**EXPLANATORY STATEMENT for
ASIC CLASS ORDER [CO 14/1276]**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (***ASIC***) makes ASIC Class Order [CO 14/1276] under subsections 283GA(1) and 741(1) of the *Corporations Act 2001* (the ***Act***).

Chapter 2L of the Act imposes requirements in relation to trust deeds and quarterly reporting in relation to an offer of debentures (also known as bonds). Subsection 283GA(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 2L of the Act or declare that Chapter 2L applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Chapter 6D regulates offers of securities such as debentures (also known as bonds). Subsection 741(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 6D of the Act or declare that the Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Class Order [CO 14/1276] repeals Class Order [CO 10/321] *Offers of vanilla bonds*. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make an instrument, the power includes a power exercisable in the like manner and subject to the like conditions (if any) to repeal the instrument.

1. **Background**

*Corporate bonds in Australia*

The Act requires that an offer of quoted corporate bonds to retail investors must generally comply with a number of regulatory obligations, including:

* the requirements relating to offers of debentures in Chapter 2L of the Act;
* the fundraising provisions in Chapter 6D of the Act which includes full prospectus disclosure under section 710; and
* the listing rules of the relevant market operator.

The time and expense involved with complying with the full prospectus disclosure requirements in the Act may deter issuers from offering corporate bonds to retail investors and limit the development of a retail corporate bond market. As a result, retail investors may not have sufficient opportunity to invest in corporate bonds.

*Class Order [CO 10/321]*

Chapter 2L of the Act provides the legislative framework for debentures. A corporate bond is considered a debenture. The Chapter imposes, among other things, an obligation on the issuer of the bond to enter into a trust deed and also imposes quarterly reporting requirements.

ASIC Class Order [CO 10/321] imposes on issuers of simple bonds (referred to as vanilla bonds) some additional requirements in relation to the trust deed and also provides relief from some of the quarterly reporting requirements.

Chapter 6D of the Act requires that an offer of bonds for issue to investors requires disclosure. This disclosure must be to the standard stipulated under section 710 of the Act where the prospectus must contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of:

* the rights and liabilities attaching to the bonds offered; and
* the assets and liabilities, financial position and performance, profits and losses and prospects of the body that is to issue the bonds.

Subject to certain conditions relating to the issuer and the bonds, [CO 10/321] gives relief to allow issuers to use a simplified prospectus regime with similar requirements to a transaction-specific prospectus as provided in section 713 of the Act for the offer of vanilla bonds.

A two-part prospectus regime was introduced whereby an issuer is able to offer vanilla bonds under a base prospectus which could be used for a number of different offers and a second prospectus which related to the particular offer. When read together, these two prospectuses need to satisfy the content requirements of [CO 10/321].

*Offers under [CO 10/321]*

Since its commencement, there have been three offers of vanilla bonds to retail investors under [CO 10/321]. The maturity date for the final offer made under [CO 10/321] will be on 30 June 2019.

*Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014*

The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014* (the ***SCB Act***) introduces a streamlined disclosure regime for simple (vanilla) corporate bonds which is largely similar to that contained within [CO 10/321]. The SCB Act also makes changes to the civil liability provisions that apply to offers of vanilla bonds.

*Corporations Amendment (Simple Corporate Bonds and Other Measures) Regulations 2014*

The SCB Act provides that the content requirements for the two-part disclosure regime are to be set by regulations. The *Corporations Amendment (Simple Corporate Bonds and Other Measures) Regulations 2014* (***SCB Regulations***) are the regulations that will contain the content requirements for the two-part disclosure regime.

1. **Purpose of the instrument**

The primary purpose of this class order is to repeal [CO 10/321] following the legislative reform to simple corporate bonds disclosure. The repeal is necessary to remove unnecessary regulatory duplication that would otherwise follow once the legislative reforms come into operation. The timing of the repeal of [CO 10/321] coincides with the operative commencement date of the legislative reforms. The operative commencement date is expected to be 19 December 2014. This is intended to ensure an orderly and seamless transition from the class order regime to the legislative regime.

The other purpose of this class order is to ensure that the ongoing exemptions and requirements of [CO 10/321] continue to apply in relation to vanilla bonds that were issued in reliance on that class order before its repeal. This is intended to ensure to minimise disruption to bodies who had issued vanilla bonds in reliance on the class order.

1. **Operation of the instrument**

This class order repeals ASIC Class Order [CO 10/321]. The effect of the repeal is that no offers of vanilla bonds can be made in reliance on the class order after the date of repeal.

This class order also contains a transitional provision. The effect of the transitional provision is to ensure that bodies who issued vanilla bonds in reliance on [CO 10/321] before its repeal:

(a) will continue to be able to rely on the relief in relation to quarterly reporting for the remaining term of the issued vanilla bonds; and

(b) will continue to be subject to requirements under the trust deed that the body was required to enter into in relation to the issued vanilla bonds (eg requirements to update key financial disclosures in respect of each financial year and half-year during the term of the vanilla bonds).

1. **Consultation**

The Australian Government undertook extensive public consultation for both the SCB Act and the SCB Regulations. As those legislative reforms will supersede the class order regime for vanilla bonds, ASIC did not consider it necessary to engage in further consultation before making this class order which will repeal the superseded regime.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**ASIC Class Order [CO 14/1276]**

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview**

In 2010, ASIC established a simplified disclosure regime to facilitate offers of simple corporate bonds (also known as vanilla bonds), which is reflected in ASIC Class Order [CO 10/321].

In 2014, the Australian Government subsequently enacted a simplified disclosure regime to facilitate the offers of simple corporate bonds, which is reflected in the *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014* and accompanying regulations to support that amending Act.

The legislative reforms which are intended to supersede the class order regime.

The purpose of this legislative instrument is to repeal ASIC Class Order [CO 10/321] so as to remove unnecessary regulatory duplication .

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.