

EXPOSURE-DRAFT

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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

No. , 2013

(Treasury)

**A Bill for an Act to amend the law relating to
corporations, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **corporations, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment (Simple*
6 *Corporate Bonds and Other Measures) Act 2013*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013 No. ,
2013 1

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

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Amendments **Schedule 1**
General amendments **Part 1**

1 **Schedule 1—Amendments**

2 **Part 1—General amendments**

3 *Corporations Act 2001*

4 **1 Section 9 (before the definition of AASB)**

5 Insert:

6 *2-part simple corporate bonds prospectus* has the meaning given
7 by section 713B.

8 **2 Section 9**

9 Insert:

10 *base prospectus* has the meaning given by section 713C.

11 **3 Section 9**

12 Insert:

13 *offer of simple corporate bonds* has the meaning given by
14 section 713A.

15 **4 Section 9**

16 Insert:

17 *offer-specific prospectus*, in relation to an offer of simple
18 corporate bonds, has the meaning given by section 713D.

19 **5 Section 9**

20 Insert:

21 *simple corporate bonds* has the meaning given by section 713A.

22 **6 Section 9**

23 Insert:

24 *simple corporate bonds depository interest* means a beneficial
25 interest in simple corporate bonds, where the interest is or was

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Schedule 1 Amendments

Part 1 General amendments

1 issued by a simple corporate bonds depository nominee (as a
2 simple corporate bonds depository nominee).

3 **7 Section 9**

4 Insert:

5 *simple corporate bonds depository nominee* means a person who:

- 6 (a) issues to someone else one or more beneficial interests in
7 simple corporate bonds that the person:
8 (i) owns legally; or
9 (ii) would own beneficially, apart from the issue of those
10 interests; or
11 (iii) has a beneficial interest in; and
12 (b) does so with the agreement of the body that issued the bonds.

13 **8 Paragraph 636(1)(g)**

14 Omit “under section 710 to 713;”, substitute:
15 under whichever of the following is applicable:
16 (iii) sections 710 to 713;
17 (iv) sections 713C to 713E;

18 **9 Subsection 700(1)**

19 Omit “not include a security referred to in paragraph (e) or (f) of the
20 definition of *security* in section 761A.”, substitute:

21 not include:

- 22 (a) a security referred to in paragraph (e) or (f) of the definition
23 of *security* in section 761A; or
24 (b) a simple corporate bonds depository interest in simple
25 corporate bonds, where the simple corporate bonds were
26 issued under a 2-part simple corporate bonds prospectus.

27 **10 Section 705 (after table item 2)**

28 Insert:

2A *2-part simple corporate bonds
prospectus*

Must be used for any offer of simple corporate bonds. content [713C, 713D, 713E]
procedure [717]
liability [728 and 729]

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Amendments **Schedule 1**
General amendments **Part 1**

defences [731 and 733]

1 **11 At the end of section 705 (after the table)**

2 Add:

3 Note: Subsection 709(1A) provides that if the offer period for an offer of
4 simple corporate bonds begins during the 2-year period beginning at
5 the commencement of that subsection, a prospectus (other than a
6 2-part simple corporate bonds prospectus) may be prepared.

7 **12 After subsection 708(14)**

8 Insert:

9 (14A) Subsection (14) does not apply to:

- 10 (a) an offer of simple corporate bonds; or
11 (b) an offer of debentures (other than simple corporate bonds), if
12 the offer is made to holders of simple corporate bonds.

13 **13 Subsection 709(1)**

14 After “securities”, insert “(other than an offer of simple corporate
15 bonds)”.

16 **14 After subsection 709(1)**

17 Insert:

18 (1A) If:

- 19 (a) an offer of simple corporate bonds needs disclosure to
20 investors under this Part; and
21 (b) the offer period begins during the 2-year period beginning at
22 the commencement of this subsection;
23 either of the following must be prepared for the offer:
24 (c) a prospectus (other than a 2-part simple corporate bonds
25 prospectus) unless subsection (4) allows an offer information
26 statement to be used instead;
27 (d) a 2-part simple corporate bonds prospectus.

28 Note: See sections 713B to 713E for the contents of a 2-part simple
29 corporate bonds prospectus.

30 (1B) If a prospectus is prepared under paragraph (1A)(c), then, under
31 section 712, the prospectus may simply refer to material already
32 lodged with ASIC instead of including it.

