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When will derivative liability enhance corporate regulatory compliance? – *Daniella Spencer-Laitt*

Imposing blame is essential if criminal sanctions used in a corporate regulatory context are to have the desired effect of enhancing corporate regulatory compliance. Despite this, the federal legislature has passed the *Personal Liability for Corporate Fault Reform Act 2012* (Cth), which reforms Australia's derivative liability regime, without clear consideration of principles of blame. There is a number of essential sources of blame in criminal remedial theory that are relevant where a director is penalised for a corporation's regulatory crime. Where one or more of these sources exists, it is more likely that a sanction will impose blame and thereby enhance compliance. These sources of blame are embodied in the director's duty of care and diligence. The continuing project of reforming Australia's derivative liability regime could be made more effective if derivative liability is only imposed where the director's involvement in the contravention is within the scope of what is regulated by the director's duty of care and diligence. 84

Unlisted and unrated debentures – the end, or a new beginning? – *Terence W Wong*

Over the past decade, Australia's investor protection laws for unlisted and unrated debentures have undergone regular cycles of investigation and reform, following several corporate collapses. Each round of reforms invariably brings about improvements to the quality and quantity of disclosure to retail investors, and higher compliance burdens on issuers. However, Australian retail investor disclosure is still poorly communicating the essential message for investing in these high-yield and inherently high-risk securities. The message of diversification is key to utilising high-yield returns to absorb the high principal risk inherent to these securities and to obtain strong investment returns in good economic conditions. This very powerful idea sparked the proliferation of a "junk" bond market in the United States that has grown to be currently worth USD 1.1 trillion, or around 40% of corporate bond issuance by value in the United States. Australia's market is less than 1% of the global high-yield market and does not offer a true secondary market to facilitate trade and diversification. This article argues that, in Australia's dangerous market for unlisted and unrated debentures, an emphasis on diversification is even more essential to future investor protection disclosure laws in this sector. It also argues that the most recent proposed reforms, which are a simplified form of prudential regulation, will further deter potential issuers, and potentially spell the end for unlisted and unrated debentures in Australia. 107

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