The team at Egan Associates wishes everyone a happy, healthy holiday season and a rewarding new year.

In our last newsletter for 2013, we reflect on the year that was and look ahead to the year to come.

We hope you continue to consider our viewpoints and appreciate your feedback.

**AGM Season in Review**

We investigate which companies received a first or second strike against their remuneration report in this year’s AGM season.

**Fair Value – is it Fair?**

Egan Associates is concerned about the application of modified valuation techniques drawing on accounting standards for the purpose of allocating an incentive opportunity to the executive.

**Remuneration and Governance Trends**

John Egan reflects on the remuneration and governance developments he expects to be front and centre in 2014.

**Remuneration Recommendations in Preparation for an IPO**

Daniel Yin reflects on seeking remuneration recommendations for IPOs, whether during the pre-IPO phase or once the company enters the public markets.

**EA News Round-up**

We provide a summary of recent remuneration and governance news from around the world.
AGM Season in Review

This AGM season, the third of the two strikes regime, has signalled a certain coming of age for the controversial rule.

The number of major companies receiving a strike has reduced, with those at the top of the pile becoming accustomed to providing better disclosure and being more receptive on stakeholder views.

The lower ASX ranking companies are still finding it difficult to avoid controversy, some because their remuneration policies have not kept up with a swift growth path, others because of large agenda-fuelled shareholding blocks, while a few maintain questionable pay practices.

The following tables provide a 2013 summary of strikes at AGMs for the top 300 companies based on market capitalisation at the end of the September quarter. AGMs have only been considered to 5 December. Some organisations have been mentioned despite being outside the top 300 companies as they were in the previous year’s round-up.

Strike newcomers included:

