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### Consultation on New Financial Stability Standards

Dear Tony,

The Australian Securities Exchange (ASX) would like to thank the Reserve Bank of Australia (RBA) for the opportunity to comment on the *Consultation on New Financial Stability Standards*. ASX recognises the important role of its clearing and settlement facilities in maintaining systemic stability in the Australian markets and fully supports the objectives of the new Financial Stability Standards (FSS). Given the short period between consultation document release and the deadline for comments we are only able to provide our initial views on the proposal put forward. We look forward to working closely with the RBA as the new FSS are finalised and implemented.

We have structured our response to the RBA consultation by providing feedback on general and specific issues. ASX's response to the consultation questions are also outlined in Attachments A and B.

#### About ASX Group

The ASX Group is a vertically integrated exchange group and a provider of multi-asset class exchange services. It operates Australia's main equities and derivatives exchange markets and the post-trade processing services in which transactions executed on Australian markets are cleared and settled.

ASX currently operates two Central Counterparties (CCPs) – ASX Clear and ASX Clear (Futures). ASX Clear provides CCP services for a range of financial products traded on the Australian markets, including cash equities, pooled investment products, warrants, certain interest rate products and equity and commodity-related derivatives. ASX Clear (Futures) provides CCP services for derivatives traded on the ASX24 market, including futures and options on interest rate, equity, energy and commodity products. Together with the major market participants, ASX Clear (Futures) is actively exploring an extension of its clearing services to A\$ and NZ\$ OTC interest rate swaps and FRAs and is planning to launch the service in June 2013.

The ASX Group also has two wholly owned settlement subsidiaries, ASX Settlement and Austraclear. These two settlement facilities provide a delivery versus payment (DvP) settlement service, secure asset holding services as well as a wide network that enables 'straight through processing' to both exchange traded markets (ASX Settlement) and over the counter markets (Austraclear).

ASX Settlement operates the Clearing House Electronic Subregister System (CHES) which effects the trade settlement for ASX Clear. It does this by transferring the title or legal ownership of the shares while simultaneously facilitating the transfer of money for those shares between participants via their respective banks.

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CHESS is a Model 3 batch settlement system which reduces settlement exposure and improves operating efficiency by providing multi-lateral settlement netting.

Austraclear is Australia's settlement system and central securities depository (CSD) for the wholesale debt market. Austraclear is a Model 1 Real Time Gross Settlement system which offers a line-by-line, DvP model providing, in real-time, the irrevocable exchange of cash for securities.

## **GENERAL ISSUES**

### **1) International transposition of the Principles for FMIs**

While ASX is broadly supportive of the strengthening of FMI requirements under the Principles for Financial Market Infrastructures (PFMIs) and the RBAs draft FSS, we are unclear of the role the PFMIs are intended to play in terms of setting global minimum standards. We are aware of a number of instances in other jurisdictions where foreign regulators are seeking to impose standards which are below the minimum standard outlined in the PFMIs. ASX strongly believes that there should be consistency in the global regulatory framework in order to provide a level playing field for all FMIs. It is important to maintain both systemic risk protections and to create a level competitive playing field that the RBA requires all CCPs active in Australia to be transparently held to each standard of the FSS.

### **2) Interaction with the capitalisation of bank exposures to CCPs**

ASX believes it is appropriate that all CCPs holding an Australian Clearing and Settlement licence, and therefore in compliance with the FSS, be deemed to be Qualifying CCPs under APRA's draft Prudential Standard APS 112 – Capital Adequacy: Standard Approach to Credit Risk – and similar overseas regulatory standards. Transitional arrangements based on the current FSS will be necessary if the new FSS are not finalised and implemented by the end of 2012 (the intended implementation date of the APRA Prudential Standard).

### **3) Interaction between ASIC and RBA regulation**

ASX understands that both ASIC and RBA have a regulatory role in relation to twelve of the twenty four Principles contained in the CPSS-IOSCO PFMIs. ASX believes it would be appropriate for the RBA and ASIC to appoint a regulatory lead agency for each Principle. This would reduce the potential for confusion and assist with streamlining both regulatory assessment of FMI compliance with the Principles as well as the day-to-day activities of ASX's CCP in complying with the Standards.

