

RUSSELL McVEAGH

BANKING LAW UPDATE

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## CASES

### PERFECTING A SECURITY INTEREST UNDER THE PERSONAL PROPERTY SECURITIES ACT 1999

*Simpson and ors (as Receivers of Service Foods Manawatu Ltd (in rec and in liq)) v New Zealand Associated Refrigerated Food Distributors Ltd* [2007] 2NZLR 130

This case considers the meaning and operation of the provisions for perfecting a security interest under the Personal Property Securities Act 1999 ("**PPSA**").

In this case, Service Foods Manawatu Limited ("**SFM**") had a trading relationship with the respondent, New Zealand Associated Refrigerated Food Distributors Limited ("**NZARFD**"), which was recorded in a document dated 19 November 2004.

In the terms of trade, SFM (the buyer) acknowledged that NZARFD "has a security interest in the goods supplied by NZARFD to the buyer". NZARFD argued that a security interest was created in its favour, in respect of which a financing statement was registered on the PPSR on 23 December 2004. The financing statement details provided by NZARFD were:

- Collateral type: all present and after-acquired property
- Description: being all the debtor's personal property and all other property.

The court identified the two main issues on appeal as:

- did NZARFD's written terms of trade create a security interest? If so,
- did NZARFD perfect its security interest by registration?

In relation to the first issue, it was argued by SFM that the document did not specifically identify which, if any, obligations incurred by SFM were to be secured by the security interest the document purported to create and as such there was insufficient precision in the document to create any security interest at all. However, the respondent argued, and the court agreed, that there was a purchase money security interest ("**PMSI**") at the time SFM obtained possession and that the overall obligations listed in the terms of trade, when taken as a whole, amounted to a "security interest".

*Cases continued ...*

In arguing that NZARFD did not perfect its security interest, SFM submitted that the collateral type the respondent had selected to describe the relevant collateral led to an over-statement of the scope of the security interest and as a result NZARFD had not perfected its security interest by registration. The court again disagreed with this view, referring to section 149 of the PPSA as the relevant section. It was stated that under this section two questions emerge:

- is the overstatement a "defect, irregularity, omission or error"; and if so
- was the statement "seriously misleading" in terms of section 149 of the PPSA?

The Court held that over-stating the scope of a security interest does not make a financing statement "seriously misleading" in terms of section 149 and the validity of the financing statement was consequently not affected. Nevertheless, the court emphasised that best practice was that the description of collateral in a financing statement should reflect accurately the description contained in the relevant security agreement or document.

## THE CCCFA AND COLLATERAL CONTRACTS

*Burmeister v O'Brien* (2006) 11 TCLR 737

This case concerns two issues arising under the Credit Contracts and Consumer Finance Act 2003 ("**CCCFA**"):

- (a) the width of section 119 (the collateral contracts provision); and
- (b) the interplay of the courts' power to reopen oppressive credit contracts under the CCCFA and the principle of indefeasibility of title in respect of a registered proprietor of land under the Land Transfer Act 1952.

The case involved a buy-back transaction under which the Burmeisters agreed to transfer their house to a "secure family trust" in return for two lump sum payments, a weekly income stream and the payment of rates and insurance. Title to the house was to be returned to the Burmeisters, who remained in occupation of the property, at the end of three years or any extension of the investment term.

*Cases continued ...*

The Burmeisters discovered that the house had been transferred to the trustees of the O'Brien family trust, who had funded the purchase by granting a mortgage over the property to ASB. The Burmeisters alleged that this occurred without their consent and that they had not signed the transfer of title. They brought proceedings against, among others, the O'Briens and ASB, seeking orders returning the property to them free of the mortgage. This case was a strike-out application by ASB in respect of the Burmeisters' claims against it.

The Burmeisters claimed that the transaction was an oppressive buy-back transaction within the meaning of the CCCFA, and that the mortgage to ASB formed part of that transaction (with the result that the court's powers under Part 5 of CCCFA could apply to the mortgage). ASB accepted for the purpose of their application that the scheme was a buy-back transaction, but argued that the mortgage was independent of that transaction and so did not come within section 119 of the CCCFA (which deems security interests taken in connection with a credit contract, consumer lease or buy-back transaction to be part of the credit contract, lease or transaction as the case may be).

ASB also argued that in any event it had an indefeasible mortgage that could not be defeated unless fraud could be proved against ASB.

