National Australia Bank

Wholesale Banking
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AUSTRALIA

19 April 2013

Dr Richard Grant
Committee Secretary
Parliamentary Joint Committee
on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Dr Grant

National Australia Bank ("NAB") welcomes the opportunity to provide comment on the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013. The focus of this submission is Schedule 1 which amends the Corporations Act 2001 to facilitate improved trading of retail corporate bonds in Australia.

This response should be read in conjunction with our submission to the Department of Treasury regarding the *Draft Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013* dated 15 February 2013 and our submission to the Department of Treasury's discussion paper titled *Development of the Retail Corporate Bond Market: Streamlining Disclosure and Liability Requirements* dated 17 February 2012. Please find attached copies of these papers.

NAB has been a vocal advocate and active participant in the further development of the corporate bond market. Our focus is on providing information and education for retail investors, and facilitating issues in both the wholesale and retail Australian markets.

NAB believes the education of retail investors about corporate bonds is essential for the market to fully develop. As a result, NAB has commissioned the Australia Centre for Financial Studies ("ACFS") to develop a series of reports about the corporate bond market in Australia.

The first ACFS report is titled "Australian Corporate Bonds – The Missing Asset Class for Retail Investors". This report can be accessed at http://business.nab.com.au/tag/corporate-bonds/. The report is introductory in nature and focuses on the reasons for retail investors to consider corporate bonds in their investment portfolios. The second report is planned to be released in May which will focus on different types of bonds and how to assess them.

NAB has been an active participant in the retail corporate bond market, not only via our Debt Markets' business as arranger and/or lead manager, but also through our $1 billion NAB Subordinated Note issue in May 2012 and again earlier this year through the NAB Convertible Preference Shares offer raising $1.5 billion. The success of these issues demonstrates the growing pool of retail investors who are looking to invest in corporate bonds and diversify their investment portfolios.

Legislation

NAB welcomes several of the changes and clarifications in the Simple Corporate Bonds legislation including:

- Allowing senior unsecured bonds to be included within the definition of Simple Corporate Bonds, and the clarification that the $50 million minimum subscription for an offer specific prospectus is only required for the first issue, not subsequent issues in respect to the base prospectus.

- The development of the infrastructure using depository interests for the parallel trading of Simple Corporate Bonds in the wholesale and retail markets is welcome. We look forward to receiving information about the regulations which will facilitate the trading of Simple Corporate Bonds in the wholesale and retail markets.

Points for further consideration by the Committee:

Prospectus requirements

It is important that there is clarity in the information that should be contained in the prospectus and can be incorporated by reference. Any lack of clarity will reduce the attractiveness to issue in this new format.

NAB believes that to facilitate the development of the retail corporate bond market the documentation to issue corporate bonds should be no more onerous than what is currently required to issue equities. This view stems from investors in corporate bonds having an additional layer of protection from shareholders, as holders of bonds rank ahead of equity in the event of insolvency.

After considering the legislation which states that a two-part prospectus will be the primary format for issuing bonds, NAB makes the following recommendations:

- For Simple Corporate Bonds which meet the criteria stated in the legislation, we propose a base disclosure document which allows information to be incorporated by reference from ASIC, as well as a two-page term sheet outlining the key characteristics of the bond, rather than an offer document. This is similar to a wholesale market program memorandum with a pricing supplement for each deal.

- For issues of corporate bonds and capital notes which do not meet the criteria of Simple Corporate Bonds, we recommend a base document which allows information to be incorporated by reference from ASIC and an offer document which provides details of the issue.

By limiting the use of a two-page term sheet alongside the base document for issues of corporate bonds which meet the criteria of a Simple Corporate Bond, investor confusion should be reduced as corporate bonds with more unusual or complex features would require a more detailed offer document to sit alongside the base document.

The base document will provide issuer specific information. Given the document will utilise information incorporated by reference we would recommend this document be no more than five pages. The legislation states that the life of the base document is three years however NAB recommends a five year life to enable more repeat issuances. This proposal to extend the life of the base document is also based on direct feedback we have received from potential issuers of Simple Corporate Bonds from corporate Australia. Furthermore, we would recommend that the five year expiration date restart when the base prospectus is replaced with a new base prospectus.

The offer document would include key details of the transaction as well as any matters material to consideration of the investment which has not been the subject of continuous disclosure. This document should be limited to fifteen pages.

We believe investors should be able to invest in corporate bonds issued by entities across the credit spectrum to meet their individual risk and reward requirements. Due care needs to be exercised by each issuer in preparing the documentation for corporate bonds, as well as investors in considering an offer.

Seeking clarification
In NAB's submission to the draft legislation we sought clarification on a number of issues. Several of these issues have not been addressed in the legislation and we continue to seek clarification including:

- Please clarify how "among other things" in section 1.67 will be defined as well as whether 713A (8) is restricted to BBSW or are the issuers allowed to reference a range of indices.

- What are the consequences if subsequent to issuance, the issuer is removed from listed status on an appropriate exchange?

