

EXPOSURE DRAFT

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Inserts for
**Financial System Legislation
Amendment (Resilience and Collateral
Protection) Bill 2016: Amendments**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1— Amendments	The 28th day after this Act receives the Royal Assent.	

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Schedule 1—Amendments

Part 1—Payment systems and netting

Payment Systems and Netting Act 1998

1 Section 5

Insert:

APRA means the Australian Prudential Regulation Authority.

Business Transfer Act means the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

derivative has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

direction stay provision: means any of the following:

- (a) subsection 11CD(1A) of the *Banking Act 1959*;
- (b) subsection 13N(2) of the *Banking Act 1959*;
- (c) subsection 103K(2) of the *Insurance Act 1973*;
- (d) subsection 105(1A) of the *Insurance Act 1973*;
- (e) subsection 230AJ(2) of the *Life Insurance Act 1995*;
- (f) subsection 230C(1A) of the *Life Insurance Act 1995*;
- (g) subsection 101(2) of the *Private Health Insurance (Prudential Supervision) Act 2015*.

eligible obligation has the meaning given by section 14A.

2 Section 5 (at the end of the definition of *external administration*)

Add:

- ; or (d) an ADI statutory manager takes control of the person's business under the *Banking Act 1959*; or
- (e) the person comes under judicial management under the *Insurance Act 1973*; or
- (f) the person, or a part of the person's business, comes under judicial management under the *Life Insurance Act 1995*.

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3 Section 5 (definition of *external administrator*)

Omit “the person’s property”, substitute “the property, business, or the part of the business, of the person”.

4 Section 5

Insert:

financial property means any of the following property, regardless of whether the property (or, for paragraph (h), the intermediary or the account) is in Australia or elsewhere:

- (a) a security (within the meaning of section 92 of the *Corporations Act 2001* (for this purpose, disregard subsections 92(3) and (4) of that Act));
- (b) a derivative;
- (c) a financial product (within the meaning of the *Corporations Act 2001*) that is traded on a financial market (within the meaning of that Act) that is:
 - (i) operated in accordance with an Australian market licence (within the meaning of that Act); or
 - (ii) exempt from the operation of Part 7.2 of that Act;
- (d) a negotiable instrument (within the meaning of the *Personal Property Securities Act 2009*);
- (e) currency (whether of Australia or of any other country);
- (f) gold;
- (g) property declared by the regulations to be financial property for the purposes of this Act;
- (h) if a person (an *intermediary*) maintains an account to which interests in property or rights to payment or delivery of property of a kind mentioned in any of paragraphs (a) to (g) may be credited or debited—the rights of a person in whose name the intermediary maintains the account;
- (i) proceeds (including rights and property) of property that is financial property;

but does not include any property declared by the regulations to not be financial property for the purposes of this Act.

foreign exchange contract has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

intermediated security means the rights mentioned in paragraph (h) of the definition of *financial property*.

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5 Section 5 (after paragraph (a) of the definition of *market netting contract*)

Insert:

- (aa) the rules governing the operating of a netting market, if those rules have effect as a contract between a participant in the netting market and one or more other persons; or

6 Section 5

Insert:

non-terminal administration: a person goes into non-terminal administration if:

- (a) they go into external administration; and
(b) the external administration is not a winding up under the *Corporations Act 2001* or a corresponding law of a foreign country.

regulated body means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
(b) a general insurer within the meaning of the *Insurance Act 1973*; or
(c) a body corporate that is registered under section 21 of the *Life Insurance Act 1995*; or
(d) a private health insurer within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*.

regulated business, of a regulated body, means:

- (a) if the body is an ADI—the body’s banking business (within the meaning of the *Banking Act 1959*); or
(b) if the body is a general insurer—the body’s insurance business (within the meaning of the *Insurance Act 1973*); or
(c) if the body is a life insurance company—the body’s life insurance business (within the meaning of the *Life Insurance Act 1995*).

resolution period has the meaning given by section 15A.

