



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 123

Debentures: Strengthening the disclosure benchmarks

October 2009

About this paper

This consultation paper sets out our proposals for strengthening the disclosure benchmarks set out in Regulatory Guide 69 *Debentures: Improving disclosure for retail investors* (RG 69). The policy proposals follow on from our second review of the unlisted, unrated debenture sector and aim to make benchmark disclosure more useful for investors.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 22 October 2009 and is based on the Corporations Act as at 22 October 2009.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on product disclosure to retail investors by issuers of unlisted, unrated debentures. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Business Cost Calculator Report and/or a Regulation Impact Statement: see [Section E Regulatory and financial impact](#), p. 20.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 4 December 2009 to:

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Australian Securities and Investments Commission
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MELBOURNE VIC 3001
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What will happen next?

Stage 1	22 October 2009	ASIC consultation paper released
Stage 2	4 December 2009	Comments due on the consultation paper
Stage 3	February 2010	Regulatory guide released

A Overview of framework for benchmark disclosure

Key points

This consultation paper sets out our proposals to strengthen the disclosure benchmarks in Regulatory Guide 69 *Debentures: Improving disclosure for retail investors*.

We developed the proposals in the paper to take into account the findings of our second review of the unrated, unlisted debenture sector, which we released in October 2009.

ASIC's disclosure benchmarks

- 1 Regulatory Guide 69 *Debentures: Improving disclosure for retail investors* (RG 69) sets out 8 benchmarks we expect issuers to disclose against on an 'if not, why not' basis to help retail investors assess the risks and make informed decisions about whether or not to invest. See Table 1, for a summary of the benchmarks.
- 2 RG 69 was released as part of the '3-point plan' we outlined in August 2007. The 3-point plan addresses:
 - (a) existing debenture issuers in the retail sector;
 - (b) new debenture issues to retail investors; and
 - (c) investor education.
- 3 Under RG 69, an issuer of unlisted, unrated debentures is expected to disclose against each of the 8 benchmarks:
 - (a) in any disclosure documents (e.g. prospectus); and
 - (b) at least twice a year in the issuer's quarterly reports to the trustee.
- 4 The benchmark disclosure should set out the issuer's performance against the benchmarks by either:
 - (a) stating that they either met the benchmark; or
 - (b) explaining—
 - (i) that they did not meet the benchmark; and
 - (ii) how and why the issuer deals with the business factors or issues underlying the benchmark in another way ('if not, why not' disclosure).

Table 1: Disclosure benchmarks for debenture issuers

General benchmarks for all issuers of unlisted debentures	1 Equity capital	Benchmarks 1 and 2 address the issuer's financial structure and ability to meet obligations on time.
	2 Liquidity	
	3 Rollovers	Benchmark 3 addresses the transparency of the issuer's approach to 'rollovers' and early redemptions of investments.
	4 Credit ratings	Benchmark 4 relates to ratings provided by experts in assessing credit risk.
Additional benchmarks for lenders	5 Loan portfolio	Benchmark 5 addresses the issuer's lending practices.
	6 Related party transactions	Benchmark 6 addresses a specific area of lending risk.
Additional benchmarks for property-related debentures	7 Valuations	Benchmarks 7 and 8 address the issuer's property-related practices.
	8 Lending principles—loan-to-value ratios	

ASIC's second review of disclosure to investors

- 5 In October 2009, we released Report 173 *Debentures: Second review of disclosure to investors* (REP 173). That report sets out the findings of our second review of the unlisted, unrated debenture sector.
- 6 Key findings of our second review of the debenture sector included that:
- (a) As of September 2009, a higher proportion of issuers complied with benchmarks 1, 7 and 8 (i.e. equity capital, valuations and lending principles) than a year before. The level of compliance with the other benchmarks remains largely unchanged.
 - (b) There was a lower level of compliance with benchmarks 1, 2, 7 and 8 (i.e. equity, liquidity, valuations and lending principles) among the 15 unlisted debenture issuers that were placed into external administration since March 2008 compared to the ongoing issuers. In addition, recent market volatility has also highlighted the importance of these benchmarks.
 - (c) A significant proportion of debenture issuers have not followed through with their plans to distribute ASIC's investor guide on their website and with their prospectus.

