



European Securities and
Markets Authority

Final report

Technical advice on third country regulatory equivalence under EMIR – Australia





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Key to the references and terms used in this technical advice

ASIC: Australian Securities and Investments Commission

APRA: Australian Prudential Regulation Authority

Corporations Act: Australian Corporations Act 2001

EMIR: Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

ESAs: European Supervisory Authorities, i.e. ESMA, EBA and EIOPA

ESMA: European Securities and Markets Authority

FSS: Reserve Bank of Australia Financial Stability Standards for Central Counterparties

Minister: The relevant Australian Minister administering Part 7.3 of the Corporations Act relating to Clearing and Settlement Facility Licensees

NCA: National Competent Authority from the European Union

RBA: Reserve Bank of Australia

Regulatory Guide: ASIC Regulatory Guide

RTS: Regulatory Technical Standards

Section I

Executive summary

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Australian regulatory regime and different aspects of the EU regulatory regime under Regulation (EC) No. 648/2012 of the European Parliament and the Council on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs)¹. The mandate was subsequently reviewed to postpone the deadline to provide the advice and to change its scope in relation to certain jurisdictions.
2. These specific areas concern: 1) the recognition of third country CCPs; and 2) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP. On 13 June 2013 the European Commission mandated ESMA to provide it with technical advice on the equivalence between the Australian regulatory regime and a third aspect of the EU regulatory regime under EMIR, namely the recognition of third country TRs.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the Australian regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. Australia has recently finalised its regulatory regime for TRs and is still in the process of finalising its regulatory regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. ESMA is therefore still in the process of preparing its technical advice under these limbs of the European Commission's mandate. That technical advice will be delivered at a later date.**
4. The equivalence assessment conducted by ESMA follows an objective-based approach, where the capability of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective. The analysis of the differences and similarities has been conducted as factually as possible. The advice to the Commission has been based on that factual assessment but has also taken into account the analysis of the consequences for the stability and protection of EU entities and investors that an equivalence decision would have in those specific areas where the legally binding requirements are not considered equivalent.
5. The European Commission is expected to use ESMA's technical advice to prepare possible implementing acts concerning the equivalence between the legal and supervisory framework of Australia under EMIR. Where the European Commission adopts such an implementing act then ESMA may recognise a CCP authorised in that third country. ESMA's conclusions in respect of this technical advice should not be seen to prejudge any final decision of the European Commission or of ESMA.

¹ Hereafter the Regulation or EMIR.

Introduction

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Australian regulatory regime and two specific aspects of the EU regulatory regime under EMIR. On 27 February 2013, the Commission amended the original mandate to postpone the deadlines for the delivery of the technical advice by ESMA. For Australia the original deadline of 15 June 2013 was changed to 15 July 2013. On 13 June 2012, the European Commission further amended the mandate to postpone the deadlines for the delivery of technical advice by ESMA and to change its scope in respect of certain jurisdictions. For Australia the revised deadline of 15 July 2013 was changed to 1 October 2013 (see Annex I and II). The European Commission also extended the scope of the mandate to request that ESMA provide it with technical advice on the equivalence between the Australian regulatory regime and the EU regulatory regime under EMIR regarding the recognition of third country TRs.
2. The mandate on equivalence for Australia therefore covers three specific areas: 1) the recognition of third country CCPs; 2) the recognition of third country TRs; and 3) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the Australian regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. Australia has recently finalised its regulatory regime for TRs and is still in the process of finalising its regulatory regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. ESMA is therefore still in the process of preparing its technical advice under these limbs of the European Commission's mandate. That technical advice will be delivered at a later date.**
4. ESMA has liaised with its counterparts in Australia (APRA, ASIC and the RBA) in the preparation of this report and has exchanged materials and views on the key areas of the analysis. However, the views expressed in this report are those of ESMA and ESMA alone is responsible for the accuracy of this advice. ESMA has decided not to launch a public consultation on this advice. The advice is not about a policy option or a legislative measure that could be subject to improvement or reconsideration due to market participants' views or comments. It is a factual comparison of the respective rules of a third country jurisdiction with the EU regime and an advice on how to incorporate these differences in a possible equivalence decision. ESMA is aware of the effects that an equivalence decision by the Commission could have on market participants, but considers that the key element of this advice is of a factual nature, not a policy one.

Purpose and use of the European Commission's equivalence decision

5. According to Article 25(6) of EMIR and 75(1) of EMIR, the European Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCPs and TRs, which are established or authorised in a specific third country, comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. Furthermore, according to Article 13(2) of the legislative act, the Commission may also adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the clearing and reporting requirements laid down in EMIR (Articles 4, 9, 10 and 11) to avoid duplicative or conflicting rules.