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<tr>
<th>Company</th>
<th>Comments</th>
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<tr>
<td>Alumina</td>
<td>The CEO was awarded 50% of his short term incentive (STI) potential for meeting individual objectives, but investors believed no STIs should have been awarded given the company’s loss. They also thought disclosure of these objectives was lacking and the company should spend less on executives in general, because they believed the company to be little more than a “post-office” for the collection of dividends from the AWAC alumina/aluminium business, 40% owned by Alumina but managed by the 60% shareholder, Alcoa of the US. The market response fails to acknowledge the level of engagement of Alumina management in capital management strategy and operational review, though clearly flags a key issue, being the critical nature of profit as a gateway for incentive payments.</td>
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<td>Aurizon</td>
<td>ISS Group believed Aurizon should have made the LTI hurdle more difficult following a $1.1 million share buyback, which it said materially affected LTI performance. Aurizon argued it had decided not to alter hurdles to adjust for one-off events in response to criticism of prior hurdle adjustment, and making no adjustment for this case was consistent with this. The issue of share buybacks on EPS performance hurdles has been around for more than a decade – market precedence supports the company’s stand. A question which remains is “should buybacks be addressed by regulation and performance hurdles tied to EPS be adjusted accordingly?” There are formula for adjusting entitlements under LTI programs in the event of bonus issues and rights issues.</td>
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<td><strong>Super Retail Group</strong></td>
<td>Super Retail Group stated that shareholders were happy with remuneration levels, but it should work on its disclosure. ISS Group believed STI performance against targets had not warranted the payout received. It also believed LTI performance hurdles were not challenging enough.</td>
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<td><strong>David Jones</strong></td>
<td>David Jones noted a large amount of comment on the link between performance and pay for its STI plan, adding that the company had implemented an additional customer experience measure for the 2014 STI and increased the percentage deferred. It has also decided to reduce Directors’ fees and keep executive fees steady. Some shareholders were said to have voted against the report due to the news of CEO Paul Zahra’s resignation and an ill-timed share purchase by Directors.</td>
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<td><strong>Karoon Gas</strong></td>
<td>The Board used its discretion to have options vest to executives despite performance conditions not being met, although they were not in the money. The Chairman believed concerns unrelated to remuneration played a part in the no vote, such as a desire for the company to sell stakes in exploration ventures.</td>
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<td><strong>Southern Cross Media Group</strong></td>
<td>Proxy firm ISS Group stated that Southern Cross Media did not bother to engage with shareholders. The CEO and CFO received significant salary increases and the CEO received over 50% of his target STI while EBITDA declined in the 2013 year.</td>
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<td><strong>Automotive Holdings Group</strong></td>
<td>Following a 2011 strike, Automotive Holdings Group designed a new remuneration framework. It escaped a strike in 2012 and believed this year’s strike was mainly due to the adverse vote of major shareholder AP Eagers. The ASA disapproved of the use of the fair value for long term incentive (LTI) allocation, a practice Egan Associates is also troubled by.</td>
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<td><strong>SCA Property Group</strong></td>
<td>The company revealed that it had received negative feedback on the complexity and generosity of its remuneration, as well as the structure and metrics of its incentive plans. STI criteria and amounts were discretionary. There was a one-off equity grant to make up for the lack of an LTI grant for the period after listing to the end of the financial year.</td>
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<td><strong>NEXTDC</strong></td>
<td>NEXTDC noted that due to its fast trajectory from start-up to top company it is not yet following proxy advisor best practice. For example, its STI pays out when “pre-determined key performance goals have been met” and its LTI is a loan-funded share plan. It criticised stakeholders who voted against the remuneration report due to frustration over a recent capital raising and founder Bevan Slattery’s sale of a large tract of shares.</td>
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<td>Company</td>
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<td>Forge Group</td>
<td>The Board paid an ex-gratia payment of $300,000 to the CEO over and above the maximum STI payment due to outperformance. He also received a one-off sign-on fee to account for foregone annual incentive, equity and retention benefits payable under previous performance arrangements, which reportedly irked institutional voters. The ASA was concerned a “culture of remuneration excess could develop”.</td>
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<td>Hills Holdings</td>
<td>Hills Holdings recorded a loss for the 2013 financial year. The Board is currently overseeing a transformation, which required a restructure of the executive team. Although there were no LTI grants during the 2013 year, STI payments were made to recognise executives’ transformation achievements.</td>
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<td>Servcorp</td>
<td>Servcorp had an unusual integrated STI and LTI plan, payments of which were predicated on the achievement of defined profit outcomes. The plan provided for a payment in subsequent years where the cumulative return met the hurdle. The Board exercised discretion to pay out the cumulative reward in a circumstance where the cumulative return had not been met. The year-on-year performance had clearly improved. The payments represented a very high proportion of the incentive opportunity, though the stretch hurdles were not met.</td>
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<tr>
<td>iSelect</td>
<td>The organisation mentioned three main issues that stakeholders had with its remuneration: additional discretionary remuneration for Directors and certain executives to compensate them for work they had conducted during the listing and equity raising; discrepancies in the disclosure of STIs between years; and the introduction of a loan share plan as a LTI.</td>
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<tr>
<td>Thorn Group</td>
<td>The organisation was disappointed with the strike; it believed its remuneration was reasonable and proxy advisors had not consulted with it about shortcomings. The Chairman did, however, receive an increase in salary and fees and there was a significant protest against the vote to raise the Director fee pool from $550,000 to $650,000.</td>
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<tr>
<td>St Barbara</td>
<td>St Barbara was caught by gold’s drop in value and a problematic acquisition, leading to a significant loss for the 2013 financial year. Despite this, executives received STIs. The organisation said the poor annual performance had led to prior LTI awards lapsing.</td>
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<td>Greencross</td>
<td>Greencross was a well performing company which achieved profit growth in excess of 30%. We suspect the strike was in part influenced by the increase in the executives’ fixed remuneration and a financial performance hurdle for the annual incentive plan which represented two thirds of forecast growth.</td>
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Near misses included:

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<th>Company</th>
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<tr>
<td>Brickworks</td>
<td>Shareholders had concerns about increases to the fixed remuneration of selected executives, the level of disclosure in the remuneration report and the structure, vesting periods and performance hurdles of the incentive schemes – the proportion of the STI is governed by Board discretion while the LTI is an employee share scheme that only has a time-based hurdle. Commentators suggest there may have also been non-remuneration issues behind the protest vote.</td>
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<tr>
<td>Oroton Group</td>
<td>Oroton had already received a strike in 2012 due to lack of transparency of remuneration structures and a disconnect between performance and pay. It improved its disclosure of performance plan hurdles, disclosing more detail about STI key performance indicators, as well as providing EPS targets for LTI awards vesting in the year being reported. These actions were only just enough, with the company recording a protest vote of over 20%.</td>
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<tr>
<td>Lynas Corp</td>
<td>Lynas Corporation has been modifying its remuneration structure over the last few years, adding a formal STI plan and new LTI hurdles, as well as a clawback policy. There were reportedly concerns over a $953,000 termination payment made when the Executive Chairman became Non-Executive Chairman, given he was still with the company. The Board later explained it as compensation for his reduction in pay.</td>
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<tr>
<td>Red Fork</td>
<td>Red Fork Energy received a strike in 2012 and only just escaped a strike in 2013. The company improved disclosure, appointed more independent Directors to sit on the remuneration and nomination committee, abolished performance-based equity for NEDs and introduced new STI and LTI plans.</td>
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Second and third strikes:

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<tr>
<td>Cabcharge</td>
<td>Cabcharge received a third strike in 2013. Reg Kermode is still the Executive Chair and commentators believe his remuneration to be high in comparison to CEOs at companies of similar size. The company has had performance issues, but will not significantly revamp its remuneration or abolish the joint CEO/Chairman role until he leaves. Kermode believes it is difficult for the company to adjust the KMP remuneration mix until new appointments are made, unless shareholders were ready to shoulder additional costs.</td>
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</table>
Linc Energy

Linc Energy also received a third strike. The CEO believes the vote is more a general protest vote than one against remuneration. His fixed pay increased from $500,000 to $1,000,000 over his three-year contract to 31 December 2013. The company intermittently makes grants under an LTI plan but has no formal STI plan, although it promised to have one by 2013 and is now promising to implement one for 2014. Following its first strike, Linc Energy engaged PwC to help redesign the company’s reward framework including STI and LTI plan eligibility, quantum, performance period and vesting conditions.

Cash Converters

Cash Converters received a second strike. It believes the strike was due to proxy advisors not having all the information on its performance plans, although the company does not seem to have made significant changes since it incurred its first strike. Disclosure on STI plans in the annual report is very brief. STIs vested “in recognition of the company’s performance” and LTIs vested due to the organisation meeting budgeted NPAT (undisclosed), which proxy advisors considered weak. Shareholders voted against a spill.

Companies that received a strike in 2012, but not in 2013:

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<tr>
<th>Company</th>
<th>Comments</th>
<th>Action</th>
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<tr>
<td>Amalgamated Holdings</td>
<td>Concerns were raised about the CEO’s maximum STI of 150% fixed pay. Other executives received 50%.</td>
<td>The organisation froze the MD’s fixed pay and reduced the maximum STI opportunity from 150% to 100% of fixed remuneration. It is considering deferring part of the STI and changing the LTI equity type.</td>
</tr>
<tr>
<td>Austal</td>
<td>There was a lack of transparency on STI hurdles. 100% of the STI was paid despite lower accounting profit.</td>
<td>Austal has frozen KMP salaries in 2013, restructured the executive team, reduced KMP participation in a new LTI plan with revamped hurdles, suspended the LTI plan for 2013 and introduced new STI performance measures.</td>
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<tr>
<td>Cochlear</td>
<td>A CEO options grant was in the money at the date of the AGM. Performance hurdles and the valuation method for option allocation were also questioned.</td>
<td>Cochlear improved its remuneration report clarity and disclosure, adjusted LTI hurdle difficulty and decided to use contract value instead of accounting value to allocate amount of LTI equity. This lowered LTI allocations so the company increased STI values and introduced STI deferral.</td>
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<tr>
<td>Company</td>
<td>Description</td>
<td>Changes and Actions</td>
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<tr>
<td>Fairfax</td>
<td>Gina Rinehart used her voting power to force a first strike. There were concerns over the quantum of Board pay.</td>
<td>Fairfax froze fixed remuneration in 2014; Executive KMP volunteered to sacrifice 10% into restricted shares. It replaced STI and LTI plans with one “transformation” plan.</td>
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<tr>
<td>Kingsgate</td>
<td>Performance hurdles were confusing and equity grants with a time condition caused protest.</td>
<td>The organisation provided additional information on its LTI hurdle, benchmarked its remuneration, and will not be providing any more time-based equity to the MD, although his executive team is eligible to receive grants.</td>
</tr>
<tr>
<td>Lend Lease</td>
<td>Accounting issues exacerbated concerns on quantum of CEO pay, despite a decision to cut some STI awards by 10%.</td>
<td>Lend Lease extended the CEO’s STI deferral period, capped STI cash, mandated an executive shareholding level and introduced malus provisions. Following a review, it then negotiated a lower target remuneration package for the CEO, adjusted the remuneration mix towards LTIs, increased STI deferral and added a ROE hurdle for its LTI.</td>
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<tr>
<td>MacMahon Holdings</td>
<td>The former CEO was paid a large STI award just prior to a downgrade. No clawback provisions existed.</td>
<td>A new CEO was employed on a lower package, the KMP accepted a 10% pay cut (permanent for the Board), remuneration will now be benchmarked at the 62.5th percentile, not the 75th percentile. STI deferral was introduced, STI maximum opportunity reduced, time-based equity abolished and LTI retesting removed.</td>
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<tr>
<td>M2 Telecommunications</td>
<td>The independent Non-executive Chair received an STI. The NED fee pool increase was refused. LTI options were in the money at the time of the AGM.</td>
<td>M2 discontinued the Chairman’s cash settled share-based bonus plan and won’t pay performance bonuses for NEDs in future. It also introduced a new LTI plan with equity vesting according to TSR and EPS growth. (The option plan vested on STI targets).</td>
</tr>
<tr>
<td>Peet</td>
<td>Despite a 2013 pay freeze and no 2012 STIs being awarded, there were concerns about the CEO’s fixed pay.</td>
<td>Peet said it considered feedback from meetings with institutional investors when it set performance measures under the LTI program for the 2014 year. Executives forewent the bonuses they could have received for meeting non-financial KPIs.</td>
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Takeaways:

Many of the lessons from this year’s strike season are the same as last year’s, with the key questions revolving around “why” rather than “how much”. Companies attempting to avoid remuneration report strikes should:

- Avoid large increases in fixed pay without cause or explanation.
- Ensure they understand the context of remuneration benchmarking data when raising pay levels or risk being caught out.
- If the company has reduced in size (market capitalisation, total assets or revenue), consider whether pay is still in line with the market.
- Think carefully about the proportion of STI that will be paid when the company is losing money. It may be necessary to consider a financial gateway or modifier to ensure limited payments for poor financial performance. If STIs are awarded when a company has recorded a loss, an explanation is mandatory.
- Be cautious of exercising discretion on payments above plan. If downwards discretion seems necessary, consider whether the remuneration structure is appropriate.
- Consider deferring part of the STI.
- Avoid complex incentive plans where alignment to the business is unclear.
- Avoid amending performance hurdles without good reason.
- Avoid offering loans to acquire shares which are subject to forfeiture and future performance hurdles.
- Avoid paying dividends on unvested shares under an LTI plan.
- Keep termination payments for termination.
- Proactively engage with shareholders who may have an agenda other than remuneration.
- Disclose, disclose, disclose! Investors who are kept guessing are unhappy investors.