Our proposals to improve disclosure

- 7 The proposals in this consultation paper are based upon the existing ‘if not, why not’ disclosure model used in RG 69. That is, issuers will be expected to disclose either that they meet the benchmark or explain why they do not meet the benchmark.
- 8 We have taken the findings from our second review of the unlisted, unrated debenture sector into account in developing the proposals in this consultation paper:
 - (a) we are proposing some changes to our benchmarks (including benchmarks 1, 2, 7 and 8) to improve their effectiveness: see paragraph 6(b) and Section B.
 - (b) we propose that issuers incorporate aspects of our investor guide into their benchmark disclosure to ensure the information is distributed to potential investors: see paragraph 6(c) and Section C.
- 9 This paper also sets out how ASIC intends to administer the law regarding the naming of debentures in s283BH of the *Corporations Act 2001* (Corporations Act): see Section D.

Who will be affected?

- 10 The proposals outlined in this consultation paper are primarily directed at issuers involved in on-lending activities, including mortgage and finance lending. However:
 - (a) our proposed changes to benchmarks 1, 2 and 4 in Section B will also impact other issuers; and
 - (b) the proposal in Section D, regarding the naming of products as debentures, applies to all debentures regardless of whether they are listed or unlisted.

B Strengthening the benchmarks

Key points

We propose strengthening the existing benchmarks outlined in RG 69 as a result of the findings of our review of their effectiveness.

Benchmark 1: Equity capital

Proposal

B1 We propose to amend benchmark 1 to provide that:

- (a) in addition to disclosing their current equity ratio, issuers should also disclose a comparative equity ratio from the prior year; and
- (b) for the purposes of calculating 'total equity', issuers should exclude from their total assets any amounts owing to the issuer by related parties or associates of the issuer.

Your feedback

B1Q1 Do you agree with this proposal? If not, please explain why.

B1Q2 Should we take any additional measures to strengthen benchmark 1 (such as increasing the minimum equity ratio)? If so, please explain why.

Explanation

- 11 Insufficient capital is one of the key factors contributing to the recent failure of debenture issuers: see REP 173. Without sufficient equity, issuers are unable to withstand losses arising from defaults on loans or a decline in asset values.
- 12 Several of the issuers that entered external administration over the last 18 months had significant related party loans. To avoid any perception that the performance of related party loans might not be monitored as robustly as other loans, we have proposed that issuers should deduct the amount owing under related party loans when calculating their equity ratio.
- 13 We also consider that the disclosure of a comparative equity ratio from the prior year will help investors to identify any change in the issuer's equity capital over the past year.

Benchmark 2: Liquidity

Proposal

- B2** We propose to amend benchmark 2 to provide that, in addition to their existing disclosure on liquidity, issuers should disclose the results of ‘stress testing’ their cash flow estimates. This should include an explanation of whether the issuer would have cash on hand or cash equivalents sufficient to meet their projected cash needs if:
- (a) the percentage of debenture funds that will be rolled over during the next 3 months is 20% less than the percentage that was rolled over in the last 3 months; and
 - (b) for debenture funds that are held on an ‘at call’ basis—the amount of debenture funds retained during the next 3 months is 20% less than the amount that was retained during the last 3 months.

Your feedback

- B2Q1 Do you agree with this proposal? If not, please explain why.
- B2Q2 Do you agree that a 20% reduction is an appropriate basis to measure the impact that difficult market conditions can have on cash flows?
- B2Q3 Do you agree that 3 months is an appropriate timeframe against which to measure the impact of a 20% change in rollover or withdrawal rates on cash flows?
- B2Q4 Should we take any additional measures to strengthen benchmark 2 (e.g. providing that issuer should hold an additional cash margin of 10% of their total debenture liabilities)? If so, please explain why.

