

16 May 2014

Manager Corporate Governance and Reporting Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent PARKES ACT 260

Dear Sir/Madam

Re: Deregulation Bill and KMP Equity Remuneration

Guerdon Associates appreciates the opportunity to respond to Treasury's invitation to comment on the *Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014* ('**Deregulation Bill**'). Our comments are limited to the changes for improving disclosure requirements in Remuneration Reports for disclosing entities, contained in section 300A of the *Corporations Act 2001* ('**the Act**').

About Guerdon Associates

Guerdon Associates is an independent¹ executive remuneration and board governance consulting firm. Our clients include 20% of the ASX 50 and a significant proportion of companies in the ASX 300. Consulting staff are located in Melbourne and Sydney, with additional support located in offices in Chennai, India (database management and administration) and San Francisco (technology support).

Deregulation Bill

The proposed amendment to section 300A(1)(e) of the Act will remove the requirement to report the value of lapsed options and the percentage value of remuneration consisting of options. Instead, there will be a requirement to disclose the number of lapsed options and the year in which the lapsed options were granted.

In reviewing the proposal we suggest Treasury consider the fundamental reason for requiring the disclosure. Guerdon Associates suggests the reason for disclosure is transparency; to allow investors to verify that the treatment of securities grants is consistent with disclosures made in prior years.

Guerdon Associates agrees that the proposed amendments will be more informative than the existing requirements and meet, to an extent, the reason for disclosure. However, we query why the requirement to report the number of lapsed options and the year they were granted is not incorporated with other options and rights reporting requirements in Regulation 2M.3.03, preferably immediately after Item 15, rather than included as an item in section 300A of the Act. Likewise, it would make sense for other aspects of the Act dealing with disclosure of options details to be transferred to the regulations. That is, repeal sub-paragraphs 300A(1)(e)(ii), (iii), (iv) and (vi), and transfer (ii), (iii), and the revised version of (iv) to Regulation 2M.3.03.

¹ Independence is defined as a specialist provider of consulting services to boards to minimise conflicts of interest that may result from being a broad based supplier of multiple services to both management and boards.

Guerdon Associates also suggests that, as the Regulations make reference to both options and rights, while these subparagraphs of the Act just refer to options, Treasury consider rewording them so that, whenever the word options is used, follow it with "and rights".

Guerdon Associates also brings Treasury's attention to the Act's requirement to use applicable accounting standards in valuing options, and other equity based remuneration. Submissions to the Productivity Commission review into executive pay, and the CAMAC review of remuneration disclosure that addressed equity valuation, indicated dissatisfaction with the application of accounting standards. The primary reason for dissatisfaction is that AASB 2 requires different and non-comparable valuation methods depending on the performance measure being applied. That is, options with vesting contingent on a "market measure" are subject to a Monte Carlo simulation that, in effect, discounts the fair value of an option by the probability it will not vest. An option with vesting contingent on a "non-market" measure is subject to a fair value calculation that excludes consideration of the probability that some options will not vest. Given that the use of the accounting standard reduces the transparency of remuneration report disclosures, and that the accounting value of each grant is disclosed elsewhere in the financial report, we suggest Treasury consider removing the requirement to disclose value based on accounting standards in sub-paragraphs (ii) and (vi) of section 300A(1)(e). Numerous submissions have been made as to how remuneration value can be disclosed, including submissions by Guerdon Associates to both the Productivity Commission and CAMAC. We suggest that the value ascribed should be the fair value of the instrument itself, irrespective of vesting probability. This is, in effect, the maximum value of the equity instrument.

Guerdon Associates supports the proposed introduction of section 300A(1)(aa) to include in the remuneration report a general description of the remuneration governance framework, to the extent that it is not included elsewhere in the annual report.

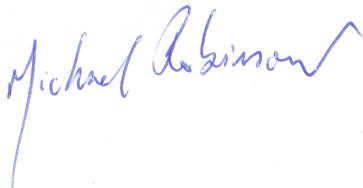
Concluding remarks

Guerdon Associates supports the basis of the amendments being proposed. Our suggestion is that Treasury take the opportunity to transfer the amendments and their related subparagraphs from the Act to the Regulations. We also suggest requirements to report a value on an accounting basis that does not assist transparency be deleted, as it serves little purpose. The value method should be defined as the fair value of the instrument itself, irrespective of vesting probability.

We believe that our suggestions are reasonable and practical, and would also be easily administered and monitored.

We would be pleased to respond to any queries you may have in relation to this submission.

Yours faithfully



Michael Robinson
Director