

19 February 2010

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Dear Anthony

CONSULTATION PAPER 126: Facilitating debt raising

The Finance and Treasury Association (FTA) welcomes the opportunity to provide a submission to Australian and Securities Investments Commission's Consultation Paper 126 - Facilitating debt raisings.

The FTA is the peak professional body in Australia for corporate treasurers and senior financial risk managers with around 900 members primarily from Australia's top 300 listed corporations. The FTA has been operating for over 22 years in different forms and has established its reputation as a premier provider of continuing professional development (CPD) for finance and treasury forums in Australia.

The FTA recognizes and welcomes ASIC considerations:

- (a) to maintain standards of consumer protection
- (b) to expand suitable investment opportunities for retail investors; and
- (c) to develop the Australian quoted debt market.

The FTA views the ASIC's review as timely given the changing nature of a large proportion of the retail investor base in Australia from a growth/wealth accumulation phase to a capital preservation, defined income phase. In addition to this, we note the difficulties that Australian corporations encountered in accessing the credit markets during the global financial crisis (GFC).

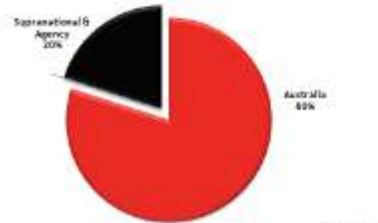
As ASIC points out between January and November 2009, there were only five retail bond offerings totaling \$659 million, which contributed 0.87% of the total amount of corporate issuance in that period. The major players in the domestic corporate bond market are the bank issuers and more recently a resurgence of Kangaroo supra-national issuers with very little genuine issuance from private sector corporations. Any initiative to promote the domestic

corporate debt market at the wholesale or retail level is widely supported by our members as this helps mitigate the dependence on offshore markets and bank lending for their funding.

Chart 1 Australian Market Issuance 2009

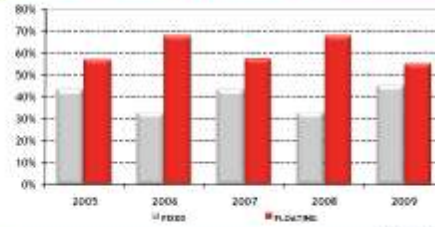
Australian Market Issuance 2009

2009 Issuance by Country



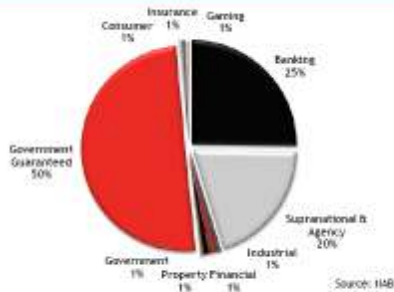
Source: IHB

Fixed vs. FRN (Excluding Agency & Supras)



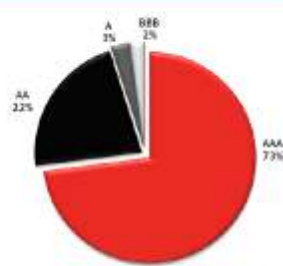
Source: IHB

2009 Issuance by Sector



Source: IHB

2009 Issuance by Rating Category



Source: IHB



Source: NAB Presentation to FTA Outlook for Corporate Debt Markets Forums, February 2010

Whilst changes to the regulatory environment are part of the equation to assist in the development of the corporate bond market, the market would also benefit from a shift in the retail investor pool's appetite for long-dated corporate debt. This would flow through to a re-allocation of assets to a higher weighting of fixed income. The shift in investor appetite will likely occur as the market develops with additional product issued as a result of less regulatory burden and the distribution channel of brokers, financial planners, self-managed superannuation funds (SMSFs) and other market participants becoming more accustomed to this asset class. This asset allocation weighting is evident in the New Zealand capital markets where the corporate bond market is larger than the Australian corporate bond market as a result of a greater investor appetite for fixed income products¹.

