



Australian Government

The Treasury

**SINGLE-STAGE
REGULATION IMPACT STATEMENT**

Streamlining disclosure and liability requirements

March 2014

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1 Background

Corporate bonds are a financial instrument companies use to raise funds from investors. Investors 'buy' bonds in return for the company paying the investor interest over the life of the bond with the principal purchase amount being repaid at the end of the bond's life, that is, at the bond's maturity date. A company may make one or more tranches of bonds from a bond offer.

An offer of **retail** corporate bonds requires disclosure to investors under Chapter 6D of the *Corporations Act 2001* (the Corporations Act). Retail investors are similar to 'retail clients' as defined in sections 761G and 761GA and are investors who have net assets of less than \$2.5 million, or gross income for each of the last two financial years of less than \$250,000 per annum or a person who is not controlling \$10 million or more in assets. This is in contrast to **wholesale** bonds, which may be offered to sophisticated or professional investors (commonly referred to as wholesale investors).

As at June 2013, \$300 million of corporate bonds were on issue in the Australian retail market. In the international wholesale market Australian corporate entities had bonds worth \$612.4 billion on offer.

Where financial products, including corporate bonds, are offered, the Corporations Act imposes disclosure obligations on product issuers. The Corporations Act also provides the right to those who suffer loss or damage resulting from misstatements or omissions in disclosure material. Persons liable for loss or damage include directors (or proposed directors) of the body making the offer and underwriters named in the disclosure material. Criminal penalties can also apply where a person makes misstatements or omissions in disclosure material and a person suffers loss or damage.

The degree of disclosure required by the Corporations Act is greater where the financial product, such as a bond, is offered to retail customers compared to wholesale customers. Retail customers are less likely to have the financial background or analytical tools available to be able to make their own assessment of risks associated with a financial product and the information provided through the disclosure obligations is intended to enable the retail investor to better understand the risks of the financial product they are investing in.

Disclosure relief is available for certain offers of 'vanilla' bonds, which are offered under a simplified vanilla bonds prospectus.¹ Vanilla bonds are bonds which are straight forward and do not have complex or unusual terms and conditions. For example, features the bond must have include that: the bond be denominated in Australian dollars, have a maturity length of no more than 10 years, repay the principal to the investor at the bond's maturity, pay interest periodically, not be convertible to any other form of security and rank at least equally with amounts owed to unsecured creditors of the issuer.

The current relief for vanilla bonds allows offers of bonds to be made using a simplified two-part prospectus where:

¹ This relief is provided by ASIC Class Order 10/321.

- investors are provided with a base prospectus (which could be used for a number of offers, and has a maximum life of two years), together with a second part prospectus (which relates to the specific or variable aspects of the bond offer, such as the terms of the bond, the interest payable on the bond and the timing of interest payments);
- the combined documents must contain information on the key features, risks and benefits of the bonds, brief details of the business of the issuer and a description of its financial position; and
- bond issuers are required to update key financial disclosures on a half-yearly basis, and provide these updates with other quarterly reports to the relevant market operator and include them on the issuer's website.

2 Problem

Australian corporate entities generally have good access to finance through wholesale markets, lending institutions or equity financing. However, there are benefits of a deeper and more liquid retail corporate bond market for bond issuers and investors.

As at December 2013, Australian corporate entities had \$612.4 billion of bonds on offer in international markets with another \$9.4 billion of Australian Government Treasury bonds on offer internationally². This contrasts with only \$300 million of bonds on offer in the domestic retail market. Further, where securities including bonds are offered in Australia, corporate bonds represent only 0.1 per cent of the total fixed interest securities listed on the ASX and only 0.8 per cent of the total private sector fixed interest securities listed on the ASX (see Table 1).

Table 1: ASX listed fixed interest securities, June 2013 (source)

Type of fixed interest	Number issued	Market capitalisation (\$m)	Share of capitalisation (%)	Share of private sector fixed interest securities (%)
<i>Private sector securities</i>				
Corporate bonds	4	300	0.1	0.8
Hybrids	33	22, 200	7.0	59.0
Convertible notes	17	1, 800	0.6	4.8
Floating rate notes	24	13, 300	4.2	35.4
Total	78	37,600	11.9	100.0
<i>Government securities</i>				
Commonwealth Government Securities	23	277, 500	88.1	na
Total	101	315,100	100.0	na

² Source: *BIS Quarterly Review*, December 2013.

The Report by the Australian Financial Services Task Force on 'Australia as a Financial Centre: Building on our Strengths' (the Johnson Report)³ assessed the strengths and weaknesses of Australia's financial sector and found that Australia's retail corporate bond market is one area of weakness in an otherwise relatively efficient and competitive financial sector. This is in contrast to the retail bond markets of Europe, the United States and the United Kingdom, which all have thriving bond markets.

The Johnson report found that there was very limited choice for consumers in the retail bond market in Australia with only a small number of corporate bonds on offer and that the corporate entities offering bonds were dominated by the banking sector. It also noted that the bonds on offer provided a low diversity in maturity life and it was significantly shorter (as average maturity of bond issues was 2.5 years) than the bonds on offer in other countries which also had a greater variation of maturity lengths. Further, in Australia there was little development of a secondary market to trade in corporate bonds or their derivatives which restricted the liquidity of the bond market.

Costs can be a major deterrent to raising finance through the retail market. Table 2 shows indicative costs of raising finance through different mechanisms.

Table 2: Indicative cost comparison across funding options¹

		Retail Corporate Bond	Wholesale Bond Market	Lending Institution	Equity
Cost Effectiveness	Spread over benchmark	250 - 300 bps	200 - 250 bps	150 - 200 bps	na
	Syndicate Fees (bps)	Arranger fee: 25 bps Management fee: 50 bps Selling fee: 100 bps	30 bps	50 to 60 bps	Underwriting: 200 bps Management: 50bps
	Documentation, accounting, legal and due diligence costs ²	<ul style="list-style-type: none"> Prospectus \$1.1-\$1.3 million (55 - 65 bps) 	<ul style="list-style-type: none"> Information Memorandum and Bond Deed Poll \$300,000-\$420,000 (15 - 21 bps) 	<ul style="list-style-type: none"> Information Memorandum (\$80,000-\$120,000) (4 - 6 bps) Arranger fee (3 - 5 bps) 	<ul style="list-style-type: none"> Investor Presentation and Low Doc Offer Booklet \$500,000-\$1.1 million (20 - 50 bps)
	Rating of bond offer ²	<ul style="list-style-type: none"> \$140,000-\$160,000 (7 - 8 bps) 	na	na	na
	Roadshow and marketing cost ²	<ul style="list-style-type: none"> \$200,000-\$450,000 (10 - 22 bps) 	Minimal	Minimal	Minimal
	Listing and Registry costs	<ul style="list-style-type: none"> \$140,000-\$160,000 (7 - 8 bps) 	na	na	na
	Total	504 - 578 bps	245 - 301 bps	210 - 270 bps	270 - 300 bps

³ Released in November 2009.