- In regards to section 1.26 which states that a "regulation making power has been inserted into Chapter 2L so that the requirement for a trust deed and trustee is able to be removed for the making of the specified offer of debentures or a specified class of offers of debentures" (Explanatory Memorandum pg. 10), we seek clarification as to how this will intersect with ASIC's recent consultation paper 199 which proposes reforms to the regulation of the debenture sector, including increasing the role of trustees for issues of Simple Corporate Bonds.

NAB looks forward to continuing the dialogue with the Committee about the development of the retail corporate bond market.

Please do not hesitate to contact me on the number below.

Yours sincerely

Steve Lambert
Executive General Manager
Debt Markets
National Australia Bank

National Australia Bank

15 February 2013

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Mr Wayne Fogarty
Manager
Disclosure and International Unit
Retail Investor Division
The Treasury
Langton Crescent
Canberra ACT 2600

Dear Mr Fogarty

National Australia Bank ("NAB") welcomes the opportunity to provide comment on the draft ***Corporations Amendments (Simple Corporate Bonds and Other Measures) Bill 2013.*** The proposed changes outlined in the draft legislation are an important step in developing the market and we acknowledge the work of the Department of Treasury.

For more than 150 years, NAB has been doing what is expected of an Australian Bank: supporting businesses with capital and risk taking, opening up markets (including access to foreign debt markets via ratings, futures markets etc) and building markets that did not exist (A$, interest rates, derivatives for hedging, securitisation etc). We believe the next stage of this evolution is a well developed retail corporate bond market that opens up the large pool of investable funds from superannuation and wealth segments.

Whilst there is no quick fix solution, developing a deeper and more liquid retail corporate bond market is necessary for financing Australia's future growth. For corporates, it will broaden their funding sources and help facilitate their growth aspirations. At the same time, it will lessen the likelihood of small and medium enterprises and home buyers being crowded out, by freeing up the banks' balance sheets to support these sectors. For investors, a fully functioning retail corporate bond market will offer them more choice and an opportunity to diversify their investments.

We acknowledge the development of a retail corporate bond market will be a lengthy and detailed process, and it is important that the Government, issuers, investors, regulators, trading houses and advisers work together to ensure the best outcome for Australian businesses and investors.

A number of commentators have discussed the dominance of equities in asset allocation and have called for an increase in focus and attention toward corporate bonds. Ideally there should be an equal understanding of corporate bonds as currently exists with equities. NAB is deeply committed to contributing to this debate and understands that education will play a critical role in developing this market. As a result, NAB engaged the Australian Centre for Financial Studies (ACFS) to develop a series of reports about the corporate bond market in Australia.

The first ACFS report is titled "Australian Corporate Bonds – The Missing Asset Class for Australian Retail Investors". This report can be accessed at www.nab.com.au/insights. The report is introductory in nature and focuses on the reasons for retail investors to consider corporate bonds in their investment portfolios. We believe that material such as these ACFS reports will provide a greater understanding of corporate bonds and contribute to the development of the market.

Our response to the draft legislation should be read in conjunction with our submission to the Department of Treasury discussion paper titled *Development of the Retail Corporate Bond Market: Streamlining Disclosure and Liability Requirements* dated 17 February 2012.

We support the Government's intention in the draft legislation to simplify prospectus requirements for Simple Corporate Bonds, as well as the changes to the civil liability of the directors of companies issuing Simple Corporate Bonds to retail investors.

For the retail corporate bond market to become deep and liquid, issuers need to be incentivised to issue in the Australian retail market compared to the wholesale market, US Private Placement market or US 144a market. Although the draft legislation is an important step, we caution that the increase of issuance of Simple Corporate Bonds in this market is not expected to be significant due to the restrictive nature of the proposed definition.

Furthermore we note that the regulations have not been released as to the structure and content of the two-part prospectus. It is important that there is clarity on what should be contained in the prospectus and what can be incorporated by reference. Any lack of clarity will diminish the attractiveness for issuers to issue in this new format.

2.0 Proposed Changes to Streamline Disclosure Regime

As per our previous submission, NAB believes that to facilitate the development of the retail corporate bond market the documentation to issue corporate bonds should be no more onerous than what is currently required to issue equities. This view stems from investors in corporate bonds having an additional layer of protection from shareholders, as holders of bonds rank ahead of equity in the event of insolvency.

As such, our view is unchanged, for entities listed on an Australian exchange or listed on an exchange recognised by the World Federation of Stock Exchanges (which is recognised by the ASX) when issuing senior secured or unsecured corporate bonds with no unusual or complex features with terms of 10 years or less, a two-page term sheet should be permitted, supported by the information already provided in the entities' continuous disclosure requirements. In addition, we would require the entity to have an unqualified audit report.

After considering the draft legislation which states that a two-part prospectus will be the primary format for issuing bonds, NAB makes the following recommendations.

- For Simple Corporate Bonds which meet the criteria stated in the draft legislation, we propose a base disclosure document which allows information to be incorporated by reference from ASIC, as well as a two-page term sheet outlining the key characteristics of the bond, rather than an offer document. This is a parallel to a wholesale market program memorandum with a pricing supplement for each deal.

