Submission to the Inquiry into the Corporations and Financial Sector Legislation Amendment Bill 2013

Parliamentary Joint Committee on Corporations and Financial Services

APRIL 2013

This submission registers the Reserve Bank's support for the changes proposed in the Corporations and Financial Sector Legislation Amendment Bill 2013. These are important changes which will:

- bring Australia's legal protections for clients of central counterparty (CCP) participants into line with international standards
- provide for appropriate prioritisation of Australian regulators' oversight activities in relation to market licensees and clearing and settlement facilities
- allow for the Bank and the Australian Securities and Investments Commission (ASIC) to more effectively share information with other regulators.

The reasons for these changes are set out in the Explanatory Memorandum (EM) and the Bank supports, and will not repeat, all the relevant comments in the EM. The Bank's supplementary comments in this submission focus primarily on the proposed amendments to facilitate portability of client positions in the event of a CCP participant default and so to bring Australia's legal protections for clients of CCP participants into line with international standards. Brief comments in support of the other proposed amendments are also included.

Portability

Porting entails the transfer of surviving clients' positions (and associated collateral) to another clearing participant in the event of a CCP participant default. This course of action will often be preferable, on both client protection and systemic risk grounds, to the alternative of close out of such positions.

Currently, under the *Corporations Act 2001*, there are significant impediments to portability. In particular, the porting of client positions could be deemed void if the prior consent of the administrator or liquidator or leave of the Court were not obtained. The proposed amendments to the *Payment Systems and Netting Act 1998* would remove these impediments, upholding the porting of positions (and associated collateral) by overriding conflicting provisions in other legislation.

The importance of providing for portability is increasingly recognised internationally. Under the CPSS-IOSCO *Principles for Financial Market Infrastructures*, 'a CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP

with respect to those positions'.[1] Furthermore, 'a CCP should structure its portability arrangements in such a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants'. These provisions have since been included in new Financial Stability Standards determined by the Bank, with which licensed central counterparties operating in Australia must comply. The new Standards came into effect on 29 March 2013, although transitional relief has been granted in respect of the provisions related to segregation and portability of client positions.

The proposed amendments would therefore not only provide for better outcomes for clients in the event of a clearing participant default but also bring this aspect of Australia's regime into line with international best practice. This will in turn help to ensure that Australia's regime achieves a favourable assessment in peer reviews by various international bodies and in equivalence assessments by overseas regulators.

Assessment of Licensees

The Bank also sees merit in the proposed amendments to remove the requirement for ASIC and the Bank to carry out comprehensive annual assessments of all market and clearing and settlement facility licensees, instead allowing the regulators to better prioritise resources according to the nature and scope of the facility.

By continuing to require comprehensive annual assessment of certain prescribed facilities, the proposed amendments will ensure that those facilities of most relevance to the Australian financial system will remain subject to the current high level of regulatory oversight. For other facilities, the proposed discretion may be valuable. For instance, where an overseas-based facility is operating in Australia, the flexibility to carry out assessments less frequently than annually may allow the Bank and ASIC to better align with the assessment cycles of the facility's home regulator, as long as to do so would not compromise domestic policy objectives.

Effective Exchange of Information

Finally, the proposed amendments to the secrecy provision in the *Reserve Bank Act 1959* are consistent with international best practice as set out by the Financial Stability Board in its *Key Attributes of Effective Resolution Regimes for Financial Institutions*, which notes that jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes.[2] Effective sharing of information needs to be possible both in normal times and during a crisis, and both at a domestic and a cross-border level.

Reserve Bank of Australia
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1 See CPSS-IOSCO (2012), *Principles for Financial Market Infrastructures*, CPSS Publications No 101, Bank for International Settlements, April, in particular Principle 14, p 82. Available at <http://www.bis.org/publ/cpss101a.pdf>.

2 See Financial Stability Board (2011), *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October, in particular pp 18 and 24. Available at <http://www.financialstabilityboard.org/publications/r_111104cc.pdf>.