

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

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

September 2014

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ISBN 978-0-9924944-3-8 (Online)

1. Introduction and Executive Summary

The *Principles for Financial Market Infrastructures* (the PFMI), published by the Committee on Payment and Settlement Systems (CPSS, now the Committee on Payments and Market Infrastructures (CPMI)) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) in April 2012,¹ establish a set of *Responsibilities of Central Banks, Market Regulators, and other Relevant Authorities for Financial Market Infrastructures* (the Responsibilities). This report presents a joint Self-assessment of how well the Australian Securities and Investments Commission (ASIC) and the Reserve Bank (the Bank) have met 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.²

Consistent with the Australian authorities' international commitment to implement the PFMI, 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 financial market infrastructures (FMIs) in Australia are discussed.

The report has been produced by ASIC's Financial Market Infrastructure Stakeholder Team and the Bank's Payments Policy Department. It is expected that the report will be an input into ongoing work of the CPMI and IOSCO to monitor implementation of the PFMI across jurisdictions, including Australia.

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.

1.1. 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. These powers are exercised under the governance of ASIC's Commission and the Payments System Board (PSB), respectively. The regulators' respective roles are defined in the Corporations Act.

- The Bank is responsible for ensuring that CS facilities comply with Financial Stability Standards (FSS) that it determines, and that facilities take any other necessary steps to reduce systemic risk.
- ASIC is responsible for ensuring that CS facilities comply with all other obligations under the Corporations Act, including the fair and effective provision of services.

Two types of CS facility operate in Australia: CCPs and SSFs.

¹ The PFMI are available at <<http://www.bis.org/publ/cpss101.htm>>.

² In this report, 'clearing and settlement facility' is defined as in Part 7.1, Division 6 of the *Corporations Act 2001*.

- **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. Three CCPs are currently licensed under the Corporations Act to operate in Australia, two of which are part of the ASX Group:
 - ASX Clear Pty Limited (ASX Clear) provides CCP services for cash equities, debt products and warrants traded on the ASX and Chi-X markets, and equity-related derivatives traded on the ASX market
 - ASX Clear (Futures) Pty Limited (ASX Clear (Futures)) provides CCP services for futures and options on interest rate, equities, energy and commodity products, as well as Australian dollar-denominated over-the-counter (OTC) interest rate derivatives
 - LCH.Clearnet Limited (LCH.C Ltd) provides CCP services for OTC interest rate derivatives and is licensed to clear trades executed on a soon-to-launch derivatives exchange, Financial and Energy Exchange (FEX).
- **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. Again two of these are part of the ASX Group:
 - ASX Settlement Pty Limited (ASX Settlement) provides SSF services for 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
 - Austraclear 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.

1.2. Assessment

This Self-assessment was conducted as at the end of June 2014. 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.

- The regulatory framework of the Corporations Act ensures that CCPs and SSFs operating in Australia are subject to appropriate and effective regulation and oversight by ASIC and the Bank. The respective responsibilities of ASIC and the Bank are clearly defined and effective cooperation and coordination between the two regulators ensures that there are no regulatory gaps.
- The regulatory regime gives the responsible Minister and ASIC appropriate enforcement powers to ensure CS facility licensees' compliance with their obligations under the Corporations Act. The Bank has sound policies in place to ensure that its regulatory and oversight function for CS facilities is appropriately resourced. Likewise, ASIC's resourcing reflects its current level of regulatory activity for CS facilities.
- ASIC's and the Bank's objectives, roles and regulations in respect of CS facilities are established and clearly defined in legislation. Associated policies and standards are publicly disclosed. A joint public statement by ASIC and the Bank clarifies how the principles within the PFMI (the Principles) have been implemented in the regulators' respective frameworks. Both regulators have amended relevant requirements and policies and adapted regulatory and oversight processes to ensure consistent application of the Principles across FMIs.

- ASIC and the Bank have appropriate cooperation arrangements in place with each other and with other relevant domestic regulatory authorities. As cross-border provision of FMI services becomes more widespread, it is increasingly important for regulators in different jurisdictions to work together effectively. Bilateral and multilateral cooperative oversight arrangements are important vehicles for host authorities to exert regulatory influence over FMIs that provide systemically important services in their jurisdictions.
 - ASIC and the Bank have established bilateral cooperative arrangements with the Bank of England to support their regulation and oversight of LCH.C Ltd. The Bank also sits on a Bank of England-led multilateral oversight group.
 - ASIC and the Bank recently concluded a joint Memorandum of Understanding (MOU) with the US Commodity Futures Trading Commission (CFTC) to govern cooperation and information sharing in relation to the regulation and oversight of US and Australian CCPs.³
 - The Bank recently concluded an MOU with the Reserve Bank of New Zealand (RBNZ) to govern cooperation and information sharing in relation to the oversight of certain CCPs in which the two central banks have a joint interest.⁴
 - Other cooperative arrangements are being established. For instance, further to an equivalence assessment in 2013, the European Securities and Markets Authority (ESMA) advised the European Commission (EC) that it regards the Australian regime for CCPs to be equivalent to the regime in the European Union (EU). Accordingly, the EC is developing an Implementing Act to give effect to this decision and ASIC and the Bank are negotiating an MOU with ESMA.

