

**MEMORANDUM OF UNDERSTANDING**

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**Reserve Bank of Australia**

**Bank of England**

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24 JUNE 2015

## MEMORANDUM OF UNDERSTANDING

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### Recitals

- A. The Reserve Bank of Australia (“**RBA**”) has responsibility for oversight of clearing and settlement (CS) facilities operating in Australia, including through its assessment under the Corporations Act 2001 of the CS facility’s compliance with Financial Stability Standards determined by the RBA, and whether the CS facility is doing all other things necessary to reduce systemic risk. The Payments System Board of the RBA has responsibility for payments system regulation in Australia and its duties include ensuring that the powers of the RBA in relation to CS facilities are exercised in a way that will best contribute to the overall stability of the Australian financial system. The RBA’s oversight of CS facilities forms part of the RBA’s broader mandate to promote stability of the Australian financial system.
- B. The Bank of England (“**BoE**”) has an objective to protect and enhance the stability of the UK financial system. The BoE has particular responsibilities to supervise certain market infrastructure (recognised payment systems, securities settlement systems and central counterparties) and as the UK’s resolution authority. A statutory Financial Policy Committee has been established as a sub-committee of the Court of Directors of the BoE to act as a macroprudential body, charged with contributing to the BoE’s financial stability objective.
- C. The RBA and the BoE wish to enter into this Memorandum of Understanding (“**MoU**”) to provide a formal basis for co-operation, including for the exchange of information and investigative assistance. The RBA and the BoE believe such co-operation will enable them to perform their functions more effectively.
- D. The RBA and BoE have a particular interest in co-operation as regards supervision of clearing and settlement facilities. The BoE and the RBA acknowledge that clearing and settlement service providers which are principally regulated by one party may offer services in the jurisdiction of the other; or be materially important to the other jurisdiction. This MoU will facilitate their cooperation in the supervision of such clearing and settlement service providers to enable the parties to meet their respective obligations and statutory mandates.
- E. The policy framework for market infrastructure supervision is to a large extent agreed globally to ensure that all jurisdictions uphold appropriate standards in their collective interest and co-operate appropriately. This MoU seeks to facilitate this participation and co-operation.

## Definitions

In this MoU unless the context requires otherwise:

- i. “**Applicable Laws and Requirements**” means any law, regulation or requirement to which an Authority is subject or administers, and where the context permits, includes:
  - a. relevant European Economic Area (“**EEA**”) legislation (whether or not transposed into UK domestic law);
  - b. the Corporations Act, Corporations Regulations 2001, Reserve Bank Act 1959, Reserve Bank Regulations and the financial stability standards determined by the RBA from time to time pursuant to the Corporations Act (“**Financial Stability Standards**”); and
  - c. any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority.
- ii. “**Authority**” means either the BoE or the RBA, and “**Authorities**” means both the BoE and the RBA.
- iii. “**Corporations Act**” means the Corporations Act 2001 (Cth).
- iv. “**Emergency Situation**” means the occurrence of an event that could materially impair the financial or operational condition of a Regulated Entity resulting in damage to financial stability.
- v. “**EMIR**” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.
- vi. “**Local Authority**” means, in respect of an On-Site Visit, the Authority in whose jurisdiction the On-Site Visit takes place.
- vii. “**On-Site Visit**” means any regulatory visit to the premises of a Regulated Entity located in the jurisdiction of the Local Authority, including any inspection of books and records, by a Visiting Authority for the purposes of that Authority’s ongoing supervision and oversight of the Regulated Entity.
- viii. “**Permitted Onward Recipient**” means:
  - a. if the Requesting Authority is the BoE:
    - i. the Prudential Regulation Authority (PRA);
    - ii. the Financial Conduct Authority (FCA); and
    - iii. the UK Department of Her Majesty’s Treasury (HMT).
  - b. if the Requesting Authority is the RBA:
    - i. the Australian Prudential Regulation Authority (APRA);
    - ii. the Australian Securities and Investments Commission (ASIC);
    - iii. the Australian Department of the Treasury (Treasury); and
    - iv. any Ministers assigned responsibility for the RBA or its functions.
- ix. “**Person**” includes a natural or legal person, unincorporated association, partnership, trust, company, or corporation and may be a Regulated Entity.
- x. “**Previous MoU**” means the Memorandum of Understanding on Co-operation for the Supervision of Clearing Service Providers dated 11 March 2011, originally

between the RBA and the UK Financial Services Authority (which, by virtue of paragraph 3(2) of Schedule 20 to the Financial Services Act 2012, is, from 1 April 2013, to be read as a reference to the BoE) including any accompanying letter agreed between the Authorities.

