



**ASIC**

Australian Securities & Investments Commission

## CONSULTATION PAPER 186

# Clearing and settlement facilities: International principles and cross-border policy (update to RG 211)

September 2012

### About this paper

This consultation paper sets out our proposals to amend the existing Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211) to:

- adopt the *Principles for financial market infrastructures* (Principles) for clearing and settlement (CS) facilities to the extent possible in our jurisdiction. The Principles were recently released by 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); and
- provide certainty and transparency on how we intend to put in place measures and update our existing guidance to ensure there is appropriate regulatory influence over cross-border CS facilities, as envisaged under the Council of Financial Regulators' (the Council) framework described in its paper *Ensuring appropriate influence for Australian regulators over cross-Border clearing and settlement facilities*.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 11 September 2012 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

# Contents

<b>The consultation process</b> .....	<b>4</b>
<b>A Background to the proposals</b> .....	<b>6</b>
Existing regulatory guidance for clearing and settlement facilities .....	6
Who regulates CS facilities.....	7
CPSS–IOSCO Principles for financial market infrastructures .....	7
Council of Financial Regulators’ graduated location requirements .....	11
Financial market infrastructure recovery and resolution framework.....	12
RBA financial stability standards .....	12
Scope of this consultation.....	12
<b>B CPSS–IOSCO Principles for financial market infrastructure</b> .....	<b>15</b>
Implementing the Principles.....	15
<b>C Cross-border CS facilities</b> .....	<b>19</b>
Existing guidance for overseas operators of CS facilities .....	19
Appropriate influence for Australian regulators over cross-border CS facilities .....	20
Proposed amendments to RG 211 .....	27
<b>D RBA’s financial stability standards</b> .....	<b>31</b>
Consequential changes to take into account proposed revised financial stability standards.....	31
<b>E Regulatory and financial impact</b> .....	<b>33</b>
<b>Appendix: CPSS–IOSCO Principles for financial market infrastructure</b> .....	<b>34</b>
<b>Key terms</b> .....	<b>38</b>
<b>List of proposals and questions</b> .....	<b>40</b>

## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us amend existing regulatory guidance on ASIC's approach to the licensing and regulation of clearing and settlement (CS) facilities. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section E, 'Regulatory and financial impact'.

### Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 19 October 2012 to:

Tania Mayrhofer/Dodie Green  
Financial Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000  
facsimile: 02 9911 2414  
email: [marketstructure@asic.gov.au](mailto:marketstructure@asic.gov.au)

## What will happen next?

<b>Stage 1</b>	11 September 2012	ASIC consultation paper released
<b>Stage 2</b>	19 October 2012  October– November	Comments due on the consultation paper  Draft amended regulatory guide
<b>Stage 3</b>	November	Amended regulatory guide released

## A Background to the proposals

### Key points

In April 2010, we released Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211), which sets out our approach to the licensing and regulation of clearing and settlement (CS) facilities.

We work closely with the Reserve Bank of Australia (RBA) to oversee CS facilities.

On 16 April 2012, the Committee on Payment and Settlement Systems of the Bank of International Settlements (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) published the final version of their new *Principles for financial market infrastructures* (Principles). These Principles apply to clearing and settlement (CS) facilities. Appendix 1 provides a list of the Principles ASIC will be primarily focused on.

In July 2012, the Council of Financial Regulators (the Council) released a paper, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities* (cross-border CS facilities paper), to provide clarity on measures that may be applied to CS facilities that are operating across borders under existing legislation.

### Existing regulatory guidance for clearing and settlement facilities

- 1 In April 2010, we released Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211) which sets out our approach to the licensing and regulation of clearing and settlement (CS) facilities, both domestic and overseas operators. RG 211 provides guidance on:
  - (a) when an Australian CS facility licence will be required;
  - (b) how to apply for a CS facility licence; and
  - (c) our approach to exemptions.
- 2 Some selective guidance about clearing and settlement is also included in:
  - (a) Regulatory Guide 54 *Principles for cross border financial services regulation* (RG 54);
  - (b) Regulatory Guide 172 *Australian market licences: Australian operators* (RG 172);
  - (c) Regulatory Guide 176 *Foreign financial services providers* (RG 176); and

- (d) Regulatory Guide 177 *Australian market licences: Overseas operators* (RG 177).

## Who regulates CS facilities

3 The *Corporations Act 2001* (the Corporations Act) establishes a licensing regime for Australian financial markets and CS facilities. The ‘responsible Minister’ (currently the Minister for Financial Services, Superannuation and Corporate Law) has overall responsibility for licensing CS facilities, under advice from both ASIC and the Reserve Bank of Australia (RBA).

4 We work closely with the RBA to oversee CS facilities. Table 1 sets out ASIC and RBA’s responsibilities under the Corporations Act.

**Table 1: ASIC and RBA’s responsibilities under the Corporations Act**

<b>RBA</b>	<ul style="list-style-type: none"> <li>• setting financial stability standards and monitoring compliance with these standards; and</li> <li>• ensuring that licensed CS facilities do all things reasonably practicable to reduce systemic risk.</li> </ul>
<b>ASIC</b>	<ul style="list-style-type: none"> <li>• monitoring compliance with the all other legislation obligations imposed on licensed CS facilities and their operators, including to provide clearing and settlement in a fair and effective manner (e.g. by having arrangements in place to enforce compliance with operating rules and for resolving complaints from facility participants); and</li> <li>• taking action to enforce compliance with all obligations imposed upon licensed CS facilities</li> </ul>

5 A Memorandum of Understanding (MOU) between RBA and ASIC covers their respective responsibilities under the Corporations Act for licensed CS facilities, and sets out a framework for cooperation between ASIC and the RBA to help prevent unnecessary duplication of effort and to minimise the regulatory burden on licensed facilities. The MOU covers information sharing, notification and other arrangements intended to achieve these aims. A copy of the MOU can be found on the ASIC website.<sup>1</sup>

## CPSS–IOSCO Principles for financial market infrastructures

6 Over recent years, CPSS and IOSCO have developed a unified and strengthened set of international standards for payment, clearing and settlement systems, central securities depositories and trade repositories (a

<sup>1</sup><http://www.asic.gov.au/asic/asic.nsf/byheadline/02%2F100+ASIC+and+RBA+sign+Memorandum+of+Understanding+?openDocument>

new class of financial market infrastructure that records and maintains financial transaction data). Each of these systems are identified as financial market infrastructure. The resulting Principles update, replace, unify and synthesise several previous sets of recommendations and Principles published by CPSS and IOSCO about particular types of financial market infrastructure—payment systems, central counterparties (CCPs) and securities settlement systems.<sup>2</sup>

- 7 The Principles represent an important milestone in the broader process of international financial reform that has emerged in response to rapid developments in financial markets and the growing awareness of the systemic importance of financial market infrastructure following the global financial crisis. Recognition of the potential risks inherent in over-the-counter (OTC) derivatives trades prompted international regulators and the Group of 20 countries to encourage management of these risks through increased central clearing of these transactions. With market participants, in response, making greater use of centralised, often cross-border, financial market infrastructure, establishing an exacting and internationally harmonised set of standards, such as the Principles, is essential.
- 8 The Principles are grouped into a comprehensive set of standards for financial market infrastructure. These standards are set out in Table 2.

**Table 2: Standards for financial market infrastructure contained in the Principles**

<b>General organisation</b>	The legal basis, governance arrangements and risk-management framework of a financial market infrastructure.  See Principles 1–3 in the appendix.
<b>Credit and liquidity management</b>	Controls to ensure a financial market infrastructure has sufficient resources, rules and procedures in place to manage credit and liquidity exposures created by the financial market infrastructure’s activities, including standards for acceptable collateral and, for CCPs, margin arrangements.  See Principles 4–7 in the appendix.
<b>Settlement</b>	Low-risk, timely, certain and reliable settlement of securities, payments, physical instruments and commodities.  See Principles 8–10 in the appendix.
<b>Central securities depositories and exchange-of-value settlement systems</b>	Low-risk and reliable transfer and issuance of securities, and elimination of principal risk from settlement systems.  See Principles 11–12 in the appendix.