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Schedule 1 Amendments

Part 1 General amendments

- 1 (1C) If:
2 (a) an offer of simple corporate bonds needs disclosure to
3 investors under this Part; and
4 (b) the offer period begins after the 2-year period beginning at
5 the commencement of this subsection;
6 a 2-part simple corporate bonds prospectus must be prepared for
7 the offer.
8 Note: See sections 713B to 713E for the contents of a 2-part simple
9 corporate bonds prospectus.

10 **15 After subsection 709(2)**

- 11 Insert:
12 (2A) Subsection (2) does not apply to an offer of simple corporate
13 bonds.

14 **16 Subsection 709(4)**

- 15 After “prospectus”, insert “(other than a 2-part simple corporate bonds
16 prospectus)”.

17 **17 At the end of section 710**

- 18 Add:
19 (4) This section does not apply to a 2-part simple corporate bonds
20 prospectus.

21 **18 At the end of section 711**

- 22 Add:
23 *Section does not apply to 2-part simple corporate bonds*
24 *prospectus*
25 (9) This section does not apply to a 2-part simple corporate bonds
26 prospectus.

27 **19 At the end of section 712**

- 28 Add:

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Schedule 1 Amendments

Part 1 General amendments

1 (4) If, at a particular time, there is no prospectus, then, for the purposes
2 of paragraph (3)(c), assume that:

- 3 (a) there is a prospectus; and
4 (b) the date of the prospectus is the first day of the offer period.

5 *Securities must be in Australian currency*

6 (5) The securities must be denominated in Australian currency.

7 *Minimum subscription*

8 (6) The offer must be made on the basis that securities will not be
9 issued unless a minimum amount of \$50 million is raised under the
10 offer. For the purpose of working out whether this condition has
11 been satisfied, a person who has agreed to take securities as
12 underwriter is taken to have applied for those securities.

13 *Securities for fixed term*

14 (7) The securities must be for a fixed term of not more than 10 years.

15 *Principal payable at end of fixed term*

16 (8) Under the securities, the principal must be repaid by the issuing
17 body to the holder at the end of the fixed term.

18 *Interest rate must be fixed or floating*

19 (9) The rate at which interest is payable under the securities must be:
20 (a) a fixed rate; or
21 (b) a floating rate that is comprised of a reference rate and a
22 fixed margin.

23 *Fixed rate etc. must not be decreased*

24 (10) If a fixed rate of interest is payable under the securities, the rate
25 must not be decreased during the term of the securities.

26 (11) If a floating rate of interest is payable under the securities, the
27 fixed margin of the rate must not be decreased during the term of
28 the securities.

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Amendments **Schedule 1**
General amendments **Part 1**

1 *Interest to be paid periodically etc.*

- 2 (12) Under the securities, interest payments:
3 (a) must be paid periodically; and
4 (b) must be paid no later than the end of the fixed term; and
5 (c) cannot be deferred or capitalised by the issuing body.

6 *Security must not exceed \$1,000*

- 7 (13) The price payable for each security must not exceed \$1,000.

8 *Securities may only be redeemed before fixed term in specified*
9 *circumstances*

- 10 (14) The securities must not be redeemable (other than at the end of the
11 fixed term) except in one or more of the following circumstances:
12 (a) at the option of the holder of the security;
13 (b) as a result of the acceptance of an offer made to the holder by
14 the issuing body to buy back the security;
15 (c) a change in a law, or in the application or interpretation of a
16 law, with the effect that interest payable on the security is
17 not, or may not be, deductible by the issuing body for the
18 purposes of calculating its taxation liability;
19 (d) a change in a law, or in the application or interpretation of a
20 law, with the effect that:
21 (i) the issuing body, or any guarantor for the body, would
22 be required to deduct or withhold an amount in respect
23 of taxes from a payment to the holder; and
24 (ii) under the terms of the security, that deduction or
25 withholding would result in the body, or any guarantor,
26 being required to pay an additional amount to the holder
27 in relation to the amount deducted or withheld;
28 (e) there is a change of control of the issuing body (as defined in
29 the terms of the security) and the redemption does not take
30 effect unless all securities issued under the offer are
31 redeemed;
32 (f) fewer than 10% of the securities issued under the offer
33 remain on issue and the redemption does not take effect
34 unless all securities issued under the offer are redeemed.

