ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 89

Unlisted, unrated debentures—improving disclosure for retail investors

August 2007

About this paper

This consultation paper sets out our proposals for change in the unlisted, unrated debenture sector as part of a 12-month plan for this sector.

We aim to improve disclosure to retail investors to help them understand and assess these debentures, while maintaining the flexibility of the public fundraising process.

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 23 August 2007 and is based on the *Corporations Act 2001* (Corporations Act) as at 23 August 2007.

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.

Contents

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 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 Regulatory and financial impact p 47.

Making a submission

We will not treat your submission as confidential, and may make it publicly available, 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 1 October 2007 to:

Rhys Bollen
Regulatory Policy
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
facsimile: 02 9911 5232
email: policy.submissions@asic.gov.au

A ASIC's 3-point plan (over 12 months)

Key points

- ASIC has been examining the unlisted, unrated debenture sector following some recent failures.
- This consultation paper sets out ASIC's proposals for change in the unlisted, unrated debenture sector as part of a 12-month plan for this sector.

Introduction

1 Capital markets provide funds to enable companies in the real economy to innovate and take commercial risks without certainty of return.

2 Unlisted, unrated debentures held by retail investors are used as a source of finance for a range of business models and activities, and there is a wide range of differences between individual issuers and the use to which they put loan funds raised through debenture issues. Appendix 1 sets out the different ways in which capital raised in this way is used. For example:

(a) *debt capital funding*—money raised and applied as working capital or transaction specific funding to further the issuer or group's business operations;

(b) *finance*—lending for personal and commercial purposes;

(c) *integrated property*—funding of property transactions and development within a group or with related parties where that amount of funds applied is greater than 10% of total assets of the debenture issuer;

(d) *memberships*—debentures issued to facilitate membership of clubs, groups, or franchise operations;

(e) *mortgage financing*—secured mortgage lending for residential and commercial property ownership and improvement with security over real property; and

(f) *structured real estate investments*—participation in ownership of commercial and residential real estate as part of a wider ownership structure.

These different uses of funds mean that it is not possible to generalise on the risk across the whole sector.

3 As Appendix 1 shows, this form of debenture issue has been part of capital markets for a long time. There have, however, been recent failures that, we believe, require a reassessment of disclosures in this unrated, unlisted area.

4 In consulting on these proposals, ASIC is seeking to balance:

(a) the need to improve disclosure to allow investors to make informed decisions; and

(b) the desirability of not unduly interfering with this market as a market for raising capital.

Note: The need to strike an appropriate balance between protecting investors' interests and allowing markets to operate freely is part of ASIC's mandate under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). It is also reflected in the Government's Statement of Expectations and ASIC's Statement of Intent. These documents were published in August 2007.

ASIC's reassessment is through a 3-point plan over a 12-month period, which carries with it as an important part, this consultation with the market.

5 Appendix 1 summarises the unlisted, unrated debentures to which any regulatory guidance that emerges from this consultation could apply. The appendix does not signify any particular level of risk with those debentures. They are within the broader class where there have been failures and, as such, are part of the reassessment of disclosure and reporting to investors which is the subject of this consultation.

6 We are reviewing relevant international developments (including the approach taken to similar products in the United States and New Zealand).

7 When we finalise our policy on unlisted, unrated debentures, we will consider whether a similar approach is appropriate for any other sectors, including some managed investment schemes.

ASIC's report to the Senate Economics Committee

8 At a hearing of the Senate Economics Committee on 30 May 2007, ASIC was asked further questions on 3 investment vehicles (i.e. Fincorp, ACR and Westpoint) that failed after attracting significant funds from large numbers of retail investors. Investors in these vehicles face losses in their investments.

9 We outlined our understanding of the common features of those failures. The entities that failed had raised funds from retail investors by issuing debentures—that is, the investor provided loan funds to the issuer, and in return the person borrowing the funds (the issuer) issued a debenture with a promise to pay a rate of interest (usually fixed) for a defined term, and then repay the loan.

Note: In the case of the Westpoint group, the funds were raised by way of promissory notes but operated in the same way described above. As noted at the Senate Economics

Committee, ASIC has written to the Government encouraging them to amend the exemption from the debenture prospectus provisions for promissory notes, to raise the threshold for exemption above its current level of $50,000.

The 3-point plan

10 ASIC presented to the Senate Economics Committee a preliminary analysis of the market for deposits and debt securities in Australia. The analysis shows that:

(a) debentures issued to retail investors account for around 7% of the total retail market for deposits and debt securities, or some $34 billion; and

(b) of that $34 billion, some $8 billion (or 24%) is invested in unlisted, unrated debentures. The most recent failures have been in this unlisted, unrated category.

Note: See Appendix 1 for a listing of debentures in the unlisted, unrated category. As the appendix states, we have provided a listing only.

11 We stressed that not that all unlisted, unrated debentures pose the same level of risk for retail investors. However, we said that we would further examine this sector.

12 We pointed out that some unlisted, unrated debentures pose particular challenges, because retail investors who hold these types of securities do not have the benefit of price discovery mechanisms and market forces to:

(a) help them work out the value of their securities on an ongoing basis; and

(b) provide them with a reliable way to exit their investment efficiently.

Being unlisted means there is no liquid secondary market on which an investor can sell an investment that is no longer required, or in which the investor has lost confidence. Some debenture issuers offer early exit mechanisms, but these are likely to be unavailable if the issuer is in financial difficulty.

13 We advised that because of these features, we have made the unlisted, unrated debentures sector a priority and were implementing a 3-point plan over a 12-month period addressing:

(a) existing debenture issuers in the retail sector;

(b) new debenture issues to retail investors; and

(c) investor education.

14 At the end of the period, we would assess whether other interventions (e.g. legislation) was needed. The first stage in the plan ASIC outlined to the Senate Economics Committee was to develop a greater understanding of the features of unlisted, unrated debenture investments that made them vulnerable to failure in an otherwise buoyant economic environment, and that made them attractive to large numbers of retail investors.

15 We indicated that we would work with industry experts and others on this, and then examine and develop proposals for additional regulatory actions that might be needed.

16 Since the end of May, ASIC's team has:

(a) consulted with a range of industry experts on the weaknesses and risks in business models that unlisted, unrated debentures use and what mechanisms might be available to help ensure those weaknesses are fully disclosed. Experts we have consulted include institutional investors, retail advisers, valuers, rating agencies and industry specialists in property and in finance; and

(b) on the basis of that work, developed the proposals set out in this paper for testing in this consultation process.

Next steps

17 During the consultation period, we plan to meet with representatives from the issuer, trustee, valuer, auditor, adviser and media sector, and with consumer and retail investor representatives. Following this consultation process, ASIC will issue regulatory guidance (to operate from late October 2007).

18 After the regulatory guidance is issued, new issuers will have to disclose against the benchmarks in new prospectuses from 1 December 2007. We also expect them to refer to the benchmarks in their ongoing disclosures from that time: see proposals I1–I2.

19 Existing issuers will have until 1 March 2008 to specifically report against the benchmarks to their existing clients by either:

(a) issuing a replacement or supplementary prospectus; or

(b) lodging a continuous disclosure notice with ASIC: see proposals I5–I6.

We also expect them to refer to the benchmarks in any new prospectuses and in their ongoing disclosures from 1 December 2007 on an 'if not, why not' basis: see proposals I4–I5.

20 We will be reviewing these updated investor disclosures and the quarterly reports of each issuer in this industry sector in the period to June 2008 to check that the benchmarking information discussed in Section D is adequately disclosed to investors on an 'if not, why not' basis: see paragraphs 115–116.

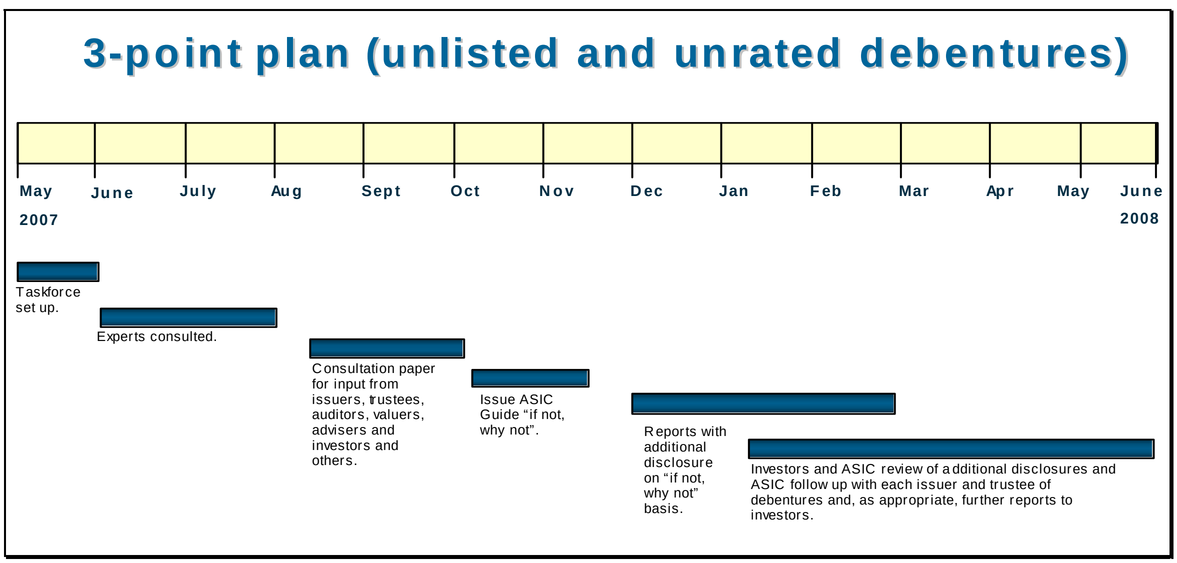
Summary

21 The key steps in our project are summarised in the table and diagram below.

Table 1: Steps in ASIC's 3-point plan

1	Task force formed—mid-May 2007
2	Task force analyses current issuers—June 2007
3	Task force meets with experts—June–July 2007
4	ASIC publishes consultation paper—23 August 2007
5	Comments due on consultation paper—1 October 2007
6	ASIC publishes regulatory guide and investor guide—October 2007
7	New fundraising documents comply with 'if not, why not' benchmarks from 1 December 2007
8	Existing issuers reporting to existing clients between 1 December 2007 and 1 March 2008
9	Investors and ASIC will review reports and fundraising documents against the 'if not, why not' approach—December 2007–June 2008
10	Public report issued on the results of the new approach—June 2008

Figure 1: Timeline for of ASIC's 3-point plan



B Unlisted, unrated debentures

Key points

- ASIC has identified a number of features common to unlisted, unrated debentures and their issuers.
- These features highlight some key risks for investors, particularly given the lack of external benchmarks for retail investors to use in understanding and assessing these debentures.

Key risk areas

22 With the help of expert advice, ASIC has developed the following list of features that are common (though not universal) in the unlisted, unrated debentures sector. In our view, these features contribute significantly to the risks that retail debenture holders face: see Table 2.

23 These features are not present in every issue of unlisted, unrated debentures to retail investors. The investment risks described will vary from issuer to issuer and from business model to business model.

Table 2: Common risk features of unlisted, unrated debentures

Risk feature	Description	What this means
Minimal equity capital	The debenture issuer frequently has little equity capital relative to the loan funding it relies on to operate its business (loan funds includes both funds borrowed from a lending institution and funds contributed by debenture holders).	If an investment runs into difficulties, there is no source of funds to tide the investment over, other than by raising further investment funds. The owners of the entity that issues the debentures also have little capital at risk compared to debenture holders and other lenders. This arguably means they have less incentive to ensure the prudent management of the business, and also that their interests and those of debenture holders are not well aligned.
Liquidity	The liquidity of the issuer is key to its ability to meet its obligations to pay interest and principal to debenture holders.	Liquidity is often at risk because of a mismatch between the timing of the issuer's obligations to repay debenture holders, and the timing of cash flows from the underlying businesses or assets to which funds have been on-lent. Liquidity is frequently heavily dependent on continuing inflows from new investors, or 'rollovers' by existing investors. This problem is exacerbated if inadequate disclosure in a prospectus leads to ASIC halting further fundraising by issuing a stop order. The issuer can then no longer rely on an inflow of funds from new investors. This may worsen its liquidity and in extreme cases threaten its solvency.

Risk feature	Description	What this means
Loan assessment and diversification	The criteria issuers use to decide what loans to make are extremely variable and prone to risk, especially in these key areas: • loan-to-valuation ratios are often much higher than for traditional lending; • the loans issuers make may be highly concentrated to particular types of assets, commercial activities or locations.	In many cases the debenture issuer's loan book exposure is not diversified.
Inconsistency in valuations	The valuations lenders rely on are carried out on a variety of bases, with differing assumptions and instructions.	This makes it difficult to assess reliably the risk exposure associated with a loan, and difficult to monitor loan-to-valuation ratios on a continuing basis.
Related party lending	Funds raised through debenture issues are often on-lent to companies or businesses associated with the debenture issuer.	There is an increased risk that lending decisions will not be made on arms' length commercial terms, and that the debenture issuer who makes the loans will not monitor performance by the borrower as rigorously as it would in an arms' length transaction.
Misleading advertising	Advertising used to promote some unlisted, unrated debentures helps create unrealistic expectations about the relative safety of the debentures.	Even if the prospectus disclosure highlights risk in an appropriate way, advertising that conveys messages not in line with the regulated disclosure document can undermine the effect of that disclosure.

Lack of benchmarks

24 Typically, there are no external benchmarks retail investors can use to assess and understand the risk of the investment, and the value of the debentures they may subscribe for. In particular:

(a) retail investors cannot obtain and rely on research prepared by recognised credit rating agencies, market professionals (such as analysts) or the coverage the financial media provides for many listed securities;

(b) few retail adviser groups conduct detailed research on individual debenture products; and

(c) retail investors do not have a way of assessing the market value of their investment, and of monitoring movements in value over time, as reliably as they would have if these products were listed and traded on a regulated financial market.

25 Risks are most significant where funds are on-lent for the development of property assets. Reasons include that there is often no cash flow to meet obligations until after a development has been completed and can be sold. In these circumstances, there is likely to be uncertainty about whether properties can be completed and sold for anticipated values; and if further loan investments are needed to complete development projects, the overall viability of the venture may be doubtful because interest costs for the project will increase.

26 Nonetheless, the features described in Table 2 are present, or potentially present, in many forms of unlisted, unrated debenture investments. For example:

(a) the underlying business models of property development issuers share many features with other debenture issuers who on-lend funds to third parties; and

(b) many types of unlisted, unrated debenture issuers have low levels of equity capital.

C Regulating unlisted, unrated debentures—additional and improved disclosure

Key points

- ASIC is concerned about the combination of the risk features of unlisted, unrated debentures (see Section B) and their appeal to ordinary retail investors.
- Disclosure needs to help investors to understand these risks, assess the rewards being offered and decide whether these debentures are suitable for them.
- ASIC proposes 4 key principles to implement improved and additional disclosure (see proposal C1).

