

Oversight, Supervision and Regulation of Financial Market Infrastructures

Financial market infrastructures (FMIs) are institutions that facilitate the clearing, settlement and recording of financial transactions. The Bank has a role in overseeing and supervising three types of FMIs: central counterparties (CCPs) and securities settlement facilities (SSFs)²² – together referred to as clearing and settlement (CS) facilities – as well as systemically important payment systems (SIPS).

The Bank's Regulatory Regime for Financial Market Infrastructures

The *Corporations Act 2001* assigns to the Bank a number of powers and functions related to the supervision and oversight of CS facilities. Under the *Reserve Bank Act 1959*, the Payments System Board is responsible for ensuring that these powers and functions are exercised in a way that will best contribute to the overall stability of the financial system.

In accordance with the Reserve Bank Act, the Payments System Board also plays a role in the governance of the Bank's oversight of SIPS.

Clearing and Settlement facilities

The scope of the licensing regime for CS facilities is set out under Part 7.3 of the Corporations Act, with CS facilities operating in Australia required to be either licensed or exempted. This requirement applies to CS facilities incorporated both domestically and overseas. Licensee obligations are specified in the Corporations Act and administered by the Australian Securities and Investments Commission (ASIC). Supplementary conditions

may be imposed on CS facility licensees by the responsible Minister; compliance with these obligations is overseen by ASIC and the Bank. In particular, the Bank is responsible for:

- providing advice to the Minister regarding applications for CS facilities, variations to, or imposition of, conditions on licences, or the suspension or cancellation of licences
- determining Financial Stability Standards (Standards) for the purposes of ensuring that CS facility licensees conduct their affairs in a way that causes or promotes overall stability in the Australian financial system
- assessing how well a licensee is complying with its obligation under the Corporations Act to comply with any applicable Standards and do all other things necessary to reduce systemic risk, to the extent that it is reasonably practicable to do so.

Under the Reserve Bank Act, the Payments System Board is responsible for ensuring that the Bank exercises these powers and functions in a way that will best contribute to the overall stability of the financial system.

²² Referred to internationally as securities settlement systems.

Financial Stability Standards

The Bank has determined two sets of Standards – one for CCPs and one for SSFs.²³ Each licensed CS facility is obliged to meet the relevant set of Standards. The objectives of the Standards are to ensure that CS facility licensees identify and properly control risks associated with the operation of the facility, and conduct their affairs in order to promote the overall stability of the Australian financial system. The Standards set principles-based requirements and regulatory expectations, rather than prescribing detailed rules and obligations.

The Bank's Standards draw on the *Principles for Financial Market Infrastructure* (PFMI), which are internationally agreed standards for FMIs set by the Committee on Payments and Market Infrastructures (CPMI) and the Technical Committee of the International Organization of Securities Commissions (IOSCO). The Bank also applies guidance developed by CPMI and IOSCO when interpreting its Standards.²⁴ This guidance provides clarity and detail on the existing requirements within the PFMI and covers areas of emerging risk and in which there were inconsistencies in the way the PFMI had been interpreted. The guidance encourages FMIs to adopt best practices and seeks to foster international consistency where that is appropriate. The Bank also considers issues arising from discussion papers such as the recent CPMI and IOSCO paper on default management auctions.²⁵ There were no changes to the Standards or associated guidance during 2019/20.

23 Available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/>>.

24 For the full list of guidance the Bank has adopted, see the notes to the Financial Stability Standards, available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/>>.

25 CPMI-IOSCO, 'Central counterparty default management auctions – Issues for consideration', June 2020. Available at <<https://www.bis.org/cpmi/publ/d192.pdf>>.

A peer review conducted by CPMI and IOSCO in 2015 concluded that the Bank has implemented the PFMI in a consistent or broadly consistent manner for the FMIs that it supervises or oversees.²⁶ In 2019, the IMF published its Financial System Stability Assessment report, which concluded that supervisory oversight of FMIs in Australia is well established.

Systemically important payment systems

A key element of the Payments System Board's responsibility for the safety and stability of payment systems in Australia is the supervision or oversight of SIPS. The Payments System Board's policy is that SIPS are expected to observe the PFMI. The Bank's policy statement on its approach to the supervision and oversight of SIPS sets out the criteria used to judge the systemic importance of payment systems in Australia, and describes how its approach differs between domestically focused and international SIPS.²⁷

Consistent with the Bank's policy statement, the Bank carries out an annual review of whether other payment systems should be considered systemically important. To date, the Bank considers that the Reserve Bank Information and Transfer System (RITS) is the only domestically focused payment system that is systemically important.