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:

- To ensure consistent regulatory outcomes across FMIs and the markets that they serve, ASIC will continue to use existing forums for coordination across its stakeholder teams. Such coordination will facilitate consideration of the broader impact of application of the Principles and other aspects of CS facility regulation 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.
- 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. Existing arrangements will continue to be enhanced, particularly in relation to cooperation during periods of market stress and in addressing matters related to the recovery, wind-down or resolution of cross-border CS facilities. Formal cooperation arrangements with other authorities will be established as appropriate.

³ The MOU with the CFTC is available at <<http://www.rba.gov.au/payments-system/legal-framework/pdf/memorandum-20140606.pdf>>.

⁴ The Bank's MOU with the RBNZ is available at <<http://www.rba.gov.au/payments-system/legal-framework/pdf/memorandum-20140811.pdf>>.

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 are 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 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.

Well-designed and reliable CS facilities can be a source of both financial stability and operational efficiency. Indeed, this has been the experience in Australia and internationally. CS facilities act as a coordinating device in financial markets, bringing a network of counterparties together to support liquidity and the netting of exposures and settlement obligations. They also establish secure arrangements for the timely clearing and settlement of obligations between counterparties, assist institutions in the management of counterparty credit risks, and help to coordinate actions in the event of a market participant's default.

Many of these benefits derive from the size and breadth of the network that a CS facility controls. Accordingly, there is a tendency towards a single CS facility, or relatively few CS facilities, providing services in any given market. This is currently the case in Australia where, with the exception of CCP services in the market for OTC derivatives, only one CS facility operates in each product market.

Given their typically large size, their lack of substitutability in the markets they serve, and strong connections with banks and other financial institutions, CS facilities are generally systemically important. Indeed, this is the presumption in the PFMI (PFMI, p 12). Accordingly, it is critical that both CCPs and SSFs identify and properly control risks associated with their operations and conduct their affairs in accordance with regulatory standards that promote overall stability in the financial system.

Table 1 presents an overview of the systemically important CCPs and SSFs currently licensed to operate in Australia. Under the Corporations Act, these facilities are regulated jointly by ASIC and the Bank. The applicable regulatory regime is introduced in Section 2.2 below.

Table 1: Systemically Important CCPs and SSFs Operating in Australia^(a)

	Description of Activity	Values Cleared/Settled, Daily ^(b)	Number of participants ^(c)
Central Counterparties			
ASX Clear	Clearing of cash equities and equity-related derivatives	Cash equities: \$4 billion traded value Equity options: \$115 million traded value/\$2.8 billion underlying	36 active direct participants (including Australian/foreign banks, brokers)
ASX Clear (Futures)	Clearing of ASX 24 exchange-traded derivatives and AUD OTC interest rate derivatives	\$167 billion for five major listed financial contracts \$4.1 billion notional value for OTC derivatives	19 direct participants (including Australian/foreign banks). Large number of indirect participants for listed derivatives
LCH.Clearnet Ltd's SwapClear Service	Clearing of OTC interest rate derivatives	\$1.3 trillion notional value for all currencies \$11.7 billion notional value for AUD-denominated trades ^(d)	90 direct participants internationally (including two Australian banks)
Securities Settlement Facilities			
ASX Settlement	Settlement of cash equities	\$8.3 billion ^(e)	78 direct participants (including Australian/foreign banks, brokers)
Austraclear	Settlement of OTC trades in debt securities, AUD payments	\$41 billion for securities trades \$11 billion for payment-only transactions	847 participants (including financial institutions and corporates); some access indirectly

(a) A third small licensed SSF is operated by IMB Limited for trades in its own securities. Since the value of financial obligations settled by IMB Limited in any financial year falls well below \$200 million, IMB Limited is not subject to the Bank's FSS for SSFs (SSF Standards).

(b) Average for the year ended 30 June 2014; ASX OTC derivatives data for June 2014.

(c) As at 30 June 2014.

(d) Average single-sided notional value of trades registered per day. Data for AUD-denominated trades are for 1 September 2013 to 30 June 2014.

(e) Includes settlement of off-market trades.

Sources: ASX; Bloomberg; LCH.Clearnet Limited; RBA

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.

- Under s 827D 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, with which all the licensees listed in Table 1 must comply. 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.⁵

- Under the *Reserve Bank Act 1959*, responsibility for the exercise of the powers granted to the Bank in the Corporations Act is assigned to the PSB. The PSB is tasked with ensuring that its powers are exercised in a way that 'will best contribute to the overall stability of the financial system'. Also relevant to its responsibility for stability, the PSB has powers under the *Payment Systems and Netting Act 1998* (PSNA) to ensure that settlement finality in approved payment, clearing and settlement systems and netting arrangements is legally certain (see Section 2.2.2, 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 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* (ASIC Act) 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 the exercise of 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 outcomes in Part 7.3 of the Corporations Act. These desired regulatory outcomes are elaborated in *ASIC Regulatory Guide 211: Clearing and Settlement Facilities: Australian and Overseas Operators* (RG 211).⁶ 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.

