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Exposure Draft: Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013

ANZ is pleased to provide a submission on the Exposure Draft of the *Corporations Amendment (Simple Bonds and Other Measures) Bill 2013*. We welcome the Government's initiative to streamline the offering of simple corporate bonds.

ANZ is strongly supportive of the Government's objective to create a deep and liquid corporate bond market for Australian retail investors. We believe this objective can be achieved by adopting a disclosure and regulatory regime for wholesale issues which has the potential for issuers to easily include retail issues in the future without impacting on the current regime for wholesale issues.

Our comments on the Exposure Draft of the *Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2011* are below.

Due diligence

ANZ strongly supports the development of a combined wholesale and retail bond market (as largely exists in the Australian equity market). One step towards achieving a combined approach would be to align the due diligence procedures between retail and wholesale issues. ANZ recommends that Treasury remove simple corporate bonds from the proposed prospectus regime altogether by adopting the 'lo-doc' process currently used for equity rights issues through the use of 'cleansing notices'. Such a notice is more than is required for existing wholesale corporate debt issues and would provide information and guidance for prospective retail investors. It would also simplify due diligence procedures for retail bonds, allowing due diligence to be substantially dealt with at a management rather than board level.

Clear exemption for wholesale transactions

In the alternative where a prospectus is required, Treasury should ensure that the prospectus for wholesale bond issues can also be used as the base prospectus for simple bond issues, and that its use for solely wholesale bond issues would not fall

under the proposed simple bond prospectus liability regime. This is essential to ensure the integrity of the existing wholesale bond market. Clarity on this would encourage issuers of wholesale bonds to invest in retail capable documentation by allowing the wholesale bond prospectus to be used as the base prospectus for a retail bond issue that would allow them to readily expand into the retail market as market conditions permit.

Reliance on Continuous Disclosure

The disclosure cost of accessing other debt sources is relatively low, particularly for the highest quality issuers. In order to attract these high quality issuers to the retail market, the disclosure costs for retail issues must be broadly equivalent to other means of raising debt. ANZ supports allowing issuers to incorporate documents and information by reference, including capturing documents for reference in the future as proposed by the draft legislation. However, the Bill, as drafted, includes documents incorporated by reference under the same disclosure and liability regime as the base and offer specific prospectus. ANZ believes that to encourage and streamline the process for issuing retail corporate bonds, documents incorporated by reference that are issued under the continuous disclosure regime should not be captured by the prospectus liability regime.

Trustee and CHESS Depository Interests

In our previous submission to the Treasury on the Development of the Retail and Corporate Bond Market: Streamlining Disclosure and Liability Requirements in 2012, ANZ outlined an approach that would allow corporate issuers to utilise the market infrastructure being created for the ASX listing of Commonwealth Government Securities. We are very pleased to see the adoption of certain provisions in the Bill to improve the ease of trade in retail bonds such as allowing simple corporate bonds to be traded as depository interests.

The proposed infrastructure will see CHESS Depository Nominees (a wholly-owned subsidiary of the ASX) act as custodian of retail bond depository interests. However, we believe this will also effectively duplicate the role of the debenture trustee, which is required by the Corporations Act 2001 whenever retail bonds are offered. The appointment of a debenture trustee is a major ongoing cost for current retail bond issuers, which is not required in the wholesale market. ANZ believes there is an opportunity to remove the requirement of issuers to appoint a debenture trustee when CHESS Depository Nominees acts as custodian of the bond for the retail investors that hold bonds via a CHESS Depository Interest.

Threshold

ANZ proposes that the minimum offer size of \$AUD50 million be applied to an initial retail bond issue and not to apply to subsequent issuances under the program document.

Seniority

ANZ believes that the requirement for 'simple bonds' to have a higher priority than unsecured creditors in a winding up of an issuer will exclude issuers who borrow on an unsecured basis. ANZ proposes that the legislation be amended to mandate that 'simple bonds' are issued with an undertaking from the issuer not to subordinate the interests of simple bond investors to any other unsecured creditors (negative pledge). More information on this proposal from an earlier submission is available [here](#).

Maturity

A key factor in the development of a retail corporate bond market is ensuring that investors have access to bonds with a range of maturities. Retail investor feedback shows a stronger demand for bonds with longer maturities up to, and beyond, 15 years. Issuers are more likely to issue both wholesale and retail bonds where an opportunity exists for issues with longer maturities and where, consequently, retail distribution fees are lower on a per annum basis. As a result, ANZ recommends that the statutory fixed term of no more than 10 years currently included in the draft exposure legislation is extended to at least 15 years.

ANZ would be pleased to provide any further information on this submission. Michael can be contacted on (03) 8654 3459 or Michael.Johnston2@anz.com.



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