## **SPECIFIC ISSUES**

### Governance

#### *Group wide policies/functions*

The revised FSS (including the guidance) should explicitly recognise, and be sufficiently flexible to accommodate, different corporate structures including vertically integrated structures. This is important to ensure the efficient administration of corporate group structures.

ASX is concerned that the proposed governance requirements do not adequately take into consideration the efficiency requirements of the PFMIs. While RBA's regulatory remit relates to financial stability, it does not follow that FMI governance arrangements should be assessed having regard only to "safety", as opposed to "safety and efficiency" as intended by the international standards (noting that "safety and efficiency" are not mutually exclusive objectives).

The revised FSS should recognise that, in corporate groups, there are, quite appropriately, different roles for the principal board and subsidiaries within that group. The FSS should recognise the respective roles of the principal



board and the subsidiary boards in approving policies and functions, and the establishment and need for committees. Other regulatory agencies have recognised that there are different corporate structures and have provided flexibility in relation to the governance arrangements of regulated subsidiaries within corporate groups.

In a corporate group, it is also usual practice for the principal board to have responsibility for the overall strategy of the group, enterprise wide policies and procedures, remuneration and performance management of senior management. The FSS should recognise that FMI subsidiaries are able to rely on group/enterprise wide policies and functions where the FMI Board is satisfied that reliance is consistent with the FMI subsidiary's Clearing and Settlement licence obligations.

#### *Independence of directors*

The revised FSS (including the guidance) should recognise that in a corporate group, independence does not, and should not mean independence from the parent.

The ASX Corporate Governance Council principles recognise in the context of listed companies that an independent director is a non-executive director who is not a member of management and who is free of any other business or other relationship that could materially interfere with or could reasonably be perceived to materially interfere with the independent exercise of their judgement.

ASX would also like to refer to AASB 1031 which deals with materiality. ASX supports this principle and notes that in the context of a subsidiary this principle should equally apply, but we acknowledge that it is important to define independence appropriately. The FSS should allow that in the context of a corporate group, subsidiary independent non-executive directors could include Board members of the parent company or the parent company's subsidiaries.

ASX also considers that there is a difference between independence and management of conflicts. The existence of a conflict does not necessarily mean that a director is not independent. Appropriate conflict handling arrangements are used to ensure that conflicts are appropriately managed.

#### *Requirement for external reviews*

ASX engages external experts periodically to review particular aspects of the business including FMI operations. For example, ASX ensures that CCP stress testing models and parameters are periodically reviewed by external consultants.

The requirement to conduct external expert reviews of "operations, risk management processes, internal control mechanisms and accounts on an annual basis" would effectively mean that the entire business of an FMI must be subject to continuous external review. Given the breadth of the proposed obligation the costs of compliance would be significant. ASX submits this standard should instead require the Board to consider periodically the need for external expert reviews of specific aspects of FMI operations, for example, in response to changes in business practices or industry standards, the emergence of new products, or regulatory developments. Given that ASX's CS licensees' accounts are continuously reviewed by an Internal Audit function that deploys external specialists where the Head of Internal Audit assesses the requisite skills are not fully available within the function and are also externally audited, we consider that the requirement for any further external review of "accounts" would be unnecessary.

ASX is interested to understand how ASIC and RBA propose to co-ordinate and harmonise assessment reviews and requirements for conflict handling arrangements.

#### Investment risk

ASX is very risk averse in its risk management of its Treasury and Investment Management operations, closely monitoring investment counterparty limits including concentration risks. We consider that the Custody and Investment standard should better recognise the characteristics of the Australian domestic financial market



including the current situation where the Australian banking industry is dominated by four large, highly rated Australian banks.

