

7KH 1R 5HIOHFWLYH /RVV 3ULQFLSOH 7RZ
5XOH

-L\DQJ =KDR

/DZ 6FKRRO 8QLYHUVLW\ GR&RG DGHM (GLVFXVHG) JKUBQLVHG .LQJGRP

\$EVWUDFW HVVD\ GLVFXVHG RWZ YWKRORZ YSODQHGSDGKDWV FXUUHQW
'31R UHIOHFWLYH ORVV' SULQFLSOH HLODWRV XFBZPQUGXKWUDV
GHHYORSHG LQ -RKQVRQ Y *RUH :RRGHDRQDEOSSOLKDDVLRDQJDX
H[SDQGHG WR DQ H[DJJHUDWHG H[WHODQF,LOVHFWLDAFRSHMICO SUIWDFYS
ZDV EHHQ QDUURZHG EXW LWV IXQGDPDQVHQLWPKBUSRRJUVSFROLKHFURQ
RI '3QR UHIOHFWLYH ORVV' SULQFLSOH VHDUHDVPRVHFRQLWUDELQJ WRIOHFUHL
'3SULRULW\ UXOH' 7KH 3ULRULW\ RFXRHFQRWRODMSXRVHFRVSWRMHFX
WKHLQWHUHVWRI VKDUHKROGHUV QR RVDSHU RQHILSORRNBG DOVGRSUHM
RI GRXEOH UHFRYHU\ VR WKH IXWXDEWKDWLRI SORQFHSHHFWLWELORJW
HVVD\ KDV GLVFXVHG WKH SULRULW\ XHODUHDUHDUFDLQV DLOVZRFRFHQD
DSSO\LQJ LW LQ SWDGHFWHFXVHGGRVWDFWLFDO OHYHO UHODWLQJ W
LPSOHPHQWLQJ WKLV SULQFLSOH LQ H[LVLWLQJ FDVHV

,QWURGXFWRQ

:KHQ D FRPSDQ\ & YXILW\ D ORV V FODLPV LQ DORWKHU FDSDFLW DUH QR
ZURQJGRHU 'WKH ERPSDQ\ KDFWLRG WKH Sevilleja FRSEIRGLHV RXU FXUUHQW
'DQG WKH FODLPXODVH ERH & QRWPHUWQGLQJ DERXW WIOHFWLYH OF
QDPH RI D VKDUHKROGHU > FUKIDQ\ FRVSKRY Sevilleja KXV GJHPHQW EHQHILWWI
SULQFLSOH ZDFoss LvUHamottle HFW' LW SULQFLSOH LWV VXLWDELOLW\ FRQWL
ZURQJIXO DFW DJDLQVW & KRZHU D RLVHGLSDFWV
VKDUHKROGHUV LQWHUHVW LQ WKH*SVRUP RPHQHFWLYH ORVV KDV E
WKH YDOXH RI > WKHLW WKHUXFWLQGLQJ D FDUHUVHFRVSWRMHFXOERQVLGHUWLRQV
GLYLGHXHVWLRQ FRQVHTXHG GDSUHVHG VFDHLYXSHAVRCHFCQGXWLHV
VKDUHKROGHU UHFRYHU WKH HZHNRQJPHUV RZHVFKDUHKROGHUV ZHUH
WKHLU RZ > OHDVZHU LV QR VFDHLYXSHAVRCHFCQGXWLHV LQJ WR ,YDQ 6LQ
RQO\ UHIOHFW WKH ORVV > XILNULGRUFWKH FRPLSDQ\ WR SURKLELW V
UXOH LV FDOOHG WKH QR UHIOHFWLYH ORVV SULQFLSOH VDS SRH QWIRQJ
'31R UHIOHFWLYH ORVV' UdeZitaV LQWURGXFHG LQ
Assurance Co Ltd v Newman Industries Ltd (No.2) 7KH SULRULW\ UXOH LV PRUH DSSURS
Prudential > @7KH SULQFLSOH GHWHUHQVWKDWWKH
VKDUHKROGHU FDQQRW UHFRYHU D VXPHTXDO RQRQR UHIOHFWLYH
GLPLQXWLRQ LQ WKH PDUNHW YDOXH RI KLWV VFRPH WKH LGZHG SRO
WR WKH GLPLQXWLRQ RZHQV LGHFRU UHIOHFWLYH ORVV DOODSGUHDV LQ
WKH O. R. v. Care Wood & Johnson > @ 7KLV HVVD\ LV RUJDQLJHG DV IROORZ
XQGHUVWRRG > LQZKGEKIHDFWV DSWRPHWKH HMRCHFWLRYHFRVQR' DQG K
SULQFLSOH V VXE\HFXVH UHYRQVHLO WKH WKH HMRCHFWLRYHFRVQR' DQG K
WKH WKH SULQFLSOH V WHQVDFPHV DUH FXUUHQW\ XGGHUVWRRG
UDWKHU OLNH VRPH JKDVW@ CHVDDSDZHG SROVGRVHGHUWLRQV
DQG LW KDV EHHQ H[WHQGHG WR SODLQWKH UHFRYHUHQVWKH SULR
FUHGLWRU DQG SXUH > XNHWRUHMVFXHFWVWKDW WKH '3SULRULW\ UXO
LQFUHDVLQJ\ DQRFDORXS WHQVHFRVSWRPH' KD V
EHHQ ILHUFHO\ FULWLFVHG
7KH FSevilleja v Marex Financial Ltd @

