

Self-assessment of the Australian Securities and Investments Commission and Reserve Bank of Australia – Clearing and Settlement Facilities

CPMI-IOSCO Responsibilities of Central Banks,
Market Regulators and other Relevant Authorities for
Financial Market Infrastructures

July 2018

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1. Introduction and Executive Summary

The *Principles for financial market infrastructures* (the PFMI), published by the Committee on Payments and Market Infrastructures (CPMI)¹ and the Technical Committee of the International Organization of Securities Commissions (IOSCO) in April 2012, establish a set of ‘Responsibilities of central banks, market regulators, and other relevant authorities for financial market infrastructures’ (Responsibilities).²

The five Responsibilities for authorities are:

- Responsibility A: Regulation, supervision and oversight of financial market infrastructures (FMIs)
- Responsibility B: Regulatory, supervisory, and oversight powers and resources
- Responsibility C: Disclosure of policies with respect to FMIs
- Responsibility D: Application of the PFMI
- Responsibility E: Cooperation with other authorities.

This report presents a joint self-assessment of how well the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (the Bank) meet their requirements under the Responsibilities in their regulation and oversight of central counterparties (CCPs) and securities settlement facilities (SSFs) – collectively, clearing and settlement (CS) facilities.³

Consistent with the Australian authorities’ international commitment to implement the PFMIs, including the Responsibilities, this report provides transparency around ASIC’s and the Bank’s roles in the regulation and oversight of CS facilities. The report is principally targeted at an international audience. The scope of the self-assessment is limited to ASIC’s and the Bank’s roles in the regulation and oversight of CS facilities in Australia, although, where relevant, the oversight arrangements for other types of FMIs in Australia are discussed. Separately, the Bank also publishes its self-assessment against the Responsibilities for systematically important payment systems (SIPS) on its website.⁴

The report has been produced by ASIC’s Market Infrastructure (MI) stakeholder team and the Bank’s Payments Policy Department. It is expected that the report will be an input into overseas authorities’ and international organisations’ assessments of how Australia has implemented the PFMI for CCPs and SSFs.

The self-assessment concludes that ASIC and the Bank jointly observe all relevant Responsibilities, although in the spirit of continuous improvement it identifies some actions for both regulators.

1 Formerly the Committee on Payment and Settlement Systems.

2 The PFMIs are available at <<https://www.bis.org/cpmi/publ/d101a.pdf>>.

3 In this report, ‘clearing and settlement facility’ is defined as in Part 7.1, Division 6 of the *Corporations Act 2001*.

4 Self-assessment of the Reserve Bank of Australia – Systemically Important Payment Systems is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/principles/assessment-against-responsibilities/>>.

1.1 Background

The *Corporations Act 2001* establishes conditions for the licensing and operation of CS facilities in Australia and gives ASIC and the Bank powers and responsibilities relating to these facilities.

ASIC and the Bank have separate, but complementary, regulatory responsibilities for the supervision of CS facilities licensed under Part 7.3 of the Corporations Act.

- The Bank is responsible for determining standards (the Financial Stability Standards or FSS) for the purposes of ensuring that CS facility licensees conduct their affairs in a way that causes or promotes overall stability in the Australian financial system, and for assessing how well a licensee is complying with its obligation under the Corporations Act to, to the extent that it is reasonably practicable to do so, comply with these standards and do all other things necessary to reduce systemic risk.
- ASIC is responsible for assessing CS facility licensees' compliance with all other obligations arising under the Corporations Act, including notably the obligation, to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the facility's services are provided in a fair and effective way.

These powers are exercised under the governance of the Payments System Board (PSB) and ASIC's Commission, respectively.

Two types of CS facility currently operate in Australia:

- *CCPs*: A CCP acts as the buyer to every seller, and the seller to every buyer in a financial market. It does so by interposing itself as the legal counterparty to all purchases and sales via a process known as novation. Four CCPs are currently licensed under the Corporations Act to operate in Australia.
- *SSFs*: A SSF provides for the final settlement of securities transactions and the maintenance of records of transfer of title. Three SSFs are licensed to operate in Australia.

1.2 Developments since June 2014

1.2.1 Progress against agreed actions

In the June 2014 self-assessment, the Australian authorities identified some actions to improve their oversight arrangements for CS facilities. Progress against these actions from 2014 is described in Table 1 below.

Table 1: Progress Against Actions from June 2014

Responsibility	Action	Progress
D. Application of the <i>Principles for Financial Market Infrastructures</i>	To ensure consistent regulatory outcomes across FMIs and the markets they serve, ASIC will continue to use existing forums for coordination across stakeholder teams. Such coordination will facilitate consideration of the broader impact of application of the PFMI and other aspects of the CS facility regulation on the fairness and efficiency of financial markets.	ASIC has continued its use of existing internal and external forums, such as ASIC's Market Policy and Advisory Committee ⁵ for coordination across stakeholder teams, including on CS facility related policy issues. Internally ASIC has used cross team working groups to respond to emerging market infrastructure issues including the impact of the oversight of CS facility providers on the fairness and efficiency of financial markets.
	The Bank recently established a senior level internal FMI Oversight Committee. The Bank will monitor the effectiveness of this Committee on an ongoing basis. Appropriate steps will be taken to ensure that the Committee meets its key objective of providing a forum for review and challenge to the staff's routine oversight decisions within the policy framework established by the PSB.	The FMI Review Committee (FMIRC, previously the FMI Oversight Committee) has met quarterly since it was established in May 2014. The Bank's Executive Committee and PSB review the effectiveness of FMIRC annually. (see section 1.2.2 for further information).
E. Cooperation with other authorities	ASIC and the Bank will continue to work with other central banks and regulators of CS facilities to promote effective cooperation and mutual assistance in the regulation and oversight of cross-border CS facilities. Formal cooperation arrangements with other authorities will be established as appropriate.	Formal cooperation arrangements have been established with primary regulators for overseas CCPs operating in Australia or for whom Australian-based CCPs are systemically important (i.e. regulatory authorities in the United Kingdom, United States, European Union and New Zealand). ASIC and the Bank will continue to promote effective cooperation and mutual assistance to other central banks and regulators as appropriate.

1.2.2 Other developments

In May 2014, the Bank established a senior level internal FMI Review Committee (FMIRC) with the objective of providing a forum for review and challenge to the staff's routine oversight decisions within the policy framework established by the PSB. FMIRC has since met quarterly, and has been effective in providing review and challenge from senior internal stakeholders, enhancing the Bank's governance arrangements. In February 2017, the PSB revised its approach to overseeing how the powers and functions of the Bank with respect to FMIs are exercised in a way that will best contribute to the overall stability of the financial system. The FMIRC was given formal responsibility for reviewing and approving annual assessment reports for each FMI, except in the case of the Reserve Bank Information and Transfer System (RITS). The PSB retained the primary responsibility for approving the staff's periodic assessments of RITS since the Bank both operates and oversees this facility. Key issues, findings and recommendations for all FMIs continue to be reported to the PSB in order to fulfil the PSB's governance duties. Furthermore, an annual report on FMIRC assessment activities and processes is also provided to the PSB and the Bank's Executive Committee.

Since June 2014, the Bank has also formally adopted the following pieces of guidance on the PFMI that have been issued by CPMI-IOSCO:⁶

- the *Public quantitative disclosure standards for central counterparties* issued in February 2015

5 Available at <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/external-committees-and-panels/markets-advisory-panel/>>.

6 See the footnotes to the FSS table available at <<http://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/>>.

- the statement on *Clearing of deliverable FX instruments*, issued in February 2016
- the *Guidance on cyber resilience for financial market infrastructures*, issued in June 2016
- the *Resilience of central counterparties: Further guidance on the PFMI*, issued in July 2017
- the revised *Recovery of financial market infrastructures*, issued in July 2017.

The Bank also issued supplementary interpretation for domestically licensed CCPs that provide services to clearing participants that are either established in the EU or subject to EU bank capital regulations.⁷

In March 2016 ASIC published the *Cyber resilience assessment report: ASX Group and Chi-X Australia Pty Ltd*.⁸ This report presented the findings of ASIC's cyber resilience assessments of ASX Group and Chi-X Australia Pty Ltd, which is licensed to operate a market in Australia. ASIC confirmed in this report that the finalised *CPMI–IOSCO Guidance on cyber resilience for financial market infrastructures* will be the basis for ASIC's future engagement on cyber resilience with ASX Group's CS facilities and will also provide helpful guidance for the markets operated by ASX Group and Chi-X—and across the broader financial system.

Since 2016, the Minister has delegated their role in CS facility licensing and approval of operating rules to authorised ASIC officers.⁹ The delegation is designed to facilitate more timely regulatory approvals – it does not otherwise change the way ASIC engages with stakeholders or the matters ASIC considers in preparing its advice to the Minister (or their delegate). ASIC, in its advisory capacity, will continue to have regard to the requirements in the Corporations Act; ASIC's strategic objectives; and advice from other government agencies (including the Bank), among other things. A quarterly report is published by the delegate on ASIC's website outlining regulatory matters during the previous quarter, on which the delegate has exercised delegated functions and powers.

In 2016, the *Payment Systems and Netting Act 1998* (PSNA) was amended to,¹⁰ amongst other things, provide additional legal certainty regarding:

- a CCP's (as an approved netting market) ability to deal with clients' unsettled cash equities positions when the client's clearing participant has defaulted
- CCP participants' ex post assessment and replenishment obligations should the participants meeting such obligations themselves subsequently enter administration
- circumstances in which a statutory manager or judicial manager has been appointed to a participant in an approved real-time gross settlement system or an approved netting arrangement.

7 The most recent supplementary interpretation was issued in October 2014 and is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>>.

8 Available at <https://asic.gov.au/media/3563866/rep-468-published-7-march-2016.pdf?utm_source=report-468&utm_medium=landing-page&utm_campaign=pdfdownload>.

9 The current delegation instrument is available here <https://static.treasury.gov.au/uploads/sites/1/2017/06/Guidelines_exercise_powers_instru_2017.pdf>.

10 The explanatory memorandum is available at <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5649_ems_c328f26e-49d6-4a9e-8cc3-a5371f4711fe/upload_pdf/446146.pdf;fileType=application%2Fpdf> and the legislation is available at <<https://www.legislation.gov.au/Details/C2016A00043>>.

In March 2017, Part 7.3 of the Corporations Act was amended to allow the Minister's delegate to exempt a CS facility, or a class of CS facilities, from particular obligations in the Corporations Act. This change will allow the regulators to more appropriately tailor licence obligations to particular facilities or classes of facility, and to create a scalable level of regulation where appropriate.

On 1 July 2017, the Government's industry funding model for ASIC commenced. Under this model, ASIC continues to be funded from the Commonwealth's budget appropriation bill, with ASIC's regulatory costs recovered through levies paid by entities that ASIC regulates in each financial year. The second phase of the industry funding model, fees for service, was introduced on 1 July 2018. Under this phase, ASIC's costs for specific regulatory activities requested by an entity will be fully recovered from that entity.

1.3 Assessment

This self-assessment was conducted as at the end of June 2018. On the basis of the evidence presented in this report, ASIC and the Bank have concluded that they observe all relevant Responsibilities in their regulation and oversight of CS facilities.

While ASIC and the Bank have concluded that they meet the requirements of the Responsibilities, in the spirit of continuous improvement they have identified the following actions:

- ASIC and the Bank will publish updated self-assessments against the Responsibilities with respect to CS facilities at least every five years or if there are material changes to the facts on which the assessment is based.
- The Bank will look to develop a formal escalation and communications framework for incidents that affect FMIs, which takes into account cross-department, inter-agency and FMI stakeholders' needs.

