



RESERVE BANK OF AUSTRALIA



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T E P Ū T E A M A T U A

## **MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING ORGANISATIONS**

This Memorandum of Understanding ('MOU') establishes a framework pursuant to which the Reserve Bank of New Zealand and the Reserve Bank of Australia (collectively 'the Authorities' and each an 'Authority') express their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates with respect to cross-border clearing organisations.

### **ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. 'Authority' means:
  - a. In New Zealand, the Reserve Bank of New Zealand ('RBNZ'); and
  - b. In Australia, the Reserve Bank of Australia ('RBA').
2. 'Requested Authority' means the Authority to whom a request is made under this MOU.
3. 'Requesting Authority' means the Authority making a request under this MOU.
4. 'Clearing Member' means a member of a Covered Clearing Organisation that trades and clears for its own account as principal and also serves as an intermediary through which market participants access the Covered Clearing Organisation's activities.
5. 'Clearing Participant' means a participant of a Covered Clearing Organisation that does not serve as an intermediary, but trades and clears only for its own account as principal.
6. 'Covered Clearing Organisation' means any organisation that satisfies both of the following criteria:
  - a. A domestic or overseas clearing and settlement facility operating in New Zealand that may be subject to oversight under the *Reserve Bank of New Zealand Act 1989* (NZ); and
  - b. A domestic or overseas clearing and settlement facility licensed in Australia under section 824B of the *Corporations Act 2001* (Cth).
7. 'Emergency Situation' means the occurrence of an event that could materially impair the financial or operational condition of a Covered Clearing Organisation.
8. 'Governmental Entity' means:
  - a. If the Requesting Authority is the RBNZ, the Financial Markets Authority of New Zealand or relevant New Zealand Government Ministers; and
  - b. If the Requesting Authority is the RBA, the Australian Department of the Treasury, the relevant Australian Government Ministers or the Australian Securities and Investments Commission ('ASIC').
9. 'Person' includes a natural person, unincorporated association, partnership, trust, investment company, or corporation.

### **ARTICLE TWO: GENERAL PROVISIONS**

10. This MOU is a statement of intent to consult, cooperate and exchange information in connection with each of the Authority's respective functions relating to Covered Clearing Organisations. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and requirements that govern each Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation. The provisions of this MOU are not intended to discourage or hinder such informal communication.

11. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede any laws or regulatory requirements in, or applying to, Australia or New Zealand. Any acknowledgement, agreement or obligation by or of an Authority under this MOU is to be read as being subject to any laws, regulations, subordinate legislation and statutory instruments applicable to that Authority and, if information may not be exchanged without the consent of the relevant Covered Clearing Organisation (whether because of a law or a contractual or other obligation of confidentiality), that consent being obtained. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
12. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any rights or arrangements between the Authorities and a Covered Clearing Organisation or any other Person.
13. The Authorities intend periodically to review the functioning and effectiveness of cooperation arrangements between the RBNZ and the RBA with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of both Authorities.
14. To facilitate cooperation under this MOU, the Authorities designate contact persons as set forth in Appendix A. An Authority may amend its contact information set out in Appendix A by giving written notice to the other Authority.

### **ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND EXCHANGE OF INFORMATION**

15. The Authorities recognise the importance of close communication concerning their supervision of Covered Clearing Organisations and intend to consult regularly, as necessary, regarding general supervisory developments and issues relevant to the operations, activities, and regulation of such Covered Clearing Organisations.
16. The Authorities recognise in particular the importance of close cooperation in the event that a Covered Clearing Organisation experiences, or is threatened by, a potential financial crisis or other Emergency Situation.

#### **Event-Triggered Notification**

17. As appropriate in the particular circumstances, and subject to any laws relating to disclosure to an Authority of information obtained or held by the other Authority, each Authority will endeavor to inform the other Authority promptly, and where practicable in advance of:
  - a. Pending regulatory changes or proposed regulatory actions that may have a material effect on the performance by an Authority of its functions or, with regard to a Covered Clearing Organisation, that may have a significant impact on the operations, activities, or reputation of a Covered Clearing Organisation, including changes related to default rules or procedures;
  - b. Any material event that could adversely impact the financial or operational stability of a Covered Clearing Organisation including, without limitation, such events as a default or potential default of a Clearing Member or Clearing Participant, market or settlement bank difficulties that might adversely impact the Covered Clearing Organisation, failure by the Covered Clearing Organisation to satisfy any requirement or condition of its licence, or any known material changes in the operating environment, financial resources, operations,

- management, or systems and controls that may adversely impact the Covered Clearing Organisation's operations or financial stability; and
- c. The status of efforts to address any material events that could adversely impact the financial or operational stability of a Covered Clearing Organisation, Clearing Member, or Clearing Participant.
18. The determination of what constitutes 'significant impact', 'material event', 'adverse impact', 'difficulties', or 'material change' shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.
  19. The above is without prejudice to any arrangements relating to specific prudential issues.

