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Imposing Fiduciary Duties on Credit Rating Agencies Towards Investors – *Meena Hanna*

The question of whether credit rating agencies (CRAs) owe fiduciary duties towards investors in Australia has oddly received little attention. This absence of enquiry persists notwithstanding that the dust has now settled on the global financial crisis. Accordingly, this article considers whether any circumstances may justify imposing fiduciary duties on CRAs towards investors. In doing so this article will reflect on their predominant Issuer-Pays business model, the consequences of that business model, the international position regarding their obligations, and the causes of action available against them in Australia. The article will apply the existing body of fiduciary principles to the relationship between CRAs and investors, including the operability of contractual disclaimers. This article concludes that limited circumstances already exist which warrant imposing fiduciary duties on CRAs to investors without disturbing the existing body of fiduciary principles. 6

Whistleblowing and Corporate Governance: Regulating to Reap the Governance Benefits of "Institutionalised" Whistleblowing – *Sulette Lombard and Vivienne Brand*

Internal corporate whistleblowing systems, or "institutionalised" whistleblowing, could offer valuable corporate governance benefits. There are interesting theoretical perspectives to justify the inclusion of such systems as part of a corporate governance framework and also to explain the relationship between internal whistleblowing, as part of a comprehensive corporate governance framework, and other corporate governance elements. However, in order for internal whistleblowing systems to optimally fulfil their function, it is important to allow for these systems to develop "organically", rather than on the basis of prescriptive regulation. Evidence from some of Australia's largest companies shows that companies are amply able to develop nuanced internal whistleblowing systems. These "systems" not only provide a good example for smaller companies to model their own internal systems on, but their mere existence also serves to demonstrate the potential practical success of a "light-touch" regulatory approach to encourage development of internal whistleblowing frameworks. 29

From Damages to Disgorgement: Civil Remedies for Insider Trading in Australia – *Mark Watts*

The confusing tangle of provisions in the *Corporations Act 2001* (Cth) that grant private plaintiffs a right to sue insider traders for damages are often analysed but never used. A close analysis of their probable operation suggests that they are not capable of achieving their compensatory purpose. This article argues that the call in the recent Senate Economics References Committee for the Australian Securities and Investments Commission to be given a power to compel insider traders to disgorge their profits in civil proceedings provides a good opportunity for Parliament to recast the civil liability of insider traders by creating a new remedy which better achieves the policy imperatives that underpin its prohibition. 48

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