The remainder of this report is structured as follows. Section 2 provides an overview of the clearing and settlement landscape in Australia, while Section 3 summarises the conclusions arising from ASIC's and the Bank's detailed self-assessment against each Responsibility. Finally, the detailed self-assessments of ASIC and the Bank against the Key considerations for each Responsibility is set out in Appendix A.

2. Overview of the Clearing and Settlement Landscape

2.1 Clearing and Settlement in Australia

CCPs and SSFs are key components of the financial system, delivering services critical to the smooth functioning of securities and derivatives markets.

- A CCP acts as the buyer to every seller, and the seller to every buyer in a financial market. It does so by interposing itself as the legal counterparty to all purchases and sales via a process known as novation. Following novation, the exposure of all parties – whether it be for the few days until an equity trade is settled, or for the several years of payment flows under a longer-term interest rate swap contract – is to the CCP, rather than the bilateral counterparty in the original trade.
- A SSF provides for the final settlement of securities transactions, executed either over the counter (OTC) or on an exchange, and the maintenance of records of transfer of title. Settlement typically involves transfer of the title to the security and transfer of cash. These functions are linked via appropriate delivery-versus-payment (DvP) arrangements incorporated within the settlement process.

The CCPs and SSFs currently licensed to operate in Australia are:

- ASX Clear Pty Limited (ASX Clear) provides CCP services for ASX-quoted cash equities, debt products and warrants traded on the ASX and Chi-X Australia Pty Ltd (Chi-X) markets, equity-related derivatives traded on the ASX market and Chi-X quoted warrants traded on Chi-X
- ASX Clear (Futures) Pty Limited (ASX Clear (Futures)) provides CCP services for futures and options on interest rate, equity, energy and commodity products traded on the ASX 24 market, as well as AUD- and NZD-denominated OTC interest rate derivatives (IRD)
- LCH Limited's (LCH Ltd's) SwapClear service provides CCP services for OTC IRD
- Chicago Mercantile Exchange Inc (CME) is licensed to provide CCP services for OTC IRD, and non-AUD IRD traded on the CME market or the Chicago Board of Trade market for which CME permits portfolio margining with OTC IRD. CME was granted an Australian CS facility licence in November 2014.
- ASX Settlement Pty Limited (ASX Settlement) provides SSF services for ASX-quoted cash equities, debt products and warrants traded on the ASX and Chi-X markets. ASX Settlement also provides SSF services for non-ASX listed securities quoted on IR Plus Securities Exchange Limited, the National Stock Exchange of Australia, and Sydney Stock Exchange Limited.
- Austraclear Pty Limited (Austraclear) provides SSF services for trades in debt securities, including government bonds and repurchase agreements.
- IMB Limited provides SSF services for trades in its own securities.

Since the last self-assessment in June 2014, LCH Ltd's licence has been varied four times, including to introduce inflation rate derivatives clearing and to cancel its provisional licence to clear derivatives for the Financial and Energy Exchange (FEX). In February 2016 the Australian Energy Market Operator Limited (AEMO) was granted an exemption from the requirement to hold a CS facility license (with conditions) for the purpose of facilitating payments between wholesale participants in the electricity market.

2.2 Regulatory Framework

Part 7.3 of the Corporations Act establishes a licensing regime for CS facilities in Australia. Licensing authority rests ultimately with the responsible Minister, with licence obligations specified in the Corporations Act – and in any supplementary licence conditions – administered by ASIC and compliance overseen jointly by ASIC and the Bank.

A failure to comply with licence obligations may be a trigger for the exercise of enforcement powers. The Minister or ASIC may take enforcement action independently or on the advice of the Bank. ASIC and the Bank have agreed a memorandum of understanding (MoU), which is intended to promote transparency, help prevent unnecessary duplication of effort, and minimise the regulatory burden on CS facilities.¹¹ Further to these objectives, ASIC and the Bank have agreed on the appropriate division of each of the PFMI between the two regulators, as published in Appendix 2 of *ASIC Regulatory Guide 211: Clearing and Settlement Facilities: Australian and Overseas Operators* (RG 211) (see also Table A1, Appendix A).¹² Some PFMI are relevant to both regulators and accordingly the authorities aim to coordinate their supervisory activities where possible.

The consistency of Australia's implementation of the PFMI has been verified through peer reviews conducted by CPMI and IOSCO. In 2015, CPMI and IOSCO conducted a peer review of the completeness and consistency of legal and regulatory measures to implement the PFMI in Australia.¹³ The review covered implementation measures for all FMI types. The report confirmed that Australia's implementation was complete and consistent in most respects. A small number of minor observations were nevertheless made. Also during 2015, CPMI and IOSCO assessed 28 jurisdictions' implementation of the responsibilities for all FMI types. The report assessed that the Australian authorities observed all five responsibilities across all FMI types.¹⁴

2.2.1 ASIC

Under the Corporations Act, ASIC is responsible for ensuring that CS facilities comply with all other obligations, including for the fair and effective provision of services. Together, the Corporations Act and the *Australian Securities and Investments Commission Act 2001* give ASIC a range of inspection, investigation and enforcement powers. These enable ASIC to carry out its regulatory functions, including for licensed CS facilities.

In exercising its regulatory functions and powers, ASIC considers whether a CS facility licensee is providing its services in a fair and effective manner such that it would meet the desired regulatory

11 The MoU between ASIC and the Bank is available at <<http://www.rba.gov.au/media-releases/2002/mr-02-08.html#mou>>.

12 ASIC's RG 211 is available at <<http://www.ASIC.gov.au/rg>>.

13 CPMI-IOSCO, *Implementation monitoring of PFMI: Level 2 Assessment Report for Australia*, December 2015. Available at <<http://www.bis.org/cpmi/publ/d140.pdf>>.

14 CPMI-IOSCO, *Implementation Monitoring of PFMI: Assessment and Review of Application of Responsibilities for Authorities*, November 2015. Available at <<http://www.bis.org/cpmi/publ/d139.htm>>.

outcomes in Part 7.3 of the Corporations Act. These desired regulatory outcomes are elaborated in RG 211.¹⁵ The outcomes cover four key regulatory areas: CS facility stability; the clearing and settlement process; facility and participant supervision; and risk management. In considering whether a CS facility is meeting these regulatory outcomes, ASIC considers a range of matters, including the reliability of operations, the transparency of the clearing and settlement process, participants' confidence in the facility, the licensee's supervision of participants and the facility's risk management.

2.2.2 The Bank's Financial Stability Standards

Under the *Reserve Bank Act 1959*, the PSB has the duty to ensure, within the limits of its powers, that the powers and functions of the Bank under Part 7.3 of the Corporations Act are exercised in a way that, in the PSB's opinion, will best contribute to the overall stability of the financial system. Also relevant to its responsibility for stability, the PSB has powers under the PSNA to provide additional legal certainty regarding settlement finality in approved payment, clearing and settlement systems and netting arrangements (see Section 2.2.3, below). The PSB comprises the Governor as chair, one other Bank appointee, an appointee from the Australian Prudential Regulation Authority (APRA), and up to five other members.

Under s827D of the Corporations Act, the Bank may determine standards 'for the purposes of ensuring that CS facility licensees conduct their affairs in a way that causes or promotes overall stability in the Australian financial system'. In accordance with this provision, the Bank has determined FSS, which apply to all licensed CS facilities.¹⁶ The Bank also has responsibility to ensure that licensees take any other necessary steps to reduce systemic risk. The Bank carries out continuous oversight of CS facilities against the FSS, periodically conducting formal assessments of licensees' compliance and reporting its findings to the Minister. These formal assessments are published on the Bank's website.¹⁷

Consistent with the PFMI, the FSS detail the risk management expectations of CS facilities to reduce systemic risk. They cover matters such as legal basis, governance, credit and liquidity management, settlement models, operational resilience, and management of business and investment risks. Reflecting standards introduced in the PFMI, the FSS include more specific requirements for financial resources held to cover any losses incurred by CCPs in the event of a participant default, and a new requirement to develop a comprehensive and effective plan for the recovery or orderly wind-down of a CCP or SSF in the event that it experienced a threat to its continued viability.

2.2.3 The Payments Systems and Netting Act

The Bank, under the governance of the PSB, has powers under the PSNA to remove two important legal risks in the Australian payments system:

- the risk that a court may apply the 'zero hour' rule and unwind any payments that have settled since midnight of the day preceding a bankruptcy order
- the risk that a court may unwind net payment obligations, restoring gross obligations.

¹⁵ ASIC's RG 211 is available at <<http://www.ASIC.gov.au/rg>>.

¹⁶ The exception is IMB Limited, which is currently exempt from the FSS owing to its small size.

¹⁷ The latest assessments by the Bank of each of the licensed CS facilities is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments.html>>.

Practically, this is achieved through the Bank having the power to ‘approve’ a real-time gross settlement (RTGS) system or a netting arrangement. Any RTGS system approved under the PSNA is protected from zero hour risk, while any netting arrangement approved under the PSNA is protected from both zero hour risk and the possible unwinding of netting. In assessing an application for approval, the PSNA sets out a number of tests including that, without such approval, the bankruptcy of a participant could cause systemic disruption.

To date, the Bank has approved three RTGS systems – RITS, Austraclear and the CHESST RTGS system.¹⁸ The Bank has also approved a number of multilateral netting arrangements, including the multilateral net settlement batch for cash equities operated by ASX Settlement.

Separately, the Minister has responsibility for approving market netting arrangements under the PSNA. Approval provides legal certainty in respect of a number of matters relevant to CCPs, particularly in the event that a participant becomes insolvent. These include arrangements for novation and netting, and dealing with securities posted as collateral by participants.

2.2.4 Proposed changes

Enhancements to the FMI Regulatory Regime

The Council of Financial Regulators (CFR) agencies are working to develop a legislative package that will enhance a number of aspects of the FMI regulatory regime.¹⁹ The primary focus of the package is a special resolution regime for FMIs, but a range of other enhancements are also proposed, including:

- ASIC and the Bank should be given an explicit power to impose location requirements in key areas, such as financial and risk management and operational arrangements
- the process by which ASIC can give directions to a CS facility should be streamlined and clarified so as to facilitate more rapid and certain actions
- the Bank should be given the power to issue directions to CS facilities in relation to matters affecting financial stability
- the range of sanctions available where licensees fail to comply with directions and licence conditions be expanded
- ASIC’s power to ensure that key persons involved in the management of the affairs of FMIs meet a ‘fit and proper’ standard should be strengthened.²⁰

Treasury released a consultation paper on this proposed legislative package in 2015, which stated that it would aim to ensure the timely and effective resolution of a failing FMI in a manner that maintains financial system stability while avoiding the use of public funds where possible. This approach was broadly affirmed by respondents and by the CFR response to consultation.²¹ Draft legislation to operationalise the regime is expected to be introduced to Parliament in 2019, following further consultation to inform policy refinements and draft legislation.

18 The CHESST RTGS system is currently not active.

19 The CFR agencies include the Department of Treasury, APRA, ASIC and the Bank. Further information is available at <<https://www.cfr.gov.au/about-cfr/index.html>>.

20 These enhancements are based on recommendations set out in a letter from the CFR to the then Deputy Prime Minister, see <https://static.treasury.gov.au/uploads/sites/1/2017/06/CoFR_Letter_to_Deputy_PM.pdf>, following a Review of Financial Market Infrastructure Regulation in 2011.

21 The response to consultation is available at <<https://www.cfr.gov.au/publications/cfr-publications/2015/resolution-regime-financial-market/pdf/report.pdf>>.

