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MARK HOLUB AND JASON MITCHELL

On-Market Share Buy-Backs: ASX Disclosure Requirements and Compliance

Our paper investigates the compliance of Australian listed firms with the ASX disclosure rules for on-market share buy-backs. We find that firm compliance is reasonable for initial buy-back announcements, but poor for final buy-back notices. In the latter instance, the disclosure in the appropriate ASX notice is provided in only 53% of cases. Of significant concern is the even lower degree of final notice compliance (42%) for buy-backs tagged as having ‘unlimited’ duration. Across our total sample of 807 buy-backs, an alternative form of disclosure of buy-back completion is provided in 25% of cases, and no proper notification of either the initial announcement or the completion of the buy-back is provided in 12% of cases. In order to improve buy-back transparency, some legislative reform of the ASX rules is suggested including: discontinuing ‘unlimited duration’ buy-backs, restricting buy-back periods to a maximum of twelve months (after which a new buy-back process must be initiated), avoiding multiple simultaneous buy-backs, removing the requirement of daily buy-back notices in favour of more meaningful quarterly or monthly reports, and requiring greater disclosure in relation to foreign buy-backs.

Key words: ASX announcements; Buy-backs; Compliance; Information disclosure; Share repurchases.

Buy-back activity has increased tremendously in Australia over the past decade. The number of buy-backs, amount of shares and the dollar value of shares bought back during this period (Table 1) illustrate the importance and magnitude of this restructuring technique. Australian domestic companies on the ASX repurchased some 3.4 billion ordinary shares costing \$14.8 billion over the period 2000–09 (see Table 1 Panel A). When one adds in the \$7.4 billion paid by foreign companies for ordinary shares (Panel B) and the \$2.8 billion paid for non-ordinary shares across all companies (Panel C), the total amount repurchased is \$24.9 billion (Panel D). The number of on-market buy-backs has mushroomed from 29 in 2000 to a high of 165 during 2008. In total, we are able to identify 807 on-market buy-backs over the 10-year period 2000–09.

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TABLE 1
DESCRIPTIVE STATISTICS OF ASX BUY-BACKS; PERIOD 2000–09

Panel A: Domestic (Australian) companies ordinary shares										
Calendar year	No. of buy-backs Identified	No. of buy-backs provided ann.	No. of buy-backs bought back shares	Ann. no. of shares bought back (mill)	Actual no. of shares bought back (mill)	\$ value of shares bought back (\$ mill)	Average announced % of shares	Average actual % of shares bought back		
2000	23	20	23	430	256	\$1,571	7.9%	4.0%		
2001	62	60	61	734	346	\$757	7.1%	2.9%		
2002	59	55	57	822	377	\$872	7.1%	3.2%		
2003	51	44	50	737	338	\$1,531	7.8%	2.4%		
2004	53	47	52	739	290	\$1,123	7.2%	3.0%		
2005	71	65	69	710	328	\$2,437	7.0%	3.2%		
2006	65	62	65	754	469	\$3,186	8.7%	7.4%		
2007	65	61	63	1,047	529	\$2,630	7.6%	2.7%		
2008	137	131	124	1,952	469	\$585	8.2%	2.1%		
2009	86	85	16	1,278	66	\$58	10.3%	3.6%		
Total	672	630	580	9,203	3,469	\$14,752	8.0%	3.3%		
Panel B: Foreign (Non-Australian) companies ordinary shares										
Calendar year	No. of buy-backs Identified	No. of buy-backs provided ann.	No. of buy-backs bought back shares	Ann. no. of shares bought back (mill)	Actual no. of shares bought back (mill)	\$ value of shares bought back (\$ mill)	Average announced % of shares	Average actual % of shares bought back		
2000	3	3	3	58	34	\$441	2.8%	1.0%		
2001	6	5	5	102	93	\$2,818	5.2%	1.9%		
2002	2	2	2	74	25	\$396	3.7%	0.7%		
2003	2	2	2	36	10	\$197	3.3%	1.3%		
2004	5	4	5	130	23	\$125	4.3%	2.8%		
2005	13	6	11	149	126	\$1,598	4.7%	1.6%		
2006	9	4	7	366	228	\$1,492	5.0%	0.8%		
2007	6	4	5	108	26	\$28	6.2%	1.2%		
2008	10	7	10	137	44	\$245	4.6%	0.5%		
2009	3	3	1	22	4	\$10	5.1%	0.0%		
Total	59	40	51	1,181	613	\$7,351	4.7%	1.3%		

ON-MARKET SHARE BUY-BACKS: DISCLOSURE AND COMPLIANCE

Panel C: All (Australian and foreign) companies non-ordinary shares

Calendar year	No. of buy-backs identified	No. of buy-backs provided ann.	No. of buy-backs bought back shares	Ann no. of shares bought back (mill)	Actual no. of shares bought back (mill)	\$ value of shares bought back (\$ mill)	Average announced % of shares	Average actual % of shares bought back
2000	3	2	3	143	12	\$105	8.2%	7.9%
2001	6	4	6	60	58	\$99	44.7%	20.5%
2002	5	3	4	8	15	\$6	26.7%	12.5%
2003	5	3	5	17	11	\$72	58.7%	19.1%
2004	4	3	4	164	147	\$232	58.4%	26.2%
2005	4	0	4	0	8	\$326	0.0%	49.8%
2006	7	5	6	102	331	\$1,046	24.0%	7.4%
2007	13	13	13	590	105	\$345	8.8%	3.0%
2008	18	14	13	600	287	\$452	22.1%	8.6%
2009	11	8	1	244	45	\$81	13.8%	46.1%
Total	76	55	59	1,928	1,019	\$2,765	22.9%	14.1%

Panel D: All (Australian and foreign) companies all shares

Calendar year	No. of buy-backs identified	No. of buy-backs provided ann.	No. of buy-backs bought back shares	Ann no. of shares bought back (mill)	Actual no. of shares bought back (mill)	\$ value of shares bought back (\$ mill)	Average announced % of shares	Average actual % of shares bought back
2000	29	25	29	632	302	\$2,118	7.3%	4.1%
2001	74	69	72	895	496	\$3,674	8.6%	4.0%
2002	66	60	63	904	418	\$1,275	7.9%	3.7%
2003	58	49	57	790	359	\$1,800	10.7%	3.8%
2004	62	54	61	1,032	460	\$1,481	9.8%	4.6%
2005	88	71	84	859	462	\$4,361	6.9%	5.3%
2006	81	71	78	1,222	1,028	\$5,724	9.6%	6.9%
2007	84	78	81	1,745	660	\$3,003	7.7%	2.6%
2008	165	152	147	2,689	800	\$1,283	9.4%	2.6%
2009	100	96	18	1,544	115	\$149	10.5%	5.9%
Total	807	725	690	12,312	5,102	\$24,867	9.0%	4.1%

No. of buy-backs identified: Have some information that enables identification of a buy-back.

No. of buy-backs provided announcement: Number of buy-backs where the number of shares provided is noted.

No. of buy-backs bought back shares: Number of buy-backs conducted where shares were actually bought back.

Ann no. of shares bought back (mill): Announced number of shares that firms are seeking to buy back.

Actual no. of shares bought back (mill): Number of shares repurchased.

\$ value of shares bought back (\$ mill): Dollar value of shares repurchased.

Average announced % of shares: Calculated percentage amount of announced shares (relative to outstanding shares) to be repurchased.

Average actual % of shares bought back: Calculated percentage amount of actual shares (relative to outstanding shares) repurchased.