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Schedule 1 Amendments

Part 1 General amendments

- 1 *Security holders rank higher than unsecured creditors*
- 2 (15) In a winding up of the issuing body, holders of the securities must
3 have higher priority than unsecured creditors of the issuing body.
- 4 *Securities issued by wholly-owned subsidiaries*
- 5 (16) If the issuing body is a wholly-owned subsidiary of a body
6 corporate, the body corporate must have guaranteed:
7 (a) the repayment of any money deposited or lent to the
8 borrower under the securities; and
9 (b) the payment of any interest payable under the securities.
- 10 *Securities not convertible*
- 11 (17) The securities must not be convertible into another class of
12 securities.
- 13 *Securities are offered at single price*
- 14 (18) The price payable for the securities must be the same for all
15 persons who accept the offer.
- 16 *Continuously quoted securities*
- 17 (19) The offer must be made by a body that:
18 (a) has continuously quoted securities; or
19 (b) is a wholly-owned subsidiary of a body corporate that:
20 (i) has continuously quoted securities; and
21 (ii) has guaranteed, or agreed to guarantee, the repayment of
22 any money deposited or lent to the borrower under the
23 securities;
24 where trading in the securities on a prescribed financial market on
25 which the securities are quoted was not suspended for more than a
26 total of 5 days during the shorter of the following periods:
27 (c) the period during which the class of securities is quoted;
28 (d) the period of 12 months before the day on which the offer is
29 made.
- 30 (20) If, at a particular time, there is no prospectus, then, in determining,
31 for the purposes of subsection (19), whether a body has
32 continuously quoted securities at that time, assume that:
-

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Amendments **Schedule 1**
General amendments **Part 1**

- 1 (a) there is a prospectus; and
2 (b) the date of the prospectus is the first day of the offer period.

3 *Auditor's reports have not been modified*

- 4 (21) The auditor's report on:
5 (a) the issuing body's financial report for the most recent
6 financial year; or
7 (b) if a half-year financial report was prepared by the issuing
8 body after the issuing body's financial report for the most
9 recent financial year—the half-year financial report;
10 does not include:
11 (c) a statement to the effect that the auditor is of the opinion that
12 the financial report, or the half-year financial report, as the
13 case may be, is not in accordance with this Act; or
14 (d) a description of a defect or an irregularity in the financial
15 report or the half-year financial report, as the case may be; or
16 (e) a description of a deficiency, failure or shortcoming in
17 respect of the matters referred to in paragraph 307(b), (c) or
18 (d); or
19 (f) an emphasis of matter paragraph related to going concern.

20 *ASIC power to exclude body from this section*

- 21 (22) The issuing body must not be a body in relation to which a
22 determination is in force under subsection (24).
23 (23) If the issuing body is a wholly-owned subsidiary of a body
24 corporate, the body corporate must not be a body in relation to
25 which a determination is in force under subsection (24).
26 (24) ASIC may determine that a body is a body to which this subsection
27 applies if ASIC is satisfied that, in the previous 12 months, any of
28 the following provisions were contravened in relation to the body:
29 (a) subsection 283AA(1), 283AB(1) or 283AC(1);
30 (b) the provisions of Chapter 2M as they apply to the issuing
31 body;
32 (c) section 674 or 675;
33 (d) section 724 or 728.
34 ASIC must publish a copy of the determination in the *Gazette*.
-

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Schedule 1 Amendments

Part 1 General amendments

- 1 *Regulations*
- 2 (25) The securities must comply with such other conditions (if any) as
3 are specified in the regulations.
- 4 (26) The offer must comply with such other conditions (if any) as are
5 specified in the regulations.
- 6 (27) The issuing body must comply with such other conditions (if any)
7 as are specified in the regulations.
- 8 (28) If the issuing body is a wholly-owned subsidiary of a body
9 corporate, the body corporate must comply with such other
10 conditions (if any) as are specified in the regulations.

11 **713B Simple corporate bonds—2-part simple corporate bonds** 12 **prospectus**

- 13 (1) A *2-part simple corporate bonds prospectus* for an offer of simple
14 corporate bonds for issue by a body is the combination of the
15 following documents prepared by the issuing body:
- 16 (a) the base prospectus that covers the period during which the
17 offer is made;
- 18 (b) the offer-specific prospectus for the offer.