Operating in Australia

In 2015 the CFR consulted on a new approach to determining whether an overseas CS facility is operating in Australia that is designed to provide clarity and increased legal certainty to all stakeholders on the scope of the Australian CS facility licensing regime.²² The new approach involves a two component test of the materiality of the CS facility's connection to the Australian financial system:

1. *A CS facility's domestic connection.* An objective test of whether the operations of a CS facility are in any way connected to the Australian financial system, which would provide greater certainty to stakeholders as to when a CS facility is not within the scope of the Australian CS facility licensing regime. The factors that would constitute a domestic connection include: whether the location of a CS facility's operations is in Australia; the provision of CS services for financial products connected with Australia; the provision of CS services to one or more Australian participants; or having arrangements with the operator of a domestically licensed or exempted financial market or CS facility.
2. *Materiality of a CS facility's domestic connection.* Where the first component of the test established that an overseas CS facility had a domestic connection ASIC, in consultation with the Bank, would assess whether the facility's current or expected activities were material to the safe, efficient and effective functioning of the Australian financial system or the confident, fair and effective dealings in financial products by Australian investors.

The next step will be to develop legislative changes with government to implement this approach, which is expected to occur as part of the FMI resolution legislative package currently being developed.

ASIC will publish revised guidance on the CS facility licence regime following the legislative changes, this may also include how the regulators may more appropriately tailor licence obligations to particular facilities or classes of facility.

Competition in Clearing and Settlement of Cash Equities

In March 2016, the government endorsed the recommendations of a review of competition in clearing cash equities in Australia carried out by the CFR and the Australian Competition and Consumer Commission (ACCC). The review examined the benefits and costs associated with a range of policy approaches including maintaining an effective monopoly and opening the cash equity clearing market to competition. The review then examined how the benefits and costs of these approaches might be distributed between stakeholders. The review also considered whether any ancillary policy or legislative measures would be necessary to ensure the continued safe and effective functioning of clearing and settlement in the Australian cash equity market.

The conclusions from that review were set out in the report, *Review of Competition in Clearing Australian Cash Equities: Conclusions*.²³ The Government's endorsement of the recommendations from the review confirmed its policy stance of openness to competition, subject to controls being in place to support safe and effective competition, should it emerge.

The CFR consequently released two policy statements in October 2016:

22 See the CFR response to the consultation, available at <<https://www.cfr.gov.au/publications/cfr-publications/2015/ocsf-aus-licensing-regime/pdf/report.pdf>>.

23 The conclusions are available at <<https://treasury.gov.au/consultation/review-of-competition-in-clearing-australian-cash-equities/>>.

- *Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia* (the Regulatory Expectations), which set expectations regarding ASX's conduct in operating its cash equity clearing and settlement services until such time as a committed competitor emerges and addresses matters relating to governance, pricing and access.
- *Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia* (the Minimum Conditions (Clearing)), which aim to mitigate any adverse implications for financial system stability and the effective functioning of markets should competition emerge.

The review of competition in clearing was conducted under the assumption that the prevailing market structure in settlement – in which there is a sole provider of settlement services – would continue for the foreseeable future. However, recent technological developments have challenged that assumption. Accordingly, after further consultation on the possible implications of competition in settlement of cash equities in Australia the CFR and ACCC made minor revisions to the above policy statements and released a third policy statement, the *Minimum Conditions for Safe and Effective Competition in Cash Equity Settlement in Australia* (the Minimum Conditions (Settlement)).²⁴

The CFR and ACCC are working with the government to develop legislative changes to provide ASIC and the ACCC with the powers necessary to enforce these policy statements. The legislation will provide ASIC and the ACCC with a rule-making and an arbitration power, respectively. ASIC's rule-making power will be used to enforce the Regulatory Expectations, the Minimum Conditions (Clearing), and the Minimum Conditions (Settlement), while ACCC's arbitration power will address disputes about the terms of access to CS facilities, including price.

These powers are important controls which will support safe and effective competition in clearing and settlement, should it emerge. The Regulatory Expectations enforced by ASIC's rule-making and arbitration powers are intended to generate outcomes similar to those which might emerge in a competitive environment for CS facility services.

24 The Regulatory Expectations is available at <<http://www.cfr.gov.au/publications/cfr-publications/2016/regulatory-expectations-policy-statement/pdf/policy-statement.pdf>>. The Minimum Conditions (Clearing) is available at <<http://www.cfr.gov.au/publications/cfr-publications/2016/minimum-conditions-safe-effective-cash-equity/pdf/policy-statement.pdf>>; The Minimum Conditions (Settlement) is available at <<http://www.cfr.gov.au/publications/cfr-publications/2017/minimum-conditions-safe-effective-competition/pdf/policy-statement.pdf>>.

3. Summary of Ratings and Actions

The following table summarises the self-assessment of ASIC and the Bank against the Responsibilities in their regulation and oversight of CS facilities. In this self-assessment, ASIC and the Bank have applied the approach and rating system set out in the *Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology*, published by CPMI and IOSCO.²⁵ Under this rating system, the regulators' observance of a Responsibility may be rated as:

Observed – The authorities fulfil the Responsibility. Any identified gaps and shortcomings are not issues of concern and are minor, manageable and of a nature that the authorities can consider taking up in the normal conduct of their activities.

Broadly observed – The authorities are broadly fulfilling the Responsibility. The assessment has identified one or more issues of concern that authorities are encouraged to address and follow up in a defined time line.

Partly observed – The authorities partly fulfil the Responsibility. The assessment has identified one or more issues of concern that could seriously affect the reliable discharge of the Responsibility by the authorities if not addressed in a timely manner. The authorities to which these concerns apply should accord a high priority to their resolution.

Not observed – The authorities are not fulfilling the Responsibility. The assessment has identified one or more serious issues of concern in the current discharge of the Responsibility by the authorities that warrant immediate action. The authorities to which these concerns apply should accord the highest priority to their resolution.

Not applicable – This Responsibility does not pertain because of the particular institutional framework or other conditions faced by the authorities with respect to this responsibility.

ASIC and the Bank have concluded that they observe all relevant Responsibilities in their regulation and oversight of CS facilities. However, ASIC and the Bank will nevertheless work towards continual improvements to align their arrangements for oversight of FMIs with best practice. Table 2 below includes some specific actions. These actions are also discussed in the detailed assessments in Appendix A.

²⁵ The disclosure framework and assessment methodology are available at <<http://www.bis.org/publ/cpmi106.htm>>.

Table 2: Responsibilities Ratings and Actions

Responsibility	Rating	Action
A. Regulation, supervision and oversight of clearing and settlement facilities	Observed	
B. Regulatory, supervisory and oversight powers and resources	Observed	
C. Disclosure of policies with respect to clearing and settlement facilities	Observed	ASIC and the Bank will publish updated self-assessments against the Responsibilities with respect to CS facilities at least every five years or if there are changes to the facts on which the assessment is based.
D. Application of the Principles for Financial Market Infrastructures	Observed	
E. Cooperation with other authorities	Observed	The Bank will look to develop a formal escalation and communications framework for incidents that affect FMIs, which takes into account cross-department, inter-agency and FMI stakeholders' needs.

3.1 Regulation, Supervision and Oversight of Clearing and Settlement Facilities

Central counterparties and securities settlement facilities should be subject to appropriate and effective regulation, supervision and oversight by a central bank, market regulator, or other relevant authority.

Consistent with the presumption under the PFMI that all CCPs and SSFs are systemically important, the Corporations Act requires all CS facilities operating in Australia to be licensed and subject to regulation and oversight by ASIC and the Bank (unless granted a specific exemption by the responsible Minister). ASIC has clarified in regulatory guidance the criteria that it would apply in considering whether to advise the Minister that a CS facility be licensed or granted an exemption. These criteria have been applied in considering licence applications to date. Only one CS facility currently operating in Australia has been granted a conditional exemption from licensing requirements under the Corporations Act.²⁶ The CS facility operated by the AEMO was exempted from the licensing regime (with conditions) because its obligations under the Corporations Act were assessed to be sufficiently dealt with by the National Electricity Law and the National Electricity Rules. More broadly AEMO was operating neither a CCP nor an SSF, and AEMO was only incidentally and technically captured by the licensing provisions in Part 7.3 of the Corporations Act. As such, the Minister, on the advice of ASIC, determined that AEMO was more appropriately regulated under the National Electricity Law and the National Electricity Rules and granted an exemption to AEMO.

ASIC and the Bank have issued policy documents and standards that clarify the scope of requirements and the nature and intensity of their regulation and oversight of CS facility licensees. ASIC's RG 211 and the Bank's FSS establish the regulators' requirements and expectations of CS facility licensees under the Corporations Act. These documents implement the PFMI within ASIC's and the Bank's respective regulatory scope and provide transparency about the regulator's respective responsibilities to ensure that there are no regulatory gaps. Other guidance documents (listed below) consider matters such as the frequency of formal assessments and how the regulators ensure appropriate

²⁶ The exemption is available at <<https://asic.gov.au/regulatory-resources/markets/market-structure/licensed-and-exempt-clearing-and-settlement-facilities/exempt-clearing-and-settlement-facilities-operating-in-australia/>>.

influence over cross-border CS facilities operating in Australia, and are available on the Bank's website:

- the *Reserve Bank's Approach to Assessing Clearing and Settlement Facility Licensees*²⁷
- CFR guidance on *Ensuring Appropriate Influence for Regulators over Cross-border CS Facilities*²⁸
- the Bank's approach to *Assessing the Sufficient Equivalence of an Overseas Regulatory Regime*.²⁹

Since 2016, the Minister has delegated their role in CS facility licensing and approval of operating rules to authorised ASIC officers. This arrangement facilitates more timely decisions. In establishing this delegation, guidelines have been developed that include, amongst other things, procedures for 'calling up' a specific matter for the Minister's decision.³⁰ This includes, for example, matters of national significance (such as the introduction of a new clearing and settlement facility); matters which materially affect the structure or nature of the Australian financial system (such as the introduction of new ways to provide finance, like peer-to-peer lending); and matters where there is disagreement between ASIC and the Bank.

3.2 Regulatory, Supervisory, and Oversight Powers and Resources

Central banks, market regulators and other relevant authorities should have the powers and resources to carry out effectively their responsibilities in regulating, supervising and overseeing central counterparties and securities settlement facilities.

ASIC and the Bank have joint regulatory responsibility for CS facilities. ASIC assesses CS facility licensees' compliance with their obligation to do all things practicable to provide their services in a fair and effective way, while the Bank has principal responsibility for the regulation and oversight of matters relating to financial stability.

The Corporations Act gives ASIC and the Minister important regulatory and enforcement powers to help ensure that CS facility operators comply with their obligations under the Corporations Act. The functions, powers and business of ASIC are further provided for under the ASIC Act. Resourcing for the team with responsibility for the oversight of licensed CS facilities reflects its current level of regulatory activity; the team sits within the larger ASIC team that has responsibility for the oversight of market infrastructures. On a day-to-day basis, ASIC is funded out of the Commonwealth budget. ASIC levies industry each January for its operating costs in the previous financial year, and charges fees for particular services. Industry levies are paid by ASIC's regulated population, while fees-for-service are charged upon lodgement of certain documents and applications. Any levies, fees and/or charges ASIC collects are returned to Consolidated Revenue.

The Corporations Act gives the Bank the power to determine standards, the FSS, for the purpose of ensuring that CS facility licensees conduct their affairs in a way which promotes the overall stability of the Australian financial system. These standards may apply to all CS facility licensees or a specified class of facility. The Bank assesses CS facilities' compliance with the FSS and lack of compliance may

27 The approach is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/assess-csf-licensees.html>>.

28 The guidance is available at <<https://static.treasury.gov.au/uploads/sites/1/2017/09/cross-border-provision.pdf>>

29 Available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/overseas-equivalence.html>>.

30 Available at <https://static.treasury.gov.au/uploads/sites/1/2017/06/Guidelines_exercise_powers_2017.pdf>.

result in enforcement action. While enforcement powers rest with ASIC and the Minister, action may be taken on the Bank's advice. Execution of the Bank's regulatory and oversight responsibilities for CS facilities is carried out by a team within the Bank's Payments Policy Department, under the governance of the PSB. The Bank has sound policies in place to provide appropriate resources to this team.