<sup>2</sup> CPSS, *Core principles for systemically important payment systems* (CPSS Publication No. 43), January 2001; CPSS–IOSCO, *Recommendations for central counterparties* (CPSS Publication No. 64), November 2004; and CPSS–IOSCO, *Recommendations for securities settlement systems* (CPSS Publication No. 46), January 2001.



<b>Default management</b>	<p>Effective and clear rules to manage participant default, including segregation and portability of positions held by clients of a defaulting participant.</p> <p>See Principles 13–14 in the appendix.</p>
<b>General business and operational risk management</b>	<p>Sufficient resources to cover business losses, employment of a prudent investment strategy, and secure and reliable systems to ensure continuous operation.</p> <p>See Principles 15–17 in the appendix.</p>
<b>Access</b>	<p>Fair and open access for prospective participants, balanced against controls to manage risks arising from direct or indirect participation, or links to other financial market infrastructure.</p> <p>See Principles 18–20 in the appendix.</p>
<b>Efficiency and transparency</b>	<p>Efficient provision of services, clear and comprehensive disclosure of risks, costs and obligations arising from participation, and provision of data by trade repositories.</p> <p>See Principles 21–24 in the appendix.</p>

- 9 The Principles strengthen previous international standards in a number of areas, including in the coverage of credit risk, the management of liquidity risks and governance. Several principles are not contained in previous CPSS–IOSCO recommendations, including those on segregation and portability of client monies, interdependencies between financial market infrastructure, general business risk, tiered participation and disclosure.
- 10 The 24 principles are each accompanied by a set of key considerations, which further elaborate on the requirements for financial market infrastructure set out in each principle. The principles and key considerations are in turn accompanied by explanatory notes that offer additional guidance as to how an financial market infrastructure might meet the requirements of each principle and key consideration in practice.

### **Responsibilities for relevant authorities**

- 11 To promote consistent global use and observance of the Principles, CPSS and IOSCO set out five key responsibilities for central banks, market regulators and other relevant authorities for financial market infrastructure in the effective regulation, supervision and oversight of financial market infrastructure. ASIC is a relevant authority under the Principles, along with the RBA. The appendix provides a list of the principles we will primarily focus on.

**Table 3: Summary of responsibilities of relevant authorities for financial market infrastructure**

Responsibility	Requirement
A Regulation, supervision, and oversight of financial market infrastructure	Financial market infrastructures must be subject to appropriate regulation, supervision and oversight by a central bank, market regulator or other relevant authority.
B Regulatory, supervisory, and oversight powers and resources	Authorities must have the powers and resources to carry out their responsibilities in regulating, supervising and overseeing financial market infrastructure.
C Disclosure of policies with respect to financial market infrastructure	Authorities must clearly define and disclose their policies with respect to financial market infrastructure.
D Application of the principles for financial market infrastructure	Relevant authorities must adopt the CPSS–IOSCO principles for financial market infrastructures and apply them consistently.
E Cooperation with other authorities	Central banks, market regulators and other relevant authorities must cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of financial market infrastructure

- 12 Authorities for financial market infrastructure, such as ASIC, are expected to accept and be guided by the responsibilities detailed in the Principles.

### Disclosure framework and assessment methodology

- 13 In addition, to promote consistent disclosure of information by financial market infrastructures, and consistent assessments of financial market infrastructures by international financial institutions and national authorities, CPSS and IOSCO are consulting<sup>3</sup> on:
- (a) a disclosure framework for financial market infrastructures (disclosure framework), which is intended to assist financial market infrastructures in providing the comprehensive level of disclosure that is expected of them under Principle 23 on disclosure of rules, key procedures, and market data; and
  - (b) an assessment methodology for the principles for financial market infrastructures and the responsibilities of authorities (assessment methodology), which provides guidance for assessing and monitoring observance with the Principles and responsibilities.

<sup>3</sup> Bank of International Settlements, *New standards for financial market infrastructures issued by CPSS-IOSCO*, press release, 16 April 2012, [www.bis.org/press/p120416.htm](http://www.bis.org/press/p120416.htm).

## Council of Financial Regulators' graduated location requirements

- 14 On 8 April 2011, following the Australian Government's rejection of a proposed merger between the Australian Securities Exchange and the Singapore Exchange, the Deputy Prime Minister referred a number of issues to the Council, relating to the regulation of financial market infrastructures. The review was conducted in part to address the concern that Australian regulators may have difficulty exercising direct oversight over an entity where significant operations may be located overseas.
- 15 In October 2011, the Council consulted on a broad package of reforms to the regulatory framework for financial market infrastructures.<sup>4</sup> The Council subsequently wrote to the Treasurer and Deputy Prime Minister outlining its final recommendations in March 2012.
- 16 Among its proposed reforms, the Council recommended legislative change to underpin the imposition of graduated 'location requirements'. These may be more broadly defined as measures to be taken by the RBA and ASIC to ensure that they retain sufficient regulatory influence over cross-border financial market infrastructures that operate in Australia. The term 'cross-border' is used to refer to the provision of services to domestic participants by overseas CS facilities and domestic CS facilities that have moved or outsourced operations overseas.
- 17 In July 2012, the Council released the cross-border CS facilities paper.<sup>5</sup> The purpose of the paper was to provide further clarity on measures that may be applied to cross-border CS facilities and how they might be implemented under the RBA's and ASIC's existing powers under the Corporations Act.<sup>6</sup>
- 18 This consultation paper deals with matters that we will be responsible for under the Council's framework for ensuring appropriate influence for Australian regulators over cross-border CS facilities under the existing legislation. It does not cover proposed legislative changes.<sup>7</sup>

---

<sup>4</sup> The Council released a consultation paper on 21 October 2011, seeking stakeholder views on a number of regulatory reform measures. On 30 March 2012 the Deputy Prime Minister and Treasurer released the Council's letter of advice in relation to the review. The Treasurer's referral, the public submissions and the Council's advice are available on the Treasury website at [www.treasury.gov.au/](http://www.treasury.gov.au/).

<sup>5</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing).

<sup>6</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 1.

<sup>7</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing).

## Financial market infrastructure recovery and resolution framework

- 19 Detailed work on a framework for financial market infrastructure recovery and resolution is continuing at the international level, through CPSS and IOSCO. A consultation paper was released on 31 July 2012.<sup>8</sup> Domestically, the Council has recommended to the Deputy Prime Minister and Treasurer that legislative amendments be sought to provide for the RBA to appoint a statutory manager to ‘step in’ to operate a distressed CS facility, including in the event of its financial distress.<sup>9</sup>

## RBA financial stability standards

- 20 The RBA is also consulting<sup>10</sup> on proposals to determine new financial stability standards to:
- (a) fully align minimum requirements in the proposed financial stability standards with those Principles that address matters relevant to financial stability;
  - (b) incorporate complementary requirements, as appropriate, to uphold the standards to which CS facilities licensed to operate in Australia are already held, and to reflect standards applied to CS facilities in other jurisdictions; and
  - (c) implement the key elements of the framework for ensuring regulatory influence over cross-border CS facilities, as articulated by the Council.
- 21 We have been working with the RBA as it has developed and released its consultation material to ensure that the proposals in this paper are consistent with the approach proposed by the RBA. Section D outlines the proposed amendments we intend to make to RG 211 to complement the RBA’s proposed revised financial stability standards.

## Scope of this consultation

- 22 This consultation paper sets out ASIC’s proposals to amend RG 211 to:
- (a) adopt the Principles, to the extent possible in our jurisdiction, for CS facilities, specifically CCPs and settlement systems; and

<sup>8</sup> CPSS–IOSCO, *Recovery and resolution of financial market infrastructures* (CPSS Publication No. 103), consultative report, July 2012.