- B3** We propose to clarify that, under benchmark 2, issuers should also disclose:
- (a) the maturity profile of debentures on issue as well as the loan portfolio term details;
 - (b) the assumptions about the level of rollovers that the issuer has used in forecasting its cash flows, and how this compares with historical rollover rates; and
 - (c) the level of liquid assets maintained by the issuer under the terms of the debenture trust deed and/or the issuer’s internal policies.

Your feedback

- B3Q1 Do you agree with this proposal? If not, please explain why.

Explanation

- 14 Liquidity is a powerful indicator of the short-term financial health of an issuer. Our recent regulatory experience shows that adequate liquidity is a key feature in the viability of debenture issuers. Insufficient liquid assets can

be a contributing factor in the failure of otherwise adequately capitalised institutions.

- 15 Most unlisted, unrated debenture business models rely on the continued support of investors. The global financial crisis (GFC) has highlighted the importance of liquidity management. Over the past year many debenture issuers experienced reduced funds from new investors, increased redemptions and less certainty about the repayment of loans.
- 16 Our recent review of debenture issuers indicated that some issuers already prepare their cash flow estimates on a worst case basis. That is, the assumptions on which their cash flow estimates are based consider factors such as low rollover rates and the lack of new funds.
- 17 The fixed assumptions we are proposing will promote greater consistency in the preparation of cash flow projections between different issuers, and will help investors understand how a low rollover rate would impact on the liquidity of the debenture issuer. Our current figure of 20% is based on our analysis of the impact of market volatility on rollovers during the GFC.
- 18 We also consider that the disclosure of information about the profile of debenture terms and loan terms and key assumptions underpinning the issuers' cash flow projections are generally matters required to be disclosed by s710(1) of the Corporations Act. It is information that investors and their professional advisers would reasonably require to make an informed assessment of the offer of debentures.

Benchmark 4: Credit ratings

Proposal

- B4** We are considering whether to make changes to benchmark 4, which provides that issuers should obtain a credit rating from a recognised credit rating agency.

Your feedback

- B4Q1 Do you think we should retain benchmark 4? If not, please explain why.
- B4Q2 Do you think we should make any adjustments to benchmark 4? If so, please explain the changes you suggest and why.

Explanation

- 19 The original purpose of the credit rating requirement under benchmark 4 was to provide investors with additional information so as to enable them to

better assess the credit risk involved in unlisted debentures and therefore to understand what is an appropriate rate of return to expect.

- 20 Our recent review of debenture issuers showed that, of the 63 issuers we reviewed, only one issuer currently has a credit rating. Common reasons for not obtaining a rating include the costs of obtaining a credit rating.

Benchmark 5: Loan portfolio

Proposal

B5 We propose to amend benchmark 5 to:

- (a) clarify which loans should be viewed as 'in arrears' for the purposes of benchmark 5—we propose that a loan is to be considered to be 'in arrears' if an expected payment under the loan, whether of principal or interest, has not been received by the issuer within 30 days of the date on which the payment was due;
- (b) require disclosure of the number, value and proportion of loans where the issuer has commenced legal proceedings to recover outstanding amounts that they have on-lent; and
- (c) require the disclosure of the range of interest rates payable under loans made by the debenture issuer compared to the interest rates offered to investors.

Your feedback

B5Q1 Do you agree with these proposals? If not, please explain why.

B5Q2 Do you agree with our definition of 'in arrears'? If not, please suggest an alternative definition.

Explanation

- 21 The disclosure and management of non-performing loans has been a critical issue given the reduced liquidity and falling asset values resulting from the GFC. Our recent review of debenture issuers showed that difficulties in managing non-performing loans has contributed to recent failures.
- 22 Accordingly, it is important for investors to know the proportion of loans that are in arrears and the issuer's approach to such loans. This includes whether the issuer is taking legal action to recover the amount in arrears and what stage the action is at.
- 23 Our recent review has also shown that in complying with this benchmark, some issuers have different policies as to when a loan is considered to be 'in arrears'. We have proposed a uniform definition of 'in arrears' for the purposes of compliance with benchmark 5, as we believe that a consistent approach would be more helpful to investors.