xi. “**Regulated Entity**” means:

- a. a Person who is a central counterparty (“**CCP**”) established in the United Kingdom or Australia that is:
  - i. a central counterparty recognised under Part 18 of the Financial Services and Markets Act 2000 and which is, or has applied to be, licensed in Australia as an overseas clearing and settlement facility under the Corporations Act; or
  - ii. domestically licensed as a clearing and settlement facility under the Corporations Act and which is, or has applied to be, recognised by the European Securities and Markets Authority under Article 25 of EMIR to operate a CCP in the United Kingdom; or
- b. a Person who operates a securities settlement facility (“**SSF**”) established in the United Kingdom or Australia that is:
  - i. approved as an operator of a settlement system under the Uncertificated Securities Regulations 2001 or authorised as a central securities depository under the Central Securities Depositories Regulation and which is, or has applied to be, licensed in Australia as an overseas clearing and settlement facility under the Corporations Act; or
  - ii. domestically licensed as a clearing and settlement facility under the Corporations Act 2001 and which is, or has applied to be an overseas clearing house recognised under Part 18 of the Financial Services and Markets Act 2000 or recognised as a Third Country CSD under Article 25 of the CSDR by the European Securities and Markets Authority (ESMA) to provide services through a UK branch or in relation to financial instruments constituted under the law of part of the United Kingdom.

For clarity, a Regulated Entity does not include a CCP or SSF which operates in both the United Kingdom and Australia but for which neither the BoE nor the RBA (together with ASIC) is the primary regulator.

xii. “**Requested Authority**” means the Authority that receives a request pursuant to this MoU or provides information under this MoU.

xiii. “**Requesting Authority**” means an Authority making a request under this MoU or to whom information is provided under this MoU.

## **Purpose and Principles**

1. This MoU is a statement of intent to support co-operation between the Authorities, including consultation and the exchange of information and investigative assistance, to facilitate timely and effective supervision of Regulated Entities, identify risks from such Regulated Entities to the financial system and, where necessary, to address emergency/crisis situations (including resolution) pertaining to such Regulated Entities. The Authorities intend to consult, cooperate and exchange information in connection with

the supervision and oversight of Regulated Entities so as to reduce regulatory overlap, in a manner consistent with, and permitted by, Applicable Laws and Requirements.

2. This MoU does not create any legally binding obligations, confer any rights, modify or supersede Applicable Laws and Requirements or fetter the discretion of the Authorities. This MoU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MoU.
3. The Authorities acknowledge that they may provide information under this MoU only if permitted or not prevented under Applicable Laws and Requirements and the cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, Applicable Laws and Requirements.
4. The Authorities acknowledge that they may be party to other memoranda of understanding and, where relevant, will clarify in requests which memorandum of understanding the request relates to. The Authorities acknowledge that this MoU replaces the Previous MoU and agree that the Previous MoU is terminated with effect from the date of this MoU. This MoU does not otherwise affect any arrangements under other memoranda of understanding.
5. This MoU does not limit or affect any right of an Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.

### **Requests for Assistance**

6. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to Applicable Laws and Requirements and its overall policy.
7. Requests for the provision of information or other assistance will be made in writing to the nominated contact persons, the details of which are set out in Appendix 2 (including by email), or made orally and, unless otherwise agreed, confirmed in writing. In an Emergency Situation, requests for information may be made in any form, including orally, provided that such communication is confirmed in writing as promptly as possible following such notification.
8. To facilitate assistance, the Requesting Authority should specify in any written request the information or other assistance requested, the purpose for which the information is sought, and the desired time within which the information sought should be provided. The Requested Authority may request further clarification ahead of responding to the request.