Mitchell and Robinson (1999) originally evaluated the information content of ASX buy-back announcements up to 1995, concentrating on the motivations provided by managers. Since then, there have been a number of changes to the regulatory requirements and the level of buy-back activity has increased substantially. In the Australian setting, the impact of the information content and signalling of on-market buy-backs is now well documented (Harris and Ramsay, 1995; Christianto *et al.*, 1997; Balachandran and Faff, 2004; Lamba and Ramsay, 2005). Furthermore, undervaluation is established as one of the major motivations of the buy-back process, both in studies comparing actual prices to theoretical models of valuation in the period leading up to the buy-back (Mitchell *et al.*, 2006) and in research examining the determinants that influence the buy-back process (Mitchell and Dharmawan, 2007). A recent paper by Brailsford *et al.* (2008) examined the factors that influence the magnitude of the buy-back amount (i.e., the disclosed and actual buy-back percentage) and found that undervaluation, capital restructuring and liquidity consistently explained the intended (announced) percentage, but not the actual percentage, of shares repurchased. While some of the above studies have integrated the disclosed motivations into the empirical work, the full extent of what information is contained in ASX announcements has not been established and neither has the degree of firms' compliance with the disclosure rules.

The simplification of the original buy-back legislation in 1995 facilitated the conduct of share buy-backs and is one of the major reasons suggested for the subsequent growth in share buy-back activity.¹ Changes in ASX Listing Rules—which have sought to streamline the reporting framework of on-market buy-backs—have also helped in this regard. However, to date, little is known about the extent to which firms have complied with existing legislative and reporting requirements, and what disclosure firms provide as part of their announcements and buy-back activity. The Australian environment provides an ideal setting for examining the impact of buy-back disclosure. With over a decade of prescribed disclosure rules, there is now a rich data set that allows us to comprehensively document firm behaviour.

Studying the information content of buy-back disclosure also has important policy implications. It allows an assessment of whether the announcement approach is effective in communicating information about a buy-back and its results. If compliance with disclosure requirements is not being met then the ASX, from an oversight perspective, should be concerned. The degree of compliance also has implications for empirical studies. If the *quality* of information in buy-back announcements is variable, the buy-back data used in studies may not represent a reliable information set.²

¹ Dharmawan and Mitchell (2001) and Lamba and Ramsay (2005) note that legislative changes may have altered the signalling impact of on-market buy-back activity.

² Evidence on the quality of disclosure in the Australian environment potentially has spill-over implications for other markets. These markets are disadvantaged relative to Australia as they do not have the minimal ASX requirements of providing initial announcement information and then providing continuous disclosure throughout the buy-back process. The quality of information is likely to be poorer in the U.S. and U.K. markets where companies only provide information at their discretion and then only for actual share repurchases rather than any *ex ante* information signalling as part of an announcement (Fried, 2001; Cook *et al.*, 2004).

FIGURE 1

TIMELINE OF REGULATORY CHANGES TO SHARE BUY-BACKS

1989	1 November	Legislation introduced allowing share buy-backs
1990	31 December	New ASX Listing Rules for on-market buy-backs
1995	9 December	<i>First Corporate Law Simplification Act 1995</i>
1996	1 July	ASX Listing Rule changes: notices required in standardized format (Appendices 7B/7C/7D/7E)
1998	1 July	Further amendments to <i>Corporations Law</i> : Part J.2 Division 2
1999	1 September	ASX Listing Rule changes: revised disclosure requirements and new Appendices 3C/3D/3E/3F (recognition of buy-backs of 'unlimited' duration)
2001	30 September	ASX Listing Rule changes: amendments to Appendices 3C/3D/3E/3F (director's participation now deleted)

The focus of our paper is to investigate firms' compliance with the disclosure of on-market buy-back information required by the ASX. We provide evidence of what information is, and is not, actually disclosed throughout the buy-back process and whether the information provided is clear. We also outline some suggestions for improved buy-back transparency and legislative reform.

LEGISLATIVE FRAMEWORK AND REGULATORY CHANGES

A timeline of key regulatory changes in the *Corporations Law* and ASX Listing Rules is presented in Figure 1.³ Primarily, three regulatory regimes have existed for share buy-backs in Australia:

1. Pre-1995: the period prior to the *First Corporate Law Simplification Act 1995* (FCLSA);
2. 1995–99: the period following FCLSA; and
3. Post-1999: the period since ASX Listing Rule changes became effective on 1 September 1999 (including additional listing rule amendments made on 30 September 2001).

This section outlines the key changes in regulatory requirements during these three regimes.

Corporations Law

Before 1989, buy-backs were not specifically permitted in Australia. In November 1989, enabling legislation was introduced into the *Corporations Law* allowing

³ A more detailed account of the legislative development of share buy-backs and the regulatory changes that have occurred can be found in Harris and Ramsay (1995), Dharmawan and Mitchell (1999, 2001), Lamba and Ramsay (2000, 2005), and the CCH Corporations Law Commentary.

companies to buy back shares under certain conditions.⁴ Five types of buy-backs were allowed: (a) equal access scheme buy-backs; (b) on-market buy-backs; (c) odd lot buy-backs (now called minimum holding buy-backs); (d) employee share scheme buy-backs; and (e) selective buy-backs. However, the procedural complexity inherent in the initial buy-back legislation meant that relatively few buy-backs were undertaken.

Following the recommendations of the Corporations Law Simplification Taskforce, the buy-back provisions were overhauled in 1995 as part of the *First Corporate Law Simplification Act 1995*. The amended provisions, which became effective on 9 December 1995, substantially reduced the mandatory requirements for undertaking share buy-backs. As discussed in Dharmawan and Mitchell (1999), the simplification process substantially shortened the buy-back provisions and made the procedural requirements easier and less costly to comply with. Only minor amendments to the buy-back provisions have occurred since 1995, including a renumbering of the provisions in 1998.⁵

ASX Listing Rules

The ASX listing rules have also changed over time, generally following changes in legislation. The initial set of listing rules relating to share buy-backs was introduced on 31 December 1990. Listing Rule 3V (now superseded) allowed listed companies to undertake on-market buy-backs after advertising in a national newspaper and lodging a notice with the ASX. Significant changes to the ASX listing rules next occurred on 1 July 1996, when new Rules 7.29–7.36 became effective. The new rules required that notices in standardized format be lodged with the ASX and no longer required the buy-back to be advertised in a newspaper.⁶ The standardized notices took the form of ASX Appendices 7B, 7C, 7D and 7E. The rules also required that for on-market buy-backs, a company's shares must have been traded on at least five days in the three months prior to the on-market buy-back (Listing Rule 7.29.2).

A new set of ASX Appendices (3C/3D/3E/3F) became effective on 1 September 1999 and have been subject to only minor amendments since that time.⁷ A key

⁴ The new share buy-back provisions were enacted under Part 3 of the *Co-operative Scheme Legislation Amendment Act 1989*, resulting in amendments to the *Companies Code*.

⁵ The *Company Law Review Act 1998*, which became effective on 1 July 1998, resulted in a re-numbering of the provisions in the *Corporations Law* and introduced some small changes. The resulting provisions became part of a new Division 2 of Part 2J.1. Minor amendments were also made in 2001 [s257B, s257H & s257J enacted by No 122 of 2001, s3 (various Schs) (effective 11 March 2002)].

⁶ For a detailed comparison of the 'old' (pre-1995) and 'new' (post-1995) rules, see Dharmawan and Mitchell (1999).

⁷ A minor change was made to Appendix 3D on 13 March 2000, when the wording in Item 10 was changed from 'proposed takeover announcement or offer' to 'proposed takeover bid'. Similarly, on 30 September 2001 the forms were updated to reflect the new Australian Business Number (ABN) and *Corporations Act*. A more significant change occurred on 30 September 2001, when items relating to directors' participation in the buy-back were deleted (discussed further below).

feature of the new Appendices is that one form applies to all buy-backs (other than minimum holding buy-backs, which are exempted from the Appendix-based disclosure system).⁸ A buy-back is announced using Appendix 3C, any changes to the original terms of the buy-back are advised in Appendix 3D, daily buy-back notices are contained in Appendix 3E, and the final buy-back notice is given in Appendix 3F.

Changes in Disclosure Requirements Over Time

Five key changes in disclosure requirements between the 'old' and 'new' ASX Appendix notices can be identified. These are outlined below.

