

# COMPANY AND SECURITIES LAW JOURNAL

Volume 36, Number 5

2018

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**Is Say-on-Pay the Answer to Executive Remuneration Problems in New Zealand?** – *Tameela Bandara*

In an attempt to constrain rising levels of executive remuneration, several countries around the world have enacted laws, commonly referred to as “say-on-pay”, which provide shareholders a right to vote on executive remuneration. This article examines whether say-on-pay is a viable regulatory tool for New Zealand. Its comparative focus relates largely to Australian law due to the general desire to harmonise the laws of these two jurisdictions. Following a critical analysis of empirical evidence and theoretical arguments for and against the adoption of say-on-pay, this article finds that the evidence on the success of say-on-pay is inconclusive. Further, several New Zealand-specific characteristics may also reduce the effectiveness of say-on-pay, if adopted. Accordingly, this article concludes that transplanting the complex and burdensome regulations of say-on-pay based on the experience of other countries is unlikely to provide a practical solution to executive remuneration problems in New Zealand. .... 380

**Australian Enterprise Risk Management Practices and Corporate Governance** – *Dr Bobae Choi, Dr Doowon Lee and Dr Michael Seamer*

This article investigates the role corporate governance plays in determining firm Enterprise Risk Management (ERM) practices. In particular, it evaluates the extent to which ERM practices adopted by Australia’s top companies comply with Australian Securities Exchange (ASX) risk management recommendations based on firms’ mandatory annual report disclosures. The results show the independence and separation of the role of CEO from that of board chair is important in actively monitoring corporate risk management as is the existence of a separate audit committee. Also, firms with corporate boards and audit committees which meet more frequently have higher ERM compliance than firms with less active corporate boards and audit committees. The long tenure of the CEO exerts a negative influence on ERM compliance while the percentage of female directors on corporate boards is positively associated with ERM compliance levels. In addition, firms which have improved their ERM compliance levels have better future performance compared to other firms. However, this positive relationship is found only in firms with strong governance. .... 404

**Misleading and Deceptive Conduct in Global Financial Markets: Implications for Regulators, Financial Intermediaries and Credit Rating Agencies** – *Professor Tony Ciro*

In the immediate aftermath of the global financial crisis credit rating agencies (CRAs) came under close scrutiny for the role they played in the crisis. The CRAs occupied a pivotal role as de facto regulators and gatekeepers of financial markets. Investors relied on the opinions as to the credit worthiness of complex residential mortgage-backed securities (RMBS) and collateralised debt obligations (CDO) that were issued by CRAs. At the peak of the crisis,

Moody’s and Standard and Poor’s were forced to downgrade their AAA-rated securities, which led to considerable financial losses for holders of RMBS and CDO securities. The widespread losses led to enforcement actions in the United States, where the Department of Justice secured substantial settlements against both Moody’s and Standard and Poor’s. Meanwhile, in Australia end-users that included local authorities were successful in their own personal action against financial intermediaries and ratings agencies for issuing and marketing structured securities that were found to contain misleading and deceptive credit ratings. .... 434

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