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Manager
Financial Services Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: RetailCorporateBonds@treasury.gov.au

Dear Sir/ Madam

Subject: Discussion paper - Development of the retail corporate bond market: streamlining disclosure and liability requirements

CPA Australia represents the diverse interests of more than 139,000 members in 114 countries throughout the world. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, CPA Australia welcomes the opportunity to comment on the issues raised in the abovementioned Discussion Paper.

If you have any queries in relation to any aspects of the attached submission, please contact Garry Addison, Senior Tax Counsel, on (03) 9606 9771 or via email at garry.addison@cpaaustralia.com.au.

Yours faithfully

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Submission by CPA Australia on 'Developing the Retail Corporate Bond Market: streamlining disclosure and liability requirements – Treasury Discussion Paper (DP)

Responses to Discussion questions

Should the short form prospectus be compulsory for issuers and bond issues that meet the eligibility requirements specified in the DP, or should it be optional?

CPA Australia believes that the existing retail corporate bond disclosure and liability regime should be appropriately re-designed to facilitate a sustainable corporate bond market. This should be done as proposed in the DP including by way of:

- reducing the current regulatory burden on issuers while maintaining appropriate investor protection
- ensuring that investors are made aware of the key features and risks associated with buying a particular bond from a particular company, while reducing the complexity of prospectuses to make them easier for investors to understand and
- moving to an appropriate liability regime which balances investor protection against ensuring that there is not an undue burden on directors.

In this light, we believe that an appropriate short form prospectus should be compulsory for issuers and bond issues that meet the eligibility requirements set out in the DP.

For reasons of simplicity for retail investors, we do not favour the use of multi-stage disclosure arrangements except in circumstances as approved by ASIC.

Are the proposed conditions as specified in paragraph 24 of the DP appropriate and are there any additional or alternative conditions that should be imposed?

The proposed conditions seem appropriate to us and we are not aware of any additional/alternative conditions that might be imposed at this stage.

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?

Unlisted entities with listed securities should only be able to use the shorter prospectus if they have the same annual financial reporting obligations as listed entities.

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?

The relevant subsidiary should only be able to use the shorter prospectus if it has the same annual financial reporting obligations as a listed company.

Is the requirement for an unmodified auditor's report appropriate?

Such a report would not appear to be necessary for the reasons listed in the DP.

Are the proposed conditions canvassed in paragraphs 25 to 32 of the DP appropriate? Are there any additional or alternative conditions that should be imposed?

We broadly agree with the proposed conditions canvassed in the abovementioned paragraphs. However, we do not support the extension of eligibility to bonds that have conditions such as subordination, very long terms or deferral of interest on the grounds that the increased risk disclosure required for such bonds would be inconsistent with the proposed shorter disclosure for vanilla type bonds.

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?

In our view, it would be highly desirable for either the issuing entity and/or the relevant bond issue to have an investment grade rating of at least 'BBB' (medium credit quality) or preferably a higher rating from one of the major bond rating firms such as Standard & Poor's. We understand that credit ratings for bonds below 'BBB' are generally considered to be of low credit quality or possibly 'junk bonds'.

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

It would seem desirable for ASIC to ensure that the relevant bond issue met the minimum credit requirements as appropriate for retail investors.

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

We broadly agree with the general approach to content requirements and prospectus length as outlined in the DP. In particular, we also see merit in prescribing the maximum length of the prospectus to ensure that the objective of a shorter document is achieved, as per recent reforms in respect to the shorter PDSs for superannuation funds and simpler managed investment schemes. We believe that a prospectus of around 30-35 pages would be more appropriate for the average retail investor subject to further assessment of this via consumer testing.

Assuming that headings are appropriate, are the (above) headings (as per the DP) suitable? Would other headings be preferable? Would an investment summary be a useful inclusion?

The headings specified in the DP would appear to be appropriate consistent with their use for other related shorter PDSs for superannuation funds, etc as mentioned above. The use of an investment summary as per other similar products would also appear to be a useful inclusion.

Are the content requirements suggested in the DP (at paras. 44-62)) appropriate? Are there alternative or additional content requirements that should be adopted?

We have no problems with the abovementioned content requirements.

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?

In the light of recent developments in the European bond markets, it would seem appropriate and timely in our view for the relevant issuer to provide appropriate information on its capacity to meet its obligations under the proposed bond issue, including forecasts of future earnings, etc as required by ASIC.

