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The Manager
Corporations and Schemes Unit
Financial Systems Division
The Treasury
Langton Crescent
CANBERRA ACT 2600

By email to insolvency@treasury.gov.au

IMPROVING BANKRUPTCY AND INSOLVENCY LAWS

ASX welcomes the opportunity to comment on the Government's proposals to improve the existing bankruptcy and insolvency laws.

New regulatory arrangements around insolvency can be an important element in facilitating a more innovative and entrepreneurial business culture in Australia. The Government's proposed model seems to balance the interests of directors/companies and creditors.

While ASX does not have specific comments on the detailed design of the new arrangements, including the safe-harbour provisions, it does wish to comment on the arrangements applying to ipso facto clauses.

The Government's proposed model constrains the operation of ipso facto clauses (e.g. one party terminating, or varying, a contract based solely on event of insolvency) by making them unenforceable where a company is in voluntary administration or subject to a formal scheme of arrangement.

The consultation paper noted that the Government intends to carve out certain 'prescribed financial contracts' from the new provisions, for example close-out netting contracts currently protected under the *Payment Systems and Netting Act 1998*, or its foreign equivalents.

ASX strongly supports the exclusion of such prescribed financial contracts. We submit that market netting contracts, also currently protected under the *Payment Systems and Netting Act 1998*, should be included as 'prescribed financial contracts' which will not be subject to the proposed ipso facto regime.

Market netting contracts are part of the legal foundation for the centralised clearing and settlement of Australia's exchange traded and OTC financial markets. The Reserve Bank has prescribed operating standards for financial market infrastructure (such as ASX) under the Corporations Act to promote financial system stability. Those standards stipulate that there should be a high degree of certainty that actions taken by a netting market (such as ASX) pursuant to market netting contracts will not be voided, reversed or subject to stays, including in the event that one or more of its participants defaults or is suspended. Subjecting market netting contracts to the proposed ipso facto regime would be inconsistent with these regulatory standards.



If you have any questions on this submission please contact me (ph: 612 9227 0412; email: nicholas.wiley@asx.com.au) or Gary Hobourn, Senior Economic Analyst (ph: 612 9227 0930; email: gary.hobourn@asx.com.au) in the first instance.

Yours sincerely

A handwritten signature in blue ink that reads 'N Wiley'.

Nick Wiley
Deputy General Counsel, Post-Trade

Copy Mr Mark Manning, Deputy Head, Payments Policy Department, Reserve Bank
Mr Oliver Harvey, Senior Executive Leader, Financial Market Infrastructure, ASIC