

Implementing the CPSS-IOSCO *Principles for financial market infrastructures* in Australia

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

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Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. This information sheet includes some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.



ASIC

Australian Securities & Investments Commission

Implementing the CPSS–IOSCO *Principles for financial market infrastructures* in Australia

In April 2012, the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) published *Principles for financial market infrastructures* (CPSS–IOSCO Principles).¹

This information sheet explains how the CPSS–IOSCO Principles apply in Australia to:

- central counterparties and securities settlement facilities (including a securities settlement facility operating a central securities depository)
- payment systems, and
- trade repositories.

What are the CPSS–IOSCO Principles?

The CPSS–IOSCO Principles are designed to ensure that the financial market infrastructures supporting global financial markets are robust and well placed to withstand financial shocks. The overall objective is to ensure that financial market infrastructures promote stability and efficiency in the financial system.

The principles also set out responsibilities for central banks, market regulators and other relevant authorities in their supervision of financial market infrastructures, including arrangements for cooperation between the relevant authorities. The CPSS–IOSCO Principles were supplemented in December 2012 by the *Principles for financial market infrastructures: Disclosure framework and assessment methodology*, to help authorities assess compliance with the principles.²

Members of CPSS and IOSCO are expected to adopt and apply the principles within their regulatory frameworks, at least for financial market infrastructures that are deemed to be systemically important. The Reserve Bank of Australia (RBA) and the Australian Securities and Investments Commission (ASIC) are members of CPSS and IOSCO respectively, and are responsible for implementing these principles in Australia.

Central counterparties and securities settlement facilities

The RBA and ASIC (collectively, the regulators) have co-regulatory responsibilities under the *Corporations Act 2001* (Corporations Act) for central counterparties and securities settlement facilities (collectively, clearing and settlement (CS) facilities, as defined in the Corporations Act). The regulators work closely together in regulating CS facilities and advising the Minister on applications for CS facility licences and changes to operating rules, which are both submitted to ASIC in the first instance.

¹CPSS–IOSCO, *Principles for financial market infrastructures*, CPSS Publications No. 101, Bank for International Settlements, April 2012, <http://www.bis.org/publ/cpss101a.pdf>

²CPSS–IOSCO, *Principles for financial market infrastructures: Disclosure framework and assessment methodology*, CPSS Publications No. 106, Bank for International Settlements, December 2012, <http://www.bis.org/publ/cpss106.pdf>

The regulators are responsible for assessing the extent to which CS facility licensees comply with their licence obligations under Pt 7.3 of the Corporations Act. The RBA is responsible for ensuring compliance with financial stability standards and reduction of systemic risk, while ASIC is responsible for ensuring compliance with the remaining obligations. The Minister has a range of enforcement powers in both areas, and ASIC also has various ancillary enforcement powers.

One of the primary statutory obligations of a CS facility licensee is to do all things necessary to ensure its clearing and settlement services are provided in a fair and effective way, to the extent it is reasonably practicable to do so. ASIC is responsible for assessing a CS facility licensee’s compliance with this obligation and other obligations under s821A of the Corporations Act. Each year, ASIC submits an assessment report to the Minister, which is published on the ASIC website at www.asic.gov.au.

Under the Corporations Act, the RBA is responsible for:

- determining financial stability standards (s827D), and
- assessing each year how well CS facility licensees have complied with these standards and whether they are doing all other things necessary to reduce systemic risk (s823CA).

The RBA also submits an assessment report to the Minister and publishes this on the RBA website³. Execution of the RBA’s responsibilities under the Corporations Act is overseen by the RBA’s Payments System Board.

Because both ASIC and the RBA are responsible for overseeing CS facility licensees under the Corporations Act, implementing the CPSS–IOSCO Principles in Australia involves coordination between the regulators. Actions taken by the regulators to implement the principles are as follows:

- ASIC has revised its regulatory guidance on licensing and oversight of CS facility licensees in Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211).⁴ Updated RG 211 incorporates the CPSS–IOSCO Principles that are relevant to ASIC’s regulatory remit as matters it will consider in:
 - framing its advice to the Minister about a CS facility licence application, and
 - annually assessing a CS facility licensee’s compliance with its ongoing obligations under the Corporations Act.
- The RBA’s Payments System Board approved the determination of new financial stability standards in November 2012.⁵ These standards, effective from 29 March 2013, are aligned with the requirements in the CPSS–IOSCO Principles that address matters relevant to financial stability. The new standards:
 - mirror the structure of the CPSS–IOSCO Principles and associated key considerations, with some amendments to reflect the type of CS facility, the Australian regulatory and institutional context, and other relevant factors⁶
 - comprise 21 standards for central counterparties and 19 standards for securities settlement facilities, each with one or more accompanying sub-standards, and
 - are accompanied by guidance, based on the explanatory notes to the CPSS–IOSCO Principles.