We recognise the taxation implications associated with income paying investments is outside the scope of this consultation paper however we highlight that part of the equation for the development of a corporate bond market in Australia requires a focus on the risk/reward after-tax profile of equity dividends, some of which attract fully-franked imputation credits and interest payments from bonds which afford no taxation benefits but rank higher in the capital structure. It is the FTA's view that a greater focus on the risk/reward after-tax profile of these two income streams is required through the distribution channel especially given the reduction of equity dividend payments during the GFC from previously perceived stable investments.

¹ Patrick Mullins, Global Co-Head Capital Markets Origination, National Australia Bank – presentation to FTA Outlook for Corporate Debt Markets, February 2010.

This greater focus could potentially occur as a result of a shift in the financial planning/broking sector remuneration model from a commission-based payment structure which incentivises trading in investments to a fee for service structure which is more aligned with 'buy-and-hold' investment products.

We also note that in the Australian Federal government's report "*Australia as a Financial Centre - Building on our Strengths*" chaired by Mark Johnson, it includes a key recommendation on reducing regulatory requirements on corporate debt issuance to retail investors.

The Report recommends, and the FTA broadly agrees, that the regulatory requirements for listed companies that issue high quality corporate debt to retail investors be reduced.

- An exemption to existing requirements would apply for those issuers:
 - with listed Australian dollar debt securities that also have listed shares and hence are already required to provide continuous disclosure and comply with the market operator's listing rules; and
 - with investment grade securities that have a reasonably simple structure (that is, fixed or floating rate securities paying a margin relative to the bank bill swap rate; and with no credit exposure to entities other than the issuer or, if applicable, the guarantor).
- Such issuers would no longer be required to issue a detailed prospectus. Rather, a shorter prospectus could be issued, cross-referencing all relevant documents already lodged with ASIC or the market operator.
- Those companies with a program of issues over time could use a base prospectus with a supplementary prospectus for each new issue.
- Subject to satisfying the relevant criteria, these simplified procedures would also be available for Commonwealth and State government (or government guaranteed) bodies; OECD government (or government guaranteed) bodies; supranational entities; and offshore corporates listed on a recognised offshore stock exchange.

As previously stated a number of our members highlighted the difficulties that corporates encountered in accessing the credit markets during the global financial crisis and noted that a number of large Australian companies including Coca-Cola Amatil (\$US400 mln), Incitec Pivot (\$US800 mln) and Amcor (\$US850 mln) raised in excess of \$US2 billion of long-term (5-10 year) debt in the US public and private markets late in 2009. The FTA recognises that these markets are largely wholesale investor markets but we present the argument that the principles of these markets help us understand the parameters required for an effective and efficient corporate bond market in Australia.

The feedback from our members is that these markets are attractive because:

- the documentation requirements are significantly less onerous;
- the depth of liquidity in these markets supplies significant accommodation in a single deal;
- it provides diversity in funding;
- it is predominantly a 'buy-and-hold' market;
- speed to market i.e. the timing to market is a lot quicker than debt markets in Australia; and
- long-dated (7+ years) tenure is currently not available in the Australia market;



Source: J.P. Morgan Presentation to FTA Outlook for Corporate Debt Markets Forums 2010 – February 2010

It is a disappointing facet of the Australian capital markets that Australian corporates have to tap overseas markets for capital when our onshore funds management market is, on one widely used measure, the fourth largest in the world and the largest in the Asia-Pacific region² and less than 1% is currently invested in quoted debt securities.

At the request of our members, the FTA intends to play a role in continuing to promote the merits of an active Australian corporate bond market through a series of forums and other mediums. This theme has been discussed at recent forums and will continue with a FTA/ASIC lunchtime forum in Melbourne on Thursday 25 March, followed by an event in Sydney on Thursday 22 April with keynote speaker Mark Johnson and other forums over the coming months.

The FTA supports the broad themes of ASIC’s Consultation Paper 126 – Facilitating debt raisings and specific comments on ASIC’s proposals are detailed in the following pages.

The FTA welcomes the opportunity to discuss the information contained in this response and I can be contacted for further explanation on +613 9653 9532.