### **Assessing Requests**

9. Each request for assistance will be assessed on a case-by-case basis by the Requested Authority, to determine whether assistance can be provided (either in part or in whole) under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Requested Authority will consider whether there may be other assistance that can be given by itself or by any other authority in its jurisdiction and, wherever possible, will endeavour to provide this.

### **Scope of Cooperation**

10. The Authorities recognise the importance of close communication concerning the

Regulated Entities and intend to cooperate regarding:

- a. general issues, including with respect to regulatory, supervisory or other developments concerning Regulated Entities;
  - b. issues relevant to operations, activities and services of Regulated Entities; and
  - c. any other areas of mutual interest.
11. The Authorities agree, where relevant for co-operative oversight, to designate a lead authority for a Regulated Entity to facilitate coordination among the Authorities and coordinate requests and communications with that Regulated Entity.
12. To enable the parties to meet their respective obligations and statutory mandates, to the extent permitted by Applicable Laws and Requirements, each Authority will use reasonable efforts as soon and as far as practicable to proactively provide the other Authority on a timely basis with information concerning Regulated Entities that is in its possession or discovered which:
- a. concerns a Regulated Entity's serious financial and operational difficulties, including member or customer failure, or market or settlement bank difficulties, that could have a material impact on the other Authority's performance of its duties or functions;
  - b. gives rise to a suspicion of a material breach of the Applicable Laws and Requirements to which the Regulated Entity is subject in that Authority's jurisdiction;
  - c. any other matter that could have a material impact on the other Authority's performance of its duties or functions with respect to the supervision of Regulated Entities.
13. To enable the parties to meet their respective obligations and statutory mandates, each Authority intends, to the extent practicable and as appropriate in the particular circumstances, to endeavour to inform the other Authorities in advance of, or as soon as possible thereafter of:
- a. pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Regulated Entity including those that may affect the rules and procedures of a Regulated Entity;
  - b. material proposed changes or material adverse changes to the ownership, operations, financial resources, governance, senior management, risk management or control processes or operational methodology or service offerings of a Regulated Entity;
  - c. the status of efforts by a Regulated Entity of which the Authority is aware to address any material event that could adversely impact the financial or operational condition of that Regulated Entity, or its members;
  - d. enforcement or significant regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorisation, designation, recognition, qualification or registration or exemption therefrom (as appropriate), concerning or related to a Regulated Entity;
  - e. material changes in their respective professional secrecy legislation.
14. The determination of what constitutes a "significant impact", "material event" or "material change" shall be left to the reasonable discretion of the relevant Authority that

determines to notify the other Authority.

15. The notification of the events or circumstances outlined in paragraphs 12 and 13 may be made by an Authority to the other Authority as part of a collegiate or multilateral framework for regulatory cooperation in relation to one or more Regulated Entities (a “**Collegiate Framework**”). The Authorities acknowledge that where an Authority provides such notification to the other Authority under a Collegiate Framework, the Authority to whom the notification is made may use and disclose that information in accordance with the terms of this MoU, notwithstanding anything to the contrary provided under the terms governing the relevant Collegiate Framework.
16. Requests for additional information should be made using the process outlined in paragraphs 7 and 8. The Authorities recognise in particular the importance of close cooperation in the event a Regulated Entity experiences, or is threatened by, an Emergency Situation. In an Emergency Situation, the Authorities will each endeavor to notify the other of its nature and communicate information to the other as would be appropriate pertaining to the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation in question. Wherever and to the extent possible, the Authorities will co-operate in seeking potential solutions, especially in instances where cross-border entities are systemic to the other Authority.

#### **On-Site Visits**

17. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, Applicable Laws and Requirements, an Authority (“**the Visiting Authority**”) may seek to conduct an On-Site Visit at the premises of a Regulated Entity in the jurisdiction of the Local Authority. The Authorities will notify, consult and work collaboratively with each other in conducting an On-Site Visit.
18. In particular:
  - a. the Visiting Authority will provide advance notice of at least 7 days to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it in accordance with Applicable Laws and Requirements, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit;
  - b. the Authorities will consult on and, where desired and permitted by Applicable Laws and Requirements, may agree to conduct an On-Site Visit jointly;
  - c. when carrying out On-Site Visits, the Local Authority will provide the Visiting Authority with reasonable assistance in reviewing, interpreting and analysing the content of books and records of the Regulated Entity, and obtaining information from its directors and senior management; and
  - d. the Visiting Authority will, to the extent permitted by Applicable Laws and Requirements, share the findings of the On-Site Visit in a timely manner with the Local Authority.