Comments	Advantages	<ul style="list-style-type: none"> Funding diversity No credit rating of bond issuer required (can be used by corporates too small to receive a credit rating) 	<ul style="list-style-type: none"> Tighter pricing and relatively lower transaction costs Documentation is easy to execute with less onerous reporting requirements 	<ul style="list-style-type: none"> Tighter pricing and relatively lower transaction costs Documentation is easy to execute with less onerous reporting requirements No rating requirement 	<ul style="list-style-type: none"> Equity funding No rating requirement
	Disadvantages	<ul style="list-style-type: none"> Higher cost - more onerous documentation and reporting requirements 	<ul style="list-style-type: none"> External rating required 	<ul style="list-style-type: none"> Low funding diversity 	<ul style="list-style-type: none"> More onerous documentation and reporting requirements

1 Estimates based on investment grade 'BBB – band' ASX200 corporate borrower seeking \$200 million. Pricing is dynamic and will depend on the company, its business and financial performance and prospects.

2 Professional fees will depend on the advisory firm and any complexities introduced by the bond issuer and the capital raising option chosen.

It is worth noting that despite the higher cost of raising finance through a retail corporate bond offer, the offer of retail corporate bonds can be a viable option for raising finance. For example, companies who are not large enough to be eligible for a credit rating cannot access the wholesale bond market. At other times a corporate entity may be unable to raise finance as it may breach ASX listing rules which prohibit a listed company from issuing more than 15 per cent of its issued equity securities in any 12-month period.

Issuing corporate bonds in the retail market generally requires a detailed prospectus. Retail investors are provided with a prospectus to alert them to the risks involved with the bond as the Corporations Act assumes that retail customers are not fully aware, or are not sufficiently equipped, to evaluate the full range of risks that can be inherent in a corporate bond. A bond issued in the wholesale market however, does not require a prospectus as wholesale market investors are considered to have sufficient information and possess sufficient resources to evaluate the investment.

To ensure that bond issuers satisfy the disclosure requirements, prospectus material tends to be long and highly detailed. Creating highly detailed and lengthy prospectus documents can be a major cost for bond issuers with the costs of some prospectus reaching \$1.5 million for a retail bond issue. It is also the case that lengthy, highly detailed disclosure documentation does not necessarily improve the retail client's understanding of the risks of the bond as most people find it difficult to absorb the large volume of information and the detailed nature of the disclosure requirements makes it difficult to identify, or deters clients from identifying, key information about the risks of the bond.

Relief from some of the disclosure requirements is available where a bond has 'vanilla' features through ASIC Class Order CO 10/321. However, the disclosure relief provided by CO 10/321 has not been sufficient to make it attractive for corporate entities to issue bonds in the retail market. Since the CO 10/321 came into effect in May 2010, only two bond issues have been made utilising CO 10/321's disclosure relief. In addition, when one of the issuers offered bonds under the conditions set out in CO 10/321, the issuer was uncertain as to what information needed to be included in each of the parts of the two-part prospectus and undertook considerable work to ensure the content in each of the documents was appropriate. This resulted in the bond issuer incurring greater costs and time delays than it was expecting. In targeted consultations, Treasury was told by

industry stakeholders that bond issuers were reluctant to issue bonds under CO 10/321 as they were concerned that the process could be too time consuming and costly.

In its submission to the former Government's *Discussion Paper: Development of the retail corporate bond market: streamlining disclosure and liability requirements* (former Government's Government Discussion Paper), the Australian Bankers' Association (ABA) considered that the 'existing regulatory relief [provided by CO 10/321] is too restrictive with regards to the conditions applied to the bonds'.

A non-regulatory, but relevant additional element of the high cost of issuing bonds in the retail market is the need to liaise with a larger broker network than is required when selling bonds in the wholesale market. Bond issuers incur costs through the need to distribute information, liaise and pay fees through a broker network. Selling a bond in the retail market may require engaging with hundreds of brokers (and advisers) to inform and educate them about the bond. This compares to dealing with only a handful of brokers to sell bonds in the wholesale market. Further to higher distribution costs compared to the wholesale market, the purchases of bonds by retail investors can take longer resulting in a delay in the entity raising funds and potentially increasing the entity's costs.

The second major deterrent to issuing retail corporate bonds is the law concerning civil and criminal liability risk borne by company directors. Section 729 of the Corporations Act provides that a person who suffers loss or damage as a result of a misleading or deceptive statement or omission in a prospectus may recover the amount of that loss or damage from the company, underwriter and each current or proposed director of the company even if they did not commit, or were not involved in, the particular statement or omission. Directors can also be criminally liable for false or misleading statements or omissions under sections 1308 and 1309 of the Corporations Act.

This risk acts as a disincentive to company directors undertaking retail bond issuance. Where a retail bond issue does occur, a high degree of (costly) due diligence is undertaken by the company (including involvement by one or more directors to ensure they have checked and understood the documentation to a sufficient level that they are comfortable enough to release the offer documentation). On the other hand, where a bond is issued in the wholesale market a prospectus is not required and company directors do not face the same criminal or civil liability risk.

The ABA noted in its submission to the former Government's Discussion Paper that it 'considers the criminal and civil liability imposed on directors of companies imposes an unreasonable and unnecessary burden on corporate issuers'.

The NAB in its submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013 identified the complexity of prospectus requirements and directors liability risk as key impediments to developing the retail bond market and as reasons why there has been so little bond issuance under ASIC Class Order CO 10/321. The Government understands through targeted consultation that, given industry's uncertainty about prospectus requirements and current directors' liability risk there is no intention by any corporate entities to issue corporate bonds to the retail market.

Australian companies wanting to obtain funding usually do not issue retail bonds. Instead they generally prefer to:

- access overseas debt markets (generally the United States, the United Kingdom or Europe);
- borrow from the Australian wholesale market;
- borrow from lending institutions such as banks; or
- issue equity (for example, issuing shares via a placement, rights issue or share purchase plan) or issue some combination of debt and equity (for example, hybrids or convertible bonds).

