

15 February 2013

Manager  
Disclosure and International Unit  
Retail Investor Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [SimpleBonds@treasury.gov.au](mailto:SimpleBonds@treasury.gov.au)

Dear Sir / Madam

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

Thank you for the opportunity to make a submission on the exposure draft of the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, released by The Treasury in January 2013 for public consultation (*Exposure Draft*).

Telstra welcomes the intention of the Exposure Draft to facilitate increased trading in retail corporate bonds in Australia through the introduction of new measures governing the issuance and trading of 'simple corporate bonds' (**SCBs**). These are positive measures and take an important and significant step towards lessening hurdles for ASX listed companies (and their guaranteed subsidiaries) seeking to make offers of debt securities to retail investors in Australia.

We believe it is in the best interests of the Australian community at large to generate a more vibrant and accessible retail bond market than currently exists.

Telstra wishes to make the following comments on key aspects of the Exposure Draft as it currently stands:

#### ***Ranking***

Telstra notes that the draft legislation contains provisions that appear to require SCBs to rank ahead of all other senior unsecured indebtedness. This would require an issuer to grant security, which would conflict with negative pledges granted by many ASX listed companies, and prevent them from issuing SCBs.

We understand that the provisions are intended to ensure that SCBs cannot be subordinated (which would not conflict with most, if not all, negative pledges) and that The Treasury has acknowledged there are shortcomings with the existing text and those shortcomings will be rectified in the next draft.

#### ***Directors' Consent***

On our assessment of the draft proposals the directors of an issuer would continue to be required to specifically (a) consent to be named in the Base Prospectus used for the issuance of SCBs under section 716, and (b) consent to lodgment of the Base Prospectus under section 720, which seems to create a risk of criminal liability exposure under section 1308 if the Base Prospectus is misleading or deceptive.

Accordingly, in consenting to lodgment, it seems that directors must take "reasonable steps" to ensure the document is not misleading or deceptive (i.e. the directors should read the whole document, before giving consent, be given an opportunity to ask questions, and if they have any suspicions, pursue the issue until they are satisfied there is no problem). As a result, the processes for undertaking an issue of SCBs will still require active board involvement, which is different to the process required for a wholesale issue.

We have two comments on these requirements:

- (a) Firstly, the identity of directors of an ASX listed company (or a subsidiary issuer) is a matter of public record and they should not need to formally consent to be named as directors.
- (b) Secondly, directors should be able to delegate the responsibility for consenting to the lodgment of a prospectus to senior management if it is reasonable to do so in the circumstances (and is consistent with the general duties of directors), in the same manner as a wide range of decisions are delegated to senior management of an ASX listed company

Of course, an individual director (or other person) should be liable if “involved” in a contravention by an issuer of SCBs, again in the same way as would be the case if the director was “involved” in other contraventions of the Corporations Act.

### ***Credit Ratings***

Currently the major credit rating agencies (S&P, Moody’s & Fitch, together the **Agencies**) are not licensed to issue retail bond ratings as they consider that a number of the provisions which would attach to an Australian financial services licence authorising them to do so are too onerous (in their view). Whilst it is quite likely the Australian Ratings will give ratings to issues of SCBs it would be an advantage to many retail investors to obtain a ratings assessment from one or more of the Agencies, particularly as wholesale investors are likely to be able to do so.

Amongst other things it would help foster integration of the retail and wholesale markets for SCBs. Retail investors in particular would gain benefit from a rating and it would boost market liquidity, confidence and appeal. This may be possible by producing specific obligations for Agencies providing a rating for SCB’s as a class of retail investments.

### ***Bond Registry***

The requirement for an issuer bond registry for depository interests should be clarified. Operating a separate registry is expensive and a possible deterrent to potential issuers. We respectfully suggest The Treasury consider a CHESS only approach with an interposed ASX nominee company to hold securities held in Austraclear.

### ***Trustee***

The proposed requirement for a trustee can be onerous particularly if quarterly reporting against financial covenants is required. An annual “Certificate of Non-default and Compliance”, similarly to the certificate used in the US SEC registered market could be allowed as an option.

Alternatively the requirement for a trustee could be removed or relaxed for SCBs.

### ***Existing A\$ Bonds***

We recommend The Treasury consider allowing appropriately seasoned bonds issued by an ASX listed company (or a guaranteed subsidiary) (e.g. on issue for more than 12 months) to qualify as SCBs and immediately allowed to trade. This move could give the emergent retail bond market an immediate boost and credibility.

We understand that transferring existing seasoned bonds to the SCB regime is not prohibited by present drafting, so long as a trustee has been appointed, but suggest that a clarifying statement be incorporated to confirm the position. In order to facilitate such a transfer, the “cleansing notice” regime under section 708A could be adapted.

The “cleansing notice” regime could also be readily used for fungible institutional placements of bonds in the same class as listed SCBs (i.e. true tap issues). This would bring the regime more closely into line with existing classes of listed equity, and would remove a disincentive to initiatives to bring the wholesale and retail markets together.

### ***Content***

Another key element to the success of this initiative will be the content requirements to be prescribed by regulation, which will drive not only simplicity of documentation but the simplicity of process (and cost).

In particular:

- the content of the base prospectus should not have to repeat factual information that has been previously disclosed to the market already, particularly information which is changed and updated readily via continuous disclosure;
- continuous disclosure information and periodic disclosure (e.g. annual reports, annual and half-yearly financial statements) should not have to be repeated - it is readily accessible on websites.
- financial statements should not have to be included or incorporated in the base prospectus – they are regularly updated and superseded, and are publicly available. Inclusion of financial statements is also likely to require accounting sign-offs for each offer, which would be time consuming.
- the second part prospectus should be able to be as short as a term sheet or cleansing notice, and should be focused on the particular offer rather than updating or summarising general factual information about the issuer. It should not have to repeat information from the base prospectus, or other publicly available information.

### **Summary**

We are supportive and enthusiastic of this Government initiative to broaden and facilitate a deeper and more flexible retail bond market in Australia. We believe this initiative will make substantial improvements in the supply side of this market.

If you have any queries or would like to discuss our submission further you may wish to contact our Treasury department on (03) 8647 9708 in the first instance.

Yours sincerely



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