

EXPOSURE DRAFT



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Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Kelly O'Dwyer [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Revenue and Financial Services

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name	1
2	Commencement	1
3	Authority	1
4	Schedules	1
	Schedule 1—Amendments	2
	<i>Corporations Regulations 2001</i>	<i>2</i>

EXPOSURE DRAFT

Amendments **Schedule 1**

1 Name

This instrument is the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1—Amendments

Corporations Regulations 2001

1 At the end of Part 5.1

Add:

5.1.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 415D of the Act

For the purposes of subparagraph 415D(6)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

2 At the end of Part 5.2

Add:

5.2.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 434J of the Act

For the purposes of subparagraph 434J(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

3 At the end of Part 5.3A

Add:

5.3A.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 451E of the Act

- (1) For the purposes of subparagraph 451E(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation (2) is prescribed.
- (2) The kinds of contracts, agreements or arrangements are as follows:
 - (a) an agreement (within the meaning of the *Convention* defined in section 3 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*);
 - (b) a contract, agreement or arrangement that is a licence, or permit, issued by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) an authority of the Commonwealth or of a State or a Territory; or
 - (iii) a local governing body established by or under a law of a State or Territory;
 - (c) a contract, agreement or arrangement that is a derivative;
 - (d) a contract, agreement or arrangement for the underwriting of an issue, or sale, of securities or financial products;
 - (e) a contract, agreement or arrangement under which a party is or may be liable to subscribe for, or to procure subscribers for, securities or financial products;

- (f) a contract, agreement or arrangement under which a body corporate incorporated in Australia issues, or may issue, securities or financial products;
- (g) a contract, agreement or arrangement under which a body corporate incorporated in Australia offers, or may offer, securities under a rights issue;
- (h) a contract, agreement or arrangement for the sale of all or part of a business, including by way of the sale of securities or financial products;
- (i) a contract, agreement or arrangement for the issue of a security or financial product that belongs to a class of fungible securities, or class of fungible financial products, that were first issued before 1 July 2018;
- (j) a contract, agreement or arrangement that is a margin lending facility (within the meaning of Chapter 7 of the Act);
- (k) a contract, agreement or arrangement for issuing covered bonds (within the meaning of the *Banking Act 1959*);
- (l) a contract, agreement or arrangement of which a special purpose vehicle is a party;
- (m) a contract, agreement or arrangement for the keeping in escrow of source code, or object code, for computer software;
- (n) a contract, agreement or arrangement for the commercial charter of a ship if:
 - (i) the ship is not an Australian ship (within the meaning of the *Shipping Registration Act 1981*); and
 - (ii) the charter is by an Australian national (within the meaning of that Act) for the purposes of exporting goods from Australia, or from an external Territory, to another country;
- (o) a contract, agreement or arrangement under which the priority of security interests in particular property is changed or can change;
- (p) a contract, agreement or arrangement that is a flawed asset arrangement;
- (q) a factoring arrangement (within the meaning of the *ASIC Corporations (Factoring Arrangements) Instrument 2017/794*);
- (r) a contract, agreement or arrangement that is the operating rules (other than the listing rules) of a financial market;

Note: The operating rules of a licensed market (within the meaning of Chapter 7 of the Act) are a contract, see subsection 793B(1) of the Act.
- (s) a contract, agreement or arrangement that is the operating rules of a clearing and settlement facility;

Note: The operating rules of a licensed CS facility (within the meaning of Chapter 7 of the Act) are a contract, see subsection 822B(1) of the Act.
- (t) a contract, agreement or arrangement that confers rights on the operator of a financial market, or the operator of a clearing and settlement facility, in relation to the operation of the market or facility;
- (u) a contract, agreement or arrangement of which the parties include the Reserve Bank of Australia and the operator of a clearing and settlement facility;
- (v) a contract, agreement or arrangement under which participants (within the meaning of Chapter 7 of the Act) in a clearing and settlement facility may settle obligations on behalf of other participants (within the meaning of that Chapter) in the facility;

EXPOSURE DRAFT

Schedule 1 Amendments

- (w) a legally enforceable arrangement referred to in paragraph 9(1)(b) of the *Payment Systems and Netting Act 1998* that supports an approved RTGS system (within the meaning of that Act);
- Note: The arrangement includes the rules that are part of that arrangement.
- (x) an approved netting arrangement (within the meaning of the *Payment Systems and Netting Act 1998*);
- Note: The arrangement includes the rules that are part of that arrangement.
- (y) a contract, agreement or arrangement that confers rights on:
- (i) the operator of an approved RTGS system (within the meaning of the *Payment Systems and Netting Act 1998*); or
 - (ii) the coordinator of an approved netting arrangement (within the meaning of that Act);
- in relation to the operation of that system or netting arrangement;
- (z) a contract, agreement or arrangement under which the parties to an arrangement covered by paragraph (w) or (x) (the **main arrangement**) may settle obligations on behalf of other parties to the main arrangement;
- (za) a close-out netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);
- (zb) a contract, agreement or arrangement under which security is given over financial property (within the meaning of the *Payment Systems and Netting Act 1998*) in respect of eligible obligations (within the meaning of that Act) of a party to a contract covered by paragraph (za);
- (zc) a netting market (within the meaning of the *Payment Systems and Netting Act 1998*);
- (zd) a market netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);
- (ze) a contract, agreement or arrangement under which security is given, in accordance with a market netting contract covered by paragraph (zd), in respect of obligations of a party to the market netting contract;
- (zf) a contract, agreement or arrangement entered into or renewed on or after 1 July 2018 as a result of either of the following:
- (i) the novation of, or the assignment of one or more rights under, a contract, agreement or arrangement entered into before 1 July 2018;
 - (ii) a variation of a contract, agreement or arrangement entered into before 1 July 2018.