The Principles have been implemented in Australia and are applied as regulatory standards jointly by ASIC and the Bank. Since both ASIC and the Bank are responsible for overseeing CS facility licensees under the Corporations Act, implementing the CPSS-IOSCO Principles in Australia involves coordination between the regulators. A statement issued by ASIC and the Bank in December 2012 (the Joint Statement) sets out the actions taken by the regulators to implement the Principles in Australia:⁷

- ASIC revised its regulatory guidance on licensing and oversight of CS facility licensees in RG 211. The updated regulatory guidance incorporates the Principles that are relevant to ASIC's regulatory remit as matters it will consider in:
 - framing its advice to the Minister about any CS facility licence application

⁵ The Bank has set out its policy on frequency of formal assessments of CS facilities, confirming that systemically important facilities will be assessed annually: see 'Frequency of Regulatory Assessments of Licensed Clearing and Settlement Facilities'. The Bank's assessments of CS facility licensees have been published on the Bank's website since 2007. Annual assessments of the CS facilities under the ASX group are available at <<http://www.rba.gov.au/payments-system/clearing-settlement/assessments/2012-2013/index.html>>.

⁶ ASIC's RG 211 is available at <<http://www.asic.gov.au/rg>>.

⁷ A policy statement setting out how the Principles have been implemented in Australia is available at <<http://www.rba.gov.au/payments-system/policy-framework/principles-fmi/implementing-principles-australia.html>>.

- assessing a CS facility licensee’s compliance with its ongoing obligations under the Corporations Act.
- The PSB approved the determination of new FSS in November 2012.⁸ These standards, which became effective from 29 March 2013, are aligned with the requirements in the Principles that address matters relevant to financial stability (see Section 2.2.1, below).

While the Bank has the power to set standards and assess licensees’ compliance, enforcement powers rest with the Minister and ASIC. 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 an MOU, which is intended to promote transparency, help prevent unnecessary duplication of effort, and minimise the regulatory burden on CS facilities.⁹ Further to these objectives, ASIC and the Bank have agreed on the appropriate division of each of the Principles between the two regulators, as published in Appendix 2 of RG 211 (see also Table A1, Appendix A). Some Principles are relevant to both regulators and accordingly are jointly overseen.

Following a request by the then Deputy Prime Minister and Treasurer in 2011, the Council of Financial Regulators (CFR, comprising the heads of regulatory authorities) consulted on a number of enhancements to the regulatory framework for FMIs. A number of recommendations were made to the government in February 2012. Some of these, relating to the application of ‘location requirements’ for FMIs operating across borders, were reflected in revisions to ASIC’s RG 211 and the FSS in 2012. Other proposals are being developed by the CFR agencies, including in relation to special resolution arrangements for FMIs.¹⁰

2.2.1 The Bank’s Financial Stability Standards

In accordance with its responsibilities under the Corporations Act, the Bank first determined FSS for licensed CCPs and SSFs in 2003. The standards were drafted at a high level, establishing an obligation for licensees to conduct their affairs ‘in a prudent manner’ so as to contribute to ‘the overall stability of the Australian financial system’. Each FSS was supported by a set of measures and guidance that the Bank would take into account in assessing a licensee’s compliance. Minor variations were made to the FSS in 2005 and 2009.

As noted above, following the release of the Principles, the Bank updated its FSS to bring them into line with the stability-related Principles. The updated FSS also introduce some additional and varied requirements to reflect the Australian regulatory and institutional context. These include measures to ensure that regulators can maintain appropriate influence over cross-border facilities.

Consistent with the higher level of detail of the Principles relative to the previous international standards, the new FSS are specified at a more detailed level than the earlier standards. 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 Principles, the new FSS include more specific requirements for financial resources

⁸ The Bank’s FSS are available at <<http://www.rba.gov.au/payments-system/clearing-settlement/standards/index.html>>.

⁹ The MOU between ASIC and the Bank is available at <<http://www.rba.gov.au/media-releases/2002/mr-02-08.html#mou>>.

¹⁰ The Council of Financial Regulators’ recommendations to the Deputy Prime Minister and Treasurer are available at <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2012/CFRWG%20on%20Financial%20Market%20Infrastructure%20Regulation/Key%20Documents/CoFR_Letter_to_Deputy_PM.ashx>.

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.

2.2.2 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.

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 that Act 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, including the Reserve Bank Information and Transfer System, in which all CS facilities ultimately settle in central bank money, as well as Austraclear. 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 Commonwealth Treasury 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.

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 their 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 CPSS and IOSCO in December 2012.¹¹ 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 ensure that their arrangements for oversight of FMI meet best practice. Table 2 below includes some specific actions.

The actions in Table 2 are discussed in more detail below and in the detailed assessments in Appendix A.

¹¹ The disclosure framework and assessment methodology are available at <<http://www.bis.org/publ/cpss106.htm>>.

Table 2: Responsibilities Ratings and Actions

Standard	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	
D. Application of the <i>Principles for Financial Market Infrastructures</i>	Observed	<p>To ensure consistent regulatory outcomes across FMI and the markets that they serve, ASIC will continue to use existing forums for coordination across its stakeholder teams. Such coordination will facilitate consideration of the broader impact of application of the Principles and other aspects of CS facility regulation on the fairness and efficiency of financial markets.</p> <p>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.</p>
E. Cooperation with other authorities	Observed	<p>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.</p>

3.1 Regulation, supervision and oversight of clearing and settlement facilities

Consistent with the presumption under the Principles 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. Currently licensed facilities are listed in Table 1, above. No CS facilities currently operating in Australia have been granted an exemption from licensing requirements under the Corporations Act.¹²

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 their expectations of CS facility licensees under the Corporations Act. These documents implement the Principles within ASIC's and the Bank's respective regulatory regimes and provide transparency around how responsibilities are