CCPs

6. ESMA may recognise a CCP authorised in a third country under certain conditions. According to Article 25(2)(a) of EMIR, one of those conditions is that the Commission has adopted an implementing act in accordance with Article 25(6) of EMIR determining that the legal and supervisory regime in the country in which the CCP is authorised ensures that CCPs authorised there comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are subject to effective on-going supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of that third country.
7. The European Commission has requested ESMA's technical advice in respect of Australia to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of Australia under Article 25(6) of EMIR.**

Trade repositories

8. TRs authorised in a third country that intend to provide services and activities to entities established in the EU for the purpose of the reporting obligation, must be recognised by ESMA. Such recognition also requires an implementing act of the Commission under Article 75(1) of EMIR determining that the legal and supervisory regime in the country in which the TR is authorised ensure that TRs authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those TRs are subject to effective on-going supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.
9. The European Commission has requested ESMA's technical advice in respect of Australia to prepare possible implementing acts under Article 75(1) of EMIR. Australia finalised its regulatory regime for TRs on 11 July 2013 and ESMA is still in the process of preparing its technical advice under this limb of the European Commission's mandate. **This report does not contain ESMA's advice in respect of Australia under Article 75(1) of EMIR. That technical advice will be delivered at a later date.**

Potential duplicative or conflicting requirements on market participants

10. In accordance with Article 13(1) of EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a CCP, in particular with regard to potential duplicative or conflicting requirements on market participants.
11. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. An implementing act adopted by the Commission declaring that the abovementioned conditions have been fulfilled for a third country shall imply, according to Article 13(3), that if at least one of the counterparties entering into an OTC derivatives transaction is established in that third country and the contract is subject to EMIR, the counterparties will be deemed to have fulfilled the requirements of EMIR by disapplying EMIR provisions and applying the provisions of the equivalent third country regime.
12. The European Commission has requested ESMA's technical advice in respect of Australia to prepare possible implementing acts under Articles 13(1) and 13(3) of EMIR. Australia is still in the process of

finalising its regulatory regime for the clearing obligation and risk mitigation techniques for uncleared trades and ESMA is therefore still in the process of preparing its technical advice under this limb of the European Commission's mandate. **This report does not contain ESMA's advice in respect of Australia under Articles 13(1) or 13(3) of EMIR. That technical advice will be delivered at a later date.**

Determination of equivalence is one of a number of criteria that have to be met

13. The adoption of an implementing act by the European Commission is required to enable a third country CCP or TR to apply to ESMA for recognition. However ESMA reiterates that this technical advice should not be seen to prejudge the European Commission's final decision on equivalence. Furthermore, a determination of equivalence by the European Commission is just one of a number of criteria that have to be met in order for ESMA to recognise a third country CCP or TR so that they may operate in the EU for regulatory purposes. Positive technical advice or a positive equivalence determination by the European Commission should not be understood as meaning that a third country CCP or TR will automatically be granted recognition by ESMA. Only if all the other conditions set out in Articles 25 and 77 of EMIR are met, can a third country CCP be granted recognition².

ESMA's Approach to assessing equivalence

14. Concerning the assessment approach taken in preparing this technical advice, ESMA has followed an objective-based approach, where the capability of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective. Annex III contains a line-by-line analysis of the differences and similarities between the requirements of the third country and those provided for in EMIR. The advice to the Commission which is set out in this section of the report has been based on that line-by-line factual assessment but takes an objective-based approach to determining whether there is equivalence between the requirements of the third country and those provided for in EMIR. In particular, the final column of the table at Annex III includes conclusions which have been drawn, on a holistic basis, for each topic. These have been drawn by taking into account the fundamental objectives that an equivalence assessment under EMIR should look at (i.e. the promotion of financial stability, the protection of EU entities and investors and the prevention of regulatory arbitrage in respect of CCPs).
15. In providing its technical advice ESMA has taken account of the following:
 - The requirements of the ESMA Regulation.
 - The principle of proportionality: that the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
 - The objectives of coherence with the regulatory framework of the Union.
 - That ESMA is not confined to elements that should be addressed by the implementing acts but may also indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.

² One of these requirements is that ESMA has established cooperation arrangements with the relevant competent authorities of the third country. ESMA is currently in discussions with the jurisdictions subject to this technical advice regarding such cooperation arrangements.



- The need for horizontal questions to be dealt with in a similar way to ensure coherence between different areas of EMIR.
- The desirability that ESMA's technical advice cover the subject matters described by the delegated powers included in the relevant provisions of the legislative act and its corresponding recitals as well as in the relevant Commission's request for technical advice.
- That ESMA should address to the Commission any question it might have concerning the clarification on the text of the legislative act.