3.3 Disclosure of Policies with respect to Clearing and Settlement Facilities

Central banks, market regulators and other relevant authorities should clearly define and disclose their regulatory, supervisory and oversight policies with respect to central counterparties and securities settlement facilities.

ASIC's and the Bank's roles, responsibilities and objectives related to CS facilities are clearly defined in relevant legislation, including the Corporations Act, the Reserve Bank Act and the PSNA.

The policies adopted by ASIC and the Bank in their regulation and oversight of CS facilities are disclosed in public documents. In particular:

- The joint statement on implementing the PFMI in Australia clarifies how ASIC and the Bank have implemented the PFMI within their respective regulatory frameworks.³¹
- ASIC's approach to the licensing and regulation of CS facilities is further disclosed in ASIC's RG 211, which provides guidance to CS facility licensees and prospective licensees on a range of regulatory matters.
- The Bank's policies with respect to the regulation and oversight of CS facilities are disclosed in the following documents, available on its website:
 - the Bank's FSS, determined by the PSB in accordance with the Bank's responsibilities under s827D of the Corporations Act³²
 - the Bank's approach to assessing CS facility licensees³³
 - Frequency and Scope of Regulatory Assessments of Licensed Clearing and Settlement Facilities.³⁴

Both ASIC and the Bank also make their formal assessment reports on CS facility licensees publicly available on their respective websites, with the Bank's oversight activities in respect of CS facilities further disclosed annually in the PSB's Annual Report.³⁵

31 A policy statement setting out how the Principles have been implemented in Australia is available at <<http://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/principles/implementation-of-principles.html>>.

32 The FSS are available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/>>.

33 Available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/assess-csf-licensees.html>>.

34 Available at <<https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/frequency-of-assessments.html>>.

35 See for example the 'Oversight, Supervision and Regulation of Financial Market Infrastructures' chapter in the 2017 PSB Annual Report, available at <<http://www.rba.gov.au/publications/annual-reports/psb/2017/oversight-supervision-and-regulation-of-financial-market-infrastructures.html>>.

ASIC and the Bank have also issued policy guidance on specific matters relevant to the licensing and oversight of cross-border CS facilities.³⁶

3.4 Application of the Principles for Financial Market Infrastructures

Central banks, market regulators and other relevant authorities should adopt the Principles and apply them consistently.

ASIC and the Bank, the Australian regulators responsible for oversight of FMIs, have committed in the Joint Statement to apply the PFMI in their oversight of all FMI types, including CS facilities.

Both regulators have also amended their oversight processes to promote consistent application of the PFMI across both CS facilities and FMI types.

- ASIC has several mechanisms to promote consistent application of the PFMI across both CS facilities and FMI types. These mechanisms allow ASIC to consider the broader impact of CS facility regulation on the fairness and efficiency of financial markets.
 - ASIC’s team with responsibility for the oversight of FMIs has regulatory responsibility for a range of FMIs that are covered by the PFMI. Members of the team work closely together to foster consistent interpretation and application of regulatory requirements across the different types of FMIs.
 - Within ASIC, the stakeholder teams with responsibility for market integrity, and market infrastructure and market participant oversight work cooperatively through formal and informal channels on matters of cross-team relevance; for instance, where a matter has implications for CS facilities and other market infrastructure licensees and/or market participants, or raises broader policy issues. Other ASIC teams, such as those responsible for policy coordination and economic and market research, may also provide input to ensure that fair, effective and reasonable regulatory outcomes are reached.
 - Significant or novel matters are considered by ASIC’s Regulatory Policy Group (RPG) and/or the Commission, either for a decision or to provide strategic direction.
 - ASIC has other forums that facilitate discussion about current issues or developments affecting financial markets, including issues that have cross-team relevance.
- Consistent application of the PFMI across and within FMI types overseen by the Bank is promoted by the location of oversight of all FMIs in a single section within the Bank’s Payments Policy Department. All CS facility oversight decisions are made by the Bank’s FMIRC, whose activities are subject to oversight by the PSB. Consistency is also supported by the Bank’s practice of publishing detailed assessments of each relevant FMI’s observance of the PFMI.

3.5 Cooperation with Other Authorities

Central banks, market regulators and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of central counterparties and securities settlement facilities.

³⁶ Available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/policies-and-guidance.html>>.

To support their joint regulatory activities, ASIC and the Bank have a range of cooperation arrangements in place. These are governed by a bilateral MoU that establishes a framework for information sharing, consultation and liaison. In addition to assisting each regulator in the performance of its responsibilities under the Corporations Act, the MoU aims to promote transparency, prevent duplication of effort, and minimise the regulatory burden on licensed facilities. In practice, ASIC and the Bank liaise frequently in the execution of their regulatory activities and often conduct joint meetings with regulated entities and other relevant stakeholders.

ASIC and the Bank also have extensive cooperation arrangements with other domestic regulatory authorities and international counterparts. These arrangements have similar objectives as those between ASIC and the Bank.

ASIC and the Bank both liaise regularly with other domestic financial regulators (APRA, Treasury, the ACCC), and the Australian Transaction Reports and Analysis Centre (AUSTRAC), both bilaterally and multilaterally.³⁷ Policy matters relevant to FMI are also often considered by the CFR, comprising the heads of regulatory authorities.

Internationally, ASIC and the Bank are members of international bodies involved in policy development relevant to the regulation and oversight of CCPs and SSFs. ASIC is a member of IOSCO, while the Bank is a member of CPMI and the Executives' Meeting of East Asia-Pacific Central Banks (EMEAP).

ASIC and the Bank have bilateral and multilateral MoUs with relevant overseas regulators to govern cooperation and information sharing relevant to the regulation and oversight of cross-border CS facilities:

- Both ASIC and the Bank have MoUs in place with the Bank of England.³⁸ These MoUs govern cooperation and information sharing arrangements for both UK and Australian CS facilities (e.g. LCH Ltd). The Bank also participates in a global cooperative oversight arrangement for LCH Ltd's SwapClear service.³⁹
- In June 2014, ASIC and the Bank established a joint MoU with the US Commodity and Futures Trading Commission (CFTC), which governs cooperation and information sharing arrangements for the oversight of both US and Australian CCPs.⁴⁰
- In July 2014, the Bank established a MoU with the Reserve Bank of New Zealand (RBNZ).⁴¹ The MoU establishes cooperation arrangements relevant to certain Australian licensed CS facilities' existing activities in New Zealand dollar-denominated products, as well as any future offerings in Australia or Australian dollar-denominated products from New Zealand-domiciled entities.

37 The MoU between ACCC and the Bank is available at <<https://www.rba.gov.au/media-releases/1998/jmr-98-acc-rba.html>>.

38 The MoU between the Reserve Bank of Australia (the Bank) and the Bank of England is available at <<https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/pdf/memorandum-2015-05-25.pdf>>. The original MoU between ASIC and UK's Financial Services Authority is available at <<https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/bank-pra-and-australian-securities-and-investments-commission.pdf>>. This MoU was amended in October 2012 to include the Bank of England.

39 Available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/pdf/multilateral-arrangement-for-regulatory.pdf>>.

40 Available at <<https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/pdf/memorandum-20140606.pdf>>.

41 Available at <<https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/pdf/memorandum-20140811.pdf>>.

- To facilitate the recognition of ASX Clear and ASX Clear (Futures) in Europe, ASIC and the Bank has established a joint MoU with European Securities and Markets Authority (ESMA) that sets out information sharing arrangements to support ESMA’s monitoring of such CCPs.⁴²
- To support ASX Clear (Futures)’s application for recognition in Switzerland, ASIC and the Bank have established a cooperative arrangement with the Swiss Financial Market Supervisory Authority (FINMA), which focuses on Swiss-domiciled participants of ASX Clear (Futures).

ASIC and the Bank will continue to work with other central banks and regulators of CS facilities to promote effective cooperation and mutual assistance in the regulation and oversight of cross-border CS facilities.

42 Available at <<https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/pdf/memorandum-2014-12-04.pdf>>.

Appendix A: Detailed Self-assessment

This Appendix sets out ASIC's and the Bank's detailed assessment of how well they observe the Responsibilities in their regulation and oversight of CS facilities, including evidence relevant to each Key Consideration. In their assessment, ASIC and the Bank have applied the rating system described in Section 3.

Responsibility A: Regulation, Supervision and Oversight of Clearing and Settlement Facilities

Central counterparties and securities settlement facilities should be subject to appropriate and effective regulation, supervision and oversight by a central bank, market regulator, or other relevant authority.

Rating: Observed

A.1 Authorities should clearly define and publicly disclose the criteria used to identify central counterparties and securities settlement facilities that should be subject to regulation, supervision and oversight.

The scope of regulation and oversight of CS facilities in Australia

To determine whether a CCP or SSF should be subject to ongoing regulation and oversight (including assessment against the PFMI), ASIC and the Bank have regard to their regulatory responsibilities under Part 7.3 of the Corporations Act, and aim to coordinate their supervisory activities where possible. Consistent with the presumption under the PFMI that all CCPs and SSFs are systemically important, the Corporations Act requires all CS facilities deemed to be operating in Australia to be licensed and subject to regulation and oversight by ASIC and the Bank, unless granted a specific exemption by the responsible Minister.

In RG 211, ASIC sets out both its interpretation of 'operating in Australia'.⁴³ RG 211 also sets out that ASIC would expect to advise the Minister to exempt a CS facility from licensing requirements only if:

- regulatory outcomes such as financial stability, effectiveness of clearing and settlement processes, facility and participant supervision, and risk management are not relevant to the facility
- the above regulatory outcomes can be achieved without regulation as a CS facility (e.g. if the facility is subject to alternative regulation that achieves the same regulatory outcomes)
- the costs of regulation to achieve the above regulatory outcomes significantly outweigh the benefits of those outcomes.⁴⁴

43 See RG 211, paragraphs RG211.60–RG.211.65.

44 See RG 211, paragraphs RG211.82–RG.211.89.

RG 211 also clarifies that ASIC will not advise the Minister to grant an exemption solely because an overseas CS facility is subject to regulation in the foreign country where its principal place of business is located, even if the regulatory regime in that country is sufficiently equivalent to that in Australia. In making an assessment as to whether the costs of regulating a CS facility are significantly outweighed by the benefits, ASIC will take into account a range of factors – all set out in RG 211 – including the nature and scale of the facility’s activities, the profile of its participants and the financial products for which it provides services, and any other regulatory requirements to which the facility is subject.

Regulation and oversight of licensed CS facilities

While all CS facility licensees are subject to regulation and oversight under the Corporations Act, ASIC and the Bank have issued policy documents and standards that clarify the scope of requirements and the nature and intensity of their regulation and oversight.