¹² For completeness, the regulators note that a small number of facilities prescribed under the Corporations Regulations are deemed not to be operating a CS facility if they meet requirements specified under the Regulations. Currently, these requirements are met by the National Stock Exchange of Australia and Bendigo Stock Exchange Limited (now known as SIM Venture Securities Exchange Limited), and their agents or participants. These facilities were grandfathered into the CS facilities regime at the time of transition to the Corporations Act in 2004.

allocated between the regulators to ensure that there are no regulatory gaps. Other policy documents consider matters such as the frequency of formal assessments and how the regulators ensure appropriate influence over cross-border CS facilities operating in Australia.¹³

3.2 Regulatory, supervisory, and oversight powers and resources

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 for CS facilities; the team sits within the wider ASIC team that has responsibility for the oversight of FMIs. ASIC is funded through the Commonwealth budget and any fees and/or charges it 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 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 ensure that this team is appropriately resourced.

3.3 Disclosure of policies with respect to Clearing and 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.

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

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

¹³ The Council of Financial Regulators' framework for ensuring appropriate regulatory influence over cross-border CS facilities that operate in Australia is available at <<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/cross-border-clearing>>. Supplementary guidance on how the framework would be applied to CCPs operating in the major Australian financial markets is available at <<http://www.cfr.gov.au/publications/cfr-publications/2014/application-of-the-regulatory-influence-framework-for-cross-border-central-counterparties/>>.

- 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 Clearing and Settlement Facility Licensees*.

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.

Further policy guidance on specific matters relevant to the licensing and oversight of cross-border CS facilities is also published from time to time.

3.4 Application of the 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 Principles in their oversight of all FMI types, including CS facilities. Since the publication of the Principles, steps have been taken to amend relevant rules and standards – in particular, ASIC's RG 211 and the Bank's FSS.

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

- ASIC has a number of mechanisms to ensure consistent application of the Principles both across CS facilities and across 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 Principles. Members of the team work closely together to ensure there is consistent interpretation and application of regulatory requirements across the different types of FMIs.
 - Within ASIC, the stakeholder teams with responsibility for market integrity and 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 market licensees and/or market participants, or raises broader policy issues. The advice and input of other ASIC teams, such as those with responsibility for policy coordination and economic and market research, is also sought from time to time to further ensure that fair, effective and reasonable regulatory outcomes are reached.
 - Significant or novel matters are considered by ASIC's policy decision-making group and/or the Commission, either for decision or to provide 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 Principles across and within FMI types overseen by the Bank is promoted by the location of oversight of all FMIs in a single team within the Bank's Payments Policy Department. Consistency is also supported by the governance of the Bank's oversight function by the PSB and the Bank's practice of publishing detailed assessments of each relevant

FMI's observance of the Principles. To supplement these arrangements, the Bank has introduced regular FMI Oversight Coordination meetings within Payments Policy Department and recently established a senior level internal FMI Oversight Committee to govern day-to-day oversight activities within the policy framework set by the PSB.

ASIC and the Bank will continue to refine existing mechanisms to promote consistent regulatory outcomes both across CS facilities and across FMI types, including in the application of the Principles.

- To ensure consistent regulatory outcomes across FMIs and the markets that they serve, ASIC will continue to use existing forums for coordination across its stakeholder teams. Such coordination will facilitate consideration of the broader impact of application of the Principles and other aspects of CS facility regulation on the fairness and efficiency of financial markets.
- The Bank will monitor the effectiveness of the new FMI Oversight 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.

3.5 Cooperation with other authorities

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 very 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 a range of international counterparts. These arrangements have similar objectives.

ASIC and the Bank both liaise regularly with other domestic financial regulators (APRA, The Treasury and the Australian Competition and Consumer Commission (ACCC)), both bilaterally and multilaterally. Policy matters relevant to FMIs are also often considered by the CFR.

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 also each has bilateral 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. These MOUs govern cooperation arrangements for LCH.C Ltd. The Bank also participates in a global cooperative oversight arrangement for LCH.C Ltd's SwapClear service.
- In June 2014, ASIC and the Bank concluded a joint MOU with the CFTC, which governs cooperation and information sharing arrangements for both US and Australian CCPs.
- In July 2014, the Bank concluded an MOU with the RBNZ. 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. New Zealand is introducing legislation that will give the RBNZ regulatory responsibility for CS facilities.

- Other cooperative arrangements are being established. For instance, further to an equivalence assessment in 2013, ESMA advised the EC that it regards the Australian regime for CCPs to be equivalent to the regime in the EU. Accordingly, the EC is developing an Implementing Act to give effect to this decision and ASIC and the Bank are negotiating an MOU with ESMA.

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. Existing arrangements will continue to be enhanced, particularly in relation to cooperation during periods of market stress and in addressing matters related to the recovery, wind-down or resolution of cross-border CS facilities. Formal cooperation arrangements with other authorities will be established as appropriate.

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

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 issued regulatory guidance on the criteria applied 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. No CS facilities currently operating in Australia have been granted an exemption from licensing requirements under the Corporations Act. ASIC and the Bank have also 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.