- For issues of corporate bonds and capital notes which do not meet the criteria of Simple Corporate Bonds we recommend a base document which allows information to be incorporated by reference from ASIC and an offer document which provides details of the issue.

The base document will provide issuer specific information. Given the document will utilise incorporation by reference, we would recommend this document be no more than 5 pages. The Government is proposing a three year life for this document however NAB recommends a five year life. This is because three years is a too short a time frame for some issuers to consider and execute repeat issuance. Furthermore, we would recommend that the five year expiration date restart when the base prospectus is replaced with a new base prospectus.

The offer document would include key details of the transaction as well as any matters material to consideration of the investment which has not been the subject of continuous disclosure. This document should be limited to fifteen pages.

By limiting the use of a two-page term sheet alongside the base document to issues of corporate bonds which meet the criteria of a Simple Corporate Bond, investor confusion should be reduced as corporate bonds with more unusual or complex features would require a more detailed offer document to sit alongside the base document.

We believe investors should be able to invest in corporate bonds issued by entities across the credit spectrum to meet their individual risk and reward requirements. Although due care needs to be exercised by each issuer in preparing the documentation for corporate bonds, as well as investors considering an offer.

2.0 *Proposed Changes to Directors' Liability*

We welcome the proposed changes to directors' liability including:

- Changes to civil liability provisions in respect to Simple Corporate Bonds issued to retail investors; and
- Clarification of the application of the changes in respect to misleading and deceptive statements and omissions in disclosure documents relating to Simple Corporate Bonds issued to retail investors.

3.0 *Continuous Disclosure and incorporating information by reference*

We note that information provided to ASIC can be incorporated by reference in the two-part prospectus outlined in the draft legislation. This process is in place for equities and should be used as efficiently and effectively for corporate bonds. This would reduce duplication of information for issuers and make the prospectus more timely and succinct for investors.

4.0 *Clarifications*

There are a number of points in the draft legislation which we seek Treasury's advice to clarify.

- The draft legislation advised that a minimum subscription of $50mio must be raised however it is unclear as to whether the first tranche of an offer must meet this level or if several tranches aggregating to $50mio is acceptable.
- Explanation of the mechanics of the depository interest ensuring that it can be extended to all bonds issued to the retail market.
- Eligibility to issue from a wholly owned subsidiary, for example, can a subsidiary that has another subsidiary between the issuer and the listed guarantor issue.
- What are the consequences if subsequent to issuance, the issuer is removed from listed status on an appropriate exchange?
- Confirmation that the Simple Corporate Bond definition only includes senior secured bonds.
- 713A (9) refers to a generic reference rate. Please clarify whether it is restricted to BBSW or are the issuers allowed to reference a range of indices.
- We seek clarification as to how "among other things" in section 1.56 will be defined.
- Please confirm that information incorporated by reference from ASIC contemplates all public disclosures released to the market via ASX.

NAB looks forward to continuing the dialogue with the Government, and would welcome the opportunity to expand on this submission.

Please do not hesitate to contact me at any stage to discuss further.

Yours sincerely,

Steve Lambert
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17 February 2012

Ms Michelle Calder
Manager, Financial Services Unit
Retail Investor Division
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Ms Calder

NAB supports the development of a retail corporate bond market and welcomes the opportunity to provide comment on the discussion paper titled *Development of the Retail Corporate Bond Market: Streamlining Disclosure and Liability Requirements.*

NAB has a history of over 150 years supporting businesses, and is a key player in the debt capital markets. We recognise the role a well developed retail corporate bond market can play in ensuring continued support of Australian businesses.

As we move into a more capital constrained environment, the development of a retail corporate bond market can help facilitate Australian businesses fund their growth aspirations.

Facilitating funding to businesses via a retail corporate bond market will both reduce the reliance of banks on wholesale funding whilst also freeing up the banks' balance sheets to continue supporting SMEs, who traditionally do not have the same level of access to capital markets as their larger counterparts.

The recent Woolworths and Origin hybrid issues, for which NAB was joint-lead arranger, demonstrated that there is strong retail investor demand for debt. This demand is partly driven by the need for portfolio diversification, but also the changing demographics of Australian investors moving into retirement who are seeking fixed income products.

We acknowledge the development of a retail corporate bond market will be a lengthy and detailed process, and it is important that the Government, issuers, investors, ASIC, ratings agencies, bond originators, trading houses and advisers work together to ensure the best outcome for Australian businesses and investors.

We encourage dialogue as to how investors will be able access the retail corporate bond market without onerous regulatory impediments.

Education for investors is an important element in the development of this market. We support and recommend a collaborative approach to developing an education campaign focused on corporate bonds for retail investors. The education campaign could build upon ASIC's document titled "Investing in Corporate Bonds". There should be a focus on improving retail investors' understanding of the capital structure, where bonds rank, the different features of bonds and the benefits and risks of investing in corporate bonds. We would welcome the opportunity to further discuss developing an education campaign with the Government and ASIC.