Section II. Technical advice on Australia

Part I – Effective on-going supervision and enforcement

16. The Australian financial supervisory regime is robust with a track record of effective supervision of financial markets including during the recent financial crisis.
17. Australia has a model of financial regulation and supervision with separate agencies in charge of prudential regulation and conduct of business. Prudential oversight of deposit-takers, insurers and large superannuation funds rests with APRA while ASIC is responsible for market conduct and consumer protection. The RBA has responsibility for overseeing financial system stability and payments and clearing and settlement systems. ASIC and the RBA have a role in the supervision of CCPs. The Australian Treasury is also involved in financial regulation by providing policy advice to the government.
18. CCPs operating in Australia are required to be licensed under the Corporations Act 2001. This legislation specifies that to grant a licence for clearing or settlement, the Australian Government must be satisfied, among other things, that the CCP has adequate operating rules and procedures to ensure that systemic risk is reduced, and that the CCP operates in a fair and effective manner. In making this assessment, the Australian Government considers advice from ASIC and the RBA.
19. CCPs operating in Australia are subject to on-going oversight by ASIC and the RBA. ASIC is responsible for ensuring that CCPs meet their obligations under Part 7.3 of the Corporations Act, including that operations are carried out in a fair and effective way, and that other conditions on a CCP's license are being satisfied. The RBA is responsible for ensuring that CCPs conduct their affairs in a way that is consistent with financial system stability. The Corporations Act specifies that CCPs must comply with the FSS, which are determined by the RBA, and do all other things necessary to reduce systemic risk. The RBA publishes formal assessments of all CCPs, which include specific evaluations against the FSS.
20. Two domestic Australian CCPs are subject to the FSS – ASX Clear Pty Limited (ASX Clear) and ASX Clear (Futures) Pty Limited (ASX Clear (Futures)). Both of these entities are part of a single corporate group, Australian Securities Exchange (ASX) Limited.

ASIC

21. ASIC supervises CCPs by:
 - advising the Minister about applications for a CCP licence, applications for a CCP licence exemption, and relevant changes to operating rules³; and other matters for which the Minister has a discretion. For example ASIC may advise the Minister of a CCP's breach of their obligations;
 - assessing and reporting to the Minister on CCP licensees' compliance with their obligations, other than the obligations relating to financial stability standards compliance and systemic risk reduction, which are assessed by the RBA;
 - enforcing CCP licensees' compliance with their obligations under the Corporations Act; and
 - enforcing the prohibition on a person operating, or holding out that the person operates, a CCP in Australia if the person does not hold a licence or an exemption.
22. Under the Corporations Act, CCPs are required to provide ASIC with an annual report on the extent to which the CCP has complied with its obligations as a CCP licensee. The annual report is required to include:
 - a description of the activities the CCP has undertaken in the financial year;
 - the resources (including financial, technological and human resources) that the CCP had available, and used, in order to ensure that it has complied with its obligations; and



- an analysis of the extent to which the CCP considers that the activities undertaken, and resources used, have resulted in full compliance with all its obligations.

23. ASIC also publishes annual assessment reports; these cover among other things, the fair and effective provision of services by the licensed CCPs and whether the CCP's licence obligations are met.² ASIC works closely with the RBA in performing its functions to supervise CCPs.

RBA

24. The RBA in its oversight role will seek sufficient information at the time a CCP submits its licence application to be able to assess whether the CCP would comply with the FSSs. Thereafter the RBA continually monitors the CCP's compliance with the FSS and publishes formal assessments on a periodic basis. CCPs are required to provide the RBA with timely information on any material developments relevant to the services provided under its licence and its compliance with the FSSs. As far as practicable, the CCP is expected to notify the RBA of developments sufficiently in advance of their implementation – or as soon as practicable after the relevant change has occurred – to allow the RBA to seek further information and/or discuss the impact of the changes. Material developments include, but are not be limited to, the introduction of or changes to:

- new products;
- key personnel;
- governance arrangements;
- ownership or control of the licensee or any holding company (direct or ultimate) of the licensee;
- the size and composition of risk resources;
- risk management policies;
- stress-testing methodology;
- margining methodology;
- operational processes and arrangements (including payment arrangements and co-sourcing and outsourcing arrangements);
- participation criteria; and
- Australian-based clearing participation.

25. The FSSs provide for the regular provision of information and data. Precise requirements, and the form and frequency of data provision, are agreed between the CCP and the RBA. At a high level, these include:

- quarterly risk management reports, including detailed information on margining and stress testing, to support assessment of the adequacy of financial resources;
- periodic activity, risk and operational data, with coverage, form and frequency to be agreed with the RBA; and
- financial and internal audit reports, and any external independent reviews of operational, risk management and control functions.