While some of the problems identified above are inherent to the industry (such as requiring more brokers to access the retail market compared to the wholesale market) other issues such as the degree of regulation affecting disclosure and risks for company directors can be addressed through changes in Government policy.

3 Objective

An effective retail corporate bond market offers investors an opportunity to diversify their investments in terms of the risk they face and in the length of fixed income investment choices.

It also enables bond issuers to access another source of funding which may be more attractive to them than the wholesale market, lending institutions or offering equity. During the global financial crisis when access to funding became very tight, enabling business to access funds from retail investors could have given business more flexibility and reduced their risk. Also, as lending institutions would not be as heavily sought to provide funding for big business, it may provide scope for lending institutions lend to other sectors of the economy.

The Government's objective is to aid the development of a strong retail corporate bond market in Australia while maintaining appropriate investor protection. This may include removing regulatory burdens that could act as disincentives to bond issuance. The Government is also conscious of the need to ensure adequate investor protection from undisclosed risks to promote confidence in the retail corporate bond market. If Australia is to develop into a leading financial centre that provides effective and efficient financial services across a broad range of products and asset classes, then a more diversified and liquid bond market is required.

4 Options

Option 1 – Reduce disclosure burden and reduce company directors' risk

Disclosure

It is proposed that corporate entities issuing bonds to the retail market be able to meet the Corporations Act disclosure obligations by more targeted disclosure. Some information will be able to be incorporated into the disclosure documentation by reference and to allow first tranche prospectuses to be used for subsequent tranches of bond offers. It is proposed to achieve this goal

by requiring that issuers provide a two-part prospectus for simple corporate bonds. The two-part prospectus would consist of an offer-specific prospectus and a base prospectus.

The offer-specific prospectus would be a short document setting out the key information specific to the bond offer while the base prospectus would set out general information about the issuer and the bond issue that is unlikely to change significantly over the life of the base prospectus. This disclosure regime would require less disclosure documentation to be reproduced and checked than is currently the case, it would result in lower disclosure costs for business and reduce the time taken to issue bonds.

This less burdensome approach to disclosure for simple corporate bonds takes into account the information about the entity and its financial position already available via existing continuous disclosure requirements. Accordingly, the proposed disclosure regime places more emphasis on the rights and liabilities attached to the bond being issued rather than corporate information.

This approach is consistent with the Johnson Report recommendation that the regulatory requirements for listed companies issuing high quality corporate debt⁴ to retail investors be reduced. The recommendation stated that:

Such issuers would no longer be required to issue a detailed prospectus. Rather a short prospectus could be issued, cross-referencing all relevant documents already lodged with ASIC or the market operator [such as the ASX]. Those companies with a program of issues over time could use a base prospectus with a supplementary prospectus for each new issue.

It is proposed that some disclosure obligations could be met by incorporation by reference, that is, by providing a reference to another document or location where the required information can be found, instead of including the information in full in the prospectus. Incorporation by reference will reduce the length of a prospectus and require less cross checking of information, reducing costs to issuers, and will benefit consumers by allowing for more targeted disclosure.

Access to a shorter, simpler two-part prospectus may also encourage investors to take up corporate bonds as it will be easier for investors to focus on the information that they consider relevant in assessing the risks of the bond.

To reduce the possible risk to investors, only relatively low risk simple bonds would be able to take advantage of the two-part prospectus regime. It is proposed that the regime only apply where the corporate bonds:

- are quoted on a prescribed financial market;
- are denominated in Australian dollars;
- have a maturity length of no more than 15 years;
- have a fixed or floating rate of return, that cannot be reduced, paid periodically by the bond issuer;

⁴ 'High quality corporate debt' is debt issued by corporate entities that have a high credit rating and is generally considered to be lower risk than debt issued by entities with a low credit rating.

- are not convertible to any other form of security;
- cannot be subordinated to debts to unsecured creditors⁵; and
- are not able to be converted into any other type of security.

Further, it is also proposed that eligibility be limited to bonds that are offered by a corporate entity (or a wholly-owned subsidiary where the listed parent guarantees payment on the bond) listed on a financial market which requires continuous disclosure as part of the market's listing rules. A bond offer must also have a minimum subscription of at least \$50 million. A minimum bond offer of \$50 million would restrict bond issuance to those corporate entities that are well-established and will ensure a sufficient number of bonds are on issue to enable the growth of a secondary market. This would further improve the liquidity of the bond market.

The disclosure relief proposed would put into the bulk of the provisions of ASIC Class Order CO 10/321, but it would also modify several conditions. Option 1 would allow bonds with a 15-year maturity to qualify for disclosure relief (a five-year increase from the Class Order 10-year maturity) and allow the base prospectus to be used for three years, instead of two years as in Class Order 10/321.

The framework for the two-part prospectus would be contained in the Corporations Act with the content and structure of the two-part prospectus being specified in the *Corporations Regulations 2001* (Corporations Regulations).

Detail of what will be required to be included in the specific and base prospectus will be provided in the Corporations Regulations. This will give issuers greater confidence that they are able to comply with the disclosure requirements under the proposed two-part simple corporate bond prospectus than they would have in complying with the requirements of CO 10/321.

Offer-Specific Prospectus

The offer-specific prospectus would be required to be provided to a retail customer prior to the customer deciding to purchase the bond. The offer-specific prospectus would outline the key details of the variable information relating to the bond offer including:

- maturity length of the bond;
- interest rate and interest payment dates;
- the minimum subscription amount;
- offer size;
- issue price;
- timetable of the offer process;
- application process;

⁵ If an entity has financial difficulties, clients who had invested in simple corporate bonds would rank with unsecured creditors such as service or trade providers in being paid.

- the purpose of the bond issue and the effect of the offer on the issuer, including details of the issuer's debt profile following the issue of the bonds;
- the issuer's capacity to meet its obligations under the bonds;
- the gearing ratio for the issuer, together with an explanation of what this means for investors and how investors can use the ratio as an indication of the potential risks the issuer faces in terms of its level of debt funding;
- the interest cover⁶ for the issuer, together with an explanation of what this means for investors and how investors can use interest cover as an indication of the issuer's ability to meet its interest payments from earnings;
- the working capital ratio⁷ for the issuer, together with an explanation of what this means for investors and how investors can use the ratio as an indication of whether an issuer has sufficient short-term assets to meet its short-term liabilities;
- details of whether the issuer has materially breached any loan covenants or debt obligations in the two years prior to the date of the prospectus;
- a statement by the bond issuer that it has complied with its financial market continuous disclosure obligations as at the date of the offer-specific prospectus and which includes any information about the offer that has been excluded from a continuous disclosure notice because the issuer has relief or an exemption in the listing rules; and
- any significant information necessary to update the information in the base prospectus.

