



RESERVE BANK OF AUSTRALIA

## REPLACEMENT EXPLANATORY STATEMENT

### *Financial Stability Standards for Securities Settlement Facilities Revocation 2024*

### *Financial Stability Standards for Securities Settlement Facilities Determination 2024*

### *Corporations Act 2001*

This Replacement Explanatory Statement relates to the following instruments:

1. *Financial Stability Standards for Securities Settlement Facilities Revocation 2024* (the Revocation); and
  2. *Financial Stability Standards for Securities Settlement Facilities Determination 2024* (the Determination),
- (together, the Instruments).

### **Purpose of the Replacement Explanatory Statement**

This Replacement Explanatory Statement replaces the initial Explanatory Statement registered on 19 June 2024 for the Instruments.

The purpose of this Replacement Explanatory Statement is to incorporate additional information relating to the fact that the Instruments are exempt from sunseting under the *Legislation Act 2003*.

### **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 clearing and settlement (CS) facility licensees 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 has determined two sets of FSSs:

- the Financial Stability Standards for Central Counterparties (CCP Standards); and
- the Financial Stability Standards for Securities Settlement Facilities (SSF Standards)<sup>1</sup>.

Each of the CCP Standards and SSF Standards are broadly aligned with the *Principles for Financial Market Infrastructures* (the Principles) developed by the Committee on Payment and Settlement Systems of the Bank for International Settlements (CPSS) (now known as the Committee on Payments and Market Infrastructures (CPMI)) and the Technical Committee of the International Organization of Securities Commissions (IOSCO). The Principles were released in 2012 and are a unified and strengthened set of international standards for payment systems, central counterparties (CCPs), securities settlement systems (SSFs), central securities depositories, and trade repositories.

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1 To assist CS facility licensees in the interpretation and application of the SSF Standards, and the Reserve Bank's approach to assessing compliance with the SSF Standards, the Reserve Bank has issued associated guidance. This guidance is available on the Reserve Bank's website at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards>>.

The SSF Standards aim to ensure that CS facility licensees that operate a SSF identify and properly control risks associated with the operation of the SSF in order to promote overall stability of the Australian financial system.

Since 2012, the SSF Standards have not applied to a CS facility licensee that operates an SSF if the value of financial obligations settled through the SSF in a financial year does not exceed a settlement activity threshold of \$200 million. A threshold was first introduced in 2005, in recognition of the fact that the activities of small SSFs are unlikely to affect the overall stability of the Australian financial system.

In November 2023, the Reserve Bank's Payment System Board decided that the settlement activity threshold under the SSF Standards should be reviewed. The Reserve Bank subsequently consulted on a proposal to increase the annual settlement activity threshold value (calculated on a gross basis) from \$200 million to \$40 billion.

Following consultation, the Reserve Bank has decided to increase the settlement activity threshold value under the SSF Standards from \$200 million to \$40 billion. The new threshold is equivalent to around 1 per cent of total annual settlement activity for Australian equity securities and less than 1 per cent of total annual settlement activity for Australian debt securities. This change was considered to strike a more appropriate balance between the public interest in the management of risks to financial stability and the public interest in avoiding excessive regulatory burden, particularly on small enterprises. The Instruments implement the Reserve Bank's decision to increase the value of settlement activity threshold under the SSF Standards.

### **Authority**

The Revocation is made pursuant to the Reserve Bank's power under subsection 827D(8) of the Act to revoke FSSs determined by it under subsection 827D(1) of the Act (including the SSF Standards).

The Determination is made pursuant to the Reserve Bank's power under subsection 827D(1) of the Act to determine FSS. In accordance with subsection 827D(2)(b) of the Act, FSSs determined by the Reserve Bank may apply to a specified class of CS facility licensees.

### **Purpose and Operation**

The purpose of the Instruments is to implement the Reserve Bank's decision to increase the annual settlement activity threshold under the SSF Standards to a value of \$40 billion, in a manner that is consistent with the technical requirements of section 827D of the Act.<sup>2</sup>

Under the Revocation, the Reserve Bank revokes the SSF Standards with effect on 24 June 2024.

Under the Determination, the Reserve Bank determines new FSS that are in the same terms as the SSF Standards, other than the necessary changes to the settlement activity threshold contained in paragraph (a) of the 'Introduction' section (New SSF Standards).<sup>3</sup> The New SSF Standards come into force on 24 June 2024.

### **Consultation**

Under section 827D of the Act, the Reserve Bank must consult with the Australian Securities and Investment Commission (ASIC) prior to revoking an FSS, and prior to determining or varying an 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 these requirements, and also with potential CS facility licence applicants and other stakeholders as part of a

<sup>2</sup> Changing the activity threshold under the SSF Standards requires a change to the specified class of CS facility licensees to which the SSF Standards apply.

<sup>3</sup> The relevant changes are specified in section 2.4 of the Increasing the Threshold for the Application of the Financial Stability Standards for Securities Settlement Facilities: Conclusions Paper available at <<https://www.rba.gov.au/publications/consultations/2023-11-increasing-the-fss-threshold-for-sffs/pdf/2023-11-increasing-the-fss-threshold-for-sffs-conclusions-paper.pdf>>.

public consultation process. The Reserve Bank's consultation paper and response to consultation is available on the Reserve Bank's website.