Yours faithfully

Mike Dontschuk, CFTP
President

² Australia as a Financial Centre Report – Building on our strengths. November 2009 Page 19

FINANCE & TREASURY ASSOCIATION FEEDBACK ON ASIC PROPOSALS IN CONSULTATION PAPER 126 – FACILITATING DEBT RAISINGS

General

BIQ1 Do you agree with our proposed relief allowing a vanilla bonds' prospectus to be used for offers of corporate bonds? Why? If relief is given, would a class order or case-by-case relief be desirable?

The FTA agrees with ASIC's proposed relief allowing a vanilla bonds prospectus to be used for offers of corporate bonds.

Our corporate members (issuers) advise that the current requirements of issuing a full prospectus for corporate retail bonds are costly, time-consuming and duplicate a lot of the existing financial reporting requirements for companies. Furthermore the internal approval processes that require several layers of management review including the Board is an expensive and timely exercise that requires a due diligence process that is quite often already taking place to satisfy listed disclosure requirements. In contrast the relatively straightforward exercise of raising up to 15% of the current equity of the company can be achieved with minimal compliance costs and in a timely manner.

It is the FTA's view that a simpler framework for issuing debt that cross-references the existing ASIC/market operator financial reporting requirements will facilitate corporates accessing this part of the capital markets. As corporates issue more retail bonds, the distribution channels (brokers, financial planners, SMSFs and other participants) will become more knowledgeable of fixed income investments.

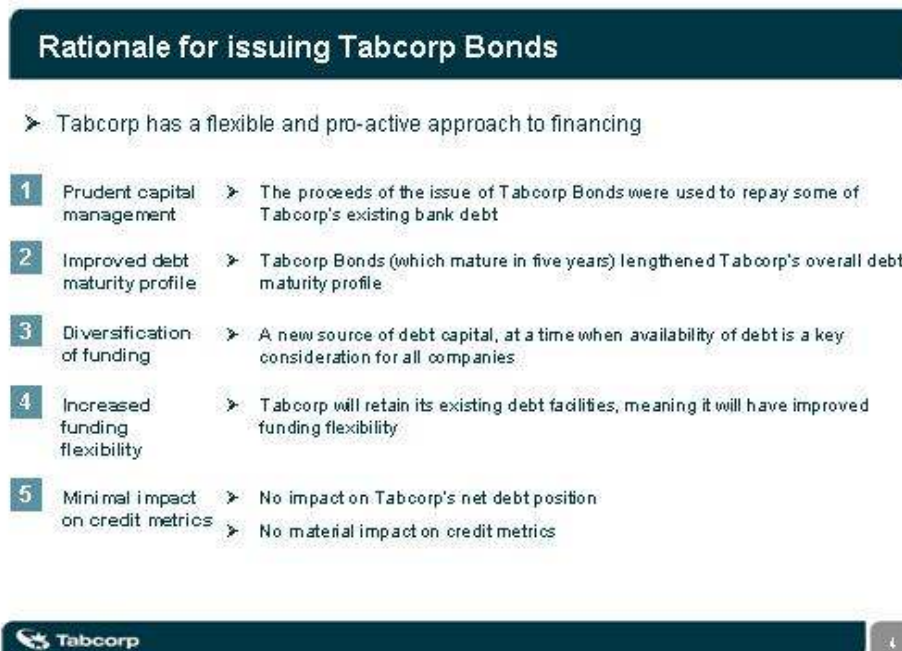
A greater understanding of fixed income assets will help play an important role in managing risk for investors that are increasingly moving from a growth accumulation phase to capital preservation, fixed income phase as a result of the changing Australian retirement demographic. Furthermore when combined with the difficulties that corporates encountered in accessing the credit markets during the global financial crisis a compelling case is made for the development of the retail market as an adjunct to their wholesale issuance needs.

It is generally understood that the retail bond market accesses a different pool of capital compared to the wholesale bond market, but nonetheless shares many of the same issuance features. Typically a retail bond issue is best established along brand and reputation lines, such as the Tabcorp May 2009 issue and relies less on the covenants and it's tradability that are a feature of wholesale bonds. It is interesting to note that of the \$A284 raised for Tabcorp's corporate bond issue, \$A84 million (30%) was raised from the retail market. This makes it potentially attractive 'sticky' money for issuers as retail investors are less likely to trade. This also makes it important for regulators to make sure that small investors are properly protected by full and straight forward disclosure of risks and a simple issuance

structure that doesn't explicitly or otherwise subordinate the rights of the bond investor in the capital structure of the issuer.

