ACSI VOTING ALERT SERVICE

Meeting details

Fairfax Media Limited (FXJ)	
Annual General Meeting - 2009	
Date	10 November 2009
Time	10:30 am (Sydney time)
Place	The Ballroom, Four Seasons Hotel, 199 George Street, Sydney, New South Wales, 2000
Proxy lodgement details	Fairfax Media Limited, C/- Link Market Services Limited, Locked Bag A14, Sydney South, NSW, 1235 +61 2 9287 0309

Shareholder voting summary

Resolution number	*Resolution summary*	*Board's recommendation*	*ACSI's recommendation*
2	Re-elect Roger Corbett as a director	FOR	FOR
3	Elect Steve Harris as a director	AGAINST	**ABSTAIN***
4	Elect Stephen Mayne as a director	AGAINST	**ABSTAIN**
5	Elect Gerard Noonan as a director	AGAINST	**ABSTAIN***
6	Adopt remuneration report for the financial year ended 28 June 2009	FOR	AGAINST

***Note:** ACSI considers it reasonable for subscribers to vote FOR both Harris and Noonan for the reasons outlined below under items 3 and 5.**

Research and analysis provided by
ISS Governance Services
RiskMetrics Group
The Center of the Financial Community

ACSI VOTING ALERT SERVICE - RECOMMENDATIONS

Background to Meeting

On 13 October 2009, Fairfax Media announced the board had unanimously elected Roger Corbett as chairperson to succeed Ron Walker, who is retiring at the AGM. The decision followed a month of public division between the directors associated with the Fairfax family – John B Fairfax and his son Nicholas – who via Marinya Media own 9.68 percent of the company's shares and the other non-executive members of the board: Walker, Corbett, Julia King, Peter Young, David Evans and Bob Savage.

The dispute became public on 17 September 2009, when Marinya Media released a press release stating it intended to vote against the reelection of Ron Walker at the 2009 AGM. This was in response to a media report that Walker intended to remain on the board, if reelected at the AGM, and retire in 2010. In announcing its intention to vote against Walker, Marinya said that:

- It was aware of "significant shareholder dissatisfaction with (Walker's) tenure as chairman".
- It could see no "sound case" for Walker to continue as chairperson and board renewal needed to start immediately. It also noted that the Fairfax board would "not be surprised by our views".
- The board under Walker had paid "inadequate attention" to corporate governance.
- Under Walker's tenure as chairperson an "unacceptable degree of risk" had been introduced to Fairfax by debt funded acquisitions.

In response, on 18 September 2009, Savage, Young, King and Evans released a statement declaring their support for Walker. This was followed by two announcements on 28 September 2009, the first from Walker stating his intention to stand down from the board at the AGM in the interests of the company and the second from Savage, Young, Corbett, Evans and King, stating their regret at Walker's departure and the fact Corbett, as deputy chairperson, would now "take soundings" of the company's shareholders over the composition of the board and the company's future direction.

The independent directors also noted that:

- All members of the Fairfax board (including the Marinya directors) had voted in favour of recent acquisitions and all board members had agreed to the reduction in the company's dividend payout ratio to 20 percent of underlying earnings announced in December 2008.
- Acquisitions during Walker's tenure as chairperson had been majority funded by equity, not debt, and had diversified the group's earnings risk away from metropolitan newspapers.
- The non-Marinya board members had been made aware that Marinya had borrowings in part secured by its Fairfax shares only through market speculation (Marinya announced on 27 June 2008 that this loan had been repaid).

On 13 October 2009, the company announced the board had unanimously endorsed Roger Corbett as the next chairperson of Fairfax. ACSI has spoken to Corbett subsequent to this event.

Prior to this announcement, Fairfax had received three candidates nominated by shareholders for election as a director at the 2009 AGM: Steve Harris, Stephen Mayne and Gerard Noonan. A discussion of their candidacies can be found below.

Financial performance

Prior to the board dissension noted above, Fairfax Media had suffered a poor year of performance as its revenue declined 10.4 percent as advertising revenue declined as economic conditions deteriorated. On 5 December 2008, Fairfax announced CEO David Kirk had resigned and had been replaced as acting CEO by Brian McCarthy (who was appointed permanent CEO and to the board on 10 December 2008). The departure of Kirk was reportedly instigated by Marinya Media and McCarthy was the CEO of Rural Press, a company majority owned by Marinya that was acquired by Fairfax in May 2007.