#### **Request-Based Information Sharing**

20. To the extent necessary to supplement informal consultations, upon written request, the Requested Authority will provide to the Requesting Authority the fullest possible cooperation subject to the terms in this MOU and any relevant laws applicable to the Requested Authority, in assisting the Requesting Authority's exercise of its functions relating to a Covered Clearing Organisation and ensuring compliance with the laws or regulations of the Requesting Authority. The Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimising administrative burdens, and will relate to information that is not otherwise readily available to the Requesting Authority.
21. Subject to any laws applicable to the Requested Authority relating to the disclosure of information held by or on behalf of the Requested Authority, the assistance covered by Paragraph 20 includes, where appropriate, providing information based upon documents held in the files of the Requested Authority that is relevant to the Requesting Authority's functions relating to the operations or activities of a Covered Clearing Organisation. The Requested Authority will provide maximum assistance, to the extent necessary, in interpreting such information.
22. The Requested Authority may, as a condition of agreeing to give information or assistance under this MOU, require the Requesting Authority to make a contribution to costs if the cost of fulfilling a request is likely to be substantial.

#### **Periodic Meetings**

23. Representatives of the Authorities may meet, as necessary, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of Covered Clearing Organisations. Such meetings may be conducted over conference call or on a face-to-face basis, as judged appropriate by the Authorities. Representatives of a Covered Clearing Organisation may also be invited to such meetings.

#### **ARTICLE FOUR: EXECUTION OF REQUESTS FOR ASSISTANCE**

24. To the extent possible, a request for information pursuant to Article Three should be made in writing, and addressed to the relevant contact person in Appendix A. A request generally should specify the following:
  - a. The information sought by the Requesting Authority;
  - b. A general description of the matter that is the subject of the request and the purpose for which the information is sought; and
  - c. The desired time period for reply and, where appropriate, the urgency.
25. In an Emergency Situation, the RBNZ and the RBA will endeavor to notify the other of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address

the Emergency Situation. During an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible and within 5 business days following such request.

#### **ARTICLE FIVE: PERMISSIBLE USES OF INFORMATION**

26. The Requesting Authority may use non-public information obtained under this MOU solely for the purposes of exercising its powers and functions in relation to Covered Clearing Organisations (including seeking to ensure compliance with relevant laws or regulations).
27. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraph 26, the Requesting Authority must first inform and gain the approval of the Requested Authority for the intended use. As necessary, the Authorities will consult to discuss the reasons for any denial by the Requested Authority of such use and the circumstances under which such use might be allowed.
28. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered Clearing Organisation, whether during an On-Site Visit or otherwise. However, where information is provided to the Requesting Authority pursuant to an information-sharing request under this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

#### **ARTICLE SIX: CONFIDENTIALITY**

29. Except for disclosures in accordance with this MOU, each Authority intends to keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
30. Each Authority acknowledges that it may become necessary for a Requesting Authority to share information obtained under this MOU with a Governmental Entity. In these circumstances and to the extent permitted by law, subject to Paragraph 31:
  - a. The Requesting Authority will notify the Requested Authority; and
  - b. Prior to passing on the information, the Requesting Authority will take reasonable measures to ensure appropriate use and confidential treatment of the information by the Governmental Entity, including, reasonable measures to ensure information will not be further disclosed without the prior consent of the Requested Authority.
31. The RBNZ acknowledges that:
  - a. The RBA is required by legislation to assess Covered Clearing Organisations against the financial stability standards that it sets and report the outcome of those assessments to ASIC and the relevant Australian Government Minister;
  - b. It is the RBA's practice to publish each assessment as permitted by legislation and after consultation with the relevant Covered Clearing Organisation about matters that the RBA believes are relevant to its assessment;
  - c. Information that the RBNZ holds about a Covered Clearing Organisation operating in New Zealand may be useful to the RBA in preparing its assessment;
  - d. The RBA will consult with the RBNZ about publication of any assessment of a Covered Clearing Organisation operating in New Zealand to the extent that it refers to matters identified by the RBNZ, and that, where the RBA deems it appropriate, the assessment may incorporate information provided by the RBNZ;
  - e. For the purpose of the RBA carrying out its legislative responsibilities outlined in this Paragraph 31, the RBA's report to ASIC and the relevant Australian Government Minister

may refer to matters identified by RBNZ and included or referred to in information provided by RBNZ; and

- f. Nothing in this MOU prevents the performance by the RBA of its legislative responsibilities.
32. Except as provided in Paragraphs 30 and 31, and subject to any applicable laws, the Requesting Authority must obtain consent from the Requested Authority prior to providing non-public information obtained under this MOU to any non-signatory to this MOU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is not obtained from the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
33. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
34. The Authorities intend that the sharing or the disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.
35. The Requesting Authority is to notify the Requested Authority immediately, in writing, of any disclosure or use of non-public information furnished under this MOU in a manner contrary to this MOU and advise of the steps that have been and/or will be taken to deal with the situation.

#### ARTICLE EIGHT: TERMINATION

36. Cooperation in accordance with this MOU will come into force on the day when it is executed by both Authorities and will continue until the expiration of 30 days after any Authority gives written notice to the other Authority of its intention to terminate the MOU. If an Authority gives notice of termination, the parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MOU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner described under Articles Six and Seven.

This MOU is executed in duplicate, this 1st day of August 2014.



Malcolm Edey  
Assistant Governor  
Financial System Group  
Reserve Bank of Australia  
Date: 31 July 2014



Grant Spencer  
Deputy Governor and  
Head of Financial Stability  
Reserve Bank of New Zealand  
Date: 01 August 2014

Appendix has been removed for privacy reasons.