In our experience, many strikes against remuneration reports have been exacerbated by remuneration reports which poorly communicate the structure of executive remuneration. We have in the past spoken to clients only to discover that our professional understanding of their remuneration policies based on their documentation did not match the actual remuneration practice. Where confusion reigns, shareholders can vote for the wrong reasons.
Fair Value – Is it Fair?

John Egan

Egan Associates is concerned about the application of modified valuation techniques drawing on accounting standards for the purpose of allocating an incentive opportunity to an executive.

Essentially, this means Boards are valuing securities for the purpose of allocation at a discount to the current share price – they’re discounting the value of the securities by the value of the dividends forecast for the performance period and for the possibility that the performance hurdle won’t be met.

For example, a Top 50 company uses a Monte Carlo simulation to account for both these issues. Assuming an Executive’s LTI potential is set at $1,000,000 and the current share price $10, on advice, the Board would calculate the number of share rights to be granted to executives by dividing the LTI opportunity by the fair value of the rights calculated via the Monte Carlo method less forecast dividends over the performance period. Monte Carlo might supply a notional value of $4.75 for the rights governed by a Relative Total Shareholder Return hurdle and $5.75 for rights governed by a Earnings Per Share hurdle. Using these prices, the executive would be granted roughly 190,000 share rights.

If instead the actual share price immediately prior to the grant date on a 10 VWAP was used ($10.00) then the executive would only be granted 100,000 share rights – just over half those awarded using the modified Monte Carlo simulation.

A Board may form the view that to incent their top talent they need to grant 190,000 share rights where the underlying shares have a current market value of $1,900,000. However, they are not disclosing the full value of the reward. Our concern is lack of transparency, not the underlying value of the award.

It is Egan Associates’ view that many shareholders do not understand the differentiation in the application of accounting standards for expensing equity instruments granted under a long term incentive plan and the use of those standards modified for LTI equity allocation purposes. They do not understand the additional value offered to executives under the latter.

In our judgment the award of rights to future shares under a long term incentive plan represents a future opportunity for the executive to receive shares equivalent to the nominal value on the basis of today’s share price if future performance standards are met.

If a shareholder has $1 million invested in shares, under the illustration above they will hold 100,000 shares. If the executive receives an incentive of similar value for meeting required performance conditions, then on a future occasion they will also receive 100,000 shares, the value of which will reflect the market price when they receive the shares three or four years hence.

In this context, assuming in four years the company’s share price is $15, the market would anticipate (if all performance considerations were met) that the executive would receive
$1,500,000 in incentive value and not $2,850,200 through the allocation of 190,000 rights to shares.

This example highlights how using derivatives of accounting methodologies to allocate securities does so at a substantial discount to the prevailing share price. These rights are valued similarly to how a punter might calculate the value of a share he won’t get his hands on for four years, and then only if the company does certain things. The difference is that the punter is paying for the right to that share. The executive is not.

Today, widely different allocation practices are used in the marketplace, that is:

- The allocation of share rights on the basis of the prevailing share price.
- The allocation of share rights on the basis of a simple Black-Scholes calculation or Monte Carlo simulation.
- The above with the value being further adjusted for expected dividends over the performance period.

We note that in the last one or two years a number of companies have on advice shifted their allocation policy from a VWAP to either a Black-Scholes value or modified fair value using the methodologies defined above but have not changed in their disclosures the annual value of the LTI award being offered to executives.

We acknowledge that at the time an award is granted, a future remuneration benefit is offered. At the time that auditors and others were strongly pursuing the creation of a future remuneration value and amortisation of that value over the performance period, Egan Associates favoured the approach – it was seen as appropriate both from a governance and moral standpoint. In our opinion, the application of accounting standards is still perfectly appropriate for expensing the value of this future remuneration award opportunity to the P & L.