26. The RBA also gathers information on domestic Australian CCPs through an ongoing dialogue with the CCP, including through scheduled periodic meetings and ad hoc targeted meetings on specific topics. These scheduled meetings include:

- Semiannual high-level review meetings to discuss strategy and relevant market developments, involving the Chief Executive Officer and other relevant board members;

- Quarterly executive-level meetings to discuss developments relevant to compliance with the FSSs, involving the Chief Risk Officer, Chief Compliance Officer, General Counsel and other members of the CCP's management team;
 - Quarterly risk management meetings, involving managers responsible for clearing risk policy and the implementation of risk management arrangements; and
 - Quarterly operations meetings, involving the Chief Operations Officer and other members of the management team responsible for implementation of operational strategy, management of operational risk and business continuity planning.
27. The formal annual assessment of compliance with the FSSs is guided by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), Assessment Methodology for the Principles for FMI and the Responsibilities of Authorities, which provides a framework for assessing and monitoring observance of the Principles for Financial Market Infrastructures and the responsibilities of authorities. Within the parameters of the Assessment Methodology, the RBA's formal assessment of a CCP's compliance against all of the FSSs comprises:
- A discussion of material changes, and their implications for compliance with the FSSs, over the assessment period;
 - A more comprehensive and granular assessment against a subset of the FSSs (annual 'special topics'). These special topics are selected according to:
 - material developments over the preceding period
 - a risk-based assessment of potential implications for financial stability
 - length of time since the last detailed assessment; and.
 - An updated detailed assessment against each FSS.
28. ESMA assessment
29. The supervisory and enforcement regime for CCPs in Europe envisages the establishment of colleges for CCPs. This provision introduces a certain degree of harmonisation of the practices to be followed, e.g. need for a NCA to present a risk assessment to the college and the functioning of colleges will necessarily harmonise the supervisory practices among European NCAs.
30. EMIR introduces minimum standards of supervision and enforcement among NCAs, e.g. that CCPs should be subject to on-site inspections and that NCAs have the necessary powers to take effective, proportionate and dissuasive measures against CCPs, but EMIR leaves to the Member States the duty to define those measures at national level.
31. On the basis of ESMA's experience in assessing common supervisory practices among European authorities, ESMA can conclude that these are not dissimilar to the ones applicable in Australia.
32. **Against this background ESMA advises the Commission to consider that CCPs are subject to effective supervision and enforcement in Australia.**

Part II – Effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country

33. An equivalent system exists in Australia for the recognition of CCPs authorised under the legal regime of a third country. The system involves the third country CCP applying for an ‘overseas CS facility license’ enabling them to provide the same services in Australia as they are authorised to provide in the third country.³
34. Similar to the EMIR regime, the Australian regime for third country CCPs places reliance on the supervisory framework of the jurisdiction in which the CCP is authorised. In particular, ASIC places reliance on the supervisory framework of the jurisdiction in which the CCP is authorised in respect of the sign-off of the CCP’s operating rules. ASIC may also conduct assessments of how well a CCP is complying with its obligations under Part 7.3 of the Corporations Act, taking into account any information and reports that it thinks appropriate, including information and reports from an overseas regulatory authority. It is also a prerequisite to the granting of an overseas CS facility license that the jurisdiction in which the CCP is authorised has a regulatory regime which is sufficiently equivalent to the Australian regulatory regime for comparable domestic CCPs.
35. In undertaking its assessment of the sufficient equivalence of the home regulatory regime in order to advise the Minister, ASIC will consider a regulatory regime to be sufficiently equivalent if it:⁴
 - is clear, transparent and certain;
 - is consistent with the IOSCO Objectives and Principles of Securities Regulation, and achieves the high-level outcomes set out in international recommendations and/or standards relating to CCPs or, if relevant, securities settlement systems published by CPSS and IOSCO from time to time;
 - is comparably enforced in the home jurisdiction; and
 - achieves the systemic risk protection and fair and effective services outcomes that are achieved by the Australian regulatory regime for comparable domestic CCPs.
36. ‘Sufficient equivalence’ is not defined in the Corporations Act. In considering the sufficient equivalence of an overseas regulatory regime for the purpose of advising the Minister whether to grant a third country CCP an overseas CS facility license, the RBA will take the following into account:
 - The clarity and coverage of stability-related principles applied by the overseas regulator relative to the stability-related principles applied by the RBA;
 - The nature and intensity of the overseas regulator’s oversight process, including direct comparison with the regime applied by the RBA; and
 - Observed outcomes relative to those in Australia, as reflected in an initial assessment of CCPs operating under the relevant overseas regime.
37. These tests involve similar considerations to those taken into account in assessing equivalence under EMIR.
38. On an ongoing basis, the RBA has articulated a separate approach to assessing the degree of reliance the RBA should place on an overseas regulator⁵. In relation to third country CCPs, this guidance notes that “notwithstanding that an overseas regime may be sufficiently equivalent to that in Australia, there may be some differences in the detailed application of principles or standards. The Reserve Bank therefore will only place reliance on a sufficiently equivalent overseas regulator in respect of those [Standards] for which a ‘materially equivalent’ standard is explicitly applied in the overseas regulatory regime”. The evidence base used to determine the degree of overlap in ‘clarity and coverage’ between an overseas regime and that in Australia is similar to that used to determine the material equivalence of individual standards (such as the CPSS-IOSCO PFMIIs).”

