COMPANY AND SECURITIES LAW JOURNAL

Volume 40, Number 4

2024

EDITORIAL 187

ARTICLES

Homo Philanthropicus: Social Impact Bonds in Australia and the Case for Retail Participation – *Greg Barwick*

Just over a decade since the first social impact bond (SIB) was launched in Australia, SIBs remain a niche development within the broader environmental, social and governance makeover of capital markets. In 2023, Treasurer Jim Chalmers signalled an intention to explore impact investing as a means of pursuing improved social conditions in Australia in the face of fiscal strains. This article examines the unique characteristics of SIBs as a socio-financial product against their current regulatory backdrop. It considers the appropriateness of the current wholesale/retail bifurcation when it comes to SIB offerings in Australia, and the nature of retail participation and regulation as a public good. The article posits that it is the measured induction of SIBs into the existing retail investment framework that will augment the democratic integrity of their governance and accelerate their normalisation as a mainstream asset class. 188

Divining the Meaning of an Unfair Preference under s 588FA: Beware Muffled Echoes of Old Arguments – *Dr Garry J Hamilton*

Part 5.7B of the *Corporations Act 2001* (Cth) contains statutory mechanisms available to company liquidators to facilitate the recovery of property or compensation for the benefit of creditors. Amongst the liquidator's legislative arsenal in this Part is s 588FA which facilitates the recovery of payments which were made preferentially to particular creditors during the six-month period leading up to the winding up. The purpose of this provision is to permit recovery of payments from the preferred creditor in order that all creditors may share rateably in a distribution of the company's assets. Although the section was introduced many years ago, there is still considerable uncertainty at a foundational level as to how the section in fact operates. That uncertainty is explored in this article, the reasons for it are explained and solutions are suggested with a view to clarifying this important area of insolvency law. 204

Reluctance to Engage? Target Board Engagement with Unsolicited Proposals in Contests for Control – *Leonardo Nosatti*

Over recent years, there has been a noticeable rise in the number of takeover contests in the Australian market. In 2023 alone, half of all announced public M&A deals involved unsolicited approaches and almost a quarter involved two or more competing bidders. The Australian Takeovers Panel has largely given target boards significant latitude to respond to takeover contests for the benefit of their shareholders. This article seeks to highlight

the apparent reluctance of target boards to engage with unsolicited proposals in contests for control and argues that the current response of the Takeovers Panel has facilitated this reluctance to engage. By drawing on recent takeover contests, the article examines how target boards may have used hard exclusivity and selectively granted due diligence to prematurely lock-out bidders in a developing contest for control. The article considers the approaches in the United Kingdom and the United States as possible ways to address these concerns. 212