#### **Periodic Meetings**

19. Representatives of the Authorities intend to meet periodically and at least annually. The purpose of the meetings will be for the Authorities to update each other on their respective functions and regulatory supervision and oversight programs and to discuss issues of common interest relating to the supervision and oversight of Regulated Entities

including: assessment of risks affecting Regulated Entities, material and substantive developments to Regulated Entities' provision of clearing and settlement services, compliance with Applicable Laws and Requirements, contingency planning and crisis management, the adequacy of existing cooperative arrangements, any systemic risk concerns, and the possible improvement of cooperation and coordination between the Authorities. Such meetings may be conducted over conference call or on a face-to-face basis, as judged appropriate by the Authorities. These meetings may be bilateral or part of a wider discussion on one or more Regulated Entities, including under a Collegiate Framework.

### **Recovery and Resolution planning**

20. This MoU seeks to facilitate rapid information exchange and co-operation and liaison, to address information sharing in Emergency Situations as well as in day-to-day supervision of Regulated Entities.
21. The Authorities will periodically review whether any Regulated Entities merit specific discussion of contingency planning and crisis management preparations.
22. To the extent practicable and as appropriate in the particular circumstances, each Authority will endeavour to inform the other Authority of regulatory changes relating to resolution measures, which will or may have a material impact on the operations or activities of a Regulated Entity in the other Authority's jurisdiction.

### **Enforcement**

23. Each of the BoE and the RBA may consider taking enforcement action against Regulated Entities, or any directors or employees of Regulated Entities, as it considers appropriate to support the exercise of its supervisory judgment.
24. The Authorities recognise that there may be circumstances in which one or the other of them wishes to take enforcement action in a situation where the other Authority has a regulatory interest. Appendix 1 sets out what the parties have agreed with respect to such cases, and in relation to requests for assistance in enforcement matters.

### **Permissible Uses of Information**

25. The Requesting Authority may use non-public information obtained under this MoU solely for the purposes of performing its functions or exercising its powers in relation to Regulated Entities or financial system stability more broadly, including seeking to ensure compliance with the Applicable Laws and Requirements of the Requesting Authority. The Requesting Authority will comply with any additional restrictions on the use of information that are imposed by the Requested Authority when the information is provided.
26. In cases where a Requesting Authority seeks to use non-public information obtained under this MoU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the Requested Authority. Such use will be subject to the terms and conditions of the arrangements referred to in Appendix 1 to the extent applicable.
27. Before using non-public information furnished under this MoU for any purpose other than that stated in paragraph 25 or 26, the Requesting Authority must obtain the written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the

Requesting Authority might be allowed.

28. The restrictions in paragraphs 25 to 26 do not apply to an Authority's use of information it obtains directly from a Regulated Entity.

### **Confidentiality and Treatment of Information Received**

29. Except as provided in paragraphs 30 to 33, each Authority will keep confidential non-public information shared under this MoU, including the content of any requests made under this MoU.

30. A Requesting Authority may disclose non-public information obtained under this MoU to a Permitted Onward Recipient as required or authorised by an Authority's Applicable Laws and Requirements. In those circumstances, except for any disclosures made by the RBA as contemplated by paragraph 31:

- a. the Requesting Authority will notify the Requested Authority; and
- b. prior to sharing the information, the Requesting Authority will take reasonable measures to ensure appropriate use and confidential treatment of the information by the Permitted Onward Recipient, including reasonable measures to ensure information will not be further disclosed without the prior written consent of the Requested Authority. Where the Permitted Onward Recipient has a memorandum of understanding with the Requested Authority, such measures may include requiring the information to be treated by the Permitted Onward Recipient as if it had been received directly from the Requested Authority under that memorandum of understanding.

