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ARTICLES

The Efficient, Competitive and Informed Market Principle in Schemes of Arrangement – *Rodd Levy*

Schemes of arrangement have steadily grown in importance in public company mergers & acquisitions over the last 25 years. They have replaced takeover bids as the dominant form of transaction for larger deals. However, the nature of a scheme of arrangement and its related arrangements often give rise to potential risks for shareholders and the market, which are usually overlooked until something goes wrong. This article comments on the lack of any requirement for the courts to consider the “efficient, competitive and informed market” principle from Ch 6 of the *Corporations Act 2001* (Cth) and suggests the Takeovers Panel could play a larger role in addressing these issues. 124

Effectiveness of IOSCO Regulation of Hedge Funds against Systemic Risk - Perspectives of TRN Theory – *Xun Li*

This article evaluates the extent to which IOSCO’s initiatives may be effective in addressing the systemic risk associated with hedge fund industry. It does so by paying close attention to the characteristics, limitations and possibilities of transnational regulatory networks (TRNs), of which IOSCO is an example. From the perspective of the constituent elements of TRNs, this article comments on the individual components of IOSCO by borrowing from the findings on TRNs’ effectiveness in TRN theory. In doing so, it examines the values and deficiencies of the IOSCO framework in terms of its member regulators and governance structure, normative output, and enforcement, sanction and accountability mechanisms. It finds that IOSCO holds advantages in technical expertise and professionalism, efficiency and cost saving, public participation, and flexibility and adaptability, but its drawbacks in governance structure and standards, lack of dispute settlement body, and weakness in accountability mechanism compromise the effectiveness of the IOSCO framework. 139

The Case for a Prohibition on the Making of Cyber Ransom Payments – *James McIntosh*

This article lays out the case for a prohibition on the making of cyber ransom payments in Australia. In doing so, it demonstrates how cyber extortion presents several enforcement difficulties due to its sophisticated nature and the abundance of safe havens from which criminals operate. As such, it is asserted that a prohibition on the making of cyber ransom payments will be a more efficient and effective measure to reduce cyber extortion than directly pursuing the criminals that demand them. A prohibition should be implemented

with a safe harbour for organisations to make ransom payments legally, where this is approved by a specially appointed cyber panel. 158

TAKEOVERS AND PUBLIC SECURITIES – *Editor: Jonathan Farrer*

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