10 minutes on....

APRA's proposed remuneration disclosure requirements for ADIs

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10 minutes on APRA's proposed remuneration disclosures

Highlights

- APRA has proposed that locally incorporated authorised deposit-taking institutions (ADIs, such as banks, foreign banks and credit unions and building societies) publicly disclose remuneration information of senior mangers and material risk-takers.
- The proposal significantly increases the information shared publically by ADIs creating both external competitiveness and internal relativity challenges.
- While increased transparency may assist with market discipline, the breadth of the disclosures may also result in some unintended consequences including:
    - Stifling of ability to innovate, with companies moving remuneration design to 'safe harbours'
    - Possible pay inflation, with increased disclosure of remuneration levels
    - Significantly varied levels of disclosure given inconsistent definitions of covered employee categories across ADIs
    - Complexity of communications and compliance
- Despite the pre-warnings from APRA in its letter of October 2011 there is limited time to prepare for implementation, so companies will need to act quickly.

On 9 April 2013, **APRA released a draft prudential standard APS 330: Public Disclosure,** for consultation, with the intent to increase transparency of financial markets and enhance market discipline. As part of the prudential standard APRA is requesting local ADIs to increase the disclosure of their composition of capital and their remuneration practices.

APRA is seeking feedback and comments on the draft prudential standard by 16 May 2013, with a proposed effective date of 30 June 2013.

http://www.apra.gov.au/adi/PrudentialFramework/Pages/April-2013-Consultation-Basel-III-Disclosure-Requirements.aspx

This alert provides detail on how the remuneration disclosure requirements may impact your company.

While APRA has requested consultation for these proposals, the proposals are currently in line with the Basel Committee's Pillar 3 remuneration disclosure requirements. As such, it may be prudent for companies to begin planning for how they will provide these disclosures, in a way that is meaningful and aligns to the proposals.

There is room for (mis)interpretation in the draft prudential standard

The current draft raises a number of questions and risks for companies to consider:

Issue	Impact and issues for considerations
Flexibility vs prescribed requirements The prudential standard is highly prescriptive on certain aspects of disclosure, and is less prescriptive in other areas.	***How much scope is available for interpretation?*** The breadth and detail of information to be disclosed will undoubtedly give the market greater visibility over areas of remuneration which have previously not been disclosed. Many of the qualitative disclosures require a description or overview of various elements of the remuneration process – for example, the nature and type of key measures used to take account of risks, and how this might impact remuneration (Attachment E, 1(c)). It is not clear the level of detail required – for example, whether disclosures need to specify how certain risks are aligned to groups of employees who most impact that risk, or the precise mechanism for how specific risks may be addressed across different groups of employees. The broad articulation of some disclosure requirements gives companies flexibility to determine how they may comply with the prudential standard. It also increases the risk that companies may misinterpret the level of detail required and either release too much information (including say commercially sensitive information), or too little (leading to increased scrutiny and reputational damage).
Inconsistency of definition and terms across APRA and Corporations Act disclosures There is an overlap of some disclosures required by the Corporations Act and those required by APRA. It is unclear whether the same definitions apply across both.	***Are terms defined consistently across both required disclosures?*** Companies are required to distinguish between APRA remuneration disclosures and Corporations Act remuneration disclosures. This raises the question of whether the definitions in both these requirements are consistent. This is particularly important in light of proposed changes to remuneration report disclosures to incorporate past, present and future pay, with definitions which are not aligned to the existing, predominantly accounting-standards based, definitions. Examples of potentially different interpretations are shown below:

Requirement	An interpretation	Alternate interpretation
Attachment E, 1(h): number and total of sign-on awards made during the year	Number and total of sign-on awards ***offered*** by the company (which may or may not be contingent on service/performance conditions)	Number and total of sign-on awards actually ***paid*** by the company (not including amounts that the company may be contractually obliged to pay in future)
Attachment E, 1(i): total amount of outstanding deferred remuneration	Outstanding deferred remuneration may refer to unvested remuneration only	Outstanding deferred remuneration may refer to both unvested remuneration, and vested remuneration but subject to disposal restrictions

Planning for disclosure involves multiple considerations

Significant time and effort is required to appropriately document and disclose companies' current arrangements.