Where payment systems are systemically important in Australia but are based overseas, and are primarily used to effect cross-border payments (including in Australian dollars), the Bank relies on the regulator in the international SIPS' principal place of business if certain

26 CPMI-IOSCO, 'Implementation monitoring of PFMI: Level 2 Assessment Report for Australia', December 2015. Available at <<http://www.bis.org/cpmi/publ/d140.pdf>>.

27 The Policy Statement on the Supervision and Oversight of Systemically Important Payment Systems is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/high-value-payments/policy-statement-on-supervision-and-oversight-of-systemically-important-ps.html>>.

conditions are met. CLS Bank International (CLS) is currently the only international SIPS overseen by the Bank.

The Bank's Financial Market Infrastructure Oversight and Supervision Activities

Day-to-day oversight and supervision of FMIs is undertaken by the Bank's Payments Policy Department, in accordance with the approach published on the Bank's website.²⁸ In carrying out these activities, the Bank works closely with ASIC.

The Bank's oversight and supervision activity is overseen by an internal body of the Bank, the FMI Review Committee. The Payments System Board is provided with the FMI Review Committee's annual report and with reports on the Bank's oversight and supervisory activities.

The FMI Review Committee is chaired by the Assistant Governor (Financial System), who is also Deputy Chair of the Payments System Board. Other members of the FMI Review Committee include the heads of the Payments Policy, Payments Settlements and Domestic Markets departments, as well as senior staff members with expertise in FMI-related matters but who are not currently directly involved in the Bank's oversight and supervision of FMIs. A core part of the committee's role is to ensure that oversight activities are carried out in a manner consistent with policies established by the Payments System Board. The committee meets quarterly ahead of Board meetings, and deals with matters by written procedure as needed.

In light of the financial and operational challenges presented by COVID-19, the Bank adjusted its supervision of FMIs to place greater focus on these challenges. To assist with this reprioritisation, staff reduced the scope of the annual assessments of ASX and LCH Ltd for 2020 and deferred the publication of an assessment of CME by 12 months.²⁹

28 The Reserve Bank's Approach to Supervising and Assessing Clearing and Settlement Facility Licensees is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/approach-to-supervising-and-assessing-csf-licensees.html>>.

29 For the latest annual assessments of CS facility licensees, see <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments.html>>.

Box C

COVID-19 and Financial Market Infrastructures

The COVID-19 pandemic continues to present a range of operational and financial risk management challenges for FMI in Australia and overseas. The FMIs operating in Australia have generally performed well and have not experienced service disruptions. Each has successfully activated business continuity measures to maintain operations while minimising risks to staff. This typically involved splitting a small number of critical staff across multiple operations sites and transitioning the majority of staff to work from home arrangements.

FMIs saw increases in the value and volume of transactions they cleared and settled in March and were able to manage the operational challenges this presented. RITS and CLS continued to operate smoothly and meet their operating capacity targets. Similarly, LCH Ltd's SwapClear service, CME's interest rate swap (IRS) service and most of the ASX CS facilities operated as normal through the period while many staff worked from home.

There were, however, some operational issues that impacted clearing and settlement. Some CCP participants delayed making payments due to operational constraints, while ASX's CHES clearing and settlement system for cash equities experienced delays to its end-of-day processing on 13 March due to high levels of activity. In response, ASX implemented changes to improve the processing times and capacity for CHES. The Bank has indicated its expectation that ASX will appropriately invest in this system before it is replaced as planned

in coming years while ASIC has set out its expectations for equity market participants to support the fair and orderly operations of Australian equity markets.¹

CCPs also faced risks associated with the increase in volatility in domestic and international financial markets. In Australia, the All Ordinaries index fell by 9.5 per cent on 16 March, the highest single-day decline since 1987, while the 10-year Australian government bond yield fell by 35 basis points on 20 March after the Bank announced a program to purchase government bonds and a target for the 3-year yield. In light of these events, CCPs have been reviewing their suite of stress-test scenarios, which are expected to include extreme but plausible market movements.