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 Principles), ASIC and the Bank have regard to their joint regulatory responsibilities under Part 7.3 of the Corporations Act. Consistent with the presumption under the Principles 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'¹⁴ and the criteria that it would apply in considering whether to advise the Minister that a CS facility be licensed or granted an exemption. RG 211 indicates that ASIC would expect to advise the Minister to exempt a CS facility from licensing requirements only if:

¹⁴ See RG 211, paragraphs RG211.60–RG.211.65.

- 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.

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 non-exempt 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 Principles within ASIC’s and the Bank’s respective regulatory regimes. Alongside the FSS, the Bank has published a guidance note 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 ensure that very small SSFs, which are unlikely to affect the overall stability of the Australian financial system, are not subject to burdensome and disproportionate regulation, 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 ensure that ASIC and the Bank have appropriate regulatory influence over CS facilities with cross-border operations. 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 domestic financial system or real economy.
 - One such additional measure is to require 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 incorporate locally and hold a domestic licence, such that: ASIC and the Bank are the primary regulators;¹⁵ 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 proposed special resolution regime for FMI in Australia. Such a facility is also subject to certain offshore outsourcing restrictions.
- 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).¹⁶ 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.C Ltd’s SwapClear service) as warranting formal annual assessment.¹⁷
- ASIC works with the Bank to conduct formal assessments of CS facilities. For CS facilities that have not been identified as warranting annual assessment, ASIC uses a risk-based approach to determining 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 supervisory obligations under s 821A(c) of the 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 relevant Principles.

In determining the systemic importance and degree of domestic connection of a central counterparty or securities settlement facility, 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 central counterparties, the total amount of initial margin held in respect of Australian dollar-denominated products)

¹⁵ 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’.

¹⁶ No CS facilities are currently prescribed by regulation for annual assessment.

¹⁷ The Bank’s policy on frequency of formal assessments of CS facilities is available at <<http://www.rba.gov.au/payments-system/policy-framework/frequency-of-assessments.html>>.

- 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.

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 financial market infrastructures.

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 provides CCP services for cash equities, debt products and warrants traded on the ASX and Chi-X markets, and equity-related derivatives traded on the ASX market
- ASX Clear (Futures) provides CCP services for futures and options on interest rate, equities, energy and commodity products, as well as Australian dollar-denominated OTC interest rate derivatives
- LCH.C Ltd provides CCP services for OTC interest rate derivatives and is licensed to clear trades executed on a soon-to-launch derivatives exchange, FEX
- ASX Settlement provides SSF services for 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
- 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.

Applying the criteria described under Key Consideration A.1, no CS facilities currently operating in Australia have been granted an exemption from licensing requirements under the Corporations Act.

With the exception of LCH.C Ltd, each of the CS facilities listed above is licensed as a domestic facility. Each is subject to the Bank's FSS, with the exception of 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.

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 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 perform a periodic assessment of the ASX Group CS facilities directly against the Principles. The first such joint assessment has been published alongside this report.¹⁸

The Bank has also identified LCH.C Ltd's SwapClear service as systemically important in Australia. The Bank has also committed to formal assessments of this service against the FSS on an annual basis, with the first such assessment published in September 2014.¹⁹ ASIC will conduct its first formal assessment of LCH.C Ltd's SwapClear service in the first half of 2015. LCH's CCP service for FEX is not yet operational.

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 (both of 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 a range of enforcement powers in both areas, and ASIC also has various ancillary enforcement powers. These include powers to take enforcement action on the advice of the Bank.

The regulators' respective roles are clearly defined in the Corporations Act.

- The Bank is responsible for ensuring that CS facilities comply with its FSS, determined under s 827D of the Corporations Act, and that facilities take any other necessary steps to reduce systemic risk. The Bank has determined separate FSS for CCPs and SSFs, aligned with requirements in the Principles that address matters relevant to financial stability.
- ASIC is responsible for ensuring that CS facilities comply with other obligations under s 821A of the Corporations Act, including: to the extent reasonably practicable, to ensure that the facility's services are provided in a fair and effective way; compliance with licence conditions; and maintenance of sufficient resources and adequate arrangements for supervising and operating the facility. In discharging its responsibilities, ASIC takes into account those Principles relevant to its regulatory remit.

The allocation of responsibilities between ASIC and the Bank may be illustrated with reference to the regulators' responsibility for implementing and overseeing the Principles. 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.

¹⁸ The first joint assessment of the ASX CS facilities against the Principles is available at <<http://www.rba.gov.au/payments-system/policy-framework/principles-fmi/assessments-of-cs-facilities.html>>.

¹⁹ The Bank's 2013/14 Assessment of LCH against the FSS is available at <<http://www.rba.gov.au/payments-system/clearing-settlement/assessments/lch/2014/lch-assess-2014-09.html>>.

Table A1: Allocation of Responsibilities for Principles

Principle	Responsible authority
1. Legal basis	
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	
3. Framework for the comprehensive management of risks	
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	
22. Communication procedures and standards	
24. Disclosure of market data by trade repositories	
	Joint responsibility of ASIC and the Reserve Bank
	Reserve Bank
	ASIC
	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

The Corporations Act provides ASIC and the Bank with a number of powers to ensure that CS facilities provide services in a fair and effective manner and conduct their affairs in a way which promotes the overall stability of the Australian financial system. These include powers to set standards, gather information and to issue directions. ASIC and the Bank have policies in place to help ensure that they have sufficient resources to perform their duties and that the employees responsible for the oversight and regulation of CS facilities have the appropriate skills and experience.