<sup>9</sup> The Council’s recommendations to the Deputy Prime Minister and Treasurer are set out in a letter from the Governor of the Reserve Bank:

[http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2012/Council%20of%20Financial%20Regulators%20Working%20Group%20on%20Financial%20Market%20Infrastructure%20Regulation/Key%20Documents/CoFR\\_Letter\\_to\\_Deputy\\_PM.ashx](http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2012/Council%20of%20Financial%20Regulators%20Working%20Group%20on%20Financial%20Market%20Infrastructure%20Regulation/Key%20Documents/CoFR_Letter_to_Deputy_PM.ashx).

<sup>10</sup> RBA, *Consultation on new Financial Stability Standards*, consultation paper, 29 August 2012, [www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html](http://www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html).

- (b) provide certainty and transparency on how we intend to put in place measures and update our existing guidance to ensure there is appropriate regulatory influence over cross-border CS facilities as envisaged under the Council's framework, described in its cross-border CS facilities paper, including using licence conditions.<sup>11</sup>
- 23 This consultation paper deals with the Council's framework for ensuring appropriate influence for Australian regulators over cross-border CS facilities under the existing legislation. It does not cover proposed legislative changes.
- 24 The consultation paper also considers how to apply the CPSS–IOSCO assessment methodology and disclosure framework to our regulatory guidance for CS facilities.
- 25 The purpose of this consultation is to detail how we propose to align our regulatory guidance with international standards and the graduated measures recommended by the Council for overseas CS facilities operating in Australia and domestic CS facilities moving or outsourcing operations overseas. We seek your views on implementation and practical issues on the proposals in this paper.
- 26 The proposals relate to CS facilities only. While the Principles cover central securities depositories and trade repositories, these forms of financial market infrastructure are not within the scope of the existing CS facility definition or RG 211 guidance. We do not intend to use this process to consider our regulatory framework for central securities depositories or trade repositories. In the medium term, we will consider whether this issue needs to be addressed and, if necessary, will consult on our policy for these types of financial market infrastructure.
- 27 This consultation paper should be read in conjunction with:
- (a) the CPSS–IOSCO consultation documents, including submissions and feedback reports, which support the Principles. These documents are available on the Bank of International Settlements website at [www.bis.org](http://www.bis.org);
  - (b) the RBA's consultation on determining new financial stability standards. The RBA's consultation paper is available on the RBA website at [www.rba.gov.au](http://www.rba.gov.au); and
  - (c) the Council's consultation documents on a broad package of reforms to the regulatory framework for financial market infrastructures, public submissions, and Council's advice. These documents are available on the Treasury website at [www.treasury.gov.au](http://www.treasury.gov.au).

---

<sup>11</sup> The licence conditions may apply to overseas CS facilities operating in Australia (i.e. overseas CS facilities) and domestic CS facilities seeking to move or outsource operations overseas.

- 28            We note that some selective guidance about CS facilities and overseas operators is contained in RG 54, RG 172, RG 176 and RG 177. We do not intend to make amendments to those regulatory guides at this stage. We are proposing amendments to RG 211 because it contains guidance that is specific to CS facilities. Existing guidance in RG 54, RG 172, RG 176 and RG 177 should be read in conjunction with any amended version of RG 211. We may consider amendments to other relevant regulatory guidance at a future date.

## B CPSS–IOSCO Principles for financial market infrastructure

### Key points

We propose to:

- adopt the Principles relevant to ASIC’s regulatory remit by recognising them as a matter we will consider in framing our advice to the Minister about a CS licence application and on an ongoing basis; and
- take into account the CPSS–IOSCO disclosure framework and assessment methodology in considering whether the CS facility meets the Principles.

We intend to amend RG 211 by the end of 2012 to reflect those matters and propose that the amendments will take effect immediately from that time.

## Implementing the Principles

### Proposal

**B1** We propose to make the following amendments to existing RG 211:

- change references from ‘the CPSS–IOSCO Recommendations’ to ‘the CPSS–IOSCO *Principles for financial market infrastructures*’ and ‘the CPSS–IOSCO Principles’.
- add the following sentences to existing RG 211.145:

When framing our advice to the Minister about granting you a licence, we will consider:

...

- whether you comply with the Principles relevant to ASIC’s regulatory remit.

When we assess a licence application to give advice to the Minister as to whether you comply with the CPSS–IOSCO Principles, we will take into account the CPSS–IOSCO *Disclosure framework for financial market infrastructures* and the CPSS–IOSCO *Assessment methodology for the principles for FMIs and the responsibilities of authorities*.

The attachment contains a marked-up version of the proposed amended RG 211.

### Your feedback

- Do you agree with the approach we intend to take to adopt the Principles in Australia?
- Do you have any comments on how we propose to amend RG 211 to adopt the Principles?

B1Q3 Are there any practical implications of adopting the Principles by making the proposed amendments to RG 211?

B1Q4 Do you suggest any additional amendments to RG 211 to adopt the Principles?

**B2** We propose to take into account the CPSS–IOSCO disclosure framework and assessment methodology in considering whether the CS facility meets the Principles.

*Your feedback*

B2Q1 Are there any consequences of ASIC taking into account the CPSS–IOSCO assessment methodology and disclosure framework in our consideration as to whether the CS facility meets the Principles?

**B3** We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect immediately from that time.

*Your feedback*

B3Q1 Are there any transitional arrangements that are necessary to enable you to comply with expectations outlined in the amended RG 211 as proposed by this consultation paper?

## Rationale

29 The Principles provide a basis for harmonisation of regulatory and oversight regimes, aligning the interests and practices of ASIC with the RBA and overseas authorities. This will be of particular importance where an overseas CS facility is licensed to operate in Australia. In particular, where the Principles have been adopted by both Australian and overseas regulators, it is more likely that an overseas facility’s home regulatory regime will be deemed sufficiently equivalent to the Australian regime and therefore that ASIC will be able to rely on the home regulator’s oversight.

30 We consider international principles and standards in regulating CS facilities. Existing RG 211.222 states:

In conducting our assessments, we will also have regard to any relevant standards and recommendations promulgated by international regulatory bodies such as IOSCO and CPSS.

31 CPSS and IOSCO have stated in their report that:

Relevant authorities should strive to incorporate the principles and the responsibilities in this report in their legal and regulatory framework by the end of 2012. To the fullest extent permissible under national statutory regimes, these authorities should seek to incorporate the principles into their respective activities as soon as possible. FMI’s that are subject to these



principles are expected to take appropriate and swift action in order to observe the principles.<sup>12</sup>

32 This expectation on authorities has been incorporated into the CPSS–IOSCO responsibilities for regulators. In particular, Responsibility D states:

Central banks, market regulators, and other relevant authorities should adopt the CPSS-IOSCO *Principles for financial market infrastructures* and apply them consistently.

33 When we originally developed our policy for regulating CS facilities, we were mindful that international recommendations and standards may change over time to take into account market developments and that, as a consequence, our regulatory regime may need to be updated. Existing RG 211.116 states:

CPSS and IOSCO may periodically review and revise the CPSS-IOSCO Recommendations to take into account market developments. Our general approach will be to promote compliance with any revised or newly established international recommendations/standards on CCPs and securities settlement systems published by CPSS and IOSCO from time to time.

34 The intention of this consultation paper is to consult on updating our regulatory guidance for CS facilities to recognise the recently updated Principles relevant to ASIC’s regulatory remit generally. The detailed application of the requirements are described in the Principles. We therefore do not consider it necessary for us to give any detailed regulatory guidance on how the Principles will apply to CS facility operators.

35 We intend to take into account the Principles relevant to ASIC’s regulatory remit on an ongoing basis. For example, we will consider the Principles when we conduct licence application reviews, annual assessments and when we advise the Minister on variations to licence conditions.

36 We also note that the RBA is proposing to embed the stability-related Principles into the financial stability standards and may provide guidance in those standards on the Principles relevant to their role.

### **CPSS–IOSCO assessment methodology**

37 We expect CS facilities may be subject to external scrutiny—for example, through the assessment programs of international financial institutions, such as the International Monetary Fund and the World Bank. It is expected that these institutions will use the CPSS–IOSCO assessment methodology to assess the observance by financial market infrastructures and authorities of the Principles, including the associated responsibilities of authorities.