19 *Prospectus*

- 20 (2) A 2-part simple corporate bonds prospectus is taken to be a
21 prospectus for the purposes of this Act.

22 *Base prospectus is not taken to be a prospectus in its own right*

- 23 (3) For the purposes of this Act, a base prospectus is taken not to be a
24 prospectus in its own right.

25 *Offer-specific prospectus is not taken to be a prospectus in its own* 26 *right*

- 27 (4) For the purposes of this Act, an offer-specific prospectus is taken
28 not to be a prospectus in its own right.

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Amendments **Schedule 1**
General amendments **Part 1**

1 *Lodgement of prospectus*

- 2 (5) For the purposes of this Act, a 2-part simple corporate bonds
3 prospectus for an offer of simple corporate bonds is taken to have
4 been lodged with ASIC on the day the offer-specific prospectus for
5 the offer is lodged with ASIC.

6 *Expiry date of prospectus*

- 7 (6) For the purposes of this Act, the expiry date of a 2-part simple
8 corporate bonds prospectus for an offer of simple corporate bonds
9 is taken to be the expiry date for the offer-specific prospectus for
10 the offer.

11 *Prospectus must be published on body's website*

- 12 (7) A base prospectus must be available on the issuing body's website
13 throughout the covered period for the base prospectus (within the
14 meaning of section 713C).
- 15 (8) An offer-specific prospectus must be available on the issuing
16 body's website throughout the application period of the
17 offer-specific prospectus.

18 **713C Simple corporate bonds—base prospectus**

19 *Base prospectus*

- 20 (1) If a body prepares and lodges with ASIC a document that satisfies
21 the conditions set out in this section, the document is a **base**
22 **prospectus** for simple corporate bonds offered by the body during
23 the 3-year period (the **covered period**) beginning on the date on
24 which the document is lodged with ASIC.

25 *Document must be expressed to be the base prospectus*

- 26 (2) The document must state that it is the base prospectus for all offers
27 of simple corporate bonds made by the body during the covered
28 period.

29 *Document to be read with offer-specific prospectus*

- 30 (3) The document must state that:

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Schedule 1 Amendments

Part 1 General amendments

- 1 (a) there will be an offer-specific prospectus for each offer of
2 simple corporate bonds during the covered period; and
3 (b) the disclosure document for each such offer will consist of:
4 (i) a base prospectus; and
5 (ii) the offer-specific prospectus for the offer.

6 Note: See also section 713B (2-part simple corporate bonds prospectus).

7 *Document must contain information specified in regulations*

- 8 (4) The document must contain the information specified in the
9 regulations.

10 *Document must set out statements specified in the regulations*

- 11 (5) The document must set out the statements specified in the
12 regulations.

13 *Replacement document*

- 14 (6) If the document is a replacement document, the *covered period* is
15 the period:
16 (a) beginning on the date on which the replacement document is
17 lodged with ASIC; and
18 (b) ending at the end of the covered period for the original base
19 prospectus.

20 **713D Simple corporate bonds—offer-specific prospectus**

21 *Offer-specific prospectus*

- 22 (1) If:
23 (a) a body proposes to make a particular offer of simple
24 corporate bonds; and
25 (b) the body prepares and lodges with ASIC a document that
26 satisfies the conditions set out in this section;
27 the document is an *offer-specific prospectus* for the offer.

28 *Document must be expressed to be the offer-specific prospectus*

- 29 (2) The document must state that it is the offer-specific prospectus for
30 the offer.

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Amendments **Schedule 1**
General amendments **Part 1**

1

Expiry date

2

- (3) The document must state that no securities will be issued under the offer after the expiry date specified in the document. The expiry date must not be later than 13 months after the date the document is lodged with ASIC. The expiry date of a replacement document must be the same as that of the original document it replaces.

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7

Note: Section 719A deals with replacement documents.

8

Document to be read with base prospectus

9

- (4) The document must state that:
- (a) there is a base prospectus that is applicable to the offer; and
 - (b) the disclosure document for each such offer will consist of:
 - (i) the offer-specific prospectus for the offer; and
 - (ii) the base prospectus.

10

11

12

13

14

Note: See also section 713B (2-part simple corporate bonds prospectus).

15

Document must contain information specified in regulations

16

17

- (5) The document must contain the information specified in the regulations.

