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The new "shorter" Product Disclosure Statement regime: Some issues and potential market responses – *Vince Battaglia*

Effective from 22 June 2010, but subject to an implementation period (and any further extension of that period granted by the Government), the *Corporations Amendment Regulations 2010 (No 5)* (Cth) introduced a new disclosure regime for certain financial products. These regulations amend the *Corporations Regulations 2001* (Cth) (Corporations Regulations) to prescribe the form and content of Product Disclosure Statements (PDSs) for standard margin loans, superannuation products (except "defined benefits funds" and "pension products") and interests in "simple managed investment schemes". As this new regime applies only to these specific financial products, and is mandatory for these financial products, the regime sits alongside the current disclosure regimes under Australian corporations law. This article describes the application of this new product disclosure regime, in particular to applicable superannuation products and interests in simple managed investment schemes, and considers some of the legal and practical issues arising under the new regime and some potential market responses to such issues. 241

The trustee's lien or charge over trust assets: A PPSA security interest or not? – *Nuncio D'Angelo* and *Helena Busljeta*

The *Personal Property Securities Act 2009* (Cth) has effected fundamental change to the way in which security interests over personal property are to be identified, classified and perfected. The underlying philosophy of the Act is a substance over form approach. So, while it clearly deals with traditional securities such as charges and mortgages, as an "in substance" regulatory regime it also embraces transactions that may not currently be classified as securities but which, in substance, involve an interest in personal property being given to secure payment or performance of an obligation. A question arises as to whether a trustee's rights of indemnity, lien and/or charge with respect to the trust estate, where the estate includes personal property, is a "security interest" within the meaning of the PPSA. It is argued that, while it is conceptually possible for a trust to be used as a security device, the trustee's ordinary indemnity, lien and/or charge, as such, does not constitute a PPSA security interest. 251

Personal property securities legislation: What happens when a company becomes insolvent? Lessons from Canada and New Zealand – *Linda Widdup*

Personal property securities legislation was enacted in Canadian jurisdictions many years ago and, more recently, in New Zealand. In these jurisdictions, some of the important effects of the legislation did not become apparent until a grantor of a security interest became insolvent and the courts were called upon to interpret the legislation in order to deal with the ensuing priority disputes. This article will discuss some of the issues that arose in Canada and New Zealand when parties impacted by the legislation failed to recognise the legislation applied to their transactions or appreciate how the new registration system was intended to operate. While this legislation is premised on delivering greater clarity and certainty to the law of personal property securities, this was not always obvious in the aftermath of the legislation coming into force. 270

The case of Goodridge v Macquarie Bank and novation of (syndicated) loan agreements – *Andreas Ruthemeyer*

In the beginning of 2010 Mr Goodridge won an action against Macquarie Bank Ltd in the Federal Court of Australia. The decision was overturned by the full bench of the Federal Court of Australia. This article was originally written before the appeal decision was handed down. It considers the trial judge's obiter with respect to novation and the full bench's assessment of the obiter. The trial judge, Rares J, declared that the broad novation clause used by Macquarie Bank to transfer its rights and obligations was ineffective. This article submits that the contractual terms used by Macquarie Bank did not satisfy the legal elements of a novation, a problem which may also exist in the standard terms and conditions of other market participants. It is argued that the underlying commercial desire for a novation may also be achieved by an express and prospective two step contractual instrument agreed on by the lender and the borrower. Finally, this article submits that the issues considered in the obiter do not relate to syndicated loans because the syndication contract usually provides for a sophisticated novation procedure which avoids the problems raised in *Goodridge v Macquarie Bank Ltd* (2010) 265 ALR 71. 289

The Inglis language – an analysis of the rule in Inglis, the law of equity and new trends – *Andrew Francis Vella*

In recent times, a willingness by the courts to depart from the strict requirements of the general rule in Inglis has given rise to the impression that there is a growing number of exceptions to the general rule. Two categories of cases which might be mistaken for new exceptions to the rule are cases involving: (1) a reasonable refinance proposal by the mortgagor (Refinance Exception) and (2) enforcement against the mortgagor's home (Home Exception). Neither of these purported exceptions are true exceptions to the general rule. Rather, they are manifestations of either an application of the general rule in Inglis or the application of the balance of convenience test by the courts. 309

Circulating security interests under the Personal Property Securities Act 2009 (Cth) compared to floating charges – *Lionel Meehan*

The *Personal Property Securities Act 2009* (Cth), which is anticipated to commence on 30 January 2012, restates the law relating to floating charges over personal property, and (effectively) renames floating charges over personal property as circulating security interests. 322

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