

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **Continuous disclosure in Australia: The empirical uncertainties – Gill North**

The continuous disclosure regime is said to be at the heart of the company disclosure framework in Australia because it provides equal and timely access to material company information. The primary continuous disclosure obligation applying to listed Australian companies is ASX Listing Rule 3.1. The article outlines an empirical study that examined compliance with Listing Rule 3.1 using Guidance Note 8 on disclosure of expected earnings as a benchmark. The study found compliance with the guidance was poor. The proportion of companies with significant earnings changes that provided an earnings forecast was low, and there were no statistically significant associations between the provision of forecasts and the absolute changes in year-on-year earnings. The article concludes that continuous disclosure is a vital part of the Australian company disclosure framework. However, the current obligations require strengthening and the inherent limitations of the regime need to be acknowledged. .... 394

### **Obligations and liabilities of the key players in managed investment schemes: Contentious questions arising from Trio Capital – Tehani Goonetilleke**

Managed investment schemes are a popular investment choice for many, especially non-institutional retail investors who are attracted to its many benefits. However, as has been seen in recent times, managed investment schemes are not without serious risk, especially where fraud occurs. Due to the often complex relationships governing those charged with the administration of the scheme, the recurring question is who is ultimately responsible: the responsible entity, the investment manager or the custodian? This article seeks to define the relationship between these three main entities, and argues that the responsible entity is ultimately responsible. Such a contention is not only based on the fact that this appears to be the intention of Parliament, but also because the responsible entity has an ancillary obligation as an Australian Financial Services Licence holder to supervise and monitor the conduct of its agents. This also serves to fall within the bounds of equity's "best interests" test. It is further contended that this supervisory obligation is so paramount as to exist before the engagement of the agent. Finally, some of these concepts are discussed in the context of the Trio Capital/Astarra fraud investigation, which has been Australia's most recent, and perhaps most interesting, alleged case of corporate fraud – with investors undoubtedly seeking answers about how such deception went unnoticed. .... 419

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