Most CCPs responded to the heightened volatility by increasing the amount of initial margin they collect. Margin levels at ASX increased significantly (see 'Trends in Payments, Clearing and Settlement Systems' chapter) as it increased margin rates on equity derivatives, with similar actions taken by overseas CCPs for equity and commodity derivatives. Such 'procyclical' increases in margin requirements during periods of market stress can create liquidity challenges for market participants. This is a topic international regulators are focusing on and the Bank has recommended that ASX strengthen its procyclicality framework. While LCH Ltd and CME did not make any changes to their margin

¹ See <<https://download.asic.gov.au/media/5591066/20-116mr-letter-to-all-equity-market-participants.pdf>>.

models for their services licensed to operate in Australia, increased market volatility and activity flowed through to higher margin levels.

The market movements also resulted in large variation margin flows, which are passed from participants who have made losses from price movements to those who have made gains. ASX Clear (Futures) collects variation margin throughout the day but is unable to do so late in the day or during the overnight trading session. This exposes it to price movements between the last margin call at 1.30 pm and 8.00 am the following morning. The Bank has recommended that ASX take additional measures to address this risk as a matter of priority.

While most participants at CCPs were able to meet increased margin requirements, there have been a small number of participant and client defaults globally, though none in Australia. Given the heightened operational risks from managing a default scenario remotely, the Bank will continue to monitor the preparations that FMI's operating in Australia have made. More broadly, the Bank is continuing to maintain a close engagement with FMI's operating in Australia and international regulators on matters related to the impact of the COVID-19 pandemic and any lessons learned. More detail on the risk management implications of COVID-19 for FMI's is being provided in the Bank's 2020 assessments.

The following summarises material developments over 2019/20 for the six CS facilities and the SIPS overseen and supervised by the Bank.

ASX

The four domestic CS facility licensees required to meet the Standards are all part of the ASX Group. In September 2020, the Bank published its latest assessment of these facilities.³⁰ This assessment concluded that the CS facilities 'observed' or 'broadly observed' all relevant requirements under the Standards, with the following exceptions: ASX Clear (Futures) was rated 'partly observed' for the margin standard while ASX Clear and ASX Settlement were rated 'partly observed' for the operational risk standard. The steps taken by ASX to address the Bank's regulatory priorities for the annual assessment period ending June 2020, as well as other material developments, are set out below.

Operational risk management

CHES replacement

During 2019/20, ASX continued its work preparing to replace CHES, its core system for clearing, settlement and other post-trade services for the Australian cash equity market. In March, ASX announced it would delay the commencement date of the new system. The decision was influenced by the uncertainty associated with the COVID-19 pandemic, feedback from stakeholders that they had insufficient time to prepare for implementation, and the need for ASX to complete aspects of its own readiness. ASX has consulted on a revised target launch date for the new system in April 2022.

The importance of replacing the current CHES system has been highlighted by the processing delays experienced in March (see 'Box C: COVID-19 and Financial Market Infrastructures'). Details on ASX's work to replace CHES are provided in the Bank's 2020 Assessment of ASX.

³⁰ The Bank's 'September 2020 Assessment of the ASX CS Facilities' is available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments/>>.

Building Stronger Foundations

During 2019/20 ASX concluded a three-year program, known as Building Stronger Foundations, to address the findings of an independent external review of ASX's technology governance, operational risk and control frameworks (the review) conducted at the instigation of ASIC and the Bank. The program also incorporated ASX initiatives to improve enterprise risk management and governance practices identified prior to the review. ASX closed the Building Stronger Foundations program having substantively completed implementation of the 36 recommendations identified by the review in the areas of risk management, technology governance, enterprise architecture and incident management. Details on ASX's progress in addressing specific areas for improvement are provided in the Bank's 2020 Assessment.

Business risk capital

In its 2019 assessment of ASX, the Bank recommended that ASX address a number of potentially serious gaps affecting its CS facilities' access to capital held to cover operational, business and investment risks. During 2019/20 ASX transferred the required amounts of capital so that it is held directly by the CS facilities, removing the risk that in certain circumstances they would be unable to access this capital from the related company that held it previously. However, the Bank has recommended that ASX take further steps to mitigate the risk that the new arrangements could result in a shortfall in investment risk capital for one of the CCPs, and to formalise its approach to SSF business and operational risk capital. Details on the new arrangements for operational, business and investment risk capital are provided in the Bank's 2020 Assessment.