The governance question which we believe is arising from variable practices and disclosures is whether the current approach of using these valuation methods for the allocation of equity retains the governance and moral fortitude of the intent of expensing LTI awards to the P & L account.

We raise this issue of valuation primarily in relation to a share right not an option, as there is no value in an option other than the share price appreciation and the market and shareholders alike have accepted Black-Scholes or a derivative of it as an appropriate approach for valuing such instruments for the purpose of both allocation and expensing to the P & L account.

These challenges are complex. We believe, however, it is beholden on Boards and their advisors to debate and discuss the ramifications of emerging practices and their appropriateness using both a moral compass and an awareness of competitor activity. Only then can they exercise their judgement in relation to what constitutes fair and reasonable reward given management’s accomplishments.

It’s unlikely that the issue will be fully explored until a majority of companies are using mark to market remuneration disclosure (valuing assets by the market price).

Some companies are already disclosing the actual value of equity vesting in the year, and more would be forced on this issue if the legislation and regulations proposed at the end of 2012 were
ever passed. However, given multiple concerns with the legislation (some of which are ours) it is likely to see serious amendments if it ever passes parliament.

This disclosure would help savvy investors to notice when an executive receives amounts above the remuneration intent. For example, they might recall that an executive was granted $1 million worth of securities, which with gang-busting performance might have increased to $2.5 million at the end of the performance period. Then they see that due to the discounted allocation price, the larger number of shares is actually worth $6 million. They would wonder how that happened, given the return is so much higher than they themselves would have experienced for the same outlay.

My judgment is this will become an issue that has to be openly addressed and fully explained in the context of the remuneration intent, which is an opportunity to earn an incentive for superior performance over a three-, four- or five-year period. Investors will ask themselves ‘in what way is the use of these accounting standards and valuation techniques aligned with that intent and the interest of shareholders?’ A modifier would be to limit the vested value of securities to the total shareholder return over the period on vested securities in relation to the original disclosed incentive value.
Remuneration and Governance Trends

John Egan

There’s been less demand for remuneration benchmarking. Many organisations are limiting remuneration increases or not adjusting fixed remuneration at all.

Instead, the focus has been on the structure and relative weighting of KPIs under annual incentive plans and the differential between the level of reward offered for achieving target performance versus performance beyond the Board and the market’s expectation.

Boards have been increasingly focused on risk, which has also been highlighted via a stronger focus on clawback and deferral of STI awards.

For long term incentives, discussion has centred around the appropriateness of performance hurdles and concerns over the use of modified accounting standards for equity allocations. Sensitivity has also arisen, particularly among companies outside the ASX Top 50, regarding the level of equity grants to Chief Executives compared to other members of the leadership team.

In terms of Director remuneration, we have participated in a significant number of assignments in the past 12 months involving reviews of Board fees in both the government, not-for-profit and private sector. The emphasis has been less on the base or retainer fees and more on Committee fees in the context of the increasing workload for Committee members, especially the Chairman.

We continue to observe a degree of sensitivity in relation to the level of Directors’ fees, particularly in the private sector where companies’ results have not met market expectations.

Boards are increasingly addressing succession and renewal, both to address age, gender or cultural diversity and to ensure their Boards’ skills are keeping pace with the needs of the organisation. To aid in this endeavour, Boards are looking to capability matrices to identify their skills requirements while monitoring their performance via a formal Board review process.

Remuneration committees have become much more knowledgeable about remuneration practices, yet there are still a large number of remuneration committees who are purchasing information from consultants without understanding the context of that information. We believe this is likely to change, with more Boards recognising the value of informed recommendations from a remuneration consultant, rather than data on its own.