Benchmark 7: Valuations

Proposal

- B6** We propose to amend benchmark 7 to provide that issuers should:
- (a) obtain valuations every 12 months for loans related to development properties; and
 - (b) also disclose a ‘forced sale’ value of the property where a property or a loan secured against a property accounts for 5% or more of the total property assets or total loan book of the issuer.

Your feedback

B6Q1 Do you agree with this proposal? If not, please explain why.

B6Q2 Will this proposal cause any practical difficulties? If so, how do you suggest these difficulties be addressed?

Explanation

- 24 Recent economic conditions have highlighted the need for issuers to obtain up-to-date valuations for development properties due to falling property prices, reduced demand and difficulties in obtaining finance. Therefore, we consider it desirable that issuers re-value development properties that are the subject of loans every 12 months in accordance with the principles in benchmark 7. This is to reduce the risk that the issuer does not have adequate security.
- 25 In some cases, a ‘forced sale’ valuation has had greater relevance where borrowers have not been able to sell assets or obtain refinancing. For that reason, we propose that issuers should obtain and disclose the ‘forced sale’ valuations of a property where the property or loan is greater than 5% of their total property assets or loan book.

Benchmark 8: Lending principles

Proposal

- B7** We propose to amend benchmark 8 to clarify that, for the purposes of its loan-to-valuation ratios (LVRs), issuers should only use valuations that were obtained in accordance with the approach set out in benchmark 7.

Your feedback

B7Q1 Do you agree with this proposal? If not, please explain why.

B7Q2 Will this proposal cause any practical difficulties? If so, how do you suggest these difficulties be addressed?

Explanation

- 26 A high LVR means that the investment is more vulnerable to changing market conditions, such as a downturn in the property market. The GFC led to falling asset prices, which highlighted the vulnerability of issuers with higher LVRs, especially where the valuations do not comply with benchmark 7.

C Promoting investor understanding

Key points

We have received feedback highlighting the importance of information that explains the relevance of benchmarks to the investor and the possible impact for the investor of an issuer not meeting a particular benchmark.

Proposal

C1 We propose to amend our benchmark disclosures to provide that:

- (a) all issuers of unlisted, unrated debentures should provide additional disclosure explaining the importance of each of the following benchmarks: benchmarks 1, 2, 5, 6, 7 and 8 (i.e. equity, liquidity, loan portfolio, related party transactions, valuations and lending principles);
- (b) the additional disclosure provided by issuers should be based on the text in Table 2, which has been extracted from our investor guide, *Investing in debentures?*; and
- (c) the benchmark disclosure contained in a prospectus should generally be located in a separate section of the prospectus.

Your feedback

- C1Q1 Do you agree with this proposal? If not, please explain why.
- C1Q2 Should the additional disclosure only be provided by issuers that have not met the particular benchmark? If so, please explain why.
- C1Q3 Should additional disclosure be given about any other benchmarks? If so, please explain which benchmarks and why.
- C1Q4 Do you have any additional or alternative suggestions to improve investor understanding of the benchmarks?

Explanation

- 27 In April 2008, we published a new investor guide, *Investing in debentures?* to help people who are thinking of investing in unlisted debentures. The guide has been designed to assist people use the 8 benchmarks, assess the risks and make an informed decision about whether or not to invest.
- 28 Feedback from investors about our investor guide has highlighted the importance of information that explains the relevance of benchmarks to the investor and the possible impact of an issuer not meeting a particular benchmark. During our recent review of benchmark disclosure, we also noted that disclosure of why some issuers were not meeting particular

benchmarks appeared to downplay or gloss over the impact of the issuer not meeting the benchmark.

- 29 We therefore propose that issuers include additional benchmark disclosure about the importance of certain benchmarks. The disclosure should be based on the ‘What’s at stake for you?’ sections from our investor guide. See Table 2 for relevant extracts from this guide.