18

Document must set out statements specified in the regulations

19

20

- (6) The document must set out the statements specified in the regulations.

21

Document may amend applicable base prospectus

22

23

- (7) The document may include material that modifies or supplements the applicable base prospectus.

24

713E Simple corporate bonds—prospectus may refer to other material lodged with ASIC

25

26

27

28

29

30

31

- (1) Instead of setting out information that is contained in a document (the *lodged document*) that has been lodged with ASIC, a base prospectus or an offer-specific prospectus may simply refer to the lodged document. The reference must:
- (a) identify the lodged document or the part of the lodged document that contains the information; and

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Schedule 1 Amendments

Part 1 General amendments

- 1 (b) inform people of their right to obtain a copy of the lodged
2 document (or part) under subsection (5).
- 3 (2) The reference must also include:
- 4 (a) if the information is primarily of interest to professional
5 analysts or advisers or investors with similar specialist
6 information needs:
- 7 (i) a description of the contents of the lodged document (or
8 part); and
- 9 (ii) a statement to the effect that the information in the
10 lodged document (or part) is primarily of interest to
11 those people; or
- 12 (b) in any other case—sufficient information about the contents
13 of the lodged document to allow a person to whom the offer
14 is made to decide whether to obtain a copy of the lodged
15 document (or part).
- 16 (3) The lodged document (or part) referred to under subsection (1) is
17 taken to be included in the base prospectus, or the offer-specific
18 prospectus, as the case may be.
- 19 (4) A person who wishes to take advantage of subsection (1) may
20 lodge a document with ASIC even if this Act does not require the
21 document to be lodged.
- 22 (5) If the base prospectus, or the offer-specific prospectus, as the case
23 may be, is taken to include a lodged document, or part of a lodged
24 document, under subsection (1), the person making the offer must
25 give a copy of the lodged document (or part) free of charge to
26 anyone who asks for it during:
- 27 (a) in the case of a base prospectus—the covered period for the
28 base prospectus (within the meaning of section 713C); or
- 29 (b) in the case of an offer-specific prospectus—the application
30 period of the offer-specific prospectus.

22 After subsection 716(1)

31 Insert:

32 *Date for 2-part simple corporate bonds prospectus*

- 33
- 34 (1A) Subsection (1) does not apply to a 2-part simple corporate bonds
35 prospectus.
-

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Amendments **Schedule 1**
General amendments **Part 1**

1 (1B) For the purposes of this Act, the date of a 2-part simple corporate
2 bonds prospectus for an offer of simple corporate bonds is taken to
3 be the date on which the offer-specific prospectus for the offer is
4 lodged with ASIC.

5 **23 Section 717 (cell at table item 1, column headed**
6 **“Sections”)**

7 Repeal the cell, substitute:

710

711

712

713

713C

713D

713E

714

715

716

8 **24 Section 717 (cell at table item 4, column headed “Action**
9 **required”)**

10 After “section 719”, insert “or 719A”.

11 **25 Section 717 (cell at table item 4, column headed**
12 **“Sections”)**

13 Repeal the cell, substitute:

719

719A

724

14 **26 Section 718**

15 Before “A disclosure”, insert “(1)”.

16 **27 At the end of section 718**

17 Add:

18 (2) This section does not apply to a 2-part simple corporate bonds
19 prospectus.

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Schedule 1 Amendments

Part 1 General amendments

1 Note: See section 713B (2-part simple corporate bonds prospectus).

2 **28 Section 719 (heading)**

3 Repeal the heading, substitute:

4 **719 Lodging supplementary or replacement document—general**

5 **29 At the end of section 719**

6 Add:

7 *Section does not apply to 2-part simple corporate bonds*
8 *prospectus*

9 (6) This section does not apply to a 2-part simple corporate bonds
10 prospectus.