It is considered that requiring the disclosure of this information in the offer-specific prospectus will provide potential investors with the key information required to assess the attractiveness and risks associated with the bond. These information requirements also align with the disclosure requirements (set out in the transactions specific prospectus provisions (section 713) of the Corporations Act) when a corporate bond is traded on a financial exchange. It is proposed that these information requirements would be set out in the Corporations Regulations.

The specific-offer prospectus and the base prospectus may meet the obligation to include information by including a reference to information contained in documents lodged with ASIC with sufficient detail for the reader to obtain a copy of the documents. The reference would also state if the information is primarily of interest to professional analysts, advisers or investors with specialist information needs.

Base Prospectus

The base prospectus would have a life of three years (which is one year longer than is currently provided for in CO 10/321) and would set out information about the issuer and the bond issue that is unlikely to change over the life of the base prospectus. Issuers would also be able to use the same

⁶ Interest cover is the amount of the entity's earnings before interest and tax exceeds any interest liability the bond issuer has to the bond holders.

⁷ The working capital ratio is the entity's current assets divided by its liabilities. The working capital ratio indicates whether a company has enough short term assets to cover its short term debt. A ratio below 1 indicates negative working capital.

base prospectus for offers of subsequent tranches of the same bond offer over the three years. This would provide the benefit to issuers that they would not need to update the base document over its life unless a significant change to the base prospectus was required (for example, following a significant change in the business of the bond issuer).

The base prospectus would contain information including:

- significant features of the bond;
- guarantees associated with the bond;
- explanation of how simple corporate bonds work; and
- ranking of subordination.

The base prospectus would also contain information about the issuer including:

- type of business of the issuer;
- risks that the business may face;
- management structure and personnel;
- business strategy; and
- governance arrangements.

Creating depository interests to enable parallel trading in the wholesale and retail markets

To further reduce the cost burden of retail corporate bond issuance, it is proposed to create architecture which will provide bond issuers with the option of parallel trading of simple corporate bonds in the wholesale and retail markets.

Legislation will be introduced to enable parallel trading of Commonwealth Government Securities (CGS) in the wholesale and retail markets established through a depository interests framework⁸. A framework broadly along CGS lines would be extended to simple retail corporate bonds. An advantage of creating a depository interests framework is that the bond issuer can make offers more quickly and it has the potential to increase demand by wholesale clients as they would be able to sell/buy the bonds in the retail market giving them more flexibility.

Directors' liability and clarification of 'reasonable steps' defence

Option 1 would also reduce the civil liability burden on directors when issuing corporate bonds to retail investors and clarify the operation of the 'reasonable steps' defence. This is different to ASIC Class Order CO 10/321 which does not provide any liability relief or clarification of reasonable step.

⁸ A depository interest framework enables legal ownership of the underlying bond to remain with the wholesale securities depository, avoiding the need to comply with all of the regulatory obligations when a bond is issued in the retail market.

Section 729 of the Corporations Act provides that a person who suffers loss or damage as a result of a misleading or deceptive statement or omission in a prospectus may recover the amount of that loss or damage from the company and any underwriter, and also from each current or proposed director of the company even if they did not commit, or were not involved in, the particular statement or omission.

It is proposed to remove this deemed civil liability so that for an offer of simple corporate bonds, the person who suffers loss or damage does not have a right to recover compensation from directors or proposed directors where the company director is not at fault. However, any director or other person *involved* in a misleading or deceptive statement or omission will continue to be liable. The meaning of involvement of a person is set out in section 79 of the Corporations Act. A person is involved where they:

- aided, abetted, counselled or procured a contravention;
- induced a contravention;
- have been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to a contravention; or conspired with another to effect a contravention.

It is considered that removing director's deemed liability for offers of simple corporate bonds will not materially reduce investor protection. The corporate entity, any underwriter, and anyone involved in the misleading or deceptive statement or omission will still be liable and a person who suffers loss or damage would still have a right to claim compensation from them. Further, given that the removal of deemed liability applies to disclosure statements for simple retail corporate bonds it is considered that there is a relatively low risk to consumer protection as simple retail corporate bonds are by their eligibility criteria, low risk.

Removing directors' deemed liability would be consistent with Council of Australian Governments' (COAG) agreement that there is a case for reform to promote a consistent and principled approach to the imposition of personal criminal liability for corporate fault (similar considerations apply to civil liability).

The COAG harmonisation of director liability is aimed at making director liability comply with a specific set of agreed-upon principles (the COAG Principles). These principles include the removal of deemed liability of directors for corporate fault where it is not appropriate and that where the derivative liability is imposed, it should be imposed in accordance with principles of good corporate governance. The proposed removal of directors' deemed liability is not directly in the scope of the COAG Principles, but is consistent with the COAG Principles.

This option would also insert into the Corporations Act (sections 1308 and 1309) greater clarity on what constitutes reasonable steps in relation to certain criminal liability offences⁹. A person would be deemed to have taken 'reasonable steps' if they made reasonable inquiries or placed reasonable reliance on information provided by others, and after making their inquiries the person believed that the statement or information was not misleading in a material way. The proposed changes reflect

⁹ In some cases the due diligence defence under section 731 of the Corporations Act, and other defences contained in sections 732 and 733 of the Corporations Act may be available.

the practical application of the criminal liability provisions in the Corporations Act. This will be a clarification of duties, not a dilution of criminal liability.

Summary

Currently, the process for offering corporate bonds to retail investors is costly and onerous compared to other avenues for raising funds as the law often requires that a full prospectus be prepared, and that directors are subject to personal liability for the content of a prospectus. Australian companies would benefit from being able to issue retail corporate bonds in a more cost-effective way.

Reducing disclosure requirements and liability risk for company directors would remove some of the impediments bond issuers face when issuing bonds in the retail market.

More targeted prospectuses would also assist investors in locating key information that they need to make informed decisions.

Option 2 – Remove the requirement to provide additional disclosure information for simple retail corporate bonds

Under the Corporations Act offers of bonds to wholesale investors do not require a disclosure document. However, bond offers to the wholesale market are commonly accompanied by documentation to inform investors about the bond. The documentation usually covers the terms and conditions of the bond, fees, bond application process, withdrawal from the investment and background on the bond issuer and those companies associated with the bond offer (for example, entities managing the bond offer). Documentation also provides information on risk factors that may affect the bond issuer. However this information is commonly provided at a high level unlike under the detail description of risk and other matters required to be provided in a prospectus to a retail investor.