31. The Authorities acknowledge that:

- a. the RBA is required to assess Regulated Entities against the Financial Stability Standards and to report the outcome of those assessments to the ASIC and the relevant Minister or Ministers;
- b. it is the RBA's practice to publish each assessment as permitted by the Corporations Act and after consultation with the relevant Regulated Entity about matters the RBA believes are relevant to its assessment;
- c. information provided by the BoE to the RBA about a Regulated Entity under this MoU may be useful to the RBA in preparing its assessment;
- d. the RBA will consult with the BoE prior to, and ideally at least 10 working days in advance of, publication of any assessment of a Regulated Entity regulated by the BoE; and
- e. the RBA will not publish any non-public information of the type described in paragraph (c.) above or any non-public report, assessment, examination or results of any other review of a Regulated Entity undertaken by the BoE, without obtaining the BoE's prior consent.

32. If there is a legally enforceable demand for information supplied under this MoU made to the Requesting Authority, that Authority will, to the extent permitted by its Applicable Laws and Requirements, notify the Requested Authority, unless this is not practicable for reasons of urgency. The Requesting Authority will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

33. Except as provided in paragraphs 30 to 32, the Requesting Authority will consult with the

Requested Authority if it proposes to pass on non-public information supplied under this MoU to another person and must obtain the prior written consent of the Requested Authority (and such consent may be subject to restrictions or conditions with which the Requesting Authority shall comply). During an Emergency Situation, consent may be obtained in any form, including orally, provided that such communication is confirmed in writing as promptly as possible following such notification. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which disclosure by the Requesting Authority might be allowed.

34. The Authorities intend that the sharing or disclosure of non-public information under the terms of this MoU will not constitute a waiver of any privilege or confidentiality which attaches to such information.
35. The Authorities acknowledge that nothing in paragraphs 29 to 33 prevents an Authority from disclosing information it receives directly from a Regulated Entity, including, in the case of the RBA, in any assessment of a Regulated Entity against the Financial Stability Standards which is published by the RBA.

### **Rights of Persons Preserved**

36. Nothing in this MoU is intended to affect the rights and protections of the laws of the jurisdiction of the Requested Authority in respect of any person providing testimony, information or documents as a result of a request made under this MoU. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the Requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

### **Contact Points**

37. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed. This is detailed in Appendix 2 and should be reviewed annually.

### **Commencement and Variation**

38. This MoU will take effect when both Authorities have signed this document. It may be amended by agreement in writing.

### **Publication of this MoU**

39. The Authorities agree to this MoU being made publicly available.

### **Review of this MoU and of Supervisory Developments**

40. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters, where they arise, that hinder its operation.

### **Termination of MoU**

41. This MoU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority. If an Authority gives such notice, the parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MoU before the expiration of the 30 day period until all requests are fulfilled or the Requesting Authority withdraws such requests

for assistance. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Articles 25 to 35.

Signed in Sydney, this 24 day of June 2015.

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David Bailey  
Director, Financial Market Infrastructure  
For the BoE  
Date: 23 June 2015

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Malcolm Edey  
Assistant Governor, Financial System Group  
For the RBA  
Date: 24 June 2015

## **Appendix 1: Further Procedures for Enforcement Matters**

### **Further details to be contained in requests for assistance**

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be contained in the request:
  - a. a description of the conduct or suspected conduct which gives rise to the request;
  - b. details of the applicable law, regulation or requirement to the administration of which the request is relevant;
  - c. the link between the specified rule or law and the regulatory functions of the Requesting Authority;
  - d. the relevance of the requested assistance to the specified rule or law; and
  - e. whether it is desired that, to the extent permitted by the laws applying to the Requested Authority, any persons from the country of the Requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

### **Further ground for denial of request**

2. If a request for assistance, as described in this MoU, relates to actual or possible enforcement action, the following further matter may be taken into account by the Requested Authority in determining whether to fulfil the request in whole or in part:
  - a. whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the Requested Authority has already been appropriately dealt with in relation to the alleged breach, in respect of the subject matter of the request.

### **Requests to sit in**

3. If, following a request from the Requesting Authority, the Requested Authority conducts an interview of any person, the Requested Authority may permit a representative of the Requesting Authority to attend such an interview and to ask questions. Such requests will be handled in accordance with the Applicable Laws and Requirements of the Requested Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the Requested Authority.

### **Joint investigations**

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues and Applicable Laws and Requirements, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.
5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and will liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.

6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions for a joint investigation should be made through the contact points in Appendix 2.