

EXPLANATORY STATEMENT – DETERMINATION OF NEW FINANCIAL STABILITY STANDARDS FOR CENTRAL COUNTERPARTIES

Background

The Reserve Bank of Australia (Reserve Bank) has the power, under subsection 827D(1) of the *Corporations Act 2001* (the Act), to determine financial stability standards (FSSs) for the purpose of ensuring that licensed clearing and settlement (CS) facilities conduct their affairs in a way that causes or promotes overall stability in the Australian financial system. In accordance with this power, the Reserve Bank determined two FSSs for licensed CS facilities on 30 May 2003. These standards governed the conduct of central counterparties (CCPs) and securities settlement facilities (SSFs) respectively.

In April 2012, the Committee on Payment and Settlement Systems of the Bank for International Settlements (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) released the *Principles for Financial Market Infrastructures* (the Principles) – a unified and strengthened set of international standards for payment systems, CCPs, securities settlement systems (also known as SSFs), central securities depositories, and trade repositories. The Principles update, replace, and synthesise previous recommendations and principles published by CPSS and IOSCO, including recommendations for CCPs and securities settlement systems to which the previous FSSs were broadly aligned.

In April 2011, the Deputy Prime Minister and Treasurer commissioned the Council of Financial Regulators (the Council) to conduct a review of the Australian regulatory framework for financial market infrastructures (FMIs). The review identified a number of areas in which regulation of FMIs could be strengthened, including additional means of exerting regulatory influence over cross-border CS facilities. It was proposed by the Council that the FSSs be the principal means for implementing the stability-relevant measures within the framework. These measures are designed to ensure that cross-border CS facilities have a financial, legal, governance, operational and regulatory basis in Australia appropriate to their activities, and that their operations provide adequate channels for Australian regulators to exercise their oversight responsibilities, including in stressed circumstances.

In light of recent international and domestic developments in the regulation and conduct of CS facilities, the Reserve Bank's Payments System Board decided at its November 2012 meeting to revoke the previous FSSs and to determine new FSSs for both CCPs and SSFs respectively. The new FSSs reflect emerging international best practice in the conduct of CS facilities, adapted to the Australian context where appropriate. The Board's decision was made following feedback received from stakeholders during a consultation process on a proposal to determine new FSSs.

Purpose and Operation

The objective of the new FSSs for CCPs (CCP Standards) is to ensure that licensed CS facilities operating a CCP in Australia appropriately control the risks they pose to the Australian financial system.

The new FSSs comprise a set of detailed standards and sub-standards that are broadly aligned with the Principles, uphold the standards to which licensed CS facilities are held under the previous FSSs, reflect selected standards applied to CS facilities in other relevant jurisdictions, and implement key elements of the Council's framework for ensuring that Australian regulators have appropriate influence over cross-border CS facilities.

The Reserve Bank is required to perform an assessment, at least once a year, of how well each CS facility licensee has complied with the new FSSs. To assist CS facility licensees in the interpretation and application of the new FSSs, and the Reserve Bank's approach to assessing compliance with the new standards, the Reserve Bank has issued associated guidance. This guidance does not create any additional binding obligations on CS facility licensees.

Consultation

Under section 827D of the Act, the Reserve Bank must consult with the Australian Securities and Investment Commission (ASIC) prior to revoking a FSS, and prior to determining or varying a FSS must consult with ASIC and any CS facility licensees that will be required to comply with the FSS. The Reserve Bank consulted with ASIC and existing CS facility licensees in accordance with this requirement, and also with potential CS facility licence applicants and other stakeholders.

The rationale for and description of the new FSSs, details of the consultation process and the Reserve Bank's response to consultation are discussed in the Reserve Bank's Media Release [*New Financial Stability Standards*] and the accompanying Regulation Impact Statement. Stakeholders broadly supported the approach taken by the Reserve Bank in determining new FSSs, and comments were largely directed towards particular details of the draft FSSs and associated guidance. In considering the comments of stakeholders, the Reserve Bank amended aspects of the draft FSSs and associated guidance.

Schedule for Implementation

Most of the CCP Standards will come into force on 29 March 2013. The Reserve Bank has, however, delayed the implementation of sub-standards relating to FMI recovery and resolution, namely CCP Standards 3.5, 4.8, 14.3 and 16.11. These sub-standards are scheduled to come into force on 31 March 2014.

Documents

- Human Rights Compatibility Statement
- RBA Media Release: New Financial Stability Standards, 5 December 2012, is available on the Reserve Bank's website at <http://www.rba.gov.au/media-releases/2012/mr-12-37.html>
- The Regulation Impact Statement detailing these changes, together with attachments setting out the new FSSs and associated guidance, is available on the Reserve Bank's website at <http://www.rba.gov.au/payments-system/clearing-settlement/standards/201212-new-fss-ris/index.html>

- Gazettal notice