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'HYHORS PHQW RI WKH 4R05VW0DVFHWLWKDW LI D FRPSDQ\ VXI
 /RVV 3ULQFLSOH EUHDFK RI D GXW\ RZHG WR LW RQO\ W
 IRU WKDW ORVV QRAVUWSRIVLWDBEKRO
 7KH 1R UHIOHFWLYH ORVV 3DLQMLSDMLHPEUBASDQQVXIIHUV ORVV
 Prudential> @HW WKH SULQFLSOH ZDQVXKDWKRSRCHWFDUXOHVWR UHFYHU
 Rfoss v Harbottle @6HYHUDO \HDUV ODQRMVWKHUMXGHPQWH ORVV 3URSRVLV
 RJohnson XSKHOG DQG H[SDQGHG ERVUHFBPSDQYDQRVVKDUHKROGHUV PD
 > @8QIRUWXQDWoHrGdn DWWWUH[FVWKHLYHFRWK VXIIHU ORVVHV DV D UHV
 H[SDQVLRQ GHFUHDVHG WKH OEUHDFKFRH RI WKH SULQFLSOH
 DQG GLIIHUHQW LQWHUSUHWDLRQRSRVLRWLWRVFLSHFRYHYUVVHGHWFHQQ
 GLIIHUHQW GHFLVLRQV E\ GLIIHFDLWFRHUVVFRHHKRSRCHHFDQ RQC
 &RXUSevillej VXEVTXHQWO\ UHVWKLFWDFHLRWKIDRSTHSDQHURRDO FDS
 7KDW GHFLVLRQUHDFHVLWKHORRUSULQFLSOHLL DQG LLL JLYH WZI
 7KH UXOHV LQ UHVSHFW WR WKHSORFKWREROLRQVUHQHARRRQUXRUG +RV
 UHIOHFWLYH ORVV DUH GHULYHMDQGRSLQWKHWKDWVWKDVWKH PRUH
 FRQVWLWXWH RXU XQGHUVDQWKQWVKHQKDKDHHKROGHVVRVHWHG DSS
 WRGD\ 7KH ILUVW H[Johnson ERQ\IDRVRVH ZKHQ
 WKH FRPSDQ\ KDG QR FDXVH RI DF

Prudential RULJLQ RI QR UHIOHFWLYH WKH FRPSDQ\ @HSHVSDQ @H@ Q
 SULQFLSOH ZKLFK WKH &RXUW RI \$\$\$SHDO KHOG W
 FDSDFLW\ WR SURVHFVWH FODLPV DJ
 , Prudential WKH 3UXGHQWLDO DV ZURQJGRUW ZDY GHQROGHU GXH WR WKH
 RI WKH GHIHQGDQW 1HZPDQ GHYHOGDQW FRPPLWVXGWR WKH VKDU
 FODLP DJDLQVW WZR GLUHFWRUV FODLPV DQG DSSURSRVORSHORLIQWI
 WKDW WKH\ KDG GHIDJXGHOWKIDRSDQVUHVWULFWGardnerPHGLDWHO
 VRXJKW GDPDJHV ILUVW YLD D Parker @WKH YLDFWHY FRXUW KHOG WKD
 RI WKH FRPSDQ\ DQG WKHQ WKGRXJKD SHUVROGDRV DRLPLWKDW SUH
 GLUHFWRUV ZURQJGRUW KDG YDXVHQDQVDFQWRKHDRSUH WKDW W
 YDOXH 7KH ILUVW FODLP ZDV UHMHFWH SUBYLQHWKDWUHQ VXFK LP
 3UXGHQWLDO WKH FRXUW UXOHGFXVHG WKH ZULH@RQULDQVJHG
 HTXDO WR WKH GLPLQXWLRQ WKHVWDRUHPWHYDQXVHXOV WKH EL
 VKDUHV RU HTXDO WR WKH>@LNPHGVPLQWLRQLGSHVSDQ @RQ WK
 EHFDXVH VXFK D ORVV LV PHUHQDWLWFOHFWLRQVDFWKKORV WKH I
 VXIIHUHG E\ WKH FRPSDQ\ DQG LQDUHKROGHUFRVWPHVVRV FODLP Z
 GLG QRW VXIIHU DQ\ SHUVRQDE ORVV DQKHUHQZURQGRVQLV
 WKURXJK WKH FRPSDQ\ LQ WKH GRVQXWLRQLQWKHFBGKHIFHSHWLF
 WKH QHW DVVHWRI WKH FRPSDQVDFUFXPVWDQFH ZKHU WKH SHUSHWU
 7KHVH FLUXPVWDQFHV SURKLVWVWRERWKFRPSDQ\ DQG VKDU
 UHIOHFWLYH ORVV Prudential SLDWVQGDQWDO UHTXLUHPHQW LV WR GL
 FRQVLGHUH SUREOHPDWF HVSHFDQWDRDQGLVWLOHFWORV ORVV
 QDUURZ VFRSH RI WKH@ORVUHVWDRUHQVFRVFWHWHWDLQLWKH ORVV
 WKHVH VKRUWFRPLJohnsonWKHGLHFWLRQVROH ZKLFK ZRXOG EH PDGH JF
 WKH QR UHIOHFWLYHPrudential VV SU>KHLHURUH LI FRPSDQ\ UHFYHU
 VKDUHKROGHU LV IXOO\ FRPSHQVDWHG

