



Senate Committee on Tax and Revenue  
PO Box 6100  
Parliament House  
Canberra ACT 2600

19 March 2020

Dear Committee Secretariat

### **Inquiry into the Development of the Australian Corporate Bond Market**

Thank you for the opportunity to provide a response in relation to your inquiry into the Australian Corporate Bond Market.

As a leading professional services firm, KPMG Australia is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also investors, employees, Governments, regulators and the wider community. We strive to contribute to debate that seeks to develop a strong and prosperous economy and welcome the opportunity to provide a submission to this inquiry.

It is apparent among the practicing professionals of this field that the current retail bond market in Australia is minimal.<sup>1</sup> KPMG Australia considers this a missed opportunity since a low interest economy could result in a greater number of successful bond issuances. Bonds can be viewed as a safer investment, than shares from the same company, potentially benefiting the more risk averse investors.

#### **Recommendations:**

That the Committee recommend that:

1. The Australian Government lower the regulatory cost of bond issuance to increase take-up and ensure that benefits exceed the cost of issuance;
2. The Australian Government consider legislating the issuance of bonds to resemble the “Low Doc” process of secondary offerings; and
3. The Australian Government review Chapter 2L of the Corporations Act given it’s prominence in debenture related markets.

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<sup>1</sup> <https://www.afr.com/markets/debt-markets/retail-corporate-bonds-to-get-boost-20200207-p53you>



## **The Current Retail Bond Market – Disclosure and Director Liability – The 2014 Simple Bond Amendment**

KPMG Australia notes that the retail bond market has been subject to previous discussion and reform. The concerns of the corporate retail bond market originate from a 2009 report titled “*Australia as a financial centre: building on our strengths*”.<sup>2</sup> The report recommended a reduction in regulatory requirements, as the cost of bond issuance exceeded the value. To reduce the regulatory burden the report recommended the creation of a system of disclosure which would consist of two parts. These two parts would comprise specific prospectuses, which would have differing shelf lives.<sup>3</sup>

The recommendations from this report were brought into law by the *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014* (Cth) (‘the Act’). This Act introduced the aforementioned two part prospectus for disclosure and reduced the deemed civil liability for directors, although the criminal liability remained unchanged. KPMG Australia considers that these changes have been ineffective at incubating a greater retail bond market due to their inability to achieve the overarching objective of streamlining the issuance process.<sup>4</sup> KPMG Australia considers the reduction of liabilities for directors has failed to achieve this streamlining. This failure is the consequence of existing liabilities still requiring a full due diligence process.

Reservations were made at the time that the two-part prospect approach would not improve efficiency and perhaps a choice between the two-part or single offer-specific prospectus would be more ideal.<sup>5</sup> KPMG Australia considers that this amendment has not effectively achieved its specified purpose, with the overall complexity of the process still consuming significant time and resources. Submissions to the *Corporate Amendment (Simple Corporate Bonds and Other Measures) Bill 2013*<sup>6</sup> highlight concerns over the effectiveness of the Bill.<sup>7</sup>

## **The similarities to an IPO – “Low Doc” Secondary Offerings as a Viable Alternative**

KPMG Australia considers that the current method of issuing retail bonds mirror the process of an Initial Public Offering (‘IPO’). This process is long in duration and consuming on resources. The issuance of bonds could instead be legislated to more closely resemble the “low doc” process of secondary offerings. This would be reflected in the implementation of a cleansing statement model as per section 708AA of the *Corporations Act 2001* (Cth).<sup>8</sup> Multiple submissions recommended that the issuance of bonds could be conducted in a similar methodology, relying on the current stringent continuous reporting to ASIC.<sup>9</sup>

## **Negative Public Opinion – Need for Reform to Grow Confidence**

The need for reforms to this system is becoming more apparent as the weak figures of the bond market are now paired with recent media coverage portraying the retail bond market as unattractive

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<sup>2</sup> <http://www.fex.com.au/media/AFCF.pdf>, p93-96.

<sup>3</sup> Relevant sections of the Corps Act are s713C, 713D, 713E

<sup>4</sup> The explanatory memorandum made it clear that the objective of the Act was to streamline the disclosure regime.

<sup>5</sup> [https://treasury.gov.au/sites/default/files/2019-03/Minter\\_Ellison-3.pdf](https://treasury.gov.au/sites/default/files/2019-03/Minter_Ellison-3.pdf)

<sup>6</sup> <https://treasury.gov.au/consultation/corporations-amendment-simple-corporate-bonds-and-other-measures-bill-2013>

<sup>7</sup> [https://treasury.gov.au/sites/default/files/2019-03/Law\\_Council\\_of\\_Australia-16.pdf](https://treasury.gov.au/sites/default/files/2019-03/Law_Council_of_Australia-16.pdf)

<sup>8</sup> [https://treasury.gov.au/sites/default/files/2019-03/Law\\_Council\\_of\\_Australia-16.pdf](https://treasury.gov.au/sites/default/files/2019-03/Law_Council_of_Australia-16.pdf)

<sup>9</sup> <https://data.allens.com.au/pubs/pdf/cm/papsep09.pdf>



to retail consumers.<sup>10</sup> It could be reasoned that reforming the disclosure process may reinvigorate the market by encouraging consumer confidence.

#### **Chapter 2L – Role of trustee – Lack of Appeal for Bond Market**

While disclosure has appeared to be a primary focus for regulation in the retail bond sector,<sup>11</sup> KPMG Australia would also like to comment on the role of the debenture trustee. KPMG Australia considers that a review of Chapter 2L of the Corporations Act may be necessary given its prominence in retail debenture related markets. Chapter 2L contains various parts which outline the duties and responsibilities of the various parties involved in a bond issuance. These include requiring a licensed approved trustee (acting as trustee for hire), a trust deed, and multiple duties.

For both listed and unlisted retail bond issuers, Chapter 2L requires the issuance of bonds commence under a heavily regulated and onerous structure with strict adherence to the Chapter. The importance of adherence with Chapter 2L for trustees has been previously emphasised by ASIC with suggestions of greater powers for trustees to perform their duties. This is due to trustees having strict and broad duties imposed on them in Chapter 2L, which consequently results in far reaching liability exposure. This exposure can explain what we understand to be a reluctance of approved trustee participants to enter the retail bond market as the potential risk is weighed heavily against reward. Previous case law has strictly conformed to the expectations of ASIC when applying Chapter 2L.

Thank you for inquiring into this important matter and we look forward to working with you as the Committee progresses its final report and recommendations.

Yours sincerely,

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<sup>10</sup> <https://www.afr.com/companies/financial-services/axesstoday-equity-and-bond-investors-sweat-together-20180927-h15y1j>

<sup>11</sup> <https://download.asic.gov.au/media/1335236/cp199-published-13-February-2013.pdf>