---

<sup>12</sup> CPSS–IOSCO, *Principles for financial market infrastructures* (CPSS Publication No. 101), 16 April 2012, p. 16.

- 38 The assessment methodology also provides a baseline for national authorities to assess observance of the Principles by the financial market infrastructures under their oversight or supervision or to self-assess the way they discharge their own responsibilities as regulators, supervisors, and overseers. CPSS and IOSCO have stated that:

National authorities may use this assessment methodology as written or use it to develop equally effective methodologies for their national oversight or supervision processes. The assessment methodology may also be used by FMI's for purposes of self-assessments of observance of the Principles.<sup>13</sup>

#### **Coordination with RBA**

- 39 Adopting the Principles in the Australian regulatory framework requires coordination with the RBA. The RBA is also consulting on proposals to revise its financial stability standards to take into account the revised Principles.<sup>14</sup> The appendix provides a division of primary focus of Principles between ASIC and RBA.

---

<sup>13</sup> CPSS–IOSCO, *Principles for financial market infrastructures* (CPSS Publication No. 101), 16 April 2012.

<sup>14</sup> RBA, *Consultation on new Financial Stability Standards*, consultation paper, 29 August 2012, [www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html](http://www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html).

## C Cross-border CS facilities

### Key points

The Council's cross-border CS facilities paper provides clarity on measures that may be applied to CS facilities to ensure there is appropriate regulatory influence by Australian regulators under existing legislative arrangements. Some of the measures are more relevant to the RBA's role in overseeing CS facilities.

The Council's framework applies to overseas CS facilities operating in Australia and domestic CS facilities seeking to move or outsource some operations overseas.

We propose to make amendments to RG 211 to give guidance that ASIC may advise the Minister to impose conditions on new and existing CS facility licence holders to ensure appropriate influence for Australian regulators over cross-border CS facilities as envisaged under the Council's framework.

ASIC will advise the Minister on appropriate licence conditions on a case-by-case basis in conjunction with the RBA. For those matters already reflected in the RBA's financial stability standards, we will consider how any conditions complement those standards to provide additional clarity and legal certainty to licensees.

We propose to make amendments to RG 211 to clarify that if a CS facility is systemically important with a strong domestic connection, we will ordinarily recommend that the applicant should apply for a domestic operator licence.

We also propose to make amendments to RG 211 to provide clarity on additional information we may expect to be included in a licence application and provided on an ongoing basis in relation to cross-border CS facilities.

We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect immediately from that time.

### Existing guidance for overseas operators of CS facilities

40 RG 211 outlines guidance for overseas operators of CS facilities. In particular, the key points of Section D state:

In order for an overseas CSF licence to be granted, the home regulatory regime as it applies to the operation of the overseas CS facility in the home country, must be sufficiently equivalent (in relation to the degree of protection from systemic risk and the level of fairness and effectiveness of services it achieves) to the Australian regulatory regime for comparable domestic CS facilities.

Adequate cooperation arrangements between ASIC, the RBA and

- the applicant; and

- the relevant home regulatory authorities, must be in place before we could advise the Minister to grant an overseas CSF licence. ASIC and the RBA will look at putting in place the cooperative arrangements with the relevant home regulatory authorities.

## Appropriate influence for Australian regulators over cross-border CS facilities

41 The Council’s cross-border CS facilities paper clarifies measures that may be applied to ensure appropriate influence for Australian regulators under existing legislative arrangements. The Council’s framework applies to overseas CS facilities operating in Australia and domestic CS facilities seeking to move or outsource some operations overseas. These requirements are summarised in Table 4. See the Council’s cross-border CS facilities paper for detailed information about the measures and the Council’s rationale for making its recommendations. The paper is available on the Treasury website at [www.treasury.gov.au](http://www.treasury.gov.au).

**Table 4: Measures to ensure appropriate influence for Australian regulators over cross-border CS facilities**

Measure	Summary
<b>Foundational requirements for all CS facilities licensed in Australia</b>	
Legal compatibility of rules with Australian regulatory requirements	Facilities to provide up-to-date legal opinions dealing with conflict of laws and enforceability of rules.
Channels to demonstrate compliance with Australian regulatory requirements	RBA and ASIC to enter into cooperative arrangements and share information with overseas regulators.
	Direct oversight of domestic licensees; vetting of outsourcing arrangements.
<b>Foundational requirements for all CS facilities licensed in Australia that have material Australian-based participation and/or provide services in Australian-related products</b>	
Governance and operational arrangements that promote stability in the Australian financial system	Facilities to demonstrate that governance arrangements give appropriate consideration to Australian interests, including default obligations proportionate to the scale and scope of participants’ activities.  Facilities to provide for operational support during Australian market hours and, to the extent reasonably practicable, accommodate local market practices.
<b>Requirements for systemically important facilities</b>	
Holding an Exchange Settlement Account (ESA) with the RBA	Systemically important CCPs to hold an ESA and comply with ancillary requirements (operational, financial and legal).

Measure	Summary
Strengthen influence for Australian regulators	Adequate participation in supervisory college for systemically important facilities including any crisis management arrangements.
<b>Requirements for systemically important facilities with a strong domestic connection</b>	
Holding a domestic CS facility licence	Periodic and/or activity-based review of the need for a domestic licence and a domestic legal presence.
Overseeing the outsourcing of critical functions	Facilities to maintain operational arrangements such that an appointed manager would have control over critical functions in a step-in scenario.

Source: Cross-border CS facilities paper, pp. 16-17

### Measures relevant to RBA role

- 42 Not all of the measures in Table 4 are relevant to ASIC's role in overseeing CS facilities. Some of the measures are more relevant to the RBA's role in overseeing these facilities. For example, the RBA is responsible for setting and ensuring compliance with financial stability standards that contain governance and operational arrangements that promote stability in the Australian financial system. The RBA is also responsible for ensuring that a systemically important CS facility holds an ESA with the RBA and complies with ancillary requirements. The RBA is also consulting on proposals to determine new financial stability standards to take into account the Council's measures for ensuring appropriate influence over cross-border CS facilities under its existing legislative framework.<sup>15</sup>

### Existing measures within ASIC's regulatory framework

- 43 In the cross-border CS facilities paper, the Council notes that the basic measures largely clarify, elaborate and interpret general licence obligations under Pt 7.3 of the Corporations Act.<sup>16</sup>
- 44 Some measures already exist within ASIC's regulatory framework that satisfy some of the Council's measures relevant to ASIC's role.
- 45 When making licensing decisions about overseas CS facilities, the Minister must, under s827A(3)(d), consider whether there are adequate cooperation arrangements between ASIC, the RBA and the home regulatory authority. Existing RG 211.133–RG 211.140 sets out ASIC's existing expectations in

<sup>15</sup> RBA, *Consultation on new Financial Stability Standards*, consultation paper, 29 August 2012, [www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html](http://www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html).

<sup>16</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 6.

relation to arrangements with the home regulatory authority. In particular, existing RG 211.134 states:

We only expect to advise the Minister to grant an overseas CSF licence if the RBA and ASIC have adequate cooperation arrangements with the relevant home regulatory authority. This is because licensing of overseas CS facilities in Australia raises a number of regulatory issues that do not arise with domestic CS facilities.

- 46 ASIC already acknowledges that in certain circumstances it may be more appropriate for an overseas CS facility to apply for a domestic licence under s824B(1). Existing RG 211.95 states:

However, in certain circumstances, even if an overseas CSF licence applicant satisfies all the criteria set out in s824B(2), ASIC or the RBA may advise the Minister that it is more appropriate for the overseas CS facility operator to apply for a domestic licence under s824B(1). An example would be an overseas CS facility seeking to provide services to a market considered particularly large in Australia or systemically important.

### **Strengthening influence for Australian regulators**

- 47 The Council has recommended that to achieve adequate influence in the supervision of a systemically important overseas CS facility licensee, the RBA and ASIC would seek:

- (a) membership of any multilateral cooperative oversight group; and
- (b) 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.