Johnson Prudential H[SDQVLRQ RI WKHVXOHV @LQJ GLPLQLVKHG WKH ORVV
 FDOOHG UHIOHFWLYH@HSHVSDQ @H@ Q
 , Johnson 0U -RKQVRQ V FRPSDQ\ ZKDW LI D VKDUHKROGHU LV XQVXFHVV
 YLUWXDOO\ FRPSOHWH FRQWURO KLV ORVWKDQVZHU LV XOFHUWDLQ
 UHSUHVHQWHG E\ D ILUP RI VROLFLWLVV DQG FDOFXDQW WKH G
)ROORZLQJ WKH VXLW EURXJKW E\ WKH FRPSDQ\ DQGLVWLOHFWORV
 VROLFLWRUV IRU QHJOLJHQW DFWWKLVIXVWDRQVLOVWKH HVWDE
 VROLFLWRUV WR FODLP D SHUVRQDQVDFQWRKHDRSUH WKDW W
 SOHDGHG WKDW WKH ORVVHV DQGDQVDFQWRKHDRSUH WKDW W
 UHIOHFWLYH ORVVHV VLQFH WKH ZHU VXIIHUHG E\ WKH
 FRPSDQ\ 7KH FRXUW WKHQ GLVPLVHG FODLPV IRU
 UHIOHFWLYH ORVVHV EXW SHUPLSevillej WOHVSRVHWKMLVFRSHWKHUIO
 FODLPV ORVV
 /RUG %LQJKDP KHOSIXOO\ FDWHJRUVHG WKH VLWXDWLROV
 LQ ZKLFK WKH 3QR UHIOHFWLYH ORVV @HSHVSDQ @H@ Q
 DSSOLHG LQWR WKUHH SRSRVLWLRQV DQVXKDWKRSRCHWFDUXOHVWR UHFYHU
 DSSOLHG LQWR WKUHH SRSRVLWLRQV DQVXKDWKRSRCHWFDUXOHVWR UHFYHU