The court found that the mortgage was not caught by section 119 of the CCCFA. The court held that the mortgage did not even meet the first step of falling within the definition of "security interest" for the purposes of the CCCFA. The mortgage certainly secured payments under a credit contract between the O'Briens and ASB, but the court held that whether it is a security interest "which the Act seeks to capture has to be determined by reference to the transaction which creates it, and the relationship between that transaction and the buy-back transaction". Because the mortgage did not secure any obligations under the buy-back transaction, it was not a security interest for the purposes of the CCCFA. The court went on to say that the mortgage was not "taken in connection with" the buy-back transaction. For that test to be met, the court held that ASB would have had to be a participant of some form in the buy-back transaction. This was not the case because ASB had no knowledge of the transaction.

*Cases continued...*

In any event, the court held that while the court's powers to reopen oppressive credit contracts or buy-back transactions may extend, in appropriate cases, to divesting the title of a registered proprietor, the court could not override the interests of a bona fide purchaser for value. Fraud must be proved within the meaning of the Land Transfer Act 1952. The High Court agreed with ASB that, on the facts alleged by the Bermeisters, fraud could not be imputed to ASB.

#### **SUMMARY JUDGMENT TO ENFORCE A GUARANTEE**

*Hanover Finance Limited (previously known as Elders Finance Limited) v A M Krukziener* [2006]. (HC Auckland, CIV 2006-404-166), 5 April 2007, Associate Judge Sargisson).

This case concerns the enforcement of a guarantee. Mr Krukziener guaranteed two loans made by Hanover Finance Limited ("**Hanover**") to two companies ("**Debtor Companies**"). Both loans were secured by mortgages. The Debtor Companies defaulted under the loan agreements and mortgages and Hanover consequently sought to enforce the guarantees against Krukziener. Mr Krukziener objected to the enforcement of the guarantees against him. Hanover's applied to have Krukziener's objections struck out by

summary judgment.

At the time the Hanover loan agreement was signed, Wolfe Developments Ltd ("**Wolfe Developments**"), Krukziener, Axis Wolfe Developments Ltd ("**Axis Wolfe**"), Axis Property Group Holdings Ltd and Hanover Group Holdings Ltd ("**HGH**") entered into a project management/joint venture agreement ("**JVA**") with the intention to develop a residential apartment building. Wolfe Developments was to manage the development and Axis Wolfe was to source the funding. The development did not proceed, and the Debtor Companies defaulted under their obligations. Hanover therefore enforced Krukziener's guarantee, and Krukziener objected.

First, Krukziener argued that Hanover was indebted to Krukziener under the JVA in a sum to be set off against the mortgage to Hanover. The JVA contained a clause allowing Wolfe Developments to set off a development fee (when due) against the loan from Hanover. The development fee was 70% of the net profit of the development. This defence failed for a number of reasons. Even if Hanover and HGH are treated as one and the same, there is no basis for the contention that the development fee has become due and

*Cases continued ...*

payable under the JVA as the development never went ahead and produced the profit the fee was supposed to be derived from. Furthermore, Krukziener was a different party in law to Wolfe Developments and the Debtor Companies, thus even if the fee was due Krukziener did not have a contractual right to enforce the development fee arising out of the JVA.

Secondly, Krukziener argued that Hanover was in breach of Axis Wolfe's obligation under the JVA to procure senior debt funding for the purchase of property to develop. Krukziener argued that this gave him the right to claim damages, which could be set off against his liability. This defence depended on Hanover being treated as the same person as Axis Wolfe, because set off requires identity of parties. This argument failed because Associate Judge Sargisson held that Hanover could not be treated as the same person as Axis Wolfe, and identity of parties was therefore not satisfied.

Krukziener also raised defences in relation to Hanover failing to act in good faith under the JVA, failing to prove compliance with the legal obligations of a mortgagee making demand of a mortgagor and guarantor for payment of sums due under mortgages, and promissory estoppel.

The court held that there was no merit in these arguments however.

Since none of Krukziener's arguments had sufficient basis to raise an arguable defence to Hanover's claim for summary judgment, an order for summary judgment was made in favour of Hanover.

## LEGISLATION

### TWO NEW NZX GUIDANCE NOTES

On 1 May 2007 New Zealand Exchange Limited ("**NZX**") issued two new guidance notes: one on share purchase plans ("**SPPs**") and one on Listing Rule 5.2.3, which sets out the minimum spread of issued securities.