The Office of Impact Analysis (OIA) was also consulted and advised that an Impact Analysis is not required (OIA24-06341). The change in settlement activity threshold value under the SSF Standards is unlikely to have a more than a minor impact, as it would remove unnecessary regulatory burden from operators of small SSFs.

### **Documents incorporated by reference into the Determination**

As is the case under the SSF Standards, sub-standard 18.4 of the New SSF Standards includes the following:

'A securities settlement facility should complete regularly and disclose publicly responses to the CPSS-IOSCO *Disclosure Framework for Financial Market Infrastructures*.

The reference in sub-standard 18.4 to the CPSS-IOSCO *Disclosure Framework for Financial Market Infrastructures* is to that document as at 16 April 2012.

A copy of the CPSS-IOSCO *Disclosure Framework for Financial Market Infrastructures* as at 16 April 2012 is available at: <<https://www.bis.org/cpmi/publ/d101c.pdf>>.

### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights for each of the Instruments is set out in Attachment A.

### **Exemption from Sunsetting**

Each of the Instruments is exempt from sunseting pursuant to item 18(c) of the table in regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Instruments made under section 827D of the Act are exempt from sunseting as FSSs are designed to be enduring and it would not be appropriate for these standards to be automatically repealed through the sunseting process. Notwithstanding the fact that these instruments are exempt from sunseting, the Reserve Bank regularly reviews the appropriateness of the FSSs determined by it.

More specifically:

- As centralised financial market infrastructure, CS facilities constitute critical elements of the financial system and a failure of a CS facility licensee to appropriately control the risks associated with its services could adversely impact the stability of the Australian financial system.
- FSSs are of enduring importance as they set standards for, and provide a means for the Reserve Bank to assess whether CS facility licensees are employing, appropriate risk controls and other practices relevant to financial stability.
- The CCP Standards and SSF Standards are based on standards set by international bodies (the CPMI and IOSCO). As a member of the CPMI, the Reserve Bank regularly reviews the need for changes to its FSSs to reflect any changes to international best practice.
- In accordance with the Act, the Reserve Bank conducts periodic assessments of the extent to which each CS facility licensee has complied with any applicable FSSs, and must submit a report on each assessment that is undertaken by the Reserve Bank to the relevant Minister. That assessment process provides a further mechanism for regular review of the appropriateness of the FSSs determined by the Reserve Bank.

### **Consultation and Background Documents**

- Increasing the Threshold for the Application of the Financial Stability Standards for Securities Settlement Facilities: Consultation Paper, is available on the Reserve Bank's website at

<<https://www.rba.gov.au/publications/consultations/2023-11-increasing-the-fss-threshold-for-sffs/pdf/2023-11-increasing-the-fss-threshold-for-sffs.pdf>>

- Increasing the Threshold for the Application of the Financial Stability Standards for Securities Settlement Facilities: Conclusions Paper, is available on the Reserve Bank's website at <<https://www.rba.gov.au/publications/consultations/2023-11-increasing-the-fss-threshold-for-sffs/pdf/2023-11-increasing-the-fss-threshold-for-sffs-conclusions-paper.pdf>>
- Regulation Impact Statement from the 2012 changes to the SSF Standards, is available on the Reserve Bank's website at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/201212-new-fss-ris/attachment-1.html>>

Michele Bullock  
Governor

Approved by the Reserve Bank of Australia

27 August 2024

**ATTACHMENT A****Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Financial Stability Standards for Securities Settlement Facilities Revocation 2024**  
**Financial Stability Standards for Securities Settlement Facilities Determination 2024**

Each of these Disallowable Legislative Instruments is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Disallowable Legislative Instruments**

On 10 December 2012, the Reserve Bank determined the Financial Stability Standards (FSS) for Securities Settlement Facilities (SSF Standards) for the purpose of ensuring that clearing and settlement (CS) facility licensees that operate a securities settlement facility (SSF) conduct their affairs in a way that causes or promotes overall stability in the Australian financial system. The SSF Standards comprise a set of detailed standards and sub-standards that aim to ensure that CS facility licensees identify and properly control risks associated with the operation of the SSF. The SSF Standards also aim to ensure that Australian regulators have appropriate influence over cross-border CS facilities.

Under the *Financial Stability Standards for Securities Settlement Facilities Revocation 2024* (the Revocation), the Reserve Bank revokes the SSF Standards with effect on 24 June 2024. Under the *Financial Stability Standards for Securities Settlement Facilities Determination 2024* (the Determination), the Reserve Bank determines new FSS for SSFs that will come into force on 24 June 2024 (the New SSF Standards).

The purpose of the Revocation and the Determination is to implement the Reserve Bank's decision to increase the annual settlement activity threshold under the SSF Standards from a value of \$200 million to a value of \$40 billion, in a manner that is consistent with the technical requirements of section 827D of the *Corporations Act 2001*.

The settlement activity threshold, in effect, exempts CS facility licensees that operate an SSF from the SSF Standards if the value of financial obligations settled through the SSF in a financial year do not exceed the specified threshold value. This change was considered to strike a more appropriate balance between the public interest in the management of risks to financial stability and the public interest in avoiding excessive regulatory burden, particularly on small enterprises.

The New SSF Standards are in the same terms as the SSF Standards, other than the necessary changes to the settlement activity threshold in paragraph (a) of the 'Introduction' section.

**Human rights implications**

The Revocation and the Determination do not engage any of the applicable rights or freedoms.

**Conclusion**

Each of the Revocation and the Determination is compatible with human rights as it does not raise any human rights issues.