³ These reports are available at <http://www.rba.gov.au/payments-system/clearing-settlement/compliance-reports/2011-2012/index.html>

⁴ ASIC, Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211), December 2012, <http://www.asic.gov.au/rg>

⁵ For a comparison of the new financial stability standards against the principles, see <http://www.rba.gov.au/payments-system/clearing-settlement/standards/2012-new-fss-ris/index.html>

⁶ Other relevant factors include elements of the Council of Financial Regulators’ framework for regulatory influence over cross-border CS facilities. This framework is articulated in *Ensuring appropriate influence for Australian regulators over cross-border clearing and settlement facilities*, http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/~/_media/Treasury/Consultations%20and%20Reviews/2012/cross%20border%20clearing/key%20documents/pdf/cross-border-provision.ashx

- In conjunction with the release of the new financial stability standards, the RBA:
 - released a paper on its approach to assessing CS facility licensees,⁷ and
 - updated its guidance on assessing when an overseas regulatory regime is sufficiently equivalent for the purposes of an application for an Australian CS facility licence by an overseas CS facility operator.⁸
- Current CS facility licensees—ASX Clear, ASX Clear Futures, Austraclear and ASX Settlement—will be assessed against the new financial stability standards in 2013.

For more information on the allocation of responsibilities between the regulators in implementing and overseeing the CPSS–IOSCO Principles, see Appendix 2 of RG 211.

Payment systems

A key element of the Payments System Board’s responsibility for the safety and stability of payment systems in Australia is oversight of the Reserve Bank Information and Transfer System (RITS), Australia’s real time gross settlement payment system. RITS is owned and operated by the RBA. The Payments System Board must be satisfied that RITS meets relevant international principles.

To this end, the RBA has periodically conducted self-assessments of RITS against the CPSS *Core principles for systemically important payment systems* (CPSS Core Principles).⁹ RITS is operated by the RBA’s Payments Settlements Department and the assessments are performed by its Payments Policy Department. These self-assessments are reviewed by the Payments System Board, which also review any material developments occurring between assessments.

From 2013, the RBA will conduct self-assessments of RITS against the CPSS–IOSCO Principles on an annual basis.

To date, the RBA considers that RITS is the only domestic payment system for which an assessment against international principles is necessary. Consistent with the criteria for systemic importance outlined in the CPSS–IOSCO Principles (and previously in the CPSS Core Principles), this view reflects the fact that RITS:

- is the principal domestic payment system in terms of the aggregate value of payments
- mainly handles time-critical, high-value payments, and
- is used to effect settlement of payment instructions arising in other systemically important financial market infrastructures.

The RBA will continue to monitor developments in other payment systems and periodically review whether assessments against the CPSS–IOSCO Principles should be conducted for other systems.

Trade repositories

Under the Corporations Act, ASIC is responsible for licensing derivative trade repositories that provide services in Australia.

The *Corporations Legislation Amendment (Derivative Transactions) Act 2012* (Amendment Act) establishes a framework for the regulation of these trade repositories, primarily through trade repository rules determined by ASIC: see Pt 7.5A of the Corporations Act. The

⁷ RBA, *The Reserve Bank’s approach to assessing clearing and settlement licensees*, <http://www.rba.gov.au/payments-system/clearing-settlement/standards/201212-new-fss-ris/pdf/attachment-6.pdf>

⁸ RBA, *The Reserve Bank’s Approach to Assessing the Sufficient Equivalence of an Overseas Regulatory Regime*, <http://www.rba.gov.au/payments-system/clearing-settlement/standards/updated-overseas-equivalence.html>

⁹ The RBA’s self-assessments of RITS in 2005 and 2009 are available at <http://www.rba.gov.au/payments-system/policy-framework/principles-fmi.html>

Amendment Act received Royal Assent in December 2012 and its substantive provisions became operational on 3 January 2013.

In making trade repository rules, ASIC may have regard to (among other things) relevant international standards and international commitments. This includes implementing the CPSS–IOSCO Principles and associated key considerations that are relevant to trade repositories.

ASIC is required under the Corporations Act to consult with interested parties and the public before implementing various aspects of the regulatory regime established by the Amendment Act, including the determination of trade repository rules.

Consultation on the proposed regime, including implementation of the CPSS–IOSCO Principles, is planned for early 2013, with a view to finalising the regime in mid-2013.