1. *Continuous buy-backs:* Under the former Appendix 7B, a company was required to specify a start and end date for each on-market buy-back.⁹ Further, the buy-back was mandated to last for a maximum period of six months. Despite buy-backs effectively being required to be finalized within six months, some firms chose to extend their buy-backs beyond the designated period. In effect, this created 'extended' or 'continuous' buy-backs, at odds with the six-month limit.¹⁰ Under the new Appendix 3C, a company is required only to disclose the intended duration of the buy-back, and the duration may be unlimited.¹¹
2. *Disclosure of directors' interests:* A significant change that occurred on 30 September 2001 was the deletion of items relating to directors' participation in the buy-back. This was required in the former Appendix 7B and the original versions of Appendix 3C, 3D and 3E.¹²
3. *Exclusion of minimum holding buy-backs:* Unlike the former rules, the current rules exempt minimum holding buy-backs from the disclosure requirements.

⁸ Previously, certain forms were specific to a particular type of buy-back, such that the announcement and variation of on-market buy-backs was contained in one dual-purpose form (Appendix 7B), and a separate final buy-back notice (Appendix 7E) was required for equal access buy-backs. Under the current system, each form serves a particular purpose and this avoids having a mixture of forms, some of which relate to only one type of buy-back. The use of 'generic' forms for all types of buy-back (other than minimum holding buy-backs) thus provides for a neater, more streamlined system of disclosure.

⁹ Appendix 7B, Items 7 and 8.

¹⁰ The ability of a company to buy back shares over an extended period of time arises from there being no deadline given in the *Corporations Act* for when a buy-back offer must close. However, this does not mean a company can rely on a single buy-back notice to buy back shares into the future. The Australian Securities and Investments Commission (ASIC) considers that a buy-back notice will become 'stale' after 12 months and no longer provide the intended protection for shareholders and creditors (ASIC *Regulatory Guide 110*, RG 110.28). After 12 months, a fresh notice will be required if the company intends to continue buying back shares (ASIC *Regulatory Guide 110*, RG 110.30). In a similar vein, where a company has not commenced to buy back shares within two months of the buy-back notice, ASIC will consider the notice to have expired. In such a case, a new buy-back notice will be required to be lodged (ASIC *Regulatory Guide 110*, RG 110.31 & 110.32).

¹¹ Appendix 3C, Item 12.

¹² The removal of the requirement to show directors' participation in the buy-back from 30 September 2001 is reflected in Appendix 3C (Item 10), Appendix 3D (Item 3) and Appendix 3E (Item 6).

4. *Reduction in procedural disclosure requirements:* The number of items requiring disclosure has been reduced and the duplication of information is avoided by requiring standard information to be reported only once (in Appendix 3C) for all types of buy-back. Companies are no longer required to disclose in Appendix 3C the percentage of shares to be bought back, or in Appendix 3F the percentage of shares in the class that the number bought back represents.
5. *Additional disclosure:* The new Appendices 3C/3D/3E/3F introduce some minor additional disclosure items. Appendix 3D requires disclosure of the number of shares remaining to be bought back and Appendix 3E requires disclosure of the date that Appendix 3C was given to the ASX.¹³ Also, the compliance statement in Appendices 3E and 3F has been expanded to include the statement that the company is in compliance with the *Corporations Act* requirements.¹⁴ This appears to place more direct responsibility on the directors.

Impact of Changes in Disclosure Requirements on Firm Compliance

The changes that have occurred to the disclosure requirements raise a number of issues for further consideration. The following points are pertinent:

- *Information requirements:* The nature of the information required to be released is confusing as on the one hand more price sensitive information (maximum and minimum share price of the buy-back) is required to be disclosed, but on the other hand there is a reduction in the information required in the initial Appendix 3C, which is counter-intuitive.
- *Directors' participation:* The directors' intention of participating in the buy-back is important, as it provides a valuable and associated signalling tool. Similarly, not reporting directors' buy-back activity on a timely basis reduces the quality of information disclosed about insiders participating in the buy-back process.
- *'Continuous' buy-backs:* The continuous form of buy-back provides less information as it moves towards effectively not providing a closure to the buy-back and diluting the information presented. This approach is similar to the U.S. and U.K. systems (see Rau and Vermaelen, 2002) where the only real information comes in the form of *actual* buy-back disclosures released as part of the quarterly reporting mechanism to the SEC and through the annual accounts (Stephens and Weisbach, 1998; Cook *et al.*, 2003). However, ASIC does not treat the buy-back as strictly

¹³ Another item that required disclosure under Appendix 3E but not under the former Appendix 7C was participation in the buy-back by company directors (discussed earlier). This item required disclosure under the former initial announcement/change notice (Appendix 7B), but not in the daily notice (Appendix 7C). However, the disclosure requirement in Appendix 3E was only in place from 1 September 1999 to 30 September 2001, after which it was deleted.

¹⁴ The compliance statement in the former Appendices 7C, 7D and 7E contained the single statement that 'there is no information that the listing rules require to be disclosed that has not already been disclosed, or is not contained in, or attached to, this form'. Appendix 7B (equivalent to current Appendices 3C and 3D) contained the additional clause that the company was also in compliance with all *Corporations Law* requirements.

‘continuous’ since it views buy-backs as becoming stale after 12 months.¹⁵ It seems logical to insert this requirement into the *Corporations Act* so that buy-backs have a natural termination date, say 12 months after the announcement, in conformity with ASIC guidelines.

- *Motivations:* Providing a motivation is essential to the assessment of the value of the buy-back. The extent of adherence to the requirement of providing a motivation illustrates how seriously companies treat the process and reflects the quality of information that is provided.
- *Relevance of daily buy-back notice:* It is relevant to consider what additional timely information is provided by the daily buy-back notice. This seems a particularly onerous requirement and the information content is low. It is problematic in a different sense as if not done accurately it has the potential to misinform.¹⁶ In line with the spirit of *ASIC Regulatory Guide 110*, it would seem more logical to require comprehensive reporting at regular set intervals (say every three months or every month) while the buy-back is ongoing.¹⁷
- *Final buy-back notice:* The final buy-back notice (Appendix 3F) is critical in determining the outcome of the buy-back. If it is omitted the outcome of the buy-back is largely not communicated. The final buy-back notice plays an important role in drawing a line in the sand to indicate that the current buy-back (and associated information signal) is now closed. Just as the commencement of the buy-back provides a signal that the company is prepared to stand in the market for its own shares, the closing of the process provides an additional valuable information signal to investors.
- *Final buy-back data not put in context:* Only four items now require final notice disclosure for all buy-backs: the type of buy-back, the number of shares bought back, the total consideration paid or payable, and the high/low share price of repurchased shares. It would seem sensible to have as a benchmark the number and the percentage of shares intended to be bought-back relative to what has already been bought back, together with intended and actual consideration. This is the critical information that investors want to know throughout the buy-back process. Many companies voluntarily disclose the percentage of shares bought back, which indicates it is valuable in judging the progress, as well as the ‘success’, of the actual buy-back.
- *Potential inconsistency of information disclosed:* A company must state in its annual report whether it has an active buy-back (Listing Rule 4.10.18). If it has not lodged the requisite forms (either initial or final notices) this means that it may fail to report the situation accurately. Information in the annual report may be misleading, inconsistent with the ASX disclosure or not in accord with actual events.

¹⁵ Refer note 10.

¹⁶ We elaborate later (with evidence) but inconsistencies can arise where there is no congruence between the information reported daily and later in Appendix 3F. Mistakes were often noted in the completion of forms.

¹⁷ A monthly report may be more appropriate for buy-backs with an announced duration under six months.

- *Penalties:* The ASX assumes that the regulations are complied with, but an interesting empirical question is whether this is valid assumption. As there are no specific fines/penalties prescribed for non-compliance, one can only presume that the general penalties/or delisting via general enforcement provisions for failure to meet continuous disclosure requirements would apply.¹⁸

RESEARCH QUESTIONS AND DATA SOURCES

Research Questions

Given the importance of the literature on the information content of buy-backs, and in light of the changes to the disclosure framework noted above, our paper seeks to address the following questions:

1. What is the extent of compliance with current ASX listing rule requirements?¹⁹
2. What information is provided/not provided, and what is the impact for investors?
3. What are the primary motivations stated by managers in ASX releases?
4. What is the actual timeframe of the typical buy-back and how does this compare to the intended/announced time period?
5. What is the impact of unlimited duration buy-backs in relation to information disclosure?