Default management and recovery

In 2019/20, the Bank conducted a detailed assessment of the default management and recovery arrangements of the ASX CS facilities. These arrangements are important so that the facilities can continue to meet their obligations to non-defaulting participants in the event that a participant defaults on its obligations.

The assessment concluded that ASX's default management and recovery framework are mostly aligned with the requirements of the Bank's Standards and that ASX has appropriate processes and systems in place to enact these arrangements. However, the Bank has recommended that ASX Clear review the risk that participants may default on their obligations or choose to resign from ASX Clear due to difficulty in meeting their recovery and replenishment obligations following the default of another participant. The detailed findings from the review are provided in the Bank's 2020 Assessment.

LCH Ltd

LCH Ltd is a London-based CCP licensed in Australia to provide clearing services for over-the-counter (OTC) interest rate derivatives (IRD) and inflation rate derivatives.

In December 2019, the Bank published the *2018/19 Assessment of LCH Limited's SwapClear Service*.³¹ This assessment concluded that LCH Ltd met the CCP Standards and either met or made progress towards meeting the Bank's regulatory priorities. The Bank carried over both regulatory priorities from the 2018/19 assessment. Steps taken so far by LCH Ltd to address these priorities, as well as other material developments, are set out below.

³¹ Available at <<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments/lch/2019/lch-assess-2019-12.html>>.

Operating hours in Australia

LCH Ltd has continued its work to extend the operating hours of the SwapClear service, while ensuring the safety and resilience of its operations. The SwapClear service is typically closed for four hours of the Australian business day, and trades executed during that time are not cleared by SwapClear until the Australian afternoon when the SwapClear service opens. In September 2019, LCH Ltd extended its flexible opening time for the SwapClear service by one hour to 4.00 am UK time, though the official opening time remains at 6.00 am UK time. The Bank's regulatory priority requires LCH Ltd to provide the Bank with an approved timeline of how it will continue to extend operating hours in the medium term. LCH Ltd has been providing regular updates to the Bank on the progress of this work.

Protected Payments System contingencies

LCH Ltd has continued its work to improve its Protected Payments System (PPS) contingency arrangements. The PPS is used by LCH Ltd to settle cash payments, such as variation margin, to and from participants. LCH Ltd has previously identified that its contingency arrangements could be improved to ensure that payments can continue to be made in a timely manner in the event of a PPS bank outage or failure. LCH Ltd has made progress towards improving the effectiveness of its arrangements by implementing enhancements to its processes and by exploring contingency arrangements that are timely and robust for its members. The Bank's regulatory priority requires LCH Ltd to formally test the enhancements to its PPS contingency arrangements. LCH Ltd has been providing regular updates to the Bank on the progress of this work.

Areas of supervisory focus

In addition to the regulatory priorities set out in the 2018/19 Assessment, the Bank also identified two areas of supervisory focus for its supervision of LCH Ltd. These related to how LCH Ltd manages operational and cyber risks, and the governance of LCH Ltd's model validations. These areas had either undergone significant change that the Bank intended to monitor, or warranted further analysis. The Bank has been engaging with LCH Ltd and the Bank of England on these areas of focus and will provide a formal update in its 2019/20 Assessment of LCH Ltd.

CME

CME is a Chicago-based CCP that provides clearing services for a number of products from its US operations. CME does not currently have any direct Australian-based clearing participants, although Australian firms access CME's clearing services indirectly as clients of direct participants. CME has held a CS facility licence in Australia since 2014, permitting it to offer clearing services to Australian-based institutions as direct clearing participants for OTC IRD and non-AUD-denominated IRD traded on the CME market or the Chicago Board of Trade market (for which CME permits portfolio margining with OTC IRD). In 2019 CME's licence was varied to also permit the provision of clearing and settlement services for commodity, energy and environmental derivatives traded on the financial market to be operated by FEX Global Pty Ltd (FEX).