FMI's seeking to invest substantial amounts of margin in Australia with high counterparty ratings are effectively limited to a small number of investment counterparties. FMI's operating in Australia must therefore choose between having either a relatively concentrated investment profile (compared with some overseas markets) or a less concentrated investment profile with greater exposure to lower rated (higher risk) investment counterparties. Given this environment and the historic absence of an appropriate means of collateralising investments through suitable reverse repurchase agreements, we do not believe that the Standard should require the CCP's resources to be able to fully meet a shortfall arising from the default of the investment counterparty to whom the CCP has the largest investment exposure. At best this requirement would involve considerable capital implications for Australian CCPs, the costs of which would need to be recouped from Clearing Participants and their clients and, more likely, it may not be possible to comply within in the current Australian market.

ASX believes CCPs should instead be able to demonstrate best endeavours to meet the standard while accepting FMI Boards should make their final determination with reference to suitable analysis of alternative risk mitigation strategies. ASX considers that FMI Boards are in the best position to manage the trade-off between maintaining low investment concentration risk and ensuring funds are invested with the highest quality counterparties.

ASX also believes that restrictions on "whole-of-relationship" exposures under the FSS should take account of the current market structure in Australia and should not therefore automatically preclude investment of margin monies in the affiliates of Clearing Participants. A suitable arrangement might be an acceptance of certain defined levels of risk, extending to the recognition of acceptable related party deposit investments amongst highly rated counterparties.

#### FMI resolution and recovery

ASX supports the RBA's objective to enhance FMI resolution and recovery planning. However, we consider that it would be appropriate for FMI's to design and implement their recovery and resolution requirements only after any new requirements from the final CPSS-IOSCO report on FMI resolution and recovery are incorporated into the regulatory framework. The current CPSS-IOSCO consultation paper specifically discusses a wide range of issues relating to FMI resolution and recovery (eg default loss allocation rules and contract 'tear ups'). Considering CPSS and IOSCO have not reached agreement on these issues we believe that it would be premature for Australian FMI's to complete their FMI recovery and resolution plans at this stage.

ASX would also appreciate if the RBA could provide further detail on how the CPSS-IOSCO FMI recovery and resolution final report findings will be incorporated into the domestic regulatory framework.

#### Cash equity market account structures

ASX believes that the CPSS-IOSCO proposal to separate house and client cash equity market positions and collateral is not an appropriate solution for the Australian market and we intend to undertake a market consultation on cash equity market account structures and portability in the near future. While ASX supports moves to protect client positions and collateral in the event of a Clearing Participant default, we believe the PFMI proposal has not appropriately taken into account Australian market characteristics. In addition, we agree with market feedback from our 2008 consultation which articulated that the current proposal to separate house and client positions in the cash equity market would provide little or no benefit but would create significant unintended consequences for Clearing Participants and their clients. In particular, we support the broad market view obtained from recent Clearing Participant meetings that this proposal would lead to a significant loss of netting efficiency and create the need for considerable Clearing Participant systems changes.

The characteristics of the Australian cash equity market act to make it highly unlikely that an FMI will be able to port client positions in the event of a CP default. For example, there are currently a large number of retail investors participating in the cash equity market which is likely to make client portability extremely difficult from an



administrative perspective. This is exacerbated by the short three day cash equity market settlement cycle which only provides a very small window of opportunity to allow client positions to be ported. As a result we feel that if the RBA is to require house and client positions to be split in order to enhance client portability then this change would impose considerable costs on the industry without having a significant impact on the likelihood that client positions can be ported in the event of a Clearing Participant default.

In the cash equity market, the transfer of the Holder Identification Numbers (HINs) can be regarded as akin to the porting of open client derivatives positions to another Clearing Participant. ASX Settlement Rules accommodate such transfers and this has been successfully done in the past. It is also important to note that under the proposed cash equity margining arrangements, ASX Clear acceptable margin is limited to the Clearing Participants' cash and stock beneficially owned by that Clearing Participant.

The National Guarantee Fund (NGF) also provides a number of protections for cash equity market clients. For example, the NGF can provide compensation to clients where:

- a transaction is not completed by a participant;
- a participant becomes insolvent and fails to meet its obligations in respect of property (usually money or securities) that had been entrusted to it in the course of, or in connection with, its business of dealing in securities, or
- a transaction is made by a participant without client authorisation.