To facilitate the development of the retail corporate bond market it is our view that the documentation required to issue corporate bonds should not be more than what is currently required to issue equities. This view stems from investors in corporate bonds having an additional layer of protection from shareholders, as holders of bonds rank ahead of equity in the event of insolvency.

As such, we recommend for entities listed on an Australian exchange or listed on an exchange recognised by the World Federation of Stock Exchanges (which is recognised by the ASX) when issuing senior corporate bonds with no unusual or complex features, a two-page term sheet should be permitted, supported by the information already provided in the entities' continuous disclosure requirements. In addition, we would require the entity to have an unmodified audit report or a modified auditor's report with emphasis of matter only and terms of 10 years or less.

In our opinion a single short form prospectus should be used in the circumstances listed below if the Government and ASIC allow information to be incorporated by reference in the document. These circumstances are:

- When entities not listed on a recognised exchange issue any corporate bonds; and
- When listed entities issue corporate bonds with more unusual or complex features such as subordination, convertibles, tier 2 capital, guarantees, deferral of interest, payment in kind (PIK) or terms greater than 10 years.

In contrast, if information is not permitted to be incorporated by reference by the Government and ASIC, we recommend a two-part prospectus is used in the circumstances listed above. The base document would provide information to investors about the issuing entity and the second part of the prospectus would provide information specific to the corporate bond issue. This would provide longevity for the issuing entity and efficiency for frequent issuers.

With this position in mind, NAB provides the following responses to the questions in the discussion paper. Also attached are appendices highlighting what we consider should be included in a two-page term sheet (Appendix 1), a single short form prospectus (Appendix 2) and a two-part prospectus (Appendix 3).

NAB looks forward to continuing the dialogue with Government, and would welcome the opportunity to expand on this submission.

Please do not hesitate to contact me at any stage to discuss further.

Yours sincerely,

Rick Sawers
Group Executive - Wholesale Banking
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ANSWERS TO QUESTIONS IN THE DISCUSSION PAPER

TAILORING/REPLACEMENT OF CURRENT PROSPECTUS RULES

Should the short form prospectus be compulsory for issuers and bond issues that meet the eligibility requirements set out below, or should it be optional?

We propose a two-page term sheet rather than a single short form or two-part prospectus be used for entities listed on an Australian exchange or listed on an exchange recognised by the World Federation of Stock Exchanges when issuing senior corporate bonds with no unusual or complex features, supported by the information already provided in the entities' continuous disclosure requirements. In addition, we would require the entity to have an unmodified audit opinion or a modified auditor's opinion with emphasis of matter only and terms 10 years or less.

In our opinion if the Government and ASIC allow information to be incorporated by reference (i.e. to existing information), a single short form prospectus should be used in the below circumstances:

- When entities not listed on a recognised exchange issue any corporate bonds; and
- When listed entities issue corporate bonds with more unusual or complex features such as subordination, convertibles, tier 2 capital, guarantees, deferral of interest, PIK or terms greater than 10 years.

However if information is not incorporated by reference, we recommend the adoption of the two-part prospectus.

We agree with the recommendation in the discussion paper that prescribed headings and content be used for a single short form and/or two part prospectus as this will assist understanding by investors and reduce costs and complexity for issuers.

Should the use of a two-part prospectus be permitted?

The use of a two-part prospectus is recommended in the circumstances noted above if the Government and ASIC do not permit information to be incorporated by reference.

A two-part prospectus provides longevity for the issuing entity and will be efficient for frequent issuers. The expectation is that the base document should remain current for five years.

We recommend the base document include:

- a brief description of the issuing entity;
- nature of the rights and obligations of the investors;
- the generic benefits and risks of investing in corporate bonds;
- significant tax information and warnings about the consequences of failing to provide a tax file number.

The second part of the prospectus would outline the details of the specific corporate bond issue, benefits and risks specific to the transaction and financial statements of the issuer (see Appendix 3).

PROPOSED ENTRY REQUIREMENTS/ELIGIBILITY – CONDITIONS RELATED TO THE ISSUER

Are these proposed conditions appropriate? Are there any additional or alternative conditions that should be imposed?

The proposed eligibility requirements for the issuer to use a single short form and /or two-part prospectus outlined in the discussion paper are appropriate. Eligibility requirements to use a single short form prospectus and/or two-part prospectus should be extended to entities which have a modified audit report, provided it is disclosed in the documentation to the investor. The investor can then choose whether to revert to the annual report for further information.

If the Government agrees with our recommendation that a two-page term sheet be used by listed entities issuing senior corporate bonds, the conditions listed below will need to be imposed:

- the entity is listed on an appropriate exchange;
- the entity is subject to continuous disclosure requirements;
- issue is a senior corporate bond with no unusual or complex features;
- the entity has an unmodified audit report or a modified auditor's report with emphasis of matter only; and
- terms limited to 10 years or less.

Should unlisted entities with listed securities on issue be allowed to use the shorter prospectus? If so, what, if any, additional requirements would need to be imposed to ensure that investors are informed about the entity's financial position?

