

COMPANY AND SECURITIES LAW JOURNAL

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EDITORIAL 233

ARTICLES

Institutional shareholders and corporate governance – *The Hon JJ Spigelman AC*

This article explores the source and nature of the legal obligation, if any, of institutional shareholders to participate in corporate governance by exercising the voting rights attached to shares. While trustee shareholders must use their voting power in the interests of beneficiaries, this does not determine whether a vote should to be cast. Australian fiduciary law – which is proscriptive rather than prescriptive – is unlikely to impose such a duty to vote. Moreover, it seems unlikely that such a duty could be found within the language of s 52 of the *Superannuation Industry (Supervision) Act 1993* (Cth). Instead, the motivation for voting must be the collective interest of all institutional investors in promoting high standards of corporate governance. In this respect, this article revives a worthy but overlooked proposal for institutional shareholders to establish a list of professional, independent directors. 235

The choice between LIFO, FIFO and mark-to-market accounting in the estimation of securities damages – *David Pompilio*

Plaintiffs in securities cases involving allegations of misleading or deceptive conduct and concomitant price inflation sometimes sell shares during the relevant period. This raises the issue that, in part at least, plaintiffs may have actually profited from the alleged misconduct. Whether awarded damages ought to be reduced to reflect such profits is an unsettled matter of law. This article discusses how some of the approaches commonly used to estimate damages in securities cases account for such profits and argues that, despite the prevalence of inventory methods such as LIFO (“last in, first out”) and, to a lesser extent, FIFO (“first in, first out”), in the United States, mark-to-market accounting is the most sensible approach for securities law in Australia. 243

The Australian company disclosure framework: Piecemeal or integrated? – *Gill North*

Users of company disclosures in Australia are concerned about the timeliness, accuracy and completeness of information provided, but few stop to consider the discrete regime that an individual company announcement falls within. This makes it important to understand the nature and scope of the broader corporate disclosure framework. However, there is little agreement among policy-makers, the judiciary and academics on the links or relationships across the individual disclosure regimes. 259

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