



## Voting Intentions – Tabcorp Ltd 2022 AGM

ASX Code	TAH
Meeting Time/Date	10.30am, Tuesday 26 October 2022
Type of Meeting	Hybrid
Monitor	Mike Muntisov assisted by Steve van Emmerik and Noel Ambler
Pre AGM-Meeting?	Yes, with Chair Bruce Akhurst, Chair Rem Committee David Gallup, Co Sec Chris Murphy, Investor Relations Terry Couper

### Summary of Issues for meeting

The main focus is the remuneration structure which has many deficiencies.

### Proposed Voting Summary

2a	Re-election of Mr Justin Milne as a Director	For
2b	Election of Mr Brett Chenoweth as a Director	For
2c	Election of Ms Raelene Murphy as a Director	For
3	Adoption of Remuneration Report	Against
4	Grant of Options to CEO/Managing Director	Against

### Key events

The lotteries and Keno business was demerged in June 2022 into a separate ASX-listed entity, The Lotteries Corporation. Tabcorp shareholders received one share in The Lotteries Corporation for each share in Tabcorp.

## Key Financials

The demerger distorts the reported financial results. Results for 2022 include 11 months of comparable operation with previous years. In comparable terms the underlying financial performance was largely the same as for the previous financial year.

	2022 <sup>1</sup>	2021	2020	2019	2018
Statutory NPAT (\$m)	6776 <sup>4</sup>	269	-870	363	29*
Underlying NPAT (\$m)	362	399	271	398	279*#
Statutory EPS except underlying in 2022 (cents)	16.3	12.3	-43	18	1.9
Dividend per Share (cents)	13	14.5	11	22	21
Share Price at End of FY (\$)	1.065	5.18	3.35	4.45	4.46
Realised CEO Remuneration (\$)	\$10.7m <sup>3</sup>	\$3.2m	\$2.5m	\$2.7m	\$4.1m
Total Shareholder Return (%)	10% <sup>2</sup>	59%	-22%	5%	7%

*Statutory NPAT and EPS are the audited figure from the financial accounts. Underlying NPAT is (usually) an unaudited figure used in management presentations or commentary. Total Shareholder Return is calculated as the share price change over the year plus the dividend declared during the year, divided by the share price at end of previous year. This may differ from the figure quoted by the company. \*Includes part year Tatts contribution. #restated to reflect AASB15*

<sup>1</sup> Results for 2022 include 11 months of comparable operation with previous years before the demerger of the Lotteries business.

<sup>4</sup> The demerger at this time gives a one-off boost to statutory profit which included a one-off net gain on the Demerger of \$6,513.8m, but a slight reduction in underlying profit.

<sup>2</sup> Shareholder return calculated by adding the share price of The Lotteries Corporation (\$4.52) in the TSR calculation (one share received for every Tabcorp share)

<sup>3</sup> Figure stated is for the outgoing CEO David Attenborough who stepped down when the demerger was completed. The magnitude of the pay is due to the pro-rata vesting of all LTI grants outstanding as discussed under Item 3.

## Key Board or senior management changes

As flagged last year, long-time CEO David Attenborough stepped down on completion of the merger. The new CEO is Adam Rytenskiel, who has been part of the Executive Leadership team at Tabcorp since 2010 and Managing Director of the Wagering and Media division since December 2017.

The previous chairman Steven Gregg has taken on the role of Chair at The Lotteries Corporation (TLC). Two other directors have also left to join TLC. In their place, director Bruce Akhurst has stepped up to take on the chairman role, and two newly nominated directors are up for election at the AGM. A further nominee is acting as Observer until regulatory approval is received.

The company secretary Chris Murphy is unchanged.

## Review of Board on Governance, Transparency, Fairness to Retail Shareholders

### Positives

- The Board has an independent Non-Executive Chair and majority of independent directors.
- Once the regulatory approval comes through to appoint nominated director Karen Stocks, the Board will meet ASA's guideline threshold of at least 30% female directors
- Tabcorp policy is for Directors and other KMP to invest at least one year's worth of base cash fees in company shares, within 3 years.
- The company meaningfully discloses ESG issues or risks facing business and the processes to manage them.

- The company discloses a meaningful skills matrix of the board easily accessible by shareholders.
- The company has a track record of raising capital fairly by using a pro-rata renounceable entitlement/rights offer (PAITREO).

#### Areas for Improvement

- The ASA is not in favour of companies making political donations. This subject has been discussed with Tabcorp previously and they believe that involvement in political party forums is important in protecting shareholder interests. In FY22 a total of \$216,000 in political donations were made (FY21: \$186,000). These are typically balanced between the parties. At least Tabcorp now disclose the quantum of donations in the annual report.

#### Summary

Tabcorp has taken the opportunity of the demerger to improve diversity and refresh the Board.

#### Items for Voting

##### **Re-election of Mr Justin Milne as a Director**

Mr Milne was appointed to the board in August 2011. His corporate experience is in digital technology and marketing. He has adequate 'skin in the game' (a shareholding close to two times his base fee) and is independent. His corporate history knowledge, particularly for a changed business, may be valuable for the board. He does not hold any other directorships and so workload is not an issue.

For these reasons, the ASA proposes to support his election.

##### **Election of Mr Brett Chenoweth as a Director**

Mr Chenoweth has qualifications in law and economics and corporate experience in media and telecom. He was appointed to the board in August 2022 and as chairman since January 2021. He is independent. His skills would be beneficial to the Tabcorp board.