A new approach to disclosure is needed

27 If the funds invested in failed unlisted, unrated debenture issues were raised in professional markets or provided by professional investors, their commercial failure would be of less concern to ASIC or the broader community. In an open economy such as that in Australia, business failure is accepted as an inevitable result of a competitive environment.

28 What is of concern is the combination of the risk features of these types of investments described in Table 2 (Section B) and their appeal to ordinary retail investors.

29 The regulatory framework places special emphasis on the needs of retail investors, and makes disclosure the key tool for them. Disclosure is designed not to stop retail investors from taking investment risks, but to help them understand the risks involved in any particular investment or type of investment. This enables them to make an informed decision about whether the potential reward (the return on their investment) matches the level of risk involved, and whether they are prepared to take on that risk.

30 This calculation is particularly important and difficult if investors need to consider not only underperformance risk (the risk that an investment will not produce returns as high as expected), but also the risk of significant or total loss of the original investment funds. For unlisted, unrated debentures, typically the return is fixed because the issuer promises to pay interest on the loan at a fixed rate. So the issuer’s ability to repay the funds lent (credit risk) is usually the most critical risk.

31 The disclosure framework in the Corporations Act requires issuers of financial products who seek retail investors to disclose to them all they need to know to make prudent decisions in their own interest; and to provide ongoing disclosure to enable retail investors to be able to monitor whether their expectations are being met.

Note: For debentures, the framework provides an additional safeguard by requiring that there be a trustee for debenture holders. The role of the trustee is discussed in more detail at paragraphs 80–85.

Improved disclosure—'if not, why not'

32 ASIC proposes 4 key principles that should drive implementation of a changed approach to improved and additional disclosure, designed to improve risk assessment by retail investors.

Proposal

C1 The quality of disclosure to retail investors needs to be improved by implementing changes based on the following principles:

(a) **Principle 1:** Benchmarks should be provided to help retail investors assess the risk and risk-reward prospects of unlisted, unrated debentures (see Section D).

(b) **Principle 2:** Issuers of unrated, unlisted debentures should include these benchmarks in their disclosures on an 'if not, why not' basis (see Section E).

(c) **Principle 3:** Those involved with issuers (e.g. trustees, advisers, valuers and auditors) should use the benchmarks and the 'if not, why not' explanations in carrying out their responsibilities (see Section G).

(d) **Principle 4:** Additional education will assist investors and potential investors in the unlisted, unrated debentures sector, including by helping them understand and use the benchmarks and the 'if not, why not' responses in their investment decision-making (see Section H).

Your feedback: our overall approach

C1Q1 Are there categories of unlisted, unrated debentures that should be excluded from the proposals in this paper, and if so on what basis (e.g. issuers who raise funds for internal working capital purposes only)?

C1Q2 Should APRA-regulated entities and their wholly owned subsidiaries be excluded from the proposals in this paper?

Your feedback: proposed principles

C1Q3 Have we identified the relevant principles? What is missing? Have we included anything that is not relevant?

C1Q4 Do you think ASIC should let market forces operate and not intervene at all in this unrated and unlisted area?

33 It is important to stress that we are not seeking to mandate longer disclosures. What recent experience shows is that investors need better quality and relevant disclosure, presented in a way best suited to investor understanding.

34 Nor are we seeking to prevent investments failing or to ensure that they perform to investors' expectations. We are assessing better disclosure to enable investors to make better risk-reward decisions.

D Benchmarks

Key points

ASIC proposes the following 8 benchmarks, based on significant areas of potential risk for retail investors in unlisted, unrated debentures:

- credit ratings (see proposal D2);
- equity capital (see proposal D3);
- liquidity (see proposal D4);
- lending principles—loan-to-valuation ratios (see proposals D5–D6);
- loan portfolio diversification and security (see proposals D7–D8);
- valuations (see proposal D9);
- related party transactions (see proposal D10); and
- rollovers (see proposal D11).

Proposal

D1 There should be clear benchmarks for 8 significant areas of potential risk for retail investors in unlisted, unrated debentures:

(a) **Benchmark 1**: Credit ratings

(b) **Benchmark 2**: Equity capital

(c) **Benchmark 3**: Liquidity

(d) **Benchmark 4**: Lending principles—loan-to-valuation ratios

(e) **Benchmark 5**: Loan portfolio diversification and security

(f) **Benchmark 6**: Valuations

(g) **Benchmark 7**: Related party transactions

(h) **Benchmark 8**: Rollovers

Your feedback

D1Q1 Have we identified the relevant benchmarks and ratios? What is missing and/or have we included anything that is not relevant?

Explanation

35 In our view, the proposed benchmarks are key to improving the quality of disclosure in the unlisted, unrated debenture sector. Taken together, these benchmarks are designed to address the risks identified in Section B:

(a) Benchmark 1 creates incentives for ratings provided by experts in assessing credit risk.

(b) Benchmarks 2 and 3 address the issuer's financial structure and ability to meet loan obligations on time.

(c) Benchmarks 4 to 6 address the issuer's lending practices, while benchmark 7 addresses a specific area of lending risk.

(d) Benchmark 8 addresses the transparency of the issuer's approach to 'rollovers' and early redemptions of investments.

36 The proposed benchmarks would apply to all unlisted, unrated debentures. We would expect each benchmark to be followed and if not followed, explained on an 'if not, why not' basis: see Section E. We would also expect any advertising to support the use of these benchmarks: see Section F.

37 Failing to meet one or more of them would not mean that a particular debenture is necessarily a poor investment; however, it would mean that additional disclosure to investors was needed to address that benchmark on an 'if not, why not' basis so that investors could assess its impact on their investment decision.

Benchmark 1: Credit ratings

Proposal

D2 This benchmark requires issuers to:

(a) have their debentures rated for credit risk (i.e. the risk that the principal will not be repaid at the end of a relevant period);

(b) use a recognised credit rating agency for this purpose;

(c) state the rating and who it is from in their prospectus and advertisements, and briefly explain the rating (i.e. what it says about the risk of the investor not getting their money back);

(d) explain the basis on which the rating agency was appointed, who appointed them (e.g. the issuer or trustee) and summarise the rating agreement;

(e) ensure the rating remains current; and

(f) if the debentures are not rated as to credit risk—state in the issuer's prospectus that they are not rated and the reasons for this.

Note: For statements issuers must make in advertisements where the debentures are not rated, see proposal F2.

Your feedback

D2Q1 Will traditional credit ratings be sufficient? Do they sufficiently highlight to investors the risk of the principal investment not being repaid? Please give reasons.

D2Q2 Are there providers other than recognised credit rating agencies that could provide a sufficiently robust and objective credit rating for the purpose of this proposal? Please give reasons.

D2Q3 Are there any particular situations where the cost of rating exceeds the investor benefits of the additional scrutiny that ratings provide? Please give details.

D2Q4 Where the debentures are unrated, will the statement in proposal D2(f) and the advertising statement in proposal F2(b) be sufficient to assist investors? If not, what else should be done (e.g. should ASIC require a prominent warning that unrated debenture products pose a 'high risk' for consumers)?

Explanation

38 Recent experience suggests investors find it difficult to assess the credit risk involved in unlisted, unrated debentures and therefore to understand what is an appropriate rate of return to expect. They do not understand the risk of the principal not being repaid and hence cannot always assess whether the return being offered is adequate or that the risk is appropriately priced.

39 Credit ratings carried out by a recognised ratings agency are a well-established and widely-used method of assessing and communicating the credit risk of an issuer and its debt securities. They do so by analysing a debenture against detailed criteria and assigning it a rating. For each rating category, the ratings agency expresses a view on the likelihood of issuers of debt securities in that category experiencing an event of default, based on historical average default rates for similar products. This provides an external opinion about the debenture, which helps investors decide whether the product is suitable for them and whether it is appropriately priced.

40 ASIC has already recognised the following credit rating agencies for regulatory purposes, and our starting position is that these are the appropriate ratings agencies for this proposal:

(a) Moody's Investors Service Pty Limited;

(b) Standard & Poor's (Australia) Pty Limited; and

(c) Fitch Australia Pty Limited.

41 Under our existing relief, these recognised credit rating agencies are obliged to give certain warnings, comply with the Code of Conduct Fundamentals for Credit Rating Agencies (issued in December 2004 by the Technical Committee of the International Organisation of Securities Commissions) and provide information to ASIC on request: see Class Order [CO 05/1230] *Credit rating agencies*.

42 Where an issuer has obtained more than one rating, they should disclose each of them. Even if an unlisted, unrated debenture obtains a rating in response to this benchmark, we still expect them to address the remaining benchmarks.

43 Ratings can assist retail investors. But they are not widely understood by retail investors and do not supply a complete answer. Indeed, even if rated, considerable care is needed to ensure the investor understands the benefits and the limits of ratings and criteria used by the rating agency. They play one role but need to be supplemented by all the other disclosure benchmarks.

Note: For example, historically some of the failures experienced here and overseas have involved issuers that had a current credit rating.

Benchmark 2: Equity capital

Proposal

D3 Issuers should use the following as equity capital benchmarks:

(a) where the primary activity of the persons to whom the issuer lends funds directly or indirectly is property development—the issuer should maintain a minimum of 20% equity;

(b) in all other cases—the issuer should maintain a minimum of 10% equity; and

(c) the debenture issuer's equity ratio should be calculated as follows:

$$\frac{\text{equity capital}}{\text{total debt + equity capital}}$$

Your feedback

D3Q1 Is the suggested equity ratio for property development activity appropriate? Please give reasons.

D3Q2 Is the suggested equity ratio for other issuers appropriate? Please give reasons.

D3Q3 Is there a better measure for whether the issuer is appropriately capitalised? Please give details.

Explanation

44 Paid-up capital or equity is the money invested by the owners of the issuer (plus any profits retained by the issuer). It provides a 'buffer' to the issuer in the event of financial difficulties, and it also provides the issuer's owners with an incentive to operate prudently and responsibly (sometimes referred to as 'hurt money' or 'skin in the game'): see 'Minimum equity capital' in Table 2.

45 Insufficient capitalisation appears to be a contributing factor in each of the failures of unlisted, unrated debenture issuers in recent years. Property development-related lenders are more vulnerable to adverse market movements and at higher risk of financial distress. So we propose a higher minimum capital for property development-related lenders. If this capital is not present, investors should be informed (on an 'if not, why not' basis) so they can make their own assessment of the risks involved.

Benchmark 3: Liquidity

Proposal

D4 This benchmark requires issuers to:

(a) estimate their cash needs for the next 3 months; and

(b) ensure that at all times they have on hand cash or cash equivalents sufficient to meet their projected cash needs over the next 3 months.

Note: In estimating cash flows an issuer can take into account a reasonable estimate of 'rollovers' based on previous experience, but not new fundraising. Issuers should consider possible redemptions as well (if their policy or practice is to allow redemptions).

Your feedback

D4Q1 Is holding cash or cash equivalents equal to an estimate of 3 months cash needs appropriate? Please give reasons?

D4Q2 How should 'cash or cash equivalents' be defined for the purposes of this requirement? What (if any) liquid assets should be included?

D4Q3 Should we accept a standing credit facility (e.g. a committed overdraft from a bank) as a 'cash equivalent' for these purposes?

D4Q4 Is including a reasonable estimate of rollovers appropriate? Should the liquidity ratio be calculated excluding rollovers of existing investments (i.e. a more conservative assumption for the issuer)?

D4Q5 Is there another method by which issuers can give their investors reasonable assurance that they are sufficiently liquid on an ongoing basis? Please give details.

Explanation

46 Liquidity is the proportion of cash or cash equivalents in a company's assets. It is a powerful indicator of the short-term financial health of a company. For debenture issuers it is relative liquidity (i.e. short term assets relative to short term liabilities) that we are particularly concerned with.

47 Recent experience and the expert advice ASIC received as part of this project shows adequate liquidity is a key feature in the viability of debenture issuers. Insufficient liquid assets appear to be a contributing factor in recent failures. Historically, lack of liquid assets has been a contributing factor in the failure of otherwise well capitalised institutions.

48 This benchmark requires issuers regularly to estimate their future cash flows to come to an estimate of their cash needs for at least the following 3 months. We envisage issuers would need to review their forecast cash flows on a monthly basis to determine whether they continue to satisfy this benchmark. We would expect issuers to take into account their policy and experience on redemptions and rollovers in estimating their cash flows.

49 Under this proposal, by ‘cash on hand’ we mean cash or highly liquid assets that can be reliably realised for cash within a very short period of time.

50 We would expect issuers to consider their current prospectus and the likelihood of an ASIC stop order disrupting their cash flows, and disclose their views on this to investors.

Benchmark 4: Lending principles—loan-to-valuation ratios

Proposal

D5 This benchmark requires issuers to maintain the following loan-to-valuation ratios:

(a) where the loan relates to property development—70% on the basis of the latest ‘as if complete’ valuation; and

(b) in all other cases—80% on the basis of the latest market valuation.

Your feedback

D5Q1 Is the suggested loan-to-valuation ratio for property development lending appropriate? Please give reasons.

D5Q2 Is the suggested loan-to-valuation ratio for other lending appropriate? Please give reasons.

D5Q3 Is there a better measure for whether the issuer is following appropriate lending practices? Please give details.

D5Q4 Are these benchmarks appropriate where the issuer is also the person primarily using the funds (i.e. where the money is not on-lent to a second person)? Please give details

D6 Where the loan relates to property development by a second person (even if related to the issuer), issuers should ensure that funds raised by the issue of debentures are only provided to the developer in stages, based on external evidence of the progress of the development.

Your feedback

D6Q1 Is this proposal to actually provide funds in stages realistic? If not, what other solutions would protect the interests of investors?

D6Q2 Should the funds raised from debentures but not yet provided to the developer be held in trust by the issuer or trustee?

D6Q3 What evidence of progress should the issuer rely on before providing further funds to the developer (e.g. further valuations, expert quantity surveyor reports)?

Explanation

51 Many issuers of unlisted, unrated debentures on-lend the funds lent to them by debenture holders. The primary assets of the issuer are the loans they make to others. The quality of these loans is a key element in the financial position and performance of the issuer.

52 An issuer's approach to loan-to-valuation ratios is one indicator of how conservative or aggressive its lending practices are. Less conservative lenders are willing to lend funds equal to a higher proportion of a property's value (sometimes up to or exceeding 100% of its value). Such ratios mean that the lender is more vulnerable to the risk that a change in market conditions (such as downturn in the property market) means it is unable to fully recover the money it has lent to borrowers. It also increases the risk that the security (if any) it has obtained from borrowers will not be sufficient to cover the loan.

53 We have separated loans relating to property development from other loans. By property development, we mean loans whose main or primary purpose is for real estate developments (e.g. home units, retail, commercial, sub-divisions and industrial development).

54 Where funds are on-lent for property development activities a loan-to-valuation ratio may be agreed up-front, but it is generally not appropriate to advance all of the funds to the developer up-front. Rather, we expect issuers to put systems and controls in place to ensure funds are only provided to the developer where there is satisfactory progress of the development (based on reliable external evidence of that progress).