Australia provides the only market in the world where such an empirical investigation is possible. It is the only market where there is a rigid framework for disclosure of on-market buy-back information, including buy-back motivations. Analysing motivations provides information about the signalling mechanism (Mitchell *et al.*, 2006) as well as the importance that companies place on this activity. To the extent that motivations vary between companies and across time, they provide valuable information that should be captured in empirical studies seeking to identify the information content of share buy-backs.

Data Sources

Our paper uses the rich source of data on Australian share buy-backs that is disclosed in ASX share buy-back notices. The details provided in these notices were manually collected and synthesized into a comprehensive database capturing information for all Australian on-market buy-backs made during the period 2000–09.

The data collection procedure involved two stages. First, all ASX listed companies announcing share buy-backs were identified using Morningstar's DatAnalysis Imagesignal service. The Imagesignal service, which contains pdf versions of ASX

¹⁸ There is some debate on whether introducing penalties encourages more disclosure. While the results are inconclusive (Blair, 1992), there is limited evidence that increased enforcement activity by ASIC leads to increased compliance (Welsh, 2009).

¹⁹ Of particular interest here are the initial announcement details of intended buy-back amount, time period, and motivation, and the final announcement details of actual buy-back amount, dollar value, and share price range.

announcements, commenced on 1 September 1998. As noted above, given that the ASX Listing Rules were amended in September 1999 we concentrate on disclosure and compliance after that date. Hence, buy-back data were sourced for the period 1 January 2000 to 31 December 2009.

In the second stage of the process, the companies identified in stage one were then analysed individually. This enabled all buy-back related announcements (including daily buy-back notices) to be viewed in chronological order, assisting identification of the start and end dates of particular buy-backs.²⁰ Detailed information for all on-market buy-backs was then collected directly from ASX Appendices 3C, 3D and 3F. Where Appendices were missing, information was compiled (where possible) from alternative sources including: Appendix 3E forms (daily buy-back notices), general company filings, annual reports and the capital history note provided in DatAnalysis. For example, where no ASX Appendix 3F form was on file, information was collected from the last filed ASX Appendix 3E notice and annual reports were used to check and confirm the number and cost of shares bought back.

Descriptive Statistics

The number of shares and dollar value of all ASX on-market buy-backs have already been noted in Table 1. Other interesting aspects are apparent from the descriptive statistics, so we begin by discussing these in more detail before considering the specific research questions and empirical results.

First, the majority (672 or 83%) of the ASX buy-backs are conducted by Australian companies and are aimed at repurchasing ordinary shares. A further 59 ordinary share buy-backs are conducted by foreign companies and there are 76 buy-backs (by both Australian and foreign companies) of non-ordinary shares. In total, 807 buy-backs are identified from the Imagesignal database over the period 2000 to 2009.

Second, the domestic buy-backs of ordinary shares (Table 1 Panel A) have different overall characteristics to the foreign, or non-Australian, buy-backs of ordinary shares (Panel B). Further differences exist between the buy-backs of ordinary and non-ordinary shares (Panel C). The number of shares, both in terms of the number announced as well as actually bought back, is higher for ordinary share buy-backs conducted by domestic companies when compared with foreign companies. For Australian companies, the 9.2 billion shares announced represent on average around 8.0% of shares outstanding with the actual number of shares repurchased of 3.4 billion representing about 3.3% of shares (Panel A). This trend of repurchasing only around 40% of the number of ordinary shares announced is relatively consistent throughout the period.

In contrast, foreign companies typically only announce they will repurchase around 4.7% of ordinary shares. Again the amount eventually repurchased is also

²⁰ In order to obtain as comprehensive a database as possible, care was taken to search announcements for any information relating to buy-backs. While the majority of buy-back-related announcements could be found using search terms like 'buy-back' (and equivalent alternative expressions) and the Appendix numbers (e.g., 3C), it was often necessary to view the complete set of a company's announcements in chronological order to find announcements that did not include these key terms in the header.

correspondingly much lower, at 1.3%. Hence, for foreign company buy-backs the completion rate of the buy-back is lower at around 28% of the targeted buy-back amount (Panel B). Foreign company buy-backs thus have less of an overall intention, less cash commitment to the repurchase and accordingly less signalling.

Evident in Panel C of Table 1, the biggest structural difference across types of shares bought back is with the repurchase of non-ordinary shares. Here the announced number of non-ordinary shares as a percentage of share capital is much greater, at 22.9%. The amount eventually repurchased is 14.1%. Hence, a different restructuring philosophy for buy-backs of non-ordinary shares is apparent. For non-ordinary shares, the signalling implications are much lower, and the aim is to restructure the company by providing an exit strategy (in many cases because of illiquidity) for these different types of shareholders.

Third, Table 1 provides a good initial insight into the overall level of disclosure and compliance in the buy-back process. The first column depicts the total number of buy-backs identified, the second column the sub-set that report the number of shares intended to be bought back and the third column notes the sub-set that report the actual number of shares repurchased. As an illustration, for the *non-ordinary* share category (Panel C), while 76 buy-backs are identified only 55 provide information about the number of shares they are intending to repurchase, and only 59 provide information about the number of shares eventually repurchased. A similar situation exists across all buy-backs (Panel D). Out of the 807 total buy-backs, only 725 provide information on the intended repurchase amount and 690 report the final number of shares repurchased. For those buy-backs that do not provide this information, an information vacuum occurs and there is a potential issue of lack of compliance. We now explore this in more detail.

EMPIRICAL RESULTS AND DISCUSSION

Disclosure and Compliance

In order to evaluate the degree of compliance with the stipulated requirements and evaluate the type and quality of information, Table 2 identifies the major items required to be disclosed and the extent to which firms have provided such disclosure throughout the buy-back process. Table 2 is divided into two sections. Panel A summarizes the information provided in the initial ASX announcement notice (Appendix 3C) and Panel B covers the final ASX announcement notice (Appendix 3F).

For the initial ASX announcement notice, disclosure of the first few items is procedural with little information content and correspondingly, compliance is high. The type of buy-back and the class of share both have a 98% compliance rate, and the items on voting rights and whether the shares are fully/partly paid have a 97% compliance rate. Compliance for more relevant information—such as the number of shareholders outstanding (97%), motivation provided (92%), number of shares to be bought back (89%) and the time period for the buy-back (96%)—are all noted in Panel A of Table 2. Overall, disclosure of more relevant information as part of the initial ASX announcement has slightly less compliance, although the compliance

ON-MARKET SHARE BUY-BACKS: DISCLOSURE AND COMPLIANCE

TABLE 2

DISCLOSURE PROVIDED FOR ASX BUY-BACKS, PERIOD 2000–09

Panel A: Compliance with disclosure required in announcement notice (Appendix 3C)					
	Yes	No	Total	% strict (3C) compliance	% total (3C) disclosure
Disclosure of type of buy-back (Appendix 3C notice)					
Appendix 3C lodged	788	0	788		
Other documents	16	3	19		
Total	804	3	807	98%	100%
Disclosure of class of share					
Appendix 3C lodged	788	0	788		
Other documents	13	6	19		
Total	801	6	807	98%	99%
Disclosure of voting rights					
Appendix 3C lodged	786	2	788		
Other documents	0	19	19		
Total	786	21	807	97%	97%
Disclosure of fully paid/partly paid shares					
Appendix 3C lodged	785	3	788		
Other documents	0	19	19		
Total	785	22	807	97%	97%
Disclosure of number of shareholders outstanding					
Appendix 3C lodged	780	8	788		
Other documents	0	19	19		
Total	780	27	807	97%	97%
Disclosure of motivation/reason					
Appendix 3C lodged	744	44	788		
Other documents	4	15	19		
Total	748	59	807	92%	93%
Disclosure of number of shares to be bought back					
Appendix 3C lodged	719	69	788		
Other documents	6	13	19		
Total	725	82	807	89%	90%
Disclosure of time period/final buy-back date					
Appendix 3C lodged	774	14	788		
Other documents	11	8	19		
Total	785	22	807	96%	97%

