

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **Raising Equity Capital during the COVID-19 Pandemic in Australia: The Efficacy of Regulatory Interventions** – *Christine Brown and Chloe Ho*

Australian regulators acted early at the onset of the COVID-19 pandemic in 2020 to grant companies temporary capital raising relief, in order to facilitate capital raisings and strengthen balance sheets. One important change to regulations was to allow (without shareholder approval) companies to increase the existing 15% placement capacity to 25% of base capital. We first document current regulations governing the issuance of equity capital for public companies in Australia, and then describe the changes made to regulations in response to the crisis caused by the COVID-19 pandemic. Analysing the effect of the regulatory changes on company equity issuance choices, both qualitatively and quantitatively, we conclude that the changes introduced by ASIC and the ASX had both a direct and an indirect impact on company choices during 2020. .... 4

### **The Liability of Directors and Officers When AFS Licensees Provide Defective Financial Product Advice** – *Corey Byrne*

Directors and officers of corporations which hold Australian Financial Services Licences and provide financial product advice face a heightened risk of personal liability when the licensee provides defective or conflicted advice. This risk is a result of two shifts in Australian law since the introduction of the modern financial regulatory system. The first is a move away from an efficient markets approach to the regulation of financial advice, as illustrated by the introduction of best interests obligations under the Future of Financial Advice legislation and the emphasis on greater enforcement of financial services laws by the Financial Services Royal Commission. The second is an increasing focus on holding directors and officers personally liable for breach of duty when corporations contravene the law. The result is a regulatory environment in which directors of AFS licensees are increasingly vulnerable to personal liability for defective or conflicted financial advice provided by the licensee. .... 19

### **Climate Risk Disclosure, Compliance and Regulatory Drivers: A Textual Tone Analysis** – *Luisa Unda and Anita Foerster*

The way in which companies disclose and manage climate-related financial risks is a matter of increasing interest and concern for market stakeholders, particularly institutional investors. This article presents a textual analysis of the tone of climate risk disclosures by ASX200 companies from 2015 to 2019. It explores the most common tones of language used, how they differ across economic sectors, how disclosure tone is influenced by corporate governance and other company characteristics, and whether approaches are changing over time. Disclosure tone can influence the judgments and decision-making

of market stakeholders. Textual analysis presents an analytical tool to help these explore and assess a company's perceptions and managerial judgment about climate-related risks, feeding into their broader analysis about a company's preparedness to manage these risks and seize opportunities. It also offers insights for regulators as they develop guidance to scaffold existing legal obligations and oversee compliance in this area. .... 47

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