Benchmark 5: Loan portfolio diversification and security

Proposal

D7 This benchmark requires issuers to disclose their policy on loan portfolio diversification, including:

(a) how many loans they have or expect to have in the coming 12 months;

(b) by number and value, loans they have or expect to have in the coming 12 months by class of activity and geographic region;

(c) by number and value, what proportion of the total loan monies are lent on a 'secured' basis and what is the nature of the security; and

(d) by number and value, what proportion of the total loan monies they have lent or expect to lend in the coming 12 months to their largest borrower and 10 largest borrowers.

Your feedback

D7Q1 Have we identified the relevant issues in loan portfolio diversification? What is missing? Have we included anything that is not relevant?

D7Q2 Are there more effective ways of the issuer disclosing the level of diversification in their loan portfolio? Please give details.

D8 Disclosure should also contain clear explanations about any security the issuer has over loans it has made or plans to make.

Explanation

55 The quality of the issuer's loans is important at an overall loan portfolio level, as well as the individual loan level. A key way lenders manage the quality of an overall loan portfolio is to ensure that it is diversified. Portfolio diversity has a number of elements, including:

(a) the number of loans;

(b) how many loans are related to a particular class of activity (e.g. residential property, commercial property, leasing, development);

(c) geographic concentration (e.g. are the borrowers concentrated in one geographic region?); and

(d) whether the lender has major exposures to a small number of borrowers (e.g. what proportion of funds are lent to the largest borrower? the 10 largest borrowers?).

56 The more diversified a loan portfolio is, the lower the risk that an adverse event affecting one borrower or one type of loan will simultaneously affect the majority of borrowers, and therefore put the overall portfolio at risk.

57 It is important that issuers disclose in their prospectus their approach to loan portfolio diversification. At the prospectus stage, an issuer may not be able to set out exactly how funds have been lent, but they should be able to explain how they intend to lend the funds invested with them. This should be done as clearly and concretely as possible to help trustees and investors monitor the financial position and performance of the issuer over time.

58 It is important that investors understand what proportion of loans is secured, by number and by value. However, this needs to be explained carefully, including by reference to the nature and scale of the security (e.g. its ranking, the value of the assets supporting the security and the financial position of any guarantor).

Benchmark 6: Valuations

Proposal

D9 This benchmark requires issuers to take the following approach to valuations:

(a) properties (i.e. real estate) should be valued on a ‘cost’, ‘as is’ and (for development property) ‘as if complete’ basis, and all of these should be disclosed to investors;

(b) for other assets, valuations should be based on the market value of the underlying property or asset;

Note: See ‘Key terms’ for definition of ‘as is’ ‘as if complete’ and market value valuations.

(c) isuers should disclose how often they obtain valuations, including how recent a valuation has to be when they make a new loan;

(d) issuers should establish a panel of valuers and ensure that no one valuer conducts more than 1/3 of the issuer’s valuation work; and

(e) appointment of valuers should be with the trustee’s consent or by the trustee.

Your feedback

D9Q1 Have we identified the issues relevant for valuations? What is missing? Have we included anything that is not relevant?

D9Q2 Are there more effective ways of dealing with valuation issues? Please give details.

D9Q3 Should we expect regular rotation of valuers (e.g. every 3–5 years)?

D9Q4 Should we expect valuers to be registered and/or subscribe to an industry code of conduct? Please give reasons.

D9Q5 Should the full valuation reports be made available to investors? Please give reasons.

D9Q6 Should valuations reflect a net present value adjustment? If so, how should this be disclosed to investors?

Explanation

59 Robust and objective valuations are needed to ensure the issuer's financial position is correctly stated in the prospectus and ongoing disclosures. Valuations affect the key ratios of the issuer—such as the adequate capital, liquidity and loan-to-valuation policies.

60 It is therefore important for investor confidence that valuations are performed by independent experts, and that the process is transparent.

Note: See paragraphs 91–92 for further discussion of options ASIC is considering in relation to valuers and the valuation process.

Benchmark 7: Related party transactions

Proposal

D10 This benchmark requires issuers to disclose their policy on related party transactions, including:

(a) how many loans they have made or expect to make in the coming 12 months to related parties; and

(b) what assessment and approval process they follow with related party loans (e.g. are they subject to approval of the trustee).

Your feedback

D10Q1 Have we identified the issues relevant for related party transactions? What is missing? Have we included anything that is not relevant?

D10Q2 Are there more effective ways of dealing with related party transactions? Please give details.

D10Q3 Should we expect the issuer to hold additional capital relative to the amount of related party loans? How should this be calculated? How much additional capital?

Explanation

61 Related party loans are less likely to be monitored as robustly as third-party loans, and this can affect valuations, loan-to-valuation ratios and credit assessment processes. Related party loans appear to be a contributing factor in some recent failures.

62 One possible approach to related party loans is to expect the issuer to hold additional capital—that is, in calculating their capital ratio (see proposal D3), related party loans could be deducted from the total assets leaving them with lower total assets for the purposes of the calculation (and therefore the need to hold additional capital).

Benchmark 8: Rollovers

Proposal

D11 Issuers should clearly disclose their approach to rollovers, including whether the ‘default’ is that their investments are automatically rolled-over.

Your feedback

D11Q1 Should issuers be required to give investors an up-to-date prospectus before their investments are due to rollover, to assist them in their decision-making?

D11Q2 Should the default be that the principal is repaid unless the investor expressly decides to rollover?

Explanation

63 Some unlisted, unrated debenture issuers rely on investors keeping their funds in the investment beyond the end of the initial period. In some cases, the terms of the issue allow this to occur automatically unless the investor makes a positive decision to withdraw their funds. In other cases, an investor is invited to make a positive decision to have their funds re-invested.

64 It is important that investors fully understand the issuer’s approach to rollovers through clear disclosure in the prospectus. If the policy or practice of the issuer is to permit early redemptions, this should also be clearly disclosed to investors (including how and when redemptions are permitted).

65 The commercial circumstances of the issuer may have changed since the initial investment. To ensure investors are fully informed about the circumstances of the rollover, it is important for them to have the benefit of current disclosure (in either a prospectus or disclosure notice) to help them decide whether to continue with their investment.

E Disclosure against the benchmarks

Key points

ASIC proposes that issuers should use the benchmarks in Section D in meeting their disclosure obligations to investors.

In particular we propose an 'if not, why not' approach to:

- up-front disclosure (see proposals E1–E2); and
- ongoing disclosure (see proposals E3–E4).

'If not, why not' approach

66 ASIC proposes that issuers disclose whether they meet the benchmarks in Section D, and if not, why not. 'Why not' means explaining how an issuer deals with the issue underlying the benchmark. Our preference is to pursue this 'if not, why not' disclosure approach, rather than other options.

67 Our proposals about disclosure against the benchmarks are not intended to lead to longer and more complex disclosure documents. Rather, we expect that these disclosure proposals will help issuers produce disclosure documents that are more clear, concise and effective.

68 This approach is based on our view that the inherent risks for investors in unlisted, unrated debentures means that information about these risks is:

(a) information that investors and their professional advisers reasonably require to make an informed investment decision (s710(1));

(b) not something investors may reasonably be expected to know without explicit disclosure in a prospectus (s710(2));

(c) needed to ensure a debenture issuer's quarterly reports to the trustee and to ASIC comply with the content requirements for those reports (s283BF(4)); and

(d) relevant to consideration of whether the issuer is required to issue a supplementary or replacement prospectus (s719) or has obligations under the continuous disclosure provisions (s675).

69 Disclosure on an 'if not, why not' basis would be required:

(a) upfront in the prospectus (see proposals E1–E2); and

(b) as material changes occur, in a replacement prospectus, supplementary prospectus or continuous disclosure notice (see proposal E3), and at least twice a year, in quarterly reports to trustees (see proposal E4).

Up-front disclosure

Proposal

E1 A prospectus for unlisted, unrated debentures should address each of the benchmarks in Section D on an 'if not, why not' basis and either:

(a) state that the issuer and product meets the benchmark; or

(b) state that the issuer and product does not meet the benchmark **and** explain how and why the issuer deals with the principle underlying the benchmark in another way.

Your feedback

E1Q1 Are there practical problems with expecting this disclosure in prospectuses? If so, what alternative do you suggest that would ensure investors are adequately informed?

E1Q2 Do you agree with our approach to the operation of the disclosure requirements?

E2 A prospectus for unlisted, unrated debentures should contain a clear and prominent disclosure of the key features of the product and its risks. This key features and risks disclosure should be in the first few pages of the prospectus.

Your feedback

E2Q1 Are there practical problems with expecting specific features and risk disclosure in prospectuses? If so, what do you suggest that would ensure investors are clearly informed?

Explanation

70 The law requires up-front disclosure for these products through the mechanism of a prospectus. The prospectus must contain 'all the information that investors and their professional advisers would reasonably require to make an informed assessment' of the product: s710(1). In particular, the prospectus should allow the investor to assess the financial position, performance and prospects of the issuer.

Note: For a summary of the current prospectus regime, see Appendix 2.

71 The law also requires clear, concise and effective prospectus disclosure. Experience suggests that this requires simple and clear disclosure of the business model of the issuer and the key risks associated with the issue. ASIC encourages issuers to use consumer-friendly tools as much as possible in disclosing key features and risks, including by using tables, diagrams and other comparative features.

72 As well as specific disclosure against the benchmarks, ASIC expects any audit qualification applying to an issuer's financial report to be disclosed and explained in a prospectus.

Ongoing disclosure

Proposal

E3 Where there have been any material changes to the issuer's performance against the benchmarks, including against the issuer's alternative approach to meeting the benchmarks, issuers should explain this in:

(a) a supplementary prospectus;

(b) a replacement prospectus; or

(c) a continuous disclosure notice.

Your feedback

E3Q1 Are there practical problems with expecting issuers to disclose against the benchmarks in ongoing disclosure documents? If so, what do you suggest that would ensure investors are adequately informed about the ongoing performance of the issuer?

73 Good ongoing disclosure plays an important role in helping investors monitor their investment, evaluate its performance and decide if and when to exit the product. Issuers make a number of statements in the prospectus about how the funds being raised will be used, and how the issuer will conduct their business. These 'promises' are part of the basis on which the investor invests their money, and the investor should be given the opportunity to monitor the issuer's performance against these promises.

74 Issuers have a number of ongoing disclosure obligations that help investors and the trustee monitor performance. These include:

(a) issuing a supplementary or replacement prospectus (as needed);

(b) quarterly reports to the trustee (which are also lodged with ASIC) (s283BF(4);

(c) audited annual and half-yearly financial reports (Chapter 2M); and

(d) continuous disclosure of material information not otherwise covered by a new prospectus or supplementary prospectus (s675).

Note: For a summary of the current ongoing disclosure regime, see Appendix 2.

75 We will make the above documents generally available where they are lodged with us. Making these ongoing disclosures freely available will help investors monitor their investments in these products. It will also provide transparency to investors about the information available to trustees in their monitoring role. We believe this will encourage greater scrutiny of the ongoing operations of the issuer, and assist trustees and investors in monitoring the financial position and performance of the issuer. We are considering the most efficient and effective way of making this information accessible to the general public.

Quarterly reports

Proposal

E4 Issuers' quarterly reports should, at least twice a year, **specifically** explain any material changes to the issuer's performance against the benchmarks set out in Section D, including against the issuer's alternative approach to meeting the benchmarks.

Your feedback

E4Q1 Are there practical problems with expecting issuers to disclose against the benchmarks in quarterly reports?

Explanation

76 Quarterly reports must include details of:

(a) any failure of the borrower to comply with the terms of the debentures;

(b) any circumstances that have occurred during the quarter that materially prejudice the issuer;

(c) any substantial change in the nature of the business of the borrower that has occurred during the quarter; and

(d) any other matters that may materially prejudice any security or the interests of the debenture holders: s283BF(4).

77 Quarterly reports are designed to give the trustee (and ASIC) regular updates about the performance of the issuer. The benchmarks set out in Section D are the key features and risks our experts advise us to focus on for these products, so in our view diversions from the benchmarks are material issues that should be covered in quarterly reports. For example, if the issuer stopped meeting the minimum capital or liquidity benchmark during the quarter, this would clearly be a matter that materially prejudices the interests of the debenture holders and that should be brought to the trustee's attention. We expect to see an issuer's quarterly reports to the trustee set out the issuer's performance against the benchmarks at least twice a year.

F Advertising

Key points

ASIC proposes that issuers should adhere to clear standards in advertising about, or related to, unlisted, unrated debentures. This is to support the disclosures using the benchmarks discussed in Section E.

Proposal

F1 Advertising by issuers should support investor understanding of the disclosures that use the benchmarks (see Section E) and not convey messages inconsistent with them.

F2 Advertisements for these products should:

(a) if the product does have a credit rating—state the credit rating, who it is from and briefly what it means (e.g. the probability of default);

(b) if the product does not have a credit rating—state this and warn the client about the credit risk, in particular, the risk of not getting the principal investment back in whole or in part (e.g. 'this product does not have a credit rating—this means there has been no external assessment of the risk that you may not get some or all of your money back'); and

(c) contain these statements prominently.

F3 Advertisements for these products should **not**:

(a) include the terms 'secure', 'secured', 'guaranteed', 'safe', 'deposit', 'first ranking', 'no fees', or any comparison with bank deposit products;

(b) state or imply that the investment is suitable for a particular class of investor (e.g. 'this product is suitable for a conservative investor' or 'this product is suitable for a self-managed super fund').

Your feedback

F3Q1 Have we identified the relevant issues on advertising? What is missing? Have we included anything that is not relevant?

F3Q2 Are there more effective ways of dealing with advertising issues?

F3Q3 Where a debenture is unrated, will the statement in proposal F2(b) be sufficient to assist consumers? If not, what else should be done (e.g. should ASIC require a prominent warning that unrated debenture products pose a 'high risk' for consumers)?

Explanation

78 Experience suggests retail investors have some difficulty in assessing unlisted, unrated debentures. As a result, they place particular emphasis on the information and impressions given in advertisements. Such advertisements do not always give a realistic impression of the debenture, its features and risks. It is particularly problematic when advertisements give messages about a product that are not consistent with the risks described in a complying prospectus.

79 We have a broad concept of advertising in mind here, including comment and promotion of debentures in the course of media programs or publications (generally know as 'advertorials').

> Note: See also paragraphs 94–95 for a discussion of our expectations on publishers and the media.

G Expectations of participants involved with unlisted, unrated debentures

Key points

This section sets out ASIC's expectations of other parties involved with issues of unlisted, unrated debentures, being:

- trustees (see proposals G1–G3);
- auditors (see paragraphs 86–90);
- valuers (see paragraphs 91–92);
- advisers (see paragraph 93); and
- publishers and the media (see paragraphs 94–95).

Trustees

80 The law requires that whenever debentures are broadly offered to the public, the issuer must appoint a trustee. The trustee's role under the trustee deed and the Corporations Act is to 'exercise reasonable diligence' in monitoring the issuer, and where necessary notify ASIC and/or call a meeting of investors.