WZR %9, FRPSDQLHV ODUH| WKRFRVVDXOWREWUDIGOLVSRKMDFLQVRUDWHU
 MXGJPHQWV DJDLQVW WKH FRP SBRQLWVLRQ6HYLVODHMMMLYHCOORVHCRULVHGLV
 VWULSSHG WKH FRPSDQLHV RI WKKH IOH JDOV N WWW HPD XIR XQ GVV K BLYH
 LQVRO@FHQVH| DV D PDMRU FUHGQWRUUVXQXWVSevilleja BPSUKRYHJK WKH QR
 ZURQJGRLQJ SHUSHWUDWHG EUH60HYEWOYIM DORZKLOSHULWKRHSOH DQG
 GHIHQGDQW DUJXHGQDWKVP HDHUBSSBOLFDFWLRQ PRUH UHDVRQDEOH LW
 WKH FRPSDQLHVH CRVQ WKH W X SRL Q FL S OFW ESANJZ DLVGQRW VXIILFLHQV
 ORVV GLG QRW DSSO\ WR ODUHFDXUH WCR LWWW FRVQW & HUDWDRQ RI PD
 XQVHFUXUH@FQHSIMBO WKH FRXULVQ ELFSOHU WKO W W K/WLOO QHHG WR EH
 SULRU MXGJPHQW VDLQJ WKDRI WKKHFDZLPORIEHWK H DRF XWK HQ QH[W
 FUHGLWRU RI FRPSDQLHV ZDV SUHFOXGHG XQGHU QR
 UHIOHFWLYHFLVROV WKH DVVHUWLRQ RI /RUG OLOOHW
 L@hnsn,WKDW WKH SULQFLSOH 7KH)ODZHG 3ROLF\ &RQVLGHU
 \$SSOLHV WR RWKHU SD\PHQWV ZKLFK ZRXOG KDYHIXHG WKH GLV
 PDGH (YHQ LI WKH SODLQWLII Johnson /RUG OLOOHW DULYHIXHG WKH GLV
 TXD HPSOR\HH DQG QRW TXD VEDLFRKROGHU VHFHYLQ UHVSHFW RI
 ZRXOG KDYH KDG D OHDO FODLR WRJERJSDGWRPHQRXUSevilleja SSSHDO LQ
 7KH FDVH ZHQWVWRXUWKH ZKSHUHPDUJH VOR UHIOHFWLYH ORVV SULQ
 DSSHDO ZDV XODLORXKONHUMS WKKH SROLF\ FRQV\FURMWHFOM DUH
 JLYHQ WKH PDLQ MXGJPHQW WRUGH5HHSZVZLWXOGKRLYH WKH SULQL
 /DG\ %ODFN DQG /RUG /ORIG ROHYROORJHGJ XPEVHEWLRQV DUH FR
 +RGJH V FRQFXUULQJ ZLWK WKH PDMRULWV DQG WKH WKHVH IQDZ
 PLQRULW\ V /RUG 6DOHV ZLWK /DG\ +DOH DQG
 .LWFKLQKH PDMRULW\ SRVLWLRQ IDYRXUHG QDUURZLQJ
 WKH VFRSH RI 3QR UHIOHFWLYH ORVKEOHZLHFRWKH PLQRULW\
 YLHZ IDYRUHG>EROLVKKLQJ LW /RUG OLOOHW KHOSIXOO DGGUHVHVG
 Sevilleja UHLWHUDWHV WZR LVVXH V WKH VFRSH RLVWKH QZKLFK KH
 UHIOHFWLYH ORVV SULQFLSOH DQG WKH DSSOLFDFWLRQ
 H\FHSWLRQV GWRPRHQ J QURPGUHVVLQJ
 WKH ILUVV TXHVWLRQ ERWK WKH PDMRULWV DQG WKH BOORZHG WRU
 DUJXHG WKDW FUHGLWRUV DUH ORVFRVHUWVHQ HQ H R V KHU W K W H ZLOO
 ORVV@RU /RUG 5HHG WKH DPHQG WKH HUSOYV SORI WSHOLGHIHQGDQW RU
 VSHFLILFDOO\ WRKRPSDQLHVBOORSHUVDWVGH HISHQVH RI WKH FRP
 KDV QR EURD@HDFPEWVHUH LV DORFRUHHODWLRQ
 EDWZHHQ WKH YDOXH RI WKH FRPSDQ\ DVVHVW RU SURILWV
 DQG WKH YDOXH RP WKRFRVHGHGROVYHGHV Sevilleja5HHG WQG WKH
 WKH PLQRULW\ SHUVSHFWLYH FROTHSVWVKDW QR UHIOHFWLYH ORVV
 FRPSHOOLQJ DUJXPHQW IRU WKKH OHHGWRDYLGG@SOEDYRISLEFRYHO\GRX
 WKLV SULQRLSWHVKRXOG EH DEDQGRQHG LV OSWPLVHG RQ WKH UHF
 PLQRULW\ YLHZ LW VKRXOG QRVEHVIXWKHUHWKHHKHOG WKDW WKH
 FUHGLWRUV ZKR DUH>QRW HYHQ VKHUHQRO SHUVRQDO ORVV 7KHUHIRU
 \$QRWKHU FRQWHQ Sevilleja RR@VGLV ZKHUWKHRYHU\ LV QRW HOLJLEOH V
 DSSO\ WKH H\FHSWLRQ URRO@BBLQ
 EHOLHYLQJ WKDW H\FHSWLRQ ZDYRKHFDJHFRYHU\ LV XQGHQDEO\ DQ
 WKDW VXFK DQ H\FHSWLRQ ZDV IXQWKHUDEWOWHWRUURULSVKH FRXUV
 YLHZ ZDV WKDW WKH VKDUHKROGHFRUREBGXODO FVIMYHGWBOORVYH PHD
 ZKLFK LV UHJDUGHG E\ WKH ODUHFWLYHFRVSOBSSH D PDMRULW\ VK
 GLVWLQFW IURP WKH KRPSDQ\XHOHYHQ FRPSHO WKH FRPSDQ\ WR D
 WKH PDMRULW\ GHFLVLRQ WKDW WKH UHFDW UHYROXWRQ@DRALD JHQHU
 WR WKH SULQFLSOH FLORULW\ VKDUHKROGHU KHGRD DSSO
 FRQGXFW KDV OHQWVWKHFRPSDQ\UHLV DQG SHWZLQRQLVKKDUHKROGHU V WQW@
 XQDEOH WR ILOH D FODLP RQ LWV RZLQRQLVKKDUHKROGHU PD\ WQW@
 RQO\ SXUVXH WKH FODLP WKKH RQDFWLRQ
 XQIDLU SUHM@GLFH FODLP 5HFRQVLGHULQJ WKH TXHVWLRQ DE
 6LQFH WKH WKH QR UHIOHFWLYH ORVV SU%OFLS WKH FRUHHODW
 ODUJHO\ UHWXUHG WR LWV FRPSDQ\ ORV DQG WKH BLQXWLRQ
 Prudential > @,WV QDUURZ DSSOLFDFWLYH KDUHY FRQVWUHG J@hnsn@FRQ
 EH XQM XVW ZKLFK LV ZK\ WKH WKRUKWKH KRKHVWV WYKORVV WHVW L
 EH DEDQGRQHG /RUG 6DOHV VZKORVYDOXH RUPHULV UHIOHFWHG LQ W
 UHIOHFWLYH ORVV DVVXPLQJ RD\QRWVH LCHQWLEDO Q /RUG OLO
 WHVW RI FRPSDQ\ ODZ DUJXLQJ FRPSDQLHV ZKHU VKDUHY ZKHV SXEOL
 RI WKH VKDUHV ZHUH GHWHUPLQHG E\

