of equity grant at grant date

> The value of the award at grant date has been determined by taking the VWAP of shares during the 10 days following the AGM date. This gave a value of $1 per share.

Definition of fair value

Fair value means the amount for which an asset could be exchanged, a liability settled, or an equity instrument could be exchanged, between knowledgeable, willing parties in an arm's length transaction.

In respect of past pay this is the value at the time of vesting using the market value of the underlying instrument. For present pay this is the market value of the instrument that has been used to settle remuneration in the reporting period. In respect of future pay this is the value at grant date based on the market value of the underlying instrument and requires disclosure of two figures:

- the fair value of the award at target performance irrespective of any performance requirements and,
- the fair value of the award at full vesting irrespective of performance requirements.