For the 12 months to 28 June 2009, Fairfax saw its net profit decline from $387 million to a loss of $380 million, largely due to $513 million in impairment charges related to goodwill, mastheads and licences. In addition to the dividend payout ratio reduction noted above the board also elected not to pay a final dividend.

The company also, after announcing to the market on 4 February 2009 that it had no need to refinance debt and no "present need to raise equity", announced a three for five non-renounceable entitlement offer on 27 February 2009 to reduce debt levels (net debt during the year declined by $734 million with $624 million raised from the entitlement offer). On the same date the company also announced the departure of its CFO. The entitlement offer saw Fairfax's shares on issue increase by 54.8 percent. Marinya was unable to take up its entitlement under the offer and as a result its shareholding fell from 13.98 percent to 9.68 percent.

Fairfax Media Limited board and board committees

Director		Committee		
Name	Type	Audit	Remuneration	Nomination
Roger Corbett*	Independent	√ (Chair)	√	
Robert Savage	Independent	√		
Peter Young	Affiliated	√	√ (Chair)	
David Evans	Independent		√	√
Ron Walker*	Independent			√
Julia King*	Independent			√ (Chair)
Nicholas Fairfax	Affiliated	√		√
John Fairfax	Affiliated		√	
Brian McCarthy	Executive			

***Note:** Ron Walker and Julia King will retire from the board at the conclusion of the AGM. Roger Corbett will replace Walker as chairperson.

Research and analysis provided by
ISS Governance Services

Item 2 - Re-elect Roger Corbett as a director

Recommendation

The recommended vote in relation to this resolution is FOR.

Roger Corbett is an independent non-executive director and will become chairperson on the retirement of Ron Walker at the AGM.

Discussions with company

ACSI and ACSI's research provider spoke with Roger Corbett and the company's representatives regarding the events outlined above under 'Background to Meeting'. In those discussions it was said that:

- If reelected as chairperson Corbett would work to renew the board's membership, including the appointment of several new directors with experience in both 'new' and 'old' media as well as directors with other necessary experience such as in accounting matters.
- He would be committed to ensuring the board represented the interests of all shareholders, and to ensuring that no one shareholder had disproportionate influence.

At this AGM the board has declared there are two vacant positions and four candidates. This means that if more than two candidates receive a majority of the votes cast on their election, the two candidates receiving the highest number of votes in favour will be elected. No candidate may be elected with less than 50 percent of votes cast in their favour.

Item 3 - Elect Steve Harris as a director

This resolution seeks shareholder approval to elect Steve Harris as a non-executive director of Fairfax Media.

Explanation

Steve Harris is a non-board endorsed candidate for director who has been nominated to the board by a shareholder. He was editor-in-chief of The Age Company (The Age is Fairfax's Melbourne newspaper) between 1997 and 2001 and prior to that was Editor-in-chief of The Herald & Weekly Times Group (a Melbourne newspaper publisher controlled by News Corporation) from 1992 to 1997. More recently he was CEO of the Melbourne Football Club.

He is a director of Berry Street, the Foundation for Public Interest Journalism at Swinburne University.

In relation to his candidacy he has included the following statement in the notice of meeting:

"I believe my experience within and beyond Fairfax and its competition, together with an understanding of the challenges and opportunities involved in shaping the form and function of a 21st century "newspaper" or media company, can help enhance Fairfax's community and commercial purpose, strength and prosperity."

Discussions with candidate

ACSI's research provider spoke with Harris concerning his candidacy for the Fairfax Media board. In discussions he said that:

- He would be committed to working constructively with the Fairfax board and management team.
- His extensive experience across metropolitan and regional media in Australia, both with Fairfax and its chief competitor in print media, News, would be a major positive addition to the board.
- There was a need for Fairfax to create and sell a "growth story" on the company's future prospects. He would be eager to see the company focus on growth and not become overly concerned with print media competition and cost control.
- There was a potential for Fairfax to significantly improve its current operations by integrating its various media capacities for benefit of clients and customers, for example, by allowing advertisers to efficiently market across all Fairfax media outlets.