The information provided to wholesale investors is not required to be lodged with ASIC by the Corporations Act (unlike a prospectus to retail investors).

Where the bond issuer is a listed company on the ASX, the company is required to comply with the ASX's continuous disclosure and periodic disclosure requirements and this information could be accessed by potential investors.

Option 2 would remove the requirement to provide full disclosure when bonds are issued in the retail corporate bond market and instead allow retail investors to be provided with the same (low) level of disclosure as wholesale investors.

Requiring a bond issuer to meet the current retail client disclosure obligations is time consuming and costly. Under Option 2 these costs would be reduced. The significance of the cost saving for the bond issuer would be modest (potentially up to \$1 million) in comparison to the value of the bond offer (ranging from \$50 million up to one billion dollars).

Although a significant amount of information would not be provided in a prospectus at the time of the bond offer, the retail client would be able to ascertain some information through the continuous

disclosure requirements of the financial market on which the issuer is listed and through the entity's financial statements and annual reports.

The type of bonds to which this low level of disclosure would be applied would be to 'simple' bonds – that is, those bonds which have the same features as the simple bonds proposed in Option 1.

The creation of a depository interest architecture to enable parallel trading in the wholesale and retail markets described in Option 1 would also be proposed. As no regulated disclosure document under Chapter 6D of the Corporations Act would be required, no deemed liability under section 729 of the Corporations Act would be created.

Option 3 – Leave regulatory settings unchanged

Another option is to leave the current disclosure requirements unchanged where bonds are offered to retail customers.

The disclosure obligations set out in Chapter 6D of the Corporations Act would continue to apply and so too would the disclosure relief provided by ASIC Class Order 10/321 for vanilla corporate bonds.

Similarly, the circumstances identified in sections 708 and 708AA of the Corporations Act which provide disclosure relief would not be changed.

5 Impact analysis

Option 1 – Reduce disclosure burden and reduce company director's risk

Benefits and costs to business

Industry has been consulted extensively on reform proposals and in particular on the Option 1 proposal and industry is supportive of Option 1.

It is estimated that this proposal would provide a modest reduction in the cost of issuing simple corporate bonds to the retail market. A substantial amount of the costs currently related to issuing a bond are driven by the length of the prospectus and the amount of factual and financial information requiring detailed verification. It is expected that bond issuers will receive cost savings due to the reduced time taken to scrutinise documentation by company directors. This will particularly be the case for the base prospectus costs where information is included by reference and where the base prospectus is used for more than one tranche of bond offers.

While it is expected that the cost of raising finance through the issue of retail corporate bonds would fall, raising finance through the wholesale market or equities would continue to be less costly than raising finance through the retail market. However, there may also be some downward pressure on the cost of finance from lending institutions. Similarly, finance raised through equity capital raising would remain a cheaper finance raising option than issuing bonds in the retail market.

Reducing the regulatory burden on bond issuance to the extent it is viable compared to other finance raising means will provide corporate entities with greater flexibility in how they fund their

operations. Bond issuers may also benefit through lower risk as domestically sourced funding does not carry the currency risk which is incurred when accessing funds on overseas markets.

The actual cost of issuing bonds varies from issuer to issuer and from issue to issue due to factors such as the manner in which each issuer conducts its due diligence, internal corporate processes and the way in which bond issuers liaise with brokers and financial advisers. An estimate of the cost of a bond issue to the retail market is generally up to \$2 million for bond offers up to \$500 million and above¹⁰. The cost of a bond issue above or below \$500 differs only marginally.

As opposed to the issue cost, the change in the *regulatory* cost due to Option 1 is calculated by applying the cost saving from the regulatory changes, to the number of bonds expected to be issued under the current regulatory settings in the future. The Treasury understands that no corporate entities intend to issue retail corporate bonds in the future under the current regulatory regime. Therefore, as there are no corporate bonds expected to be issued in the retail market under the current regulatory settings, there are no regulatory savings or costs from Option 1. This is shown in Table 3.

Table 3: Regulatory Burden and Cost Offset of Option 1

Average Annual Compliance Costs (from Business as usual)

Costs (\$m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	\$0	\$0	\$0	\$0
Cost offset (\$m)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0	\$0	\$0	\$0
Within portfolio	\$0	\$0	\$0	\$0
Outside portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$0	\$0	\$0	\$0

Proposal is cost neutral? yes
Proposal is deregulatory? no
Balance of cost offsets not required

In contrast to the lack of willingness to issue bonds to the retail sector under the current regulatory settings, the Treasury has been advised that one corporate entity intends to issue retail corporate

¹⁰ Bond offers commonly range from \$100 million to \$300 million. Some bond offers can be \$1 billion or more.

bonds as soon as possible under Option 1 if it is put into effect. Also, industry expectation is that six bond issues would be brought to the retail market in the first year of Option 1 being in effect with the number of bond issues rising to around 20 issues over a 10-year period.

An increase in the number of bonds by six in one year is a significant increase in bond issuance. As shown in Table 1, there are only four corporate bonds currently on offer for retail investors. If the value of the bonds offered were \$200 million per issue¹¹, the new bonds on issue would significantly exceed the \$300 million of bonds currently on offer. The expected increase in private sector securities if six simple corporate bonds are issued, would represent a 6.4 per cent increase in the value of fixed income bonds on offer on the ASX.

Industry's confidence in issuing increasing numbers of bonds stems from the greater ease of issuing bonds and the expected increase in investor demand due to the demonstration effect of bond issuance increasing retail investors' levels of exposure to retail corporate bonds. Industry believes that when investors see other investors investing in simple corporate bonds they will have a better understanding of how bonds work and the risks associated with them. Industry also considered that financial advisers would become more familiar with bonds over time and be more comfortable in recommending bond investment to their clients. It is considered that the investors most likely to be attracted to corporate bonds would be older Australians and the trustees of self-managed superannuation funds who are seeking to diversify their investments while still maintaining a predictable income stream at relatively low risk.

Although there will not be a regulatory cost saving shown above, there will be operating cost savings for simple retail corporate bond issues in the future. An estimate of the cost savings under Option 1 based on a \$200 million bond issue indicated that savings are around \$420,000. This cost saving would be achieved from reduced design/printing costs (\$30,000), legal drafting (\$160,000), accounting review of prospectus material (\$80,000) and management direction and conducting due diligence (\$150,000).