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 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.

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 Reserve Bank

A licensed CS facility is required under the Corporations Act to comply 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 FMI team is responsible for supervising and assessing the operations of licensed clearing and settlement facilities and examining new clearing and settlement proposals. The FMI team also performs these functions in respect of financial markets. The FMI team currently comprises 27 people directly involved in markets and/or clearing and settlement-related matters.²⁰ Within the FMI team, the CS Facilities team has five members, including a senior manager. CS Facilities team members have a variety of experience and knowledge, covering (collectively) the practical functioning of CS facilities and/or 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 other FMI colleagues and other teams in ASIC to ensure that the analysis of clearing and settlement matters takes into account more wideranging financial markets issues, and that staff expertise and resources are deployed efficiently.

²⁰ Administrative staff and others are additional to this.

ASIC's Recruitment and Selection policy establishes a framework to ensure that recruitment processes attract 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 134 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 2012/13 financial year, one of ASIC's three key priorities was to ensure fair and efficient financial markets; and 32 per cent of ASIC's 2012/13 budget was allocated to achieving this priority during the period.²¹ Regulation of CS facilities falls within this priority.

The Reserve Bank

A team of 15 people in Payments Policy Department is responsible for oversight of FMIs, with 10 staff dedicated to regulation and oversight of CS facilities, as well as associated policy development, research and data support. The Bank has formal and comprehensive human resources policies in place to ensure that this function is appropriately resourced and that all employees have the appropriate skills and experience to perform their duties. Employees responsible for the oversight of CS facilities typically also have experience in 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.

²¹ ASIC's other two key priorities during the period were Confident and Informed Investors and Financial Consumers (allocated 42 per cent of ASIC's budget) and Efficient Registration and Licensing (26 per cent of ASIC's budget). Further detail on ASIC's allocation of funding during 2012/13 and historical information about ASIC's funding is available in ASIC's Annual Report at <[http://www.asic.gov.au/ASIC/pdf/lib.nsf/LookupByFileName/ASIC-Annual-Report-2012-13-complete.pdf/\\$file/ASIC-Annual-Report-2012-13-complete.pdf](http://www.asic.gov.au/ASIC/pdf/lib.nsf/LookupByFileName/ASIC-Annual-Report-2012-13-complete.pdf/$file/ASIC-Annual-Report-2012-13-complete.pdf)>.

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

ASIC's and the Bank's high-level objectives related to the regulation and oversight of CS facilities are set out in relevant legislation. Relevant policies adopted by ASIC and the Bank are also clearly defined and publicly disclosed in documents available on their respective websites.

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 clearly defined in relevant 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.
 - s 823CA(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'.
 - s 823C(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 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 Payments System Board 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 gives the Bank responsibility for the approval of RTGS systems and netting arrangements, to promote stability by giving certainty to payment systems' and CS facilities' settlement and netting arrangements.

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 Principles in Australia clarifies how ASIC and the Bank have implemented the Principles within their respective regulatory frameworks.

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

- the purpose of regulating CS facilities
- the respective roles of ASIC, the Bank and the Minister in the regulation of CS facilities²²
- 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 Clearing and Settlement 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.

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 regulatory influence over cross-border CS facilities

²² 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.

- a paper setting out the Bank’s approach to assessing the sufficient equivalence of overseas regulatory regimes.

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

ASIC and the Bank, the Australian regulators responsible for oversight of FMIs, have committed in the Joint Statement to apply the Principles in their oversight of all FMI types, including CS facilities. Since the publication of the Principles, steps have been taken to amend relevant requirements and standards – in particular, ASIC’s RG 211 and the Bank’s FSS.

Both regulators have processes in place to ensure consistent application of the Principles both across CS facilities and across FMI types. As part of this, the Bank has recently established a new senior level internal FMI Oversight Committee.

ASIC and the Bank will continue to use and, as appropriate, refine existing mechanisms to promote consistent regulatory outcomes both across CS facilities and across FMI types, including in the application of the Principles.

- To ensure consistent regulatory outcomes across FMIs and the markets that they serve, ASIC will continue to use existing forums for coordination across its stakeholder teams. Such coordination will facilitate consideration of the broader impact of application of the Principles and other aspects of CS facility regulation on the fairness and efficiency of financial markets.
- The Bank will monitor the effectiveness of the new FMI Oversight 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.

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

ASIC and the Bank have publicly articulated in the Joint Statement how the Principles apply to FMIs in Australia, including CS facilities, and the steps taken to amend relevant requirements and standards, including through ASIC’s revision of RG 211 and the Bank’s determination of new FSS.

The Australian authorities’ implementation of the Principles across all FMI types has been recognised by CPSS and IOSCO in their peer review of jurisdictions’ implementation of the new international standards.²³

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.

²³ CPSS-IOSCO (2014), *Implementation Monitoring of PFMI: First Update to Level 1 Assessment Report*, May. Available at <<http://www.bis.org/publ/cpss117.pdf>>.

In the Joint Statement, ASIC and the Bank describe the steps taken to implement the Principles across FMI types. ASIC's and the Bank's approach to ensuring these Principles 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 Principles, the Bank published its first assessments of licensed CS facilities against these new standards in September 2013.

ASIC and the Bank have also undertaken to publish periodic joint assessments of systemically important domestic CS facilities directly against the Principles. The first such assessment of the CS facilities in the ASX Group has been published alongside this report.