The single short form and/or two-part prospectus should be allowed to be used by unlisted entities with listed securities, as long as they comply with the continuous disclosure requirements. These entities would be expected to comply with the continuous disclosure regime in line with requirements for entities which issue equities.

Should eligibility extend to a wholly-owned subsidiary of a body which has continuously quoted securities where the business of the subsidiary is to act as a financing company for the group?

Eligibility should be extended to use a single short form and/or two part prospectus to a wholly owned subsidiary of a body which has continuously quoted securities under certain conditions being:

- additional risks are adequately disclosed in the document including whether there is recourse to the parent company or not; and
- the financial statements of the subsidiary are included in the prospectus or by reference.

Is the requirement for an unmodified auditor's report appropriate, or is it:

a) **Inconsistent with audit requirements in other contexts where unmodified reports are not necessary?**
b) **Unnecessary, as some modifications may be positive?**
c) **Unnecessary because, if the report is modified, investors will have access to the modified report in order to make an assessment of the relevant issues?**

An unmodified auditor's report is unnecessary for a single short form and/or two-part prospectus because if the report is modified investors can access it and make an assessment.

In addition, if the Government agrees with our proposal for listed entities to use a two-page term sheet when issuing senior corporate bonds with no unusual or complex features, an unmodified audit report or a modified auditor's report with emphasis of matter only is required.

OTHER REQUIREMENTS THAT COULD BE IMPOSED

Are the proposed conditions set out above appropriate? Is there a case for adopting any of the alternative conditions?

We are supportive of the proposed conditions related to the bond in section 25. We have made recommendations as to the information that should be included in a two-page term sheet (Appendix 1), a single short form prospectus (Appendix 2) and a two-part prospectus (Appendix 3).

Should subordination be allowed? If so, is disclosure of the fact of subordination sufficient to protect investors?

Subordinated corporate bonds should be allowed in the single short form prospectus and/or two- part prospectus provided the documentation clearly outlines the capital structure and the ranking of the bonds within that structure. That is, that subordinated corporate bonds rank below senior corporate bonds but above equities in the event of insolvency.

The prescribed headings and content outlined in the discussion paper will assist in disclosing this information to limit investor confusion and enhance protection. Developing an education campaign about corporate bonds for retail investors will further develop their understanding about the different structures within corporate bonds.

Should terms longer than 10 years be permitted? If so, how long should the permitted maximum be, or should there be no maximum?

Terms beyond 10 years should be allowed provided there is clear and adequate disclosure detailing the liquidity risk for both a single short form prospectus and two-part prospectus. We understand there is both investor and issuer demand for durations greater than 10 years due to the yield and diversification it would offer.

Should deferral of interest be permitted, or would this be inconsistent with the notion that bonds provide a regular income stream?

For senior or subordinated corporate bonds, deferral of interest should not be permitted as it is inconsistent with the view that corporate bonds provide a regular and stable income stream.

However, deferral of interest should be permitted for hybrid issues, as long as the conditions under which it would occur are clearly disclosed to the investor in either the single short form prospectus or two-part prospectus.

If eligibility is extended to bonds that have conditions such as subordination, very long terms or deferral of interest, will far more risk disclosure be required and would this undermine the utility of shorter disclosure for these products?

No. Clear and concise disclosure of the risks of investing in corporate bonds with more unusual or complex features must be outlined. Using the prescribed headings and content described in the discussion paper will assist in doing so without materially expanding on the amount of disclosure outlined in either a single short form prospectus or a two-part prospectus.

In addition, an education campaign to develop investor understanding of corporate bonds with more unusual or complex features will facilitate their understanding of the risks associated with their investment.

Is there a risk that investors may confuse more complex products with vanilla bonds, if both types of investment are able to take advantage of simplified disclosure?

No. By limiting the use of a two-page term sheet to issues of senior corporate bonds with no unusual or complex features which meet the requirements previously specified investor confusion will be reduced as corporate bonds with more unusual or complex features would utilise a single short form prospectus or a two-part prospectus rather than a term sheet.

Due care does need to be exercised by each issuer in preparing the documentation for corporate bonds as well as investors considering an offer. As previously mentioned an education campaign for retail investors on corporate bonds would improve their understanding and reduce the potential for confusion.

Is it important that the bonds be correctly described? For example, if an issuer offers subordinated bonds or hybrid-type securities, should it be obligatory that the name of the securities not suggest to retail investors that vanilla bonds are being offered?

It is vital that corporate bonds are accurately described. To avoid investor confusion we recommend the prescribed headings and content outlined in the discussion paper be followed when using a single short form prospectus or a two-part prospectus.

USE AND AVAILABILITY OF CREDIT RATINGS

Should the entity or the bond issue be required to have an investment grade rating (if available)? If so, how would an investment grade rating be defined and mandated?

It is not necessary for the entity or the corporate bond to have an investment grade rating, because as with equities, investors are able to invest in corporate bonds issued by entities across the credit spectrum to meet their individual risk and reward requirements.

What other measures could the Government or ASIC take to enable the provision of credit ratings to retail investors?