It was also estimated that if the bond offer had subsequent tranches of bond issues using the same base prospectus and limited changes to the offer-specific prospectus, the further cost saving would be in the order of \$610,000 per tranche. This cost saving would be achieved from reduced costs for design/printing (\$40,000), legal drafting (\$270,000), accounting review of prospectus material (\$50,000), rating of bond (\$100,000) and management direction and conducting due diligence (\$150,000). This is a total saving of \$1 million compared to the cost of issuing a bond under the current regulatory settings.

Estimates from NAB indicate that under Option 1 another major cost reduction for bond issuers is expected to be the reduction in brokerage fees from 1 per cent to 0.75 per cent due to the simple nature of the bonds and the increased volume of sales that will be able to be made due to the reduced directors' costs and other costs. This equates to a saving for bond issuers of about \$250,000 per \$100 million bond issue.

¹¹ That is, in the middle of the range of commonly offered bonds.

While stakeholders indicated that the current liability regime imposed significant liability risk on company directors, there was no indication from stakeholders that company directors had been pursued for loss or damage arising from an omission or misstatement in a retail corporate bond prospectus. More broadly than corporate bonds, action has been taken against company directors by investors seeking compensation for loss or damages due to inadequate disclosure material. Similarly ASIC has taken action against corporate entities for breaches of the disclosure law requirements.

The mandatory requirement of issuing a two-part prospectus when issuing a simple bond may reduce the flexibility for some bond issuers. It may also mean that some bond issuers would need to develop a new approach to their disclosure arrangements as they have not used a two-part disclosure in the past. However, this will be a lower cost disclosure activity and the bond issuer is likely to be able to issue a bond quite easily that does not meet the specific criteria of a simple bond.

Under this option, over time it is expected that retail investors will become more familiar with bonds and readily invest in them. This will provide corporate entities with an alternate source of funding to raising funds in the wholesale market, securing a loan from a lending institution or issuing equity. Submissions from banking businesses also noted that the reduced reliance of corporate entities on bank lending will 'free up the banks' balance sheets to continue to support SMEs [small and medium sized enterprises]'¹².

Benefits and costs to retail investors

It is expected that the number of bond issues will increase, giving retail investors greater choice in their investment decision. Bond issuance to retail investors would allow investors to diversify their risk and access a higher fixed interest income than would be available through bank fixed-interest investments. With an ageing population and demand for fixed interest income by people in their retirement, this option is considered to be in demand by these investors.

Investors will be able to access the same amount of disclosure information under Option 1 as they can under the current disclosure obligations, however the information being disclosed would be packaged in a more targeted manner through a two-part prospectus. The disclosure documentation that investors receive will be more effective in enabling customers to more easily identify the key information relevant to their investment decision. This approach balances the convenience of shorter disclosure documentation with the need to inform investors fully about risky or complex products. As investors will have access to all key information it is considered that investors will not face any greater risk than is currently the case. And as the key risk information will be easier for the investor to find in the disclosure material, there is the potential for the 2-part prospectus to reduce the risk of an investors not being aware of important information.

However, if investors want to read all of the information required to be disclosed, including that information that is not key to their investment decision, they would need to locate the information on the bond issuer's website and access documents lodged with ASIC which has been incorporated into the two-part prospectus by reference.

¹² Extract from NAB testimony to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013.

Retail investors are likely to face the cost of becoming familiar about retail corporate bonds and potentially incur the cost of financial advice on retail corporate bonds. However, as it will be the investor's choice as to whether they seek advice and/or invest in the bonds, this cost is likely to be acceptable to the investor. This cost is no greater than would occur under the current regulatory regime. There are no significantly greater risks under Option 1 than under the current regulatory regime.

The risk that could be generated by removing company director's deemed liability for offers of simple corporate bonds will not materially reduce investor protection. The corporate entity, any underwriter, and anyone involved in the misleading or deceptive statement or omission will continue to be liable for any loss or damage. If the investor suffers any loss or damage the investor would still have the right to claim compensation.

Option 2 – Remove the requirement to provide additional disclosure information for simple retail corporate bond

Benefits and costs to business

Business would receive a modest reduction in the cost of issuing bonds if only wholesale client disclosure obligations were applied. As noted earlier, the disclosure costs associated with a bond issue are a major share of the costs incurred when issuing a bond.

The reduction in disclosure cost will be greater under Option 2 than those under Option 1 including subsequent tranche issues. Based on a bond issue of \$200 million¹³ the saving would be in the order of \$1.2 million comprising reduced costs for legal drafting, management direction and conducting due diligence (\$900,000), accounting review of prospectus material (\$165,000) and rating of the bond (\$150,000).

Benefits and costs to retail investors

The Corporations Act differentiates between wholesale and retail clients such that consumer protection provisions (through disclosure obligations on securities issuers) apply only to retail clients. It is considered that wholesale clients do not require the same level of disclosure because they are better informed and better able to make their own assessment of the risks involved in financial transactions. However, penalties for misleading and deceptive conduct and certain other breaches of the Corporations Law apply equally to bonds issued to wholesale and retail clients.

Reducing the disclosure costs on bond issuers is likely to increase the number of bonds offered to the retail market. More bonds being offered to retail investors will provide a greater choice of investment products, giving investors the opportunity for greater diversity in their investment portfolio. The benefit of lower issuance costs may be passed on to investors, however, given the size of the cost savings compared to the value of the bond issue, which is a minimum of \$50 million, there is unlikely to be a material cost benefit flowing to bond investors.

¹³ With the issuance costs depicted in Table 2.

All bonds carry some degree of risk and removing the disclosure obligation on corporate bond issuers is likely to result in buyers being unaware of the risks they are being exposed to. This will particularly be the case where buyers invest in bonds with high returns which generally reflect a greater degree of risk. However, it is noted that as far as the Treasury is not aware of any no default in repayments on corporate bonds in Australia.

Retail investors are likely to be cautious of investing in a financial product which does not disclose all risks/details. However, information about the issuer would be available to investors from sources such as the issuer's financial statements and annual reports and through the company's continuous disclosure requirements of being a listed entity on a financial market. This information would not be as readily available as that appearing in a retail market prospectus and nor would it relate specifically to the bond on offer or be as extensive as the information disclosed in a prospectus.

The investor caution created by a lack of easily available information may limit demand for bond offers and is likely to reduce investor confidence in investing in retail corporate bonds.

Option 3 – Leave regulatory settings unchanged

The cost and effort required to issue a retail corporate bond would remain high if the regulatory settings were left unchanged.

There is unlikely to be any increase in the number of retail corporate bonds on offer under this option and the retail bond market would remain underdeveloped.

