

Civil liability provisions

Mr FLETCHER: I want to ask about the position for secondary trading of these bonds. As I understand it, it is envisaged and, indeed, required that the bonds will then be tradable. Is that right?

Dr Sandlant: Yes. Under this regime issuers can issue simple corporate bonds directly to retail investors through the ASX, and they can be traded on the ASX. However, we have included some amendments which provide the foundation for a framework to be able to trade some corporate bonds on the ASX as depository interests. At this stage, how that will work will be fleshed out in regulations.

Mr FLETCHER: And that is similar to the way, for example, that an interest in a foreign share can be traded on the Australian exchange?

Dr Sandlant: Correct.

Mr FLETCHER: (1) How do the liability provisions apply? (2) Is it only the person who acquires the bonds when they are first issued who has the benefit of those, or does every subsequent person who acquires them when they are traded have the benefit of them?

Dr Sandlant: I would expect it to be every subsequent person, but I will have to come back to you on that as well.

(Committee Hansard, 22 April 2013, pp 11–12)

(1) Answer —Under the current law, liability for misstatements etc. attaches to securities in two ways:

- when an offer of corporate bonds is made by the issuer to retail investors, through the application of the liability provisions in section 728; and
- through the general liability provisions in section 1041H, which apply when trading occurs on the secondary market.

The application of the liability provisions for an offer of simple corporate bonds as well as for secondary trading will be consistent with the current law (as outlined above).

(2) Answer —As outlined above, and consistent with current law, it is only the person who initially acquires the simple corporate bonds from the issuer who benefits from the liability provisions in section 728. However, every subsequent person who acquires them through secondary trading (including the secondary trading of simple corporate bond depository interests) will have the benefit of the general liability provisions in section 1041H.

However, regulation will be required to make it clear that the liability provisions in section 728 will apply to the initial offer of simple corporate bond depository interests (these regulations are currently being developed and will be released for public consultation shortly).