- ASIC’s RG 211 and the Bank’s FSS clarify the regulators’ requirements and their expectations of CS facility licensees under the Corporations Act. These documents implement the PFMI within ASIC’s and the Bank’s respective regulatory regimes. Alongside the FSS, the Bank has published guidance on its approach to overseeing and assessing both domestic and overseas CS facility licensees, drawing out matters such as information and notification requirements, the frequency of meetings and the formal assessment process. This guidance clarifies that the Bank carries out continuous oversight, with regular scheduled review points supplemented with ad hoc engagement on material developments.
- To balance the regulatory burden on very small SSFs, which are unlikely to affect the overall stability of the Australian financial system, those that settle financial obligations below a threshold value of \$200 million per annum are exempt from compliance with the Bank’s FSS for SSFs (SSF Standards; see also Responsibility D). However, such facilities remain subject to the regulation and oversight of ASIC and the Bank in respect of their broader obligations under the Corporations Act.
- The CFR has established a policy framework to provide ASIC and the Bank with appropriate regulatory influence over CS facilities with cross-border operations.⁴⁵ The framework, which is implemented primarily through the Bank’s FSS and ASIC’s RG 211, establishes a graduated approach to imposing additional requirements on cross-border CS facilities proportional to the materiality of domestic participation, their systemic importance to Australia and the strength of their connection to the Australian financial system or real economy.
 - Examples of such additional measure are requiring that any systemically important CCP use an Exchange Settlement Account (ESA) at the Bank to manage its Australian dollar-denominated obligations, and also that it maintain a portion of its liquid assets in Australian dollar-denominated liquid assets.
 - Additional requirements apply where a facility is not only systemically important, but also has a strong domestic connection. Such a facility is typically expected to be incorporated locally and hold a domestic licence, such that: ASIC and the Bank are the primary regulators; the activities of the facility – including the location and administration of collateral – are carried out under Australian law; and the facility would fall within the scope of the

45 CFR, *Ensuring Appropriate Influence for Australian Regulators over Cross-border Clearing and Settlement Facilities*, July 2012. Available at <<https://treasury.gov.au/publication/ensuring-appropriate-influence-for-australian-regulators-over-cs-facilities/>>.

proposed special resolution regime for FMIs in Australia.⁴⁶ Such a facility is also subject to certain offshore outsourcing restrictions.

The CFR has also issued additional guidance on how ASIC and the Bank would apply the regulatory influence framework to CCPs in various Australian financial markets.⁴⁷

- The Bank also takes into account the systemic importance and strength of domestic connection of a CS facility in determining how frequently to formally assess the compliance of the facility with the FSS and other Corporations Act obligations (where formal annual assessment by ASIC and the Bank is not otherwise prescribed by regulation).⁴⁸ The Bank has published on its website a statement on the frequency of its assessments of CS facilities and has identified certain CS facilities (all four facilities in the ASX Group and LCH Ltd SwapClear service) as warranting formal annual assessment. Other CS facilities (currently CME) may be assessed at a reduced level of detail and less frequently at the Bank's discretion.
- ASIC works with the Bank to conduct formal assessments of CS facilities. ASIC uses risk-based and thematic approaches to determine the appropriate frequency and approach for assessments of these facilities. In its assessments, ASIC considers how effectively a CS facility licensee has complied with its obligations under s 821A(c) of the Corporations Act, having regard to the regulatory outcomes discussed in Section 2.2 above (as set out in RG 211). ASIC may also consider a CS facility's compliance with other obligations that fall within its remit. In conducting its assessments, ASIC has regard to relevant international standards and recommendations. As noted in the context of Responsibility D, the international standards to which ASIC has regard include the relevant PFMI and *CPMI-IOSCO's Guidance on cyber resilience for FMIs*. ASIC's March 2016 Cyber resilience assessment report on ASX Group and Chi-X is an example of ASIC's risk based and thematic approach.

In determining the systemic importance and degree of domestic connection of a CCP or SSF, ASIC and the Bank take into account a number of factors. Relevant factors in assessing a CS facility's systemic importance in Australia would ordinarily include:

- the size of the facility in Australia (e.g. the absolute number and value of transactions processed by the facility in Australian dollar-denominated products, or its market share; or, for CCPs, the total amount of initial margin held in respect of Australian dollar-denominated products)
- the availability of substitutes for the facility's services in Australia
- the nature and complexity of the products cleared or settled by the facility
- the degree of interconnectedness with other parts of the Australian financial system.

46 By contrast, a facility operating under an overseas licence would be primarily overseen by the appropriate regulator in its home jurisdiction. In order for a CS facility to be granted an overseas licence, the Minister must be satisfied that the facility is subject to sufficiently equivalent regulation in its home jurisdiction and must take into account whether adequate arrangements exist for cooperation between ASIC, the Bank and relevant authorities in the facility's home jurisdiction. RG 211 includes guidance on how ASIC assesses the sufficient equivalence of an overseas regulatory regime and the adequacy of cooperation arrangements. The Bank has also published guidance on 'Assessing the Sufficient Equivalence of an Overseas Regulatory Regime', available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/overseas-equivalence.html>>.

47 Application of the Regulatory Influence Framework for Cross-border Central Counterparties, available at <<https://www.cfr.gov.au/publications/cfr-publications/2014/pdf/app-reg-influence-framework-cross-border-central-counterparties.pdf>>.

48 No CS facilities are currently prescribed by regulation for annual assessment.

Relevant factors in assessing the strength of a CS facility's domestic connection would ordinarily include:

- whether the CS facility offers services in a domestic or international market
- the mix of domestic and international participants in the facility
- the potential for market disruption to affect the real economy
- whether the market serviced by the facility is retail or wholesale
- whether the facility clears or settles a domestic securities market
- links that the facility has with other FMIs.

Each CS facility is assessed against these factors, and any other criteria that may be deemed appropriate on a case-by-case basis.

A.2 Central counterparties and securities settlement facilities that have been identified using these criteria should be regulated, supervised and overseen by a central bank, market regulator, or other relevant authority.

Licensed CS facilities

Taking into account the scope of licensing requirements under the Corporations Act and the criteria for exemption set out in RG 211, the following CS facilities are licensed and subject to regulation and oversight by ASIC and the Bank: ASX Clear, ASX Clear (Futures), Austraclear, ASX Settlement, LCH Ltd and CME.

Applying the criteria described under Key Consideration A.1, only one CS facility currently operating in Australia has been granted an exemption from the licensing requirements under the Corporations Act.

Except for LCH Ltd and CME, each of the CS facilities listed above is licensed as a domestic facility. Apart from IMB Limited, which is exempt from the SSF Standards on the basis that its annual settlement of financial obligations falls below the \$200 million value threshold, each CS facility is subject to the Bank's FSS.

ASIC and the Bank regard the four CS facilities in the ASX Group to be both systemically important and strongly domestically connected. In accordance with ASIC's and the Bank's policy on the frequency of assessments, the regulators perform formal annual assessments of how well each complies with its obligations under the Corporations Act. In addition, ASIC and the Bank jointly performed an assessment of the ASX Group CS facilities directly against the PFMI, which was published in September 2014.⁴⁹

The Bank has also identified LCH Ltd's SwapClear service as systemically important in Australia. The Bank has completed formal assessments of this service against the FSS on an annual basis, with the most recent assessment published in December 2017.

49 The joint assessment of the ASX CS facilities against the Principles is available at <<http://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/principles/assessment-against-principles/asx/2014/>>.

The Bank has also completed annual assessments for CME against the Bank's regulatory priorities since the CS facility license was granted in September 2014.⁵⁰

The scope of the regulators' respective responsibilities

ASIC and the Bank work closely together in regulating CS facilities and advising the Minister on applications for CS facility licences and changes to operating rules (which are submitted to ASIC in the first instance). ASIC and the Bank are responsible for assessing the extent to which CS facility licensees comply with their licence obligations under Part 7.3 of the Corporations Act. The Minister has enforcement powers in both areas, and ASIC also has ancillary enforcement powers. These include powers to take enforcement action on the advice of the Bank.

Since 2016, the Minister has delegated their role in CS facility licensing and approval of operating rules to authorised ASIC officers. The delegation arrangements are designed to facilitate more timely regulatory approvals. They do not otherwise change the way ASIC engages with stakeholders or the matters ASIC considers in preparing its advice to the Minister (or their delegate).

Under this arrangement, in making decisions the ASIC delegate must have regard to:

- the matters the Minister is required to consider under Chapter 7 of the Corporations Act 2001
- the guidelines issued by the Minister for delegates
- advice provided by ASIC and, where relevant, the Bank (e.g. in relation to clearing and settlement facility matters)
- feedback from any industry consultation undertaken on specific matters.

The guidelines include procedures for 'calling up' a specific matter for the Minister's decision. This includes, for example, matters of national significance (for example, the introduction of a new CS facility), and matters which materially affect the structure or nature of the Australian financial system (for example, the introduction of innovative ways to provide finance such as peer-to-peer lending); and matters where there is disagreement between ASIC and the Bank.

Apart from the above delegation, the regulators' separate, but complementary, regulatory responsibilities are defined in Part 7.3 of the Corporations Act.

- The Bank is responsible for determining the FSS for the purposes of ensuring that CS facility licensees conduct their affairs in a way that causes or promotes overall stability in the Australian financial system, and for assessing how well a licensee is complying with its obligation under the Corporations Act, to the extent that it is reasonably practicable to do so, comply with these standards and do all other things necessary to reduce systemic risk.
- ASIC is responsible for assessing the extent to which CS facility licensees comply with all other obligations of a CS facility licensee arising under the Corporations Act, including notably the obligation, to the extent that it is reasonably practicable to do so, do all things necessary to ensure that the facility's services are provided in a fair and effective way.

The allocation of responsibilities between ASIC and the Bank may be illustrated with reference to the regulators' responsibility for implementing and overseeing the PFMI. This allocation is set out in RG 211 and summarised in Table A1. Arrangements for cooperation between ASIC and the Bank in discharging their oversight responsibilities are discussed further under Responsibility E.

⁵⁰ These assessments focus on the Bank's regulatory priorities; they do not cover all FSS.

Table A1: Allocation of Responsibilities for PFMI

Principle	Responsible Authority
1. Legal basis	ASIC and the Bank
2. Governance	
11. Central securities depositories	
13. Participant default rules and procedures	
14. Segregation and portability	
15. General business risk	
16. Custody and investment risks	
17. Operational risk	
18. Access and participation requirements	
19. Tiered participation arrangements	
20. Financial market infrastructure links	
23. Disclosure of rules, key procedures and market data	
4. Credit risk	
5. Collateral	
6. Margin	
7. Liquidity risk	
8. Settlement finality	
9. Money settlements	
10. Physical deliveries	
12. Exchange-of-value settlement systems	
21. Efficiency and effectiveness	ASIC
22. Communication procedures and standards	
24. Disclosure of market data by trade repositories	Not applicable to CCPs or SSFs

Responsibility B: Regulatory, Supervisory, and Oversight Powers and Resources

Central banks, market regulators and other relevant authorities should have the powers and resources to carry out effectively their responsibilities in regulating, supervising and overseeing central counterparties and securities settlement facilities.

Rating: Observed

B.1 Authorities should have powers or other authority consistent with their relevant responsibilities, including the ability to obtain timely information and to induce change or enforce corrective action.

As set out in Section 2.2, ASIC is responsible for the regulation and oversight of CS facilities in relation to the fair and effective provision of services, while the Bank has principal responsibility for the regulation and oversight of matters relating to financial stability. The Corporations Act gives the Bank the power to determine the FSS for the purpose of ensuring that CS facility licensees conduct their affairs in a way which promotes the overall stability of the Australian financial system. The FSS may apply to all CS facility licensees or a specified class of facility.

A licensed CS facility is obliged under s 821C for the Corporations Act to give such assistance to ASIC or the Bank as reasonably requested in relation to the performance of the regulators' respective functions. This assistance may include access to books and records or provision of other relevant

information. In addition, the ASIC Act gives ASIC inspection and investigation powers, including the power to inspect books, require the production of documents, and summon individuals to appear before ASIC and answer questions. As noted under Responsibility A.1, ASIC and the Bank may periodically formally assess a CS facility's compliance with its obligations under the Corporations Act. Both ASIC and the Bank must provide copies of any assessment report to the Minister and to each other. It is also both ASIC's and the Bank's policy to publish their formal assessment reports.

ASIC

The Corporations Act gives ASIC and the Minister important regulatory and enforcement powers to help ensure that CS facility operators comply with their obligations under the Corporations Act. If the Minister considers that a CS facility licensee is not complying with its obligations as a CS facility licensee, the Minister may give the licensee a written direction to do specified things to promote compliance with those obligations. In practice, ASIC may advise the Minister on the exercise of these powers. ASIC is empowered under s 823D of the Corporations Act to give a direction in writing, if it considers:

- that it is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products
- that a CS facility licensee has not done all things reasonably practicable to ensure the facility's services are provided in a fair and effective way.