Benefits and costs to business

There are no significant benefits to bond issuers by retaining the current regulatory settings. The only benefit to business by leaving the regulatory settings unchanged is that businesses would not need to adjust to new regulatory requirements. Industry feedback indicated that no bonds will be issued in the retail market in the near term under the current regulatory settings.

There would be no adverse impact on bond issuers, with bond issuers continuing to be able to raise finance in the wholesale market, loans from lending institutions and through the sale of equity securities.

However, there would be no change to the investor protection than currently exist. Company directors would continue to be deemed liable for omissions and misstatements in disclosure documentation. Company directors would continue to be unclear about what reasonable steps they are required to take to ensure disclosure material is adequate to meet the law.

There are no direct administration costs that would be imposed on business by not implementing the proposed relief. However, the existing high costs and liability risk of offering corporate bonds to retail investors would remain.

Benefits and costs to retail investors

There are no benefits that would accrue to retail investors by not implementing the proposed relief. Maintaining the status quo would not increase the likelihood of issuers offering corporate bonds to retail investors.

There are no costs that would be imposed on retail investors by not implementing the relief. However, investors would also not be given increased opportunities to participate directly in offers of corporate bonds. This in turn would mean that investors would not be afforded greater opportunities to diversify their investment portfolios by investing in corporate bonds.

6 Consultation

Extensive consultation has been undertaken on proposed reforms to the retail corporate bond market. A Bill encompassing the vast bulk of Option 1 was introduced into the Parliament by the former Government. The Bill received support from the current Government when it was in Opposition in the House of Representatives. The Bill was not debated in the Senate prior to the election being called and as a consequence the Bill lapsed. The development of the retail corporate bond market is also one of the recommendations of the Johnson Report. The current Government gave a public commitment during the election to give priority to the Johnson report recommendations. Given these considerations, the Treasury has prepared a single-stage RIS. In addition, as no decision has been announced by the current Government a Single-Stage RIS is appropriate and an Options-Stage RIS is not required.

The former Government released a discussion paper on the *Development of the retail corporate bond market: streamlining disclosure and liability requirements* in December 2011 seeking views from interested parties on options to reduce the burden of disclosure and liability requirements on bond issuers to aid development of the corporate bond market in Australia.

Thirty-three submissions were received on the discussion paper and included submissions from bond issuers, financial advisers, law firms and credit ratings agencies. There were no submissions received from individual investors or investor representative groups. The Discussion Paper and the submissions received are available on the Treasury website. The public consultation process was accompanied by targeted industry consultation, including with the regulator of corporate bonds issuance – the Australian Securities and Investments Commission. The majority of submissions supported the former Government’s proposals, in addition to suggesting various changes on particular aspects of the proposal. Bond issuers generally preferred the inclusion of more risky features than was proposed in the Discussion Paper for a simple bond. The former Government’s overall analysis of the feedback received through the consultation process was that to ensure that investor risk was low, the bonds eligible for streamlined disclosure and liability requirement, should contain low risk features.

The following is a summary of the issues raised and the Government’s proposed response in relation to the issues.

- The majority of bond issuers (for example, ABA, Australian Financial Markets Association (AFMA) and NAB), financial advisers and law firms supported the bonds being subordinated debt with some respondents seeking a lower level of subordination matching that of unsecured creditors. The Commonwealth Bank of Australia (CBA) raised concerns with allowing any subordination.

: The Treasury considers that ranking the subordination of debt equal to that of unsecured creditors enables the bond to pay a premium for the risk to the

investors while also limiting the risk such that the bonds are still considered to be low risk and attractive to investors.

- The majority of respondents supported a longer bond life than the 10-year bond life proposed in the Discussion Paper, for example with ANZ Bank (ANZ) proposing a bond life of 25 years.
 - : The Treasury proposal increases the bond life from 10 to 15 years to enable more bonds to be eligible for the streamlined arrangements. Treasury considers the additional risk created by allowing bonds with an additional five year life is low risk given the other eligibility requirements.
- Respondents differed in their views on the design of a two-part prospect with ANZ, AFMA and Baker & McKenzie preferring a regime which required the bond issuer to disclose any matter material to a consideration of an investment in the bonds which has not already been the subject of continuous disclosure.
 - : The Government will undertake further targeted and public consultation on the content of the offer-specific and base prospectus to be prescribed in regulations.
- Many respondents wanted the two-part prospectus to be voluntary.
 - : The Treasury considers that issuing a two-part prospectus for all simple retail corporate bonds will provide consistency across bond issues and allow for greater comparability of bonds. It is also noted that bond issuers can avoid the requirement to issue a two-part prospectus by making minor changes to their bond issue to ensure that it is not considered a simple bond.
- Some stakeholders indicated that directors' liability should be reduced (ABA, AFMA, ANZ and CBA) while KPMG, Baker & McKenzie considered that further relief is not required.
 - : The Treasury considers that removing the deemed liability from company directors is considered to be an appropriate balance between removing the disincentive of liability risk for company directors and ensuring investor protection.
- Stakeholders proposed a range of amounts as the minimum bond issue size. Four respondents (Baker & McKenzie, Challenger, Global Credit Investors and Mr Philip Henty) considered it was not necessary, RBS Morgan supported a \$50 million bond issue while noting that the market was still quite illiquid with a \$50 million bond issuance. Three respondents considered it should be less than \$50 million (Australia Ratings, C&Co and a confidential submission). KPMG considered a minimum was necessary, but it was undecided on the amount.
 - : The Treasury considers that a \$50 million minimum bond issue strikes an appropriate balance between making the streamlined arrangements accessible to bond offers and there being sufficient bonds on offer to develop a secondary market in corporate bonds.
- The *Discussion Paper* proposed requiring bond issuers to have a minimum credit rating. This proposal received very little support from any of the groups who responded to the paper.
 - : The Treasury consider that requiring a credit rating may unfairly exclude small to medium issuers as they would be too small to qualify for a credit rating. Also, a credit rating may not be an accurate indicator of the riskiness of the bond. The Treasury is not proposing to include credit ratings as an eligibility criterion.

- A number of respondents raised broader issues affecting the retail bond market. These included concerns about the taxation of interest income vis a vis equity, the perceived under allocation of fixed income by superannuation funds investor education and the availability of credit ratings.

: These matters can be considered outside of the scope of this proposal which focuses on streamlining disclosure and liability requirements.

Following consultation on *Development of the retail corporate bond market: streamlining disclosure and liability requirement* the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013 (Bill) was introduced into the Parliament in March 2013 by the former Government. The Bill would have made into law the option proposed in Option 1 except for the length of the bond life being 10 years rather than the 15 years proposed in Option 1.