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 a number of steps to promote consistent application of the Principles across and within FMI types, both domestically and across jurisdictions.

ASIC's approach

ASIC has a number of mechanisms to ensure consistent application of the Principles both across CS facilities and across 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 Principles. Members of the team work closely together to ensure there is consistent interpretation and application of regulatory requirements across the different types of FMIs. The FMI team has its own set of strategic priorities and related strategic risks. These are linked to ASIC's wider priorities and risks. These common goals and strategies help ensure consistent focus across ASIC teams.
- ASIC's FMI team works closely with other ASIC teams – particularly those with responsibility for oversight of financial markets, market participants or market integrity – through formal and informal channels on matters of cross-team relevance; for instance, 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 priority of fair and efficient financial markets. The advice and input of other ASIC teams, such as those with responsibility for policy coordination and economic and market research, is also sought from time to time to further 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 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.

As noted below, regular meetings are also held between the Bank and ASIC to discuss matters that are of common regulatory interest.

The Reserve Bank's approach

The Bank applies a number of mechanisms to ensure consistent application of the Principles:

- *Coordination.* All Bank staff involved in overseeing the various FMI types are part of a single team 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.

To help ensure there is appropriate coordination of oversight views and decisions, the Bank has introduced regular FMI Oversight Coordination meetings within Payments Policy Department. These meetings, which involve all members of the Bank's oversight staff, periodically review recent oversight decisions and matters under consideration for each overseen FMI, and decide which matters need to be escalated to either the Assistant Governor (Financial System), a senior level internal FMI Oversight Committee (see below) or the PSB.

- *Governance.* Ultimately, 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 has established an internal FMI Oversight Committee. The Committee is chaired by the Assistant Governor (Financial System) and includes a further five senior members of Bank staff with relevant experience. Its principal activities are to:
 - review the staff's routine oversight 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 identified oversight priorities for each FMI
 - consider draft assessments of FMIs against the FSS and proposed recommendations/oversight priorities, before finalisation of these for approval by the PSB
 - consider the resourcing of the Bank's oversight activities and in particular the need for additional input from specialists elsewhere in the Bank
 - advise on matters to be escalated to the PSB.

The Committee will meet at least four times a year and report annually to the Bank's Executive Committee on its activities. The Bank will monitor the effectiveness of the new FMI Oversight 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.

- *Disclosure.* The Bank also promotes consistent application of the Principles 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 Principles 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 a CPMI-IOSCO task force that is monitoring implementation of the Principles.

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

To support their joint regulatory and oversight 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. ASIC and the Bank also have extensive cooperation arrangements with other domestic regulatory authorities and a range of international counterparts. These arrangements have similar objectives.

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. Existing arrangements will continue to be enhanced, particularly in relation to cooperation during periods of market stress and in addressing matters related to the recovery, wind-down or resolution of cross-border CS facilities. Formal cooperation arrangements with other authorities will be established as appropriate.

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 a number of 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.

Domestic cooperation

ASIC and the Bank have a range of formal and informal cooperation arrangements in place to govern their joint regulatory responsibilities for licensed CS facilities. A formal MOU between the two authorities 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 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 very frequently in the execution of their regulatory activities and often conduct joint meetings with regulated entities and other relevant stakeholders.

ASIC and the Bank both liaise regularly with other domestic financial regulators – APRA, The 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 The Treasury. In the 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.²⁴

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 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 Commonwealth Treasury 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.

Periodic inter-agency secondments also help promote cooperation and information sharing between the domestic authorities.

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. Formerly known as the CPSS, the CPMI is 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 among other matters focuses on FMIs.
- *OTC Derivatives Regulators Group (ODRG)*: ASIC participates in the ODRG. ODRG is a group of regulators of major OTC derivative markets that has been tasked by the G20 and FSB to address and resolve remaining cross-border conflicts, inconsistencies, gaps and duplicative requirements in the implementation of OTC derivatives reforms which have an impact on some types of FMIs.
- *EMEAP Working Group on Payment and Settlement Systems*. This working group monitors developments in domestic and cross-border payment, clearing and settlement systems among member countries of EMEAP.

ASIC and the Bank also cooperate directly with relevant overseas regulators in the regulation and oversight of cross-border CS facilities:

²⁴ The ‘Memorandum of Understanding on Financial Distress Management’ is available at <<http://www.cfr.gov.au/about-cfr/mou/index.html>>.

- Both ASIC and the Bank have MOUs in place with the Bank of England. These MOUs govern cooperation arrangements for LCH.C Ltd. The Bank also participates in a global cooperative oversight arrangement for LCH.C Ltd's SwapClear service. This arrangement provides an efficient means for sharing relevant regulatory data, analysis and assessments. It also fosters efficient communication and consultation by bringing together a range of authorities with a joint interest in the safety and efficiency of LCH.C Ltd. Work is ongoing to establish crisis management protocols for the cooperative group to ensure effective communication and coordination in the event of market stress or the potential recovery, wind-down or resolution of LCH.C Ltd.
- In June 2014, ASIC and the Bank concluded a joint MOU with the CFTC, which governs cooperation and information sharing arrangements for both US and Australian CCPs, both in normal and stressed circumstances.
- In July 2014, the Bank concluded an MOU with the RBNZ. 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. New Zealand is introducing legislation that will give the RBNZ regulatory responsibility for CS facilities.
- Other cooperative arrangements are being established. For instance, further to an equivalence assessment in 2013, ESMA advised the EC that it regards the Australian regime for CCPs to be equivalent to the regime in the EU. Accordingly, the EC is developing an Implementing Act to give effect to this decision and ASIC and the Bank are negotiating an MOU with ESMA.