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

It would seem appropriate for the relevant formulae to be prescribed. We are not in a position to advise on the relevant formulae to be used in this context but assume that ASIC could consult on the matter with the Australian Government Actuary (AGA) and/or relevant financial market experts.

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?

It may be appropriate for the relevant issuer to use other metrics subject to approval of the latter by the AGA and/or other independent experts.

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;*
- *Inclusion of the terms of the bonds and the trust deed (if applicable) on the issuer's website rather than in the prospectus;*
- *Inclusion of a summary of the tax consequences of the bonds for investors rather than a full tax opinion from a tax advisory firm;*
- *Requiring issuers to refer to other sources of information about themselves such as their Annual Reports and websites; and*
- *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.*

We believe that other content requirement reforms of the kind mentioned above would be desirable.

Will retail investors benefit from reading the reports referred to at paragraph 63 of the DP and should account be taken of the fact that not all bonds require a trustee and therefore not all bonds are subject to section 283BF?

We support the concept of ongoing disclosure to ensure that investors and their advisers are fully aware of the risk and return profiles of the bonds they choose to invest in. Consistent with this, we believe that such disclosure should alert investors of those bonds which are not subject to section 283BF and thus do not require a trustee and the potential implications of this.

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?

We support the two-part prospectus approach referred to at paragraph 64 of the DP (ie. a base prospectus and a second part prospectus relating to the terms of a particular offer) subject to the prospectus meeting the content requirements for a retail corporate bonds prospectus. This is because, as noted in the DP, the first part of the prospectus would be a base prospectus which could be used for several different offers, while the second part would cover the terms of a particular offer which could vary in the light of the prevailing economic conditions at the time of the relevant issue.

We broadly agree that the appropriate content of a base prospectus should comprise general information that is unlikely to change significantly over the life of the base prospectus. The second part of the prospectus could include details of the particular offering that have not been included in the base prospectus such as the interest rate, term, offer size and application process, etc.

What should be the maximum life of a base prospectus?

The current maximum life for a base prospectus of 2 years as allowed by ASIC would seem to be appropriate going forward having regard to the relevant cost and prudential issues in this area.

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?

Consistent with current practice, it would seem appropriate that the content of the current disclosure documents be broadly along the following lines:

- Base prospectus containing general information relating to the issuer and any future bond offers;
- Second part prospectus containing specific terms of the particular offer such as interest rate, term, offer size, application process, effect of offer on the issuer, and information excluded from continuous disclosure and other supplementary information;
- Short form prospectus – a first tranche issued through this prospectus with a sufficiently long life to enable subsequent tranches to be issued possibly over a maximum period of 5 year;
- Terms sheet – this document can be used for subsequent tranches to outline the key terms of a public offer such as the relevant interest rate, term, offer size, application process and effect of the offer on the issuer; and
- Cleansing statement – used for subsequent tranches to disclose any material matters relevant to the decision to invest in the bonds not already disclosed to the market.

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 on ASIC's MoneySmart website?

The proposal in the DP that the shorter prospectus may refer to material located outside the prospectus document itself seems appropriate given that incorporating information by reference would not involve a change to the existing law.

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)?

While we note that the prospectus liability regime would not attach to this referenced information as it would not formally be part of the prospectus, the information would still be subject to requirements such as those against misleading and deceptive conduct.

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

It would seem appropriate to remove the current deemed liability of directors for misleading or deceptive statements in a prospectus under sections 728 and 729 of the *Corporations Act* given the Government may adopt specific content rules and the fact that the current liability arrangement is seen as a factor inhibiting retail bond issues as well as a factor increasing the expense of such issues.

Should the exemption for prudentially regulated entities under subsection 708(19) be amended in the context of these proposed reforms?

We support the view expressed in paragraph 88 of the DP that sub-section 708(19) should not be amended.

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

We do not see a need for a transition period as we believe that the proposed reforms aimed at stimulating the retail corporate bond market should be implemented as soon as practicable.

The following factors are relevant in this regard:

- tightening international credit markets;
- the large amount of corporate debt which is to be refinanced over the next 12 to 18 months
- the need for Australian banks to move away from their reliance on off-shore wholesale debt;
- the benefits for Australian superannuation funds (including self-managed funds) of being more easily able to invest in an asset class with a lower risk level than equities; and
- the difficulty for many small/medium companies in accessing the equity markets.