#### *Guidance Note on SPPs*

An SPP is where an issuer raises capital through an offer to existing security holders. With the introduction of the Securities Act (NZX - Share and Unit Purchase Plans) Exemption Notice 2005, issuers using an SPP, as long as they comply with certain rules, will not have to meet the usual requirements for an offer of securities such as registering a prospectus and investment statement. The Guidance Note on SPPs addresses how issuers can ensure that they fall within the Exemption Notice.

Key requirements of the Exemption Notice are:

- the offer must be made on the same terms and conditions to all holders of the same security class as that being offered (there is an exception for overseas

holders to whom such an offer would be illegal in their jurisdiction);

- the subscription price must be less than the average end of day market price for a period specified in the SPP that falls within 30 days before either the date of the offer to subscribe or date of issue of the securities;
- in any 12 month period, the total issue price of securities issued under SPPs to an individual security holder must not exceed \$5,000; and
- while the requirement to register a prospectus and investment statement is waived, a more limited offer document must still be prepared.

The NZX Listing and Participant Rules that apply generally continue to apply to SPPs. Also, custodian holders (eg trustees) need to certify to the issuer certain facts to ensure that the \$5,000 limit will apply for each beneficial holder.

#### *Listing Rule 5.2.3*

The Guidance Note for Listing Rule 5.2.3 was prepared to give issuers information as to when NZX is likely to be

*Legislation continued ...*

satisfied that a "sufficiently liquid market" exists in a class of securities. The purpose of Listing Rule 5.2.3 is to "set a benchmark for issuers in terms of the spread of its security holders" in order to encourage efficient pricing and ensure that security holders "have a ready market to purchase or sell securities."

Listing Rule 5.2.3 requires that each class of an issuer's quoted securities must have at least 25% of the securities on issue held by at least 500 members of the public. However, Listing Rule 5.2.3 enables NZX to approve an alternative spread of a class of securities where it is satisfied that there will be a sufficiently liquid market in that class of securities under the following two instances:

- **Free Float Methodology:** Where the aggregate market capitalisation of securities held by at least 500 members of the public is at least \$50 million; and
- **Market Makers:** Where a Market Maker commits to provide a market in a given security by maintaining bid and offer prices in accordance with section 12 of the NZX Participant Rules.

NZX can suspend trading of the relevant security if Listing Rule 5.2.3 is not complied with.

Both new Guidance Notes are available from <http://www.nzx.com>

**DEVELOPMENTS IN NEW ZEALAND  
SECURITIES REGULATION**

Jane Diplock, chair of the New Zealand Securities Commission, gave a speech on 2 May 2007 to mark the Commission's 28th anniversary of regulating New Zealand securities markets.

The speech focused on the three major law reforms since 2000, which have brought New Zealand more into line with international expectations.

The first of these was the introduction of the Takeovers Code in 2000, administered by the Takeovers Panel. The Code ensures that all shareholders in a public company can take part in an offer to take over that company.

*Legislation continued ...*

The second reform came with the Securities Markets and Institutions Bill in 2002, which introduced disclosure requirements for public companies and extended rules governing insider trading.

The final reform was the Securities Legislation Bill passed at the end of 2006, which, among other things, introduces new law on "market manipulation".

Ms Diplock also considered the current reforms in the pipeline (the main one being the regulation of financial intermediaries, which was identified as being sub-standard by international standards in a recent World Bank survey), their progress and what the Commission hopes to achieve with their introduction.

A transcript of the speech is available from <http://www.sec-com.govt.nz>

**CHANGES TO COMPANIES OFFICE FEES**

Some of the fees charged by the Companies Office will change on 1 July 2007. Fees that are changing are:

- the fee to incorporate a company online, which will increase from \$50 to \$150;
- the fee for re-registering a financing statement on the Personal Property Securities Register, which will be reduced from \$5 to \$3; and
- the fee to file financial accounts, which will increase from \$100 to \$250.

For more information on the fees charged by the Companies Office see <http://www.companies.govt.nz>

**RENEWAL OF FINANCING STATEMENTS**

Financing statements registered on the Personal Property Securities Register ("**PPSR**") have a life of five years before they expire and must be renewed in order to maintain priority. The first financing statements registered on the PPSR are now approaching the date for renewal, and some users are receiving reminder emails.

