

# EXPOSURE DRAFT

## EXPLANATORY STATEMENT

### Corporations Amendment (Simple Corporate Bonds and Other Measures) Regulation 2014

#### Section 1 – Name of the regulation

This section specifies the name of the regulation as the Corporations Amendment (Simple Corporate Bonds and Other Measures) Regulation 2014.

#### Section 2 – Commencement

This section provides that this regulation commences on the commencement of Schedule 1 to the *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014*.

#### Section 3 – Authority

This section provides that the authority for the regulation is the *Corporations Act 2001* (the Act).

#### Section 4 – Schedules

This section provides that the regulation has the effect as specified in Schedule 1 - Amendments.

#### **Schedule 1 - Amendments**

The *Corporations Act 2001* requires offers of simple corporate bonds to retail investors to be accompanied by a 2-part prospectus. A simple corporate bonds 2-part prospectus comprises:

- a ***base prospectus*** that contains general information about the issuer and their bonds that is unlikely to significantly change over the life of the base prospectus. The life of a base prospectus is three years from the time it is lodged with the Australian Securities and Investments Commission (ASIC). A base prospectus can form part of the 2-part prospectus for more than one offer of simple corporate bonds during its life; and
- an ***offer-specific*** prospectus that contains information specific to an offer of simple corporate bonds that is material to a consumer's decision to invest in that offer of bonds. An offer-specific prospectus is valid for 13 months. Each offer of simple corporate bonds must be accompanied by a separate offer-specific prospectus.

This schedule inserts three new regulations in the Corporations Regulations 2001 that set out, in particular, the structure and content of the base and offer-specific prospectus.

- To ensure that investors are adequately informed about investing in simple corporate bonds, and to provide certainty for bond issuers in what disclosure is required when issuing simple corporate bonds, regulations **6D.2.04** and **6D.2.05** specify the minimum information required to be included in a base and offer-specific prospectus respectively.

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- To remove the administrative burden on issuers of simple corporate bonds to re-produce a base prospectus for each offer of bonds, a single base prospectus must be created and maintained as a separate document from an(y) offer-specific prospectus(es). This requirement adds to the requirements applying to 2-part simple corporate bonds prospectuses set out in section 713(B) of the Act and is modified by the regulation making power provided by subsection 742(1) of the Act [**regulation 6D.2.06**].

### *Base prospectus*

Authority to amend by regulations the information and statements that must be contained in a base prospectus is provided by subsections 713C(5) and (6) of the Act respectively [**subregulation 6D.2.04(1)**].

Regulation **6D.2.04** specifies the information required to be included in a base prospectus. The information contained in a base prospectus is not limited to that only prescribed by the regulation [**subregulation 6D.2.04(2)**].

A base prospectus must contain a table of contents that indicates where relevant material in the prospectus is located. The prospectus must contain information about what constitutes a bond offer; what information investors need to know about the bonds being offered; information about the bond issuer; the risks involved in investing in the bonds; other information relevant to investing in the bonds; and a glossary of key terms [**subregulation 6D.2.04(3)**].

To make it clear that the base prospectus does not contain all of the information relevant to an offer of simple corporate bonds, Section 1 of a base prospectus must include the following statements:

- This document will be the base prospectus for these bonds for 3 years from the time it is lodged with the Australian Securities and Investments Commission.
- There will be a separate offer-specific prospectus for each offer of bonds during the life of this base prospectus.
- To make an informed investment decision about these bonds, you should read the offer-specific prospectus and this prospectus before investing.
- This prospectus alone is not a full offer. The full offer is contained in the offer-specific prospectus, this prospectus and other information that is incorporated by reference into the offer-specific prospectus and this prospectus.
- To find out more about the pros and cons of investing in corporate bonds, visit ASIC's MoneySmart website: <http://moneysmart.gov.au> [**subregulation 6D.2.04(4)**].

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To assist investors better understand the key features of the issuer's simple corporate bonds, Section 2 of a base prospectus must contain, or reference if this material is already contained in a document lodged with ASIC, details of the key aspects of the bonds, including: the interaction between the coupon rate and yield; the interest rate and term of the bonds; the maturity and redemption of the bonds; events that will constitute default; guarantees in relation to the bonds and information about any guarantors; and the security and ranking of the bonds [**subregulation 6D.2.04(5)**].

It is expected that information about the bonds contained in the base prospectus will be general in nature, and detailed information relating to an offer of simple corporate bonds will be contained in the offer-specific prospectus.

To assist investors consider the timing of their investment in the issuer's simple corporate bonds, Section 2 of a base prospectus must also contain, or reference if this material is already contained in a document lodged with ASIC, information on the program of the bonds (if applicable), including any pre-planned future issues of bonds [**subregulation 6D.2.04(5)**].

Section 3 of a base prospectus must include information to assist the investor better understand the issuer and its business. This includes referring investors to the most up to date information. In particular, Section 3 must contain, or reference if this material is already contained in a document lodged with ASIC:

- brief information about the issuing body, including for example, a summary of their business, business strategy, management personnel including directors and senior managers, and governance arrangements;
- information about the trust deed relating to the issuing body and an explanation of the role of the trustee;
- any additional information relevant to a consumer's investment decision, including for example, the issuing body's annual and financial reports, reference to any half-year report lodged with ASIC if one was lodged since the full-year report was lodged and where that information can be obtained;
- an explanation of how the continuous disclosure regime requires issuing bodies to disclose information that is price sensitive; and
- the financial position of the issuing body, as well as key financial ratios relevant to the bonds, including an explanation of the ratios and information about how a change in the ratios may affect the bonds [**subregulation 6D.2.04(6)**].