As previously stated, a vanilla bonds prospectus for corporate bonds should assist in the development of the corporate bond market thereby reducing the dependence on bank funding and offshore markets. The key benefits of corporate bonds are outlined in the following chart.

Chart 3 Rationale for issuing Tabcorp Bonds



Source: Tabcorp Holdings presentation to FTA 2009 Congress, 29 October 2009

We recognise the taxation implications associated with income paying investments is outside the scope of this consultation paper however we highlight that part of the equation for the development of a corporate bond market in Australia requires a focus on the risk/reward after-tax profile of equity dividends, some of which attract fully-franked imputation credits and interest payments from bonds which afford no taxation benefits but rank higher in the capital structure. It is the FTA's view that a greater focus on the risk/reward profile of after-tax dividends versus pre-tax fixed income payments is required through the distribution channel especially given the reduction of equity dividend payments during the GFC from previously perceived stable investments. This greater focus could also occur as a result of a shift in the financial planning/broking sector remuneration model from a commission-based payment structure which incentivises trading investments to a fee for service structure which is more aligned with 'buy-and-hold' investment products.

In order to maintain confidence and the benefits of the market, it is the FTA's view that the class order model is preferred.

B1Q2 Would our proposed relief be of commercial benefit to issuers? Would the relief make it more likely that issuers would extend offers of quoted corporate bonds to retail investors?

Yes. Yes refer response to B1Q1

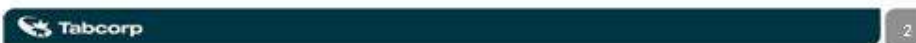
B1Q3 What are the risks and benefits to our proposed relief for investors?

The risks to investors include credit risk, interest rate risk, liquidity risk and prepayment risk. Subordinated debt issues and quasi-equity should be satisfactorily disclosed as such and the risks iterated in the same fashion as ordinary equity. The principal risk therefore is a probability of default which is likely to be priced by the primary market at issuance from knowledge of wholesale issuance and available credit research, much of which will be provided by the Arranger/Dealer typically a bank. It is expected that there will be an increase in demand for research in much the same way it is in the equity markets.

The benefits may include accessing a fixed income security for an entity that the investor already has an exposure to as part of his/her equity portfolio. With reference to comments from Damien Johnston, Deputy CFO of Tabcorp Holdings³ at the 2009 FTA Congress, “*given Tabcorp’s strong retail equity shareholding base, investors were comfortable with the investment profile of the company and subscribed to the corporate debt offering based on the familiarity of the company through the equity holding*”. Hence the importance of ensuring the clarity of ranking in the capital structure in any bond issue that relies on equity disclosure, which should be a catch all on the risks an investor can face. Where this becomes less clear is if the issuing entity is not the same as the equity entity being disclosed.

Chart 4 Summary of Tabcorp Bonds

Summary of Tabcorp Bonds	
Size	➤ \$284 million (\$200m on firm basis to institutional investors and \$84 to Tabcorp shareholders and other investors)
Ranking	➤ Ranks equally with Tabcorp’s current bank lending arrangements
Issue price	➤ \$100 per Tabcorp Bond
Interest	➤ Mandatory interest payments each quarter ➤ Interest = 3 month BBSW + 4.25 % ➤ Bonus interest of 0.25% for the first year on an investor’s initial allocation provided it is at least 100 Tabcorp Bonds (capped at 500 Tabcorp Bonds) and their initial allocation is held for at least 12 months
Maturity	➤ 5 years ➤ On maturity, holders receive \$100 cash per Tabcorp Bond plus the final interest payment
Listed	➤ Listed on ASX
Investors	➤ Minimum investment of \$5,000



Source: Tabcorp Holdings presentation to FTA 2009 Congress, 29 October 2009

Exposure period

B1Q4 Do you agree with our proposal not to provide relief from the exposure period required under s727(3)? Why?