- 48 We will consider, on a case-by-case basis depending on the particular circumstances, whether any existing cooperative oversight or crisis-management arrangements are adequate or new arrangements are necessary.

### **Imposing conditions**

- 49 To meet the objectives of minimising disruption to the stability of the financial system and providing for efficient oversight, the Council has recommended that:

- (a) the RBA and ASIC conduct a periodic and/or activity-based review of the need for a domestic licence and a domestic legal presence; and
- (b) to the extent critical functions are outsourced to an overseas party, CS facilities be required to maintain operational arrangements such that an appointed manager would have control over critical functions in a step-in scenario.

50 The Council has recognised that CS facilities may differ significantly in the nature of their activities, their scale, the products and participants, and their importance to the Australian financial system. As a consequence, the Council has proposed that specific requirements for cross-border CS facilities be applied in a graduated and proportionate manner.<sup>17</sup> In its cross-border paper, the Council stated that:

Under this approach, there would be some basic requirements imposed on all cross-border CS facility licensees, both domestic and overseas, which largely clarify, elaborate and interpret general licence obligations under Part 7.3 of the [Corporations] Act, including under the [financial stability standards]. While in principle it would be expected that these requirements would be met by all licensees, some specific measures may not in practice apply unless a facility had material Australian-based participation or provided services in Australian-related products (e.g. Australian-dollar denominated products, or securities issued by Australian-domiciled issuers).

Other requirements would apply only if the licensee was deemed to be, or over time became, systemically important in Australia, and/or exhibited a particularly strong connection with the Australian financial system and real economy. Determination of which specific measures should apply to a given facility would reflect a case-by-case assessment of the benefits from enhanced influence for the Regulators, relative to the costs of imposing additional requirements.

51 At present, the Corporations Act allows a registered foreign company with a principal place of business outside of Australia to apply for a domestic CS facility licence.

52 ASIC can advise the Minister to impose licence conditions on new and existing CS facility licence holders. Existing RG 211.147 states that:

The Minister may impose any conditions that they consider appropriate for the operation of the CS facility. We will advise the Minister about the conditions we think should apply to your CSF licence.

53 Existing RG 211.148 lists examples of the conditions we may advise the Minister to impose. RG 211 also gives guidance that ASIC will:

- (a) discuss with RBA whether they would like to propose any conditions to the licence; and
- (b) consult with applicants about the type of conditions it may recommend before it gives its advice to the Minister.

54 After a licence is granted, the Minister may only impose conditions or additional conditions, or vary the conditions, on the licence if they consider it appropriate to do so considering:

- (a) the licensee's obligations as a CS facility licensee; and

---

<sup>17</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 6.

- (b) any change in the facility's operations or the conditions in which the facility is operating.<sup>18</sup>

55 In its cross-border paper, the Council stated:

More generally, even if a facility entered the Australian market with a small operation, the requirements for both systemically important facilities and those facilities with a strong domestic connection would be expected to apply should its market share grow substantially or the nature of its operations or participants change.<sup>19</sup>

56 Proposal C1(b) sets out how we intend to amend our guidance on what licence conditions we may advise the Minister to impose on cross-border CS facilities to be consistent with that published in the cross-border CS facility paper.

57 For those matters already reflected in the RBA's financial stability standards, we will consider how any conditions complement those standards to provide additional clarity and legal certainty to licensees.

### **Systemically important with a strong domestic connection**

58 The Council states in its paper that the determination of systemic importance will be made by the Regulators, as appropriate, and may require a degree of judgement in some cases. The Council has outlined relevant factors that would ordinarily be considered in assessing the systemic importance of a facility in Australia.<sup>20</sup>

59 The Council's cross-border paper and the indicators considered by the Basel Committee on Banking Supervision (BCBS)<sup>21</sup> and outlined in the Principles, provide guidance that the following factors may indicate that a CS facility is systemically important:

- (a) the size of the facility in Australia—for example:
  - (i) the absolute number and value of transactions processed by the facility in Australian dollar-denominated products;
  - (ii) its market share; or
  - (iii) for CCPs, the total amount of initial margin held in respect of Australian dollar-denominated products;
- (b) the availability of substitutes for the facility's services in Australia;

<sup>18</sup> Section 825A(3) of the Corporations Act.

<sup>19</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 7

<sup>20</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 10.

<sup>21</sup> BCBS, *Global systemically important banks: Assessment methodology and the additional loss absorbency requirement*, November 2011, [www.bis.org/publ/bcbs207.htm](http://www.bis.org/publ/bcbs207.htm).



- (c) the nature and complexity of the products cleared and settled by the facility;
- (d) the degree of interconnectedness with other parts of the Australian financial system.

60 The above factors are indicative only. They are neither exhaustive nor determinative. Determining whether the CS facility is systemically important will require an assessment of all the facts and circumstances pertaining to the CS facility.

61 The Council has stated in its cross-border CS facilities paper that the strength of a facility's domestic connection will reflect the characteristics of the markets it serves, including the nature of its products and participants, and any Australian clients of those participants, as well as any links and dependencies with other domestic financial market infrastructures or the domestic legal framework. The Council has also stated that determining whether a facility's domestic connection is sufficiently strong to warrant the imposition of these more stringent requirements will entail consideration of a number of factors relevant to an assessment of the costs and benefits. The Council has listed a number of relevant factors in its cross-border paper (noting that the consideration is not limited to these factors).

62 The Council's cross-border paper provides guidance that the following factors may indicate that a CS facility has a strong domestic connection:

- (a) whether the CS facility offers services in a domestic or overseas market;
- (b) the mix of domestic and overseas participants in the facility;
- (c) the potential for disruption of CS facility to effect the real economy;
- (d) whether the market serviced by the facility has retail or wholesale clients;
- (e) whether the facility clears or settles a domestic securities market; and
- (f) links that the facility has with other financial market infrastructures more generally.

63 The Council's cross-border paper provides further detail about each factor.

64 Again, these factors are indicative only. They are neither exhaustive nor determinative. Determining whether the CS facility is systemically important with a strong domestic connection will require an assessment of all the facts and circumstances pertaining to the CS facility.

65 More generally, even if a facility entered the Australian market with a small operation, the requirements for systemically important facilities with a strong domestic connection would be expected to apply should its market share grow substantially or the nature of its operations or participants change. Accordingly, over time as the facility's systemic importance or

domestic connection increases we may advise the Minister to vary the conditions attached to the facility operators' licence. This is consistent with the Council's framework.<sup>22</sup>

- 66 Proposal C1(a) states that we will provide new guidance for cross-border CS facilities on what factors we may take into account in our consideration of when we consider a CS facility to be systemically important with strong domestic connections, to be consistent with the guidance published in the cross-border CS facility paper.

### **What should be included in an application for a CS facility licence**

- 67 RG 211 outlines what should be included in an application for a CS facility licence. Existing RG 211.152 lists a number of items an application should deal with, including 'detailed information and characteristics of your facility and your company'.
- 68 Proposal C1(c) sets out how we intend to amend our guidance for CS facility licence application.

### **Examples of additional obligations in RG 211**

- 69 Existing RG 211.203–RG 211.205 outline additional obligations overseas CS facility licensees must comply with. These additional obligations require an overseas CS facility to comply with its home regulatory regime, remain authorised to operate the CS facility in its home country and not change the home country without the Minister's approval, notify ASIC of any significant changes to its home regulatory regime or if it is no longer authorised to operate the CS facility in its home country, and continue to be registered in Australia as a foreign company.
- 70 Existing RG 211.205 states that:
- Complying with the licence obligations set out in the Corporations Act will help you achieve the regulatory outcomes in Table 1. In certain circumstances, ASIC may recommend the Minister impose conditions on the CSF licence in order to achieve those outcomes.
- 71 Existing RG 211.206 provides a specific example of additional conditions that may be imposed in a particular set of circumstances.
- 72 Our proposals C1(d)–C1(e) set out specific licence conditions we may impose on CS facilities to ensure appropriate influence by ASIC over cross-

---

<sup>22</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 7.

border CS facility licensees, to be consistent with the guidance published in the cross-border CS facility paper.