This may include a direction that the CS facility licensee not provide services in relation to transactions relating to a specified financial product or class of financial products, or any other direction concerning dealings with transactions that relate to a regulated financial product.

If ASIC considers a CS facility licensee has not done all things reasonably practicable to reduce systemic risk in the provision of its services, ASIC may give the licensee a written direction to take specified measures to comply with the FSS or any other action that ASIC considers will reduce systemic risk in the provision of the facility's services. The Bank may request that ASIC issue such a direction, and in practice the Bank and ASIC would consult with each other on such matters. A direction issued by the Minister or ASIC is enforceable by court order.

The Bank

A licensed CS facility is required under the Corporations Act to comply, to the extent that it is reasonably practicable to do so, with any relevant FSS. The Bank may assess a CS facility's compliance with the FSS and failure to comply may result in enforcement action. Enforcement powers rest with the Minister and ASIC, but action may be taken on the Bank's advice.

The Bank may also publish its assessments, and has in practice done so since 2007. This is, of itself, a powerful inducement to compliance. The Bank has established, and disclosed, policies on its oversight process and the frequency of its formal assessments (see Responsibility C). The continuous process of information gathering, assessment and publication is also an incentive to adopt best practice risk management that may exceed minimums specified in international guidance. In practice, both the CS facility licensee and the regulator benefit from this engagement in deepening understanding of market-wide risk and mechanisms to mitigate such risk.

B.2 Authorities should have sufficient resources to fulfil their regulatory, supervisory and oversight responsibilities.

ASIC

ASIC's MI team is responsible for supervising and assessing the operations of licensed CS facilities financial markets, trade repositories, credit rating agencies, and benchmark administrators, as well as considering new license applications. The MI team sits within the broader Markets Integrity Group (MIG), which also includes Market Supervision and Market Enforcement. The MI team currently comprises 32 people directly involved in markets infrastructure. The CS Facilities team, sitting within the MI team, has at least five members, including a senior manager and at least one technical senior specialist. CS Facilities team members have a broad range of experience and knowledge, collectively covering the operation of CS facilities and clearing participants, the regulatory and legal framework, and the global clearing and settlement landscape. As discussed under Responsibility D.3, the CS Facilities team works closely with MI and other ASIC colleagues – particularly those in its Technology team – to ensure that its analysis of clearing and settlement matters addresses all relevant issues, including the perspectives of the users of the facilities, and that resources and staff expertise are deployed efficiently. The MI team sits within the broader MIG, which also includes Market Supervision and Market Enforcement. The MI team's structure means that smaller, cross-team working groups can be put together at short notice to address market, CS, or trade repository issues as they emerge, if necessary.

ASIC's Recruitment and Selection policy establishes a framework to ensure that recruitment processes attract diverse applicants with skills and experience that best match the requirements of the business and that any decision relating to engagement or promotion is based on merit. ASIC further ensures the adequacy of its human resources through the provision of training, including training targeted at particular technical skills and knowledge, and management development.

ASIC's operations are funded through the Australian Commonwealth budget (s 8A of the ASIC Act). This funding is provided from the Commonwealth's Consolidated Revenue under the Appropriations Bill for each financial year. Decisions made about appropriation to agencies and departments are governed by the government's Outcomes and Outputs Framework for Budgeting and Reporting policy. In the 2017/18 financial year, one of ASIC's three key priorities was to ensure fair and efficient financial markets.⁵¹ Regulation of CS facilities falls within this priority.

The Bank

A team of 21 people in Payments Policy Department is responsible for FMI oversight and policy development, with 17 staff involved in regulation and oversight of CS facilities.⁵² The Bank has also established arrangements to seek advice on specific issues from technical experts (e.g. legal, IT) in other areas of the Bank. The Bank has formal human resources policies in place designed to help ensure that all employees have the appropriate skills and experience to perform their duties. The department has also developed its own FMI training program, with sessions on a range of relevant topics. Employees responsible for the oversight of CS facilities typically also have experience in

51 ASIC's vision is to allow markets to fund the economy and, in turn, economic growth. In doing so, ASIC contributes to the financial wellbeing of all Australians. ASIC does this by: promoting investor and consumer trust and confidence, ensuring fair and efficient markets and providing efficient registration services. <<https://download.asic.gov.au/media/4439405/corporate-plan-2017-published-31-august-2017-1.pdf>>.

52 The Bank is also in the process of recruiting two additional people into its FMI resolution team.

oversight and policy development related to other FMI types. Senior management in Payments Policy Department also have extensive expertise related to payment systems.

The Bank self-funds its activities and manages its resources through an internal budgeting process. The main legal protections that apply to Bank staff are set out in the Reserve Bank Act. Notably, employees cannot be required, unless directed in terms of specific legislation, to disclose to a court any protected information or produce a protected document.

Responsibility C: Disclosure of Policies with respect to Clearing and Settlement Facilities

Central banks, market regulators and other relevant authorities should clearly define and disclose their regulatory, supervisory and oversight policies with respect to central counterparties and securities settlement facilities.

Rating: Observed

C.1 Authorities should clearly define their policies with respect to central counterparties and securities settlement facilities, which include the authorities' objectives, roles and regulations.

The high-level objectives of ASIC and the Bank in their regulation and oversight of CS facilities are defined in legislation, with associated standards and policy documents further defining the regulators' roles and regulations.

- Part 7.3 of the Corporations Act defines licensed CS facilities obligations and ASIC's and the Bank's regulatory responsibilities for ensuring that licensees comply with these obligations.
 - s823CA(1) of the Corporations Act gives the Bank the responsibility to assess CS facility licensees' compliance with obligations under the Act related to the reduction of systemic risk. In particular, s 827D of the Corporations Act grants the Bank the power to 'determine standards for the purposes of ensuring that CS facility licensees conduct their affairs in a way that causes or promotes overall stability in the Australian financial system'.
 - s823C(1) of the Corporations Act defines the scope of ASIC's responsibility, giving ASIC the responsibility to assess CS facility licensees' compliance with all of its obligations under the Corporations Act other than those related to the reduction of systemic risk. This includes licensees' obligation to 'do all things necessary to ensure that the facility's services are provided in a fair and effective way'.
- The Bank's responsibilities for payment, clearing and settlement systems are clearly set out in the Reserve Bank Act. In particular, it is the duty of the PSB to ensure, within the limits of its powers, that:
 - (a) the Bank's payments system policy is directed to the greatest advantage of the people of Australia; and
 - (b) the powers of the Bank under the *Payment Systems (Regulation) Act 1998* and the PSNA are exercised in a way that, in the PSB's opinion, will best contribute to:
 - (i) controlling risk in the financial system; and
 - (ii) promoting the efficiency of the payments system; and

- (iii) promoting competition in the market for payment services, consistent with the overall stability of the financial system; and
- (c) the powers and functions of the Bank under Part 7.3 of the Corporations Act are exercised in a way that, in the PSB's opinion, will best contribute to the overall stability of the financial system.
- The PSNA promotes stability by giving legal certainty to key aspects of FMI's arrangements. The PSNA gives the Bank responsibility for the approval of RTGS systems and netting arrangements. Licensed CS facilities can also be protected as a netting market through regulation or approval by the Minister.

In the spirit of continuous improvement, ASIC and the Bank will publish updated self-assessments against the Responsibilities with respect to CS facilities or at least every five years or if there are material changes to the facts on which the assessment is based.

C.2 Authorities should publicly disclose their relevant policies with respect to the regulation, supervision and oversight of central counterparties and securities settlement facilities.

Relevant policies adopted by ASIC and the Bank in their regulation and oversight of CS facilities and their regulatory approaches are disclosed in various public documents.

The Joint Statement on implementing the PFMI in Australia clarifies how ASIC and the Bank have implemented the PFMI within their respective regulatory frameworks.

ASIC's approach to the licensing and regulation of CS facilities is outlined in ASIC's RG 211. This provides guidance to CS facility licensees and prospective licensees on a range of regulatory matters, including:

- the purpose of regulating CS facilities
- the roles of ASIC, the Bank and the Minister in the regulation of CS facilities⁵³
- the circumstances in which a CS facility licence is required and the licence application process
- CS facility licensees' ongoing obligations under the Corporations Act and the regulators' assessments of compliance.

The Bank's policies with respect to the regulation and oversight of CS facilities are disclosed in the following documents, available on its website:

- the Bank's FSS, determined by the PSB in accordance with the Bank's responsibilities under s 827D of the Corporations Act
- the Reserve Bank's Approach to Assessing CS Facility Licensees.

Both ASIC and the Bank also make their formal assessment reports on CS facility licensees publicly available on their respective websites. These reports clarify the scope of the regulators' interests and the matters they take into consideration in reaching a judgement on licensees' compliance with their obligations under the Corporations Act. The Bank's oversight activities in respect of CS facilities are also disclosed annually in the PSB's Annual Report.

⁵³ RG 211 also clarifies the role of The Treasury in advising and briefing the Minister on matters related to the regulation and oversight of CS facilities and arranging for licences and exemptions to be drafted by the Australian Government Solicitor.

Further policy guidance on specific matters relevant to the licensing and oversight of cross-border CS facilities is provided in:

- CFR guidance on *Ensuring Appropriate Influence for Australian Regulators over Cross-border CS Facilities*
- the Bank's approach to *Assessing the Sufficient Equivalence of an Overseas Regulatory Regime*.

Responsibility D: Application of the Principles for Financial Market Infrastructures

Central banks, market regulators and other relevant authorities should adopt the Principles and apply them consistently.

Rating: Observed

D.1 Authorities should adopt the CPMI-IOSCO Principles for Financial Market Infrastructures.

ASIC and the Bank, the Australian regulators responsible for oversight of FMIs, have committed in the Joint Statement to apply the PFMI in their oversight of all FMI types, including CS facilities. ASIC and the Bank have publicly articulated in the Joint Statement how the PFMI apply to FMIs in Australia, including CS facilities. Since the publication of the PFMI, steps have been taken to amend relevant requirements and standards, in particular ASIC's revision of RG 211 and the Bank's determination of new FSS.

The consistency of the Australian authorities' implementation of the Principles and the Responsibilities within the PFMI across all FMI types has been verified through peer reviews conducted in 2015 by CPMI and IOSCO.⁵⁴

D.2 Authorities should ensure that these Principles are, at a minimum, applied to all systemically important payment systems, central securities depositories, securities settlement systems, CCPs and trade repositories.

In the Joint Statement, ASIC and the Bank describe the steps taken to implement the PFMI across FMI types. ASIC's and the Bank's approach to ensuring these PFMI are applied to systemically important CS facilities is set out under Responsibility A.

Having aligned its FSS for CCPs and SSFs with the stability-related PFMI, the Bank publishes assessments of licensed CS facilities against these standards in accordance with its policy on the frequency of assessments (see Key Consideration A.1).

ASIC and the Bank have also undertaken to publish periodic joint assessments of systemically important domestic CS facilities directly against the PFMI. The first such assessment of the CS facilities in the ASX Group was published in September 2014.⁵⁵

⁵⁴ CPMI-IOSCO (2015), *Implementation monitoring of PFMI: Level 2 assessment report for Australia*. Available at <<https://www.bis.org/cpmi/publ/d140.htm>>.

⁵⁵ Available at <<http://download.asic.gov.au/media/2014844/2014-assessment-of-asx-cs-facilities-published-12-september-2014.pdf>>.

D.3 Authorities should apply these Principles consistently within and across jurisdictions, including across borders and to each type of FMI covered by the Principles.

ASIC and the Bank have taken steps to promote consistent application of the PFMI across and within FMI types, both domestically and across jurisdictions.

