

15 February 2013

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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](http://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,

A handwritten signature in black ink, appearing to read 'Steve Lambert', with a stylized flourish at the end.

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