



26 April 2017

Mr James Mason
Financial System Division
The Treasury
Langton Crescent
CANBERRA ACT 2600

By email insolvency@treasury.gov.au

Dear Mr Mason

IMPROVING BANKRUPTCY AND INSOLVENCY LAWS

The ASX Group appreciates the opportunity to comment on the exposure draft Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017.

As we noted in our submission on the Proposals Paper last year, the integrity of the ASX Group's licensed markets, and clearing and settlement facilities, depends in part on legal certainty regarding the contractual basis for participation in those markets and facilities by banks, brokers, custodians and investment firms.

The proposed stay on enforcement of contractual rights included in the draft Bill is somewhat broader than what was contemplated in the Proposals Paper. Contrast 'termination or amendment of a contract' (2016), with 'enforcement of a right under a contract' (2017). The ASX Group has no objection in principle to the wider expression of the stay in the draft Bill. But the stay has a potentially broader scope of application than what we contemplated last year, and leads us to make this supplementary submission.

If enacted the draft Bill would prohibit a licensed market operator from suspending a trading participant (broking firm) by reason that it had entered external administration. This could have material implications for the market operator's compliance with its statutory obligation to maintain a fair, orderly and transparent market (section 792A). The same can be said regarding a clearing facility operator's response to the financial failure of a clearing broker, and the operator's compliance with its statutory obligation to do all things necessary to reduce systemic risk (section 821A).

In order to maintain consistency with the legislative framework and prudential standards applicable to financial market infrastructure, it will be necessary to exclude the following classes of contracts and arrangements from the operation of the proposed stay on enforcement:

- The operating rules of any market licensed under Part 7.2 of the Corporations Act (the operating rules have effect as a contract under seal: section 793B);
- The operating rules of any clearing and settlement facility licensed under Part 7.3 of the Corporations Act (the operating rules have effect as a contract under seal: section 822B);
- Any 'RTGS system' approved under Part 2 of the Payment Systems and Netting Act 1998 (Cth) (PSNA);
- Any 'multilateral netting arrangement' approved under Part 3 of the PSNA;
- Any 'netting market' approved for the purposes of Part 5 of the PSNA, any 'market netting contract' entered into in connection with the netting market, and any security interest or other

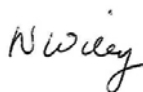
right with respect to property given by any person in connection with the netting market or market netting contracts.

We understand that Treasury intends to consult publicly on regulations which will prescribe 'contracts, agreements or arrangements' that are to be excluded from the ambit of the stay. We look forward to reviewing the draft regulations in due course.

Finally, the interaction between the proposed stay on enforcement and the Payment Systems and Netting Act 1998 (Cth) should be clarified. This could be achieved by an express statement in the Bill to the effect that the PSNA will prevail to the extent of any inconsistency between the two Acts. In our view this is necessary to meet the minimum standards of legal certainty required by prudential standards applicable to financial market infrastructure.

If you have any questions on this submission please contact the writer.

Yours sincerely

A handwritten signature in black ink that reads 'Nick Wiley' in a cursive script.

Nick Wiley
Deputy General Counsel, Post-Trade

Copy Mr Mark Chambers and Ms Jenny Hancock, Reserve Bank of Australia
Mr Oliver Harvey and Ms Dodie Green, Australian Securities and Investments Commission
Ms Julie Greenall-Ota, Treasury