The incumbent board is recommending against the election of all three shareholder-nominated candidates (Harris, Mayne and Noonan) because it considers the most effective process for board renewal is for the board to undertake a full review of the skills it requires and following this analysis consider the most appropriate candidates with skills to fill the requirements.

Recommendation

ACSI in relation to this resolution is recommending subscribers ABSTAIN.

ACSI also considers it reasonable for subscribers to vote FOR Harris' election.

This recommendation, and the recommendation in relation to items 4 and 5 below, has been made because:

- ACSI considers Harris, Noonan and Mayne to be individuals with extensive and direct experience in media that is presently lacking on the Fairfax board.
- In discussions with ACSI, the chairperson-elect of Fairfax Media has indicated the board is seeking to appoint new directors as part of a board renewal process, and as part of that will seek to appoint directors with experience and knowledge of new media.
- ACSI considers it reasonable on the basis of this commitment and the need for a cohesive board (especially at Fairfax Media given recent events) to allow the new chairperson to lead this process.
- ACSI has commonly supported board endorsed candidates and opposed non-board endorsed candidates on the basis that outside of compelling reasons non-board endorsed candidates carry the risk of creating factionalised or dysfunctional boards.
- In the case of Fairfax Media ACSI notes that the incumbent board has clearly suffered from division and has presided over a decline in returns to shareholders. The commitment of the chairperson elect to board renewal is positive but ACSI notes that this commitment includes the appointment of directors with media experience – and all three non-board endorsed candidates have significant media experience.
- ACSI notes that the risk of the Fairfax Media board becoming divided as a result of the election of non-board endorsed candidates must be balanced by the recent divisions among the incumbent, board-endorsed, directors.
- To reinforce the need for board renewal at Fairfax Media and the appointment of directors with significant media experience ACSI is recommending subscribers 'Abstain' or vote 'For' the election of Harris and Noonan and 'Abstain' on the election of Mayne. This is because ACSI considers these candidates would potentially be able to make a valuable contribution to the Fairfax Media board. ACSI has recommended a simple 'Abstain' on Mayne's election because of his status as a perennial board candidate and shareholder activist which makes it less likely he would be able to work constructively with the incumbent board.

At this AGM the board has declared there are two vacant positions and four candidates. This means that if more than two candidates receive a majority of the votes cast on their election, the two candidates receiving the highest number of votes in favour will be elected. No candidate may be elected with less than 50 percent of votes cast in their favour.

Item 4 - Elect Stephen Mayne as a director

This resolution seeks shareholder approval to elect Stephen Mayne as a non-executive director of Fairfax Media.

Explanation

Stephen Mayne is a former business journalist and the founder of commercially successful ezine www.crikey.com.au. Following the sale of Crikey, his non-compete arrangement ended in March 2009. In November 2008 he was elected to the Manningham City Council and is a member of the Council's audit committee. He is a well-known shareholder advocate in Australia.

In relation to his candidacy, Mayne states he offers Fairfax Media "much-needed internet experience as the founder of www.crikey.com.au" and "supports the current Fairfax management team and would be a genuinely independent director, treating issues on their merits irrespective of personalities or individual shareholders".

The incumbent board is recommending against the election of all three shareholder-nominated candidates (Harris, Mayne and Noonan) because it considers the most effective process for board renewal is for the board to undertake a full review of the skills it requires and following this analysis consider the most appropriate candidates with skills to fill the requirements.

Recommendation

The recommended vote in relation to this resolution is ABSTAIN.

This recommendation has been made for the reasons given above under item 3.

At this AGM the board has declared there are two vacant positions and four candidates. This means that if more than two candidates receive a majority of the votes cast on their election, the two candidates receiving the highest number of votes in favour will be elected. No candidate may be elected with less than 50 percent of votes cast in their favour.

Item 5 - Elect Gerard Noonan as a director

This resolution seeks shareholder approval to elect Gerard Noonan as a non-executive director of Fairfax Media.