11 **30 After section 719**

12 Insert:

13 **719A Lodging supplementary or replacement document—2-part** 14 **simple corporate bonds prospectus**

15 *Need for a supplementary or replacement document*

- 16 (1) If the person making an offer of simple corporate bonds under a
17 2-part simple corporate bonds prospectus becomes aware of:
- 18 (a) a misleading or deceptive statement in the 2-part simple
19 corporate bonds prospectus; or
 - 20 (b) an omission from the 2-part simple corporate bonds
21 prospectus of information required by section 713C, 713D or
22 713E; or
 - 23 (c) a new circumstance that:
 - 24 (i) has arisen since the 2-part simple corporate bonds
25 prospectus was lodged with ASIC; and
 - 26 (ii) would have been required by section 713C, 713D or
27 713E to be included in the prospectus if it had arisen
28 before the prospectus was lodged;
- 29 that is materially adverse from the point of view of an investor, the
30 person may:

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Amendments **Schedule 1**
General amendments **Part 1**

- 1 (d) if the statement, omission or circumstance relates to the base
2 prospectus component of the 2-part simple corporate bonds
3 prospectus:
4 (i) include material in an offer-specific prospectus that
5 supplements or modifies the base prospectus; or
6 (ii) lodge a replacement document with ASIC; or
7 (e) if the statement, omission or circumstance relates to the
8 offer-specific prospectus component of the 2-part simple
9 corporate bonds prospectus—lodge a supplementary or
10 replacement document with ASIC.

11 Note 1: Section 728 makes it an offence to continue making offers after the
12 person has become aware of a misleading or deceptive statement,
13 omission or new circumstance that is materially adverse from the
14 point of view of an investor unless the deficiency is corrected.

15 Note 2: Because of section 713E, a 2-part simple corporate bonds prospectus
16 may be taken to include information in another document. This should
17 be taken into account when considering whether the prospectus is
18 deficient.

19 Note 3: A base prospectus may be supplemented or modified by the
20 offer-specific prospectus for a particular offer, see subsection
21 713D(7).

22 Note 4: The power to issue a supplementary or replacement document is not
23 limited to the situations dealt with in this section.

24 Note 5: This section applies to a document that has already been previously
25 supplemented or replaced.

26 Note 6: See section 720 for the consents that need to be obtained before
27 lodgement.

- 28 (2) If the person making the offer becomes aware that information in
29 the base prospectus component of the 2-part simple corporate
30 bonds prospectus is not worded and presented in a clear, concise
31 and effective manner, the person may lodge a replacement
32 document with ASIC.

33 Note: A base prospectus may be supplemented or modified by the
34 offer-specific prospectus for a particular offer, see subsection
35 713D(7).

- 36 (3) If the person making the offer becomes aware that information in
37 the offer-specific prospectus component of the 2-part simple
38 corporate bonds prospectus is not worded and presented in a clear,
39 concise and effective manner, the person may lodge a
40 supplementary or replacement document with ASIC.

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Schedule 1 Amendments

Part 1 General amendments

1 *Form of supplementary document for offer-specific prospectus*

- 2 (4) At the beginning of a supplementary document for an
3 offer-specific prospectus, there must be:
4 (a) a statement that it is a supplementary document; and
5 (b) an identification of the offer-specific prospectus it
6 supplements; and
7 (c) an identification of any previous supplementary documents
8 lodged with ASIC in relation to the offer; and
9 (d) a statement that it is to be read together with:
10 (i) the offer-specific prospectus it supplements; and
11 (ii) any previous supplementary documents; and
12 (iii) the base prospectus that covers the period during which
13 the offer is made.

14 The supplementary document must be dated. The date is the date
15 on which the document is lodged with ASIC.

16 *Form of replacement document for a base prospectus*

- 17 (5) At the beginning of a replacement document for a base prospectus,
18 there must be:
19 (a) a statement that it is a replacement document; and
20 (b) an identification of the base prospectus it replaces.

21 The replacement document must be dated. The date is the date on
22 which the document is lodged with ASIC.

23 *Form of replacement document for an offer-specific prospectus*

- 24 (6) At the beginning of a replacement document for an offer-specific
25 prospectus, there must be:
26 (a) a statement that it is a replacement document; and
27 (b) an identification of the offer-specific prospectus it replaces.

28 The replacement document must be dated. The date is the date on
29 which the document is lodged with ASIC.

30 *Consequences of lodging a supplementary document for an*
31 *offer-specific prospectus*

- 32 (7) If a supplementary document is lodged with ASIC in relation to an
33 offer-specific prospectus, the offer-specific prospectus is taken to
34 be the offer-specific prospectus together with the supplementary
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Amendments **Schedule 1**
General amendments **Part 1**

1 document for the purposes of the application of this Chapter to
2 events that occur after the lodgement.