Yes agree, as speed to market is not likely to be an issue for long-dated retail bonds.

³ Tabcorp Holdings presentation to FTA 2009 Congress, 29 October 2009

Debenture Trustee requirement

B1Q5 Do you agree with our proposal not to provide relief from the requirement to appoint a debenture trustee for offers of vanilla bonds? Why?

Requires further analysis. Whilst we recognise protections for retail investors are paramount for an efficient capital market, the purpose of this review is to reduce the regulatory burden of companies to undertake corporate debt raisings. This requirement involves a significant compliance cost and given that the proposed issuing company is already subject to stringent regulatory requirements is the appointment of a debenture trustee likely to assist in the investor's appetite for this product?

The key issues are what legal rights are available to an investor through a note or bond issue versus a trustee mechanism and how the investor is protected in the capital structure both of which should be clearly articulated in the bond issuance documentation.

Conditions applying to the issuer

B2Q1 Do you agree with the proposed conditions that must be satisfied in relation to the issuer and its existing continuously quoted securities? Are there any additional conditions that should be required?

Yes. No additional conditions.

B2Q2 Should we require the bond issuer to satisfy a minimum level of net tangible assets? If so what is the appropriate amount?

No this would be additional regulatory burden and compliance cost. It is contrary to the purpose of this review and should be the responsibility of the investor to assess the investment risk.

B2Q3 Should we also require the issuer to satisfy minimum conditions based on key financial metrics (e.g. gearing ratio, interest cover and working capital ratio)? If so, what conditions should be applied?

No. Our corporate members advise that they are in regular contact with the ratings agencies and it is critical that the corporates maintain the financial parameters required for its credit rating. Whilst this process is operating at the wholesale level and the ratings agencies have not sought financial services licenses for the retail sector, the principles are consistent. Corporates are already stringently reviewed on the aforementioned financial ratios and it is up to the investor to assess its appetite to the calculated financial risk associated with the investment through financial metric analysis and other information gathering processes.

B2Q4 Should relief extend to foreign issuers that are listed on an approved foreign market and that are proposing to issue vanilla bonds that will be quoted on the approved foreign market or on a prescribed financial market?

The FTA represents Australian corporations and supports the development of an Australian issuers market in retail corporate bonds. Unlike the wholesale market we don't believe that additional issuers enhance or detract from the development of the retail market.

Corporate bond conditions

B3Q1 Do you agree that relief should be limited to offers of ‘vanilla’ bonds? Do you agree with our proposed conditions for vanilla bonds? Are there any other conditions that should be satisfied?

We concur with ASIC’s proposed conditions on issuing a vanilla bonds prospectus except for the minimum size bond requirement of \$A100 million. The FTA’s view is that funding mechanism could become a useful tool for medium-sized companies and perhaps a minimum size of \$A50 million is a better level. We recognise that this will reduce the liquidity for the bonds once they are issued and reduced the likelihood of institutional participation given the reduced size however it is the FTA’s view that this market should be predominantly a ‘buy-and-hold’ market rather than a trading instrument.

B3Q2 Should Australian Prudential Regulation Authority (APRA) regulated entities that are issuing bonds for regulatory capital be exempt from the requirement for bonds to be vanilla bonds? For example, should we permit APRA regulated entities to raise regulatory capital by issuing subordinated debt under a vanilla bonds prospects?

We agree that APRA already provide a comprehensive risk management framework for ADI’s and other regulated entities, but as the global financial crisis has amply demonstrated the subordination in a banks capital base is there for a reason – as a capital buffer – a fact that has left many investors worldwide at a loss thinking they had a secure bond like investment. We re-iterate our comments above that capital subordination or capital structuring through related issuing entities should be discouraged under the vanilla bond prospectus for any issuer.

B3Q3 Do you agree with the requirement for the issue to be a minimum subscription size? If so, is \$100 million an appropriate minimum amount?

Refer B3Q1 response

B3Q4 Should we require that, on issue, there is no secured debt that ranks ahead of the corporate bonds? Alternatively, should any additional conditions apply if the issuer has existing secured debt that ranks ahead of the bonds? If so, what conditions should apply (e.g. conditions restricting the level of secured debt that can be on issue)?