ASIC's approach

ASIC has mechanisms to promote consistent application of the PFMI across both CS facilities and FMI types. These mechanisms allow ASIC to consider the broader impact of CS facility regulation on the fairness and efficiency of financial markets.

- ASIC's MI team has regulatory responsibility for a range of FMIs that are covered by the PFMI. Members of the team work closely together to ensure that regulatory requirements are consistently interpreted and applied to different types of FMIs. The MI team has its own set of strategic priorities and strategic risks, which are related to ASIC's broader priorities and risks. These common goals and strategies help ensure consistent focus across ASIC teams.
- ASIC's CS Facilities team works closely with other ASIC teams – particularly those with responsibility for oversight of financial markets, market participants and market integrity – through formal and informal channels on matters of cross-team relevance; for example, where a matter has implications for CS facilities and market licensees and/or market participants, or raises broader policy issues. This ensures that regulatory decisions in relation to CS facilities are equitable and reasonable from a 'whole-of-ASIC' perspective and in the context of ASIC's mandate to support fair and efficient financial markets. MI also draws on the advice and input of other ASIC teams, such as those with responsibility for policy coordination and economic and market research, to ensure that regulatory outcomes are fair, effective and reasonable.
- Significant or novel matters are considered by ASIC's RPG and/or Commission. The RPG, chaired by an ASIC Commissioner, meets regularly. Working under the delegated power of the Commission under s 102 of the ASIC Act, the RPG makes decisions on the need to develop new policy and the content of new policy (e.g. as set out in consultation papers, regulatory guides and decisions to issue class orders), novel applications for relief (e.g. applications that cannot be decided by applying existing policy). ASIC has various other forums that facilitate discussion about current issues or developments affecting financial markets, including issues that have cross-team relevance.

The Bank and ASIC engage closely on matters of common regulatory interest. In particular, ASIC and the Bank work closely to minimise the burdens to CS facilities of duplicative regulatory effort in areas of shared regulatory responsibility.

The Bank's approach

The Bank applies a number of mechanisms to promote consistent application of the PFMI:

- *Coordination.* All Bank staff involved in overseeing the various FMI types are part of a single section within Payments Policy Department. This team holds regular meetings at which issues affecting each type of FMI are discussed. There is also extensive dialogue between ASIC and Bank staff involved in oversight of the various FMIs in Australia.

The management team has various mechanisms to promote appropriate coordination of oversight views and decisions, including FMI Section meetings within Payments Policy Department. These meetings, which involve all members of the Bank's oversight staff, may be

used to discuss matters under consideration for each overseen FMI, and decide which matters need to be escalated to either the Assistant Governor (Financial System), FMIRC (see below) or the PSB.

- *Governance.* The PSB has responsibility for the policy framework within which the Bank carries out its oversight of FMIs. To enhance the routine day-to-day governance of FMI oversight within this policy framework, the Bank's Executive Committee has established an internal FMIRC. A core part of the FMIRC's role is to provide governance for oversight activities, overseeing whether these are carried out in a manner that is consistent with the policies established by the PSB. The FMIRC is chaired by the Assistant Governor (Financial System) and includes a further five senior members of Bank staff with relevant experience. The Terms of Reference of the FMIRC were revised in February 2017 and its objectives and membership are described in further detail under Key Consideration D.3. Its principal activities are to:
 - review, and where appropriate approve, the staff's routine oversight and supervisory decisions, including the interpretation of standards and consideration of FMIs' proposals for material changes to products/services, rules, policies and processes
 - review FMIs' progress in meeting the Bank's recommendations and identified regulatory priorities for each FMI
 - in the case of FMIs that are not operated by the Bank, consider and approve for publication assessments of such FMIs against the FSSs/PFMIs and proposed recommendations/regulatory priorities; as part of this, and prior to any reports being finalised and/or published, the Committee should consider if any assessment matters should be escalated to the PSB for its consideration, and should address any directions from the PSB in relation to the assessment
 - in the case of RITS and any other FMIs that are operated by the Bank, consider and approve draft assessments of such FMIs against the FSSs/PFMIs and proposed recommendations/regulatory priorities for consideration by the PSB; any decision to approve for publication assessments of Bank-operated FMIs would be for the PSB
 - consider the resourcing of the Bank's oversight and supervisory activities and in particular the need for additional input from specialists elsewhere in the Bank
 - decide on any matters where authority has been delegated by the PSB
 - advise on any other matters to be escalated to the PSB.

The FMIRC meets at least four times a year, approximately six weeks before the PSB meetings, and report annually to the Bank's Executive Committee on its activities. As needed, the FMIRC is informed or can provide approval through written procedures. Senior staff of the Bank's Payments Policy Department also provide direct reports to the PSB. The Bank monitors the effectiveness of FMIRC on an ongoing basis, with the activities of FMIRC reported annually to the Bank's Executive Committee and the PSB.

- *Disclosure.* The Bank also promotes consistent application of the PFMI by publishing assessments of each FMI's compliance with the relevant regulatory requirements. These assessments also include recommendations on appropriate remedial action and the expected time frame for implementing any such action.

To further enhance the consistency of application of the PFMI across jurisdictions, the Bank participates in regular formal and informal dialogue with overseas regulators of FMIs, both bilaterally and through international forums such as the CPMI and the CPMI-IOSCO Steering Group. The Bank is represented on the CPMI-IOSCO Policy Standing Group, which develops guidance that clarifies expectations within the PFMI; and the CPMI-IOSCO Implementation Monitoring Standing Group, which monitors implementation of the PFMI.

Responsibility E: Cooperation with Other Authorities

Central banks, market regulators and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of central counterparties and securities settlement facilities.

Rating: Observed

E.1 Relevant authorities should cooperate with each other, both domestically and internationally, to foster efficient and effective communication and consultation in order to support each other in fulfilling their respective mandates with respect to central counterparties and securities settlement facilities. Such cooperation needs to be effective in normal circumstances and should be adequately flexible to facilitate effective communication, consultation, or coordination, as appropriate, during periods of market stress, crisis situations, and the potential recovery, wind down, or resolution of a central counterparty or securities settlement facility.

ASIC and the Bank have formal and informal cooperative arrangements in place to support their roles in promoting the safety, stability and efficiency of CCPs and SSFs, both domestically and internationally. The Bank will look to develop a formal escalation and communications framework for incidents that affect FMIs, which takes into account cross-department, inter-agency and FMI stakeholders' needs.

Domestic cooperation

ASIC and the Bank have signed an MoU that establishes the framework for cooperation, covering information sharing, consultation and liaison. In addition to assisting each agency in the performance of its regulatory responsibilities under the Corporations Act, the MoU aims to promote transparency, prevent duplication of effort and minimise the regulatory burden on licensed facilities. In practice, ASIC and the Bank liaise frequently in the execution of their regulatory activities and often conduct joint meetings with regulated entities and other stakeholders.

ASIC and the Bank liaise regularly with other domestic financial regulators – APRA, Treasury and the ACCC – both bilaterally and multilaterally. ASIC and the Bank are also members of the CFR, which is a non-statutory coordinating body for Australia's main financial regulators. The CFR is chaired by the Bank and comprises the agency head and one other representative of each of the Bank, APRA, ASIC and Treasury. CFR members share information, discuss regulatory issues and, if the need arises, coordinate responses to potential threats to financial stability. CFR members have signed a joint MoU that sets out the objectives, principles and processes for dealing with stresses in the Australian financial system.⁵⁶

The CFR could be used to facilitate communication and coordination if an FMI, such as a CCP or SSF, was in financial or operational distress. The CFR could, for instance, be a forum to discuss the

⁵⁶ The 'Memorandum of Understanding on Financial Distress Management' is available at <<http://www.cfr.gov.au/about-cfr/mou/index.html>>.

implications for that FMI's participants, financial markets and the public at large. Policy matters relevant to FMIs are also often considered by the CFR. To assist in policy development and coordination of policy implementation relevant to FMIs, the CFR established an FMI Steering Committee in 2012. This Committee, which typically meets at least once a quarter, involves senior executives and other senior specialists from each CFR agency.

International cooperation

Internationally, ASIC and the Bank are members of international bodies involved in policy development relevant to the regulation and oversight of CCPs and SSFs.

- *CPMI*. The Bank is a member of the CPMI, an international standard-setting body for payment, clearing and securities settlement systems. As a committee of the Bank for International Settlements, the CPMI also serves as a forum for central banks to exchange views and experiences on developments in their respective FMIs, as well as in cross-border and multicurrency settlement arrangements.
- *IOSCO*. ASIC is a member of IOSCO. IOSCO is an international standard-setting body which focuses, among other matters, on FMIs.
- *EMEAP Working Group on Payments and Market Infrastructures*. The Bank is a member of this central bank working group that monitors developments in domestic and cross-border payment, clearing and settlement systems among member countries of EMEAP.

As set out in Section 3.5, ASIC and the Bank also cooperate directly with relevant overseas regulators in the regulation and oversight of cross-border CS facilities.

ASIC and the Bank will continue to work with other central banks and regulators of CS facilities to promote effective cooperation and mutual assistance in the regulation and oversight of cross-border CS facilities.

E.2 If an authority has identified an actual or proposed operation of a cross-border or multicurrency central counterparty or securities settlement facility in its jurisdiction, the authority should, as soon as it is practicable, inform other relevant authorities that may have an interest in the central counterparty's or securities settlement facility's observance of the Principles.

Through their ongoing regulation and oversight of domestic CS facility licensees, ASIC and the Bank become aware of products or services provided that may be of interest to other authorities – for instance, the operation of multicurrency services, or the material provision of services to entities domiciled in other jurisdictions.

ASIC and the Bank have identified several services provided by domestic CS facility licensees that are relevant to other jurisdictions. Accordingly, appropriate cooperation and information sharing arrangements have been established with authorities in those jurisdictions:

- The Australian-based licensed CCP, ASX Clear (Futures), provides CCP services for New Zealand dollar-denominated interest rate and energy futures products. At present, activity and outstanding exposure in these products is small relative to the CCP's total activity and exposure – comprising around 2 per cent of initial margin held. While ASIC and the Bank would not consider this activity systemically important from an Australian perspective, the Bank and the RBNZ have nevertheless established cooperation and information sharing arrangements related to this aspect of ASX Clear (Futures) operations. As noted, the Bank and the RBNZ have established an MoU to govern these arrangements.

- ASX Clear (Futures) has been granted an exemption from the requirement to register as a Derivatives Clearing Organisation with the CFTC. This relief permits ASX Clear (Futures) to provide CCP services in OTC derivatives products for the Australian branches of US banks. The MoU with the CFTC governs cooperation and the exchange of information between Australian regulators and the CFTC in relation to the CFTC's interest in ASX Clear (Futures), as well as any other US or Australian CCPs that may be of joint interest in the future.
- ASX Clear and ASX Clear (Futures) have received recognition in the EU, related to their provision of services to entities established in the EU or subsidiaries of such entities. As noted, the Bank and ASIC have cooperation arrangements with ESMA that are governed by an MoU.
- Following Brexit, the UK has indicated that it will establish a recognition regime for foreign CCPs, such as ASX Clear (Futures) and ASX Clear, which provide services to the UK. The existing MoUs between the Bank of England and ASIC/the Bank, respectively, cover cooperation and information sharing for such CCPs.