81 We expect trustees to monitor issuers' performance against the promises made in their disclosure documents. This is one of the reasons why we are proposing that, at least twice a year, issuers include in their quarterly report to the trustee information about their performance against the benchmarks as discussed in their prospectus: see proposal E4.

Proposal

G1 We expect trustees to actively monitor the financial position and performance of the issuer. This will include reviewing the information set out in the quarterly reports, and half-year and annual financial reports.

G2 We expect trustees to assess and form a view (and record this in writing) about the financial position and performance of the issuer at least quarterly.

G3 Where the trustee forms the view that the issuer is failing to meet the promises made in their disclosure documents or that there have been material adverse changes in the financial position or performance of the issuer, the trustee should notify both ASIC and the investors promptly. For serious matters, we would expect the trustee to call a meeting of investors and seek their instructions about what action to take.

Your feedback

G3Q1 Are there practical problems with expecting trustees to take this monitoring role? If so, what do you suggest that would ensure investors are adequately protected?

G3Q2 What impact would these new expectations have on the cost of the trustee role, and what impact might this have on issuers and investors? Please give details

G3Q3 Should some or all of the benchmarks (or where the issuer takes an alternative approach on one or more benchmarks, these alternative approaches) be set out in the trust deed?

G3Q4 Should the trustee appoint the auditor and valuers, and should they report directly to the trustee? Or should the trustee appoint its own experts (e.g. an investigating accountant) to assist it to monitor the issuer?

Explanation

82 The law requires a trustee to be appointed to help protect the interests of investors and to facilitate ongoing monitoring of the issuer. Issuers are obliged to report regularly to the trustee, including:

(a) quarterly reports (s283BF);

(b) information about charges (s283BE); and

(c) half-yearly and annual financial reports (Chapter 2M).

83 The trustee has the power to call meetings of the investors and provide information to and make recommendations to the investors: s283EB. This is an important protective measure, as the trustee has greater resources and experience than retail investors, and is therefore more likely to identify issues with the financial position and performance of the issuer.

84 The trustee's obligation is to exercise reasonable diligence to ascertain:

(a) whether the property of the issuer will be sufficient to repay the amounts lent; and

(b) whether the issuer has committed a breach of the 'terms of the debentures', the trust deed or Chapter 2L of the Corporations Act. This includes the issuer's general obligations to carry on their business in a 'proper and efficient manner': s283DA.

85 In our view, monitoring the financial position and performance of the issuer generally, and the issuer's performance against the 'promises' made their prospectus, is part of exercising this reasonable diligence.

Auditors

86 Issuers must lodge half-yearly and annual audited financial reports. Annual reports must be audited, and half-yearly reports at least reviewed by an auditor.

87 These reports also help trustees and investors monitor the financial position and performance of the issuer. Many of the benchmarks are or are closely based on information in the audited reports. The auditing process should give the trustee and investors greater confidence about the reliability of the financial information and therefore of the issuer's performance against the benchmarks.

88 Through the audit, the auditor will consider the systems and controls of the issuer, and its ongoing financial position (under the going concern issue). We expect that in doing so they will be likely to become aware of material deviations from the disclosure benchmarks, or to any alternative approaches the issuer is taking to one or more of the benchmarks.

89 In auditing the issuer's financial reports, auditors will naturally form a view about the financial position and performance of the issuer. The auditor's report to the trustee will help the trustee in carrying out their monitoring role.

90 Auditors of debenture issuers have some additional obligations, designed to focus their attention on matters that the auditor becomes aware of during the audit. They are obliged to notify the trustee within 7 days of any matter that in the auditor's opinion 'is or is likely to be prejudicial to the interests of debenture holders': s313.

Your feedback

G3Q5 Should we expect auditors to expressly state an opinion on how the issuer is performing against the benchmarks, or where the issuer takes an alternative approach on one or more benchmarks, these alternative approaches? What impact would this have on the cost of the audit?

G3Q6 Should we expect auditors to expressly state an opinion on the issuer's cash flow projections and minimum cash holding (see proposal D4)? What impact would this have on the cost of the audit?

Valuers

91 As discussed in Section D, a key aspect of the quality of the issuer's loan assets is their valuation. Robust and objective valuations are necessary to ensure that the issuer's financial position is correctly stated in the prospectus and ongoing disclosures. In Section D we introduce new expectations on how valuations are used and disclosed by issuers.

92 Some experts have raised with us concerns about inconsistent regulation of valuers across Australia. They also suggest the need for industry codes to be strengthened and compliance with them to become the norm.

Your feedback

G3Q7 Should we expect all valuers (who are contracted to provide valuations for a debenture issuer) to be registered under one of the state/territory valuer registration regimes? What does this mean for valuers based in a state/territory that does not yet have a registration regime?

G3Q8 Should the current industry code of conduct be strengthened to deal more fully with the reliability and robustness of valuations? Should all valuations for the purposes of a debenture issue contain a warranty that it complies with relevant industry codes?

Advisers

93 From our discussions with experts and our own experience, some investors in these debenture products have obtained advice from a licensed financial adviser. Other investors have made the investment directly, without obtaining any advice.

Your feedback

G3Q9 What (if any) changes to current advisory firm business models might facilitate specific advice on whether or not to invest in a particular debenture issue? Please give details.

G3Q10 What (if any) changes to the current regulatory framework might facilitate specific advice on whether or not to invest in a particular debenture issue? Please give details.

G3Q11 What other measures might assist clients in assessing and deciding whether or not to invest in a particular debenture issue (e.g. community advice centres, publicly-funded advice services, DIY advice kits)?

Publishers/media

94 Publishers and the media also have a role in the promotion and public discussion of these debenture products. Many of these products were directly promoted in the media, through advertising and by media commentators. In this project we have conducted a review of a sample of the advertisements for these debenture products. For example, a number of them used terms like 'secure' and 'guaranteed'. Even if they are literally true, these terms are likely to give a misleading impression to the average investor about how safe and secure the investment is.

95 While the primary responsibility for advertising material rests with the organisation placing the advertisement, under general law the publisher may also have some responsibility for its content. This depends on whether the publisher received the 'advertisement for publication in the ordinary course of that business and did not know, and had no reason to believe, that its publication would amount to an offence against that provision': s1044A Corporations Act, s12GI(4) ASIC Act.

96 We will be meeting with media organisations in the coming months to discuss their approach to accepting such advertisements. Our expectation will be that as the media is aware of the risks these products pose, it should adopt specific screening methods to detect and refuse advertisements that do not comply with ASIC guidelines: see proposals F1–F3 on advertising.

Your feedback

G3Q12 What role should publishing and the media play in this area (e.g. media and financial commentators)?

G3Q13 To what extent should publishing and the media be checking proposed advertisements for unlisted, unrated debentures?

H The retail investor

Key points

This section outlines:

- some key messages to existing investors (see paragraphs 97–98);
- further investor research planned by ASIC (see proposal H1); and
- further investor education planned by ASIC (see proposal H2).

Existing investors

97 ASIC is developing some investor education programs as well as a new guide for investors in how to approach debenture offers: see proposal H2. We expect investors to make use of these tools to better help them look after their own interests and money.

98 We encourage existing investors in these debentures to:

(a) seek advice from a licensed financial adviser if they are unsure what to do in their circumstances;

(b) ask for a copy of the current prospectus before making any ‘rollover’ decisions; and

(c) carefully read the current prospectus or supplementary prospectus and any other document (e.g. a continuous disclosure notice or quarterly report) made available by the issuer that explains how the issuer is performing against the benchmarks in Section D.

Investor research

Proposal

H1 ASIC is undertaking research targeted at people who have invested in unlisted, unrated debentures to identify their demographic characteristics and investment preferences, and to undertake some consumer testing of the suggestions made in this paper for better disclosure.

Explanation

99 Recent research, including investor research ASIC commissioned Roy Morgan Research to conduct over the past year, suggests that some investors find investment concepts difficult to understand and apply. There is also evidence

that some investors do not take an active interest in their investments. See Appendix 3 for more detailed results about our research on investors generally.

100 To better target investor education programs, our next survey will be of the investors in failed investments and what motivated their decisions or choices to invest in those products.

Investor education

Proposal

H2 ASIC plans to address investor education needs in this area by:

(a) developing and publishing an investor guide to understanding the disclosure documents used in connection with unlisted, unrated debentures (as enhanced by implementation of the proposals in this paper);

(b) encouraging issuers of unlisted, unrated debentures to provide investors with a copy of the investor guide with the prospectus and prior to rollover of their investments;

(c) conducting a broader education program directed to better consumer understanding of the need for investment diversification;

(d) consulting with industry participants (particularly those who provide investor education programs) on ways to provide targeted seminars; and

(e) exploring with industry participants options for funding a broad investor education program.

Your feedback

H2Q1 Have we identified the relevant issues for investor education? What is missing? Have we included anything that is not relevant?

H2Q2 Do you agree with the proposal that issuers should be encouraged to provide investors with a copy of the investor guide?

H2Q3 Do you support the idea of establishing a substantial industry fund to provide investor education courses and seminars to equip investors to make better investment decisions?

Explanation

101 Many of the proposals in this paper are designed to help investors by making sure issuers and others provide them with better quality information to help them to make good decisions in their own interest. Investors can also be assisted by guidance in the use of this information.

102 Investors also need help to understand how investment in unlisted, unrated debentures might fit into an overall investment and savings strategy. This suggests the need not only to have information about individual products but more general information about the basics of investment decision-making. Previous experience with unlisted, unrated debentures suggests investors could be assisted to a real understanding of:

(a) the importance of diversification in an investment strategy (e.g. 'don't put all your eggs in one basket'), including clarity about what constitutes diversification;

(b) how to apply diversification in practice (i.e. asset allocation);

(c) risk-reward premiums (i.e. high returns = high risk) and awareness about reasonable rates of return for different asset classes so people can tell what is 'risky' and 'price' the risk;

(d) how to apply risk-reward information in practice, including the need to focus on a range of indicators rather than just one (e.g. not focusing on the 'reasonableness' of the rate of return alone);

(e) credit ratings (e.g. the value in looking for them, what they mean in terms of the risk that the investor will not get some or all of their investment money back);

(f) the basic underlying business model of these debenture issuers (e.g. how much money are they raising, what are they going to do with it, is it likely to generate enough money to pay the promised return and how risky is it); and

(g) how to work with the statutory disclosure documents for these products (e.g. how to read and use the prospectus, quarterly reports and financial reports).

103 Investors also need to know when and how to obtain professional financial advice. For those investors wishing to seek professional advice, we recommend they ask themselves and their adviser the following questions:

(a) how risky is this product and is the return adequate compared to the risk?

(b) are there other products with better returns for the same level of risk, or lower levels of risk for the same returns?

(c) does this product suit me, considering my current investment portfolio and circumstances?

I Implementing these proposals

Key points

This section describes:

- how we envisage the proposals in this paper will be implemented; and
- the implications of these proposals for new and existing issuers (for both their up-front and ongoing disclosure documents), and for ASIC.

104 Sections C–E set out ASIC's expectations of issuers going forward. In particular, we set out important benchmarks in Section D that we encourage issuers and investors to focus on for unlisted, unrated debentures. It is in the interests of investors that issuers begin to comply with these expectations as soon as possible.

New issuers

Up-front disclosure documents

Proposal

I1 ASIC expects:

(a) prospectuses issued by new issuers on or after 1 December 2007 to follow our proposed 'if not, why not' approach to disclosing against the benchmarks (see proposal E1); and

(b) new issuers to use the new advertising benchmarks from this time (see Section F).

Your feedback

I1Q1 Is this timing realistic? If not, what timing do you suggest and how would you ensure investors are adequately protected in the meantime?

Explanation

105 As explained in Section E, we expect prospectuses for unlisted, unrated debentures to address each of the benchmarks in Section D on an 'if not, why not' basis and either:

(a) state that the issuer and product meets the benchmark; or

(b) state that the issuer and product does not meet the benchmark and explain how and why the issuer deals with the principle underlying the benchmark in another way: see proposal E1.

Ongoing disclosures

Proposal

I2 ASIC expects ongoing disclosures lodged by new issuers on or after 1 December 2007 to specifically refer to the issuer's performance against the disclosure benchmarks (or where the issuer takes an alternative approach on one or more benchmarks, against the alternative approaches).

I3 New issuers should make their ongoing disclosure documents (even those that are lodged with ASIC) available to all debenture holders (e.g. by putting them on the issuer's website).

Your feedback

I3Q1 Is this timing realistic? If not, what timing do you suggest and how would you ensure investors are adequately protected in the meantime?

I3Q2 Are there any practical problems with issuers making all of their ongoing disclosure documents (even those that are lodged with ASIC) available to all debenture holders? Please give details.

Explanation

106 As explained in Section E, we expect issuers to regularly report against the benchmarks. On an ongoing basis, we expect new issuers to explain any material changes to their performance against the benchmarks, including against the issuer's alternative approach to meeting the benchmarks, in:

(a) a supplementary prospectus;

(b) a replacement prospectus; or

(c) a continuous disclosure notice: see proposal E3.

107 From 1 December 2007, we expect the prospectuses of new issuers to follow our proposed 'if not, why not' approach to disclosing against the benchmarks. Therefore, it is important that any ongoing disclosures by those issuers after 1 December 2007 also refer to the benchmarks (to help investors monitor the issuer's performance against the statements made in the prospectus).

108 From 1 December 2007, we also expect a new issuer's quarterly reports to the trustee to set out the issuer's performance against the benchmarks at least twice a year: see proposal E4.

Existing issuers

109 The proposed benchmarks and disclosures in Sections D–F apply to both existing and new offers of debentures. We do not expect existing offer documents to be rewritten, but it is important that issuers with current offers open also provide this new information to investors in a timely way.

Up-front disclosure documents

Proposal

I4 ASIC expects:

(a) all new prospectuses issued by existing issuers on or after 1 December 2007 to follow our proposed 'if not, why not' approach to disclosing against the benchmarks (see proposal E1); and

(b) existing issuers to use the new advertising benchmarks from this time (see Section F).

Your feedback

I4Q1 Is this timing realistic? If not, what timing do you suggest and how would you ensure investors are adequately protected in the meantime?

Explanation

110 From 1 December 2007, we expect new prospectuses (whether from new or existing issuers) for unlisted, unrated debentures to address each of the benchmarks in Section D on an 'if not, why not' basis: see proposal E1.

Ongoing disclosures

Proposal

I5 ASIC expects ongoing disclosures lodged by existing issuers on or after 1 December 2007 to specifically refer to the issuer's performance against the disclosure benchmarks (or where the issuer takes an alternative approach on one or more benchmarks, against the alternative approaches).

I6 ASIC expects existing issuers to lodge by 1 March 2008 an ongoing disclosure document specifically referring to the issuer's performance against the disclosure benchmarks (or where the issuer takes an alternative approach on one or more benchmarks, against the alternative approaches).