Explanation

Gerard Noonan was until the beginning of 2009 a senior journalist with Fairfax Media. He was editor of The Australian Financial Review for five years in the late 1980s and early 1990s. He is chairperson of Media Super, a $2.4 billion superannuation fund, having recently overseen the merger of Just Super and Print Super that created Media Super (Noonan was formerly chair of Just). He is a member of the policy committee of the Australian Institute of Superannuation Trustees, a director of the Australian Council of Superannuation Investors and is chairperson of the Venture Capital Committee of Innovation Australia.

In relation to his candidacy he states in the notice of meeting that "as a journalist of more than 30 years standing, I believe I can represent the interests of Fairfax Media shareholders and bring an intimate knowledge of the way nurturing and using quality editorial can underpin the company's continued success".

Discussions with candidate

ACSI and ACSI's research provider spoke with Noonan concerning his candidacy for the Fairfax Media board. In discussions he said that:

- He would offer the Fairfax Media board a perspective it lacks, that of an experienced journalist (who had also worked in an online environment) and editor with an understanding of how quality content can be linked to profitability.
- He also had considerable governance experience particularly through his role at Media Super but was also used to operating in environments where dissent and different ideas were common, and noted this was potentially positive for a board.
- If elected he would not intend to serve for more than "four to six years" and would one focus would be ensuring the Fairfax Media board on his departure would have at least half of its membership "under 40" with significant experience and knowledge of new media, given the importance to Fairfax's future survival of finding a way to transition from being a print-based advertising business in an industry facing secular decline.

The incumbent board is recommending against the election of all three shareholder-nominated candidates (Harris, Mayne and Noonan) because it considers the most effective process for board renewal is for the board to undertake a full review of the skills it requires and following this analysis consider the most appropriate candidates with skills to fill the requirements.

Recommendation

ACSI in relation to this resolution is recommending subscribers ABSTAIN.

ACSI also considers it reasonable for subscribers to vote FOR Noonan's election.

Subscribers should note that Gerard Noonan is a director of ACSI. He was not nominated or endorsed to stand as a director of Fairfax Media by ACSI and he has played no part in the preparation of this recommendation other than through discussions with ACSI and ACSI's research provider. ACSI routinely speaks with legitimate candidates for board seats as part of its normal operations.

This recommendation has been made because:

- ACSI considers Harris, Noonan and Mayne to be individuals with extensive and direct experience in media that is presently lacking on the Fairfax board.
- In discussions with ACSI, the chairperson-elect of Fairfax Media has indicated the board is seeking to appoint new directors as part of a board renewal process, and as part of that will seek to appoint directors with experience and knowledge of new media.
- ACSI considers it reasonable on the basis of this commitment and the need for a cohesive board (especially at Fairfax Media given recent events) to allow the new chairperson to lead this process.
- ACSI has commonly supported board endorsed candidates and opposed non-board endorsed candidates on the basis that outside of compelling reasons non-board endorsed candidates carry the risk of creating factionalised or dysfunctional boards.
- In the case of Fairfax Media ACSI notes that the incumbent board has clearly suffered from division and has presided over a decline in returns to shareholders. The commitment of the chairperson elect to board renewal is positive but ACSI notes that this commitment includes the appointment of directors with media experience – and all three non-board endorsed candidates have significant media experience.
- ACSI notes that the risk of the Fairfax Media board becoming divided as a result of the election of non-board endorsed candidates must be balanced by the recent divisions among the incumbent, board-endorsed, directors.
- To reinforce the need for board renewal at Fairfax Media and the appointment of directors with significant media experience ACSI is recommending subscribers 'Abstain' or vote 'For' the election of Harris and Noonan and 'Abstain' on the election of Mayne. This is because ACSI considers these