## Reporting

- 73 A CS facility licensee is required to produce an annual report on how it considers it has complied with its licence obligations. We have stated in existing RG 211.214 the items that we expect the report to deal with. Existing RG 211.215 also sets out that, in conjunction with the granting of a CS facility licence and subject to individual circumstances of the case, we may enter into a cooperative agreement with the licensee, setting out among other things the additional information required to be included in the annual report. We have made proposal C1(f) to clarify that this information may include whether any operations have been moved or outsourced overseas.
- 74 In general, we are interested in developments affecting domestic and overseas CS facilities and it is useful for us to understand significant developments affecting a facility beforehand. We have already expressed this in RG 211 in relation to prospective rule changes (see existing RG 211.197). Consistent with this, we would expect a domestic CS facility licence holder to speak to us about any intention to move or outsource critical functions overseas so that we can understand any potential regulatory impact and ensure any necessary measures are put in place: see proposal C1(g).

## Proposed amendments to RG 211

### Proposal

- c1** We propose to amend RG 211 to put in place measures and build on existing ASIC guidance to ensure there is appropriate regulatory influence over cross-border CS facilities as envisaged under the Council's framework. We propose to:
- (a) clarify that if a CS facility is systemically important with a strong domestic connection, ASIC would ordinarily recommend that the applicant should apply for a domestic operator licence. We propose to include guidance in RG 211 on the indicative factors we may take into consideration to determine if a CS facility has a strong domestic connection and is systemically important;
  - (b) amend existing RG 211.148, which lists the examples of circumstances where we may advise the Minister to impose conditions, to include the following examples:
    - (i) facilitating ASIC's ability to conduct periodic and/or activity-based reviews to determine if there has been changes that mean that a domestic licence and a domestic legal presence should be required;

- (ii) requiring the CS facility to report to ASIC regularly on its overseas activities and presence;
  - (iii) requiring the CS facility to establish a domestic operational presence, either with respect to human resources or other aspects of their operations, for either all or part of their functions; and
  - (iv) requiring a CS facility to set controls around how they deal with outsourcing of critical functions (e.g. core risk management function);
- (c) amend existing RG 211.152(a) to include an expectation that a CS facility licence application will include detailed information about whether any operations are performed overseas;
  - (d) insert a new paragraph under existing RG 211.204 to state that specific licence conditions may be imposed to ensure appropriate influence by ASIC over cross-border CS facilities;
  - (e) insert a new paragraph under existing RG 211.206 to provide an example of additional conditions that may be required to achieve regulatory outcomes in the circumstance of a domestic CS facility seeking to move or offshore some operations overseas or an overseas CS facility that is systemically important with a strong domestic connection;
  - (f) amend existing RG 211.215 to provide an example that we may require, through a cooperative agreement with a CS facility licensee, that information is included in the licensee's annual report about whether any operations have been moved or outsourced overseas;
  - (g) insert a new paragraph under existing RG 211.215 stating that we would expect a domestic CS facility licence holder to speak to us about any intention to move or outsource critical functions overseas so that we can understand any potential regulatory impact and ensure any necessary measures are put in place; and
  - (h) amend Examples 4 and 6 in Table 2 of RG 211.

The attachment contains a marked-up version of the proposed amended RG 211.

#### *Your feedback*

- C1Q1 Do you agree with the approach we intend to take to implement the Council's measures under existing legislation?
- C1Q2 Do you have any comments on how we propose to amend RG 211 to take into account the Council's measures under existing legislation?
- C1Q3 Are there any practical implications of implementing the Council's measures by making the proposed amendments to RG 211?
- C1Q4 Do you suggest any additional amendments to RG 211 to implement the Council's measures under existing legislation?

- c2 We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect immediately from that time.

*Your feedback*

- C2Q1 Are there any transitional arrangements that are necessary to enable you to comply with expectations outlined in the amended RG 211 as proposed by this consultation paper?

## Rationale

- 75 The purpose of the Council's paper is to provide clarity on measures that may be applied to cross-border CS facilities to ensure appropriate influence for Australian regulators over cross-border CS facilities under existing legislative arrangements. The Council acknowledged in its paper that the specific measures would be the subject of further consultation by ASIC and the RBA, in the context of planned revisions to RG 211 and the RBA's financial stability standards.
- 76 The Council stated in the cross-border CS facilities paper that:
- In principle, the class of foundational requirements should not generate substantial incremental costs for CS facilities, particularly since they generally clarify or make explicit requirements already contemplated within the Corporations Act.<sup>23</sup>
- 77 We intend to make changes to our regulatory guidance for CS facilities to put in place the measures that are relevant to ASIC's role in overseeing these facilities and build on existing ASIC guidance for CS facilities.
- 78 The existing regulatory framework enables ASIC to advise the Minister to impose conditions on a new or existing CS facility licence. The Minister may impose any conditions that they consider appropriate for the operation of the CS facility. Our regulatory guidance states that we will discuss with the RBA whether they would like to propose any conditions to the licence and that we will consult with applicant about the types of condition we may recommend before we give our advice to the Minister. A decision to vary an existing licence may be the subject of review by the Administrative Appeals Tribunal on application by an affected person, such as the licensee.
- 79 We consider that the complementary application of licence conditions and financial stability standards is the most transparent and efficient mechanism to implement the Council's measures under existing legislation. We aim to provide clarity throughout RG 211 on our intention on a case-by-case basis where relevant to advise the Minister to impose licence conditions to ensure appropriate influence by ASIC over cross-border CS facilities.

<sup>23</sup> Council of Financial Regulators, *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, 27 July 2012, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/cross-border-clearing), p. 7.

- 80 We note that s821C of the Corporations Act places an obligation on CS facility licensees to meet any of our reasonable requests for assistance in relation to the performance of our functions. Section 821D of the Corporations Act places an obligation on CS facility licensees to give ASIC access to the facility. Proposal C1(b)(i) builds on these existing obligations.
- 81 We can also use regulatory guidance to set out our expectations about what should be dealt with in a licence application. Existing RG 211.152(a) already sets an expectation that CS facility licence applications should include detailed information and characteristics of the facility and company. The proposed amendment to include detailed information about whether any operations are performed overseas provides clarity to applicants that we expect them to provide this information to us as part of the detailed information about the facility and company.
- 82 We expect a CS facility licensee to engage in ongoing dialogue with us about any likely changes to its facility or company, including any intention to move or outsource any operations overseas. At a minimum, we would expect to see this information as part of the annual report. However, in order to assess any regulatory impact, we would expect a CS facility licensee to speak to us before a decision is made to move or outsource operations overseas.

## D RBA's financial stability standards

### Key points

We propose to amend RG 211 to make consequential changes which take into account the RBA's proposed revisions to its financial stability standards.

We intend to amend RG 211 by the end of 2012 to reflect those changes and propose that the amendments will take effect immediately from that time.

### Consequential changes to take into account proposed revised financial stability standards

#### Proposal

D1 We propose to make the following amendments to existing RG211:

- (a) update references to RBA's financial stability standards in existing RG 211.165 and RG 211.166;
- (b) amend existing RG 211.108 to update the factors RBA will take into account in assessing sufficient equivalence of the home regulatory regime as it applies to the overseas CS facility, in relation to the degree of protection from systemic risk to include observed outcomes relative to those in Australia, as reflected in an initial assessment of CS facilities operating under the relevant overseas regime;
- (c) amend existing RG 211.165 to reflect that the new level of exemption from the financial stability standards for Securities Settlement Facilities issued by the RBA is proposed by the RBA to be \$200 million; and
- (d) remove the exemption from existing RG 211.166 that states:
 

An overseas CSF licensee that operates a central counterparty is exempt from complying with this standard if certain conditions are met, including:

  - (a) compliance with the home regulatory regime's requirements relating to financial stability; and
  - (b) having in place satisfactory arrangements to provide additional information to the RBA as required.

The attachment contains a marked-up version of the proposed amended RG 211.

