

16 April 2013

Dr Richard Grant  
Acting Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
Department of The Senate  
Parliament House  
CANBERRA ACT 2600

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Dr Grant,

### **Inquiry into the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013**

The Stockbrokers Industry Association, as the peak industry body representing wholesale and retail stockbrokers and investment banks in Australia, would like to make the following submission to the Committee in order to assist its Inquiry into the *Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013*.

We are grateful for the opportunity to raise these matters with the Committee.

Yours sincerely,

**David W Horsfield**  
**Managing Director/CEO**



# Stockbrokers

## Association of Australia

Incorporating SDIA

**Parliamentary Joint Committee on Corporations and Financial Services**

**Inquiry into the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013**

**Submission**

16 April 2013

### **Introduction**

The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013* (the *Bill*) amends the *Corporations Act 2001* in two respects:

- a. to facilitate improved trading of retail **corporate bonds** in Australia, and
- b. to define the terms '**financial planner**' and '**financial adviser**' and restrict their use.

### **A. Facilitating improved trading of retail corporate bonds**

The GFC and accompanying fall in world share markets - including a fall of over 50% in the Australian market<sup>1</sup> - had the effect of making investors explore options other than equities. In particular this meant that fixed interest securities gained in prominence, whether corporate, government or semi-government issued.

Compared to other countries, traditionally, Australian investors have not had a great exposure to fixed interest securities. According to figures presented by BlackRock in 2013:

*Globally, bonds account for nearly twice as much investment as equities. In Australia, the bond market has grown from around 1/3 the size of the Australian equity market to approximately 2/3 the size over the past 10 years<sup>2</sup>.*

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<sup>1</sup> ASX S&P All Ordinaries Index - November 2007: 6780; February 2009: 3295

<sup>2</sup> BlackRock iShares [A guide to Australian fixed income investing](#) p.2

As has been identified in the Government's work to encourage development of the retail corporate bond market, the fall in values post-GFC meant that diversification became important for investors, together with the possibility of regular income especially during or approaching retirement<sup>3</sup>.

Opportunities for retail investor participation in the bond markets have been limited, for reasons including:

- a. the high cost to companies of issuing bonds to retail investors, especially small to medium sized companies; and
- b. with Government bonds, the high face value (usually at least \$500,000).

Post-GFC, there has been growth in the market listed interest rate securities, including convertible notes, hybrids and preference shares. According to figures released by ASX, between 2008 and 2010, the proportion of Australians holding shares directly rose from 36% to 39%. Of those holding direct investments, one of the highest areas of growth was in listed interest rate securities, which rose from 14% in 2008 to 19% in 2010<sup>4</sup>.

ASX has been very active in the establishment of the market for the listed Commonwealth Government Securities, which are designed to appeal to the retail investor through measures such as the structuring of CGS as depository interests - the 'Exchange Traded Treasury Bonds' – with a face value of \$100, and trading them on a transparent and open market in the same way as equities.

The efforts to make interest rate securities more accessible to retail investors are commendable. However, from the adviser's point of view, in advising those investors, there are still some issues that need to be addressed. While the products may look and feel more like equities, and be traded on markets like normal shares, there are still fundamental differences between equity and debt securities. This means that stockbrokers with little experience in bonds may not be equipped to advise on these products. They are not just another product to add to the suite of products on which they advise. They are priced differently to shares. There are different types of corporate bonds, which may vary as to the level of protection offered to investors on liquidation. For example, debentures are usually secured by a charge over the company's assets, while unsecured notes are not. Not all corporate bonds may be suitable for retail investors. Retail bond markets will probably not be as active as the share market, since especially with CGS like Exchange Traded Treasury Bonds, these bonds will tend to be a core, long-term holding for retail investors' portfolios.

Therefore, Adviser knowledge will definitely need to be updated if more bonds are to be presented as investment options to retail clients.