7 Section 5 (paragraphs (a) and (b) of the definition of *specified provisions*)

Repeal the paragraphs, substitute:

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- 1 (a) subsections 11CD(2) and (3), section 11F and
2 subsection 13A(3) of the *Banking Act 1959*; and
3 (aa) subsections 105(2) and (3) of the *Insurance Act 1973*; and
4 (b) section 187 and subsections 230C(2) and (3) of the *Life*
5 *Insurance Act 1995*; and

6 **8 Section 5 (paragraph (d) of the definition of *specified***
7 ***provisions*)**

8 Omit “and 468”, substitute “, 440B, 468 and 556”.

9 **9 Section 5 (after paragraph (f) of the definition of *specified***
10 ***provisions*)**

11 Insert:

- 12 (fa) subsections 101(3) and (4) of the *Private Health Insurance*
13 *(Prudential Supervision) Act 2015*; and

14 **10 Section 5**

15 Insert:

16 ***specified stay provision***: each of the following is a ***specified stay***
17 ***provision***:

- 18 (a) subsection 11CD(1A) of the *Banking Act 1959*;
19 (b) subsection 13N(2) of the *Banking Act 1959*;
20 (c) subsection 14AC(2) of the *Banking Act 1959*;
21 (d) subsection 15C(2) of the *Banking Act 1959*;
22 (e) subsection 36AA(2) of the Business Transfer Act;
23 (f) subsection 62V(2) of the *Insurance Act 1973*;
24 (g) subsection 62ZB(2) of the *Insurance Act 1973*;
25 (h) subsection 103K(2) of the *Insurance Act 1973*;
26 (i) subsection 105(1A) of the *Insurance Act 1973*;
27 (j) subsection 165B(2) of the *Life Insurance Act 1995*;
28 (k) subsection 168C(2) of the *Life Insurance Act 1995*;
29 (l) subsection 230AJ(2) of the *Life Insurance Act 1995*;
30 (m) subsection 230C(1A) of the *Life Insurance Act 1995*;
31 (n) subsection 101(2) of the *Private Health Insurance*
32 *(Prudential Supervision) Act 2015*.

33 ***trigger event***, for a close-out netting contract, means an event of a
34 kind mentioned in paragraph (a) of the definition of ***close-out***
35 ***netting contract***.

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11 Section 6 (heading)

Repeal the heading, substitute:

6 Winding up not to affect transactions carried out on the day of appointment

12 Paragraph 6(1)(a)

After “external administration”, insert “(other than non-terminal administration)”.

13 Subsection 6(2)

Repeal the subsection, substitute:

(2) This section has effect despite any other law (including the specified provisions and the specified stay provisions).

Note: Section 5 defines *specified provisions* and *specified stay provision*.

14 After section 6

Insert:

6A Non-terminal administration not to affect transactions

(1) If:

(a) a participant in an approved RTGS system goes into non-terminal administration; and

(b) a payment or settlement transaction is executed through the system at any time before the participant goes into, or while the participant is in, non-terminal administration; and

(c) the transaction involves the payment of money, or the transfer of an asset, by the participant;

the payment or transfer has the same effect it would have had if the participant had not gone into non-terminal administration.

(2) This section has effect despite any other law (including the specified provisions and the specified stay provisions).

Note: Section 5 defines *specified provisions* and *specified stay provision*.

15 Paragraph 10(2)(a)

Before “the party may”, insert “if the external administration is not a non-terminal administration—”.

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16 After paragraph 10(2)(a)

Insert:

- (aa) if the external administration is a non-terminal administration—the party may do anything permitted or required by the arrangement in order to net:
- (i) obligations incurred before the participant goes into, or while the participant is in, non-terminal administration; and
 - (ii) net obligations if the obligations that are directly or indirectly netted are incurred before the participant goes into, or while the participant is in, non-terminal administration; and

17 After paragraph 10(2)(e)

Insert:

- ; and (f) for an arrangement that is governed by the rules of a licensed CS facility as defined in section 761A of the *Corporations Act 2001*—a payment, or a transfer of property, by a party under the arrangement to discharge a net obligation is not to be void or voidable in the external administration.

18 Subsection 10(2) (note 1)

Omit “by payment”, substitute “by payment or transfer of property”.

19 Subsection 10(3)

Repeal the subsection, substitute:

- (3) Subsections (1) and (2) have effect despite any other law (including the specified provisions and the specified stay provisions).

Note: Section 5 defines *specified provisions* and *specified stay provision*.