The Bank monitors CME's progress in addressing regulatory priorities set by the Bank and other material developments on an ongoing basis. Consistent with the Bank's supervisory approach for overseas licensees, the Bank relies on reports and information from CME's home regulators to the extent possible. Given the nature and scope

of CME's current activities in Australia, the Bank does not conduct a regular detailed assessment of CME against all of the CCP Standards, instead publishing a targeted assessment focused on regulatory priorities and material developments.

The Bank's next assessment of CME was scheduled to be published in early 2021. Given that the operational and risk management response to COVID-19 placed significant additional demands on both CME and its home regulators, the Bank deferred its assessment of CME by 12 months. The Bank's last assessment of CME, published in March 2019, indicated that outstanding regulatory priorities had been broadly addressed, pending certain follow-up activities. Since then, changes to the end-of-waterfall rules for the CME OTC IRS clearing service have been implemented. The Bank has also commenced work on areas of supervisory focus related to how CME's practices align with international guidance on financial and cyber resilience.

Reserve Bank Information and Transfer System

RITS is Australia's high-value payments system that is used by banks and other financial institutions to settle their payment obligations. RITS is owned and operated by the Bank. The most recent assessment of RITS against the PFMI, prepared by the Bank's Payments Policy Department and endorsed by the Board, was published in June 2020.³² Payments Policy Department is the functional area responsible for oversight of RITS and is separate from areas of the Bank responsible for operating RITS.

The assessment concluded that as at the end of March 2020, RITS observed all of the relevant principles other than the Operational Risk

principle, which it broadly observed. To observe this principle, the assessment recommended the Bank, as operator of RITS, complete implementation of initiatives to support the continued operational stability of RITS.

Key RITS developments during the assessment period are set out below.

IT operational stability review

In June 2019, the Bank completed a review of its IT operational practices following a number of new systems coming into production across the Bank and some incidents that affected usual operations. The aim of the review was to ensure the reliability of technology services and, in turn, the Bank's business operations, including RITS. While the review did not identify any significant concerns with the operational stability of RITS, the Bank identified that implementation of the review recommendations was necessary in order to reduce risks to the stability of systems supporting RITS. The recommendations are being implemented via the Bank's Technology Stability Improvement Program (TSIP), which includes a number of initiatives aimed at improving the operational stability of RITS. In the 2020 RITS assessment, Payments Policy Department recommended the Bank complete the implementation of these initiatives and will assess the Bank's progress as part of the 2021 assessment. More detail on the Bank's TSIP is provided in the Bank's 2020 Assessment of RITS.

Implementation of 2019 assessment recommendations

During the year, the Bank fully addressed the recommendations from the 2019 RITS assessment. These recommendations included actions to support the ability of RITS to recover within two hours of a disruption as well as taking steps to validate this ability via contingency testing. The recommendations

³² Available at <<https://www.rba.gov.au/payments-and-infrastructure/rits/self-assessments/2020/>>.

were made in light of the lessons learned from the 30 August 2018 data centre power outage, which abruptly cut off technology systems operating from that data centre, including those supporting RITS.³³

Cyber resilience

The Bank continued its work to further strengthen the cyber resilience of RITS over 2019/20. This included work to address security standards established by SWIFT as part of its Customer Security Programme. An external assessment determined RITS to be fully compliant with all mandatory controls. The Bank is also continuing exploratory work on options for further enhancing the capability to recover RITS from cyber attacks in a timely manner.

In December 2019, the Bank conducted a cyber table-top exercise with a range of industry participants to rehearse existing industry contingency procedures. The exercise focused on communication and collaboration arrangements in the event of an attack on participants' payments systems.

The Bank has continued work on implementing CPMI's strategy to improve the security of participants and other 'endpoints' in wholesale payment systems.³⁴ The Bank already meets elements of the strategy described in this report and is in the process of implementing further enhancements to RITS's endpoint security as an ongoing process of continuous improvement for the system.

³³ Further information can be found in the 2019 RITS assessment, available at <<https://www.rba.gov.au/payments-and-infrastructure/rits/self-assessments/2019/>>.

³⁴ The report 'Reducing the Risk of Wholesale Payments Fraud Related to Endpoint Security' is available at <<https://www.bis.org/cpmi/publ/d178.htm>>.