ZURQJGRHU" \$V /RUG 6DOHV DUNHG WKDW FRPSDQ\ EXW FKRRVH WR EULQJ D SHU
FODLP LV QRW FRYFHV ClarBottleV KHUHU GEFWLLQYH ORVV DQDO\VHG LQ 3DUW
VLQFH WKHUH LV QR UHDVHQ WKH S QWUFRVVOH RW IDO GHDULWLRQ LQY
PDNLQJ SURFHVV ZKHQ WKH FRPSDQ\ KDV FRQWURO RYHU
KRZ WR GHDO ZLWK >DQ\ FDXVH RI DFWLRQ

(b) Protect creditors and co-shareholders

/RUG 0LQJHWW HLPDUNHG WKDW WKH SURWHFW WKHLU VKDUHV DW D O
LQWHUHVW RI WKH FRPSDQ\ V FPHUJLWUWV WKH FRPSDQ\ PXXVW
EH DOORZHG WR UHFRYHU WKH WKH H FOXVLRQ RI
VKDUHKROGHU LUUVW JODQFH WKLV DUJXPHQW VHPV

ORJLFDQ LI WKH FRPSDQ\ IDOOLV EDNUXSW DV D FRVHTXHQFH
RI ZURQJGRHUV FUHGLWUUV ZLW (a) The shareholder retains in the company
DFWLRQ DV LW SLDQ RH SDQ WKH YDLODEOH IRU
GLVWULEXWLRQ@: KHRQ DUHVKDWRI RYHQ WKH UHFRWQBFRUSRUHVSWH JRYH

SHUPLWWHG WR UHFRYHU UHIOHFW WRORP WKH IXSGDWBDBDFWKR
WKH FRPSDQ\ V FODLP PD\ WKHUH WHUFWL YSDQVPLQWGHEDD JRYHI
ZKLFK ZLOO GLVUXSW WKH UDQGLRIFKODPLVVFPHGDWKRHMUVWOG
DQG VKDUHKROGHU + RZHVMRQVWKH
VKDUHKROGHUV DUH VHSUDWFRPSDQ\ FRERGLQWR DSDQYH .RK W

GLVVLPLODU ULJKWV DQG REOLJLWLRGV LWFRVWRVWSDY RQO
FROOHFW IURP RU FODLP DJDLQW DVVH V KRUFKROGHVIXORVHV W
EHORQJ WR WKH FRPSDQ\ HIRU DUMKHV WKH UHIOHFWLYH ORVV KH LV REO
DUJXPHQW WKDW WKH LQGLYLGXDPDQJ RWKLV LQWHUWLRQV WKH

VKRXOG EH VXERUGLQDWHG WR FRPHQFW WKH VWRUHVWRIDWKRQV
FRPSDQ\ V FUHGLWUUV HIRU JH WKH FRPSDQ\ KLP RU WKH FRPSDQ\ I
RI DFWLRQ SURSHUO\ SXUVXHG SHHBRQ RI WRPKHRUHQIDPSO DGDV
VKDUHKROGHU KLPVHOI FDQQRW VXH WKH ZURRZORBDPH

:KDW LI WKH FRPSDQ\ LV VWLGH VROXW FRPSDQ\ V IXVHV WR EU
FLUXPVWDQFH WKH FUHGLWUUV KDVH ZR WKH WR RQJRHUWKH V
LQ WKH LQWHUQDO DIIDLUV RI WKH FRPSDQ\ FRPSDQ\ FULQV DQ RWLR
FRPSDQ\ V ULJKW WR FRUWKLVD D DFWLRQ WKH RIIHQGHU EXW GRHV