I also believe the remuneration committee’s role will expand to encompass a company’s culture, ensuring that the company is embracing diversity issues, as well as hiring and rewarding the right talent via the right recruitment strategies, performance management, succession planning and talent management. Boards are now saying this is an important lever to ensure a sustainable business.
Remuneration Recommendations in Preparation for an IPO

In last month’s Newsletter, we discussed the importance of Boards seeking remuneration recommendations in respect of the quantum and structure of key management personnel remuneration. With the increasing number of listings on the ASX, we turn now to the relevant considerations within the context of private equity taking one of their portfolio companies public.

Trying to identify, manage and balance the interests of all relevant stakeholders presents particularly acute challenges in the context of a private equity listing. Existing shareholders are seeking to maximise their proceeds from exit, new shareholders are assessing the value and overall attractiveness of the potential investment and changes to the Board’s composition are inevitable.

Given the increasing complexity of listing processes, a horde of advisors are often engaged; financial, legal, tax and accounting advisors; for the transaction and often also separately, and additionally, for management.

Remuneration advisors are increasingly engaged either at the formative stages of the proposed listing, once the due diligence committee has been established and/or following the company’s listing. What is critical during the entire listing process is transparency in any advice being provided and identification, acknowledgement and effective management of any perceived and actual conflicts of interest.

In this context, it is imperative that the Board seeks advice in respect of remuneration matters concerning the key management personnel of the company having regard to the legislative framework specifically enacted to facilitate transparency and better management of any attendant conflicts of interest.

Whether it is during the pre-IPO phase or once the company enters the public markets, remuneration recommendations should be sought. This means any advice provided in respect of the quantum or structure of key management personnel remuneration is required to be disclosed. The cost of such advice will also be required to be disclosed, along with the nature and cost of any other advice provided by the relevant advisor.

Most importantly, the provision of remuneration recommendations requires strict guidelines to be followed in respect of the engagement of the advisor, dealings with the Board and access to and input from management. The advisor is also required to formally declare that no undue influence has been applied by management in respect of the remuneration advice provided.

The seeking of remuneration recommendations is especially critical given the increasing stakes retained by existing shareholders at listing. Whilst existing shareholders often remain invested in the company (albeit with reduced stakes), Board and management changes are common.
In this environment of change and evolution, it is imperative that maximum transparency and effective identification and management of any perceived or actual conflicts of interest are maintained in respect of key management personnel remuneration. Both existing and new shareholders want management to continue to be incentivised and deliver on performance, whilst having maximum confidence that appropriate and fair reward will result from such effort.
We keep you informed with the latest news from around the world.

**Australia**

*Treasury whitepaper on Superannuation*

The Treasury Department has released a discussion paper on a number of superannuation themes, including regulation and governance.

The paper broaches the question of how an independent Director should be defined for superannuation organisations, whether superannuation Board Chairs should have to be independent and what proportion of a superannuation Board should be independent. Assistant Treasurer Arthur Sinodinos has indicated he agrees with the ASX guideline and APRA regulations that Boards be majority independent.

Board renewal and effectiveness are also addressed, with the paper asking whether there should be maximum appointment terms for directors and if so, what should they be, as well as asking whether the Boards should have to undergo regular Board reviews.

There has been significant protest from superannuation Boards to mandating levels of independence, saying that the current model is working well for fund members.

Consultation is open until February 2014.

*Proposed incentive scheme changes*

ASIC released a Consultation Paper and draft Regulatory Guide on 14 November 2013 relating to employee incentive schemes.

The Paper and Regulatory Guide proposes to expand the disclosure relief for schemes under ASIC Class Order 03/184, desiring to adjust for market practice and ease the burden of offering share schemes where the benefits of the scheme outweigh risks to employees.

For more detail, see our article on the release.