There is currently only one agency of the six licensed to provide credit ratings to retail investors. There should be a minimum of two rating agencies (preferably three) being able to provide credit ratings on entities in the retail corporate bond market for the rating to be objective.

GENERAL APPROACH TO CONTENT REQUIREMENTS AND PROSPECTUS LENGTH

Should the prospectus contain prescribed headings and/or prescribed content?

Both the single short form prospectus and two-part prospectus will benefit from using the prescribed headings and contents outlined in the discussion paper. This will assist investor understanding of corporate bonds being issued as the documentation will be consistent, consequentially allowing them to compare and contrast offer documents.

Should there be a maximum prospectus length (possibly with ASIC having discretion to increase this)? If so, what should be the maximum length for (a) a standalone prospectus; (b) each part of a two-part prospectus? Could a two-part prospectus be restricted to a maximum total of, say, 40 pages?

Assuming a prospectus is required to be issued for corporate bonds in the circumstances listed below, an appropriate maximum length for a single short form prospectus should be 20 pages (inclusive of application forms) as much of the information can be referenced. These circumstances are:

- When entities not listed on a recognised exchange issue any corporate bonds; and
- When listed entities issue corporate bonds with more unusual or complex features such as subordination, convertibles, tier 2 capital, guarantees, deferral of interest, PIK or terms greater than 10 years.

If information is not permitted to be incorporated by reference the maximum length of a two-part prospectus should be 40 pages combined.

Would it be useful to consumer test one or more examples of 'model' prospectuses?

It is not necessary to consumer test one or more of the model prospectuses as the first issue will highlight any problems with the proposed prospectus and the lead time before the corporate bond would be issued will be sufficient to accommodate these changes.

As mentioned, an education campaign would be a useful tool to educate investors in corporate bonds. It will be important that this campaign is consumer tested to ensure the information provided is appropriate before being publicly launched. Ideally, this effort would engage industry participants.

CONTENT REQUIREMENTS

Assuming that headings are appropriate, are the above headings suitable? Would other headings be preferable?

Recommendations regarding the appropriate section headings for the prospectus are made in Appendix 1 for the two-page term sheet, Appendix 2 for the single short form prospectus and Appendix 3 for the two-part prospectus.

Would an investment summary be a useful inclusion?

If information is permitted to be incorporated by reference an investment summary is not a useful inclusion in a single short form prospectus of 20 pages as it is considered to be unnecessary and repetitious. Likewise for the two-part prospectus.

DETAILED CONTENTS

Are the content requirements suggested below appropriate?

Recommendations regarding the content requirements in each section are made in the attached appendices.

Are there alternative or additional content requirements that should be adopted?

For corporate bonds that contain more unusual or complex features such as PIK and deferral of interest, additional information should be provided in the single short form prospectus and/or in the two-part prospectus on the features that can be triggered during the term of issue.

Could section 4 be merged with section 3?

For a single short form prospectus where information can be incorporated by reference, we recommend generic benefits in Section 4 (the benefits of investing in corporate bonds) be included by reference only. However benefits specific to the transaction should be cited within the prospectus. Likewise the generic risks in Section 5 (risks of investing in corporate bonds) should be included by reference only; however risks specific to the transaction should be included in the prospectus.

For a two-part prospectus where the information is not permitted to be incorporated by reference we recommend not merging Section 4 with Section 3.

Is it appropriate to require the inclusion of information on the capacity of the issuer to meet its obligations under the bonds? Would this require the issuer to provide forecasts which should not be required for bond transactions?

No. Financial information including annual reports and interim statements should be included via reference only in a single short form prospectus. This ensures that the information provided is up-to-date and current.

For a two-part prospectus where the information is not permitted to be included by reference, a summary of the financial position of the issuer should be included in the transaction document.

Forecasts are not recommended as this information is not generally available to the public when purchasing equities and therefore similar disclosure requirements are recommended for corporate bonds.

Additional risk due to the structure of the bond must be clearly articulated in the single short form prospectus and two-part prospectus. This enables the investor to make informed decisions and issuers to offer instruments to a range of investors with different risk and reward appetites.

If ratios are to be included, should the formulae to calculate the ratios be prescribed and, if so, what formulae should be used?

In our view the interest cover ratio will be appropriate (EBIT/Interest Expense).

If the abovementioned metrics are not useful given the nature of the issuer or the industry they are in, could the issuer be permitted to use other metrics?

Yes. The issuer should be permitted to use other metrics which are suitable to their industry provided the metrics are defined in the two-page term sheet, the single short form prospectus or the two-part prospectus.

Would other content requirement reforms be desirable, for example: A statement of general principles, including that the complexity of prospectuses is to be minimised, repetition is to be minimised and the focus of disclosure is on matters material to a consideration of an investment in the bonds?

Rather than stipulating these general principals in the prospectus, it is more beneficial to investors for issuers to work towards meeting principles such as reducing repetition and length of the prospectus.

Would other content requirement reforms be desirable, for example: Inclusion of the terms of the bonds and the trust deed (if applicable) on the issuer's website rather than in the prospectus?