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. Existing arrangements will continue to be enhanced, particularly in relation to cooperation during periods of market stress and in addressing matters related to the recovery, wind-down or resolution of cross-border CS facilities. Formal cooperation arrangements with other authorities will be established as appropriate.

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) is seeking recognition in the EU, related to their provision of services to entities established in the EU. Discussions on cooperation arrangements are ongoing between the Australian authorities and the relevant European authorities (the European Commission and the European Securities and Markets Authority).
- ASX Clear (Futures) has separately sought ‘no-action’ relief 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 relief, which is until the end of this year, could become permanent if the CFTC grants a formal exemption. The MOU recently concluded with the CFTC will govern 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.
- Since the date of this Self-assessment, Austraclear has launched a foreign currency settlement service for Chinese renminbi payments. This service, developed as a joint venture with Bank of China’s Sydney branch, reflects growing interest in the offshore use of renminbi for both trade and financial market transactions. The Bank will engage with the relevant Chinese authorities as appropriate as this service evolves.

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. One overseas-based CCP provides material services to Australian-based participants and is deemed to be operating in Australia. This CCP has therefore been licensed in Australia and appropriate cooperation arrangements have been established with the relevant overseas authorities:

- As described under Responsibility A, the London-based CCP, LCH.C Ltd, is licensed to provide CCP services – for OTC interest rate derivatives and the soon-to-launch derivatives exchange, FEX – to Australian participants. LCH.C 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.C Ltd, coordinated by the Bank of England. This provides a forum for discussion of regulatory matters, including LCH.C Ltd’s observance of the Principles.

Were the Bank or ASIC to become aware of any other cross-border or multicurrency CCP or SSF, 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:²⁵

All CS facility licensees must comply with their obligations under the 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 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 Principles, 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)

²⁵ See CFR (2012), 'Ensuring Appropriate Influence for Australian Regulators over Cross-border Clearing and Settlement Facilities', July. Available at <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/~/_media/Treasury/Consultations%20and%20Reviews/Consultations/2012/cross%20border%20clearing/key%20documents/pdf/cross-border-provision.ashx>.

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 only overseas-based CCP currently operating in Australia, the Bank of England has accepted primary responsibility for the regulation and oversight of LCH.C Ltd. 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 Considerations E.1 and 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 periodically assess domestically licensed systemically important CS facilities against the Principles. The first such assessment of the licensed CS facilities in the ASX Group has been published alongside this report.

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 and LCH.C Ltd's SwapClear service. Since the Bank's FSS are aligned with the stability-related Principles, these annual assessments constitute annual assessments against the majority of the Principles.

ASIC and the Bank share drafts of their respective assessments with each other prior to finalisation. To date, cooperation arrangements with overseas authorities have not envisaged the sharing of draft assessments. This may change if domestically licensed CS facilities are formally recognised or authorised in other jurisdictions and enhanced or more formal cooperation arrangements are established with relevant authorities.

The Bank of England has the responsibility to ensure that LCH.C Ltd is periodically assessed directly against the Principles.

- 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 foreign currencies in which domestically licensed CS facilities currently provide clearing or settlement services are the New Zealand dollar and the Chinese renminbi.

- 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 will engage with the relevant Chinese authorities as appropriate as Austraclear's recently launched Chinese renminbi settlement service evolves.

The Bank's interests in the Australian dollar liquidity arrangements of LCH.C Ltd are appropriately represented through the Bank's involvement in the cooperative oversight arrangement established by the Bank of England.

- 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** Not applicable to CS facilities.

- 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 Principles were not adequately observed, this would be clearly set out in the published assessment of that CS facility against the Principles, 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.

Abbreviations

ACCC	Australian Competition and Consumer Commission	FMI	financial market infrastructure
APRA	Australian Prudential Regulation Authority	FSS	Financial Stability Standards
ASIC	Australian Securities and Investments Commission	IOSCO	International Organization of Securities Commissions
CCP	central counterparty	LCH.C Ltd	LCH.Clearnet Ltd
CFR	Council of Financial Regulators	MOU	Memorandum of Understanding
CFTC	Commodity Futures Trading Commission	ODRG	OTC Derivatives Regulators Group
CPMI	Committee on Payments and Market Infrastructures (formerly CPSS)	OTC	over-the-counter
CPSS	Committee on Payment and Settlement Systems (now CPMI)	PFMIs	Principles for Financial Market Infrastructures
CS	clearing and settlement	PSB	Payments System Board
DvP	delivery-versus-payment	PSNA	<i>Payment Systems and Netting Act 1998</i>
EC	European Commission	RBNZ	Reserve Bank of New Zealand
EMEAP	Executives' Meeting of East Asia-Pacific Central Banks	RG 211	ASIC Regulatory Guide 211
ESA	Exchange Settlement Account	RPG	Regulatory Policy Group
ESMA	European Securities and Markets Authority	RTGS	real-time gross settlement
EU	European Union	SSF	securities settlement facility
FEX	Financial and Energy Exchange		