FRQVLGHUDWLRQ GRHV QRW SURYHQVWRV VRSRWV FODLWVKH V
DSSOLFWDWLRQ RI WKLV SULQFESOH ZHFKH WKH FRPSDQ\ V
VROYHQW 2QH H[FHSWLRQ HILVWV ZKHQ D FRPS

7KH SURWHFWLRQ RI FR VKDUHKROGHUV HIRUWRDQRWKH WKH QRW
SROLF\ FRQVLGHUDWLRQ DUVLWV WKH V KRUFKROGHVWKH DQV EURXJK
)URP WKH VWDQGSRLQW RI DOO FRXUVU RIRUHQGRVWRVWRV F DVHV
DFWLRQ LV EHQHILFLDO WR WKH FRPSDQ\ FRPSDQ\ DQGHPRPHQ LQIR

E\ SDUWLFXODU VKDUHKROGHU FHWZHQ GRUWKH RIRUWKH V
WKH RWKHU KDQG 3HDUOLH RK SREOHVGRXWHWV LW RQO WDWKH MXG
VKDUHKROGHUV DUH GHHQG DQWV V V WKH FRPSDQ\ KDV MXVW
RQH VKDUHKROGHU WKHUH LV QR DSDQV LW R V SHUYSDFWLRK WKHU
VKDUHKROGHUV LQWHUHVW IRU WKH FRXUV)LUVWO\ WKH FRXUV

7R VXPPDULVH WKHVH IODZHWR SROLFXQV LQGHV DQG SHUPD
GR QRW IXQGDPHQWDOO\ VXSSRUW WKH RQGLWV SHUYSDFWLRQV LQWV
RI WKH H[LVWHQFH RI WKH QR UHIOHFWLYH ORVV ZKLV YHQWV WKDUHK
7KH ULJLG EDU RQ FODLPV EURXJWRV WKH KRUFKROGHUVWKH LQGLYLGXD
WKLV VHQVH XQIDLU WR VKDUHKROGHU FRPSDQ\ HIRUWKH VWRUHVWRIDWKRQV
SULRULW\ UXOH LQWURGXFHG FRXUV DQ KRXORVGRVPRVWKH FRPSDQ\

DSSOLFDEOH 7KH VWRUVRQ ZLOO WKH VKDUHKROGHU V SHUVRQDO UHFR
DSSOLFDELOLW\ RI WKH 3SULRULW\ UXOH (FRPSDQ\ UHFRXS D ORVV DQV VV WKDQ
rata VKDUHKROGHU DQ KRZHYHU LW ZRXOG
UHDVHQDEOH DQWVWKH VFLWVFXVHTXLUH
VKDUHKROGHU WR EHDU WKH FRVW RI

7KH 3ULRULW\ 5XOH

\$V GLVFXVVHG LQ 3DUW & DQG 3DUW Q UHIOHFWLYH ORVV RQDOLW
LV KLJKO\ SUREOHPDWLF LQ WKH DQGHVWRVWKH DQGHVWRVWRIDWKRQV
DIVULSLeja, WKH VLWXDWLRQ KDV FRUWKLQGHVWRVWRVWKH VWRUHVWRIDWKRQV
LPSURYHG 7KH SULRULW\ UXOH HIRUWKH VWRUHVWRIDWKRQV SURWHFW D F
LV D YLDEOH GLUHFWLRQ IRU LPSURYHPHQW DV LW RYHURPHV

WKDW LI WKH FRPSDQ\ GRHV QR SR IEO\WQJR ID CE ID IEO\WL RQO UR HEDWIAZLOE JOH \$O
D SHULRG RI QRWLFH LWV ULJKDWUVKRXG GW EIWG WIFRSHG WR VEIKQGDPH
ZDLYHG E\ WDFLW FRQVHQW DQIGV WXHVFBXUWL VDKRMOG Q\RW SROPEWFRQ
WKH FRPSDQ\ WR EULQJ DQRWKSULQDFMSLRO QURH UXQRDYPH QVRV DQV DQG
IRU WKH VDPH ZURQJIXO DFW DQWFKU WVKZKXKVU BFKIRIACCHUEWKHGG WR
FRPPHQFHG WKH SURFHHGLQJV DEDQGRQ LW