I7 Existing issuers should make their ongoing disclosure documents (even those that are lodged with ASIC) available to all debenture holders (e.g. by putting them on the issuer's website).

Your feedback

I7Q1 Is this timing realistic? If not, what timing do you suggest and how would you ensure investors are adequately protected in the meantime? Should there be specific transitional arrangements for existing issuers?

I7Q2 Are there any practical problems with issuers making their ongoing disclosure documents available to all existing debenture holders? Please give details.

Explanation

111 Section D sets out ASIC's proposals for the benchmarks to serve as the basis for enhanced disclosure. In our view, these benchmarks are key to improved disclosure in the unlisted, unrated debenture sector. We expect issuers to refer to the benchmarks in their prospectuses and regularly report against the benchmarks: see Section E.

112 For existing issuers, the first information investors will see about the benchmarks and the issuer's performance against them will be after they have made their investment decision. Therefore, by 1 March 2008, we expect existing issuers to specifically address each of the benchmarks in Section D on an 'if not, why not' basis in:

(a) a supplementary prospectus;

(b) a replacement prospectus; or

(c) a continuous disclosure notice.

Note: See Appendix 2 for a summary of when an issuer is expected to use a supplementary or replacement prospectus, and when they are expected to use a continuous disclosure notice.

113 It is important that issuers bring this information directly to the attention of investors. We expect issuers to make their first ongoing disclosure document that specifically refers to the issuer's performance against the benchmarks available to all of their existing debenture holders. This could be done by:

(a) sending the report to their existing investors; or

(b) publishing the report on their website and notifying investors that it is available and how to access it.

114 From 1 December 2007, we also expect an existing issuer's quarterly reports to the trustee to set out the issuer's performance against the benchmarks at least twice a year: see proposal E4.

What ASIC will do

115 The up-front and ongoing disclosure documents discussed in this section are also lodged with ASIC. We will be reviewing them up to June 2008 to check that the benchmarking information is adequately disclosed to investors.

116 Over this period, we will also:

(a) work with issuers and trustees to ensure that the benchmarks and our disclosure expectations are understood;

(b) discuss any concerns we have with an issuer's disclosure with the issuer and, where necessary, require additional disclosure (e.g. about the practical impact of not following a particular benchmark and the associated risks for investors);

(c) discuss any concerns we have about the financial position and performance of an issuer with the issuer and trustee; and

(d) conduct surveillance visits as needed to reinforce our disclosure expectations.

J Regulatory and financial impact

117 In developing our final position, we will need to consider the regulatory and financial impact of our proposals. We are aiming to strike an appropriate balance between:

(a) disclosure that better informs investors about the business models and risks of unlisted, unrated debenture issuers; and

(b) not unduly interfering with the market and the flexibility of the public fund-raising process.

118 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).

119 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.

120 To ensure that we are in a position to assess the regulatory and financial impact of our proposals, and to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can about the following aspects of our proposals (or any alternative approaches):

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

Note: See 'The consultation process' p. 5.

Key terms

Term	Meaning in this document
ASIC	The Australian Securities and Investments Commission
ASIC Act	The *Australian Securities and Investments Commission Act 2001* (Cth)
'as if complete' valuation	An estimate of the market value of a property, assuming certain specified improvements are made
'as is' valuation	An estimate of the market value of a property in its current state (i.e. without any further improvements)
BCC report	Business Cost Calculator report
Corporations Act	The *Corporations Act 2001* (Cth)
market value	An estimate of the amount for which the property or asset could exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction
OBPR	Office of Best Practice Regulation
RIS	Regulation Impact Statement
rollovers	where 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)

Appendix 1: Unlisted, unrated debentures currently offered to retail investors

> Note: The information in this appendix is based on publicly-available information in the most recent prospectuses, financial reports and quarterly reports of debenture issuers.
>
> It is simply a list of unlisted, unrated debentures and does not signify any particular level of risk with any debenture.

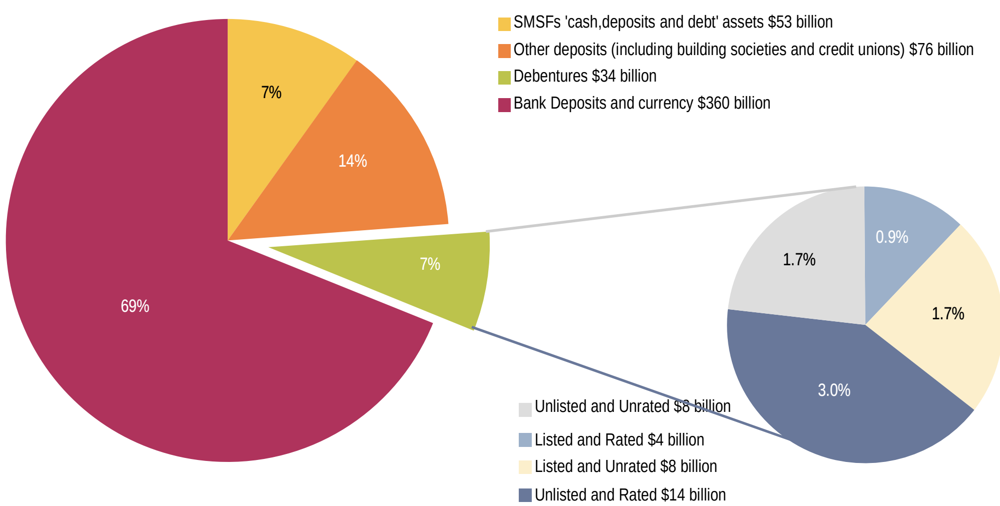
What is in and out of the unlisted, unrated debenture analysis?

121 ASIC presented at the Senate Economics Committee on 30 May 2007 a preliminary analysis of the market for deposits and debt securities in Australia. The analysis as shown in Figure 2 shows that:

(a) debentures issued to retail investors account for around 7% of the total retail market for deposits and debt securities, or some $34 billion; and

(b) of that $34 billion, some $8 billion (or 24%) is invested in unlisted, unrated debentures. Most recent failures have been in this unlisted, unrated category.

Figure 2: Total deposits and debt securities $523 billion (100%)



Sources: ABS APRA; ASIC (released 30 May 2007)

122 We pointed out at the Senate Economics Committee that retail investors who hold unlisted, unrated securities do not have the benefit of price discovery mechanisms and market forces to:

(a) help them work out the value of their securities on an ongoing basis; and

(b) provide them with a reliable way to exit their investment efficiently.

123 Being unlisted means there is no liquid secondary market on which an investor can sell an investment that is no longer required, or in which the investor has lost confidence. Some debenture issuers offer early exit mechanisms, but these are likely to be unavailable if the issuer is in financial difficulty.

124 In this consultation paper we outline a process of additional disclosure for investors who have invested in these debenture issues and may wish to do so in new issues in the future.

125 The unlisted, unrated debenture area involves debentures issued to raise funds for different objectives and strategies. This reinforces the view that they can be a useful and flexible way of raising capital.

126 While ASIC considers that, for investor decision making, additional disclosure may be needed on a 'if not, why not' basis, we have not conducted a review of each debenture on issue or ranked each debenture on issue by degree of risk or reward.

127 The material contained in this appendix therefore:

(a) is a listing only;

(b) does not signify any level of risk;

(c) does not signify any level of reward.

It has been compiled to inform the market of the debentures currently on issue and their value.

128 In compiling and releasing the list, we weighed up the public benefit of informing the market of what makes up the unlisted, unrated debenture area against the risk that such a release by ASIC might be seen by investors as investments that investors should avoid. We are not suggesting the latter. We are simply saying that these debenture issues are in the unlisted, unrated area and therefore relevant to this consultation paper.

How was the list of debentures compiled?

129 The list was compiled using a range of publicly available information including:

(a) notifications of appointment of trustees for debenture holders lodged with ASIC;

(b) quarterly reports given to debenture trustees and lodged with ASIC by debenture issuers;

(c) prospectuses lodged with ASIC to raise money from retail investors through the issue of debentures and any stop orders for debenture prospectuses; and

(d) information extracted from financial statements lodged with ASIC by debenture issuers.

130 The list includes only unlisted, unrated debentures. It excludes debentures issued by entities that are in external administration or liquidation, and any debentures that are convertible into listed securities at the discretion of the investor.

131 The current list includes 92 issuers of unlisted, unrated debentures, which is a net movement of 9 issuers from the 83 included in the hearing of the Senate Economics Committee on 30 May 2007. This movement includes additions for new issuers, less issuers that have since repaid debentures and other movements.

How are the debentures categorised?

132 There are a diverse range of issuers and investments in this market, and there is limited research and analysis where classifications, common frameworks, or categories are available to demonstrate either comparability or diversity of unlisted, unrated debentures. ASIC looked at classification methodologies and categories used by research agencies in managed funds, superannuation, and listed securities and applied that knowledge to the list of unlisted, unrated debentures.

133 We examined publicly available information for each debenture issuer and then sorted each debenture issuer into a category based upon its principal business and the purpose and application of funds from the issue of the unlisted, unrated debentures.

134 The categories are defined as follows:

(a) *debt capital funding*—money raised and applied as working capital or transaction specific funding to further the issuer or group's business operations;

(b) *finance*—lending for personal and commercial purposes;

(c) *integrated property*—funding of property transactions and development within a group or with related parties where that amount of funds applied is greater than 10% of total assets of the debenture issuer;

(d) *memberships*—debentures issued to facilitate membership of clubs, groups, or franchise operations;

(e) *mortgage financing*—secured mortgage lending for residential and commercial property ownership and improvement with security over real property; and

(f) *structured real estate investments*—participation in ownership of commercial and residential real estate as part of a wider ownership structure.

135 We have included examples for each category later in the appendix. The majority of debentures (62% by number and 77% by value) fall into the debt capital funding and mortgage financing categories as shown in Table 3.

Table 3: Summary of unlisted, unrated debentures by category

Category	Number of issuers	Debentures $m (most recent)	Debentures $m (median)	Interest rates %
Debt capital funding	21	2,682.1	12.8	2.90–11.00
Finance	15	885.3	19.2	5.23–11.43
Integrated property	3	72.5	26.6	8.00–9.25
Memberships	7	81.8	8.5	5.60
Mortgage financing	36	3,206.2	48.2	2.35–12.00
Structured real estate investments	10	679.9	27.3	6.45–9.90
Total	**92**	**7,607.8**	**24.8**	**2.35–12.00**

136 This list excludes Fincorp Investments Limited and Australian Capital Reserve Limited which had total debentures on issue of $201 and $327 million respectively. These entities are excluded due to the appointment of external administrators. Had they been included they would have been categorised as integrated property. Bridgecorp Finance Limited is also excluded due to the appointment of external administrators. It had $25 million of debentures on issue when an administrator was appointed. Bridgecorp Finance Limited would have been categorised as mortgage financing. Westpoint Group is excluded as it issued promissory notes and not unlisted, unrated debentures. Westpoint Group would have been categorised as integrated property.

137 Just over half of the debentures (53% by number and 52% by value) are included in property related categories (i.e. integrated property, mortgage financing, and structured real estate investments) as shown in Table 4.

Table 4: Summary of unlisted, unrated debentures by category with property related subtotal

Category	Number of issuers	Debentures $m (most recent)	Debentures $m (median)	Interest rates %
Integrated property	3	72.5	26.6	8.00–9.25
Mortgage financing	36	3,206.2	48.2	2.35–12.00
Structured real estate investments	10	679.9	27.3	6.45–9.90
Property related	**49**	**3,958.6**	**44.5**	**2.35–12.00**
Debt capital funding	21	2,682.1	12.8	2.90–11.00
Finance	15	885.3	19.2	5.23–11.43
Memberships	7	81.8	8.5	5.60
Total	**92**	**7,607.8**	**24.8**	**2.35–12.00**

138 The interest rates applying to the debentures range very widely from 2.35% to 12.00% as shown Table 3 and Table 4 and this range demonstrates that not all unlisted, unrated debentures reflect high yielding interest rates.

139 The following charts graphically demonstrate the diverse mix of unlisted, unrated debentures by number of issuers and by amount outstanding.

Figure 3: Unlisted, unrated debenture by number

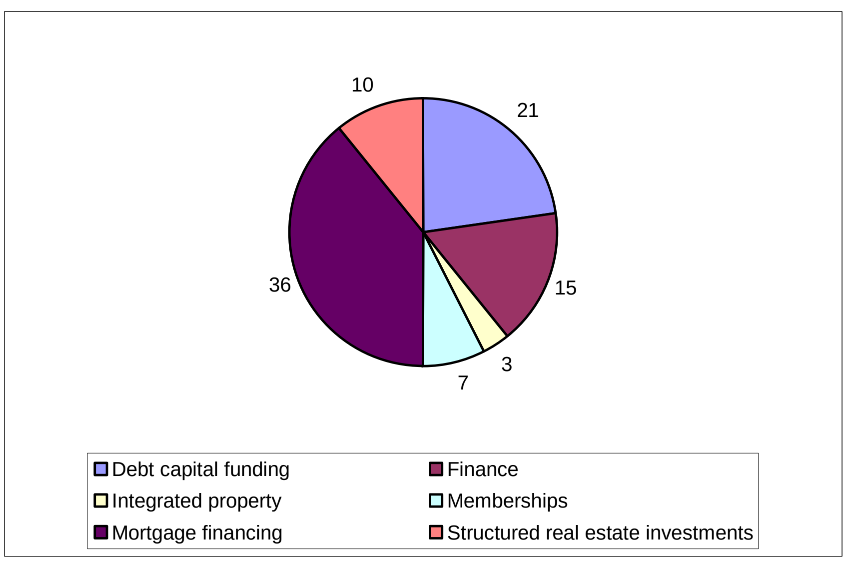
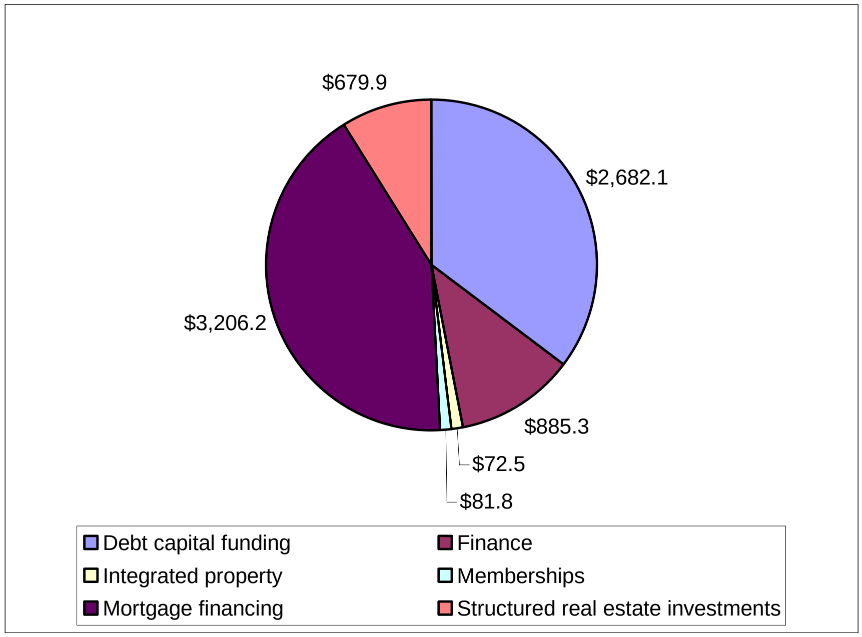


Figure 4: Unlisted, unrated debenture by amount $m



How was the interest rate and date of first issue data in the tables compiled?