The terms of the offer document should be included on the website as well as the prospectus as it provides convenience for investors and potentially reduces costs for issuers.

Would other content requirement reforms be desirable, for example: Inclusion of a summary of the tax consequences of the bonds for investors rather than a full opinion from a tax advisory firm?

A summary of the general tax consequences of the corporate bonds for investors should be included in both a single short form prospectus and a two-part prospectus. A further comment should be included advising investors to seek taxation advice specific to their circumstances.

Would other content requirement reforms be desirable, for example: Requiring issuers to refer to other sources of information about themselves such as their Annual Reports and websites?

Issuers should be able to refer to other sources of information about themselves; otherwise a single short form prospectus would be lengthy, contrary to the objective of disclosing key information in a shorter document. This format would be helpful as it would allow automatic inclusion of the latest public information about the issuer without requiring constant updates of the prospectus.

Would other content requirement reforms be desirable, for example: Publication by the Government, ASIC and other relevant bodies of relevant general information for investors, including in relation to the calculation and relevance of key ratios. Issuers could be required to refer to this independent information rather than to attempt to provide this advice to investors?

Education for investors is an important element in the development of a retail corporate bond market. Independent publication of the calculations and relevance of key ratios is recommended as it provides a consistent and credible source of information for investors.

Will retail investors benefit from reading these reports?

Informed market participants are critical to a successful retail corporate bond market and therefore an education campaign should be developed to assist retail investors understand corporate bonds. Retail investors should be encouraged to use these independent reports in addition to the available materials about the issuer.

Also, should account be taken of the fact that not all bonds require a trustee and therefore not all bonds are subject to section 283BF?

No reference to this is necessary in a single short form prospectus or two-part prospectus.

USING A MULTI-PART PROSPECTUS

Do you agree with a two-part prospectus approach, or do you consider it would be preferable to have a prospectus followed by a term sheet and cleansing statement? What is the basis for your view?

As referred to earlier, our preference is for a two-page term sheet for issuers of senior corporate bonds with no unusual or complex features which meet the requirements listed previously.

If information is permitted by the Government and ASIC to be incorporated by reference, our preference is for a single short form prospectus used in the below circumstances:

- When entities not listed on a recognised exchange issue any corporate bonds; and
- When listed entities issue corporate bonds with more unusual or complex features such as subordination, convertibles, tier 2 capital, guarantees, deferral of interest, PIK or terms greater than 10 years.

If information is not permitted to be incorporated by reference our preference is for a two part prospectus, as this will provide longevity for the issuing entity and would be efficient for frequent issuers. The expectation is that the base document should remain current for five years, with the information reviewed in conjunction with continuous disclosure to ensure it is up-to-date.

As previously mentioned the base document should include:

- a brief description of the issuing entity;
- nature of the rights and obligations of the investors;
- the benefits and risks of investing in corporate bonds;
- significant tax information and warnings about the consequences of failing to provide a tax file number.

The second part of the prospectus would outline the details of the specific corporate bond issue, specific benefits and risks as well as financial statements for the issuing entity (see Appendix 3).

What should be the maximum life of a base prospectus?

The life of a base prospectus should be five years as this is more efficient for both frequent and infrequent issuers of corporate bonds (infrequent issuers are unlikely to come back to the market within two years but likely to come back within five years) thereby reducing the need for documentation rework and reissue.

Is it feasible and/or appropriate to specify what information should be included in each part of a two-part prospectus, or alternatively in a short prospectus, term sheet and cleansing statement? If so, what should that content be?

It is appropriate to specify what information should be included for a two-page term sheet, a single short form prospectus and a two-part prospectus as consistency is important from an investor perspective. Information which should be included in each of these documents is included in Appendix 1, 2 and 3.

INCORPORATION OF INFORMATION BY REFERENCE

Should there be scope to have information that is 'otherwise referred to', for example the issuer's annual and half-yearly reports, or information such as ASIC's MoneySmart website?

Financial information and other disclosed information on an exchange should be incorporated by reference. Information incorporated by reference should be maximised to ensure the investor is informed without requiring the issuer to duplicate information.

Should it be made clear what the effect of referring to such information will be since it does not form part of the prospectus (for example, could it satisfy prospectus content requirements even though there is no prospectus liability for this information)?

It is not necessary to explain the effect of referring to such information in the single short form prospectus. This is not currently required for equities, and there should be no additional requirement for bonds.

LIABILITY FOR PROSPECTUS CONTENT

Should directors' deemed civil liability for prospectus content be removed?

We support a review and potential removal of the existing directors' deemed liability regime for retail corporate bonds. Given the Government is currently in the process of proposing reforms in relation to the personal liability of company officers and these reforms are based on certain Principles agreed by COAG, any proposal regarding directors' deemed liability for corporate bonds to retail investors should also consider these Principles.