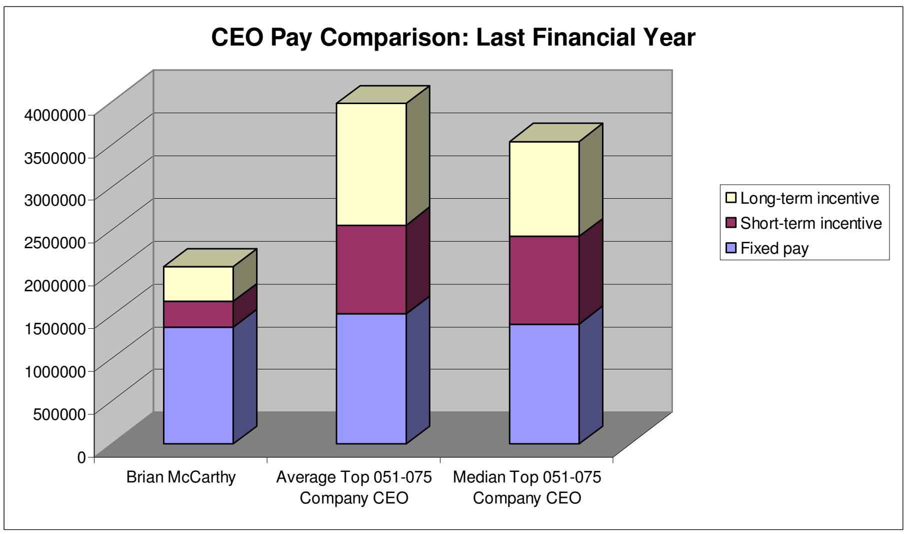
candidates would potentially be able to make a valuable contribution to the Fairfax Media board. ACSI has recommended a simple 'Abstain' on Mayne's election because of his status as a perennial board candidate and shareholder activist which makes it less likely he would be able to work constructively with the incumbent board.

At this AGM the board has declared there are two vacant positions and four candidates. This means that if more than two candidates receive a majority of the votes cast on their election, the two candidates receiving the highest number of votes in favour will be elected. No candidate may be elected with less than 50 percent of votes cast in their favour.

Item 6 - Adopt remuneration report for the financial year ended 28 June 2009

The purpose of this resolution is to give shareholders a non-binding vote on the Remuneration Report contained in the annual report.

The Corporations Act requires a non-binding vote in relation to financial years beginning on or after 1 July 2004.



Note: Former Deputy CEO and CEO, Australia Brian McCarthy was appointed to the board on 10 December 2008 as group CEO. The remuneration shown above is for the full 2009 financial year.

How did we assess last year's Remuneration Report, and what changes has the company made?

Summary Of Feature	Action Taken by company since last AGM
Positive features	
▪ One-quarter of annual director fee are paid in the form of shares. Non-executive directors are otherwise remunerated only by way of fees and statutory superannuation.	There will be no increase in director's fees for 2009/10.
▪ The features of the 2008 long-term incentive plan are consistent with local market standards.	All share plans have been suspended pending review of the revised tax treatment announced by the Federal Government.

Negative features	
▪ The CEO and other senior executives are entitled to excessive termination entitlements.	UNCHANGED. The former CEO and CFO received excessive termination payments in the 2009 year.
▪ Executives received substantial fixed pay increases in the 2008 year.	An executive pay freeze has been declared.
▪ The company does not disclose the value of share based payments received by executives in a clear way.	UNCHANGED
▪ Fairfax does not require its shareholders to approve equity grants (purchased on-market) to its executive directors.	UNCHANGED
ACSI recommendation on last year's Remuneration Report	*AGAINST*

Explanation

The **positive** features of Fairfax Media Limited's executive and director remuneration practices include:

Long-term incentive scheme

- The long-term incentive scheme under which Fairfax made grants in the 2009 financial year is unchanged from the scheme used for 2008. Under the scheme, zero exercise price options (ZEPOs) are granted that vest over three years against demanding relative total shareholder return (TSR) and absolute earnings per share (EPS) growth hurdles. The TSR and EPS hurdles each apply to half of each grant. The scheme satisfies the ACSI Guidelines which also endorse dual hurdles for LTI schemes.
- The hurdles applying under the LTI scheme are as follows:
  - **TSR hurdle:** This measures Fairfax's performance against the S&P/ASX 300 Consumer Discretionary Index. Half of the TSR ZEPOs vest if Fairfax is ranked at the 50th percentile, with straight line vesting up to full vesting for performance at or above the 75th percentile.
  - **EPS hurdle:** Vesting under this hurdle commences if Fairfax achieves 7 percent compound annual growth in EPS (at which point 25 percent vest), with linear vesting up to full vesting if Fairfax achieves 10 percent compound annual growth in EPS.
  - One retest of both performance hurdles is permitted after four years.
- The EPS hurdle for grants in both 2008 and 2009 appears particularly demanding. In the 2008 financial year, EPS pre-significant items increased 0.86 percent and in 2009 it fell 47 percent.
- ACSI notes that as the scheme uses ZEPOs recipients could still receive a substantial benefit should the hurdles be achieved and the Fairfax share price fall substantially. ACSI notes however that based on performance over the past two years it is unlikely that Fairfax will achieve the EPS hurdle.
- **Suspension of scheme:** The scheme is presently suspended as a result of the uncertainty created by proposed changes to taxation of employee share schemes announced by the Australian Government in May 2009.