He is chairman of Adairs Ltd, and a NED of Janison Education group. He also holds several directorships in non-listed companies which potentially puts him over the limit of ASA's director workload guideline. ASA raised workload of Mr Chenoweth at the pre-AGM and a separate meeting with Mr Chenoweth was arranged to discuss his workload. Based on our understanding of his private company commitments and future plans, we are satisfied that Mr Chenoweth can devote the necessary time to his Tabcorp directorship.

Therefore, the ASA proposes to support his election.

##### **Election of Ms Raelene Murphy as a Director**

Ms Murphy has qualifications in accounting and was appointed to the board in August 2022. She is independent. Her corporate experience in finance and business turnaround are relevant for the board. She has listed board experience with several other directorships, including Bega Cheese, Altium and Elders, but is within the ASA guidelines for workload.

For these reasons, the ASA proposes to support her election.

**Item 3 & 4 Adoption of Remuneration Report and Grant of Options to CEO/Managing Director**

CEO rem. Framework (FY23)	Target (\$m)	% of Total	Max. Opportunity (\$m)	% of Total
Fixed Remuneration	1.5	33%	1.5	22%
STI - Cash	0.75	17%	1.125	17%
STI - Equity	0.75	17%	1.125	17%
LTI	1.5	33%	3	44%
Total	4.5	100%	6.75	100%

The assessment in this section is for the FY23 Remuneration Scheme as it is the most applicable to the 'new' Tabcorp and the new CEO. [The information in the Remuneration Report is largely related to FY22 and the outgoing CEO's structure.]

**Positives**

- CEO's actual take-home remuneration, as well as the target and maximum opportunity of each component is clearly disclosed.
- At least 50% of CEO's pay is genuinely at risk [67% at target].
- STIs are not more than fixed remuneration (at target).
- The majority of STIs are based on disclosed performance criteria and no STIs to be paid unless a financial gateway (EBIT) is met.
- 50% of STIs is paid in equity with a 2-year holding lock.
- No retesting of performance hurdles is allowed.
- Termination payments do not exceed 12 months fixed pay.
- Vesting in a takeover or "change of control" event is at the discretion of the Board.
- The Remuneration report is readable and understandable.

**Areas for Improvement**

- The total quantum of the CEO remuneration package is not reasonably within the Godfrey Group report benchmarks, not even allowing for the fact that the new CEO is a 'rookie'. The target remuneration is only around 10% lower than that of the previous longstanding CEO who ran a much bigger (\$11.5B pre demerger) and more complex company. By any measure, the CEO remuneration is too high. (Notes: Tabcorp's current market cap (9/22) is about \$2.2b. The CEO target remuneration is above expected benchmarks even assuming a \$4billion market cap company. In 2021 Tabcorp received unsolicited bids of up to \$4b for the Wagering and Media business (which forms the 'new' Tabcorp). Note that the market cap of Tabcorp pre Tatts merger in 2017 was around \$3.6b. After that merger, the previous CEO received an immediate 43% remuneration uplift to reflect the larger, more complex merged company.)
- The quantum of the Chairman's fee is not reasonably within remuneration benchmarks. Instead, the Chair's fee has been set at \$493k. (For reference it was \$430k pre-Tatts merger).
- The board used its discretion to override the STI EBIT hurdle, which was not achieved, yet chose not to use its discretion to reduce the STI pool. The board justified this decision because of non-forecast COVID events.
- The LTI award is based on only one measure, Return on Invested Capital (ROIC), rather than at least two measures favoured by ASA. The company argues that the option exercise price is a second measure.

- ASA’s preferred measure for LTI award is Total Shareholder Return (TSR), which was used last year as one of two measures but has been dropped this year.
- Actual LTI hurdles and criteria (measured over 3 years) are:

Performance Criteria	Contribution % of total LTI award	Threshold performance	Vesting at threshold performance	Target performance for 100% vesting
ROIC	100% (i.e. single LTI measure)	7.7%	35%	8.9%

It is very difficult to assess whether the LTI hurdle threshold and target levels are challenging or not

- The LTI award is in the form of options
- The options, by necessity, are priced at fair value via the Black-Scholes model. This is not easy for average shareholders to understand.
- If the LTI options vest, the Board has the option to pay the “settlement” for the vesting, being the difference in share price between award and vesting, in cash rather than shares. The company argues that cash payment would be an exception.
- The ASA does not favour retention payments which were paid this year, including to the incoming CEO. The company argues that this was necessary because of the uncertainty created by the demerger.
- The outgoing CEO received a \$1.3m payment in lieu of notice which appears unreasonable, given his retirement has been known since 2020. The company argues that the timing of the merger was uncertain.
- The 2019 LTI grant TSR component was allowed to vest in full at the demerger date of 1 June 2022 despite the test date being only a few months later. The board did not measure the TSR at merger date as a potential justification for their decision.
- All other outstanding LTI grants fully vested (pro-rata) as part of the demerger process, with the explanation being it was too complicated to allow them to remain on foot.
- LTI hurdles are measured over three years not ASA’s preferred four years or more after issue.

### Conclusion on Remuneration

Tabcorp’s remuneration framework has not reflected the reduction in size and complexity of the company after the demerger. The remuneration levels of the CEO and Board are too high. Further, the LTI scheme in place is unacceptable for the reasons set out above. Finally, decisions on retention/notice payments and vesting of outstanding LTI awards were overly generous. For these reasons, we will be voting undirected proxies against the remuneration report.

### Monitor Shareholding

*The individual (or their associates) involved in the preparation of this voting intention has no shareholding in this company.*

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