140 The interest rate data was primarily sourced from the latest financial statements of the debenture issuers. In most cases this was as at 30 June 2006. Accounting standards require the measurement and disclosure of the interest rate applicable to debentures outstanding at year-end for debenture issuers. This interest rate data is either presented as a simple average, a weighted average, or a range. Where the information was not available in the financial statements, or where a new issuer had not yet been required to lodge financial statements, the information was sourced from the prospectus, if disclosed.

141 Where information was not applicable (such as for certain memberships) it is shown in the table as ‘Not applicable’.

142 The ‘Date of first issue’ column indicates the earliest month and year on ASIC’s public database where the entity has lodged a document which includes it in the class of unlisted, unrated debenture issuers covered by this paper. A number of issuers may have been operating, borrowing from investors, or carrying on lending businesses for a longer period of time although under earlier fundraising regimes than the one currently in place.

List of debentures by category

143 Tables 5–10 list unlisted, unrated debentures by category (i.e. debt capital funding, finance, integrated property, memberships, mortgage financing, and structured real estate investments).

Dept capital funding

144 Debt capital funding is defined as monies raised and applied as working capital or transaction specific funding to further the issuer or group's business operations. This category represents 35% by value and 23% by number of the total unlisted, unrated debentures. The largest 3 issuers' amounts outstanding represent 89% by value of this category.

Example

ABC Limited was incorporated in 1970, and is one of the largest suppliers of widgets in Australia and also exports to many other countries. ABC packages and markets its widgets. In addition to this, ABC engages in other activities including the sales of widget component parts. A wholly owned subsidiary of ABC, XYZ Pty Ltd, has been formed to develop and commercialise widgets for office applications.

ABC has its ordinary shares listed on a share market. The funds raised through the issue of shares have been applied to further ABC's business. In addition to this equity funding, ABC has also raised funds from the public through the issue of unsecured notes under a prospectus. To date, ABC has issued over $28 million of unsecured notes for terms ranging from 'at call' to 12 months. The unsecured notes pay an interest rate depending on the term between 3 and 7%. This debt capital funding has been applied to assist XYZ develop its business. In particular, the costs have included market research, product design and testing, and prototype feasibility studies. ABC is considering lodging a new prospectus to raise further funds to take the office widget to market.

Figure 5: Debt capital funding

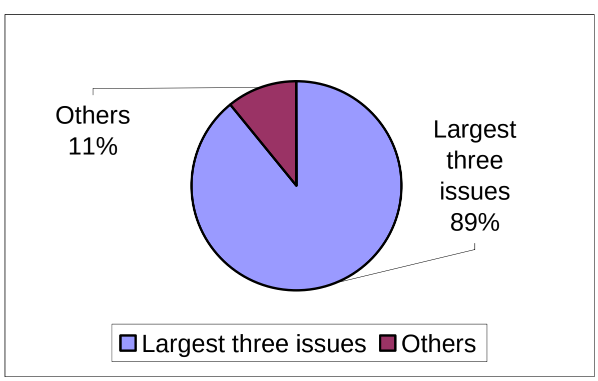


Table 5: Debt capital funding unlisted, unrated debentures

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Alocit Group Limited	112 309 369	ANZ Executors & Trustee Company Ltd	4.200	10.00%	Sep 05
Blue Square Investments Limited	109 107 539	Permanent Nominees (Aust.) Ltd	17.356	4.68%	May 04
Capilano Honey Limited	009 686 435	Trust Company of Australia Ltd	1.469	2.90%–7.01%	May 93
Charles Stewart Finance Ltd	099 850 807	Sandhurst Trustees Ltd	1.365	5.00%	Jul 02
Diverseport Fixed Income Limited	113 122 286	Trust Company Fiduciary Services Ltd	127.589	6.90%–7.30%	Jul 05
Driscoll Mcillree & Dickinson Finance Company Limited	110 942 124	Sandhurst Trustees Ltd	2.615	7.26%	Dec 04
Elderslie Financial Services Limited	000 175 502	Permanent Nominees (Aust.) Ltd	1.565	7.15%	Mar 92
Goldman Sachs JBWere Capital Markets Limited	004 463 263	Perpetual Trustees Consolidated Ltd	1,894.030	6.03%	Nov 93
Graincorp Ag Finance Limited	096 359 447	National Australia Trustees Ltd	24.184	6.89%	Jul 05
Landmark Operations Limited	008 743 217	Permanent Nominees (Aust.) Ltd	375.980	6.78%	Feb 02
Mariner Treasury Limited	113 215 802	Trust Company Fiduciary Services Ltd	17.004	9.84%	Mar 05
MFS Financial Services Limited	101 579 999	Public Trustee of Queensland	16.136	9.04%	May 03
Milton Corporation Ltd	000 041 421	National Australia Trustees Ltd	8.601	5.40%	Apr 92
Minerals Corporation Limited	002 529 160	Trust Company of Australia Ltd	12.771	10.50%	Oct 03
Palandri Finance Ltd	090 580 500	Public Trustee of Queensland	18.435	11.00%	Mar 05
Powton Land Holdings Limited	087 201 652	Professional Funds Management Ltd	1.873	6.00%	Dec 99
Roberts Limited	009 475 647	Tasmanian Perpetual Trustees Ltd	60.126	5.61%	Nov 01
SAI Group Capital Limited	123 211 012	Sandhurst Trustees Ltd	77.020	9.50%	Jan 07
Tatura Milk Industries Limited	006 603 970	Trust Company Fiduciary Services Ltd	6.371	6.00%	Dec 05

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Webster Limited	009 476 000	Tasmanian Perpetual Trustees Ltd	11.423	6.53%	Feb 02
Windsor Farm Foods Group Limited	001 249 038	Cowra Industry Nominees Pty Limited	2.022	8.41%	Aug-00
Total			**2,682.136**		
Median			**12.77**		

Finance

145 Finance is defined as lending for personal and commercial purposes. This category represents 12% by value and 16% by number of the total unlisted, unrated debentures. The largest 3 issuers' amounts outstanding represent 61% by value of this category.

Example 1

XYZ Limited was incorporated in 2004 and is an unlisted public company. XYZ's primary business is the provision of finance for the acquisition of new and used commercial vehicles and equipment. XYZ provides finance to borrowers from funds raised from retail investors through the issue of debentures under a prospectus. XYZ takes security over the vehicle or equipment acquired by the borrower or security over another asset of the borrower including real property. XYZ also provides borrowers with leasing options to finance motor vehicles. A charge has been granted over the assets of XYZ in favour of the trustee for the debenture holders.

Example 2

ABC Limited has been providing finance products and services to business customers since commencing operations 20 years ago. ABC's products and services primarily include operating and finance leases, working capital facilities and loans. ABC raises funds from retail investors through the issue of unsecured notes to enable it to provide finance to its customers. To date, ABC has used approximately 5% of funds raised from retail investors to fund other activities by investing in property development projects. The unsecured notes are issued from terms of 6 months to 4 years.

Figure 6: Finance

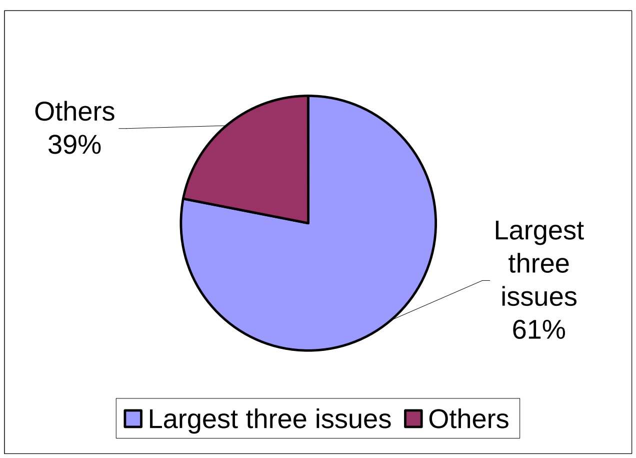


Table 6: Finance unlisted, unrated debentures

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Alleasing Finance Limited	110 175 043	Trust Company of Australia Ltd	0.144	7.23%	Nov 04
Australian Finance & Leasing Ltd	080 524 689	Trust Company of Australia Ltd	19.224	9.79%	Jun 98
Bell Potter Capital Limited	085 797 735	Trust Company Fiduciary Services Ltd	70.822	5.96%	May 06
Bidgee Finance Limited	000 362 596	Trust Company Fiduciary Services Ltd	24.065	6.32%	Dec 94
Elderslie Finance Corporation Limited	008 678 233	Perpetual Trustees W.A. Ltd	198.971	7.15%	Jan 92
Financial Resources Securities Limited	108 611 436	Permanent Nominees (Aust.) Ltd	2.343	6.50%–10.75%	Feb 05
G2 Finance Limited	116 139 701	Australian Executor Trustees Ltd	6.606	11.43%	Aug 06
Investment Nominees Limited	009 503 315	Sandhurst Trustees Ltd	17.842	7.54%	Jul 95
Millbrook Finance Limited	110 264 278	Trust Company Fiduciary Services Ltd	13.700	10.34%	Feb 05
North State Finance Limited	003 959 126	Permanent Nominees (Aust.) Ltd	27.712	6.16%	May 93
Profinance Ltd	003 164 190	Permanent Nominees (Aust.) Ltd	10.346	5.23%–5.81%	Feb 93
R.A.C. Finance Limited	009 066 862	Perpetual Trustees W.A. Ltd	169.302	6.03%	Mar 91
R.A.C.V. Finance Limited	004 292 291	Perpetual Trustees Victoria Ltd	171.232	6.06%	Aug 91
Rivwest Finance Ltd	073 358 666	Permanent Nominees (Aust.) Ltd	12.893	6.50%	May 01
Westlawn Finance Limited	096 725 218	Public Trustee of Queensland	140.053	5.80%	Jun 01
Total			**885.255**		
Median			**19.22**		

Integrated property

146 Integrated property is defined as funding of property transactions and development within a group or with related parties where that amount of funds applied is greater than 10% of total assets of the debenture issuer. This category represents 1% by value and less than 3% by number of the total unlisted, unrated debentures.

Example

ABC Limited is an unlisted public company and a member of the ABC Property Group, providing financial services to ABC Property Group. ABC's activities are funded through the issue of both debentures and unsecured notes with terms of up to 5 years. Property development is a core business activity of ABC Property. Development projects in the pipeline include commercial offices, residential planned estates and apartments. ABC Property's largest development is situated in Darwin's business district and is a 13-floor building with 8 floors for offices and 4 floors for apartments with the ground floor including a number of eateries. This project is due for completion in 6 months and has pre-sales of 60%. ABC Property has recently purchased a 50-hectare land parcel that it preparing for subdivision.

Table 7: Integrated property unlisted, unrated debentures

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Austcorp Capital Limited	109 917 517	Sandhurst Trustees Ltd	44.751	8.08%	Sep 04
Cromwell Finance Limited	111 461 093	Trust Company Fiduciary Services Ltd	26.594	8.00%–9.00%	Dec 04
Riviera Properties Limited	073 087 199	ANZ Executors & Trustee Company Ltd	1.178	9.25%	Oct 03
Total			**72.523**		
Median			**26.59**		

Note: The figure for Austcorp Capital Limited and the total figure were incorrectly stated in the previously published version of this table.

Memberships

147 Memberships is defined as debentures issued to facilitate membership of clubs, groups, or franchise operations. This category represents 1% by value and 8% by number of the total unlisted, unrated debentures. The largest 3 issuers' amounts outstanding represent 88% by value of this category.

Example

XYZ Limited was incorporated in 2004. XYZ's principal activity is the operation, development and management of a golf course in Rolling Fields. In early 2005, XYZ issued a series of debentures to people who wished to become a member of Rolling Fields Golf Club (Club) and to provide funding to achieve XYZ's objectives. Holder of debentures are entitled to become members of the club and the terms of the debentures provide member rights to use the Club's course and facilities and to invite guest to do the same subject to the rules of the Club. The debentures issued by the Club have a value of $50,000 are for an initial term of 12 years and do not earn interest. The debentures may convert into preference shares at the end of the term.

Figure 7: Memberships

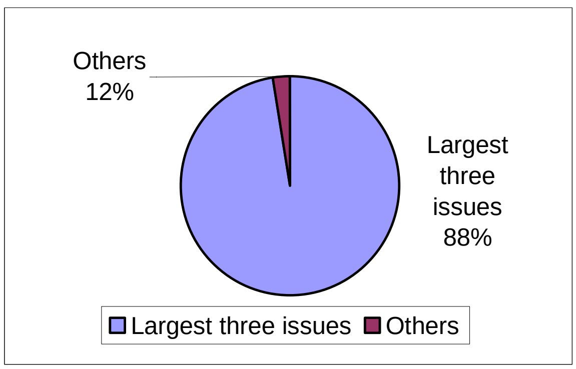


Table 8: Memberships unlisted, unrated debentures

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Cash Converters Finance Corporation Limited	050 495 095	Perpetual Trustees Consolidated Ltd	0.797	Not applicable	Mar 93
Flight Centre Limited	003 377 188	Permanent Nominees (Aust.) Ltd	26.754	Not applicable	May 98
Indian Pacific Limited	009 178 894	Perpetual Trustee Co	0.000	Not applicable	
Retravision Finance (WA) Ltd	079 440 494	Perpetual Trustees Consolidated Ltd	8.467	5.60%	Feb 98
Sanctuary Cove Golf And Country Club Holdings Limited	120 283 534	Public Trustee of Queensland	9.092	Not applicable	Jul 06
Terrey Hills Golf & Country Club Holdings Limited	003 917 628	Trust Company Fiduciary Services Ltd	36.101	Not applicable	Jul 96
The Kew Golf Club	004 098 257	Panker Nominees (Vic) Pty Ltd	0.581	5.74%	Aug 92
Total			**81.793**		
Median			**8.47**		

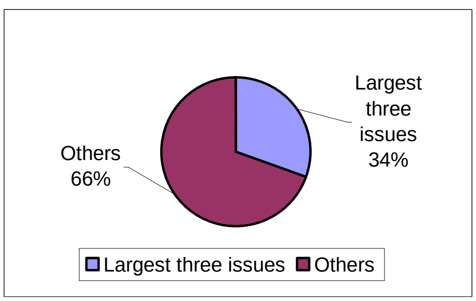
Mortgage financing

148 Mortgage financing is defined as secured mortgage lending for residential and commercial property ownership and improvement with security over real property. This category represents 42% by value and 39% by number of the total unlisted, unrated debentures. The largest 3 issuers' amounts outstanding represent 34% by value of this category and the largest 10 issuers' amounts outstanding represent 69% by value of this category.