APS 330 requirements	Impact and issues for considerations

Where to disclose
• The remuneration information must be disclosed in a "Regulatory Disclosures" section on the company's website. Further, an ADI may include these remuneration disclosures in the annual remuneration report prepared under the *Corporations Act 2001*, provided these are distinguished from the disclosures which are required under the Act.
	Should the information be included only on a company website or in a company's remuneration report?
	• It is sufficient for companies to publish the information on the website, and it is optional for inclusion in the remuneration report.
	• While some companies may consider including this information in the remuneration report in the interests of good governance, there are also unintended consequences of doing so:
	  • the additional disclosures add complexity to a document which some shareholders already find lengthy and complex
	  • the information included in the remuneration report may be subject to a vote at the Annual General Meeting.
	• However shareholders may be sceptical of a company's claims to good governance if information is not included in the remuneration report. It is also unclear whether or not including this additional information within the remuneration report will require it to be audited. Auditors currently provide an audit opinion over the existing remuneration report.

Frequency of disclosure and implementation date • Annual reporting concurrent with the publication of audited financial statements (listed ADI), or lodgement of its financial statements (unlisted ADI). • Effective from first balance sheet date occurring on or after 30 June 2013.	***How should ADIs prepare for disclosure obligations?*** • Despite the pre-warnings from APRA in its letter of October 2011 there is limited time to prepare for implementation. • We believe that companies with a year end of 30 June 2013 will need to immediately start planning how they can meet these disclosure requirements. ADIs will need a formal policy on disclosure approved by the Board. • APRA may require an ADI to commission an independent audit of disclosures, for example where APRA has reason to believe that the information disclosed is incorrect or misleading. • In the interests of good governance, companies may also wish to request external assurance of the information to be disclosed. Further, paragraph 27 (e) of APS 310 requires the CEO to attest that (for the financial year) prudential disclosures required under APS 330 are reliable. This attestation has to be endorsed by the Board. This will cover remuneration disclosures when and if they are included within APS 330. • Concurrent with preparation for external remuneration disclosures, companies may also need to prepare internal communications – including planning for how to address questions employees may raise, when internal stakeholders consider remuneration disclosures which they may not previously have had access to (for example how their own remuneration mix may differ from that offered to other employees)

What companies need to do

In preparation for the proposed prudential standards, companies may wish to:

- provide a submission to APRA on the draft prudential standards
- consider time and capability required to comply with disclosure requirements
- prepare a format for disclosure to comply with APRA requirements, and a formal policy for disclosure to be approved by the Board

How PwC can help

PwC can help you to quickly and effectively prepare a formal policy, and format for disclosure.

We are able to draw on the experience of our UK network to share how companies in other jurisdictions have effectively complied with similar disclosure obligations.

For a deeper discussion about remuneration issues, please contact:

Sydney

Debra Eckersley
Partner
Ph: (02) 8266 9034
Email: debra.eckersley@au.pwc.com

Emma Grogan
Partner
Ph: (02) 8266 2420
Email: emma.grogan@au.pwc.com

Alena Mackie
Director
Ph: (02) 8266 0696
Email: alena.mackie@au.pwc.com

Melbourne

Della Conroy
Partner
Ph: (03) 8603 2999
Email: della.conroy@au.pwc.com

For a deeper discussion about disclosure of composition of capital, please contact:

Sydney

Steven Lim
Partner
Ph: +61 (2) 8266 8016
Email: steven.y.lim@au.pwc.com

Ashley Rockman
Partner
Ph: +61 (2) 8266 1882
Email: ashley.b.rockman@au.pwc.com

Melbourne

Rachael Phelan
Partner
Ph +61 (3) 8603 0155
Email: rachael.phelan@au.pwc.com

Appendix A: Detailed requirements

1. An ADI must disclose the items in Table 18, to the extent applicable to the ADI.

	Table 18: Qualitative disclosures
a)	Information relating to the bodies that oversee remuneration. Disclosures must include: • the name, composition and mandate of the main body overseeing remuneration; • the name of external consultants whose advice has been sought, the body by which they were commissioned, and in what areas of the remuneration process • a description of the scope of the ADI's remuneration policy (e.g. by regions, business lines), including the extent to which it is applicable to foreign subsidiaries and branches; and • a description of the types of employees considered as material risk takers and as senior managers, including the number of employees in each group. At a minimum, these must include the persons specified in paragraphs 17 to 19 of this Prudential Standard.
b)	Information relating to the design and structure of remuneration processes. Disclosures must include: • • an overview of the key features and objectives of remuneration policy • whether the remuneration committee reviewed the ADI's remuneration policy during the past year, and if so, an overview of any changes that were made; and • a discussion of how the ADI ensures that risk and compliance employees are remunerated independently of the businesses they oversee.
c)	Description of the ways in which current and future risks are taken into account in the remuneration processes. Disclosures must include: • • an overview of the key risks that the ADI takes into account when implementing remuneration measures • an overview of the nature and type of the key measures used to take account of these risks, including risks difficult to measure (values need not be disclosed); • a discussion of the ways in which these measures affect remuneration; and • a discussion of how the nature and type of these measures has changed over the past year and reasons for the change, as well as the impact of changes on remuneration.

	Table 18: Qualitative disclosures
d)	Description of the ways in which the ADI seeks to link performance during a performance measurement period with levels of remuneration. Disclosures must include: • an overview of the main performance metrics for the ADI, top-level business lines and individuals • a discussion of how amounts of individual remuneration are linked to institution-wide and individual performance; and • a discussion of the measures the ADI will in general implement to adjust remuneration in the event that performance metrics are weak.
e)	Description of the ways in which the ADI seeks to adjust remuneration to take account of longer-term performance. Disclosures must include: • a discussion of the ADI's policy on deferral and vesting of variable remuneration and, if the fraction of variable remuneration that is deferred differs across employees or groups of employees, a description of the factors that determine the fraction and their relative importance; and • a discussion of the ADI's policy and criteria for adjusting deferred remuneration before vesting and after vesting through clawback arrangements.
f)	Description of the different forms of variable remuneration that the ADI utilises and the rationale for using these different forms. Disclosures must include: • an overview of the forms of variable remuneration offered (ie cash, shares and share-linked instruments and other forms; and • a discussion of the use of the different forms of variable remuneration and, if the mix of different forms of variable remuneration differs across employees or groups of employees), a description the factors that determine the mix and their relative importance.

Appendix A: Detailed requirements

	Table 18: Quantitative disclosures
g)	• Number of meetings held by the main body overseeing remuneration during the financial year and the remuneration paid to its members.
h)	• The number of employees having received a variable remuneration award during the financial year. • Number and total amount of guaranteed bonuses awarded during the financial year. • Number and total amount of sign-on awards made during the financial year. • Number and total amount of severance payments made during the financial year.
i)	• Total amount of outstanding deferred remuneration, split into cash, shares and share-linked instruments and other forms. ` • Total amount of deferred remuneration paid out in the financial year.
j)	• Breakdown of the amount of remuneration awards for the financial year in accordance with Table A below to show: – fixed and variable; – deferred and non-deferred; and – the different forms used (cash, shares and share-linked instruments and other forms).
k)	Quantitative information about employees' exposure to implicit (e.g. fluctuations in the value of shares or performance units) and explicit adjustments (e.g. malus, clawbacks or similar reversals or downward revaluations of awards) of deferred remuneration and retained remuneration: • Total amount of outstanding deferred remuneration and retained remuneration exposed to ex post explicit and/or implicit adjustments. • Total amount of reductions during the financial year due to ex pose explicit adjustments. • Total amount of reductions during the financial year due to ex post implicit adjustments.

2. The quantitative disclosures in Table 18A must be completed separately for the following groups:
(a) senior managers; and
(b) material risk-takers,

which, at a minimum, must include the persons specified in paragraphs 17 to 19 of this Prudential Standard.

Table 18A: Total value of remuneration awards for senior managers/material risk-takers

Total value of remuneration awards for the current FY	Unrestricted	Deferred
Fixed remuneration		
• Cash-based		
• Shares and share-linked instruments		
• Other		
Variable remuneration		
• Cash-based		
• Shares and share-linked instruments		
• Other		

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