TABLE 2
CONTINUED

	Location of disclosure						Total	% strict (3F) compliance	% total (3F) disclosure
	App 3F	Daily 3E	Annual report	Other co. ann.	Other Info.	No info.			
Panel B: Compliance with disclosure required in final notice (Appendix 3F)									
Disclosure of overall completed status and details of buy-back									
Complete	416	167	24	5	4	2	618		
No initial notice	9	4	1				14		
In-progress						89	89		
Indeterminate						86	86		
Total	425	171	25	5	4	177	807	53%	78%
Disclosure of type of buy-back (Appendix 3F Notice)									
Yes	425	177	43	7	38		690		
No					6	111	117		
Total	425	177	43	7	44	111	807	53%	86%
Disclosure of final number of shares actually bought back									
Yes	425	177	43	7	38		690		
No					6	111	117		
Total	425	177	43	7	44	111	807	53%	86%
Disclosure of final dollar value of shares actually bought back									
Yes	425	177	43	7	38	7	697		
No					6	104	110		
Total	425	177	43	7	44	111	807	53%	86%
Disclosure of high-low share price for shares actually bought back									
Yes	392						392		
No	33	177	43	7	44	111	415		
Total	425	177	43	7	44	111	807	49%	49%

% strict compliance: The percentage of buy-backs providing the relevant disclosure in the designated 3C/3F ASX notice (strict compliance).

% total disclosure: The percentage of buy-backs providing the relevant disclosure either as part of the designated notice, or as part of other ASX releases or attachments to releases (e.g., annual reports). This includes those firms that are providing the details in the correct form ('strict compliance') as well as those providing the information in other notices and releases ('informal disclosure').

Completed status: The total percentage of companies disclosing the completed status of the buy-back in a form other than the Appendix 3F notice can be calculated by combining the relevant sub-totals across the 'Complete' category (202) and the 'No Initial Notice' category (5). This gives a total of 207 (26%) of the 807 that do not strictly comply with the required disclosure. Strict compliance with Appendix 3F is measured as 425 out of 807 (53%) and total disclosure is 632 (618 plus 14) out of 807 (78%).

rate is still reasonable (around 90% or greater). These reported numbers reflect a 'strict compliance' with ASX requirements, namely reporting the information specifically in the initial announcement notice (Appendix 3C). This is contrasted with a situation where the information is buried elsewhere in other ASX disclosures. Strict compliance is the appropriate form of compliance, as the information should be provided correctly and completely in the mandated form rather than requiring investors to incur search costs and inconvenience trying to locate the information in other information releases. Table 2 also notes the additional informal or 'total disclosure' compliance rate, which captures whether the information can be sourced regardless of whether it is in the correct form. While possible for researchers, this procedure would be impractical for most investors. The total disclosure compliance rate is slightly higher for the initial announcement ASX Appendix 3C notice (Table 2 Panel A).

Non-compliance with the required disclosure in the final ASX notice (Appendix 3F) is stark and of concern (Table 2 Panel B). Considering the (four) key individual items, strict compliance in each case is: 53% for the type of buy-back, the number of shares bought back, and the final dollar value actually bought back, and 49% for the price range (high-low) of the actual repurchases. Once again, information is disclosed outside of the mandated form in other ASX releases such as Appendix 3E daily buy-back notices, annual reports, notices of meetings and other ASX announcements. As a result, it is extremely time consuming to find key information. With approximately 33% of buy-backs providing an alternative means of disclosure, it is difficult to envisage how investors can get a complete, straightforward or sensible picture regarding whether a buy-back is finished or what has occurred during the buy-back process.

Using all disclosure releases, we sought to investigate whether one could obtain confirmation as to whether a buy-back was completed, or if not completed, whether the status of the buy-back was clear as at the end of 2009. Here, buy-backs were classified into four categories: 'complete', 'no initial notice', 'in-progress' and 'indeterminate'. 'Complete' is where the buy-back can be classified as finished, even though the company may not have provided some of the information. 'No initial notice' is where it is possible to treat the buy-back as completed, but the targeted finish date or time period for the buy-back was not provided properly as part of the initial disclosure (ASX Appendix 3C notice), and so it was not clear when the buy-back would end. 'In-progress' refers mainly to recent 2009 (or unlimited) buy-backs that were still ongoing and had not reached their targeted finish date. 'Indeterminate' is where the buy-back is not able to be classified as 'complete' or 'in-progress' using the information provided in ASX releases.

For 425 (53%) of the 807 buy-backs the market is able to discern that the buy-back is finalized through the correct formal Appendix 3F notice (Table 2 Panel B). A further 207 (26%) buy-backs provide the closure information in other ASX announcements or locations. However, it is not possible to determine whether 86 (11%) of buy-backs have been finalized. These buy-backs are not concluded using the requisite Appendix 3F notice, nor is information provided in any alternative

manner that enables the status of the buy-back to be readily ascertained. For fourteen completed buy-backs, no initial Appendix 3C notice is provided. Overall then, an alternative form of disclosure of buy-back completion is provided for 202 (618 - 416) (25%) properly announced buy-backs, while no proper notification of either the initial announcement or the completion of the buy-back is provided in 100 (86 + 14) (12%) cases.

Of the 718 buy-backs that are not 'in progress', only 58% comply strictly with ASX disclosure requirements. In 29% of cases, disclosure is provided in some other form, making it possible (with effort) to piece together relevant information about the progress of the buy-back. However, in 12% of cases, companies fail to provide sufficient information about the buy-back. We stress that this last analysis concentrates simply on confirming whether the buy-back is complete, and not on the quality of any of the information released during the buy-back process, as already commented on for the specific items above. In terms of the 632 buy-backs we were able to identify as complete, a significant number of buy-backs (216 or 30%) did not fully comply with one of the ASX's strict disclosure requirements.

Motivations Provided

A cataloguing of the main buy-back motivations and whether they have altered over the sample period is presented in Table 3. A key showing the way the various motivations are coded is provided in the Appendix, which follows and extends the original coding in Mitchell and Robinson (1999). As can be seen from Table 3, there is an emphasis on M3 capital structure management as a primary motivation (Panel A), whereas M4 undervaluation and M7 financial position are provided as secondary motivations (Panel B). Little variation in the motivations occurs over our sample period 2000–09. Consistent with Table 2, in about 7% of cases, no motivation is provided, although in turn, there are on average 1.25 motivations provided for each buy-back.

In order to compare the current sample's motivation disclosures with disclosures prior to the listing rule changes in December 1999, motivations for buy-backs conducted over the period 1996 to 1999 were sourced as a benchmark. The benchmark motivations were obtained from the database of motivations used in Mitchell *et al.* (2001) and Mitchell and Dharmawan (2007). Mirroring Panels A and B of Table 3, the results for the period 1996 to 1999 are presented in Panels C and D.

