

COMPANY AND SECURITIES LAW JOURNAL

Volume 39, Number 7

2023

EDITORIAL – *Editor: Edmund Finnane* 377

ARTICLES

Section 52(12) – The Forgotten Covenant – *M Scott Donald*

The past few years has seen resurgent interest in the obligation, variously manifested, imposed on the trustees of Australian superannuation funds to exercise their powers and perform their duties in the best interests of their members. Curiously, however, almost no attention has been given to the obligation arising from the covenant in s 52(12) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act), a covenant whose open textured drafting, on its face, would appear to extend the horizon of the family of “best interests” duties in a number of non-trivial directions. This article starts to address that lack of attention. It finds that although uncertainties remain, the text of the covenant, and its presence in Pt 6 of the SIS Act, potentially extends the scope of the so-called “best interests” duty as currently understood by most in the industry in ways that are consequential and ought not be underestimated..... 378

IOSCO’s Initiatives on Hedge Fund Regulation: An Interpretative Perspective – *Xun Li*

As a transnational regulatory network (TRN), the International Organization of Securities Commissions (IOSCO) has championed a wide range of initiatives on hedge funds. They compose the only global framework in this area that national regulators can draw from but have not been specifically studied by academics. By doctrinally explaining and assessing this by reference to the strengths and weaknesses of TRNs, this article attempts to close the research gap from the perspective of TRN theory. Based on an elaboration of IOSCO’s legal nature, it finds that the IOSCO framework is crucial in this area as it exemplifies four essential characteristics in helping regulators to address the systemic risk associated with hedge funds. 393

TAKEOVERS AND PUBLIC SECURITIES – *Editor: Jonathan Farrer*

The Drawbridge: The Ups and Downs of an Effective Fiduciary Out – *James Nicholls and Matthew Nowotny-Walsh* 419

CURRENT DEVELOPMENTS – LEGAL AND ADMINISTRATIVE – *Editor: Priscilla Bryans*

An Analysis of the ACNC’s Approach to Compliance and Enforcement – *Rosemary Teele Langford and Miranda Webster* 430