Given these existing important client protections, ASX does not believe there is a strong case for costly changes to existing account segregation arrangements at ASX Clear. ASX considers that any change to this existing practice would impose further unnecessary costs for little or no extra benefit.

### Money Settlements

Under the proposed FSS, FMI's are required to minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money. Currently ASX Settlement and Austraclear do not take direct counterparty exposure and therefore do not have direct credit or liquidity risk. Such circumstances should be reflected in the Standards.

ASX believes that the proposed FSS will also require CCPs and SSFs to monitor and manage the concentration of its participants' credit and liquidity exposure to commercial bank money settlement agents and settlement banks. It also appears to require CCPs and SSFs to consider the diversification of its participants' exposures to commercial banks in the settlement process and assess the participants' potential losses and liquidity pressures in the event of the failure of a commercial bank. ASX does not believe this is appropriate given that CCPs and SSFs do not have any principle exposure to these settlements nor do they have access to all participant settlement exposures to commercial banks. In many cases, participant settlement exposures to commercial banks in respect of their CCP or SSF payments form only a small part of their overall settlement exposure which is beyond the scope of the FMI's transparency and oversight.

ASX also does not believe it is appropriate that CCPs and SSFs should be responsible for ensuring that Participants' legal agreements with commercial settlement banks provide clarity in relation to finality of settlement. ASX considers that this wording should be removed from the FSS as SSFs and CCPs are neither party to such agreements nor are they involved in their drafting or negotiation. Again the scope of these agreements may be much wider than the payments in respect of FMI activities.

### Exchange of Value

The Exchange of Value standard currently requires that DvP should be achieved for primary markets. While this requirement is suitable for exchange traded securities, DvP is not always possible for some asset types e.g. for equity applications or allocations (eg secondary raisings, initial public offerings) or for the proposed ASX Managed Funds Service. In such markets it is usual and operationally necessary for a delay between payment



and allocation but ASX's SSF services provides clear benefits to users and reduced systemic risk compared with the alternative manual processes. As CCPs are not counterparty to the transfer of the associated units, ASX considers that this requirement should be modified to reflect the obligations or removed from the CCP standards.

We are also concerned with the requirement that large transactions must be settled real time trade by trade and small transactions settled via multilateral net batch does not provide FMs with sufficient clarity. ASX is unable to form an opinion on these requirements as drafted and would appreciate further detail on the RBA proposal.

#### Central Securities Depositories

Standard 9.1.2 requires a SSF to undertake end to end auditing and daily reconciliation of securities on issue. ASX is concerned that this requirement would impose a significant burden on SSFs for only a marginal enhancement in systemic risk protections given the automated processes for securities settlement. ASX would also like to undertake further analysis and discussion with the RBA to understand their expectations with regard to interest rate security issues in Austraclear and equity securities in CHES.

#### Bank Guarantees

ASX notes that the proposed FSS imposes restrictions on bank guarantees as acceptable collateral which are more onerous than the positions proposed by the European Securities and Markets Authority (ESMA) and potentially other overseas jurisdictions. Given that the range of acceptable collateral is also likely to be a point of competitive differentiation between clearing service offerings, ASX urges the RBA to maintain competitive neutrality by allowing CPs and their clients in Australia to retain ASX's current prudent bank guarantee arrangements.

#### Continuity of service in a crisis

While ASX will seek to do everything in its power to ensure service continuity in the event of a crisis there may be factors outside ASX's control which could inhibit this objective. ASX would like to further understand the RBA's expectations of domestic FMs responsibilities in ensuring that key staff are retained during a crisis event and the means by which contractual, legal and potentially regulatory barriers to attaining this goal will be recognised under the planned Standard.

#### Business Risk Capital

ASX notes that the proposed FSS imposes a business risk capital requirement on FMs to hold liquid net assets funded by equity equal to at least six months of current operating expenses. Given that ASX operates a group structure it is preferable that this equity be held at the group holding entity. ASX would like to confirm that the RBA finds holding business risk capital at a group level is acceptable.

If you would like further detail on any of our comments, please contact Joshua Everson on +61 2 9227 0233. We look forward to working with you as you finalise the Standards.