#### Your feedback

- D1Q1 Do you agree with the approach we intend to take to make consequential amendments to RG 211 to take into account the RBA's proposed financial stability standards?
- D1Q2 Do you have any comments on how we propose to amend RG 211 in this way?

D1Q3 Are there any practical implications of making these consequential amendments to RG 211?

D1Q4 Do you suggest any additional amendments to RG 211 to which are necessary taking into account the proposed revised financial stability standards?

D2 We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect from that time.

*Your feedback*

D2Q1 Are there any transitional arrangements that are necessary to enable you to comply with expectations outlined in the amended RG 211 as proposed by this consultation paper?

## Rationale

- 83 The RBA is also consulting<sup>24</sup> on proposals to determine new financial stability standards:
- (a) to fully align minimum requirements in the proposed financial stability standards with those Principles that address matters relevant to financial stability;
  - (b) to incorporate complementary requirements, as appropriate, to uphold the standards to which CS facilities licensed to operate in Australia are already held under the current financial stability standards, and to reflect the standards applied to CS facilities in other jurisdictions; and
  - (c) to implement the key elements of the framework for ensuring regulatory influence over cross-border CS facilities, as articulated by the Council.
- 84 We have been working closely with the RBA as it has developed and released its consultation material to ensure that the proposals in this paper are consistent with the approach proposed by the RBA in its consultation.
- 85 We intend to make consequential amendments to RG 211 to reflect any amended terminology used by the RBA in naming its standards and links to those standards. We also intend to make amendments to RG 211 for consistency with the proposed revised financial stability standards. See the RBA's consultation paper for the rationale behind the proposed revisions.<sup>25</sup>
- 86 If the RBA amends its proposals in light of stakeholder feedback, we intend to amend our guidance for consistency. We intend to make consequential amendments to RG 211 that are consistent with the final revisions to the RBA's financial stability standards. We do not propose to re-consult if the RBA amend its proposals.

<sup>24</sup> RBA, *Consultation on new Financial Stability Standards*, consultation paper, 29 August 2012, [www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html](http://www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html).

<sup>25</sup> RBA, *Consultation on new Financial Stability Standards*, consultation paper, 29 August 2012, [www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html](http://www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html).



## E Regulatory and financial impact

87 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) maintaining financial system stability;
- (b) reducing systemic risk;
- (c) ensuring clearing and settlement services are provided in a fair and effective way; and
- (d) protecting investors dealing in financial product and users of CS facilities.

88 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

89 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

90 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

## Appendix: CPSS–IOSCO Principles for financial market infrastructure

**Table 5: Division of primary focus of Principles between ASIC and RBA**

Principle	Responsibility
<p><b>1 Legal basis</b></p> <p>A financial market infrastructure should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.</p>	ASIC & RBA
<p><b>2 Governance arrangements</b></p> <p>A financial market infrastructure should have governance arrangements that are clear and transparent, promote the safety and efficiency of the financial market infrastructure, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.</p>	ASIC & RBA
<p><b>3 Framework for the comprehensive management of legal, credit, liquidity, operational, and other risks</b></p> <p>A financial market infrastructure should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.</p>	RBA
<p><b>4 Credit risk</b></p> <p>A financial market infrastructure should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. A financial market infrastructure should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.</p>	RBA
<p><b>5 Collateral</b></p> <p>A financial market infrastructure that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. A financial market infrastructure should also set and enforce appropriately conservative haircuts and concentration limits.</p>	RBA
<p><b>6 Margin</b></p> <p>A CCP should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.</p>	RBA

Principle	Responsibility
<b>7 Liquidity risk</b>	RBA
<p>A financial market infrastructure should effectively measure, monitor, and manage its liquidity risk. A financial market infrastructure should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the financial market infrastructure in extreme but plausible market conditions.</p>	
<b>8 Clear and certain final settlement</b>	RBA
<p>A financial market infrastructure should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, a financial market infrastructure should provide final settlement intraday or in real time.</p>	
<b>9 Money settlements</b>	RBA
<p>A financial market infrastructure should conduct its money settlements in central bank money where practical and available. If central bank money is not used, a financial market infrastructure should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.</p>	
<b>10 Physical deliveries</b>	RBA
<p>A financial market infrastructure should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.</p>	
<b>11 Central securities depositories</b>	ASIC & RBA
<p>A central securities depository should have appropriate rules and procedures to help ensure the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities. A central securities depository should maintain securities in an immobilised or dematerialised form for their transfer by book entry.</p>	
<b>12 Exchange-of-value settlement systems</b>	RBA
<p>If a financial market infrastructure settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.</p>	
<b>13 Participant-default rules and procedures</b>	ASIC & RBA
<p>A financial market infrastructure should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the financial market infrastructure can take timely action to contain losses and liquidity pressures and continue to meet its obligations.</p>	

Principle	Responsibility
<p><b>14 Segregation and portability of positions</b></p> <p>A CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP with respect to those positions.</p>	ASIC & RBA
<p><b>15 General business risk</b></p> <p>A financial market infrastructure should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.</p>	ASIC & RBA
<p><b>16 Custody and investment</b></p> <p>A financial market infrastructure should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. A financial market infrastructure's investments should be in instruments with minimal credit, market, and liquidity risks.</p>	ASIC & RBA
<p><b>17 Operational risk</b></p> <p>A financial market infrastructure should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the financial market infrastructure's obligations, including in the event of a wide-scale or major disruption.</p>	ASIC & RBA
<p><b>18 Access and participation</b></p> <p>A financial market infrastructure should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.</p>	ASIC & RBA
<p><b>19 Tiered participation arrangements</b></p> <p>A financial market infrastructure should identify, monitor, and manage the material risks to the financial market infrastructure arising from tiered participation arrangements.</p>	ASIC & RBA
<p><b>20 Financial market infrastructure links</b></p> <p>A financial market infrastructure that establishes a link with one or more financial market infrastructures should identify, monitor, and manage link-related risks.</p>	ASIC & RBA
<p><b>21 Efficiency and effectiveness</b></p> <p>A financial market infrastructure should be efficient and effective in meeting the requirements of its participants and the markets it serves.</p>	ASIC
<p><b>22 Communication procedures and standards</b></p> <p>A financial market infrastructure should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.</p>	ASIC

	Principle	Responsibility
23	<p><b>Disclosure of rules, key procedures, and market data</b></p> <p>A financial market infrastructure should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the financial market infrastructure. All relevant rules and key procedures should be publicly disclosed.</p>	ASIC & RBA
24	<p><b>Disclosure of market data by trade repositories</b></p> <p>A trade repository should provide timely and accurate data to relevant authorities and the public in line with their respective needs.</p>	ASIC

## Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Australian market licence	Australian market licence under s791A of the Corporations Act
CCP (central counterparty)	An entity that interposes itself between counterparties to trades, becoming the buyer to every seller and the seller to every buyer
Corporations Act	<i>Corporations Act 2001</i> including any regulations made for the purposes of the Act
Corporations Regulations	Corporations Regulations 2001
Council	Council of Financial Regulators
CPSS	Committee on Payment and Settlement Systems of the Bank of International Settlement
cross-border CS facilities	CS facilities that provide cross-border services by providing services to domestic participants by offshore-based facilities (i.e. overseas CF facilities) or 'offshoring' by domestic facilities (i.e. domestic CS facilities) by moving or outsourcing operations overseas.
cross-border CS paper	The Council of Financial Regulators' paper, <i>Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities</i>
CS facility	A clearing and settlement facility as defined by s768A
CS facility licence	An Australian CS facility licence under s824B that authorises a person to operate a CS facility in Australia
CS facility licensee	A person who holds a CSF licence Note: This is a definition contained in s761A.
CS facility users	Investors who use the services provided by the CS facility to meet obligations arising out of transactions in financial products that they enter into. Investors may be participants acting for themselves or, when participants act as intermediaries, the clients of the participants
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C); and</li> <li>• makes non-cash payments (see s763D)</li> </ul> Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.