Financing statements may be renewed at <http://www.ppsr.govt.nz>

## SNIPPETS

### SHAREHOLDER RATIFICATION OF DIRECTORS' BREACHES OF DUTY

The December 2006 issue of the *New Zealand Business Law Quarterly* contains an article by Don Holborow entitled **Shareholder ratification of directors' breaches of duty in financial transactions: A New Zealand perspective.**

This article examines common law and New Zealand statutory rules relating to shareholder ratification of directors' breaches of duty. It does so by considering the "lines of defence" available for a party seeking to uphold a transaction that may be challenged on the basis that it was entered into in breach of a director's duties.

In carrying out this examination the author draws attention to the uncertainty in this area of the law. In particular, it is noted that some commentators consider that, because directors' duties are now embodied in statutory rules, ratification is no longer available, while others consider that the duties found in sections 131 to 138 of the Companies Act 1993 can be ratified to the same extent as the parallel duties at common law.

The author concludes that the better view is that ratification in New Zealand remains available. He notes that although there have been significant statutory interventions that may prevent ratification in particular circumstances, ratification will still have an important role to play in protecting counterparties from the adverse consequences of breaches of fiduciary duties by the directors with whom they are transacting.

### ABUSIVE CALLS ON DEMAND GUARANTEES

The February 2007 issue of *Lloyd's Maritime and Commercial Law Quarterly* contains the paper **The problem of abusive calls on demand guarantees**, written by Nelson Enonchong of the University of Birmingham.

A demand bond is a guarantee that is independent of the underlying transaction in respect of which it is issued. If the beneficiary makes a call that complies with the requirements of the bond, the money must be paid by the issuer of the bond without question. The person on whose account the bond is issued is powerless to prevent the issuer from honouring a demand for payment, and the only

*Snippets continued ...*

situation where a court will intervene to restrain a call is where there is fraud. The problem is that some beneficiaries take advantage of this situation to make abusive calls on demand bonds. The paper examines the approach of English law to this problem and makes comparisons with the approach of other common law jurisdictions such as the United States, Australia and Singapore.

The paper first gives a summary of the treatment of demand guarantees by the English courts, which have traditionally acknowledged the principle of contractual independence. That is, the English courts have not been prepared to intervene to restrain calls on demand guarantees, with the only exception being where there is established fraud.

The paper argues that on its own the fraud exception has not been equal to the task of protecting the person on whose account the bond is issued from abusive calls, as the narrow scope of the exception has left a protection gap. The author's opinion is that to fill this gap English law should adopt a narrower version of the underlying contract exception currently recognised by the Australian courts. Such an exception would permit the courts also to rely on

the provisions of an underlying contract in order to restrain a call on a demand bond.

The paper considers a further exception based on unconscionability, which has been adopted by the Singapore courts. However, the author states that the English courts should resist the temptation to introduce this exception as injunctions to restrain calls would become too easily available and demand guarantees would be deprived of their unique quality as the equivalent of cash in the hand.

#### **LIABILITY FOR LENDERS IN WORKOUT ARRANGEMENTS**

Issue 15 2007 of the *Insolvency Law Journal* contains an article by R P Austin entitled **Hip-pocket injuries in workouts: Accessory liability for bankers and advisers.**

The article considers the modern trend for banks and other financiers, and their advisers, to participate in informal workout arrangements for large corporate groups in financial difficulty. The potential liability of such participants is not governed by a separate chapter of the law.

This article reviews their liability risks in two main areas:

*Snippets continued ...*

1. There is a potential for banks that step in to guide corporates through a difficult period to be viewed as de facto directors, opening themselves up to breaches of duties of care and diligence and for insolvent trading. Important differences between Australian and United Kingdom legislation are noted. In the absence of compelling authorities, the facts of first instance cases are used to identify the key ingredients leading to classification of the financier or adviser as a director.
2. Liabilities arising out of involvement in misleading conduct, or involvement in failure to make market disclosure (where the company is listed), are also noted.

#### RECENT COMMON LAW DEVELOPMENTS

Issue 4 2007 of the *Journal of International Banking Law and Regulation* contains the second half of an article by Andrew McKnight entitled **A review of developments in English law during 2006: Part 2**.

