

COMPANY AND SECURITIES LAW JOURNAL

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EDITORIAL 137

ARTICLES

Transparency and disclosure: Implications of the bear raid on ABC Learning Centres – Tim Poisel and Andrew Terrett

Concerns have been raised about the transparency of Australian securities markets and the adequacy of the current disclosure regime in the wake of the market volatility experienced during 2008. These were key issues in the catastrophic share value collapse suffered by ABC Learning Centres and many other Australian companies. The first part of this article suggests that the failure of ABC directors to disclose their margin lending facilities to the market does not mean that greater regulation of margin lending is required. It is concluded that most margin loans held by company directors would not be expected to have a material effect on the value of their company's shares. The second part of the article argues that legislative amendments and concerted policy action from market regulators are required to stamp out the market misconduct that has resulted from the opacity of short selling practices. The legislative changes enacted by the *Corporations Amendment (Short Selling) Act 2008* (Cth) are a useful response to some of the issues detailed in this article, but more could be done. The integrity of Australian securities markets will be jeopardised if sophisticated market participants continue to be able to operate without making disclosures to ASIC and the ASX about their short positions. 139

The “golden ticket” to globalised capital markets: A study of golden share rulings and their implications for capital market liberalisation – Andrea Gatt

Golden shares allow governments to retain control of companies while at the same time achieving the economic benefits of privatisation. They restrict the free global flow of capital and in doing so distort the markets both for corporate control and portfolio investment. The cost of this distortion is underestimated because a global perspective has thus far not been adopted. Adverse findings in golden share cases, and the subsequent dismantling of these mechanisms, have significant effects beyond the European internal market. Golden share abolition and the consequent capital market liberalisation result in greater corporate efficiencies and synergies and more competitive and predictable markets. There is a very limited role for golden shares to play in contemporary corporate governance. The economic arguments against golden shares and the alternative means of achieving state objectives are overwhelmingly in favour of their abolition. 166

HONG KONG, SINGAPORE AND MALAYSIA – Say Goo

Extending the black out period on share trading by directors in Hong Kong: In whose court does the ball lie? – Chee Keong Low 184

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