(b) *The shareholder exists the company*

7KH VFHRQG VFHQDULR FRQVL VHWV WFRWKH B\WVROPLA FRUSRU
ZKHUH WKH VKDUHKROGHU PKR RYVRW R UHYHFWW KW FRPSDQ\ HUHVVW RI
IRU H[DPSON LQ WKH LQVWDQFH WKH WKDQRKROGHU WKDYH ORV
VROG VKDUHV DW D ORZ SULFH SWHYDQXVHWKSWR EHOHFRWRWRH U
ORVVHV :KHQ WKH H[LW SURFHHGLQV SRROSOH LWKLVJKWHU WKD
VKDUHKROGHU LV FRPSOHWHO QRGLVHQJDJHG IURP WKH
FRPSDQ\ DQG QRZ KH LV WKH H[VKDUHKROGHU KLV WLVKLV GLVFXVVH
HQWLWOHG WR EULQJ DQ DFWLRQ PD DQDQW WKH WKH QDQFVH WDWQA
ORVV RI SULFH LQ FXUULQCE WKH H[VKDUHKROGHU DSSO\LQJ LW LQ SUD
XQGHUYDOXH <HW WZR TXHVWLVKRXQG EHV FDU WLVKRXWK RQ WK SUDFW
FRPSDQ\ DQG WKH QHZ VKDUHKROGHU SRVLEOH FDU WLVKRXWK RQ WK SUDFW
EULQJ WKH DFWLRQ H[LVLWLV FDU WLVKRXWK RQ WK SUDFW

)RU WKH FRPSDQ\ WKH DQVZHU LV FRQVLGHUDEFD FODPHU DQG PRUH
DV LW KDV DOVR VXIIHUG UHQDQGHV H[HUHQV H[HUHQV WKH
VKDUHKROGLQJ RI WKH H[VKDUHKROGHU VKRXOG EH GHGXFWHG
)RU H[DPSON LI WKH H[VKDUHKROGHU RZQH WZHQA\ SHU
FHQW RI WKH VKDUHV WKH FRPSDQ\ QRZ FDQ RQO UHFRYHU
HLJKW\ SHU FHQW RI WKH WRWDO DMHFKVHG DQV WLVKRXWK RQ WK SUDFW
WKH ZURQJIXO DFWLRQ LV QRWR DQQRZHG WR WK HGQ 2[IRUG
UHFRYHU WKLV SRUWLRQ RI WKH RORUVV H[HUHQV WKH H[VKDUHKROGHU
VKDUHKROGHU QHYHU ILOHV D ODZVXLW LQ RUGHU WR SUHYHQW D
SRVLEOH GRXEOH UHFRYHU Foss v Harbottle (5)

)RU WKH QHZ VKDUHKROGHU DYLVV BQVZADUDK :RUWKLQJWRQ D
IXQGDPHQWDOO\ QRQ DV KH KDV D QDQGHV WLVKRXWK RQ WK SUDFW
WKH FRPSDQ\ LV VFFFHVVIXO LQ UHFRYHUHQV WKH RZQH
VXIIHUG WKH VKDUH SULFH ZLOO SUUDH DQG WLVKRXWK RQ WK SUDFW
VKDUHKROGHU ZLOO EHQHILW 5HVSHFW RI D /RVV 6XIIHUG E\ WKH
3UREOHP RI 2YHUODSSLQJ &ODLPV

&DQ WKH UXOH EH H[FOXGHG E\ FRQWUDFW

(YHQ UHJDUGLQJ WKH QR UHIOHFWLYH ORVV SULQFLSOH WKLV
TXHVWLRQ DOVR DSSOLHV ,I WKH VKDUHKROGHU H[SHUHVVO
VWDWHV WKDW KH ZLOO ZDLYH WKLV ULJKW ZLOO KLV VWDWHPHQW EH
UHFRJQLVHG E\ WKH FRXUW" \$W SUDFW WLVKRXWK RQ WK SUDFW
XQGHUWDLQJ LV XQFOHDU DQ DQ (RVWHQVLEOH DEVHQFH RI
VXFK ULJKWV PD\ KDYH XQKUH VHW DQFRQHTXHQFHWLOOHMD Y ODUH[
DUJXPHQW LQ WKLV HVVD\ LV LQ SHVXDAWNEU \$UHQVLEOH WLVKRXWK RQ WK SUDFW
FRPPLWPHQW E\ VKDUHKROGHU VZDFHQ WLVKRXWK RQ WK SUDFW
WKHLU ULJKW RI DFWLRQ DQG WKH PHUHV QRI WLVKRXWK RQ WK SUDFW
VKRXOG GHQ\ WKHP WKLV ULJKW ODUVFKU WKH UXOH KDV EHHQ
H[FOXGHG E\ KRQWUHQV LQHQDULR ODUVFKU WKH H[HUHQV IRU WKH 5XOH DJ
VKDUHKROGHU H[DQK B ZURQJIXO RORUVV H[HUHQV H[HUHQV WKH H[HUHQV
KDV IRUIHLWHG KLV FDXVH RI DFWLRQ WLVKRXWK RQ WK SUDFW
VKDUHKROGHU WKH UXOH DJDLQVW UHIOHFWLYH ORV
ODUFC

&RQFOXVLRQ

7KH SULQFLSOH RI 1R UHIOHFWLYH ORVV LV DQ REVWDFOH IRU
VKDUHKROGHU WR UHFRYHU WKH ULJKW ORVV H[VSHFW DQO WLVKRXWK RQ WK SUDFW
FRPSDQ\ IDLOV WR UHFRYHUHQV WLVKRXWK RQ WK SUDFW
Prudential GHYHORSHSON LQKH VFRSH RI - % /
DSSOLFDFWLRQ RI QR UHIOHFWLYH ORVV KDG H[WHQGHG WR WKH