**Global**

*EU heads towards mandatory gender diversity quotas*

The EU parliament has voted for a proposal that would force large listed companies across the EU to hire women for 40% of Board posts by 2020. The mandatory quotas, proposed at the end of 2012, had attracted a significant amount of criticism; many nations (including the UK) believed it should be up to the EU member states to chart their own path to gender diversity on Boards, while others believe all candidates must be appointed on merit.

The proposals now go to the 28 EU member states for approval, with the possibility that a bloc of nations will oppose the legislation and prevent it becoming law.

*Swiss decide against executive pay caps*
Swiss voters have rejected a proposal to limit annual executive pay to 12 times the amount a company’s lowest paid worker earns in a month. Outrage over outsized pay-packets had spread following the government bail-out of Switzerland’s biggest bank UBS: Swiss voters had already waved through another referendum earlier in 2013 which proposed 24 initiatives including a binding annual shareholder vote on executive pay; a ban on severance, sign-on and merger payments; and the introduction of annual elections for Board Directors.

However, large companies stated that the rule would damage Switzerland’s attractiveness as a business location.

*Investment Banks tighten pay*

According to a *Financial Times* analysis of quarterly reports, nine of the largest US and European investment banks are depressing employee pay despite profit increases, shifting returns from employees to shareholders. The banks have set aside only $51.4 billion for employee pay (including salaries, bonuses and other benefits) for the first nine months of the year, 5% less than the same period the year before. Meanwhile, profits have risen 10%. The cuts are more marked in European than US banks, with the EU’s bonus cap likely to further differentiate pay between the regions.

*Action on NZ golden handshakes*

New Zealand MP Paul Goldsmith has introduced a Bill that may reduce the likelihood of executives receiving golden handshakes. The Bill proposes the removal of the automatic right to personal grievance for employees earning salaries of over $150,000. This would mean that if such employees were paid out under the terms of their contract, they would be unable to start a personal grievance case to try and get a higher payout. Employers told Goldsmith that as the law currently stood, the threat of a personal grievance case meant they would put up with someone who was not doing the job well or offer a generous golden handshake to “make the problem go away”. There has been some support for the Bill if the threshold were raised.
About us

For more than 25 years, Egan Associates has advised leading organisations and emerging enterprises in Australia and New Zealand on the remuneration of Board Directors, executives and key staff members, as well as performance management, corporate governance and Board effectiveness.

Our Services include:

- **Remuneration reviews and benchmarking** for Boards, CEOs, executives, senior management and professional positions, including specialist roles
- **Corporate transactions / IPOs**: assistance transitioning pre-IPO reward arrangements into the listed company environment with considerations including escrow provisions
- **Advice on annual incentive plan structures**, performance criteria, target and maximum payment levels including deferral and clawback provisions
- **Advice on long term incentive plan structures**, participation, performance hurdles, equity instruments, valuation and allocation, as well as monitoring
- **Government pay reviews**: assistance at both Federal, State and local level in administrative, policy and corporatised environments on reward for senior executives, professional and administrative staff and governing Boards
- **Online human capital solutions**: online resources to assist organisations manage position documentation, work value, internal relativity, market competitiveness and performance.
- **Board effectiveness**: assistance with Board reviews, Board skills matrices, scenario planning and Board documentation.

John Egan

John’s early career was with Cullen Egan Dell (now Mercer Human Capital), which he chaired from 1983 to 1989, when he formed Egan Associates. John has been an advisor to Boards and senior executives on organisation, governance and reward issues over many years. He has assisted a significant majority of Australia’s top 200 companies as well as a myriad of entrepreneurial organisations and government entities across a wide range of industries.

John has been actively involved with Universities, chairing Sydney University’s Board of Advice for its Faculty of Economics & Business (2001 – 2010). John is an Honorary Fellow of the University and an Adjunct Professor in the School of Business.

His personal interests are in cool climate gardens – [www.thebraesgarden.com](http://www.thebraesgarden.com) – and he served as a Trustee of the Sydney Royal Botanic Gardens & Domain Trust from May 2010 to June 2014.