- Fairfax states in its 2009 remuneration report that "no options were granted to directors or key management personnel". According to its financial accounts (note 35, page 103), Fairfax issued 1.887 million ZEPOs to key management personnel in the 2009 financial year.

Non-executive director remuneration

- In the 2009 financial year non-executive directors of Fairfax received only fixed fees and statutory superannuation payments were applicable. Until the suspension of the scheme in May 2009 following the proposed taxation changes noted above, directors received at least 25 percent of their fees as shares in Fairfax. The ACSI Guidelines support such arrangements as aligning directors with shareholders.
- Non-executive directors did not receive any fee increase for the 2009 financial year and there has been no fee increase for the 2010 financial year.

Termination entitlements for current executives

- The majority of current senior executives of Fairfax Media are not entitled to an excessive termination payment under the ACSI Guidelines which call for such payments to be capped at 12 months' fixed pay. Of the three key management personnel other than the CEO listed in the 2009 remuneration report, two are entitled to 12 months' notice (or fixed pay in lieu of notice) on termination (Brian Cassell and Jack Matthews).
- The CEO, Brian McCarthy, is entitled to 12 months notice.
- Former senior executive Joan Withers, who retired on 30 June 2009, received a payment of $162,580 on departure.
- Please see below for payments to the former CEO and CFO.

Fixed pay freeze

- On 12 May 2009, Fairfax, as part of a profit downgrade, announced salary freezes for the CEO and direct reports to the CEO.
- In addition, ACSI notes that the new CEO, Brian McCarthy, and the new CFO, Brian Cassell, both receive substantially lower fixed pay than their predecessors: McCarthy receives $1.3 million per annum (Kirk received $1.7 million) and Cassell receives $600,000 (in 2008, his predecessor, Sankar Narayan, received fixed pay of $800,000.
- Please see below with regards to a salary increase for the new CEO from 1 October 2009.

The **negative** features of Fairfax Media Limited's executive and director remuneration practices include:

Termination payments

- One executive, Gail Hambly is entitled to 18 months' notice or payment in lieu of notice. This is excessive under the ACSI Guidelines.
- The former CEO of Fairfax Media, David Kirk, received a termination payment of $4.123 million on departure from the company in December 2008. This is well in excess of his contractual entitlement on termination of $2 million, well over twice his 2008 fixed pay of $1.7 million and is excessive under the ACSI Guidelines.
- The former CFO, Narayan, received a termination payment of $1.198 million following his departure in May 2009 relative to his 2008 fixed pay of $800,000. He was entitled to 12 months fixed pay in lieu of notice on termination and his departure was announced at the end of February 2009.

- **Discussions with company:** ACSI's research provider spoke with Fairfax's representatives to gain a better understanding of the basis of the payments to the former CEO and CFO. The company's representatives said that:
    - The termination payment to the former CEO, David Kirk, represented the entitlement under his service contract payable should he terminate his employment due to a substantial diminution of responsibility, and had been paid based on the board's judgment that Kirk was likely to be able to successfully argue that this had occurred. The payment also reflected an increased termination entitlement over and above the $2 million he had been disclosed as being entitled to on resignation reflecting the review of this entitlement under his employment contract (released to the ASX in 2005) in August 2007. This review event, which did not take place as scheduled in August 2007, was incorporated into negotiations over Kirk's entitlements on termination.
    - For the CFO, this payment reflected annual leave, his notice entitlement and a pro rata bonus for the proportion of the year worked.