Generally, the recent motivations are consistent with previous disclosures, although for the current sample period there is a variation in the importance hierarchy. Relative to the pre-2000 period there is now more of a focus on M3 capital structure (60%) and a reduced focus on M4 undervaluation (10%) as the prime motivations (Panel A). Previously, M4 (the undervaluation motivation) was used in 25% of instances, and M3 was used in only 21% of cases as the prime motivation (Panel C). The current reduction in reporting of the undervaluation motivation (M4) is consistent with the implications of previous literature—namely that the information content of providing this motivation in the buy-back is relevant, so it is now used

ON-MARKET SHARE BUY-BACKS: DISCLOSURE AND COMPLIANCE

TABLE 3

MOTIVATIONS OF BUY-BACKS NOTED IN ASX ANNOUNCEMENTS

Panel A: Motivations disclosed as priority (first motivation), period 2000–09														
Year	M1	M2	M3	M3b	M4	M5	M6	M7	M10	M11	M11b	M12	M14	Total
2000		1	17	1	4			2		1	1		2	29
2001		2	35	10	17			3		2			5	74
2002		5	37	11	7	1					1		4	66
2003		2	30	8	10			1		3			4	58
2004		4	33	7	5			1		3	1		8	62
2005		5	49	10	4	2		5		4			9	88
2006		4	47	9	5			3		3		2	8	81
2007		6	50	7	10	2		4				1	4	84
2008		5	116	12	12	1		3	3	2		3	8	165
2009		3	71	5	6		1			4		3	7	100
Total	0	37	485	80	80	6	1	22	3	22	3	9	59	807
	0%	5%	60%	10%	10%	1%	0%	3%	0%	3%	0%	1%	7%	100%

Panel B: All motivations disclosed regardless of priority (any order), period 2000–09														
Year	M1	M2	M3	M3b	M4	M5	M6	M7	M10	M11	M11b	M12	M14	Total
2000	1	1	19	2	6			3		2	1		2	37
2001		5	38	10	19	1		10		3		1	5	92
2002		9	37	15	10	4		5	1		1	1	4	87
2003		6	31	13	13	1		4		4			4	76
2004		8	35	8	6	3		5		4	1		8	78
2005		10	49	11	9	2		10		4			9	104
2006		6	49	14	5			5		5	1	2	8	95
2007		11	53	9	15	6		5		1	2	1	4	107
2008		16	120	13	32	4		9	7	5	2	4	8	220
2009		5	72	6	7		1	3	2	7	1	3	7	114
Total	1	77	503	101	122	21	1	59	10	35	9	12	59	1,010
	0%	8%	50%	10%	12%	2%	0%	6%	1%	3%	1%	1%	6%	100%

Panel C: Motivations disclosed as priority (first motivation), period 1996–99														
Year	M1	M2	M3	M3b	M4	M5	M7	M8	M11	M12	M13	M14	Total	
1996		4	3	1	17	3	2	5				5	40	
1997		7	14	3	14	1	2	1	7		1	9	59	
1998		6	23	7	19	1	12	3	3	1	2	18	95	
1999		11	18	6	19	1	6	1	4			16	82	
Total	0	28	58	17	69	6	22	10	14	1	3	48	276	
	0%	10%	21%	6%	25%	2%	8%	4%	5%	0%	1%	17%	100%	

TABLE 3
CONTINUED

Panel D: All motivations disclosed regardless of priority (any order), period 1996–99													
Year	M1	M2	M3	M3b	M4	M5	M7	M8	M11	M12	M13	M14	Total
1996	1	6	5	1	18	3	4	5	3			6	52
1997	1	8	15	3	19	3	8	1	10		1	9	78
1998		8	26	7	22	3	21	4	15	3	2	24	135
1999		15	26	6	19	3	13	1	8	2		20	113
Total	2	37	72	17	78	12	46	11	36	5	3	59	378
	1%	10%	19%	4%	21%	3%	12%	3%	10%	1%	1%	16%	100%

Details of the various motivations (coded M1 to M14) are contained in the Appendix.

Motivations not noted in the table were not disclosed in the relevant period.

The coding follows the original work and coding mechanism of Mitchell and Robinson (1999) and later papers. Two additions are made to reflect new motivations that have appeared to become relevant in more recent announcement periods and which merit separate coding: M3b, which captures the restructuring mechanism of the number of shares (i.e., trying to maintain balance in number of shares or offset effects of dilution) and M11b, which captures attempts to create stability of the share price or alleviate price volatility. As these items are variants of the original M3 and M11 motivations, they are coded as M3b and M11b respectively.

M14 denotes unavailable as well as no sensible motivation being provided. The most obvious example of the latter is where the motivation for the buy-back is stated as ‘for the benefit of shareholders’ which sheds no light on a practical, useful motivation for the specific instance. Given that a firm would not state it was taking an action that was not in shareholders’ interests, such motivations are superfluous and add no value.

more sparingly. For the recent 2000 to 2009 period there are now distinctly fewer firms that do not provide a motivation—that is, 7% (Panel A) relative to 17% for the period 1996 to 1999 (Panel C). Again this supports the merit of providing a motivation as part of the signalling mechanism.

Time Period and Unlimited Duration Buy-Backs

We now consider the duration of the buy-backs by comparing the actual buy-back time period to the announced, or intended, time period. This also allows us to evaluate ‘unlimited’ or ‘continuous’ buy-backs relative to defined period buy-backs. Table 4 provides the relevant statistics on the actual period taken for the buy-back using different groupings of the announcement timeframe. The total results (Panel A) are decomposed by whether the buy-back is conducted by a foreign or a domestic company (Panels B and C) and whether the original time frame is extended or not (Panels D and E).

The results (Panel A) reveal that the ratio of the actual to the announced time period is reasonably close (0.9 on average). The most common timeframe, both in terms of announcement as well as the actual period for completion, is around nine to twelve months. This preferred timeframe of less than 12 months is in part dictated by the additional *Corporations Act* requirement that mandates shareholder approval for buy-backs seeking to repurchase greater than 10% of shares over a 12-month period. This requirement exists regardless of the timeframe or whether the buy-back is stated to be an unlimited buy-back. As such, Panel A

ON-MARKET SHARE BUY-BACKS: DISCLOSURE AND COMPLIANCE

TABLE 4

LENGTH OF ASX BUY-BACKS: ANNOUNCED RELATIVE TO ACTUAL PERIOD, 2000-09

Panel A: All buy-backs on ASX regardless of extension					
Announced period	No. of buy-backs in period (count)	Average announced period (months)	Average actual period (months)	Ratio of actual to announced period	Completion date provided
0 to ≤3 months	63	1.4	1.6	1.1	57
3 to ≤6 months	76	5.7	7.3	1.3	62
6 to ≤9 months	28	7.2	9.5	1.3	27
9 to ≤12 months	472	11.9	9.9	0.8	352
>12 months	24	15.5	12.5	0.8	15
Unlimited	122		11.7		105
No disclosure	22		4.3		14
Total	807	10.1	9.1	0.9	632

Panel B: ASX buy-backs Australian companies					
Announced period	No. of buy-backs in period (count)	Average announced period (months)	Average actual period (months)	Ratio of actual to announced period	Completion date provided
0 to ≤3 months	46	1.5	1.7	1.1	44
3 to ≤6 months	71	5.7	7.4	1.3	57
6 to ≤9 months	25	7.2	8.3	1.2	24
9 to ≤12 months	444	11.9	9.9	0.8	326
>12 months	22	14.7	8.8	0.6	13
Unlimited	117		11.9		101
No disclosure	13		4.5		9
Total	738	10.3	9.2	0.9	574

Panel C: ASX buy-backs foreign companies					
Announced period	No. of buy-backs in period (count)	Average announced period (months)	Average actual period (months)	Ratio of actual to announced period	Completion date provided
0 to ≤3 months	17	1.3	1.5	1.2	13
3 to ≤6 months	5	5.8	6.4	1.1	5
6 to ≤9 months	3	7.8	18.5	2.4	3
9 to ≤12 months	28	11.8	10.3	0.9	26
>12 months	2	24.0	36.1	1.5	2
Unlimited	5		6.7		4
No disclosure	9		3.8		5
Total	69	8.2	8.5	1.0	58

TABLE 4
CONTINUED

Panel D: ASX buy-backs without extension

Announced period	No. of buy-backs in period (count)	Average announced period (months)	Average actual period (months)	Ratio of actual to announced period	Completion date provided
0 to ≤3 months	56	1.4	1.3	0.9	50
3 to ≤6 months	61	5.8	5.1	0.9	49
6 to ≤9 months	21	7.3	6.5	0.9	21
9 to ≤12 months	426	11.9	9.2	0.8	323
>12 months	22	15.7	12.5	0.8	14
Unlimited	115		11.0		99
No disclosure	22		4.3		14
Total	723	10.2	8.3	0.8	570

Panel E: ASX buy-backs with extension

Announced period	No. of buy-backs in period (count)	Average announced period (months)	Average actual period (months)	Ratio of actual to announced period	Completion date provided
0 to ≤3 months	7	1.9	3.9	2.1	7
3 to ≤6 months	15	5.4	15.4	2.9	13
6 to ≤9 months	7	7.1	19.7	2.8	6
9 to ≤12 months	46	11.9	17.9	1.5	29
>12 months	2	13.5	12.6	0.9	1
Unlimited	7		23.5		6
No disclosure	0				0
Total	84	9.3	16.4	1.8	62

illustrates that ‘unlimited’ buy-backs are in practice not unlimited but constrained by this 10% of share capital rule. Interestingly, the effective length of 11.7 months for ‘unlimited’ buy-backs is actually *less* than the average actual period of 12.5 months for the ‘longer than 12 month’ announcement timeframe category.