20 Before section 14

Insert:

Division 1—Effectiveness of close-out netting contracts

21 After paragraph 14(1)(c)

Insert:

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1 (ca) security given in writing over financial property, in respect of
2 obligations of a party to the contract, may be enforced in
3 accordance with the terms of the security (but see
4 section 14A);

5 **22 Paragraph 14(1)(d)**

6 Omit “paragraph (c) applies”, substitute “paragraphs (c) and (ca)
7 apply”.

8 **23 Subparagraphs 14(1)(d)(ii) and (iii)**

9 After “those rights”, insert “or that financial property”.

10 **24 After paragraph 14(2)(f)**

11 Insert:

12 (fa) security given in writing over financial property, in respect of
13 obligations of a party to the contract, may be enforced in
14 accordance with the terms of the security (but see
15 section 14A);

16 **25 Paragraph 14(2)(g)**

17 Repeal the paragraph, substitute:

18 (g) none of the following is to be void or voidable in the external
19 administration:

20 (i) the netting or termination of obligations under the
21 contract;

22 (ii) a payment by the party to discharge a net obligation
23 under the contract;

24 (iii) the enforcement of security under paragraph (fa).

25 **26 Subsections 14(3), (4) and (5)**

26 Repeal the subsections, substitute:

27 (3) A person may not rely on the application of subsection (1) or (2) to
28 a right or obligation under a close-out netting contract if:

29 (a) the person acquired the right or obligation from another
30 person with notice that that other person, or the other party to
31 the contract, was at that time unable to pay their debts as and
32 when they became due and payable; and

33 (b) the person acquired the right or obligation otherwise than as a
34 result of the operation of section 22, 35 or 36R of the
35 Business Transfer Act.

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1 (4) Subsections (1) and (2) have effect in relation to a close-out netting
2 contract:

3 (a) subject to a specified stay provision that applies to the
4 contract; and

5 (b) despite any other law (including the specified provisions).

6 Note 1: Section 5 defines *specified provisions* and *specified stay provision*.

7 Note 2: Division 2 sets out the circumstances in which non-direction stays
8 may cease.

9 (5) None of the following things done by a party to a close-out netting
10 contract, while it is in external administration and a specified stay
11 provision applies to the contract, is to be void or voidable in an
12 external administration:

13 (a) making a payment, or transferring property, to another person
14 to meet an obligation under the contract;

15 (b) creating rights or obligations in another person under the
16 contract;

17 (c) giving any security to another person in relation to the
18 contract;

19 (d) entering into one or more close-out netting contracts with
20 another person.

21 (6) Subsection (1) or (2) does not apply to an obligation owed by a
22 party to a close-out netting contract, or to security given by a party
23 to another person in respect of such an obligation, if:

24 (a) the party goes into external administration; and

25 (b) the person acquired the obligation or the security otherwise
26 than as a result of the operation of section 22, 35 or 36R of
27 the Business Transfer Act; and

28 (c) subsection (8) applies in relation to the transaction that
29 created the terminated obligation or the security.

30 (7) Subsection (5) does not apply to a thing mentioned in that
31 subsection done by a party to a close-out netting contract in
32 relation to another person if:

33 (a) subsection (8) applies in relation to the transaction under
34 which that thing was done; and

35 (b) the transaction did not result from the operation of section 22,
36 35 or 36R of the Business Transfer Act.

37 (8) This subsection applies if any of the following are satisfied:

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- 1 (a) the other person did not act in good faith in entering into the
2 transaction;
- 3 (b) when the transaction was entered into, the other person had
4 reasonable grounds for suspecting that the party was
5 insolvent at that time or would become insolvent because of,
6 or because of matters including:
- 7 (i) entering into the transaction; or
8 (ii) a person doing an act, or making an omission, for the
9 purposes of giving effect to the transaction;
- 10 (c) the other person neither provided valuable consideration
11 under, nor changed their position in reliance on, the
12 transaction.