Table 2: Extract of statements from ASIC’s investor guide

Benchmark	‘What’s at stake for you?’
Benchmark 1—Equity	If the issuer has less equity capital invested in the business, there might be no safety margin to tide things over if the business runs into financial difficulties. It could also mean that the issuer has less incentive to operate the business prudently and responsibly because less of their own money is at risk.
Benchmark 2—Liquidity	Liquidity is an important measure of the short-term financial health of an issuer or business. If the issuer has insufficient cash or liquid assets, they might be unable to meet their short-term obligations (e.g. to run the business properly, pay you interest, or pay your money back at the end of the term).
Benchmark 5—Loan portfolio	Is the issuer’s loan portfolio heavily concentrated into a small number of loans, or loans to a small number of borrowers? If so, there is a higher risk that a single negative event affecting one loan will put the overall portfolio (and your money) at risk.
Benchmark 6—Related party loans	The risk with related party transactions is that they might not be made with the same rigour and independence as transactions made on an arm’s length commercial basis. There is a greater risk of the loans defaulting, and therefore, your money is at greater risk if the: <ul style="list-style-type: none"> • issuer has a high number of loans to related parties, and • assessment and approval process for these loans is not independent.
Benchmark 7—Valuation	If the issuer does not include information about valuations in the prospectus, it will be more difficult for you to assess how risky the investment is. Keeping valuations up-to-date and shared among a panel means they are more likely to be accurate and independent.
Benchmark 8—Lending Principles	A high loan-to-valuation ratio means that the investment is more vulnerable to changing market conditions, such as a downturn in the property market. Therefore, the risk of losing your money could be higher.

- 30 We consider that information about risks for investors is information that investors and their professional advisers would reasonably require to make an informed assessment of the offer of debentures as required by s710(1) of the Corporations Act. We consider that a clear, concise and effective statement of what each benchmark means to an investor and the associated risks if the issuer is unable to meet the benchmark will generally be information required by s710(1).

- 31 Our proposal that benchmark disclosure should generally be located in a single place in prospectus (i.e. in a separate section of the document) is consistent with the obligation under s715A of the Corporations Act that a prospectus be worded and presented in a clear, concise and effective manner. Where the benchmark disclosure is scattered throughout the document, it is more likely that the document is not clear, concise and effective.

D Naming of products as debentures

Key points

We do not propose to continue our interim no-action position in relation to certain non-compliance with the naming restriction under s283BH of the Corporations Act limiting what financial products may be called 'debentures'.

Proposal

- D1** We propose to discontinue the interim no-action position set out in Report 38 *High-yield debentures* (REP 38) in relation to when issuers can describe or refer to their products as 'debentures'.

Your feedback

- D1Q1** Do you agree with this proposal? If not, please explain why.
- D1Q2** Will this proposal cause any practical difficulties? If so, how do you suggest these difficulties be addressed? In particular, if the proposals are adopted is any transition period required before it is implemented and, if so, why?

Explanation

- 32 Under s283BH of the Corporations Act, an issuer can only describe or refer to its product as a 'debenture' if:
- (a) the repayment of debenture money has been secured by a charge in favour of a debenture trustee over tangible property of the issuer and the value of the tangible property that makes up the security for the charge is sufficient to repay the debentures and any other liabilities of the issuer that rank in priority or have equal priority to the debentures; or
 - (b) the product satisfies the requirements to be described as a 'mortgage debenture' (i.e. the debenture trustee has been given a registered first mortgage over land vested in the issuer and the total amount secured by the mortgage does not exceed 60% of the value of the issuer's interest in the land).
- 33 Any product that cannot be described as a 'debenture', can only be described or referred to as an 'unsecured note' or 'unsecured deposit note'.
- 34 A key determinant of whether a product may be called a 'debenture' depends on whether the obligation to repay the principal is secured by a charge over 'tangible property'.

