

February 2013

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

Barry Sharkey
Executive Director
Co-Head of Global Capital Markets
Tel. (02) 9324 2926
barry.sharkey@ubs.com

Andrew Buchanan
Executive Director
Head of Hybrid Capital
Tel. (02) 9324 2617
andrew.buchanan@ubs.com

www.ubs.com

By Electronic Lodgement to
SimpleBonds@treasury.gov.au

Dear Sirs

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

UBS AG, Australia Branch supports the initiative to streamline the regulatory requirements for issuing corporate bonds to retail investors. Whilst there are a range of commercial factors which influence an issuer's funding strategy and its choice of which bond market(s) to access, we expect that the Bill will provide additional support to the creation of a more active listed bond market in Australia.

Our comments on the Bill are set out below.

1. Underwriters' liability

The removal of directors and proposed directors from the operation of section 729 of the *Corporations Act 2001* (Cth) ("**Corporations Act**" or "**Act**") in relation to an offer of simple corporate bonds under a 2-part simple corporate bonds prospectus is a welcome change. On its face, this will provide issuers with more flexibility in conducting due diligence enquiries and preparing offer documentation in a manner which is less onerous than current market practice, and more in line with some other (wholesale) bond markets.

It is possible that some issuers will still choose to follow the current market practice of due diligence and documentation, including convening a formal due diligence committee ("**DDC**") to undertake due diligence enquiries and prospectus verification. We have previously seen some issuers take this approach for reputational or other corporate governance reasons, even in circumstances where a legal form prospectus has not been issued (for example under section 708(19) of the Act).

However, irrespective of the issuer's position on the level of due diligence required to be undertaken, we anticipate that the current use of DDCs will continue, given that underwriters will still have strict liability under the Act. As a result, there may not be any meaningful reduction in the issuance costs and preparation time for simple corporate bonds, which may result in fewer companies electing to access the local listed market instead of other markets where documentation and due diligence is perceived to be less onerous.

In order to meet Treasury's policy objectives regarding market development and more streamlined regulatory requirements, we would suggest that underwriters be removed from the operation of section 729 of the Act. There should be no distinction between directors and underwriters in this regard.

2. References to other material lodged with ASIC

We support the use of "incorporation by reference" as a way to make 2-part simple corporate bonds prospectuses as clear and concise as possible. It is useful for a prospectus to summarise and reference certain documents lodged with the Australian Securities and Investments Commission ("**ASIC**"), rather than set out the information contained in those documents in full.

However, it is not clear whether prospectus liability would extend to any such document that is incorporated by reference, or if the intention is for the documents to be merely "cross-referenced" in the prospectus, without being taken to form part of the prospectus itself.

In many cases, documents lodged with ASIC which could be sensibly incorporated by reference will not have been prepared to prospectus standards. Without completing additional due diligence, some issuers may be reluctant to incorporate such documents if it means that their liability is "elevated" to prospectus standard. We have observed this reluctance on many previous transactions, in respect of the current "incorporation by reference" regime in the Act.

We recommend that Treasury consider adopting a "cross-reference" approach for certain documents, to encourage an issuer to streamline its prospectus and utilise information that already exists in the public domain by virtue of the issuer being a continuously quoted entity.

3. Simple corporate bond terms

We suggest the following changes and clarification to draft section 713A, in order to make the simple corporate bonds attractive to prospective issuers and investors alike:

- (a) *Prescribed Financial Market – draft section 713A(3)*: No foreign financial market is currently recognised as a prescribed financial market. It would potentially expand the pool of prospective issuers if entities listed on reputable foreign exchanges could also access the local listed bond market under the Bill.
- (b) *Australian Currency – draft section 713A(5)*: The securities should be able to be denominated in both Australian Dollars and New Zealand Dollars, to enable offers into New Zealand under the *Trans-Tasman Mutual Recognition Act 1997* (Cth).
- (c) *Minimum Subscription – draft section 713A(6)*: The minimum amount requirement of \$50 million should only apply in respect of an initial offer of securities. A follow-on offer of an existing series of bonds should not be subject to any minimum amount requirement.
- (d) *Fixed or Floating Interest Rate – draft section 713A(9)*: There is no ability for the interest rate on the securities to change from fixed to floating and vice versa. The Bill should allow for this flexibility.
- (e) *Early Redemption – draft section 713A(14)*: Whilst we understand the benefit for investors in having consistency across different bonds issued by different issuers, we do not believe that this section should include an exhaustive list of early redemption triggers. Some issuers may require bespoke early redemption triggers to ensure consistency across their funding platform, and we believe this is an area where the market can be self-regulated.
- (f) *Ranking – draft section 713A(15)*: The ranking requirement should be amended to include bonds which rank equally with (or higher than) all other unsecured and unsubordinated creditors of an issuer. Without this change, very few issuers would be able to meet the requirements for simple corporate bonds, given the majority of issuers only use unsecured funding platforms and so would be unwilling or unable to grant security to new listed bondholders. This change would be consistent with the policy objective to exclude subordinated securities.
- (g) *Parent Guarantee – draft section 713A(16)*: Not every listed entity or parent would be able to guarantee securities which are issued by a wholly-owned finance subsidiary. We are aware of some issuers where their senior debt is guaranteed only by operating subsidiaries, either for regulatory, intercreditor or other reasons. We also

note that some finance subsidiaries are wholly but not directly owned by the ultimate listed parent. Whilst we understand the need to have a link between the continuously quoted entity (usually the listed parent) and the issuing entity (usually a previously unlisted finance subsidiary), further consideration should be given to this section to ensure that certain issuers are not unintentionally excluded from the regime by virtue of their borrowing structure.

- (h) *Single Price - draft section 713A(18)*: The price for any follow-on offer of an existing series of bonds may be different to the initial issue price, having regard to fluctuations in market prices. This requirement should be amended so that a different issue price can be used for follow-on offers.
- (i) *Auditor's Report – draft section 713A(21)*: If the issuing body is a wholly owned subsidiary of a listed entity, no auditor's report will be prepared for the issuing body. This requirement should be amended to include the auditor's report for the issuing body, the listed entity, the parent and/or the guarantor.

4. Ratings

Whilst beyond the scope of the Bill, we also suggest that the current regulation of rating agencies be revisited, with the aim of ensuring that rating agency reports can be made available to retail investors in Australia. This would remove any perception of differential disclosure between wholesale and retail investors, and provide all investors with equal access to independent, globally standardised and largely user-friendly information on an issuer's credit profile and debt securities. It would also remove the anomaly whereby issuers are free to disclose ratings as part of their continuous disclosure obligations, but not in connection with an offer of listed debt securities.

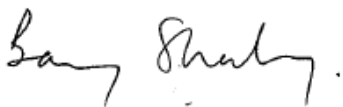
We believe this is an important part of developing a deep and liquid retail bond market in Australia. If all investors have access to rating agency reports, we will further improve the market's familiarity and understanding of credit analysis and fixed income generally.

* * *

We are grateful for the opportunity to make a submission in relation to the Bill. We look forward to providing further comments once details of the draft regulations are released, in particular relating to the split of content between the base and offer specific prospectuses.

If you would like to discuss any aspect of this submission, please do not hesitate to contact us.

Yours faithfully



Barry Sharkey
Executive Director
UBS AG, Australia Branch



Andrew Buchanan
Executive Director
UBS AG, Australia Branch