

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **Personal liability for corporate disclosure problems – Jason Harris and Suzanne Webbey**

This article considers the potential for company directors to be exposed to personal liability in respect of misleading or deceptive corporate disclosures under s 1041H of the *Corporations Act 2001* (Cth). It reviews the development of this provision from s 52 of the *Trade Practices Act 1974* (Cth), which traditionally has not contained a defence. The article advocates the introduction of a due diligence defence in respect of personal liability for defective disclosure resulting from misleading or deceptive conduct undertaken on behalf of the corporation. It suggests the need for law reform to balance managerial control with organisational efficiency and innovation. .... 463

### **Shares and units: The parity myth and the truth about limited liability – Nuncio D'Angelo**

In previous articles, the author argued that trust law does not properly support unsecured trust creditors, particularly when compared to the position of unsecured creditors of companies. In this article, the author considers the issues from the perspective of the beneficiary as a unit holder in a unit trust, including one which is a managed investment scheme. An expectation that equity investors in a unit trust enjoy the same limited liability as a company's shareholders would be misplaced. While shareholders' liability position is protected by statute, there is no such protection for unit holders. There are circumstances in which they may suffer personal liability for debts of the trust enterprise, even in the face of documentary exclusions. There is thus a potential for creditors to "pierce the trust veil" if they are left unsatisfied by action against the trustee and trust assets. The issues have been debated at length in the United States and Canada and in both countries have resulted in statutory solutions. The debate is yet to be fully ventilated in Australia. .... 477

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