- 35 We consider that ‘tangible property’ is property which has an actual physical existence, for example, goods and land. Tangible property is distinguished from intangible or incorporeal property such as choses in action (e.g. a receivable). We consider that a charge in favour of a debenture trustee over a loan receivable by a debenture issuer does not constitute a charge over the ‘tangible property’ of the issuer. The law therefore requires this type of investment to be called an unsecured note or unsecured deposit note.
- 36 However, after identifying a divergence of industry views on the meaning of ‘tangible property’, in 2005 we announced an interim no-action position in relation to certain non-compliance with the naming restriction under s283BH of the Corporations Act: see REP 38 at pp. 10–12. The no-action position, in effect, allowed issuers to treat property without an actual physical existence (e.g. receivables) as ‘tangible property’ for the purposes of s283BH.
- 37 Some issuers that have failed over the last year had described their products as ‘debentures’, even though the charge in favour of the trustee was not over tangible property with a physical existence. We think that the term ‘unsecured notes’ more accurately describes the nature of these products than ‘debentures’ and, therefore, do not propose to continue our interim no-action position.

E Regulatory and financial impact

- 38 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) promoting disclosure that better informs investors about the business models and risks of debenture issuers; and
 - (b) not unduly interfering with the market and the flexibility of the public fund-raising process.
- 39 Before settling on a final policy, we will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:
- (a) considering all feasible options;
 - (b) if regulatory options are under consideration, undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy;
 - (c) if our proposed option has more than low impact on business and individuals or the economy, consulting with OBPR to determine the appropriate level of regulatory analysis; and
 - (d) conducting the appropriate level of regulatory analysis, that is, complete a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).
- 40 All BCC reports and RISs are submitted to the OBPR for approval before we make any final decision. Without an approved BCC report and/or RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 41 To ensure that we are in a position to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can about:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits,
- of our proposals or any alternative approaches: see ‘The consultation process’ p. 4.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
benchmark 1 (for example)	a benchmark for disclosure about unlisted, unrated debenture products to potential investors as described in RG 69 (in this example numbered 1)
Corporations Act	<i>Corporations Act 2001</i>
issuer / issuers	an issuer or issuers of unlisted, unrated debentures
REP 127 (for example)	an ASIC report (in this example, numbered 127)
RG 69 (for example)	an ASIC regulatory guide (in this example, numbered 69)
rollovers	when an existing investor keeps their money in the existing debenture investment for an additional term (whether on the same or slightly different terms)
s710 (for example)	a section of the Corporations Act (in this example, numbered 710)

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to amend benchmark 1 to provide that:</p> <p>(a) in addition to disclosing their current equity ratio, issuers should also disclose a comparative equity ratio from the prior year; and</p> <p>(b) for the purposes of calculating 'total equity', issuers should exclude from their total assets any amounts owing to the issuer by related parties or associates of the issuer.</p>	<p>B1Q1 Do you agree with this proposal? If not, please explain why.</p> <p>B1Q2 Should we take any additional measures to strengthen benchmark 1 (such as increasing the minimum equity ratio)? If so, please explain why.</p>
<p>B2 We propose to amend benchmark 2 to provide that, in addition to their existing disclosure on liquidity, issuers should disclose the results of 'stress testing' their cash flow estimates. This should include an explanation of whether the issuer would have cash on hand or cash equivalents sufficient to meet their projected cash needs if:</p> <p>(a) the percentage of debenture funds that will be rolled over during the next 3 months is 20% less than the percentage that was rolled over in the last 3 months; and</p> <p>(b) for debenture funds that are held on an 'at call' basis—the amount of debenture funds retained during the next 3 months is 20% less than the amount that was retained during the last 3 months.</p>	<p>B2Q1 Do you agree with this proposal? If not, please explain why.</p> <p>B2Q2 Do you agree that a 20% reduction is an appropriate basis to measure the impact that difficult market conditions can have on cash flows?</p> <p>B2Q3 Do you agree that 3 months is an appropriate timeframe against which to measure the impact of a 20% change in rollover or withdrawal rates on cash flows?</p> <p>B2Q4 Should we take any additional measures to strengthen benchmark 2 (such as providing that issuer should hold an additional cash margin of 10% of their total debenture liabilities)? If so, please explain why.</p>
<p>B3 We propose to clarify that, under benchmark 2, issuers should also disclose:</p> <p>(a) the maturity profile of debentures on issue as well as the loan portfolio term details;</p> <p>(b) the assumptions about the level of rollovers that the issuer has used in forecasting its cash flows, and how this compares with historical rollover rates; and</p> <p>(c) the level of liquid assets maintained by the issuer under the terms of the debenture trust deed and/or the issuer's internal policies.</p>	<p>B3Q1 Do you agree with this proposal? If not, please explain why.</p>
<p>B4 We are considering whether to make changes to benchmark 4, which provides that issuers should obtain a credit rating from a recognised credit rating agency.</p>	<p>B4Q1 Do you think we should retain benchmark 4? If not, please explain why.</p> <p>B4Q2 Do you think we should make any adjustments to benchmark 4? If so, please explain the changes you suggest and why.</p>

