

15 December 2014

Manager
Corporations and Schemes Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Response to Exposure Draft *Corporations Amendment (Remuneration Disclosures) Regulation 2014*

Dear Sir / Madam

Ernst & Young is pleased to submit our comments on the Exposure Draft *Corporations Amendment (Remuneration Disclosures) Regulation 2014* ('ED').

We support most of the proposed changes to the Corporations Regulations to address the inconsistencies in the various disclosures regarding key management personnel (KMP) incorporated to the Remuneration Report by the *Corporations and Related Legislation Amendment Regulation 2013 (No. 1)* following the removal of these requirements from AASB 124.

However, we do not agree with the proposal to substitute the term 'disclosing entity' for 'issuing entity' under item 1 and 4 in schedule 1- Amendments of the ED. We note that the proposed substitution would carve out the disclosure of equity instruments issued by the parent entity and subsidiaries of the disclosing entity or a shareholder of the group in a share-based payment arrangement. Detailed comments are set out in Part A of Appendix 1 attached.

We also note two areas in the Regulation where we see further inconsistencies. Whilst we understand that it was not the intention of Treasury to change the KMP disclosure requirements from the previous AASB 124, we highlight areas where further amendments are required to the current Regulations to align the disclosures with the previous AASB 124. Our detailed comments are set out in Part B of Appendix 1.

Should you wish to discuss any of our comments further, please contact Vincent Sheehan – Partner on (03) 9655 2941 / vincent.sheehan@au.ey.com or Georgina Dellaportas – Executive Director, on (03) 9288 8621 / georgina.dellaportas@au.ey.com .

Yours faithfully



Ernst & Young

APPENDIX 1

A. Items addressed by the ED

Table below highlights our detailed comments on the proposals included in the ED:

ED reference	EY Comments
<p>1. Subregulation 2M.3.03(1) (table item 14, column headed “Condition (if any)”)</p> <p>Omit “issuing entity”, substitute “disclosing entity”.</p>	<p>We do not agree with the proposal to substitute the term ‘disclosing entity for ‘issuing entity’.</p> <p>In line with the definitions of AASB 2 ‘<i>Share-based Payments</i>’ a share-based payment arrangement would include equity instruments (including shares or options/rights) granted by the disclosing entity including its subsidiaries or even a shareholder or the parent of the group. Therefore the disclosure requirement under item 14 should apply to any share based payment arrangement granted as compensation to KMPs that have been altered or modified by the issuing entity during the reporting period.</p> <p>The term “issuing entity” in this instance is broader in scope and covers any shareholder or entity in the group that grants and subsequently modifies a share based award to a KMP. In order to capture all modifications, on the other hand the term ‘disclosing entity’ is restricted to awards granted and modified by the disclosing entity only.</p> <p>We also note that items 15 and 16 of subregulation 2M.3.03(1), relates to disclosures of equity instruments (options/rights issued and shares issued by the exercise of options/rights) granted as compensation to KMPs. As such, these disclosures also originate from various share based payment arrangements which may be awarded by the disclosing entity including its subsidiaries, a shareholder or a parent of the group.</p> <p>Given that items 15 and 16 relates to share based payments arrangements, the term ‘disclosing entity or any of its subsidiaries’ for these items should also be amended to ‘issuing entity’ to be consistent with item 14 as explained above.</p>
<p>2. Subregulation 2M.3.03(1) Item 19</p> <p>(b) has occurred, during the reporting period, between the disclosing entity and any of the following:</p>	<p>We note that the intention of this disclosure is to capture equity transactions with KMP’s (other than share-based payment compensation) issued/issuable by the disclosing entity or any of its subsidiaries which has occurred, during the reporting period, between the disclosing entity including its subsidiaries.</p> <p>We recommend that the Regulation be amended to state “disclosing entity or any of its subsidiaries” to be consistent with the requirement under part (a) of items 19 of subregulation 2M.3.03(1).</p>
<p>3. 4 Subparagraph 2M.3.03(3)(b)(i)</p> <p>Omit “issuing entity”, substitute</p>	<p>We do not agree with the proposal to substitute the term ‘disclosing entity for ‘issuing entity for subparagraph 2M.3.03(3)(b)(i).</p>

“disclosing entity”	Given that item 15 and 16 of subregulation 2M.3.03(1) should refer to ‘issuing entity’ as explained in 1 above, and item 17 and 19 is proposed to refer to ‘disclosing entity or any of its subsidiaries; disclosure under section 2M.3.03(3)(b)(i) should not be restricted to ‘disclosing entity’. It should remain ‘issuing entity’ to cover off all items from 15 to 19 of subregulation 2M.3.03(1).
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B. Items not addressed by the ED

Table below highlights our detailed comments on inconsistencies in other areas in the Regulations, which have not been covered in the ED:

Regulation reference	Previous AASB 124 reference	EY Comments
<p>1. Subregulation 2M.3.03 (3B) A transaction with, or an amount that is receivable from or payable under a transaction to, a key management person, a close member of the family of that person, or an entity over which the person or the family member has, directly or indirectly, control, joint control or significant influence, is excluded from the requirements of items 22 to 24 if:</p> <ul style="list-style-type: none"> (a) the transaction occurs within a normal employee, customer or supplier relationship on terms and conditions no more favourable than those that it is reasonable to expect the entity would have adopted if dealing at arms-length with an unrelated person; or (b) information about the transaction does not have the potential to affect adversely decisions about the allocation of scarce resources made by users of the financial statements, or the discharge of accountability by the key management person; or (c) the transaction is trivial or domestic in nature. 	<p>AASB 124.Aus29.9.3</p> <p>Transactions with and amounts receivable from or payable to a key management person, a close member of the family of that person, or an entity over which either of these persons have, directly or indirectly, control, joint control or significant influence, are excluded from the requirements of paragraphs Aus29.9 to Aus29.9.2 when:</p> <ul style="list-style-type: none"> (a) they occur within a normal employee, customer or supplier relationship on terms and conditions no more favourable than those that it is reasonable to expect the entity would have adopted if dealing at arm’s length with an unrelated person; (b) information about them does not have the potential to affect adversely decisions about the allocation of scarce resources made by users of the financial statements, or the discharge of accountability by the key management person; and (c) they are trivial or domestic in nature. 	<p>We note that the Regulations expand the circumstances under which transactions with KMP’s can be excluded from disclosure under sub-section 3B compared to the previous requirements under AASB 124.</p> <p>Under the Regulations transactions with KMPs that meet the criteria under either (a),(b) or (c) of subregulation 2M.3.03 need not be disclosed whilst under the previous AASB 124, other transactions with KMPs could only be excluded from disclosure if the criteria under paragraphs (a),(b) and (C) were all met. Hence resulting in more KMP transactions being captured by the disclosure requirements.</p> <p>For example, the current drafting would allow an “arms-length” transaction to be omitted irrespective of whether such a transaction had the potential to adversely affect the decisions of users. E.g - a retailer transacts with a distributor which is a related entity of one of its KMP’s on an arms-length basis for a material transaction. This information could be excluded from disclosure under the current Regulations on the basis that it meets the requirements under (a), whereas under AASB 124, such transaction</p>

		<p>may have required disclosure on the basis that the decisions of users would be affected by its non-disclosure.</p> <p>To the extent that it was not the intention of Treasury to change the requirements from the previous AASB 124, we recommend that the Regulation be amended to use the previous wording that was in AASB 124 Aus 29.9.3.</p>
<p>2. Subregulation 2M.3.03 (1) Item 17 – Item 22</p>	<p>AASB 124.9</p> <p>A <i>related party</i> is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the ‘reporting entity’).</p> <p>(a) A person or a close member of that person’s family is related to a reporting entity if that person:</p> <p>(i) has control or joint control over the reporting entity;</p> <p>(ii) has significant influence over the reporting entity; or</p> <p>(iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.</p> <p>(b) An entity is related to a reporting entity if any of the following conditions applies:</p> <p>(i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).</p> <p>(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).</p> <p>(iii) Both entities are joint ventures of the same third party.</p> <p>(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.</p> <p>(v) The entity is a post-employment benefit plan for the benefit of employees of either</p>	<p>We note that under items 17-22 of the Regulations, disclosure is required in respect of a key management person, a close member of the family of that person, or an entity over which the person or the family member has, directly or indirectly, control, joint control or significant influence.</p> <p>However, an entity over which the KMP, a close family member of that KMP of the disclosing entity has significant influence is not a ‘related party’ under paragraph 9 of AASB 124.</p> <p>Illustrative example para IE12 in AASB 124 indicates that where the KMP of the reporting entity has significant influence over another entity, this would not result in the two entities being related parties and therefore transactions between the two entities would not be disclosed under AASB 124.</p> <p>However, disclosure would be required under Item 22 of the subregulation 2M.3.03(1).</p> <p>The definition of a related party was amended with effect from 1 January 2011 to align with the amendments to IAS 24. The changes to the definition clarifies that two entities are not related parties by virtue of a member of KMP of one entity having significant influence over another entity.</p> <p>As a result there exists an inconsistency in scope between the</p>

	<p>the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.</p> <p>(vi) The entity is controlled or jointly controlled by a person identified in (a).</p> <p>(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).</p>	<p>KMP disclosures under the Regulations and AASB 124, which we believe was unintentional.</p> <p>We recommend that the Regulation be amended to delete the wordings '<i>or significant influence</i>' to ensure consistency of the scope of related parties with AASB 124.</p>
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