13 **27 After section 14**

14 Insert:

15 **14A Effectiveness of security given in respect of obligations under** 16 **close-out netting contracts**

- 17 (1) Paragraphs 14(1)(ca) and 14(1)(fa) apply to the enforcement of
18 security over financial property only to the extent that:
- 19 (a) the obligations secured by the financial property, and
20 discharged through the enforcement, are:
- 21 (i) eligible obligations in relation to the contract; or
22 (ii) obligations under the contract of a party to the contract
23 to pay interest on an eligible obligation; or
24 (iii) obligations of a party to the contract to pay costs and
25 expenses incurred in connection with enforcing security
26 given in respect of an eligible obligation; and
- 27 (b) before the enforcement, the financial property is transferred
28 or otherwise dealt with so as to be in the possession or under
29 the control of:
- 30 (i) the secured party; or
31 (ii) another person (who is not the grantor), who
32 acknowledges in writing that he, she or it has that
33 possession or control of the financial property on behalf
34 of the secured party; and
- 35 (c) the enforcement is carried out in a manner that complies with
36 section 420A of the *Corporations Act 2001* (if it applies) and
37 any applicable general law duties that are not inconsistent
38 with the terms of the security.
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Note: Section 5 defines *financial property*.

- (2) For the purposes of paragraph (1)(b), financial property is taken not to be in the possession of a person if the financial property is in the actual or apparent possession of the grantor.
- (3) Without limiting paragraph (1)(b), financial property is taken to be in the possession of a person for the purposes of that paragraph if:
 - (a) in a case where there is an issuer of the financial property—the person is registered by, or on behalf of, the issuer as the registered owner of the financial property; or
 - (b) in a case where the financial property is an intermediated security—the person is the person in whose name the intermediary maintains the account.

Note: Section 5 defines *intermediated security*.

- (4) Without limiting paragraph (1)(b), financial property is taken to be under the control of a person for the purposes of that paragraph if:
 - (a) the financial property is an intermediated security; and
 - (b) there is an agreement in force between the intermediary and one or more other persons, one of which is the secured party or the grantor; and
 - (c) the agreement has one or more of the following effects:
 - (i) the person in whose name the intermediary maintains the account is not able to transfer or otherwise deal with the financial property;
 - (ii) the intermediary must not comply with instructions given by the grantor in relation to the financial property without seeking the consent of the secured party (or a person who has agreed to act on the instructions of the secured party);
 - (iii) the intermediary must comply, or must comply in one or more specified circumstances, with instructions (including instructions to debit the account) given by the secured party in relation to the intermediated security without seeking the consent of the grantor (or any person who has agreed to act on the instructions of the grantor).
- (5) Without limiting paragraph (1)(b), the fact that a grantor retains a right of a kind mentioned in column 1 of an item of the following

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- 1 table does not stop that paragraph from being satisfied. However,
2 that paragraph is taken not to be satisfied if:
3 (a) column 2 of the table item sets out a condition in relation to
4 the right; and
5 (b) the condition is not met.
6

Retention of certain rights in relation to financial property by grantor

Item	Column 1 Type of right	Column 2 Condition
1	Right to receive and withdraw income in relation to the financial property	None
2	Right to receive notices in relation to the financial property	None
3	Right to vote in relation to the financial property	None
4	Right to substitute financial property	The secured party (or a person who has agreed to act on the instructions of the secured party) must have the right (however described) to consent to the exercise of that right by the grantor
5	Right to withdraw excess financial property	The secured party (or a person who has agreed to act on the instructions of the secured party) must have the right (however described) to consent to the exercise of that right by the grantor
6	Right to determine value of financial property	None
7	Right to require release of financial property if secured party becomes insolvent	The secured party (or a person who has agreed to act on the instructions of the secured party) must have the right (however described) to consent to the exercise of that right by the grantor

- 7
8 (6) The regulations may prescribe circumstances in which financial
9 property is, or is not, transferred or dealt with so as to be in the
10 possession or under the control of the secured party for the
11 purposes of paragraph (1)(b).
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- 1 (7) An obligation is an *eligible obligation* in relation to a close-out
2 netting contract if the obligation is any of the following:
3 (a) an obligation under the contract of a party to the contract that
4 relates to a derivative or foreign exchange contract;
5 (b) a net obligation that results from the netting of 2 or more
6 obligations that:
7 (i) must include at least one obligation covered by
8 paragraph (a); and
9 (ii) may include one or more incidental obligations that,
10 taken together, do not form a material part of the net
11 obligation;
12 (c) an obligation declared by the regulations to be an eligible
13 obligation in relation to a close-out netting contract.
- 14 (8) However, an obligation is not an *eligible obligation* in relation to a
15 close-out netting contract if it is declared by the regulations not to
16 be an eligible obligation in relation to the contract for the purposes
17 of this Act.