Yours sincerely



**Alan Bardwell**  
Chief Risk Officer

## ATTACHMENT A - ASX responses to questions on the new Financial Stability Standards

### **1. Are there potential conflicts between the requirement for licensed CS facilities to explicitly support financial system stability and other relevant public policy objectives (proposed CCP and SSF Standard 2.1), and other obligations or duties of facilities and their directors?**

It is difficult for ASX to respond to this question without receiving further guidance on the "other relevant public policy objectives". ASX considers that the RBA should elaborate on this issue. We would also like to note that the draft standard cites "public interest [not policy] considerations" but it is unclear whether the RBA is referring to public policy or public interest?

A Clearing and Settlement facility licensee's statutory obligation is to do all other things necessary, to the extent reasonably practicable, to reduce systemic risk. ASX is unclear why licensees are required by the FSS to define their objectives in different terms to their licence obligations.

### **2. Should the requirement for non-executive members of a CS facility's board (proposed CCP and SSF Standard 2.4) be extended to specify the number of non-executive directors and their degree of independence from management or related entities?**

Please see the specific Governance issues outlined in the main section of our submission.

### **3. Are there any potential obstacles to CCPs taking the proposed steps to monitor the credit standing of participants and impose additional risk controls where a participant's credit standing is called into question (proposed CCP Standard 4.3)?**

ASX CCPs constantly monitor the credit standing of their Clearing Participants and have access to a number of tools to mitigate credit risk where a CP's credit standing is called into question (eg the power to call additional margin and adjust Stress Test Exposure Limits). We support the proposed CCP Standard 4.3 and do not see any obstacles to its implementation.

### **4. In balancing the system-wide impact of restricting collateral eligibility to high-quality liquid assets against the risk that lower-quality or less-liquid collateral assets may not hold their value in a stressed market, should any other collateral eligibility criteria be considered (proposed CCP and SSF Standard 5)?**

ASX does not believe that there are any other criteria which should be considered. ASX believes that it is important to maintain a flexible list of eligible collateral which is supported by a prudent haircutting regime.

### **5. To date, SSFs in Australia have not assumed credit or liquidity risks as principal. Some SSFs may, however, be designed in such a way that they assume credit exposures or liquidity obligations to participants, as contemplated in the proposed SSF Standards 4 and 6. Should SSFs licensed to operate in Australia be permitted to assume these risks as principal?**



ASX's SSFs are not exposed to credit or liquidity risk. Although ASX does not currently intend to accept such risks in the future, we do not have any in-principle objections to the FSS allowing such models provided that there are prudent requirements in place for SSFs accepting these risks.

**6. Should an SSF always be required to offer intraday or real-time settlement finality, or are there circumstances in which a minimum standard of end-of-day settlement finality would be acceptable (proposed SSF Standard 7)?**

ASX considers that there may be instances where a SSF may wish to offer intraday or real time settlement finality but we do not believe that it is appropriate for such a requirement to be imposed on SSFs. We are aware of many instances where real time settlement finality is not possible due to the underlying characteristics of the market. Examples of such markets include Initial Public Offers, secondary capital raisings and the proposed ASX Managed Fund Service.

In addition, in rare circumstances, such as a major Clearing Participant default, it may be appropriate for the SSF or CCP to re-schedule transactions to another day in order to maintain the integrity of the clearing and settlement system. Such actions are a prudent response to a crisis situation and avoid the need to create complex and expensive alternatives that achieve the same outcome. This flexibility should be explicitly recognised in the FSS as it is particularly relevant to the highly efficient Model 3 settlement approach on the Australian equity markets. CPSS-IOSCO is contradictory on this topic – preventing re-scheduling but only discouraging the post-settlement reversal of some settlements.

**7. Should settlement arrangements utilised by CCPs, or offered by SSFs, be allowed to settle using DvP model 2 where trade values are small and operational requirements dictate its use, or should all facilities be required to settle according to DvP model 1 or 3 (proposed CCP Standard 11, SSF Standard 10)?**

ASX considers it is appropriate for DvP model 2 to be used as a standard where it is the most appropriate settlement model for the settlement of the underlying security. All proposals should be examined on a case-by-case basis. We believe that the new FSS should provide flexibility in this area in order to ensure that the SSFs and their customers are able to devise the most effective settlement processes.

