

COMPANY AND SECURITIES LAW JOURNAL

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EDITORIAL 409

ARTICLES

False trading and market rigging in Australia – Emma Armson

One of the key corporate regulatory issues in Australia arising from the global financial crisis is whether the market misconduct provisions in Pt 7.10, Div 2, of the *Corporations Act 2001* (Cth) are effective. Recent events have demonstrated the importance of protecting stock markets against manipulation, given the repercussions for the economy and community more generally. Problems with the false trading and market rigging provisions in s 1041B of the Act were identified by the Commonwealth Treasury back in 2007. This article analyses the provision and proposes urgent reform to this important area of law. 411

Should claims held by misled and deceived shareholders rank with rather than behind claims held by other unsecured creditors of insolvent companies? – David Pompilio

In *Sons of Gwalia Ltd v Margaretic* (2007) 231 CLR 160 the High Court held that, as a matter of statutory construction, claims brought by aggrieved shareholders under the investor protection provisions of the *Corporations Act 2001* (Cth) rank equally with other unsecured creditors in insolvency. Recently, the Corporations and Markets Advisory Committee (CAMAC) released its report on the policy implications of the High Court decision and concluded that it “is not persuaded of the need to change the current legal position”. This article examines the economic merits of the Committee’s conclusion. The deterrence function generally performed by aggrieved shareholder claims breaks down if the prospect of making remedial payments to subscribing shareholders does not reduce the expected payoff to the fraudulent issuer. Because the issuer already faces a payoff of zero in the event of a subsequent insolvency not induced by an aggrieved shareholder claim, the additional deterrence benefits that equal ranking brings seem too small to justify the likely higher transaction costs. This article also explores other arguments that could potentially support the Committee’s position, including investor protection, investor participation, fairness and consistency in the law. With the exception of consistency in the law, none of the arguments considered offer much support. 426

COMPANY LAW – Robert Baxt AO

The costs of corporate litigation in Australia – Asjeet S Lamba and Ian M Ramsay 448

DIRECTORS’ DUTIES AND CORPORATE GOVERNANCE – Geof Stapledon and Jon Webster

Director termination benefits and superannuation under the Corporations Act – John Sartori 458

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