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EDITORIAL 505

ARTICLES

AFL club membership: A glorified stadium entry ticket, or a genuine ownership stake in the club? – James Paterson

This article explores the circumstances in which members of Australian Football League (AFL) clubs are provided with an opportunity to participate in determining issues relating to the club's core identity and strategic direction. It considers whether members are treated as stakeholders in the clubs, or simply sources of revenue in exchange for an entry ticket into the games. In doing so, the article reviews the rights provided to members of AFL clubs under the *Corporations Act 2001* (Cth), under common law principles, and under each club's constitution, noting that an arguably emotional investment by an AFL club member can also provide significant legal rights. The article provides a set of recommended best practice governance principles for AFL clubs, and measures each AFL club against those recommended principles, with the author contending that more work is required from all AFL clubs if they wish to properly recognise members as key stakeholders of the entity. 507

Short sale restrictions and trading halts around secondary capital raisings – David Pompilio

An interesting by-product of the recent surge in secondary capital raisings in the Australian market was the apparent frequency with which trading was halted, often for an entire day, while issuers announced and executed their share placements. Since such trading halts are typically initiated prior to the announcement of the forthcoming issue, this practice denies traders the opportunity to express their views on the proposal and the issuer the ability to take into consideration those views in setting the issue price. This article considers the implications for the design of securities law in an alternative setting where trading continues uninterrupted after the issuer announces its intentions to raise capital. A particular concern with such a setting is that it provides subscribers to the issue with the opportunity to hedge their exposure to the issue by short selling shares in the pre-issue market, an activity which, some argue, can lead to lower proceeds for the issuer. The analysis in this article suggests that while ideally some forms of pre-issue short selling could be precluded by regulation, such restrictions risk inadvertently excluding constructive pessimistic opinions from the market. Given the importance of efficient securities prices around the time capital is raised, such restrictions could potentially lead to a loss in wealth larger than that associated with the subscribers' short selling activities. 537

Removal of the responsible entity of a managed investment scheme: Voting by the responsible entity and its associates and the role of the chair – Michael Legg, John Moutsopoulos and Nicholas Mavrakis

This article addresses the *Everest Capital* and *Australian Olives* decisions as they relate to voting on the removal of a responsible entity of a managed investment scheme. The

Everest Capital and *Australian Olives* decisions have altered the law as it had been previously interpreted in relation to the meaning of “associates” so that an associate relationship is now more likely to exist. The *Everest Capital* case has interpreted the restriction on a responsible entity of an unlisted scheme and its associates voting their interest on a resolution to remove the responsible entity more broadly so as to prevent voting in a greater range of circumstances. The article also reviews the role of the chair who must rule on challenges to voting based on the above developments. 566

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