Domestic companies (Table 4 Panel B) tend to use unlimited buy-backs more frequently than foreign companies (Panel C). Further, foreign company buy-backs have both a shorter announcement (8.2 months) and actual time period (8.5 months) for completion of the buy-back relative to Australian companies (10.3 months and 9.2 months respectively) as noted in Panels B and C. No real difference is evident in the length of buy-backs of non-ordinary, relative to ordinary, shares (not reported in tables).

Generally, buy-backs are completed within the allotted or announced time, as captured by the average ratio of the actual period to the announced period (Table 4 Panel A). For some announcement categories these ratios are greater than 1 due to the company applying for an extension as required. Once the results are broken down into buy-backs with no extension (Table 4 Panel D) relative to those with extension (Panel E), the ratios for the not extended buy-backs are all below 1, confirming that the majority of buy-backs are completed before the targeted finish date. For buy-backs that were extended, the final completion date is naturally after the originally supplied finish date. In such cases, the shareholder is kept informed via the extension process (ASX Appendix 3D notice). In virtually all cases where the buy-back has a defined time period and the original finish date was provided as part of the Appendix 3C initial announcement, the actual length of the buy-back complies with the requirements. Where no disclosure of the finish date is provided in the initial buy-back announcement, the buy-back is still actually finished within a reasonable timeframe (4.3 months); hence there is no delay associated with the buy-back due to the non-disclosure (Table 4 Panel A).

An important concern is whether unlimited duration buy-backs are used as a means to obfuscate disclosure and compliance given that, as noted in Table 4, they already mask the timeframe of the buy-back. The disclosure and compliance notices for both the initial announcement and the final buy-back (as provided in Table 2) are examined separately for unlimited buy-backs (not reported in tables) and reveal this is, in fact, the situation. For the unlimited buy-back category the initial ASX notice disclosure is good, with around 96%–99% compliance for the various items (slightly superior to the compliance results for the full sample). The one exception here is the disclosure of the number of shares to be bought back, which is provided only in 87% of cases. Naturally the disclosure of the period of the buy-back is redundant for the unlimited category. However, the compliance with the final ASX notice disclosure requirements is very poor, with only around 42% of the unlimited buy-backs providing the appropriate disclosure in the proper Appendix 3F form (strict compliance). As a result, the unlimited type of buy-back, in addition to encouraging uncertainty with respect to duration, is generally associated with signals of low quality and non-compliance with required disclosure items concerning the final status of the buy-back. It seems counterproductive to allow for such unlimited buy-backs given the aim of the ASX's framework to provide clear signals and timely information disclosure as part of the buy-back process.

ANECDOTAL ISSUES AND SUGGESTED REGULATORY REFORM

Our examination of buy-back compliance and disclosure reveals a number of issues that merit further consideration. In particular, there are several aspects of the buy-back process that are not well addressed by the existing ASX Listing Rules and

procedures. These items are noted below, together with some suggestions for regulatory reform.

1. *Compliance:* Lack of compliance in providing the initial form Appendix 3C and the final form Appendix 3F as well as all relevant details therein is of concern. It is not practical for investors to have to search alternative ASX announcements so that they can reach a conclusion as to whether the buy-back is complete, or to determine the number of shares bought back. Our recommendation is first, for the ASX to impose specific fines for non-compliance (for either not submitting the requisite form or not providing adequate details) and second, to enforce the compliance via a process of review to prohibit the buy-back from proceeding or others taking place in future (i.e., banned list) if relevant details are not provided.
2. *Foreign companies:* It is not clear if, and when, foreign company buy-backs should comply with the ASX buy-back listing rule requirements. For instance, if a buy-back is initiated overseas to what extent does the foreign company need to comply with ASX requirements? Another aspect is that if shares are only purchased on an overseas exchange, does the company need to go through the same procedure for reporting on the ASX? At present it is not clear what the required disclosure is for these foreign buy-backs, with different levels of detail actually being provided.²¹

The recommended approach is to have a slightly different ASX Appendix notice for overseas buy-backs. If the company intends to buy shares back on the ASX then it needs to provide the relevant announcement forms and disclosure details, as it would for an ASX buy-back. Similarly, if any shares are actually purchased on the ASX as part of an overseas buy-back then the full ASX final notice requirements need to be complied with. If the shares are only repurchased overseas, the relevant details of the impact on share capital should still be provided to the ASX, notwithstanding the overseas buy-back filing/repurchase. The aim is to ensure that ASX investors are fully informed regarding all repurchases and their impact on share capital, regardless of which exchange the repurchase takes place on.

3. *Multiple buy-backs:* Different buy-back types occurring at the same time are very confusing to investors and provide mixed signals. On-market buy-backs combined with either equal access or selective buy-backs are the most problematic. In some cases it is not clear to which buy-back the ASX disclosure relates. Ideally the company would need to divorce the restructuring activity

²¹ If a company is listed on two different exchanges (e.g., the ASX and LSE) then a buy-back is feasible on either or both exchanges, with different local requirements for the buy-back procedure and disclosure mechanism. If an overseas buy-back is initiated, then domestic shareholders still need to be informed of it and have disclosure of the impact and outcome. Separately noting the extent to which the buy-back is intended to occur/has occurred on an overseas exchange through a more detailed, separate section of the ASX Appendix 3C/3F forms, is seen as a practical way of communicating this information to investors and the market.

done mainly through equal access and selective buy-backs from signalling done through an on-market buy-back. Hence, the recommendation is that on-market buy-backs should only be allowed where there is no other buy-back in place.

4. *Unlimited/continuous buy-backs*: Buy-backs of unlimited duration differ in nature from buy-backs undertaken for a definite period since the information conveyed is not synonymous. As the prime motivation of a buy-back is to commit capital during periods of undervaluation and provide information signalling, the continuous form of buy-back does not achieve that objective. Hence, the recommendation is to eliminate the continuous buy-back option and make the maximum period 12 months.²² The ASX Appendix 3F final buy-back notice should be submitted when the buy-back is complete, at the designated completion date or at the end of the 12 month period, whichever is earlier. This should be supplemented with (at least) quarterly or (potentially) monthly reporting of the relevant information about buy-back activity so that investors are fully informed throughout the buy-back process.
5. *Information overload*: The daily share buy-back information provided in ASX Appendix 3E is too frequent and unhelpful, as the information does not provide any meaningful insight into the buy-back. It would be more efficient to provide a quarterly or monthly summary containing the original announcement details (restated for clarity), the number of shares currently bought back, the maximum/minimum and average prices paid for the shares bought back, as well as the intention to continue or terminate the buy-back.
6. *Incorrect/inconsistent reporting*: Errors were frequently noted in daily share buy-back notices (Appendix 3E). These included firms not completing the form correctly, failing to show consistent information for shares bought back on the previous day, and reporting incorrect cumulative tallies. Typically this is a problem for companies 'extending' a buy-back beyond 12 months and then re-setting the count at a particular point in time.