No provided that a proper disclosure of the subordination is made. Vanilla bond issuance should avoid subordinated issues below unsecured. Existing subordination below unsecured debt can be dealt with under the two-part proposal once the required risks have been disclosed to the investor.

B3Q5 Should we prohibit the issuer from issuing any new debt that would rank ahead of the corporate bonds? Should we also prohibit the issuer from providing any further security that would cause existing debt to rank ahead of the corporate bonds?

No, as mentioned, provided that this relates to secured or unsecured borrowings the investor can decide on the appropriate risk/return profile for debt on a vanilla issue. Refer Tabcorp Holdings ranking chart below.

Ranking of Tabcorp Bonds

- Tabcorp Bonds are unsecured debt obligations ranking equally with Tabcorp's existing debt funding, including A\$ bank debt, US\$ and A\$ institutional bonds

	Category of funding	Existing Tabcorp funding
Higher ranking	Secured debt	None
Tabcorp Bonds →	Unsubordinated unsecured debt	Bank debt, US\$ and A\$ institutional bonds
	Subordinated unsecured debt	None
	Preference shares	None
Lower ranking	Ordinary equity	Tabcorp shares



Source: Tabcorp Holdings presentation to FTA 2009 Congress, 29 October 2009

B3Q6 Are there any circumstances in which the terms of issue of vanilla bonds should permit interest to be deferred? Please provide details.

No in line with our comments on capital subordination and to maintain the confidence and security in this market, it is important the issuers and instruments are simple with on-going interest payments.

B3Q7 Are there any circumstances in which the terms of issue of vanilla bonds should permit early redemption? Please provide details.

Yes, if the company is acquired by another entity, the terms of such potential transaction should be fully disclosed in the prospectus.

Disclosure conditions

B4Q1 Do you agree that our relief should be conditional on point-of-sale disclosure of the key matters identified in Appendix 1? Are there any other key matters for which disclosure should be required?

The FTA agrees that ASIC relief should be conditional on point-of-sale disclosure of the key matters identified in Appendix 1 except for the need for quarterly reports. The issuers are already providing six-monthly detailed financial updates which should be cross-referenced in the prospectus. The need for quarterly reports would increase the compliance cost and reduce the attraction of this funding product.

B4Q2 Should we require the key matters in Appendix 1 to be disclosed in a particular order to assist investors in comparing different offer documents?

Yes, consistencies in the presentation of key financial metrics would assist investors understand the investment opportunity, develop a knowledge base and improve the education of the market.

B4Q3 Do you agree with our proposals in relation to disclosure of the gearing ratio, interest cover and working capital ratio, as outlined in Appendix 2? Are there any other financial metrics that should be included for use by either retail or institutional investors? If so, what are they and why are they needed? Are there any entities for which disclosure of these metrics may not assist retail investors (e.g. APRA regulated entities)?

We have some concerns regarding requirements for certain financial metrics across the whole market. For example the interest cover ratio of net interest expense/EBITDA is typically relevant for the industrials sector, but not for the consumer or real estate sectors, where fixed charge measures and gearing measures (respectively) are more relevant. In industries where there are various types of debt/obligation incurrence (bonding, bank guarantees, leasing), banks and rating agencies will make adjustments to the ratios on the basis of the industry and the impact these obligations have on debt service and or financial strength. Comparison of issuers based on pre-defined ratios could result in a misleading picture of the financial health of the issuer.

B4Q4 Do you agree that our relief should be conditional on the ongoing quarterly disclosure of key financial information and the quarterly reports required under s283BF? Are there any other matters for which ongoing disclosure should be required?

Refer answer B4Q1

Two-part prospectus relief

Relief to extend operation of [CO 00/173]

CIQ1 Should we extend the operation of [CO 00/173] so that it applies to listed entities that are entitled to use a vanilla bonds prospectus but do not issue debentures in the ordinary course of their business? This would enable interest rate and term information to be set out in an application form and facilitate 'rolling' bond issues.

Agree

CIQ2 Would providing such relief be of commercial benefit to listed entities? Why?

