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Finding the wisdom of Salomon – *Tom Spencer*

"The corporate veil" has become an iron curtain, removable in only a few exceptional cases. This article argues that the corporate veil is a rebuttable presumption of independence, and not the separate entity doctrine whereby each company is inviolably separate from its shareholders, which founds the doctrine. The doctrine of the undisclosed principal is set out, culminating in analysis of the Privy Council's decision in *Siu Yin Kwan* (1994). It then raises the separate entity principle and the agency veil piercing cases, particularly those involving implied agency such as *Smith, Stone & Knight* (1939), before suggesting how the undisclosed principal can clarify them. 64

Will the fraud-on-the-market theory be adopted in Australia? – *David Pompilio*

The fraud-on-the-market theory holds that an investor's reliance on any public misstatements may be presumed on the basis that, in an efficient securities market, the price at which the investor traded reflects all publicly available information. The fraud-on-the-market theory is an element of securities law in the United States but not Australia. Despite the passage of more than two decades since the United States Supreme Court adopted the fraud-on-the-market theory in Basic Inc v Levinson 485 US 224 (1988), it remains a contentious and evolving aspect of securities law in that country. This observation is exemplified by the recent rulings of Easterbrook CJ in *Schleicher v Wendt* 2010 WL 3271964 (7th Cir 2010) and the United States Supreme Court in *Erica P John Fund Inc v Halliburton Co* 563 US __ (2011) at 2. Both cases involved allegations of securities fraud brought against companies and their executives. This article discusses what the courts in those cases held plaintiffs were required to show in order to establish that their reliance on the defendants' misstatements transpired through the market price and contrasts the rulings to the position adopted by the Court of Appeals for the 5th Circuit in earlier cases. This article also presents a general discussion of some of the difficulties the courts face in invoking the efficient markets hypothesis as a basis for decisions in cases involving misleading or deceptive conduct, even if the hypothesis is valid. 77

The new mercantilism? – direct investment by State-owned enterprises in Australian public companies – *Geoffrey Nicoll*, *Gerard Brennan* and *Keni Josifoski*

In recent times, Sovereign Wealth Funds (SWFs) and State Owned Enterprises (SOEs) have become active investors around the world, prompting several American authors to herald the rise of a "new mercantilism" – in which sovereign States pursue their national goals through corporate entities investing globally. The phenomenon itself is hardly new, but the potential for foreign SOEs to acquire significant shareholdings in corporations on developed markets presents a new form of the phenomenon and brings new challenges for Australian law and investment policy. In the light of the acquisition by some Chinese

SOEs of shareholdings and board positions in Australian corporations, this article suggests that traditional concepts of corporate ownership and control must now be considered within the broader context of Australian foreign investment policy (including competition policy), presenting difficulties for the application of the national interest test in approving and monitoring investment approvals. 105

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