Bonus payments in 2009

- In the 2009 financial year Fairfax recorded a net loss of $381 million, down from a net profit of $387 million in 2008. On an underlying basis, excluding substantial impairment charges, profit declined from $396 million to $241 million. Operating cash flow declined from $420 million to $385 million. The decline was largely due to a fall of 10 percent in revenue due to poor economic conditions.
- Despite the poor financial performance of Fairfax in 2009, the company paid bonuses in 2009 of $556,000 to McCarthy, Cassell, Hambly and Matthews. The largest bonus received was by McCarthy who was paid $298,200, down from $780,000 in 2008. ACSI notes it is not clear on what basis these bonuses were paid given the remuneration report states bonuses are based on group earnings before interest, tax, depreciation and amortisation, earnings per share, revenue and non-financial measures such as circulation, readership and safety targets.
- **Discussions with company:** In discussions with ACSI's research provider, the company's representatives explained that these bonuses had been paid based on achievement by some executives of group financial targets (Fairfax Digital increased its revenue in 2009) and also of non-group financial targets linked to targets such as circulation or efficient management of group legal costs.

Disclosure of share based payments

- As in 2008, ACSI notes Fairfax does not include share based values in the tables that disclose the remuneration of key management personnel. Instead, Fairfax discloses the value of share based payments in a footnote to the table.
- It is accepted practice among almost all large listed Australian companies to disclose the value of share based payments relevant to an executive's remuneration in the remuneration table. ACSI considers that the approach adopted by Fairfax has the potential to understate total executive remuneration.
- Based on past discussions between the company and ACSI's research provider, the company's representative said that the change to disclosure reflected Fairfax's past experience with share based payments: Under the scheme used prior to 2006, no equity incentives had vested. Disclosing remuneration in this way clearly showed the actual remuneration received by executives, with the amount representing share based payments for accounting purposes disclosed in a footnote.
- It should be noted that it is unlikely the shares subject to the EPS hurdle under the LTI will vest.

No shareholder vote on LTI equity grant to CEO

- For its long-term incentive schemes, Fairfax acquires the shares granted on-market using company funds. In 2009, former CEO David Kirk received 857,489 ZEPOs under the company's long term incentive scheme. No shareholder approval was sought for these rights at the 2008 AGM.
- The company is able to grant substantial numbers of shares to its CEO because ASX Listing Rule 10.14, as amended in late 2005, does not require shareholder approval for grants of equity securities to executive directors if those securities are purchased on-market rather than being newly issued.
- ACSI opposes companies using the 10.14 'loophole' given executive directors are related parties of the company and that the only rationale for making such grants is to align director and shareholder interests.
- In this case ACSI notes that the hurdles applying to recent grants of shares to former CEO David Kirk appear sufficiently demanding to satisfy the ACSI Guidelines. The shares granted under the TSR/EPS LTI were forfeited by Kirk on his departure.

Fixed pay increase for new CEO

- As noted above, on 12 May 2009, Fairfax announced its CEO, Brian McCarthy and other senior executives had agreed to salary freezes as part of cost cutting initiatives. The 2009 remuneration report however states that McCarthy's fixed pay will increase from $1.3 million to $1.5 million on 1 October 2009.
- **Discussions with the company:** In discussions with RiskMetrics, the company's representatives said this pay increase was effectively McCarthy's 'promotion pay rise'. It had been agreed at the time he took over as CEO in December 2008 but deferred until 1 October 2009. He had therefore received no pay increase despite working as CEO since December 2008. The details of this arrangement were inadvertently not communicated prior to the 2009 remuneration report.

Recommendation

The recommended vote in relation to this resolution is AGAINST.

This recommendation has been made because:

- ACSI recommended 'Against' the Fairfax remuneration report in 2008. On the basis of the company's disclosures this year ACSI does not consider its remuneration practices have significantly improved, with the fixed pay freeze for senior executives offset by the substantial termination payments to the former CEO and CFO.
- On this basis ACSI subscribers should vote against this resolution. ACSI will correspond with the company over the payments to the former CEO and CFO and seeking better disclosure of the basis of annual bonuses.

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