The article continues its summary of areas of law that have been changed by recent decisions or statutes (Part 1 of this

article was summarised in the April 2007 issue of BLU). The main areas discussed are:

**Insolvency**, in particular;

- the adoption in Great Britain of the UNCITRAL Model Law on cross-border insolvency;
- assistance in foreign insolvency proceedings;
- cross-border insolvencies: section 426 of the Insolvency Act 1986 (UK);
- EC Insolvency Regulation: jurisdiction, recognition and a debtor's centre of main interests;
- transactions at an undervalue and transactions to defraud creditors;
- insolvency of a group of companies under English law: disclaimer of unprofitable contracts, subordination of claims, restrictions upon proving and the rule in *Cherry v Boultbee*; and
- administration: the priority of expenses arising in the period of the administration.

*Snippets continued ...*

**Conflict of laws**, in particular;

- justiciability of claims by states in a bank account;
- jurisdiction agreements: Article 23 of the EC Regulation on jurisdiction and judgments;
- agreements as to jurisdiction;
- Article 8(2) of the Rome Convention and exclusive jurisdiction clauses;
- sovereign immunity and the EC Regulation on jurisdiction and judgments;
- sovereign immunity, arbitration agreements and the enforcement of a foreign arbitral award;
- public policy: the refusal of an English court to enforce a foreign sovereign claim;
- conflict of laws rules for tortious issues;
- the quantification of damages in tort;
- reform of the law concerning claims in tort;

**Arbitration**, in particular;

- the validity and effectiveness of the arbitration agreement; and
- the determination of a claim to set off in an arbitration.

**PIERCING THE CORPORATE VEIL**

Volume 24 (2006) of the *Companies and Securities Law Journal* contains the article **Piercing the corporate veil on sham transactions and companies** by Robert Baxt. This article examines the application of the "sham" exception to the doctrine of separate corporate personality by the High Court of England in the recent case of *Kensington International Limited v Republic of Congo* [2005] EWHL 2684.

*Kensington* involved a complex series of transactions among entities that were connected to the Republic of Congo. The Republic of Congo owed significant debts to Kensington International Limited. Kensington International Limited applied to the court to have a payment to one of the entities intercepted and applied towards the debt owed

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by the Republic of Congo. In *Kensington* it was argued that the separate personality of the company is fundamental and should be recognised and respected. However, the court in *Kensington* was prepared to pierce the corporate veil to find the companies in question did not have separate existence from the Republic of Congo. The court concluded the underlying reason for creating the various corporate entities was to defeat the claims of the Congo's creditors.

This decision outlines a number of legal propositions in relation to piercing the corporate veil. First, simply using the company as a façade will not justify piercing the corporate veil. There must be an element of impropriety or dishonesty. The court will look at the substance of a matter when deciding whether to pierce the corporate veil and will look at the legal rather than economic substance. It is unnecessary for there to be divestment of assets at undervalue. The corporate veil will not be pierced when the corporate structure is used legitimately to avoid future obligations and liability.

Baxt concludes that a similar result to *Kensington* is achievable in Australian company law based on existing authorities which recognise veil piercing on the grounds

of sham. It is currently recognised at Australian law that a sham is something that is false or deceptive and that sham transactions may always be disregarded.

*Kensington* illustrates the limits of the separate identity doctrine through reliance on the sham exception and sends a warning that artificial schemes designed to defeat existing claims of creditors will come under close judicial scrutiny.

#### **SECURITY INTERESTS IN SHIPS AND AIRCRAFT**

The Part 4 2006 *New Zealand Law Review* contains the article **Security Interests in ships and aircraft** by Andrew Tetley. This article discusses security interests in the context of the aviation and maritime industries both within the international legal framework and domestically with reference to the Personal Property Securities Act 1999 ("**PPSA**") and the Ship Registration Act 1992 ("**SRA**").

Security interests in both the aviation and shipping industries face similar legal challenges arising from the fact that they regularly cross in and out of different jurisdictions. Internationally, the aviation industry has applauded the recent 2001 Cape Town Convention as being "the most

*Snippets continued ...*

ambitious problem solving convention to date". However, the author feels that the lack of penetration of international maritime conventions (the most recent being the Geneva Convention on Maritime Liens and Mortgages 1993 that took 11 years to ratify) in protecting security interests is "disappointing."