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To inform investors that the issuing body must publicly disclose further information than that contained in the 2-part prospectus, Section 3 of a base prospectus must also include the following statement:

- A publicly listed entity must release financial reports and continuously disclose information that may have an impact on its share or bond price. This information is available publicly on the relevant market exchange. You should consider this information when making an investment decision about bonds. While this information is important, it is not considered part of the disclosure document for the offer of bonds using this base prospectus [**subregulation 6D.2.04(7)**].

All investments contain a degree of risk that investors should consider before investing. Section 4 of a base prospectus highlights the main risks of investing in an offer of simple corporate bonds. Specifically, Section 4 of a base prospectus must include, or reference if this material is already contained in a document lodged with ASIC, information on:

- the main risks associated with the bonds and an explanation of the risks;
- the issuing body's main business risks;
- other risks specific to the bonds that may be relevant to a consumer's investment decision, including an explanation of the risks and a reference to information about them; and
- other business risks that may be relevant to a consumer's investment decision, including an explanation of the risks and a reference to information about them [**subregulation 6D.2.04(8)**].

Section 5 of a base prospectus must contain, or reference if this material is already contained in a document lodged with ASIC: an explanation of the taxation consequences of investing in bonds; information relating to privacy and the issuing body's obligations under privacy laws; and any applicable selling restrictions on the bonds [**subregulation 6D.2.04(9)**].

Section 5 of a base prospectus must also include the following statements:

- More information on the tax implications associated with investing in bonds can be found on the Australian Taxation Office's website: <http://www.ato.gov.au>.
- The following is a list of material referred to, but not set out in full, in this prospectus. However, it is incorporated by reference and, as such, forms part of the offer of bonds covered by this prospectus [**subregulation 6D.2.04(10)**].

A base prospectus must also include a list of material referred to, but not set out in full, in the base prospectus [**subregulation 6D.2.04(11)**].

To assist investors better understand the terminology used in the prospectus material relating to simple corporate bonds, Section 6 of a base prospectus must include a glossary that adequately explains the meanings of terms used in the base and offer-specific prospectuses [**subregulation 6D.2.04(12)**].

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### *Offer-specific prospectus*

Authority to amend by regulations the information and statements that must be contained in an offer-specific prospectus is provided by subsections 713D(6) and (7) of the Act respectively [**subregulation 6D.2.05(1)**].

Regulation **6D.2.05** specifies the information required to be included in an offer-specific prospectus. Information contained in an offer-specific prospectus is not limited to that only prescribed by the regulation [**subregulation 6D.2.05(2)**].

An offer-specific prospectus must contain a table of contents that indicates where relevant material in the prospectus is located. The prospectus must contain information about what investors need to know about the bonds being offered; key dates and details of the offer of bonds; and any other offer-specific information relevant to a consumer's decision to invest in the bonds [**subregulation 6D.2.05(3)**].

To make it clear that the offer-specific prospectus does not contain all of the information relevant to an offer of simple corporate bonds, Section 1 of an offer-specific prospectus must contain the following statements:

- This offer-specific prospectus is not a summary of the information contained in the base prospectus.
- This offer-specific prospectus is only relevant for this offer of bonds.
- A base prospectus applies to this offer of bonds.
- This offer-specific prospectus provides offer details, key dates and other relevant information for the offer. The base prospectus for this offer provides additional information that is also critical to your decision. You should take all of the information in the base prospectus into consideration before making your decision in relation to this offer.
- To find out more about the pros and cons of investing in corporate bonds, visit ASIC's MoneySmart website: <http://moneysmart.gov.au> [**subregulation 6D.2.05(4)**].

To provide investors with detailed information about the terms and conditions of the bonds being offered, Section 2 of an offer-specific prospectus must contain, or reference if this material is already contained in a document lodged with ASIC:

- information on the terms of the offer of the bonds, including: the name of the issuing body; the size of the series, or tranche, to which the offer relates; the face value, term, and maturity date of the bonds; guarantees in relation to the bonds and information about any guarantors; the interest and market rate and margin of the bonds; interest payment dates; events that will constitute default; details of any existing security; the structure of the offer; the minimum size of an application for the bonds; and the prescribed financial market on which the bonds will be listed.

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- A short explanation of the circumstances in which the bonds can be redeemed.
- any fees and costs associated with the offer of bonds.
- an explanation of where investors can obtain additional information about the offer, including for example, the contact details of the issuing body.
- information or reference to the selling restrictions, if any, on the bonds [subregulation 6D.2.05(5)].

In recognition that a base prospectus is valid for up to three years, and that information contained in that prospectus can change over time, an offer-specific prospectus must update significant information contained in a base prospectus that has changed. This information is to be included, or referenced if it is already contained in a document lodged with ASIC, in Section 3 of an offer-specific prospectus, and should specifically include:

- any significant information necessary to update the information in the base prospectus;
- any notices that the issuing body has issued to explain changes that have occurred to the base prospectus since it was lodged with ASIC;
- the key financial ratios that are relevant to the bonds and to the financial position of the issuing body, including any changes in the financial ratios since the last offer-specific prospectus or base prospectus was issued. If no offer-specific prospectus has previously been issued, details of any change in the key financial ratios by comparison with the key financial ratios at the time the base prospectus was lodged with ASIC; and
- an explanation of any changes to the offer-specific and issuer-specific risks [subregulation 6D.2.05(6)].

Section 3 of an offer-specific prospectus must also contain, or reference if this material is already contained in a document lodged with ASIC, other information specific to the offer of simple corporate bonds that investors should consider, including:

- an explanation of how the issuing body will use the funds raised by issuing the bonds;
- a brief summary of the effect of the offer on the issuing body;
- the ranking of the bonds and any other debt on issue; and
- a reference to, and details of how to obtain, the issuing body's Offer Management Agreement [subregulation 6D.2.05(6)].