18 **28 At the end of Part 4**

19 Add:

20 **Division 2—Ceasing non-direction stays for derivatives** 21 **contracts**

22 **15A Ceasing non-direction stays for derivatives contracts**

- 23 (1) This section applies in relation to a close-out netting contract to
24 which a regulated body is a party if:
25 (a) an obligation under the contract of a party to the contract is
26 an eligible obligation in relation to the contract; and
27 (b) a specified stay provision (other than a direction stay
28 provision) applies to a trigger event that happens in relation
29 to the contract.
- 30 (2) A specified stay provision (other than a direction stay provision)
31 ceases to apply to a close-out netting contract:
32 (a) at the time when a declaration under section 15B in relation
33 to the contract takes effect; or

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- 1 (b) at the end of the resolution period for the trigger event, if no
2 declaration under section 15C in relation to the contract is
3 made during that period.
- 4 (3) The *resolution period* for a trigger event is the period starting
5 when the trigger event happens and ending:
- 6 (a) at midnight (by legal time in the Australian Capital Territory)
7 at the end of the first business day after the day on which the
8 trigger event happens, unless the specified stay provision is
9 subsection 36AA(2) of the Business Transfer Act; or
- 10 (b) for subsection 36AA(2) of the Business Transfer Act:
- 11 (i) if APRA makes a declaration under subsection (5)—at
12 the time the declaration is made; or
- 13 (ii) if a certificate of transfer under that Act comes into
14 force—just after the certificate of transfer comes into
15 force.
- 16 Note: Subsection 36AA(2) applies indefinitely if neither subparagraph (b)(i)
17 nor (b)(ii) ends the resolution period.
- 18 (4) If:
- 19 (a) a trigger event happens to which subsection 36AA(2) of the
20 Business Transfer Act applies; and
- 21 (b) the trigger event is the fact that an act is done for the
22 purposes of Division 2 or 3 of Part 4 of that Act; and
- 23 (c) APRA is satisfied that APRA will not issue a certificate of
24 transfer under that Act;
- 25 APRA may declare, in writing, that the resolution period for that
26 trigger event ends.
- 27 (5) A declaration under subsection (4) is not a legislative instrument.

15B When APRA may declare that non-direction stays cease

- 28
- 29 (1) Subsection (2) applies if:
- 30 (a) a trigger event to which a specified stay provision (other than
31 a direction stay provision) applies happens in relation to a
32 close-out netting contract to which a regulated body is a
33 party; and
- 34 (b) APRA is satisfied that APRA will not make a declaration
35 under section 15C in relation to a party before the end of the
36 resolution period for the trigger event.
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- 1 (2) APRA may, before the end of the resolution period for the trigger
2 event, declare that the specified stay provision is to cease to apply
3 to all close-out netting contracts of the party.
- 4 (3) A declaration under subsection (2) takes effect:
5 (a) if the declaration specifies a time before the end of the
6 resolution period when the specified stay provision is to
7 cease to apply—at the specified time; or
8 (b) in any other case—at the time when the declaration is made.
- 9 (4) A declaration under subsection (2) cannot be varied or revoked.
- 10 (5) If a declaration under subsection (2) is in writing, the declaration is
11 not a legislative instrument.
- 12 (6) The regulations may do any of the following:
13 (a) prescribe requirements relating to how declarations under
14 subsection (2) are to be made (including requirements
15 relating to the content or form of declarations);
16 (b) prescribe requirements relating to the notification or
17 publication of declarations under subsection (2);
18 (c) include provisions that apply to determining, either generally
19 or for a particular purpose, the time when declarations under
20 subsection (2) are taken to be made.
- 21 Note: Regulations under paragraph (c) may (for example) provide that, for
22 the purpose of this section, a declaration is taken not to have been
23 made until certain requirements of regulations under paragraph (b)
24 have been complied with.

