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Fiduciary obligations, financial advisers and FOFA – *Simone Degeling* and *Jessica Hudson*

This article examines the financial adviser/client relationship against the matrix of statutory and equitable principles. The analysis examines the course of dealing, contemplated by Pts 7.7-7.7A and 7.9 of the *Corporations Act 2001* (Cth), and argues that a key distinction must be drawn between "substantive advice", and advice that is given much earlier in the relationship, which the authors label "advice about advice". Substantive advice concerns recommendations by the financial adviser about actual investment decisions and strategies which are capable of implementation by the client. Advice about advice on the other hand is early guidance by the adviser about the selection of topic areas on which the client will later receive substantive advice. Advice about advice has significance for equitable fiduciary law, but is not necessarily caught by the statutory regime. In providing advice about advice, the adviser constitutes him or herself a fiduciary, albeit that any fiduciary duties may be limited in scope. In consequence, the financial adviser may well be in breach of fiduciary duty depending on the substance of the advice about advice. The article demonstrates that compliance with Pts 7.7-7.7A and 7.9 is unlikely systematically to discharge fiduciary obligations and compliance regimes that are calibrated towards an adviser's statutory obligations may thus not be effective in preventing a breach of fiduciary obligations arising earlier in the parties' interactions. 527

The potential for superannuation funds to make investments with a social impact – *M Scott Donald*, *Jarrod Ormiston* and *Kylie Charlton*

The trustees of Australia's superannuation funds oversee the administration of pools of investible moneys of unprecedented size. They are required both by statute and by the general law to exercise their powers in pursuit of the best interests of their members. At the same time, there is a strong demand for capital from what have come to be called "social impact" projects. These are projects which expressly seek to address social or environmental issues while providing competitive financial return to investors. This article finds that superannuation fund trustees may be able to provide finance to such projects if they are careful in their attention to the specific issues arising from these types of investment and they remain focused on how the drivers of expected returns and risk contribute positively to the investment strategy they have designed for their funds. 540

A shareholder's contractual right to a dividend and a company's oppressive conduct in withholding dividend payments: Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd – *Jean du Plessis* and *Stephen Alevras*

Traditionally, a shareholder's expectation of receiving a dividend has been limited by the discretion the board of directors has to recommend the appropriate amount for payment as a dividend. As a general rule, shareholders will only be entitled to a dividend after the dividend is declared (normally, at the general meeting), or when the actual date arrives for the dividend to be paid. Because courts were traditionally reluctant to interfere with the internal management of companies, the remedies available to shareholders to compel a company to declare a dividend were very limited. As a result, if the directors have decided to withhold dividend payment, courts will only make an order requiring dividends to be paid under very exceptional circumstances. In this article, the authors discuss the case of *Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd* [2013] NSWSC 235, which is exceptional for the court's recognition of a shareholder's contractual right to a dividend. The article analyses the court's approach, which found that withholding dividend payments was oppressive and unfairly prejudicial conduct of the company. It also discusses the significance of shareholders entrenching their rights in a company's constitution, irrespective of the fact that a company has a statutory right to alter its constitution by way of a special resolution. 552

Timely public disclosure of company information: A likely precondition for optimal long-term corporate and national outcomes – *Gill North*

The article advocates corporate disclosure regulation on fairness, efficiency, governance, and national interest grounds. It suggests that relevant empirical research points to timely disclosure of listed company information as a precondition for attainment of optimal long-term corporate and economic outcomes. While company managers and large institutional investors have strong incentives to exchange information privately, listed company communication models based on favoured institutional relationships or relative levels of power and wealth are unlikely to lead to efficient markets, strong corporate performance, sound governance practices, or sustained economic growth. Market observations and interdisciplinary research consistently link superior corporate and national outcomes to high-quality listed company disclosure, protection of minority shareholder rights, broad investor participation, and public trust in financial markets. 560

Basel III's effect on the Australian market – *Siobhan Caitlin Sweeney*

The Australian Prudential Regulation Authority (APRA) has imposed a "super" version of Basel III, which requires Australian banks to be amongst the most heavily capitalised in the world. Moreover, the complexities and nuances of Australia's modified version of Basel III render this over-capitalisation opaque, so that Australian banks are left to bear higher capital costs without any commensurate recognition. Australia's adoption of Basel III in this form creates significant negative effects on domestic and international competition. APRA's quantitative review is misdirected and inadequate, and the voices of APRA are not comforting in relation to these inefficiencies. This Australian perspective demonstrates that Basel III, as imposed by Australia, is not sound economic regulation. 583

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