Yes. It will reduce costs

CIQ3 Would providing such relief raise any investor protection concerns?

None that we can currently foresee.

General two-part vanilla bonds prospectus relief

CIQ4 Should we provide relief to allow an issuer that is entitled to use a vanilla bonds prospectus to:

(a) lodge a base prospectus which does not relate to any particular offer of corporate bonds and does not contain all the information required to be included in a vanilla bonds prospectus for any particular offer; and

Yes

(b) (when making a particular offer of quoted corporate bonds) lodge a supplementary prospectus which, together with the base prospectus, contains all the information that is required to be disclosed in a vanilla bonds prospectus for the offer?

Yes

CIQ5 If a two-part prospectus approach were available, what information would issuers be likely to include in:

(a) the base prospectus; and

Disclosure in line with existing regulatory requirements including the latest reported financials, outlook and risk statements in line with existing continuous disclosure requirements

(b) the second-part prospectus?

An update of company financial, outlook and risk disclosure information provided in the base prospectus in line with continuous disclosure requirements together with a deal specific term sheet and statement on use of funds

CIQ6 Are any investor protection concerns raised by the use of a two-part offer document for offers of quoted corporate bonds? Are there any conditions that could address these concerns, while preserving the benefits of a two-part prospectus approach (e.g. conditions mandating that particular disclosures must be made in the second-part prospectus)?

As previously stated the prospectuses (base and pricing supplement) should cross-reference existing ASIC/market operator financial reporting requirements. Clearly it is in the issuer's interest to provide the appropriate level of financial detail in an investor-friendly manner to ensure the maximum uptake of the issue. Australian companies that are reporting regularly against ASIC/market operator requirements are very familiar with this concept.

CIQ7 To what extent does the 13-month time limit for prospectuses reduce the benefit of a two-part prospectus? Is there another maximum term that would strike an appropriate balance between flexibility for issuers and investor protection?

The prospectus time-limit of 13 months reduces the benefit of a two-part prospectus because of the compliance cost involved in re-issuing a prospectus every 13 months. We recommend that the ASIC incorporate the US standard where a base prospectus can have an expiry date of up to three years.

Disclosure relief for offers of convertible notes to institutional investors

D1Q1 Do you agree with our proposed relief? Why? If relief is given, would a class order or case-by-case relief be preferable?

Yes.

In order to maintain confidence and the benefits of the market, it is the FTA's view that the class order model is preferred.

D1Q2 To what extent is the requirement to prepare a transaction-specific prospectus in order to come within the on-sale relief in [CO 04/671] an impediment to offers of convertible notes to institutional investors? Would our proposed relief simplify the offer process?

As previously stated any additional compliance cost and regulatory requirements enforced on issuers when companies have already provided this information in other forms is an impediment of issuing the product. Yes.

D1Q3 Do you agree with the proposed conditions for our relief? Should we require any additional disclosures to be made or impose any additional conditions?

The FTA supports the proposed relief from the on-sale provisions so that the underlying quoted securities can be on-sold without a prospectus if a cleansing notice containing prospectus-like disclosure is provided to the relevant market operator at the time the convertible notes are issued.

Annual Report Proposal

E1Q1 How useful are annual reports as a source of information for investors in corporate bonds and other quoted securities? Are there any common features of the presentation or content of annual reports that detract from their effectiveness? What improvements could be made to annual reports to make them a more useful source of information?

No comment. This is a question for the investor community and associations that cater for this group.

E1Q2 Certain content requirements for annual reports focus on information reasonably required by members: s299A. Holders of corporate bonds are not members. Other than the updates to the key financial disclosures identified in Appendix 1, is there any other information reasonably required by holders of corporate bonds that is not currently required to be included in an annual report?

No comment. This is a question for the investor community and associations that cater for this group.

E1Q3 Would there be benefits for investors in expanding the role of annual reports so that they provided a more detailed update of key information about a company and its securities? Are there any matters not currently included in the annual report that would be particularly useful to investors and that are required to be included in a prospectus under s710?

No comment. This is a question for the investor community and associations that cater for this group.