Term	Meaning in this document
financial stability standards	Standards issued by RBA under s827D
IOSCO	Technical Committee of the International Organization of Securities Commissions
licensee obligations	Obligations of a CSF licensee as set out in Subdivision A of Division 2 of Part 7.3 of the Corporations Act
market licensee	Holder of an Australian market licence
market users	Investors who acquire or dispose of financial products in a financial market, including an OTC market. Investors may be participants dealing for themselves or, where participants act as intermediaries, the clients of the participants
Objectives and Principles	IOSCO Objectives and Principles of Securities Regulation
OTC	Over-the-counter
participant	A person who is allowed to directly participate in the facility under the facility's operating rules Note: This is a definition contained in s761A.
Pt 7.3 (for example)	Part of the Corporations Act (in this example numbered 7.3)
Principles	CPSS–IOSCO <i>Principles for financial market infrastructures</i> , as revised from time to time, including any clearing and settlement systems-related standards promulgated by CPSS and IOSCO
RBA	Reserve Bank of Australia
reg 7.2.10 (for example)	A regulation in the Corporations Regulations (in this example numbered 7.2.10)
RG 211 (for example)	An ASIC regulatory guide (in this example numbered 211)
s782 (for example)	A section of the Corporations Act (in this example numbered 782)

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to make the following amendments to existing RG 211:</p> <p>(a) change references from 'the CPSS–IOSCO Recommendations' to 'the CPSS–IOSCO Principles for financial market infrastructures' and 'the CPSS–IOSCO Principles'.</p> <p>(b) add the following sentences to existing RG 211.145:</p> <p>When framing our advice to the Minister about granting you a licence, we will consider:</p> <p>...</p> <p>(d) whether you comply with the Principles relevant to ASIC's regulatory remit.</p> <p>When we assess a licence application to give advice to the Minister as to whether you comply with the CPSS–IOSCO Principles, we will take into account the CPSS–IOSCO Disclosure framework for financial market infrastructures and the CPSS–IOSCO Assessment methodology for the principles for FMIs and the responsibilities of authorities.</p> <p>The attachment contains a marked-up version of the proposed amended RG 211.</p>	<p>B1Q1 Do you agree with the approach we intend to take to adopt the Principles in Australia?</p> <p>B1Q2 Do you have any comments on how we propose to amend RG 211 to adopt the Principles?</p> <p>B1Q3 Are there any practical implications of adopting the Principles by making the proposed amendments to RG 211?</p> <p>B1Q4 Do you suggest any additional amendments to RG 211 to adopt the Principles?</p>
<p>B2 We propose to take into account the CPSS–IOSCO disclosure framework and assessment methodology in considering whether the CS facility meets the Principles.</p>	<p>B2Q1 Are there any consequences of ASIC taking into account the CPSS–IOSCO assessment methodology and disclosure framework in our consideration as to whether the CS facility meets the Principles?</p>
<p>B3 We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect immediately from that time.</p>	<p>B3Q1 Are there any transitional arrangements that are necessary to enable you to comply with expectations outlined in the amended RG 211 as proposed by this consultation paper?</p>
<p>C1 We propose to amend RG 211 to put in place measures and build on existing ASIC guidance to ensure there is appropriate regulatory influence over cross-border CS facilities as envisaged under the Council's framework. We propose to:</p> <p>(a) clarify that if a CS facility is systemically important with a strong domestic connection, ASIC would ordinarily recommend that the applicant should apply</p>	<p>C1Q1 Do you agree with the approach we intend to take to implement the Council's measures under existing legislation?</p> <p>C1Q2 Do you have any comments on how we propose to amend RG 211 to take into account the Council's measures under existing legislation?</p> <p>C1Q3 Are there any practical implications of implementing the Council's measures by making the proposed amendments to</p>



Proposal	Your feedback
<p>for a domestic operator licence. We propose to include guidance in RG 211 on the indicative factors we may take into consideration to determine if a CS facility has a strong domestic connection and is systemically important;</p> <p>(b) amend existing RG 211.148, which lists the examples of circumstances where we may advise the Minister to impose conditions, to include the following examples:</p> <ul style="list-style-type: none"> <li>(i) facilitating ASIC's ability to conduct periodic and/or activity-based reviews to determine if there has been changes that mean that a domestic licence and a domestic legal presence should be required;</li> <li>(ii) requiring the CS facility to report to ASIC regularly on its overseas activities and presence;</li> <li>(iii) requiring the CS facility to establish a domestic operational presence, either with respect to human resources or other aspects of their operations, for either all or part of their functions; and</li> <li>(iv) requiring a CS facility to set controls around how they deal with outsourcing of critical functions (e.g. core risk management function);</li> </ul> <p>(c) amend existing RG 211.152(a) to include an expectation that a CS facility licence application will include detailed information about whether any operations are performed overseas;</p> <p>(d) insert a new paragraph under existing RG 211.204 to state that specific licence conditions may be imposed to ensure appropriate influence by ASIC over cross-border CS facilities;</p> <p>(e) insert a new paragraph under existing RG 211.206 to provide an example of additional conditions that may be required to achieve regulatory outcomes in the circumstance of a domestic CS facility seeking to move or offshore some operations overseas or an overseas CS facility that is systemically important with a strong domestic connection;</p> <p>(f) amend existing RG 211.215 to provide an</p>	<p>RG 211?</p> <p>C1Q4 Do you suggest any additional amendments to RG 211 to implement the Council's measures under existing legislation?</p>

Proposal	Your feedback
<p>example that we may require, through a cooperative agreement with a CS facility licensee, that information is included in the licensee's annual report about whether any operations have been moved or outsourced overseas;</p> <p>(g) insert a new paragraph under existing RG 211.215 stating that we would expect a domestic CS facility licence holder to speak to us about any intention to move or outsource critical functions overseas so that we can understand any potential regulatory impact and ensure any necessary measures are put in place; and</p> <p>(h) amend Examples 4 and 6 in Table 2 of RG 211.</p> <p>The attachment contains a marked-up version of the proposed amended RG 211.</p>	
<p>C2 We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect immediately from that time.</p>	<p>C2Q1 Are there any transitional arrangements that are necessary to enable you to comply with expectations outlined in the amended RG 211 as proposed by this consultation paper?</p>

Proposal	Your feedback
<p>D1 We propose to make the following amendments to existing RG211:</p> <ul style="list-style-type: none"> <li>(a) update references to RBA's financial stability standards in existing RG 211.165 and RG 211.166;</li> <li>(b) amend existing RG 211.108 to update the factors RBA will take into account in assessing sufficient equivalence of the home regulatory regime as it applies to the overseas CS facility, in relation to the degree of protection from systemic risk to include observed outcomes relative to those in Australia, as reflected in an initial assessment of CS facilities operating under the relevant overseas regime;</li> <li>(c) amend existing RG 211.165 to reflect that the new level of exemption from the financial stability standards for Securities Settlement Facilities issued by the RBA is proposed by the RBA to be \$200 million; and</li> <li>(d) remove the exemption from existing RG 211.166 that states: An overseas CSF licensee that operates a central counterparty is exempt from complying with this standard if certain conditions are met, including: <ul style="list-style-type: none"> <li>(a) compliance with the home regulatory regime's requirements relating to financial stability; and</li> <li>(b) having in place satisfactory arrangements to provide additional information to the RBA as required.</li> </ul> </li> </ul> <p>The attachment contains a marked-up version of the proposed amended RG 211.</p>	<p>D1Q1 Do you agree with the approach we intend to take to make consequential amendments to RG 211 to take into account the RBA's proposed financial stability standards?</p> <p>D1Q2 Do you have any comments on how we propose to amend RG 211 in this way?</p> <p>D1Q3 Are there any practical implications of making these consequential amendments to RG 211?</p> <p>D1Q4 Do you suggest any additional amendments to RG 211 to which are necessary taking into account the proposed revised financial stability standards?</p>
<p>D2 We intend to amend RG 211 by the end of 2012 and propose that the amendments will take effect from that time.</p>	<p>D2Q1 Are there any transitional arrangements that are necessary to enable you to comply with expectations outlined in the amended RG 211 as proposed by this consultation paper?</p>