**8. Would a change from a principal-to-principal model to an agency model for indirect participants of a CCP allow for effective portability arrangements in the case of a clearing participant default (proposed CCP Standard 13)? What would be the costs and consequences of such a change?**

ASX considers that a change from a principal to principal model for indirect participants would not by itself allow for effective portability arrangements. ASX submits that a CCP's contractual rights to effect the transfer (or "porting") of client positions and related collateral in circumstances where a Clearing Participant has entered external administration would be given greater legal certainty if the Payment Systems and Netting Act (Part 5) were amended to place beyond legal challenge any such transfers effected in accordance with the terms of "market netting contracts".



**9. Should the required level of segregation for any collateral posted on behalf of participants' customers differ between CCPs clearing securities and derivatives markets, having regard to the much shorter duration of pre-settlement risk exposure in securities transactions and the reduced likelihood that customer positions would be ported in such circumstances (proposed CCP Standard 13)?**

ASX strongly believes that there is a fundamental difference between securities and derivatives clearing and we urge RBA to ensure that the segregation requirements under the FSS reflect this differentiation. Please see the comments we have made on the cash equity market in the main section of our submission.

**10. Should a CS facility licensee be subject to more prescriptive controls regarding their investment policies than envisaged in the proposed FSSs, such as a minimum proportion of funds invested in risk-free assets or limits on the concentration of exposures to investment counterparties (proposed CCP Standard 15, SSF Standard 13)?**

ASX maintains a highly conservative FMI Board approved investment mandate and we do not believe that there is a strong case for more prescriptive rules in this area. We consider that FMI Boards are in the best position to assess key investment portfolio issues such as concentration risk and eligible investment products which are consistent with the FSS requirements.

**11. It is proposed that CS facility licensees be required to achieve resumption of operations within two hours following a disruption to critical information technology systems (proposed CCP Standard 16.7, SSF Standard 14.7). What would be the benefits and costs of reducing the window for resumption of operations for systemically important CS facility licensees in respect of their critical systems?**

ASX currently runs dual processing sites for all existing Clearing and Settlement systems and all of these systems replicate data real-time to our alternate site. ASX is continually reviewing its system architecture to ensure that our own high technology recovery expectations are met.

The recovery time for each system to the alternate site is achievable within a two hour timeframe. There may, however, be some events, such as a complex application or database issues, that could exceed this timeframe and we believe that any FSS requirement should take this possibility into account.

**12. Should the proposed FSSs include specific requirements for licensed CS facilities to manage cyber security risks? If so, what sorts of risk controls would be appropriate?**

Cyber security risks could be considered together with all other risks for assessing and managing the overall FMI risk exposure. ASX would suggest that suitable risk controls could include:

- Periodic security reviews
- Authentication for external connections where appropriate, and
- Vulnerability management procedures.



**13. Following the release of the CPSS-IOSCO consultative report on Recovery and Resolution of Financial Market Infrastructures, is there sufficient clarity within the proposed FSSs to capture all necessary measures to ensure an effective recovery regime (including loss allocation arrangements)?**

ASX supports further CPSS-IOSCO and RBA efforts to enhance the regulatory framework for FMI recovery and resolution. As CPSS-IOSCO is still to release its final FMI Recovery and Resolution report we believe that FMIs do not have the required regulatory clarity to allow recovery and resolution plans to be prepared at this point in time. RBA should consider transitional relief until international clarity is achieved and, where necessary, upgrades made to the domestic regulatory framework.