The Bill was passed by the House of Representatives in May 2013 receiving bilateral support.

The Parliamentary Joint Committee on Corporations and Financial Services conducted an inquiry into the Bill and reported its findings on 15 May 2013. The Committee received seven submissions on the simple retail corporate bonds' Schedule of the Bill.¹⁴ Submissions were received from groups representing bond issuers, intermediaries and investors. All submissions supported the changes proposed in the Bill. The Committee supported the progress of the Bill in the Senate and the Committee's report noted that 'the Bill proposes measures that seek to streamline the regulatory burden faced by directors in issuing simple corporate bonds'.

The NAB representative at the Committee hearing supported the proposed changes and noted that:

A deeper and more liquid retail corporate bond market has benefits for corporates, businesses and investors. For corporates, it will broaden their funding sources and help facilitate their growth aspirations. For investors, a fully functioning retail corporate bond market will offer investors more choice and an opportunity to diversify their investments. Facilitating this funding will free up the banks' balance sheets to continue supporting SMEs, who traditionally do not have the same access level of access to capital markets as their larger counterparts.

The investor group SMSF Owners' Alliance Limited stated that:

Combined with the offer of Commonwealth Government bonds to the retail market, easier access to corporate bonds will assist SMSF owners to adjust asset allocation in accordance with their investment strategy, taking into account yield and risk. We believe the conditions set in the Bill for the issue of retail corporate bonds will provide sufficient protection for SMSFs and these can be complemented by Regulations to be developed.

ASIC also undertook a significant public consultation process when it developed Class Order C0 10/321 which provides very similar disclosure relief to that proposed in Option 1. ASIC received 31 submissions in response to its *Consultation Paper 26 Facilitating debt raising*. Submissions were generally in support of the proposal in the Consultation Paper with respondents also raising a

¹⁴ The organisations which made submissions were the ABA, Australian Institute of Superannuation Trustees, NAB, Self-Managed Superannuation Funds Professionals Association, SMSF Owners' Association, Stockbrokers' Association of Australia and one confidential submission.

number of matters of detail. ASIC also prepared a regulation impact statement prior to issuing CO 10/321. The Consultation Paper, ASIC's response to the issues raised in submissions in response to the Consultation Paper and the Regulation Impact Statement relating to CO 10/321 are available on the ASIC website.

7 Conclusion

The options described in this RIS provide two deregulatory options (Option 1 and Option 2) and one option that maintains the regulatory status quo.

Option 1 proposes that where simple corporate bonds are issued, the disclosure required will be reduced through the use of a base prospectus and specific-offer prospectus in addition to removing deemed liability for responsibility for misstatements and omissions in prospectus documents.

Option 1 will reduce the costs to bond issuers by around \$420,000 for a first tranche issue and by around \$1 million for tranches after the first compared to current issuance costs. While these costs are modest in relation to the size of the bond issues, they are significant to the issuer. Coupled with the benefit to bond issuers is the benefit to investors of the opportunity to invest in a relatively safe security and diversify their investment portfolios.

Option 2 proposes that the disclosure that is required for bond issues to the retail market be removed for simple corporate bonds. Retail corporate bond investors would rely on information disclosed to the wholesale market and information available through the company's discontinuous disclosure obligations and that provided to ASIC, such as its financial statements, and other information publicly available. This proposal would result in the initial bond offer and subsequent offer tranches with a cost saving of \$1.2 million which is larger than the savings under Option 1. However, Option 2 does not require the bond issuer to provide a two-part prospectus resulting in the investors having to search for information on the issuer and the risks associated with the bond. It is unlikely that the investor would be able to find out as much information as that provided under the proposed disclosure requirements of Option 1. This would leave the investor unaware of some of the risks associated with the bond. This may also deter people investing in the bonds as they may be too wary of undisclosed risks and reduce investor confidence in retail corporate bonds.

Option 3 proposes that there be no change in the regulatory settings. Under the current settings there are no proposed bond issues to the retail market. While under Option 1 there are expected to be six bond issues in the first year the option is in effect with the number of bonds being issued rising to 20 over 10 years. It is considered that Option 3 would not aid the development of a strong corporate bond market in Australia which is integral to the objective of the proposal in this RIS.

Both Options 1 and 2 reduce the regulatory burden on bond issuers to aid the development of the retail corporate bond market, but Option 2 exposes investors to greater risks and could create too high a risk for investors which could also act to stifle demand for bonds. Ensuring that appropriate investor protection is in place is an integral part of the objective of this proposal and it is considered that Option 2 does not achieve this part of the objective. Option 1 continues to provide investor protection through the higher level of disclosure.

Option 1 is the option considered to best reduce regulatory burdens to meet the Government's objective of developing the corporate bond market in Australia while ensuring that appropriate consumer protection is maintained. In addition, it is considered that Option 1 is the only option which would increase investor confidence in the bond market over time.

The proposal detailed in Option 1 has been heavily consulted with stakeholders who have indicated their strong support.

8 Implementation and review

It is proposed that Option 1 be implemented through legislative amendments and regulations. It is proposed that a Bill that would put Option 1 into the law be brought before the Parliament as soon as possible.

It is proposed that the legislation would apply the requirement to provide a 2-part simple corporate bond prospectus up to six months after the legislation receiving the Royal Assent. It is considered that if an entity wanted to issue a bond shortly after the proposed reform becomes law, the entity should not be 'caught out' by the new requirements of the law. In addition, it is considered that a transition period of six months will provide sufficient time to develop regulations on the prescribed contents of the prospectus documentation.

The removal of the deemed civil liability burden on directors and clarification of the operation of the reasonable steps defence would be proposed to take effect upon the legislation receiving the Royal Assent. In this way company directors will not have to wait to have the civil and criminal liability risk reduced.

Treasury will publicly consult on draft regulations and on template disclosure documents. Treasury will work with key stakeholders to develop the content required for the disclosure documents to ensure they strike an appropriate balance between streamlining disclosure for issuers, and ensuring that the documents are easily comprehensible for retail investors.

Treasury has established an industry task force to develop a template disclosure document to provide industry greater certainty of what is required to be disclosed in the two-part simple corporate bonds prospectus. This task force will also continue its work on developing the template document.

ASIC will monitor the date on which the legislation comes into effect and will revoke Class Order CO10/321 with effect from when the new law becomes operative.

The Government and ASIC would continue to monitor the retail corporate bond market to ensure that the change to the law operates as intended.