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EDITORIAL 231

ARTICLES

Corporate governance survey of resources companies – *John Chandler* and *Barbara Gordon*

In the first half of 2013, the Centre for Mining Energy and Natural Resources Law at the University of Western Australia and KPMG conducted a survey of corporate governance of small to mid-sized resources companies with their head offices in Western Australia. In this article the authors describe the survey, discuss the results and the implications for corporate governance of resources companies. 234

Breach reporting: Some difficult issues to consider – *Andrew Eastwood*

There are now numerous statutory obligations requiring the reporting of known or suspected breaches of the law to regulatory authorities. An important instance of such an obligation is s 912D of the *Corporations Act 2001* (Cth), which applies to Australian financial services (AFS) licensees. The Australian Securities and Investments Commission (ASIC) has recently made a number of public statements to the effect that it is concerned as to the "narrow" approach that some AFS licensees are taking to this significant breach reporting obligation. ASIC has issued guidance as to its views on s 912D, and expects licensees to "err on the side of caution" and report matters to it, even if there is uncertainty as to whether a legal obligation to report has arisen. There are, however, important commercial and legal reasons why a licensee may not wish to submit a breach report to ASIC, unless it is legally required to do so. This article explores some of the difficult issues that arise in determining whether an obligation to report under s 912D has arisen. Similar issues arise in relation to other self-reporting obligations. 251

The disclosure of equity derivatives in Australia – *Alexandra Eggerking*

Against the backdrop of worldwide debate surrounding the use of and need for disclosure of equity derivatives, commentators, governments and regulatory bodies continue to express concerns that Australia's legislative and regulatory framework for the disclosure of cash-settled equity derivatives is inadequate. This article examines the historical events in the debate surrounding the need for better disclosure of cash-settled equity derivatives in Australia, the key concerns cited in the debate and the existing framework for disclosure of interests in listed bodies in Australia. It concludes that reform is desirable so as to cement a disclosure obligation in the *Corporations Act 2001* (Cth) where a person's long position in respect of shares in a company, including positions held under cash-settled equity derivatives, exceeds 5%. It has not yet been demonstrated, however, that broader reform is necessary, for example to create a test for disclosure based on a person's economic interests, rather than a person's ability to control the voting securities of a listed body. 264