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# Australia needs a standard method of calculating shareholder loss in continuous disclosure cases

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**The number of continuous disclosure class actions in Australia is rising but Australia does not have a standard method for calculating shareholder loss. Empirical research assesses the different methods of calculating loss and identifies a clear winner.**

In U.S. securities fraud cases the *Market model based event study* (MMBES) has been the required method of calculating damages. In Australia there is no legally binding method of estimating damages for breaches of continuous disclosure provisions (a branch of securities fraud) by publicly listed companies. Research by Daniel Maroney suggests that the MMBES method of calculating damages is the most accurate and should be introduced sooner rather than later given the increasing number of legal cases in this area.

Continuous disclosure in Australia is an obligation whereby any ASX listed company has to disclose immediately to the ASX any information, it becomes aware of, that may have a material effect on the company's share price. Non-disclosure of information by ASX listed companies may cost shareholders money and shareholders have the right to take legal action against the company, its directors and officers if they think that is the case.

Just over ten years ago Australia had its first continuous disclosure class action (the GIO/AMP takeover) and since then there have been over 30 cases with an ever increasing number each year. Most of these cases have been settled out of court and unlike the U.S. (which uses MMBES) there has been no legal precedent set for the way losses to shareholders should be calculated.

In the U.S. prior to court acceptance of MMBES shareholder losses for continuous disclosure breaches were calculated by using different methods including the raw market capitalisation approach, modified recissory (average price) method and a market model with industry adjustments. Maroney's research examines 31 Australian cases, using actual continuous disclosure breaches and crunches the numbers for 5 years of daily data on 30 stocks. His research compares the methods of loss estimation and finds that the MMBES method is the most accurate. The MMBES method assesses losses differently to the others and takes into account market fluctuations as well as being both simple and scientific in its approach.

Maroney's practical research backs up theoretical arguments that suggest the MMBES method generates the most accurate estimates of shareholder losses. In Australia both sides obtain expert evidence to quantify the loss to shareholders and although many experts use MMBES none of these claims have proceeded to judgement so no Australian precedent has yet been set to use the MMBES for assessing shareholder losses.

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