39. EMIR does not mandate an ongoing assessment of the equivalence of the supervisory framework of the jurisdiction in which the CCP is authorised. While this assessment represents a departure from the third country CCP regime prescribed in EMIR it is not considered to detract from the equivalence of Australia's system for the recognition of third country CCPs.
40. Similar to the EMIR regime, the Australian regime for third country CCPs also requires the establishment of cooperative arrangements between the Australian authorities and the authorities in the jurisdiction in which the CCP is authorised.
41. The Australian regime does involve the imposition of certain reporting requirements on third country CCPs namely:
- (1) A requirement that the CCP provides ASIC with advance notice if:⁶
 - the CCP ceases to be authorised to operate a clearing and settlement facility in the third country in which the CCP's principal place of business is located; or
 - there is a significant change to the regulatory regime applying in relation to the CCP in the third country in which the CCP's principal place of business is located.
 - (2) A requirement that the CCP provides ASIC with an annual report outlining the activities undertaken by the CCP, how the CCP has complied with any conditions on its overseas CS licence, the adequacy and effectiveness of the CCP's rules and procedures, supervisory arrangements and arrangements for handling conflicts of interest.⁷
 - (3) A requirement that the CCP provides the RBA with advance notice if:⁸
 - the CCP becomes aware that it has failed to comply with standards determined under section 827D of the Corporations Act, or is likely to fail to comply with such standards; or
 - the CCP becomes aware that it may no longer be able to meet, or has breached, its obligation under subparagraph 821A(aa)(ii) of the Corporations Act.
 - (4) A requirement that the CCP informs the RBA in a timely manner of any events or changes to its operations or circumstances that may materially impact its management of risks or ability to continue operations and regularly provide information to the RBA regarding its financial position and risk controls on a timely basis.⁹
42. These requirements represent a departure from the third country CCP regime prescribed in EMIR, insofar as EMIR does not place such requirements on the CCP directly, but envisages the provision of such information under the information sharing arrangement between ESMA and the authorities responsible for supervision of the CCP. However, the impact of these reporting requirements is unlikely to be a significant burden.
43. One CCP authorised in the EU (LCH.Clearnet Limited) currently holds an overseas CS facility license enabling it to clear for the market operated by Financial and Energy Exchange Global Pty Ltd, an Australian Market Licencee operating a derivatives market in Australia, and to clear over-the-counter interest rate derivatives through the SwapClear facility.
44. On 11 February 2013 the Minister announced that, on the basis of the advice of the Australian Council of Financial Regulators¹⁰, the Australian Government considers that competition in the clearing and settlement of ASX-listed equities is not appropriate. Pursuant to this decision, consideration of any application to operate a CCP to clear cash equities listed on the ASX market will be deferred for two years.¹¹ The Minister did however indicate that the Australian Government supports competition in the clearing of OTC derivatives and the deferral of competition for two years would not apply in relation to clearing and settlement services supporting either exchange-traded or OTC derivative markets or debt markets.

45. **Against this background ESMA advises the Commission to consider the legal framework of Australia as providing for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes in respect of CCPs providing clearing services to the Australian derivative markets (including both exchange-traded and OTC derivative markets), the Australian debt markets, and the Australian cash-equity markets except for the ASX listed equities market.**

Part III – Legally binding requirements which are equivalent to those of Title IV of EMIR

46. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Australia and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.
47. As highlighted under the detailed analysis included in Annex III, all of the provisions in Title IV of EMIR for CCPs are replicated with corresponding legally-binding requirements which are applicable, at a jurisdictional level, to CCPs in Australia.
48. The Reserve Bank of Australia has recently introduced a substantial revision of its standards for CCPs (its Financial Stability Standards or FSS) following the publication of the CPSS-IOSCO Principles for Financial Market Infrastructure.¹²
49. In some cases the revised regulatory framework for CCPs in Australia is less prescriptive than that under EMIR. However, the RBA has recently issued an interpretation of its FSS requirements which clarifies certain requirements in respect of domestically licensed derivatives CCPs that require recognition in the EU¹³. The areas in which the RBA has done so include all of the areas in which the Australian regulatory framework for CCPs would not otherwise be deemed to include legally-binding requirements broadly equivalent to those contained in EMIR.
50. The RBA's position regarding the interpretation and application of its FSS requirements has been communicated to the single Australian CCP which currently requires recognition in the EU, but would equally apply to other Australian CCPs in similar circumstances.¹⁴ The RBA will assess compliance with the FSS in accordance with its position regarding the interpretation and application of its FSS requirements. The RBA may take appropriate action to the extent that a domestically licensed derivative CCP was found not to be in observance.
51. For example, under the FSS an Australian CCP is not required to maintain financial resources sufficient to cover the default of the two clearing members to which it has the largest exposure under extreme but plausible market conditions, unless the CCP is involved in activities with a more complex risk profile or is systemically important in multiple jurisdictions. EMIR, however, requires that, for all CCPs, the combination of a CCP's default fund and other pre-funded financial resources of the CCP must be sufficient to cover the default of the two clearing members to which the CCP has the largest exposure under extreme but plausible market conditions. The RBA has, however, outlined its interpretation and application of its FSS requirements which clarifies how a judgement would be formed on whether a CCP is systemically important in multiple jurisdictions, noting that the views of the relevant overseas regulator would be taken into account. The RBA has further clarified that a systemically important domestically licensed derivative CCP which also requires recognition in the EU and has material participation of clearing participants established in the EU and cleared a range of derivatives products with different characteristics (including levels of liquidity) would be considered by the RBA to be systemically important in the EU and accordingly systemically important in multiple jurisdictions. The RBA would accordingly require such a CCP to maintain additional financial resources to cover the default of its largest two clearing members and their affiliates.