Proposal	Your feedback
<p>B5 We propose to amend benchmark 5 to:</p> <p>(a) clarify which loans should be viewed as 'in arrears' for the purposes of benchmark 5—we propose that a loan is to be considered to be 'in arrears' if an expected payment under the loan, whether of principal or interest, has not been received by the issuer within 30 days of the date on which the payment was due;</p> <p>(b) require disclosure of the number, value and proportion of loans where the issuer has commenced legal proceedings to recover outstanding amounts that they have on-lent; and</p> <p>(c) require the disclosure of the range of interest rates payable under loans compared to the interest rates offered to investors.</p>	<p>B5Q1 Do you agree with these proposals? If not, please explain why.</p> <p>B5Q2 Do you agree with our definition of 'in arrears'? If not, please suggest an alternative definition.</p>
<p>B6 We propose to amend benchmark 7 to provide that issuers should:</p> <p>(a) obtain valuations every 12 months for loans related to development properties; and</p> <p>(b) also disclose a 'forced sale' value of the property where a property or a loan secured against a property accounts for 5% or more of the total property assets or total loan book of the issuer.</p>	<p>B6Q1 Do you agree with this proposal? If not, please explain why.</p> <p>B6Q2 Will this proposal cause any practical difficulties? If so, how do you suggest these difficulties be addressed?</p>
<p>B7 We propose to amend benchmark 8 to clarify that, for the purposes of its loan to valuation ratios, issuers should only use valuations that were obtained in accordance with the approach set out in benchmark 7.</p>	<p>B7Q1 Do you agree with this proposal? If not, please explain why.</p> <p>B7Q2 Will this proposal cause any practical difficulties? If so, how you suggest these difficulties be addressed?</p>
<p>C1 We propose to amend our benchmark disclosures to provide that:</p> <p>(a) all issuers of unlisted, unrated debentures should provide additional disclosure explaining the importance of each of the following benchmarks: benchmarks 1, 2, 5, 6, 7 and 8 (i.e. equity, liquidity, loan portfolio, related party transactions, valuations and lending principles);</p> <p>(b) the additional disclosure provided by issuers should be based on the text in Table 2, which has been extracted from our investor guide, <i>Investing in debentures?</i>; and</p> <p>(c) the benchmark disclosure contained in a prospectus should generally be located in a separate section of the prospectus.</p>	<p>C1Q1 Do you agree with this proposal? If not, please explain why.</p> <p>C1Q2 Should the additional disclosures only be provided by issuers that have not met the particular benchmark? If so, please explain why.</p> <p>C1Q3 Should additional disclosure be given about any other benchmarks? If so, please explain which benchmarks and why.</p> <p>C1Q4 Do you have any additional or alternative suggestions to improve investor understanding of the benchmarks?</p>

Proposal	Your feedback
<p>D1 We propose to discontinue the interim no action position set out in Report 38 High-yield debentures (REP 38) in relation to when issuers can describe or refer to their products as 'debentures'.</p>	<p>D1Q1 Do you agree with this proposal? If not, please explain why.</p> <p>D1Q2 Will this proposal cause any practical difficulties? If so, how do you suggest these difficulties be addressed? In particular, if the proposals are adopted is any transition period required before it is implemented and, if so, why?</p>