25 **15C When APRA may declare that non-direction stays continue**

- 26 (1) Subsection (2) applies if:
27 (a) a trigger event to which a specified stay provision (other than
28 a direction stay provision) applies happens in relation to a
29 close-out netting contract to which a regulated body is a
30 party; and
31 (b) APRA is satisfied that all the matters in subsection (3) will be
32 satisfied in relation to the party in respect of which the
33 declaration under subsection (2) will be made:
34 (i) unless subparagraph (ii) applies—at the time the
35 declaration will be made; or

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- 1 (ii) if a certificate of transfer will come into force under the
2 Business Transfer Act—just after that coming into
3 force; and
- 4 (c) the party in respect of which the declaration under
5 subsection (2) will be made is not in external administration
6 (disregarding paragraphs (d), (e) and (f) of the definition of
7 *external administration* in section 5); and
- 8 (d) APRA has not already made a declaration under section 15B.
- 9 (2) APRA may, before the end of the resolution period for the trigger
10 event, declare that the specified stay provision is to continue to
11 apply to:
- 12 (a) unless paragraph (b) or (c) applies—all close-out netting
13 contracts to which the regulated body is a party; or
- 14 (b) if a certificate of transfer for a total transfer will come into
15 force under the Business Transfer Act—all close-out netting
16 contracts to which the receiving body (within the meaning of
17 that Act) will become a party; or
- 18 (c) if a certificate of transfer for a partial transfer will come into
19 force under the Business Transfer Act—either or both of the
20 following:
- 21 (i) all close-out netting contracts to which the transferring
22 body (within the meaning of that Act) is a party;
- 23 (ii) all close-out netting contracts to which the receiving
24 body (within the meaning of that Act) will become a
25 party.
- 26 (3) For the purposes of paragraph (1)(b), the matters are as follows:
- 27 (a) that the party is able to meet all its liabilities under close-out
28 netting contracts to which it is a party as and when they
29 become due and payable;
- 30 (b) that the party is solvent (within the meaning of the
31 *Corporations Act 2001*);
- 32 (c) that the party has each material authorisation (however
33 described) necessary for its regulated business;
- 34 (d) that either subsection (4) or subsection (5) is satisfied.
- 35 (4) This subsection is satisfied if the party’s level of capital complies
36 with the minimum capital requirements that apply to it under:
- 37 (a) the *Banking Act 1959*, the *Insurance Act 1973* or the *Life*
38 *Insurance Act 1995* (as the case requires); and
- 39 (b) the applicable prudential standards made under that Act.
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- 1 (5) This subsection is satisfied if:
- 2 (a) arrangements are in place to ensure that the party performs
- 3 all its obligations under close-out netting contracts to which it
- 4 is a party as and when they are due to be performed; and
- 5 (b) those arrangements will remain in place until at least the
- 6 earliest day on which one or more of the following occurs:
- 7 (i) subsection (4) is satisfied;
- 8 (ii) for subsection 15C(2) of the *Banking Act 1959* (ADI
- 9 statutory manager in control)—APRA makes an
- 10 ultimate termination of control under subsection 13C(3)
- 11 of that Act;
- 12 (iii) for subsection 62V(2) of the *Insurance Act 1973*
- 13 (judicial manager in control)—an order under
- 14 section 62ZF of that Act cancelling the judicial
- 15 management comes into force;
- 16 (iv) for subsection 165B(2) of the *Life Insurance Act 1995*
- 17 (judicial manager in control)—an order under
- 18 section 172 of that Act cancelling the judicial
- 19 management comes into force.
- 20 (6) A declaration under subsection (1) cannot be varied or revoked.
- 21 (7) A declaration under this section is not a legislative instrument.
- 22 (8) The regulations may do any of the following:
- 23 (a) prescribe requirements relating to how declarations under
- 24 subsection (2) are to be made (including requirements
- 25 relating to the content or form of declarations);
- 26 (b) prescribe requirements relating to the notification or
- 27 publication of declarations under subsection (2);
- 28 (c) include provisions that apply to determining, either generally
- 29 or for a particular purpose, the time when declarations under
- 30 subsection (2) are taken to be made.
- 31 Note: Regulations under paragraph (c) may (for example) provide that, for
- 32 the purpose of this section, a declaration is taken not to have been
- 33 made until certain requirements of regulations under paragraph (b)
- 34 have been complied with.

29 Subparagraph 16(2)(g)(iii)

Omit “to pay a deposit or margin call”.

