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24 April 2017

Mr. James Mason  
Manager, Corporations and Schemes Unit  
Financial Systems Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [insolvency@treasury.gov.au](mailto:insolvency@treasury.gov.au)

Dear Mr. Mason

**Submission on Improving Bankruptcy and Insolvency Laws Exposure Draft**

We refer to our letter of 27 May 2016 in relation to the above, and to the Exposure Draft Legislation and related documents released on 28 March 2017 (**Exposure Documents**).

The Australian Securitisation Forum (**ASF**) appreciates the opportunity to comment on the Exposure Documents and acknowledges that the Exposure Documents reflect responses on the Proposal Paper of 29 April 2016. In particular, the ASF notes that the explanatory document setting out the types of contracts and contractual rights which are expected to be excluded from the broad stay on the operation of ipso facto clauses reflects, in general, the issues identified by ASF in its previous letter.

In response to the Government's request for feedback on the proposed contract types, the ASF confirms it believes that the proposed general types of contracts as they relate to the securitisation industry are appropriate, but for the purposes of specific regulations would propose the relevant transactions be prescribed with the level of detail set out in the Schedule to these letter (or appropriately equivalent drafting).

We would be pleased to discuss our submission with you further at your convenience.

Yours sincerely

A handwritten signature in black ink that reads 'Chris Dalton'. The signature is written in a cursive, slightly stylized font.

Chris Dalton

## Schedule

### Excluded Contract types - securitisation and structured finance

"any contract, agreement or arrangement:

(a) constituting or comprising a covered bond (as defined in the Banking Act 1959) or obligation of an entity of a kind referred to in paragraph (b), or entered into in connection with the issue of such a covered bond or obligation;

(b) entered into by or with:

(i) a covered bond special purpose vehicle (as defined in the Banking Act 1959);

(ii) an entity established for the purposes of managing some or all of the economic risk associated with assets, liabilities or investments (whether the entity assumes the risk from another entity or creates the risk itself) or being party to a particular transaction or particular transactions under which it incurs liabilities for which creditors' recourse is limited to particular assets or investments;

(iii) an entity which is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity's circumstances; or

(iv) a person acting in the capacity of a trustee, general partner or other representative capacity of or for an entity referred to in paragraphs (i) to (iii) above; or

(c) with respect to purchasing, acquiring or factoring book debts or other trade receivables."

If the relevant exclusions are drafted so as to make reference to particular rights, then the exclusions should refer to:

"any right under a contract, agreement or arrangement referred to in paragraphs (a) to (c) including, without limitation, in each case a right:

(i) to terminate the appointment of any person, or some or all of the services provided by any person;

(ii) to accelerate the time for payment or performance an obligation of, or terminate a transaction entered into with, any person;

(ii) to enforce any security interest granted by, or to make or perfect at law a transfer or assignment of property assigned in equity by, any person;

(iii) to vary the order or priority of any payment to any person; and

(iv) under a contract, agreement or arrangement otherwise excluded from the operation of section 415D or 415E of the Corporations Act 2001 as that contract, agreement or arrangement relates to a transaction specified in any of paragraphs (a) to (c) (inclusive)."