Relevant Principles to consider include, amongst other things:

- that the corporation should be liable in the first instance where it contravenes a statutory requirement;
- directors should not be liable as a matter of course for corporate fault;
- a designated officer approach is not suitable for general application;
- the imposition of personal criminal liability on a director should be limited to situations where there is a compelling public policy reason to do so, corporate liability will not automatically promote compliance, and it is reasonable for the directors to be liable having regard to various factors (such as the capacity of the director to influence the conduct of the corporation in relation to the offending, and whether reasonable steps were taken to ensure the company's compliance); and
- director liability is limited to where they encouraged or assisted the offence, or were negligent or reckless in relation to the offence.

EXEMPTION FOR PRUDENTIALLY REGULATED ENTITIES

Should subsection 708(19) be amended in the context of these proposed reforms?

Subsection 708 (19) does not need to be amended in the context of these reforms. As noted in the discussion paper, Authorised Deposit-taking Institutions (ADIs) are prudentially regulated. This subsection could be used as an example of what we should try to emulate with regard to issue documentation.

APPLICATION AND TRANSITIONAL ARRANGEMENTS

Is there a need for a transitional period and, if so, what should that period be?

The transitional period should be sufficient to enable issuers and investors time to understand and incorporate the new proposed measures.

Appendix 1 – Term Sheet

- Timetable setting out the key dates in relation to the offer
- The amount the entity expects to raise
- Purpose to which the money will be put
- Summary of minimum and maximum investment amounts
- Structure of the scheme (eg. senior secured/unsecured)
- Frequency of interest payments and how they are calculated
- Term and maturity of the bonds
- Interest rates payable on the bonds
- The dates for payment of interest on the bonds
- Future Value of the bonds will be repaid on the maturity date, subject to any early redemption events
- Amount of other debt that would need to be paid in priority to the bonds in the event of liquidation.
- Voting right of bondholders
- The prescribed financial market on which the bonds will be listed
- Information on buying and selling the bond
- Governing law
- Early redemption events
- Amounts of money being paid to a director, promoter of the bonds, performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus including underwriter
- How to apply for the bond
- Name, address, internet page, phone number by the body issuing the retail bond

Appendix 2 – Single Short Form Prospectus

Section 1

- Timetable setting out the key dates in relation to the offer

Section 2

- Brief description of issuing entity (by reference)
- The amount the entity expects to raise
- Purpose to which the money will be put

Section 3

- Nature of the rights and obligations of the investors
- Summary of minimum and maximum investment amounts
- Structure of the scheme (eg. senior/subordinated))
- Frequency of interest payments and how they are calculated
- Term and maturity of the bonds
- Interest rates payable on the bonds
- The dates for payment of interest on the bonds
- Future value of the bonds will be repaid on the maturity date, subject to any early redemption events
- Amount of other debt that would need to be paid in priority to the bonds in the event of default
- Voting right of bondholders
- The prescribed financial market on which the bonds will be listed
- Information on buying and selling the bond

Other features as required including:

- Circumstances in which the bonds can be redeemed prior to the maturity date
- Ranking of the bonds in relation to other debt
- Any guarantee of the issuer of the bonds' obligations in relation to the bonds and any significant limitations that apply to the guarantee

Section 4

- Generic benefits - by reference
- Specific benefits

Section 5

- Generic risks - by reference
- Specific risks

Section 6

- Overview of financial position of the issuer - primarily by reference

Section 7

- Significant tax information
- Warnings about consequences of failing to provide a Tax File Number

Section 8

- Amounts of money being paid to a director, promoter of the bonds, performing a Function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus including underwriter

Section 9

- How to apply for the bond
- Name, address, internet page, phone number by the body issuing the retail bond

Section 10

- How to register a complaint

Appendix 3 – Two-Part Prospectus

PART 1 (Base)

Section 2
- Brief description of issuing entity
- Nature of the rights and obligations of the investors

Section 4
- Generic and specific benefits

Section 5
- Generic and specific risks

Section 7
- Significant tax information
- Warnings about consequences of failing to provide Tax File Number

PART 2 (Issue Specific)

Section 1
- Timetable setting out the key dates in relation to the offer

Section 2
- The amount the entity expects to raise
- Purpose to which the money will be put

Section 3
- Summary of minimum and maximum investment amounts
- Structure of the scheme (eg. senior/subordinated)
- Frequency of interest payments and how they are calculated
- Term and maturity of the bonds
- Interest rates payable on the bonds
- The dates for payment of interest on the bonds
- Future alue of the bonds will be repaid on the maturity date, subject to any early redemption events
- Amount of other debt that would need to be paid in priority to the bonds in the event of default
- Voting right of bondholders
- The prescribed financial market on which the bonds will be listed
- Information on buying and selling the bond

Other features as required including:
- Ranking of the bonds in relation to other debt or proposed debt
- Circumstances in which the bonds can be redeemed prior to the maturity date

- Any guarantee of the issuer of the bonds' obligations in relation to the bonds and any significant limitations that apply to the guarantee

Section 6

- Brief summary of financial position of the issuer

Section 8

- Amounts of money being paid to a director, promoter of the bonds, performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus including underwriter

Section 9

- How to apply for the bond
- Name, address, internet page, phone number by the body issuing the retail bond

Section 10

- How to register a complaint