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<sup>3</sup> Australian Government [\*Discussion Paper: Development of the retail corporate bond market: streamlining disclosure and liability requirements December 2011\*](#) p.2-3

<sup>4</sup> Australian Securities Exchange *2010 Australian Share Ownership Study* Sydney, 2011, p.6-9

Another issue in adding bonds (including CGS) to the suite of stockbrokers' offerings is the lack of dependable research. With shares, stockbroking firms rely on in-house expertise from specialist research analysts to analyse the relevant issuer companies and sectors, or have third party arrangements with specialist research houses to obtain such research. This research informs the advice that is then given to clients. Accordingly, retail advisers may lack specialist research in order to properly advise their clients.

The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill* introduces measures to facilitate the issuance of simple corporate bonds, which the Government hopes will make it easier to buy and sell these financial products, and enable business to better harness national superannuation savings to domestically fund more productive investment in the economy, reducing reliance on offshore wholesale funding<sup>5</sup>. The legislation amends the *Corporations Act* to:

- introduce a two-part simple corporate bonds prospectus;
- modify and clarify the director's liability in relation to simple corporate bonds; and
- allow for simple corporate bonds to be transferred from the wholesale to the retail market, in the same way as retail CGS about to be traded on ASX, through the simple corporate bond depository interests.

We agree that the measures in the Bill should reduce the compliance costs for issuers of simple corporate bonds to retail investors, and that it achieves the appropriate level of liability for the directors of such issuing companies, both in the first issuance and in subsequent tranches.

While from the issuer's point of view, the Bill will bring many benefits, we note our above comments in relation to adviser knowledge and research. These factors will need to be addressed for the continuation of a deep and liquid market in these securities.

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<sup>5</sup> The Hon Bill Shorten MP, Minister for Financial Services and Superannuation *Retail Corporate Bonds Legislation* Joint Media Release with The Hon Wayne Swan Treasurer 20 March 2013, No.13 of 2013

## **B. Restricting the use of the terms ‘financial planner’ and ‘financial adviser’**

For some years, there has been misuse of the terms ‘financial planner’ and ‘financial adviser’, particularly the latter. Until now, anyone can call themselves a financial planner or adviser, and there has been very little the regulators could do about it. In particular, a number of property salesmen and mortgage brokers have marketed themselves as ‘financial advisers’. This has posed a risk to consumers, since these parties (especially prior to the regulation of mortgage brokers in *National Consumer Credit Protection Act 2009* have not had to comply with the investor protection measures of the *Corporations Act*, including disclosure, conduct and compensation requirements.

According to the Explanatory Memorandum to the Bill (at p.27):

*2.5 This measure complements the FOFA reforms by clearly identifying genuine providers of financial product advice, thereby improving consumer trust in the financial planning and advice industry. By prohibiting anyone who is not authorised under an Australian financial services licence (Licence) from holding themselves out to be a financial adviser or financial planner, this measure enhances consumer protection and improves outcomes for consumers.*

We welcome the new requirement. We particularly welcome the use of the terms being tied to authorisations under the **AFSL**, rather than membership of any particular **industry body**.

### ***Restrictions on use of Stockbroker or Sharebroker***

For many years, the stockbroking industry has been subject to strict restrictions in relation to terminology. Section 923B of the *Corporations Act* (and its predecessors) makes it an offence to use the term -

*‘...stockbroker or sharebroker, or any other word or expression (whether or not in English) that is of like import to that expression’,*

*unless* the party is licensed by ASIC to provide financial services and is a participant in a licensed market.

In addition, section 791B makes it an offence for a person to hold out that they are a participant of a licensed market if they are not.

The Stockbrokers Association often advises ASIC of apparent breaches of section 923B and/or section 791B. While we are not aware of the prosecution of a person for a contravention of these sections, ASIC has on occasion taken administrative action<sup>6</sup>.

We urge ASIC to remain vigilant and to use its enforcement powers against parties for the misuse of these existing and new restricted terms. As they are often aggressively used in marketing, their misuse has the potential to cause significant loss to clients through misleading and deceptive conduct.

**David W Horsfield**  
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**Stockbrokers Association of Australia**  
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<sup>6</sup> For example, the provider has entered into an Enforceable Undertaking with ASIC as a remedial measure as was the case recently with [Halifax Investment Services Ltd.](#)