

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

The impact of credit derivatives on corporate debt restructuring – *Jeremy Green*

In recent times, credit derivatives in various forms have been the subject of considerable global interest. However, little consideration, at least in Australia, has been given to how or the extent to which the use of credit derivatives may impact upon the ability of an entity to restructure its debt. Should the presence of protection purchased under a credit derivative be expected to alter the behaviour of traditional bank lenders towards their distressed corporate borrowers? If so, is this really any different to the way in which the behaviour of a bank lender would be influenced by the availability of any other form of credit risk transfer instrument? This article considers whether concerns about challenges to the restructuring process are truly novel to credit derivatives or if they have all been seen before.

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“Shareholder creditors”: Further risk for directors of corporate trustees? – *Dr Sheelagh McCracken*

While the *Sons of Gwalia* litigation has generated substantial debate on the ranking of aggrieved investor claims in a liquidation, little attention has yet been paid to other ramifications flowing from the fact of recognising shareholders as creditors. This article explores one possible consequence; the opening up of claims against directors of corporate trustees under the *Corporations Act 2001* (Cth), s 197. It argues that “shareholder creditors” fall within the protective scope of s 197, which raises questions as to whether the level of protection offered by that provision is appropriate for such creditors and, more generally, whether that provision should as a matter of policy be available as a further remedy for statutory misleading conduct. The resulting risk now faced by directors of companies operating as trusts in the financial markets is unlikely to have been contemplated by those who drafted s 197.

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