Example

ABC Limited commenced business in 1996. ABC's main business activity is the acceptance of funds from retail investors, through the issue of debentures, and the on-lending of these funds to a range of borrowers for the acquisition or improvement of residential and commercial property. ABC takes security of a registered first or subsequent mortgage over the borrower's real property. The type of property taken as security includes residential, commercial, industrial, development and rural property. The debentures issued by ABC have terms ranging from 'at call' to 24 months and pay interest between 3.5 to 7.7% depending on the term of the debentures. ABC has 180 loans in its portfolio. The value of the loans does not exceed more than 70 percent of the underlying value of the real property taken as security.

Figure 8: Mortgage financing



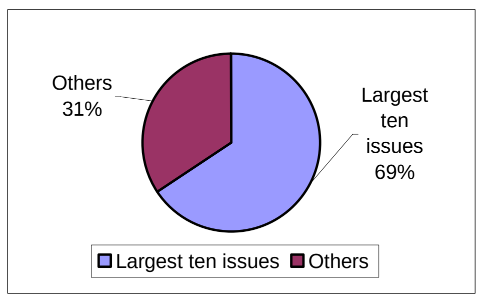


Table 9: Mortgage financing unlisted, unrated debentures

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Angas Securities Limited	091 942 728	Permanent Nominees (Aust.) Ltd	132.267	8.00%	Jul 00
Asset Loans Limited	107 745 095	Public Trustee of Queensland	15.980	10.42%	Sep 04
Assist Finance Corporation Limited	007 604 631	Lowell Capital Ltd	3.790	8.91%	Jun 98
Australian Secured Investments Limited	090 730 886	Permanent Nominees (Aust.) Ltd	25.196	8.04%	Jul 00
Balanced Securities Limited	083 514 685	Australian Executor Trustees Ltd	102.827	6.50%–10.00%	Jan 00
Banksia Securities Limited	004 736 458	Permanent Nominees (Aust.) Ltd	408.042	3.00%–6.50%	Nov 00
Central Victorian Investments Limited	058 071 631	Sandhurst Trustees Ltd	55.272	6.15%	Nov 99
Cherry Fund Limited	106 274 631	Permanent Nominees (Aust.) Ltd	13.842	7.00%–7.15%	Nov 03
Cymbis Finance Australia Limited	109 245 141	Trust Company Fiduciary Services Ltd	90.737	8.30%	Jan 05
Dolilta Investments Limited	004 664 322	Sandhurst Trustees Ltd	43.916	6.36%	Jan 00
Donovan Oates Hannaford Mortgage Corporation Limited	086 879 307	Trust Company Fiduciary Services Ltd	274.575	8.22%	Aug 99
Eurofinance Capital Limited	101 785 282	Permanent Nominees (Aust.) Ltd	16.705	8.29%	Sep 02
First Capital Securities Limited	109 846 853	Public Trustee of Queensland	29.976	9.30%	Jan 05
G R Finance Ltd	093 549 305	Sandhurst Trustees Ltd	13.771	9.23%	Dec 03
Gippsland Secured Investments Limited	004 860 057	Permanent Nominees (Aust.) Ltd	104.000	4.90%	Dec 95
Grenfell Securities Limited	075 358 075	J.P Morgan Trust Australia Ltd	97.683	7.65%	Dec 06
H.D. & C. Securities Limited	007 346 214	Sandhurst Trustees Ltd	55.745	5.94%	Nov 99
Hargraves Secured Investments Limited	089 001 267	Sandhurst Trustees Ltd	52.817	6.80%	Nov 99
Hastings Capital Limited	099 685 739	Permanent Nominees (Aust.) Ltd	44.930	8.89%	Jul 02

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Hastings Mezzanine Limited	109 231 503	Trust Company of Australia Ltd	2.150	12.00%	Jul 02
Level Ten Securities Limited	108 969 517	Public Trustee of Queensland	0.000	8.25%–11.25%	Sep 06
LKM Capital Limited	091 379 930	Sandhurst Trustees Ltd	96.379	7.92%	Feb 00
Mackay Community Credit Limited	009 932 816	Public Trustee of Queensland	17.895	7.25%	Jan 06
Momentum Mortgages Limited	103 596 210	Trust Company of Australia Ltd	51.436	8.60%	Jul 03
Progressive Mortgage Company Limited	000 192 012	National Australia Trustees Ltd	44.529	6.05%–6.50%	Jan 03
Provident Capital Limited	082 735 573	Australian Executor Trustees Ltd	218.660	7.91%	Dec 98
Questus Mortgage Funds Limited	112 868 881	Sandhurst Trustees Ltd	4.841	10.47%	Aug 05
Sewells Finance Limited	068 955 733	Sandhurst Trustees Ltd	73.339	6.00%	Feb 02
South Eastern Secured Investments Limited	071 637 477	Permanent Nominees (Aust.) Ltd	198.885	3.25%–7.50%	Jun 99
Southern Finance Limited	007 352 089	Permanent Nominees (Aust.) Ltd	226.599	3.50%–7.75%	Jul 97
Statewide Secured Investments Ltd	004 682 517	Permanent Nominees (Aust.) Ltd	392.682	6.27%	Mar 96
Vicstate Savings & Loans Limited	004 727 511	Sandhurst Trustees Ltd	37.582	4.80%	Apr 99
Victorian Securities Corporation Limited	004 496 208	Permanent Nominees (Aust.) Ltd	160.881	5.31%	Dec 94
Webster Investments Limited	004 651 576	Permanent Nominees (Aust.) Ltd	41.056	6.08%	May 96
Wickham Securities Limited	111 421 811	Sandhurst Trustees Ltd	20.521	9.42%	Jun 05
Win Securities Limited	007 346 223	Sandhurst Trustees Ltd	36.719	2.35%–7.00%	Dec 99
Total			**3,206.233**		
Median			**48.18**		

Structured real estate investments

149 Structured real estate investments is defined as participation in ownership of commercial and retirement real estate as part of a wider ownership structure. This category represents 9% by value and 11% by number of the total unlisted, unrated debentures. The largest 3 issuers' amounts outstanding represent 77% by value of this category.

Example

XYZ Limited acquired a property portfolio of five industrial properties with long-term lease commitments by a global logistics organisation. The property portfolio was acquired as a wholly owned subsidiary special purpose vehicle. XYZ funded the acquisition using a new external senior bank debt facility.

XYZ Limited then structured a securitisation offer to retail investors for them to acquire ownership interests in this property portfolio. The investors obtain their interest in the property portfolio by subscribing for units in the trust and acquiring debentures issued by the special purpose vehicle. The investors' returns comprise trust distributions and interest on the debentures. The investors' funds will be used to repay the external senior bank debt.

Figure 9: Structured real estate investments

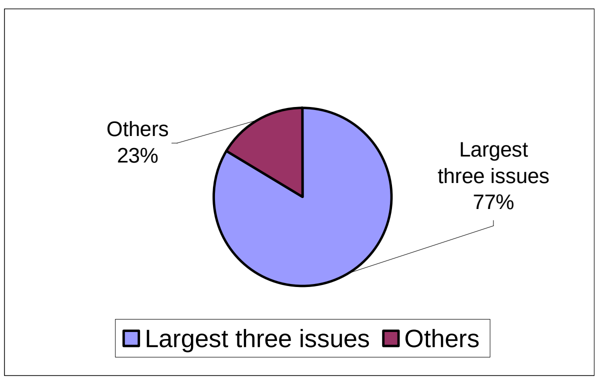


Table 10: Structured real estate investments unlisted, unrated debentures

Issuer name	ACN	Trustee	Debentures on issue ($m)	Interest rates	Date of first issue
Australian Unity Finance Limited	114 646 070	Trust Company Fiduciary Services Ltd	24.000	8.50%–9.00%	Oct 05
Centro Watt America REIT 11, Inc.	120 435 092	Sandhurst Trustees Ltd	146.543	7.70%	Sep 06
Centro Watt America REIT 14, Inc.	122 237 076	Sandhurst Trustees Ltd	190.365	7.70%	Oct 06
Centro Watt America REIT 15, Inc.	122 235 554	Sandhurst Trustees Ltd	186.676	7.70%	Oct 06
Centro Watt America REIT 2, Inc.	113 432 885	Sandhurst Trustees Ltd	30.311	8.30%	Apr 05
Centro Watt America REIT IV, Inc.	114 828 241	Sandhurst Trustees Ltd	73.098	8.20%	Aug 05
Fairway Investments Ltd	008 992 014	Perpetual Trustees W.A. Ltd	2.298	6.45%	Apr 82
MAB American Property REIT Inc	123 316 209	Sandhurst Trustees Ltd	0.000	8.30%	Dec 06
Plantation Land Limited	090 443 333	Permanent Nominees (Aust.) Ltd	24.358	9.75%	Feb 00
Timbercorp Properties Limited	074 825 675	Trust Company Fiduciary Services Ltd	2.257	9.90%	Sep 98
Total			**679.907**		
Median			**27.33**		

List of debentures by issuer name

150 Table 11 lists all unlisted, unrated debentures by issuer name.

Table 11: Unlisted, unrated debenture issuers

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Alleasing Finance Limited	110 175 043	Trust Company of Australia Ltd	Finance	0.144	7.23%	Nov 04
Alocit Group Limited	112 309 369	ANZ Executors & Trustee Company Ltd	Debt funding	4.200	10.00%	Sep 05
Angas Securities Limited	091 942 728	Permanent Nominees (Aust.) Ltd	Mortgage financing	132.267	8.00%	Jul 00
Asset Loans Limited	107 745 095	Public Trustee of Queensland	Mortgage financing	15.980	10.42%	Sep 04
Assist Finance Corporation Limited	007 604 631	Lowell Capital Ltd	Mortgage financing	3.790	8.91%	Jun 98
Austcorp Capital Limited	109 917 517	Sandhurst Trustees Ltd	Integrated property development	44.751	8.08%	Sep 04
Australian Finance & Leasing Ltd	080 524 689	Trust Company of Australia Ltd	Finance	19.224	9.79%	Jun 98
Australian Secured Investments Limited	090 730 886	Permanent Nominees (Aust.) Ltd	Mortgage financing	25.196	8.04%	Jul 00
Australian Unity Finance Limited	114 646 070	Trust Company Fiduciary Services Ltd	Structured real estate investments	24.000	8.50%–9.00%	Oct 05
Balanced Securities Limited	083 514 685	Australian Executor Trustees Ltd	Mortgage financing	102.827	6.50%–10.00%	Jan 00
Banksia Securities Limited	004 736 458	Permanent Nominees (Aust.) Ltd	Mortgage financing	408.042	3.00%–6.50%	Nov 00

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Bell Potter Capital Limited	085 797 735	Trust Company Fiduciary Services Ltd	Finance	70.822	5.96%	May 06
Bidgee Finance Limited	000 362 596	Trust Company Fiduciary Services Ltd	Finance	24.065	6.32%	Dec 94
Blue Square Investments Limited	109 107 539	Permanent Nominees (Aust.) Ltd	Debt funding	17.356	4.68%	May 04
Capilano Honey Limited	009 686 435	Trust Company of Australia Ltd	Debt funding	1.469	2.90%–7.01%	May 93
Cash Converters Finance Corporation Limited	050 495 095	Perpetual Trustees Consolidated Ltd	Memberships	0.797	Not applicable	Mar 93
Central Victorian Investments Limited	058 071 631	Sandhurst Trustees Ltd	Mortgage financing	55.272	6.15%	Nov 99
Centro Watt America REIT 11, Inc.	120 435 092	Sandhurst Trustees Ltd	Structured real estate investments	146.543	7.70%	Sep 06
Centro Watt America REIT 14, Inc.	122 237 076	Sandhurst Trustees Ltd	Structured real estate investments	190.365	7.70%	Oct 06
Centro Watt America REIT 15, Inc.	122 235 554	Sandhurst Trustees Ltd	Structured real estate investments	186.676	7.70%	Oct 06
Centro Watt America REIT 2, Inc.	113 432 885	Sandhurst Trustees Ltd	Structured real estate investments	30.311	8.30%	Apr 05
Centro Watt America REIT IV, Inc.	114 828 241	Sandhurst Trustees Ltd	Structured real estate investments	73.098	8.20%	Aug 05
Charles Stewart Finance Ltd	099 850 807	Sandhurst Trustees Ltd	Debt funding	1.365	5.00%	Jul 02

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Cherry Fund Limited	106 274 631	Permanent Nominees (Aust.) Ltd	Mortgage financing	13.842	7.05%–7.15	Nov 03
Cromwell Finance Limited	111 461 093	Trust Company Fiduciary Services Ltd	Integrated property development	26.594	8.0%–9.00%	Dec 04
Cymbis Finance Australia Limited	109 245 141	Trust Company Fiduciary Services Ltd	Mortgage financing	90.737	8.30%	Jan 05
Diverseport Fixed Income Limited	113 122 286	Trust Company Fiduciary Services Ltd	Debt funding	127.589	6.90%–7.30%	Jul 05
Dolilta Investments Limited	004 664 322	Sandhurst Trustees Ltd	Mortgage financing	43.916	6.36%	Jan 00
Donovan Oates Hannaford Mortgage Corporation Limited	086 879 307	Trust Company Fiduciary Services Ltd	Mortgage financing	274.575	8.22%	Aug 99
Driscoll Mcillree & Dickinson Finance Company Limited	110 942 124	Sandhurst Trustees Ltd	Debt funding	2.615	7.26%	Dec 04
Elderslie Finance Corporation Limited	008 678 233	Perpetual Trustees W.A. Ltd	Finance	198.971	7.15%	Jan 92
Elderslie Financial Services Limited	000 175 502	Permanent Nominees (Aust.) Ltd	Debt funding	1.565	7.15%	Mar 92
Eurofinance Capital Limited	101 785 282	Permanent Nominees (Aust.) Ltd	Mortgage financing	16.705	8.29%	Sep 02
Fairway Investments Ltd	008 992 014	Perpetual Trustees W.A. Ltd	Structured real estate investments	2.298	6.45%	Apr 82