3 Note: This subsection means, for example, that offers made after lodgement
4 of the supplementary document must be accompanied by copies of
5 both the original offer-specific prospectus and the supplementary
6 document.

7 *Consequences of lodging a replacement document for a base*
8 *prospectus*

9 (8) If a replacement document is lodged with ASIC in relation to a
10 base prospectus, the base prospectus is taken to be the replacement
11 document for the purposes of the application of this Chapter to
12 events that occur after the lodgement.

13 Note: This subsection means, for example, that offers made after lodgement
14 of the replacement document must be accompanied by copies of the
15 replacement document and not the original base prospectus.

16 *Consequences of lodging a replacement document for an*
17 *offer-specific prospectus*

18 (9) If a replacement document is lodged with ASIC in relation to an
19 offer-specific prospectus, the offer-specific prospectus is taken to
20 be the replacement document for the purposes of the application of
21 this Chapter to events that occur after the lodgement.

22 Note: This subsection means, for example, that offers made after lodgement
23 of the replacement document must be accompanied by copies of the
24 replacement document and not the original offer-specific prospectus.

25 **31 Section 720 (cell at table item 1, column headed “Type of** 26 **offer”)**

27 After “issue”, insert “(other than an offer of simple corporate bonds
28 under a 2-part simple corporate bonds prospectus)”.

29 **32 Section 720 (after table item 1)**

30 Insert:

Simple corporate bonds issue offers

1A	offer of simple corporate bonds under a 2-part simple corporate bonds prospectus	every director of the body every person named in the document as a proposed director of the body if simple corporate bonds in a managed investment scheme made
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Schedule 1 Amendments

Part 1 General amendments

available by a body—every director
of that body

if simple corporate bonds in a
managed investment scheme made
available by an individual—that
individual

1 **33 Subparagraphs 724(1)(c)(ii) and (d)(ii)**

2 After “713,” insert “713C, 713D, 713E,”.

3 **34 Subsection 724(2) (note)**

4 Omit “Section 719 deals”, substitute “Sections 719 and 719A deal”.

5 **35 Subsection 724(3) (cell at table item 1, column headed**
6 **“Circumstances”)**

7 After “prospectus”, insert “(other than a 2-part simple corporate bonds
8 prospectus)”.

9 **36 Subsection 724(3) (after table item 1)**

10 Insert:

- | | | |
|----|--|---|
| 1A | the disclosure document is a 2-part
simple corporate bonds prospectus | a supplementary or replacement
document that corrects the
deficiencies or changes the terms of
the offer |
|----|--|---|

11 **37 After subsection 727(3)**

12 Insert:

13 *Simple corporate bonds*

14 (3A) Subsection (3) does not apply in relation to an offer of securities
15 under a 2-part simple corporate bonds prospectus if the securities
16 are in the same class as existing securities that are quoted on a
17 prescribed financial market immediately before the application
18 period for the prospectus but for differences as to:

- 19 (a) the fixed term of the securities (if any); or
20 (b) the rate at which interest is payable under the securities; or
21 (c) the dates on which the holders are to be paid interest under
22 the securities.

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Amendments **Schedule 1**
General amendments **Part 1**

1 **38 Paragraph 728(1)(b)**

2 After “713,” insert “713C, 713D, 713E,”.

3 **39 Subparagraph 728(1)(c)(ii)**

4 After “713,” insert “713C, 713D, 713E,”.

5 **40 After subsection 729(1)**

6 Insert:

7 (1A) Table items 2 and 3 in subsection (1) do not apply to an offer of
8 simple corporate bonds under a 2-part simple corporate bonds
9 prospectus.

10 **41 Paragraph 730(1)(b)**

11 After “713,” insert “713C, 713D, 713E,”.

12 **42 Subparagraph 730(1)(c)(ii)**

13 After “713,” insert “713C, 713D, 713E,”.

14 **43 Section 761A (at the end of paragraph (f) of the definition
15 of security)**

16 Add “or”.

17 **44 Section 761A (after paragraph (f) of the definition of
18 security)**

19 Insert:

20 (g) a simple corporate bonds depository interest;

21 **45 Paragraph 1317DAG(5)(a)**

22 After “713(6),” insert “713A(24),”.

23

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Schedule 1 Amendments

Part 2 Amendments relating to false or misleading statements etc.