CLS Bank International

CLS operates a payment-versus-payment settlement system (CLS Settlement) for foreign exchange transactions in 18 currencies, including the Australian dollar. CLS, an Edge Act Corporation, is chartered in the United States and is regulated and supervised by the Federal Reserve. The Federal Reserve has established a cooperative oversight arrangement for CLS, in which the Bank participates. In July 2019, CLS launched its CLSNow service, which facilitates same-day payment-versus-payment FX settlement outside the CLS Settlement session. This service replaced the Same-Day Settlement Session that was deactivated in October 2019.

SWIFT

SWIFT provides critical messaging and connectivity services to both RITS and CLS, as well as other FMIs and market participants in Australia and overseas. Oversight of SWIFT is conducted by the SWIFT Oversight Group (OG), which consists of the G10 central banks and the ECB. Since SWIFT is incorporated in Belgium, the OG is chaired by the National Bank of Belgium. The Bank is a member of the SWIFT Oversight Forum, a separate group established to support information sharing and dialogue on oversight matters among a broader set of central banks. Through the SWIFT Oversight Forum, these central banks receive information on the OG's conclusions and have an opportunity to input into the OG's oversight priorities and policies. Oversight of SWIFT is supported by a set of standards – the High-level Expectations – which are consistent with standards for critical service providers in the PFMI.

During 2019/20, cyber resilience remained an important focus of SWIFT and its overseers. All SWIFT members (in Australia, this includes the major banks and other large financial institutions) are required to self-attest their level of compliance with the mandatory security controls in SWIFT's Customer Security Programme and are encouraged to support this attestation with an independent assessment of compliance. SWIFT has delayed making this independent assessment mandatory by 12 months to the second half of 2021, in light of the disruption to many SWIFT participants as a result of COVID-19.

SWIFT also announced that it would delay the start date of its phased migration to ISO 20022 messages for cross-border payments to the end of 2022. The migration is still scheduled to be completed in November 2025 (see the 'Retail Payments Regulation and Policy Issues' chapter).

Policy Development

The Bank works with other regulators (both domestically and abroad) on issues relevant to the regulation and oversight of FMI. In Australia, much of this work has been coordinated by the Council of Financial Regulators (CFR) and, internationally, the Bank engages with relevant international standard-setting bodies. Where relevant to the Board's responsibilities, the Board is kept updated on developments and members' input and guidance are sought.

International

A focus of international policy work on FMI over recent years has been on monitoring and implementing guidance in relation to CCP resilience, recovery and resolution. This work has been conducted under a joint CCP workplan developed by CPMI, the Financial Stability Board (FSB), IOSCO and the Basel Committee

on Banking Supervision.³⁵ The Bank has been closely engaged in this international policy work, as well as other work areas, including monitoring of implementation of the PFMI and the development of a strategy to reduce the risk of wholesale payments fraud.

The CPMI-IOSCO Policy Standing Group has continued its work on default management auctions. This included a published report and cover note outlining the issues it expects industry to progress by June 2022.³⁶ The CPMI also published a report in December 2019 on member authorities' experiences with cooperation arrangements.³⁷

The Bank has continued to be involved in work considering the adequacy of financial resources for CCP resolution and the treatment of CCP equity in resolution. Draft guidance on these issues was released for public consultation in May 2020.³⁸

In 2019/20 the Bank continued to contribute to the international monitoring of implementation of the PFMI by the CPMI-IOSCO Implementation Monitoring Standing Group. This included a contribution to peer review exercises that assess the extent to which a jurisdiction's implementation measures are complete and consistent with the PFMI, and the consistency of outcomes in the implementation of the PFMI by FMI.

35 Available at <<http://www.bis.org/cpmi/publ/d165.pdf>>.

36 The June 2019 CPMI discussion paper is available at <<https://www.bis.org/cpmi/publ/d185.pdf>>, the issues paper and cover note at <<https://www.bis.org/cpmi/publ/d192.pdf>> and <https://www.bis.org/cpmi/publ/d192_covernote.pdf>.

37 The CPMI report is available at <<https://www.bis.org/cpmi/publ/d189.pdf>>. IOSCO produced a report in June 2020 on deference practices among FMI regulators, which is available at <<https://www.iosco.org/library/pubdocs/pdf/IOSCOP659.pdf>>.

38 Available at <<https://www.fsb.org/2020/05/fsb-consults-on-guidance-on-assessing-the-adequacy-of-financial-resources-for-ccp-resolution/>>.