**14. Requirements under proposed CCP Standards 3.5, 16.4 and 16.10, and SSF Standards 3.5, 14.7 and 14.10 have been designed to ensure arrangements are in place to assist any statutory manager when stepping into a CS facility following a shock to the CS facility. Are these standards sufficiently comprehensive to ensure any such action would be effective?**

The proposed FSS anticipates a statutory regime for FMI regulation (including step in rights) which the RBA acknowledges is only a recommendation of CoFR agencies at this stage. It is undesirable to anticipate this regime, through the imposition of FSS requirements, in advance of the further work that council agencies need to do to develop the detail of the recommended step in regime and, subsequently, the passage of legislation to make it law. An alternative and preferable approach would be to defer inclusion of step in related requirements in the new FSS until a step in regime commences; the FSS could be updated with appropriate and complementary requirements at that time.

**15. Are there any further requirements placed on CS facilities in other jurisdictions that could be applied in Australia to enhance the systemic risk controls of licensed CS facilities, without imposing disproportionate costs?**

ASX is not aware of any further systemic risk requirements, used in other jurisdictions, which should be applied in Australia. ASX considers that the new Australian regime will be sufficiently prudent for domestically licenced CCPs and in a number of areas the RBA is proposing to introduce requirements which are more onerous than what has been proposed by CPSS-IOSCO (e.g. outsourcing arrangements). ASX strongly believes that overseas CCPs operating in Australia should be required to also meet any FSS requirements which are above that proposed by CPSS-IOSCO. This will be required in order to achieve a level playing field between offshore and domestic FMIs. ASX notes that emerging overseas standards are not fully implementing the CPSS-IOSCO Standards in some respects and recommends that this be monitored and taken into consideration where compliance with those standards forms part of the RBA's assurance of an FMI's FSS compliance.

**16. Is it appropriate to increase the threshold value below which an SSF would be exempt from the proposed FSSs?**

ASX has no in-principle objection to raising the small size market criteria for determining whether a settlement facility should be eligible for an exemption from the FSS. However, if that settlement facility is operating in a systemically significant market (even if it only settles a small portion of total activity in that market) it should not be eligible for an exemption from the FSS.



**17. Is the assessment approach articulated in Attachment 5 consistent with the objective to deliver a framework for regulation of overseas licensees that does not impose an unnecessary regulatory burden, while ensuring competitive neutrality in the Australian regulatory environment?**

ASX is strongly of the view that where the RBA has imposed a requirement on domestic FMs which is above the standard outlined in the CPSS-ISOCO Principles for FMs then offshore FMs operating in Australia should also be required to achieve this higher standard. This will be a necessary condition to achieve competitive neutrality between domestic and offshore FMs.



**ATTACHMENT B – ASX responses to questions on the implications for current Clearing and Settlement Facility Licensees**

**1. Do any requirements of the proposed FSSs place unreasonable or disproportionate costs on licensed CS facilities' participants or their customers relative to the potential benefits? For example, could requirements for facilities to:**

- implement loss allocation rules (CCP Standard 4.8 and SSF Standard 4.5)
- hold additional liquid resources (CCP Standard 7 and SSF Standard 6)
- implement segregation or portability arrangements (CCP Standard 13)
- place operational requirements on participants (CCP Standards 16.6 and 16.8; SSF Standards 14.6 and 14.8)

**create disproportionate costs for participants or their customers?**

Please see the issues raised in the main section of our submission.

**2. In what areas might transitional relief be required for currently licensed CS facilities, and what length of relief would be appropriate in these areas?**

ASX is currently formalising the areas where we will be seeking transitional relief. We will provide the RBA and ASIC with this a copy of this list once it has been finalised.

The appropriate length of relief will vary based on the scale of the change required in order to comply with the new FSS requirement. ASX considers that it is appropriate for transitional relief to be determined based on the degree of change required in order to comply with the new requirements.

**3. Should transitional relief be tailored to particular licensees, as required on a case-by-case basis, or would it be more appropriate in some cases to extend relief generally to all licensees?**

Existing licenced Clearing and Settlement facilities should be granted transitional relief based on a case by case basis. Any future Clearing and Settlement facility applicants should, in principle, need to meet all the requirements contained in the new FSS. ASX considers, however, that it is appropriate that new applicants should be able to benefit from any transitional relief provided to existing licence holders. Relief should only be provided in the same area as that granted for existing licence holders and should only be available up until the end of the transitional date granted to the existing licence holder.