

GRG

Remuneration Review

Aggregate Fees Limit Trends

Remuneration Review No. 13

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INTRODUCTION

It has been four years since we last undertook a detailed analysis of shareholder voting patterns in relation to resolutions seeking shareholder approval of increases in aggregate fees limits (AFLs) which are the caps that apply to fees that may be paid by companies to their non-executive directors (NEDs).

The need for increases in fees to be approved by shareholders arises from ASX Listing Rule 10.17 which provides that: "An entity must not increase the total amount of directors' fees payable by it or any of its child entities without the approval of holders of its ordinary securities."

Since the ASX Corporate Governance Council's guidelines were first released in March 2003 the ASX has taken the view that fees for purposes of Listing Rule 10.17 include superannuation contributions. In late 2008 the ASX released for public comment a draft change to Listing Rule 10.17 formally confirming that fees include superannuation contributions. The proposed amendment has not been processed at the time of writing this article.

As companies have become aware of the changed interpretation they have found that their AFLs were either insufficient or contained little or no head room to: accommodate market related increases in fee levels, allow addition of NEDs to the Board or compensate NEDs for additional Board work that can arise from time to time in relation to acquisitions, takeovers, divestments etc. Accordingly, many companies have needed to seek shareholder approval for increases in their AFLs.

This article reports on the findings from analysis of:

- voting on resolutions put to shareholders,
- the increases sought and approved by shareholders, and
- the new levels of AFL.

In relation to the data, GRG has noted that larger companies may have adopted a practice of more regularly seeking shareholder approval of modest increase as opposed to less frequently seeking approval of larger increases. However, in general companies continue to seek increases at 4 to 5 yearly intervals.

The rates of increase sought in 2008 have been relatively lower (37%) than shown in our study 4 years ago (50%).

When reading this article, Board members should be mindful of the fact that many shareholders have recently experienced significant falls in the value of their shareholdings and this experience may prejudice their views on the acceptability of future increases in AFLs, albeit that those increases may not translate into immediate increases in fees for individual NEDs.

In the more challenging environment facing Boards, GRG presents an approach that should be considered when seeking increases in AFLs.

GRG Remuneration Reviews are articles to assist directors and senior executives who have responsibilities in relation to Board and senior executive remuneration and other human resources issues. Their role varies between articles with some aimed at stimulating critical thinking, others updating information and others simply acting as a reminder of principles and approaches where awareness may need to be heightened.

GRG Godfrey Remuneration Group Pty Ltd
ABN: 38 096 171 247
56 Berry Street
North Sydney NSW 2060
Phone (02) 8923 5700
Facsimile (02) 8923 5706

COMPANIES ANALYSED

The companies analysed were those with market capitalisations of \$250 million or more as at the end of June 2008. The following table shows the spread of those companies between market capitalisation groups and the number of companies in each group that submitted AFL increase resolutions to shareholders at their 2008 Annual General Meetings.

Market Capitalisation Group (b = billion, m = million)	No of Companies in Group	No of Companies That Sought AFL Increase	% of Companies That Sought AFL Increase
>\$10b	19	8	42%
\$5b to <\$10b	18	5	28%
\$2b to <\$5b	39	9	23%
\$1b to <\$2b	42	9	21%
\$500m to <\$1b	39	6	17%
\$250m to <\$500m	55	9	16%
TOTALS	212	46	22%

Clearly a greater percentage of those companies with market capitalisations of more than \$10 billion have sought shareholder approval of AFL increases than in any other group of companies. The remaining groups are consistent with our understanding of common market practice which is to seek increases at 4 (25% pa) to 5 (20% pa) yearly intervals.

VOTING SUPPORT

The following table shows the 25th, 50th and 75th percentiles of the votes supportive of increases in AFLs expressed as percentages of the votes cast.

Market Capitalisation Group (b = billion, m = million)	Percentage of Votes Supportive of Increase in the AFL		
	P25	P50	P75
>\$10b	93%	95%	96%
\$5b to <\$10b	96%	96%	96%
\$2b to <\$5b	95%	98%	99%
\$1b to <\$2b	92%	93%	97%
\$500m to <\$1b	96%	97%	97%
\$250m to <\$500m	85%	95%	98%
Overall	93%	96%	98%

The voting clearly shows that shareholders have strongly supported increases in AFLs.

AFL INCREASES APPROVED

The following table shows the approved increases expressed as percentages of the previous AFLs.

Market Capitalisation Group (b = billion, m = million)	Percentage Increase in AFL		
	P25	P50	P75
>\$10b	19%	30%	38%
\$5b to <\$10b	25%	33%	40%
\$2b to <\$5b	25%	30%	40%
\$1b to <\$2b	28%	36%	50%
\$500m to <\$1b	23%	33%	46%
\$250m to <\$500m	43%	60%	100%
Overall	25%	37%	50%

The rates of increase have reduced compared to those in our previous study 4 years ago when the P50 increase was 50% compared to 37% this time.

NEW AFLs

The following table shows the new levels of AFL for those companies that had AFL increases approved at 2008 AGMs.

Market Capitalisation Group (b = billion, m = million)	New AFLs		
	P25	P50	P75
>\$10b	\$2,425,000	\$3,250,000	\$4,125,000
\$5b to <\$10b	\$2,000,000	\$2,000,000	\$2,100,000
\$2b to <\$5b	\$1,250,000	\$1,600,000	\$2,000,000
\$1b to <\$2b	\$1,200,000	\$1,450,000	\$1,600,000
\$500m to <\$1b	\$631,250	\$825,000	\$925,000
\$250m to <\$500m	\$500,000	\$700,000	\$1,100,000
Overall	\$812,500	\$1,500,000	\$2,175,000

Generally, the size of the AFL increases with the size of the company as would be expected.

SEEKING FUTURE INCREASES IN AFLs

The following provides a brief summary of the approach that GRG would recommend Boards adopt in relation to the process of seeking shareholder approval of increases in AFLs.

1. Obtain independent professional advice on reasonable, market competitive and appropriate levels of:
 - a. Remuneration for all board work including committee work for each NED role on the Board, and
 - b. AFL for the size of the board and any changes it is undertaking including refreshing its experience and expertise mix.
2. Ensure that the Board's remuneration strategy is appropriate for the Company's circumstances.
3. Explain in clear simple terms in the Remuneration Report the NED remuneration strategy.
4. Adopt a program in relation to NED remuneration of:
 - a. Regularly i.e. not less frequently than three yearly, seeking shareholder approval of increases in AFLs,
 - b. Modest increases in AFLs with less than 30% being desirable, and
 - c. Clearly explaining the rationale for the increase being sought as part of the resolution explanation in the notice of meeting.

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GRG Contacts

GRG is well positioned to assist boards in reviewing their company's remuneration strategies, incentive plans and employment contract terms. Many of the top Australian listed companies are among our substantial client base.

GRG maintains databases on director and executive remuneration. We capture all the aspects required to be covered in Remuneration Reports and therefore provide an authoritative source of advice in relation to market practices and emerging trends.

Please feel free to call any of the following consultants on **02 8923 5700**

◆ Denis Godfrey ◆ Jeff Smith ◆ Tony Santiago

More information on GRG and copies of other GRG Remuneration Reviews please access our website:

www.godfreyremuneration.com