Domestically, although it is not currently a party to either of these conventions, New Zealand appears to be in better shape. The SRA provides for a quasi-Torrens system of registration of security interests for New Zealand owned ships. The PPSA is the default Act where the provisions of the SRA are not applicable. However, there is a call for an amendment to the framework to clarify the current confusion as to when each Act applies. For aviation, the PPSA currently governs the security interests over aircraft although this has been set to change as Cabinet has recently agreed in principle to accede to and ratify the 2001 Cape Town Convention.

#### **LOAN-ONLY CREDIT DEFAULT SWAPS**

The January 2007 issue of *Butterworths Journal of International Banking and Financial Law* contains the article

**Loan-only credit default swaps** by Martin Bartlam and Karin Artmann. The article summarises the differences between loan-only credit default swaps in the UK and those in the US.

A loan-only credit default swap ("**LCDS**") is a credit default swap where the underlying loan is a syndicated secured loan. Pursuant to the contractual arrangement one party ("**protection seller**") promises the other party ("**protection buyer**") to take on the risk of default or non-performance ("**credit event**") of a specified entity ("**reference entity**") in respect of its obligations ("**reference obligation**") in return for a fixed premium. In US markets, institutional investors use LCDS as a trading product. In Europe, LCDS are used primarily by banks as a hedging product. The purpose of the article is to highlight the different motivations of participants in the US and European markets and how LCDS documentation deals with such motivations. The key differences between US and European LCDS are:

- US LCDS are designed to provide trading efficiencies and thus, if the reference obligation is paid, US LCDS provide for a substitute obligation (which maintains income on the LCDS). In contrast, upon

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payment of the reference obligation, European LCDS will terminate. This means that US LCDS favour the protection seller as premiums do not terminate upon prepayment.

- European LCDS include restructuring as a credit event. Although restructuring of a syndicated loan will not always adversely affect the holder of a syndicated loan, banks wish to hedge this risk. Such an inclusion is valuable to protection buyers.
- US LCDS are more restrictive than European LCDS in the sense that the reference obligation can only be a specific tranche. European LCDS can be a specific tranche or the entire syndicated loan.
- A deliverable obligation for a European LCDS is the reference obligation and any senior obligation secured over the same assets that ranks senior to the reference obligation in all material respects. This means the protection buyer can deliver a more senior tranche to source the required amount of the reference obligation. A deliverable obligation for a US LCDS is "loan", ie any obligation arising under

a syndicated loan agreement with a designated priority or a priority senior thereto.

- European LCDS state that the reference entity is whichever entity is from time to time a borrower and is thus unstipulated. A US LCDS stipulates the reference entity.
- European LCDS do not provide for dispute resolution as there is no substitution of the reference obligation. US LCDS provide for dispute resolution regarding whether a reference obligation and a substitute reference obligation are in fact syndicated secured.
- Physical settlement is the default settlement for European and US LCDS. However, US LCDS have harmonised the standards for physical settlement with existing procedures in the secondary loan market. Currently it is being discussed whether similar settlement mechanics should be hardwired into the European LCDS.

*Snippets continued ...*

### CONFUSION OVER BOND RATING

The winter 2007 issue of *The Journal of Structured Finance* contains an article entitled **Bond rating confusion** by Mark H Adelson.

The article argues that bond ratings provided by rating agencies lack the uniform consistency required by market participants to enable them to use ratings to compare credit risk across different sectors of the fixed income market. The article asserts that a rating system is most useful when each rating symbol has a constant meaning over time, geography, currency and type of instrument.

The article discusses the rating agencies' historical active promotion of consistency in their ratings, using policy statements of both Moody's and Standard & Poor's as evidence of such. The article goes on to argue that despite their goal of consistent rating definitions, the agencies have not adhered to their statements and that studies reveal that bonds from different sectors and from different times have displayed a wide range of real-world credit performance.

Additionally, the article uses both Standard & Poor's and

Moody's as illustrations of how the agencies adjust and qualify their ratings across sectors, causing anomalies which result in uncertainty for market participants. The article maintains however that the divergence between real-world credit performance and idealised rating definition should not prompt the agencies to abandon their aim of constant definitions.

The article concludes that the market is in need of ratings that are a clear and honest measure of credit quality, encouraging the rating agencies to return to their previous practice (or aspiration) of constant, uniform definitions for their ratings symbols.

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[www.russellmcveagh.com](http://www.russellmcveagh.com)

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