52. **Taking into account the overall regulatory framework for CCPs in Australia and the RBA's position regarding the interpretation and application of its FSS requirements for those Australian CCPs which require recognition in the EU, ESMA advises the Commission to consider that the legal and supervisory arrangements of Australia ensure that CCPs authorised in Australia comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR .**
53. It should be noted that ESMA's detailed analysis has been restricted to reviewing primary and secondary legislation, rules and regulations promulgated under primary and secondary legislation and legally binding documentation issued by ASIC and the RBA. This is in line with the mandate given to ESMA by the European Commission.

Conclusions on CCPs

54. **ESMA advises the Commission to consider that CCPs authorised in Australia are subject to effective supervision and enforcement on an on-going basis and that the legal framework of Australia provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes in respect of CCPs providing clearing services to the derivative markets (including both exchange-traded and OTC derivative markets), the Australian debt markets and the Australian cash-equity markets except for the ASX listed equities market.**
55. **ESMA also advises the Commission to consider that the legal and supervisory arrangements of Australia ensure that CCPs authorised in Australia comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR.**



ANNEX I – Original Mandate from the European Commission – 11 October 2012

FORMAL REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING ACTS CONCERNING REGULATION 648/2012 ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES (EMIR)

With this formal mandate the Commission seeks ESMA's technical advice to prepare possible implementing acts concerning the **equivalence** between the legal and supervisory frameworks of certain third countries and Regulation No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR' or the "**legislative act**"). Any such implementing acts that may be proposed by the Commission must be adopted in accordance with Article 291 of the Treaty on the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

This mandate is based on Regulation No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Securities and Markets Authority (the "**ESMA Regulation**")³ and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁴.

According to Articles 25(6) and 75(1) of the legislative act the Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCP's and trade repositories, which are respectively established or authorized in a specific third country comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. Furthermore, according to Article 13(2) of the legislative act, the Commission may also adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the clearing and reporting requirements laid down in EMIR (Articles 4,9,10 and 11) to avoid duplicative or conflicting rules.

The European Parliament and the Council shall be duly informed about this mandate.

In accordance with the established practice within the European Securities Committee,⁵ the Commission will continue, as appropriate, to consult experts appointed by the Member States in the preparation of these possible implementing acts.

The powers of the Commission to adopt implementing acts are subject to Articles 13(2), 25(6) and 75(1) of the Legislative act. As soon as the Commission adopts an implementing act, the Commission will notify it simultaneously to the European Parliament and the Council.

³ OJ L 331, 15.12.2010, p. 84 - 119.

⁴ OJ L55/13, 28.2.2011, p. 13-18

⁵ Commission's Decision of 6.6.2001 establishing the European Securities Committee, OJ L191, 17.7.2001, p.45-46.



1. Context.

1.1 Scope.

CCPs

ESMA may recognise a *CCP* established in a third country under certain conditions. According to Article 25 (2a) EMIR one of those conditions is that the Commission has adopted an implementing act in accordance with Article 25 (6) EMIR determining that the legal and supervisory regime in the country in which the *CCP* is established ensure that *CCPs* established there comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those *CCPs* are subject to effective ongoing supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of *CCPs* authorised under the legal regime of a third country.

Trade repositories

Trade repositories established in a third country that intend to provide services and activities must be recognized by ESMA. Such recognition also requires an implementing act of the Commission under Article 75(1) of EMIR determining that the legal and supervisory regime in the country in which the trade repository is established ensure that trade repositories authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those trade repositories are subject to effective ongoing supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.

Potential duplicative or conflicting requirements on market participants

In accordance with Article 13(1) EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a *CCP*, in particular with regard to potential duplicative or conflicting requirements on market participants.

The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. An implementing act adopted by the Commission declaring that the above-mentioned conditions have been fulfilled for a third country shall imply, according to Article 13(3), that if at least one of the counterparties entering into an OTC derivatives transaction is established in that third country and the contract is subject to EMIR, the counterparties will be deemed to have fulfilled the requirements of EMIR.

1.2 Principles that ESMA should take into account.

In providing its technical advice ESMA is invited to take account of the following principles:

- It should respect the requirements of the ESMA Regulation, and, to the extent that ESMA takes over the tasks of CESR in accordance with Art 8(1)(1) of the ESMA Regulation,

take account of the principles set out in the Lamfalussy Report⁶ and those mentioned in the Stockholm Resolution of 23 March 2001⁷.

- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
- While preparing its advice, ESMA should seek coherence within the regulatory framework of the Union.
- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the implementing acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- ESMA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.
- ESMA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the legislative act and its corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by ESMA to the Commission should not take the form of a legal text. However, ESMA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology in the Union.
- ESMA should address to the Commission any question they might have concerning the clarification on the text of the legislative act, which they should consider of relevance to the preparation of its technical advice.

2. Procedure.

The Commission is requesting the technical advice of ESMA in view of the preparation of the possible implementing acts to be adopted pursuant to the legislative act and in particular regarding the questions referred to in section 3 of this formal mandate.

The mandate takes into account the ESMA Regulation and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

⁶ Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, chaired by M. Lamfalussy, Brussels, 15 February 2001. (http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf)

⁷ Results of the Council of Economics and Finance Ministers, 22 March 2001, Stockholm Securities legislation, (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/01/105&format=HTML&aged=0&language=EN&guiLanguage=en>).



The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way.

In accordance with established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of the implementing acts relating to the legislative act.

The Commission has duly informed the European Parliament and the Council about this mandate. As soon as the Commission adopts possible delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3. ESMA is invited to provide technical advice on the following issues with the following priorities.

Taking into account the existence or expected adoption of final primary and/or secondary legislation in third countries and in order to compare the provisions of EMIR to that legislation the following division and prioritisation of technical advice is required in two phases.

CCPs

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) applicable to CCPs and to advise whether they comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are subject to effective ongoing supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country.

The delivery of technical advice should be prioritised in two phases.

- Phase I: the USA and Japan;
- Phase II: Switzerland, Australia, Dubai, India, Singapore and Hong Kong.

Trade repositories

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) and to advise whether the legal and supervisory regime in the country in which the trade repository is established ensures that trade repositories authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those trade repositories are subject to effective ongoing supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.

The delivery of technical advice should be prioritised in two phases.

- Phase I: the USA;
- Phase II: Hong Kong.

No further third countries are envisaged at this point in time.



Potential duplicative or conflicting requirements

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) and to advise whether the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

The determination of any such requirements and arrangements for the obligations for clearing, reporting and non-financial counterparties (Articles 4, 9 and 10 of EMIR) should be prioritised in two phases.

- Phase I: the USA and Japan;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

The determination of any such requirements and arrangements for the obligations for risk mitigation techniques for OTC trades that are not cleared by a CCP (Article 11 of EMIR) should be prioritised in two phases.

- Phase I: the USA, Japan;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

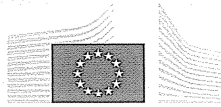
4. Indicative timetable.

This mandate takes into consideration that ESMA requires sufficient time to prepare its technical advice and that the Commission may seek to adopt any implementing acts according to Article 291 of the TFEU. The powers of the Commission to adopt implementing acts are subject to the control mechanisms for Member States laid down in Regulation 182/2011.

The deadlines set to ESMA to deliver technical advice are as follows:

- Phase I: 15 March 2013
- Phase II: within 3 months after the entry into force of the European Commission's Regulations with regard to regulatory and implementing technical standards for EMIR but at the latest by 15th June 2013.

ANNEX II – Updated Mandate from the European Commission – 13 June 2013



EUROPEAN COMMISSION
Directorate General Internal Market and Services
FINANCIAL MARKETS

Director

Brussels, 13 June 2013
DG Markt/G2/MJ/kc (2013) 2224977

Mr Steven Maijoor
Chair of ESMA
ESMA
103, rue de Grenelle
75007 Paris
France

Subject: Revised request for ESMA technical advice on the equivalence between certain third country legal and supervisory frameworks and the Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)

Dear Mr Maijoor,

On 11th October 2012, I sent you a formal request for ESMA technical advice on the equivalence between certain third country legal and supervisory frameworks in respect of Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

This request has then been subsequently amended to revise the list of countries to be considered and extend the deadline for ESMA to deliver its technical advice, with the view to better take into account on-going international discussions and developments in this area.

This technical advice is an important element for the development of European Union's policy for third countries in the field of OTC derivatives regulation. At this stage, we consider that the deadlines for the submission of ESMA technical advice need to be reviewed in order to allow ESMA more time to take account of international on-going developments and to consider their implications fully.

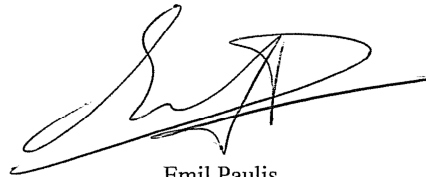
As discussed between our staff, I would therefore like to formally revise the deadlines indicated in the Commission's request for technical advice and ask ESMA to deliver its advice on Japan and the USA by 1 September 2013 and, for the remaining countries, to deliver its advice by 1 October 2013. The table in annex summarises the list of technical advice requested to ESMA, as well as their respective deadlines.