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Financial Resources Securities Limited	108 611 436	Permanent Nominees (Aust.) Ltd	Finance	2.343	6.50%–10.75%	Feb 05
First Capital Securities Limited	109 846 853	Public Trustee of Queensland	Mortgage financing	29.976	9.30%	Jan 05
Flight Centre Limited	003 377 188	Permanent Nominees (Aust.) Ltd	Memberships	26.754	Not applicable	May 98
G R Finance Ltd	093 549 305	Sandhurst Trustees Ltd	Mortgage financing	13.771	9.23%	Dec 03
G2 Finance Limited	116 139 701	Australian Executor Trustees Ltd	Finance	6.606	11.43%	Aug 06
Gippsland Secured Investments Limited	004 860 057	Permanent Nominees (Aust.) Ltd	Mortgage financing	104.000	4.90%	Dec 95
Goldman Sachs JBWere Capital Markets Limited	004 463 263	Perpetual Trustees Consolidated Ltd	Debt funding	1,894.030	6.03%	Nov 93
Graincorp Ag Finance Limited	096 359 447	National Australia Trustees Ltd	Debt funding	24.184	6.89%	Jul 05
Grenfell Securities Limited	075 358 075	J.P Morgan Trust Australia Ltd	Mortgage financing	97.683	7.65%	Dec 06
H.D. & C. Securities Limited	007 346 214	Sandhurst Trustees Ltd	Mortgage financing	55.745	5.94%	Nov 99
Hargraves Secured Investments Limited	089 001 267	Sandhurst Trustees Ltd	Mortgage financing	52.817	6.80%	Nov 99
Hastings Capital Limited	099 685 739	Permanent Nominees (Aust.) Ltd	Mortgage financing	44.930	8.89%	Jul 02

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Hastings Mezzanine Limited	109 231 503	Trust Company of Australia Ltd	Mortgage financing	2.150	12.00%	Jul 02
Indian Pacific Limited	009 178 894	Perpetual Trustee Co	Memberships	0.000	Not applicable	Feb 87
Investment Nominees Limited	009 503 315	Sandhurst Trustees Ltd	Finance	17.842	7.54%	Jul 95
Landmark Operations Limited	008 743 217	Permanent Nominees (Aust.) Ltd	Debt funding	375.980	6.78%	Feb 02
Level Ten Securities Limited	108 969 517	Public Trustee of Queensland	Mortgage financing	0.000	8.25%–11.25%	Sep 06
LKM Capital Limited	091 379 930	Sandhurst Trustees Ltd	Mortgage financing	96.379	7.92%	Feb 00
MAB American Property REIT Inc	123 316 209	Sandhurst Trustees Ltd	Structured real estate investments	0.000	8.30%	Dec 06
Mackay Community Credit Limited	009 932 816	Public Trustee of Queensland	Mortgage financing	17.895	7.25%	Jan 06
Mariner Treasury Limited	113 215 802	Trust Company Fiduciary Services Ltd	Debt funding	17.004	9.84%	Mar 05
MFS Financial Services Limited	101 579 999	Public Trustee of Queensland	Debt funding	16.136	9.04%	May 03
Millbrook Finance Limited	110 264 278	Trust Company Fiduciary Services Ltd	Finance	13.700	10.34%	Feb 05
Milton Corporation Ltd	000 041 421	National Australia Trustees Ltd	Debt funding	8.601	5.40%	Apr 92
Minerals Corporation Limited	002 529 160	Trust Company of Australia Ltd	Debt funding	12.771	10.50%	Oct 03

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Momentum Mortgages Limited	103 596 210	Trust Company of Australia Ltd	Mortgage financing	51.436	8.60%	Jul 03
North State Finance Limited	003 959 126	Permanent Nominees (Aust.) Ltd	Finance	27.712	6.16%	May 93
Palandri Finance Ltd	090 580 500	Public Trustee of Queensland	Debt funding	18.435	11.00%	Mar 05
Plantation Land Limited	090 443 333	Permanent Nominees (Aust.) Ltd	Structured real estate investments	24.358	9.75%	Feb 00
Powton Land Holdings Limited	087 201 652	Professional Funds Management Ltd	Debt funding	1.873	6.00%	Dec 99
Profinance Ltd	003 164 190	Permanent Nominees (Aust.) Ltd	Finance	10.346	5.23%–5.81%	Feb 93
Progressive Mortgage Company Limited	000 192 012	National Australia Trustees Ltd	Mortgage financing	44.529	6.05%–6.50%	Jan 03
Provident Capital Limited	082 735 573	Australian Executor Trustees Ltd	Mortgage financing	218.660	7.91%	Dec 98
Questus Mortgage Funds Limited	112 868 881	Sandhurst Trustees Ltd	Mortgage financing	4.841	10.47%	Aug 05
R.A.C. Finance Limited	009 066 862	Perpetual Trustees W.A. Ltd	Finance	169.302	6.03%	Mar 91
R.A.C.V. Finance Limited	004 292 291	Perpetual Trustees Victoria Ltd	Finance	171.232	6.06%	Aug 91
Retravision Finance (WA) Ltd	079 440 494	Perpetual Trustees Consolidated Ltd	Memberships	8.467	5.60%	Feb 98

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
Riviera Properties Limited	073 087 199	ANZ Executors & Trustee Company Ltd	Integrated property development	1.178	9.25%	Oct 03
Rivwest Finance Ltd	073 358 666	Permanent Nominees (Aust.) Ltd	Finance	12.893	6.50%	May 01
Roberts Limited	009 475 647	Tasmanian Perpetual Trustees Ltd	Debt funding	60.126	5.61%	Nov 01
SAI Group Capital Limited	123 211 012	Sandhurst Trustees Ltd	Debt funding	77.020	9.50%	Jan 07
Sanctuary Cove Golf And Country Club Holdings Limited	120 283 534	Public Trustee of Queensland	Memberships	9.092	Not applicable	Jul 06
Sewells Finance Limited	068 955 733	Sandhurst Trustees Ltd	Mortgage financing	73.339	6.00%	Feb 02
South Eastern Secured Investments Limited	071 637 477	Permanent Nominees (Aust.) Ltd	Mortgage financing	198.885	3.25%–7.50%	Jun 99
Southern Finance Limited	007 352 089	Permanent Nominees (Aust.) Ltd	Mortgage financing	226.599	3.50%–7.75%	Jul 97
Statewide Secured Investments Ltd	004 682 517	Permanent Nominees (Aust.) Ltd	Mortgage financing	392.682	6.27%	Mar 96
Tatura Milk Industries Limited	006 603 970	Trust Company Fiduciary Services Ltd	Debt funding	6.371	6.00%	Dec 05
Terrey Hills Golf & Country Club Holdings Limited	003 917 628	Trust Company Fiduciary Services Ltd	Memberships	36.101	Not applicable	Jul 96

Issuer name	ACN	Trustee	Category	Debentures on issue ($m)	Interest rates	Date of first issue
The Kew Golf Club	004 098 257	Panker Nominees (Vic) Pty Ltd	Memberships	0.581	5.74%	Aug 92
Timbercorp Properties Limited	074 825 675	Trust Company Fiduciary Services Ltd	Structured real estate investments	2.257	9.90%	Sep 98
Vicstate Savings & Loans Limited	004 727 511	Sandhurst Trustees Ltd	Mortgage financing	37.582	4.80%	Apr 99
Victorian Securities Corporation Limited	004 496 208	Permanent Nominees (Aust.) Ltd	Mortgage financing	160.881	5.31%	Dec 94
Webster Investments Limited	004 651 576	Permanent Nominees (Aust.) Ltd	Mortgage financing	41.056	6.08%	May 96
Webster Limited	009 476 000	Tasmanian Perpetual Trustees Ltd	Debt funding	11.423	6.53%	Feb 02
Westlawn Finance Limited	096 725 218	Public Trustee of Queensland	Finance	140.053	5.80%	Jun 01
Wickham Securities Limited	111 421 811	Sandhurst Trustees Ltd	Mortgage financing	20.521	9.42%	Jun 05
Win Securities Limited	007 346 223	Sandhurst Trustees Ltd	Mortgage financing	36.719	2.35%-7.00%	Dec 99
Windsor Farm Foods Group Limited	001 249 038	Cowra Industry Nominees Pty Limited	Debt funding	2.022	8.41%	Aug 00
Total				**7,607.838**		

Appendix 2: Disclosure obligations of debenture issuers

Prospectus disclosure

151 If you are an issuer preparing a prospectus, you must:

(a) include all information that investors and their professional advisers would reasonably require to make an informed assessment of the issuer and the securities being offered (s710);

(b) make specific disclosures (s711); and

(c) word and present the prospectus in a clear, concise and effective manner (s715A).

152 The general prospectus content requirement in s710 is designed to:

(a) promote efficiency in the capital markets;

(b) promote disclosure of relevant information;

(c) reduce the likelihood of omitting important information;

(d) focus issuers on the information needs of investors; and

(e) be sufficiently flexible to accommodate changes in investors' information needs.

153 ASIC's proposed benchmarks relate to matters that in any event must be disclosed under s710. Issues relating to the amount of capital, liquidity, loan ratios, valuations, related party loans and diversification are all matters that investors and their professional advisers would reasonably require to make an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of the issuer: s710.

154 After we issue final guidance, we would expect an issuer to comply with these benchmarks. In addition we consider that s710 requires:

(a) disclosure of these benchmarks and how they have been complied with;

(b) a statement that the issuer will comply with these benchmarks going forward and if not, why not; and

(c) in circumstances where there is non-compliance with these benchmarks, disclosure of the extent of non-compliance and the reason for non-compliance. In some circumstances non-compliance with these benchmarks is a risk that should be disclosed prominently.

155 We will consider exercising our stop order powers under s739 if we consider there is material non-disclosure of the matters referred to in paragraphs 154(a)–154(c).

156 We are also of the view that disclosure of compliance with these benchmarks up-front in a prospectus promotes compliance with the requirement that prospectuses should be worded in clear, concise and effective manner by encouraging comparability and uniformity of financial measures and highlighting issues which ASIC and industry experts consider crucial to making an investment decision.

Ongoing disclosure obligations

157 Where there is a current prospectus, s719 requires an issuer to lodge a supplementary or replacement prospectus where, among other matters, there is misleading or deceptive statement in the prospectus or where there is an omission of information required under s710.

158 In cases where there is no current prospectus, if the issuer becomes aware of information that is not generally available and a reasonable person would expect, if it were available, to have a material effect on the price or value of the securities of the entity, s675 requires the issuer to lodge a document with ASIC containing the information. Where there is a prospectus on issue, s675 does not require lodgement of a document with ASIC if the information is included in a supplementary or replacement prospectus.

159 Supplementary and replacement prospectuses are required to be given to prospective investors: s719(4) and (5), s704.

160 Section 318 provides that debenture holders can ask for the financial reports of an issuer free of charge.

161 Section 708(14) provides for an exception from the requirement to provide investors with a prospectus for rollovers and offers to existing investors.

162 ASIC considers that it is potentially misleading not to provide investors with updated information when they are considering whether to rollover their investment or make a further investment in debentures.

163 We consider that it is best practice for issuers to make arrangements so that investors have access to the relevant information immediately or at least by the time that they are considering rolling over their investment or making a further investment. This could include sending relevant documents to investors or making the relevant information available on the website and ensuring that investors have access to those documents.

Appendix 3: Summary of recent investor research

164 Last year ASIC commissioned Roy Morgan Research to conduct a large-scale piece of research about retail investors, including who they are and what influences their investment decisions. The research, which collected both qualitative and quantitative information from investors during 2006 and 2007, is currently being finalised and will be released shortly.

165 In this research, investors included those holding shares, investment property, managed investments, self managed super funds and other direct investments (which included, amongst other things, debentures).[1] While the sample size for those holding debentures is too small to draw definitive, representative conclusions, the research does contain relevant findings about investors more broadly. The research also included a small number of focus groups testing general investors' responses to particular investment advertisements, including unlisted, unrated debenture advertisements. Table 12 summarises the key findings to date.

Table 12: Key findings of ASIC investor research[2]

Demographic characteristics of investors	Investors are a large and diverse population, though tend to be more likely to be: • aged over 50 (47%) • employed (69%) • home owners (48%) or paying off a home (36%) • married/defacto (68%).
Level of investor engagement	The survey revealed relatively low levels of investment activity and interest among many investors, for example: • Around half of the investors (49%) had only one investment type (e.g. shares only) (The mean number of investment types was around 2). • Most investors did not see themselves as investors; rather they felt they were simply 'saving for their future/retirement'—most felt an investor was someone who invested on a full-time basis or had much more money than they did. • Investors often came to invest due to external, life-stage pressures such as divorce, inheritance, redundancy or retirement, rather than a proactive desire to become an investor. • The frequency by which people reviewed their investments varied widely, with the most likely frequency being annually (32%), and 12% admitting they never review their investments. • Less than half of the investors (47%) said they had a long-term financial goal and a plan to reach that goal and many (37%) had neither a plan or a goal. • Only 12% of the investors had ever paid for investing seminars (8%), training courses (6%) or software (3%).

[1] The research also included a smaller 'capped' sample of people who put voluntary contributions to superannuation, people with term deposits and/or people with high interest savings accounts.
[2] Most of the findings in this table are based on the results of a telephone survey of 1,217 investors.

	• Only 29% of investors were able to name ASIC as the 'corporate watchdog'. • Some investors did not read formal disclosure documents and those who did read them did not necessarily read or understand all of the material. Barriers to reading disclosure material included complexity, jargon, time required to read, length of documents, and cynicism about the content or purpose of the documents.
Investment decisions	• Most investors say they make decisions cautiously, after a number of steps. • Investors draw from a wide range of information and advice sources when making decisions, including formal sources (e.g. professional advisers) and informal sources (e.g. family and friends, newspapers). • While decisions are informed by a wide range of factors, and these factors vary both from investor to investor and also from decision to decision, returns and risk appear to be the most consistently important factors. • While most investors know what diversification means, a significant number have difficulty applying the concept, and few state it as a reason for making an investment decision. • Common decision-making barriers include: information and choice overload, fear of uncertainty, time pressures, and difficulty evaluating the significance and impact of investment components and propositions (e.g. in particular, evaluating reasonable rates of return and applying diversification). These and other barriers apply to a range of investor types and are not limited to investors with particular demographic characteristics or levels of investment experience.
Information and advice sources used by those with 'other direct investments' (including debenture investors)	Of the investors in the survey, 11% had an 'other direct investment' and, of these, 39% held debentures. In keeping with investors more generally, those with other direct investments nominated a wide range of investment information and advice sources. However, other direct investment investors appeared to be more likely to value their own judgment and daily newspapers when making investment decisions when compared against total investors. The top information sources for investors with other direct investments were: • daily newspapers (22%) • friends and family members (21%) • reliance on own judgment alone (16%) • professional financial advisers (15%) • managed fund prospectus (14%).[3]
Investment advertising, including unlisted, unrated debenture advertising[4]	• Investment advertising elicits a wide range of positive and negative triggers from investors and some triggers are considered both negative and positive, depending on the individual. Common positive triggers in this research included 'reasonable'-sounding returns (the closer to the bank rate, the safer they appear), the word 'fixed', references to property, the appearance of detail/full disclosure (e.g. mention of prospectus lodgement), and familiar terms/concepts/products. • Print media is generally perceived by investors to be the most appropriate media for investment information and advertisements (TV and radio are viewed as playing a brand awareness role and, while the internet is a valued information source, internet advertisements are seldom noticed). • Ratings agencies and rating information is not widely known or used.

[3] The base sample for these figures is 54 and the data refers to other direct investment investors who were interviewed about the last investment decision they made.
[4] 4 focus groups were held with investors (not specifically unlisted, unrated debenture investors). Investors evaluated 6 advertisements and were also asked about their advertising preferences more generally.