Overall, only one buy-back type should be permitted at any time. In terms of the timing or duration of the buy-back, our view is that it should be for a maximum period of 12 months. This is in keeping with the *Corporations Act's* 10/12 rule, support from ASIC *Regulatory Guide 110*, as well as the results above documenting the practical length of actual conducted buy-backs. Lamba and Ramsay (2005) raise concerns about companies announcing more than one share buy-back in close proximity to one another. They also point out the difficulties that

²² This is in line with the view of ASIC as stated in ASIC *Regulatory Guide 110*. Another approach is to have a six-month limit with an option of extending that for a further six months. A summary/termination form or intention to extend with relevant details should then be provided at the six-month point.

arise when the original buy-back is not formally closed and when information is not properly communicated about the buy-back status.²³ We have a similar view and note that a clear understanding of the length and details of the buy-back should be provided as part of the initial announcement. Summary reports should then be provided on a periodic basis indicating the current status of the buy-back and whether there is any intention to extend the buy-back. The final notice must be given, at the latest, 12 months after the announcement date of the buy-back. Failure to conform to these requirements should attract an appropriate penalty, and emphasis should be placed on overcoming incorrect practices when completing the details required on the buy-back forms.

The above recommendations will result in the following time-line:

- Start: ASX Appendix 3C Announcement notice—first communication of buy-back with relevant details (as currently provided) and with a maximum duration of 12 months (recommendation points 1, 2 and 4 above).
- During: ASX Appendix 3E Quarterly/monthly statements (replacing current daily notices)—with relevant details (recommendation point 5 above).
- Variation: ASX Appendix 3D On-market variation notice—if buy-back details are changed.
- End: ASX Appendix 3F Final notice—with relevant details: number of and dollar value of shares repurchased, high and low price (as currently provided), plus the number of shares remaining relative to that announced and average share price paid for repurchase (recommendation points 3 and 6 above).

CONCLUSION

Overall our results show that the degree of firm compliance with disclosure requirements is generally reasonable (around 89%–98%) for the initial ASX on-market buy-back announcement notice. Disclosure of the number of shares to be bought back, which can be seen as the most sensitive and relevant piece of information, has

²³ Lamba and Ramsay's (2005) comments applied to the period under the old ASX Listing Rule framework that required buy-backs to be a maximum of six months duration but could then be extended. Companies that did not complete a buy-back within the (old) six-month limit often announced a follow-up buy-back. However, from the announcement information it is not always possible to ascertain whether the announced buy-back is a new buy-back or an extension of a previously announced buy-back. Lamba and Ramsay split their sample to consider companies announcing a subsequent buy-back within six months from those that do not. A positive market reaction to companies announcing multiple buy-backs was found, suggesting they are not mere extensions of previous buy-backs, and accordingly should not be referred to as such.

the worst compliance (89%) of all mandated disclosure items for the initial buy-back announcement. Compliance with the regulated disclosure for the final ASX buy-back notification is much worse, with a compliance rate ranging around 49%–53% in terms of strict compliance. In terms of informal disclosure, where the relevant Appendix 3F buy-back information is communicated through means other than the requisite form (requiring investors to search through various sources to identify and piece together relevant information), compliance is higher, around 86% for most items. One exception here is that compliance is still only around 49% for the disclosure of the high-low share price paid during the buy-back process. Further, lack of clarity about the completion status of the buy-back process is an issue. It was difficult to ascertain the status of many buy-backs that do not even provide a clear statement as to whether they have been, or when they are likely to be, completed.

Several recommendations are made in an attempt to improve the buy-back process. Firstly, ‘unlimited period’ buy-backs should not be permitted. Unlimited duration buy-backs are not practical and defeat the purpose of having a buy-back announcement mechanism. Unlimited buy-backs are not recommended by ASIC and our results show that they have low compliance with other relevant disclosure requirements. For unlimited buy-backs, formal compliance of required information as part of the final ASX buy-back notice was only around 42%, lower than that for buy-backs with a defined period. Our view is that it is much harder for shareholders to identify whether unlimited buy-backs are complete, or what the final buy-back details are. Accordingly, we recommend that buy-backs be permitted to last for a maximum period of 12 months, with periodic reports being lodged quarterly or monthly. At the end of 12 months, a buy-back must be finalized. If a company wishes to continue to buy back shares, it must begin a new buy-back, lodging Appendix 3C and proceeding in the usual manner.

Secondly, while the basic mechanism of reporting using four forms (Appendices 3C, 3D, 3E and 3F) should be maintained, we suggest the following modifications. The *announcement of the buy-back* (Appendix 3C) should include the duration of the buy-back (start and end dates), which should not exceed 12 months. The requirement to lodge *daily share buy-back notices* (Appendix 3E) should be replaced with a requirement to report only at quarterly/monthly intervals, overcoming the problem of information overload. Importantly, the ability for companies to extend buy-backs beyond a 12-month period should be removed. This will help to overcome deficiencies in the practices of some firms failing to lodge a final buy-back notice on the grounds that a buy-back is ‘continual’. The *final buy-back notice* (Appendix 3F) is highly important as it brings closure to the buy-back and reports the buy-back results. A final buy-back notice should be mandatory and required even if firms choose to report the buy-back results in other ASX information releases.

In addition to these recommendations about the buy-back process, there are two other important points that arise from our analysis. First, *contemporaneous buy-backs* should not be permitted as they have the potential to confuse investors

and may create mixed signals. Second, there needs to be a clearer set of procedures for *foreign buy-backs* ensuring adequate disclosure is made about the intention and details for the portion of the buy-back that relates to ASX-listed shares.

The current ASX buy-back disclosure rules aim to provide a clear approach to communicating all aspects of the on-market buy-back process. Unfortunately, this aim is not being achieved at present, with confusion arising from the lack of required disclosure, compliance with, and enforcement of, the buy-back regulations. Given the disclosure and compliance deficiencies we have documented in this paper, the recommendations noted above will encourage a more transparent and efficient buy-back process so that investors are more fully informed at all stages of the buy-back process, thus ensuring that the maximum signalling effect occurs.

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APPENDIX

DESCRIPTION KEY FOR MOTIVATIONS

Code	Title	Description
Excess liquidity (surplus cash effect)		
M1	Dividends v. capital gains (personal tax saving)	Alternative to paying dividends is to distribute cash to shareholders as a capital gain. Personal tax consideration of buy-backs vs dividends is a factor.
M2	Return of surplus capital	Company has surplus liquid funds that it decides to return to shareholders.
Capital structure (leverage effect)		
M3	Gearing (corporate restructuring)	Reduces the equity of the firm, hence changing the capital structure mix.
M3b	Gearing (number of shares)	To maintain balance in the number of shares issued, offset dilution through increase in number of shares.
Information signalling (leverage effect)		
M4	Signal future expectations (underpricing)	Signal management's perception of the 'true' (intrinsic) value of the firm (underpricing by market).
M5	Limited investment (less speculative) opportunities	Management believe the firm is the best investment that can be made with the surplus cash. Note must have limited investment opportunities in addition to surplus capital (as for M2).
M6	Limited growth opportunities	Engage in buy-backs due to lack of growth options. Note growth options are internal relative to external investment opportunities (M5).
M7	Declining (improve) financial performance and position	Share buy-backs are contended to have a positive effect on EPS or NABS.
Wealth transfers (expropriation effect)		
M8	Remove a shareholder	Removal of shareholders who are critical of management, pay a premium above market to favoured shareholders, or keep a large sale off-market. Increases the percentage holding (ownership) of remaining shareholders.
M9	Defend against a potential takeover offer	Takeover defence mechanism provided by repurchases, that is, increase substantial shareholding of non-participants.
Miscellaneous motivations (other effects)		
M10	Economic activity	Firms will only take advantage of buy-backs when economic conditions are relatively poor.
M11	Illiquid (non-existent) market	Expedite the sale of those shareholders who wish to sell their shares but no market is available or it is illiquid.
M11b	Stability of share price	Intervene in market to provide stability for the share price.
M12	Administrative burden on registry	Repurchase is an effort to consolidate share registry for administrative (i.e., rationalize cost) reasons.
M13	Removal of subsidiary's shareholding in parent	As part of (or post) a takeover, a subsidiary's interest in the parent must be removed within 12 months (<i>Corporations Law</i> , s.185).
Unavailable		
M14	Unavailable—no reason given	Announcements failed to give a reason for buy-back.