1 **Part 2—Amendments relating to false or misleading**
2 **statements etc.**

3 ***Corporations Act 2001***

4 **46 Subsection 1308(4)**

5 After “not false or misleading”, insert “in a material particular”.

6 **47 Subsection 1308(4)**

7 Omit “the statement did not omit any matter or thing without which the
8 document would be misleading”, substitute “the document did not omit
9 any matter or thing without which the document would be misleading in
10 a material respect”.

11 **48 At the end of section 1308**

12 Add:

- 13 (10) For the purposes of subsection (4), a person is taken to have taken
14 reasonable steps to ensure that a statement was not false or
15 misleading in a material particular if the person proves that:
- 16 (a) the person made all inquiries (if any) that were reasonable in
17 the circumstances; and
 - 18 (b) after doing so, the person believed on reasonable grounds
19 that the statement was not misleading in a material particular.
- 20 (11) For the purposes of subsection (4), a person is taken to have taken
21 reasonable steps to ensure that a document did not omit any matter
22 or thing without which the document would be misleading in a
23 material respect if the person proves that:
- 24 (a) the person made all inquiries (if any) that were reasonable in
25 the circumstances; and
 - 26 (b) after doing so, the person believed on reasonable grounds
27 that there was no such omission.
- 28 (12) For the purposes of subsection (4), a person is taken to have taken
29 reasonable steps to ensure that a statement was not false or
30 misleading in a material particular if the person proves that:
- 31 (a) the person relied on information given to the person by:
 - 32 (i) if the person is a body—someone other than a director,
33 employee or agent of the body; or
-

EXPOSURE-DRAFT

Amendments **Schedule 1**
Amendments relating to false or misleading statements etc. **Part 2**

- 1 (ii) if the person is an individual—someone other than an
2 employee or agent of the individual; and
3 (b) the reliance placed on that information by the person was
4 reasonable in all the circumstances.
- 5 (13) For the purposes of subsection (4), a person is taken to have taken
6 reasonable steps to ensure that a document did not omit any matter
7 or thing without which the document would be misleading in a
8 material respect if the person proves that:
- 9 (a) the person relied on information given to the person by:
10 (i) if the person is a body—someone other than a director,
11 employee or agent of the body; or
12 (ii) if the person is an individual—someone other than an
13 employee or agent of the individual; and
14 (b) the reliance placed on that information by the person was
15 reasonable in all the circumstances.

16 **49 At the end of section 1309**

17 Add:

- 18 (7) For the purposes of subsection (2), a person is taken to have taken
19 reasonable steps to ensure that information was not false or
20 misleading in a material particular if the person proves that:
- 21 (a) the person made all inquiries (if any) that were reasonable in
22 the circumstances; and
23 (b) after doing so, the person believed on reasonable grounds
24 that the information was not misleading or deceptive in a
25 material particular.
- 26 (8) For the purposes of subsection (2), a person is taken to have taken
27 reasonable steps to ensure that information did not have omitted
28 from it any matter or thing the omission of which rendered the
29 information misleading in a material respect if the person proves
30 that:
- 31 (a) the person made all inquiries (if any) that were reasonable in
32 the circumstances; and
33 (b) after doing so, the person believed on reasonable grounds
34 that there was no such omission.

EXPOSURE-DRAFT

Schedule 1 Amendments

Part 2 Amendments relating to false or misleading statements etc.

- 1 (9) For the purposes of subsection (2), a person is taken to have taken
2 reasonable steps to ensure that information was not false or
3 misleading in a material particular if the person proves that:
- 4 (a) the person relied on information given to the person by:
- 5 (i) if the person is a body—someone other than a director,
6 employee or agent of the body; or
- 7 (ii) if the person is an individual—someone other than an
8 employee or agent of the individual; and
- 9 (b) the reliance placed on that information by the person was
10 reasonable in all the circumstances.
- 11 (10) For the purposes of subsection (2), a person is taken to have taken
12 reasonable steps to ensure that information did not have omitted
13 from it any matter or thing the omission of which rendered the
14 information misleading in a material respect if the person proves
15 that:
- 16 (a) the person relied on information given to the person by:
- 17 (i) if the person is a body—someone other than a director,
18 employee or agent of the body; or
- 19 (ii) if the person is an individual—someone other than an
20 employee or agent of the individual; and
- 21 (b) the reliance placed on that information by the person was
22 reasonable in all the circumstances.