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1 **30 Subsection 16(3)**

2 Repeal the subsection, substitute:

3 (3) Subsections (1) and (2) have effect despite any other law
4 (including the specified provisions and the specified stay
5 provisions).

6 Note: Section 5 defines *specified provisions* and *specified stay provision*.

EXPOSURE DRAFT

1 Part 2—Other amendments

2 *Banking Act 1959*

3 **31 After paragraph 11CD(1A)(c)**

4 Insert:

5 ; (d) enforce any security under that contract.

6 **32 Subsection 11CD(1A)**

7 After “subsections (2) and (3)”, insert “of this section and section 31B”.

8 **33 At the end of subsections 13N(2) and 14AC(2)**

9 Add:

10 ; (d) enforce any security under that contract.

11 **34 At the end of subsection 15C(2)**

12 Add:

13 ; (d) enforce any security under that contract.

14 This subsection has effect subject to section 31B.

15 *Financial Sector (Business Transfer and Group Restructure)* 16 *Act 1999*

17 **35 Subsection 4(1)**

18 Insert:

19 *approved netting arrangement* has the same meaning as in the
20 *Payment Systems and Netting Act 1998*.

21 *close-out netting contract* has the same meaning as in the *Payment*
22 *Systems and Netting Act 1998*.

23 *market netting contract* has the same meaning as in the *Payment*
24 *Systems and Netting Act 1998*.

25 **36 At the end of subsection 36AA(2)**

26 Add:

27 ; (d) enforce any security under that contract.

EXPOSURE DRAFT

37 After section 36AA

Insert:

36AB Partial transfer of netting contracts void

(1) This section applies if:

- (a) a certificate of transfer comes into force in respect of a partial transfer; and
- (b) just before the partial transfer, the transferring body is a party to a close-out netting contract, market netting contract or approved netting arrangement; and
- (c) the partial transfer covers some (but not all) of the assets and liabilities the body has, under the contract or arrangement, with respect to another party to the contract or arrangement (the *counterparty*).

Note: The *Payment Systems and Netting Act 1998* affects what the assets and liabilities of a party to a close-out netting contract, market netting contract or approved netting arrangement are taken to include.

(2) The partial transfer is void to the extent of the assets or liabilities the transferring body has, just before the partial transfer, under the contract or arrangement, with respect to the counterparty.

Insurance Act 1973

38 At the end of subsections 62V(2), 62ZB(2) and 103K(2)

Add:

; (d) enforce any security under that contract.

39 After paragraph 105(1A)(c)

Insert:

; (d) enforce any security under that contract.

Life Insurance Act 1995

40 At the end of subsections 165B(2), 168C(2) and 230AJ(2)

Add:

; (d) enforce any security under that contract.

EXPOSURE DRAFT

1 **41 After paragraph 230C(1A)(c)**

2 Insert:

3 ; (d) enforce any security under that contract.

4 ***Private Health Insurance (Prudential Supervision) Act 2015***

5 **42 At the end of subsection 101(2)**

6 Add:

7 ; (d) enforce any security under that contract.

EXPOSURE DRAFT

1 **Part 3—Application**

2 **43 Application of amendments**

- 3 (1) In this item:
4 *start time* means the commencement of this Schedule.
- 5 (2) The amendments made by Part 1 apply in relation to approved netting
6 arrangements, market netting contracts and close-out netting contracts
7 entered into after the start time, or that are in existence immediately
8 before the start time.
- 9 (3) Subject to subitem (6), the amendments made by Part 1 do not apply in
10 relation to an external administration that commenced before the start
11 time.
- 12 (4) The amendments made by Part 1 apply in relation to trigger events that
13 occur for a close-out netting contract after the start time.
- 14 (5) The amendments made by items 22 and 23 do not apply to disposals of
15 rights or property, or the creation or operation of encumbrances or
16 interests, before the start time.
- 17 (6) The amendments made by item 26 applies in relation to a person being
18 in external administration, whether the external administration
19 commences before or after the start time.
- 20 (7) The amendment made by item 37 applies to a partial transfer if the
21 certificate of transfer comes into force after the start time.
- 22 (8) The amendments made by Parts 1 and 2 apply in relation to the
23 enforcement of a security after the start time, even if the security was
24 given before the start time.