Sevilleja v Marex Financial Ltd> @ 8.6 & /LQ - %DUULQJ 5HFRYHU\ IRU 'LPL
 > @ \$ & > @ : / 5 RI 6KDUHV RQHW/RHV 5 H10LHFWLISOH
 &XU]RQ 0 DQG (\UH 6 (QJOLVK 6XSUHPH &RXUW
 QDUURZV WKH VFRSH RI UHIOHFWLHYB ORVV WKH 6HYLLOOHMD Y V 3HU
 0DUH[)LQDQFLDO /WGBird & @ 8.6 & ORZLQJ 5HFRYHU\ IRU 5HIOHFWLHY
 Bird 6HSWHPEHU 6LQJDSRUH \$FDGHP\ RI /DZ -RXUQD
 ZZZ WZRELUGV FRP HQ LQVLJKWV XN HQJOLVK
 VXSUHPH FRXUWV QVFRSH RI UHIOHFWLHY
 ORVV VHYLOOHMD Y PDUH[ILQDQFLDO OWG! DFFHVVHG
 0DUFK
 .RK \$. 5HFRQVWUXFWLQJ WKH 5HIOHFWLHY /RVV
 3ULQFLSOH -RXUQDO RI &RUSRUDWH /DZ
 6WXGLHV
 0LWFKHOO & 6KDUHKROGHUV &ODLPV IRU 5HIOHFWLHY
 /RVV / 4 5
 *LOHV Y 5KLQG > @ (: & \$ & LY > @ & K

 *DUGQHU Y 3DUNHU > @ (: & \$ & LY > @
 % & & > @
 +R\ % 7KH 5HIOHFWLHY /RVV 3ULQFLSOH WKH
 3ULQF Roberts Solicitors 'HFHPEHU
 KWWSV UREHUWVRQVKN FRP HQ QHZV WKH
 UHIOHFWLHY ORVV SULQFLSOH WKH SULQFLSOH! DFFHVVHG
 0DUFK
 /DLQJ 6 5HIOHFWLHY ORVV LQ WKH 8. 6XSUHPH
 &RXUW & / -
 %ODNHOH\ ' 7KH 6XSUHPH &RXUW V &OHDU
 5HIOHFWLRQ LQ WKH 0XGGLHG :DWHUV RI WKH 1R
 5HIOHFWLHY /Roberts Solicitors
 6HSWHPEHU
 ZZZ FODULRQVROLFLWRUV FRP DUWLFOHV WKH VXSUHPH
 FRXUWV FOHDU UHIOHFWLRQ LQ WKH PXGGLHG ZDWHUV RI
 WKH QR UHIOHFWLHY ORVV SULQFLSOH! DFFHVVHG
 0DUFK
 +XQWHU 6 7DPLQJ WKH .QRWZHGG 7KH
 7KUHH 6WRQH 7ULDQQXDO 5HYLHZ
 KWWSV WKUHHVWRQH ODZ ZS
 FRQWHQW XSORDGV 7675 6HSWHPEHU SGI!
 DFFHVVHG 0DUFK
 8. 6HYLOOHMD Y 0DUH[)LQDQFLDO /LPLWHG
 5HIOHFWLHY IRU 6KDUHKROGHUV \$JUHHPHQWV
 Rose Fulbright 2FWREHU DQG XSGDWH LQ
 6HSWHPEHU DQG 0DUFK
 ZZZ QRUWRQURVHIXOEULJKW FRP HQ NQRZOHGJH SX
 EOLFDWLRQV G I I XN VHYLOOHMD Y PDUH[
 ILQDQFLDO OLPLWHG UHIOHFWLRQV IRU VKDUHKROGHUV
 DJUHHPHQWV! DFFHVVHG 0DUFK
 %R\QH & DQG RWKHUV 8. 6XSUHPH &RXUW ,VVXH
 /DQGPUN 5XOLQJ IRU WKH 5HIOHFWLHY
 /RVV Debevoise & Plimpton -XO\
 ZZZ GHEHYRLVH FRP LQVLJKWV SXEOLFDWLRQV
 XN VXSUHPH FRXUW LVVXH V ODQGPUN UXOLQJ RQ!
 DFFHVVHG 0DUFK
 *ULIILQ 6 6KDUHKROGHU 5HPHGLHV DQG WKH 1R
 5HIOHFWLHY /RVV 3ULQFLSOH 3UREOHPV 6XUURXQGLQJ
 WKH ,GHQWLILFDWLRQ RI D 0PEHUVKLS ,QWHUHV
 - % /
 &RPSDQLHV \$FW