Through their regular engagement with industry participants and other domestic authorities, ASIC and the Bank may also become aware of overseas-based CS facilities that are providing services in Australian dollar-denominated products, or services to Australian-based participants. In some circumstances, ASIC and the Bank may also be notified directly by overseas-based CS facilities (or their regulators) that Australian-based participants are, or have an interest in, using their services. Two overseas-based CCPs are deemed to be operating in Australia and have therefore been licensed in Australia and appropriate cooperation arrangements have been established with the relevant overseas authorities:

- As described under Responsibility A, the UK-based CCP, LCH Ltd, is licensed to provide CCP services – for OTC interest rate and inflation derivatives – to Australian participants. LCH Ltd is regulated and supervised by the Bank of England. As noted under Key Consideration E.1, ASIC and the Bank have cooperation arrangements in place with the Bank of England. The Bank is also represented on a cooperative oversight arrangement for LCH Ltd, coordinated by the Bank of England. This provides a forum for discussion of regulatory matters, including LCH Ltd's observance of the PFMI.
- Similarly, the US-based CCP, CME., is licensed to provide CCP services as described under Responsibility A. CME is regulated and supervised by the CFTC in the US. As noted under Key Consideration E.1, ASIC and the Bank have cooperation and information sharing arrangements in place with the CFTC, both under normal and stressed conditions.

Were the Bank or ASIC to become aware of any other cross-border or multicurrency CCP or SSF operating in Australia, they would duly inform the relevant domestic and international authorities that may have an interest in that facility.

E.3 Cooperation may take a variety of forms. The form, degree of formalisation and intensity of cooperation should promote the efficiency and effectiveness of the cooperation, and should be appropriate to the nature and scope of each authority's responsibility for the supervision or oversight of a central counterparty or securities settlement facility and commensurate with the central counterparty's or securities settlement facility's systemic importance in the cooperating authorities' various jurisdictions. Cooperative arrangements should be managed to ensure the efficiency and effectiveness of the cooperation with respect to the number of authorities participating in such arrangements.

As described under Key Consideration E.1, ASIC and the Bank cooperate, both formally and informally, with each other and with other domestic and international authorities. The form of the cooperative arrangements (also described under Key Consideration E.1 and E.2), both between domestic authorities and across jurisdictions, is in each case designed to be commensurate with the nature and scope of each authority's responsibility and the CS facility's importance in each relevant jurisdiction.

The CFR's policy on regulatory influence over cross-border CS facilities, released in July 2012, explicitly considers this matter, noting:

All CS facility licensees must comply with their obligations under the [Corporations] Act, even where a level of reliance is placed on an overseas facility's home regulator. Facilities should therefore provide for adequate channels to demonstrate to the Regulators their compliance with these requirements. The appropriate form of this demonstration may, again, depend on the type of facility and the nature of its activities. In the case of an overseas licensee, for the Regulators to conduct their respective annual assessments as required under Part 7.3 of the [Corporations] Act, there should be adequate information-sharing arrangements between the Regulators and the licensee's home regulator. These arrangements should clarify procedures for sharing and requesting relevant information. (page 8)

To achieve adequate influence in the supervision of a systemically important overseas CS facility licensee, the Regulators would seek membership of any multilateral cooperative oversight group. The Regulators would also seek participation in any crisis management groups or other such arrangements to provide for representation of Australian financial stability or other regulatory interests in the event of the actual or potential default of a major clearing participant, disruption to relevant markets, or financial stress to the CS facility itself.

'Responsibility E: Cooperation with Other Authorities', included in the PFMI, underpins the establishment of such arrangements for FMIs operating in multiple jurisdictions. The level of Australian regulatory representation would need to be commensurate with the nature of the facility's activities in Australia. For a systemically important overseas CS facility licensee, this would imply representation sufficient to ensure that the Regulators were party to key strategic decisions concerning the facility and had an opportunity to raise any issues or concerns regarding the facility's risk management, default procedures, and operational arrangements. It is recognised that each Regulator's role in cooperative oversight or crisis-management arrangements may differ, depending on the particular circumstances. (pages 11–12)

In the case of CS facilities that operate in multiple jurisdictions, multilateral cooperative oversight arrangements provide for effective and efficient communication, information sharing and mutual assistance among a broad range of interested authorities. To operate effectively, however, it is important that such cooperative oversight groups are not too large. Even where multilateral cooperative arrangements exist, ASIC and the Bank also seek to ensure that bilateral arrangements are also in place. This facilitates direct contact with the relevant overseas regulator, which may be particularly important in times of stress, or to address idiosyncratic matters and events relevant to the facility's services in Australia.

E.4 For a central counterparty or securities settlement facility where cooperative arrangements are appropriate, at least one authority should accept responsibility for establishing efficient and effective cooperation among all relevant authorities. In international cooperative arrangements where no other authority accepts this responsibility, the presumption is the authority or authorities

with primary responsibility in the central counterparty's and/or securities settlement facility's home jurisdiction should accept this responsibility.

In accordance with the presumption in the Key Consideration, ASIC and the Bank have accepted primary responsibility for the regulation and oversight of all domestically licensed CCPs and SSFs for which cooperation arrangements are currently in place or may be in future (i.e. the two CCPs and two SSFs in the ASX Group). The relevant MoUs establish ASIC's and the Bank's respective responsibilities for information provision, communication and notification.

In relation to the overseas-based CCPs currently operating in Australia, the Bank of England and CFTC have accepted primary responsibility for the regulation and oversight of LCH Ltd and CME respectively. The Bank of England has taken steps to establish efficient and effective cooperation among all relevant authorities. The arrangements in place are described under Key Consideration E.2. Other arrangements are also in place between the Bank, ASIC and the CFTC and are described under Key Consideration E.2.

E.5 At least one authority should ensure that the central counterparty and/or securities settlement facility is periodically assessed against the Principles and should, in developing these assessments, consult with other authorities that conduct the supervision or oversight of the central counterparty and/or securities settlement facility and for which the FMI is systemically important.

ASIC and the Bank have undertaken to ensure domestically licensed systemically important CS facilities are periodically assessed against the PFMI. At a minimum, CS facilities are expected to review their responses to the CPMI-IOSCO *Disclosure Framework for Financial Market Infrastructures* each year to ensure continued accuracy and usefulness. ASIC and the Bank also jointly performed a periodic assessment of the ASX Group CS facilities directly against the PFMI, which was published in September 2014.

ASIC and the Bank also assess annually against domestic regulatory requirements all licensed CS facilities that meet the criteria in their respective policies on frequency of assessments – currently all domestically licensed CS facilities, LCH Ltd's SwapClear service and CME's Australian CS facility service. Since the Bank's FSS are aligned with the stability-related PFMI, these annual assessments constitute annual assessments against the majority of the PFMI.

ASIC and the Bank share drafts of their respective assessments with each other prior to finalisation. The Bank's practice is also to share its assessment reports of licensed CS facilities operating in Australia with relevant overseas authorities prior to publication.

The Bank of England has the responsibility to ensure that LCH Ltd is periodically assessed directly against the PFMI. CFTC regulations require CME to complete and publicly disclose its self-assessment against the PFMI every two years.

E.6 When assessing a central counterparty's or securities settlement facility's payment and settlement arrangements and its related liquidity risk management procedures in any currency for which the central counterparty's or securities settlement facility's settlements are systemically important against the Principles, the authority or authorities with primary responsibility with respect to the FMI should consider the views of the central banks of issue. If a central bank of issue is required under its responsibilities to conduct its own assessment of these arrangements and procedures, the central bank should consider the views of the authority or authorities with primary responsibility with respect to the central counterparty or securities settlement facility.

The only material foreign currency in which domestically licensed CS facilities currently provide clearing or settlement services is the New Zealand dollar. Cooperation arrangements have been

established by the Bank with the RBNZ, allowing for exchange of information on matters related to domestic licensed CS facilities' liquidity arrangements and settlement activity in New Zealand dollars.

The Bank's interests in the Australian dollar liquidity arrangements of LCH Ltd and CME are appropriately represented through the Bank's involvement in the cooperative oversight arrangement established by the Bank of England and through bilateral cooperation arrangements with the CFTC.

E.7 Relevant authorities should provide advance notification, where practicable and otherwise as soon as possible thereafter, regarding pending material regulatory changes and adverse events with respect to central counterparties and/or securities settlement facilities that may significantly affect another authority's regulatory, supervisory, or oversight interests.

In accordance with the cooperation arrangements described under Key Considerations E.1 and E.2, ASIC and the Bank would, where relevant, provide advance notification of material regulatory changes and adverse events with respect to CS facilities.

E.8 Relevant authorities should coordinate to ensure timely access to trade data recorded in a trade repository.

While this key consideration is not applicable to CS facilities, ASIC and the Bank have signed MoUs with the Monetary Authority of Singapore and ESMA to facilitate timely access to trade repository data.⁵⁷

E.9 Each authority maintains its discretion to discourage the use of a central counterparty or securities settlement facility or the provision of services to such an FMI if, in the authority's judgment, the central counterparty or securities settlement facility is not prudently designed or managed or the Principles are not adequately observed. An authority exercising such discretion should provide a clear rationale for the action taken both to the FMI and to the authority or authorities with primary responsibility for the supervision or oversight of the central counterparty or securities settlement facility.

If it was considered that a licensed CS facility was not prudently designed or well managed, or that the PFMI were not adequately observed, this would be clearly set out in the published assessment of that CS facility against the PFMI, or equivalent domestic standards and regulations. It would be expected that such an assessment would discourage the use of or provision of services to that CS facility.

E.10 Cooperative arrangements between authorities in no way prejudice the statutory or legal or other powers of each participating authority, nor do these arrangements constrain in any way an authority's powers to fulfil its statutory or legislative mandate or its discretion to act in accordance with those powers.

The existing cooperation arrangements between ASIC and the Bank, and between ASIC and the Bank and other domestic and international authorities, do not prejudice the statutory or legal, or other powers of the cooperating authorities to fulfil their statutory or legislative mandates, or their discretion to act in accordance with those powers.

57 The MoUs between the Bank and these authorities are available at <<http://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/otc-derivatives/memoranda-of-understanding.html>>.

Abbreviations

ACCC	Australian Competition and Consumer Commission	FEX	Financial and Energy Exchange
AEMO	Australian Energy Market Operator	FINMA	Financial Market Supervisory Authority
AMO	Approved Market Operator	FMI	financial market infrastructure
APCA	Australian Payments Clearing Association	FMIRC	FMI Review Committee
APRA	Australian Prudential Regulation Authority	FSB	Financial Stability Board
ASIC	Australian Securities and Investments Commission	FSS	Financial Stability Standard(s)
ASXCC	ASX Clearing Corporation	GE	Group Executive
AUSTRAC	Australian Transaction Reports and Analysis Centre	IOSCO	International Organization of Securities Commissions
CCP	central counterparty	IRD	interest rate derivatives
CEO	Chief Executive Officer	IRS	interest rate swaps
CFO	Chief Financial Officer	LCH Ltd	LCH Limited
CFTC	US Commodity Futures Trading Commission	MI	Market Infrastructure
CFR	Council of Financial Regulators	MoU	Memorandum of Understanding
CHES	Clearing House Electronic Sub-register System	OTC	over-the-counter
CME	Chicago Mercantile Exchange Inc	PFMI	<i>Principles for Financial Market Infrastructures</i>
CPMI	Committee on Payments and Market Infrastructures	PSB	Payments System Board
CPSS	Committee on Payment and Settlement Systems	PSNA	<i>Payment Systems and Netting Act 1998</i>
CRO	Chief Risk Officer	PvP	payment versus payment
CS	clearing and settlement	RBNZ	Reserve Bank of New Zealand
DCO	Derivatives Clearing Organization	RG	regulatory guide
DMF	Default Management Framework	RITS	Reserve Bank Information and Transfer System
DvD	delivery-versus-delivery	RPG	Regulatory Policy Group
DvP	delivery-versus-payment	RTGS	real-time gross settlement
EMEAP	Executives' Meeting of East Asia and Pacific Central Banks	SOF	Swift Oversight Forum
ESA	Exchange Settlement Account	SSF	securities settlement facility
ESAS	Exchange Settlement Account System	SWIFT	Society for Worldwide Interbank Financial Telecommunication
ESMA	European Securities and Markets Authority	TAS	Trade Acceptance Service
ETO	exchange-traded option		