Domestic

In developing domestic policy for FMIs, the Bank works with the other regulators through the CFR, the coordinating body for Australia's main financial regulatory agencies. During 2019/20, the focus of the CFR's work on FMIs has been on enhancements to the regulatory regime and on competition in clearing and settlement of equities.

The Bank and other CFR agencies have developed a proposal for enhancements to the regulatory regime for CS facilities, markets, trade repositories and benchmark administrators. The proposed reforms aim to ensure the effective regulation of the systems, services and facilities that underpin Australia's financial system. They are intended to strengthen the supervision and enforcement powers of ASIC and the Bank, and to redistribute existing powers and decision-making authority between the regulators and the Minister to reflect their respective responsibilities. The introduction of a crisis management regime for licensed CS facilities is also proposed ('Box D: Financial Market Infrastructure Regulatory Reforms').

A consultation paper on these reforms was released in November 2019.³⁹ Feedback was received from 18 stakeholders, and the CFR agencies met with a number of stakeholders. After considering the stakeholder feedback, the CFR agencies finalised their proposals, which were provided to the Government in July 2020.

The CFR, in cooperation with the Australian Competition and Consumer Commission (ACCC), has developed a policy framework to support competition in clearing and settlement of Australian cash equities. The framework includes minimum conditions for safe and effective competition in cash equity clearing and settlement. It also includes a set of regulatory expectations for ASX's conduct in the provision of such services where it is a monopoly provider. However, significant elements of this framework are currently not enforceable under the existing regulatory framework. Consequently, the CFR and ACCC are working with the Australian Government to implement legislative changes to the statutory framework for CS facilities to make these elements enforceable by regulators.

³⁹ Available at <<https://www.cfr.gov.au/publications/consultations/2019/consultation-on-financial-market-infrastructure-regulatory-reforms/>>.

Box D

Financial Market Infrastructure Regulatory Reforms

As the regulators of FMIs, ASIC and the Bank (together, the regulators) require strong and reliable powers to carry out their mandates and mitigate the risk of disruption to FMI services. While the regulators currently have a range of powers with respect to FMIs, the options available to address the potential insolvency of an FMI or other severe threats to its continued operation are very limited. It would also be desirable to enhance the day-to-day regulatory regime and improve the ability of the regulators to manage risks that could precipitate a crisis, and to prepare for the orderly resolution of a CS facility. In addition, the current distribution of regulatory powers does not always reflect the responsibilities of each regulator, and the existing legislation provides a number of operational powers to the Minister (which are currently delegated to ASIC).

Reform to the regulatory regime in this area has been pending for some time, and the recent consultation built on a number of earlier consultations. The CFR considers that reform is needed due to the limitations of the current framework, the current heightened global risk environment and the growing systemic importance of FMIs. The reforms would aim to manage risks associated with FMIs and promote reliability and integrity of the markets that FMIs support. The case for these changes has been noted in a number of independent reviews including the 2014 Financial System Inquiry and

the International Monetary Fund's 2019 Financial System Assessment Program review.¹

The proposals consulted on by the CFR can be grouped into three categories:

- the introduction of a crisis management regime for CS facilities with the objectives of maintaining the overall stability of the financial system and providing for the continuity of critical CS services. A crisis management regime would give a resolution authority the tools to take action in respect of a distressed CS facility and to support the continuity of the facility's critical market functions
- the redistribution of existing regulatory powers and decision-making authority between the Bank, ASIC and the Minister, to better align with each regulator's mandate and to distinguish the regulators' operational responsibilities from the strategic role of Government
- a strengthening of the regulators' supervisory powers, including information-gathering powers, and a broadening in the range of enforcement tools they have available. This will give the regulators significantly more capacity to monitor the ongoing conduct of FMIs, identify risks as they emerge, and take appropriate action to prevent those risks escalating.

¹ See Recommendation 5 of the 'Financial System Inquiry Final Report' (2014). Available at <<http://treasury.gov.au/publication/c2014-fsi-final-report>>. The IMF FSAP 'Technical Note on Supervision, Oversight and Resolution Planning of Financial Market Infrastructures' (2019). Available at <<http://www.imf.org/en/Publications/CR/Issues/2019/02/13/Australia-Financial-Sector-Assessment-Program-Technical-Note-Supervision-Oversight-and-46609>>.