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EDITORIAL 85

ARTICLES

Minimum price rule in takeovers: Does the minimum price rule promote the equal opportunity principle at the expense of a more efficient market for corporate control? – Jolyon Rogers

The minimum price rule is an embodiment of the equal opportunity principle incorporated into our takeover regulations as part of the Eggleston principles. The intention of the minimum price rule is to ensure that shareholders in a target company have a reasonable and equal opportunity to participate in the benefits derived from a change in corporate control. The scope of the minimum price rule has been extended by the *Corporate Law Economic Reform Program Act 1999* (Cth) to cover all types of takeover bids. This article discusses the legislative history of the minimum price rule and the manner in which the rule has been applied in practice. It also critiques the policy rationale behind the equal opportunity principle in light of the legislature's stated policy objective of encouraging takeover activity. The primary contention of this article is that potential bidders should be able to build a pre-bid stake in a target company unfettered by takeover regulation and particularly the minimum price rule. Finally, this article considers some proposals for reform pursuant to which the minimum price rule would be abolished in favour of alternative protections for target shareholders. 87

When is a financial product not a financial product? – Dr Kevin Lewis

The definition of "financial product" is central to the operation of the financial services reforms in Ch 7 of the *Corporations Act*. In this article, the author explores the scope of that definition and critically examines recent rulings by ASIC that bills of exchange and promissory notes are not financial products for the purposes of Ch 7. He concludes that there is a strong likelihood that those rulings are not correct and outlines the consequences for industry participants if that is so. He suggests changes to the law to rectify the situation and action that ASIC and industry participants who advise on or deal in these products should be taking in the meantime to avoid a breach of the law. 103

Is "due diligence" dead? Financial services and products disclosure under the Corporations Act – Dimity Kingsford Smith

This article maps the legal implications of the new disclosure regime for the variety of instruments which are "financial products" under the *Financial Services Reform Act 2001*, which comes into final effect as Ch 7 of the *Corporations Act*, on 10 March 2004. It also considers the similarly patterned disclosure requirements for "financial services"

(eg financial advice), which commonly accompany the delivery of financial products. The article analyses the policy reasons which underpin the reform legislation. It also argues for the adoption of compliance programs to operationalise the “due diligence” requirement under the new legislation and give meaning to the term “take reasonable steps” which has been provided to defend allegations of defective disclosure. 128

COMPANY LAW

Use of prospectuses by investors and professional advisers 151

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