In any case, I would like to highlight that the extension of ESMA deadline to deliver its technical advice affects neither the procedure nor the timeline for recognition of third-country central counterparties or trade repositories.

In particular, as explained in our memo on the *Practical implementation of the EMIR framework to non-EU central counterparties*¹, third-country central counterparties that are currently providing services to EU clearing members should apply by 15 September 2013 in order to benefit from the transitional provisions provided by EMIR and continue providing services to EU clearing members until a decision is made by ESMA on their recognition.

In accordance with EMIR, ESMA will have 180 working days after the receipt of a complete application by a third-country CCP to make a decision on its recognition. The Commission will work in parallel to ensure the timely adoption of any equivalence decisions, as appropriate, in order to enable ESMA to adopt its recognition decision within this timeframe. I look forward to continuing working with you in close cooperation during this important work ahead.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Emil Paulis", is positioned above the printed name. The signature is stylized and cursive.

Emil Paulis

Enclosures: Table on the deadlines for ESMA Technical Advice

Copies: N. Calviño

Contact:

Muriel Jakubowicz, Telephone: +32 229-58154, Muriel.Jakubowicz@ec.europa.eu

¹ http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/130513_equivalence-procedure_en.pdf

13 June 2013

Deadlines for ESMA Technical Advice
In view of the European Commission's Decisions on Equivalence

Third Country	CCPs	Trade Repositories	Potential Duplicative or Conflicting Requirements
US	1 September 2013	1 September 2013	1 September 2013
Japan	1 September 2013	1 September 2013	1 September 2013
Australia	1 October 2013	1 October 2013	1 October 2013
Canada			1 October 2013
Hong Kong	1 October 2013	1 October 2013	1 October 2013
India	1 October 2013		<i>To be determined</i>
Singapore	1 October 2013	1 October 2013	<i>To be determined</i>
South Korea	1 October 2013		<i>To be determined</i>
Switzerland	1 October 2013	<i>To be determined</i>	1 October 2013
Dubai	<i>Withdrawn</i>		

Annex III - Legally binding requirements which are equivalent to those of Title IV of EMIR (CCP Requirements)

Description of the provision in Title IV of EMIR	Description of the corresponding Australian provisions	Assessment of equivalence
<p>Organisational requirements</p> <p>A CCP must have robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures.¹⁵</p> <ul style="list-style-type: none"> • Governance arrangements. A CCP must define its organisational structure as well as the policies, procedures and processes by which its board and senior management operate. These governance arrangements must be clearly specified and well-documented.¹⁶ <p>They should include: (i) the composition, role and responsibilities of the board and any board committees; (ii) the roles and responsibilities of the management; (iii) the senior management structure; (iv) the reporting lines between the senior management and the board; (v) the procedures for the appointment of board members and senior management; (vi) the design of the risk management, compliance and internal control</p>	<p>Organisational requirements</p> <ul style="list-style-type: none"> • Governance arrangements. <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have clear and transparent governance arrangements that promote the safety of the CCP and support the stability of the financial system.⁴⁵ <p>Have governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, the RBA and other relevant authorities, clearing members and, at a more general level, the public.⁴⁶</p> <p>Have governance arrangements in which the roles and responsibilities of a CCP’s board of directors (or equivalent) should be clearly specified. There should also be documented procedures for the board’s functioning, including procedures to identify, address and manage member conflicts of interest. The board should regularly review both its overall performance and the performance of its individual board</p>	<p>Organisational requirements</p> <p><i>The Australian regime for CCPs includes organisational requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR. Like EMIR the Australian regime requires CCPs to establish governance arrangements that are transparent, well-defined, include a clear organisational structure with consistent lines of responsibility, to have effective internal controls including a mechanism for internal audit, and to identify, document, and manage the range of risks to which the CCP is exposed.</i></p> <ul style="list-style-type: none"> • Governance arrangements. Australian CCPs are not specifically restricted to only sharing human resources with other group entities under the terms of an outsourcing arrangement. An Australian CCP is however required to consider any conflicts of interest or other issues such as the availability of resources that may arise from its being part of a larger organisation or corporate group. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the

<p>functions; (vii) the processes for ensuring accountability to stakeholders.¹⁷</p> <p>The risk management policies, procedures, systems and controls must be part of a coherent and consistent governance framework which is reviewed and updated regularly.¹⁸</p> <p>A CCP which is part of a group must consider the group’s implications for its own governance arrangements, including (i) whether it has the necessary level of independence to meet its regulatory obligations as a separate legal entity, and (ii) whether its independence could be compromised by its group structure or any board members shared with other group entities.¹⁹</p> <p>A CCP must have adequate human resources to meet all of its obligations under EMIR, and should not share such resources with other group entities, unless under the terms of an outsourcing arrangement in accordance with EMIR, Art. 35.²⁰</p> <p>To ensure that CCPs have the necessary levels of human resources, that CCPs are accountable for their activities, and that CCPs Competent Authorities have relevant points of contact within the CCPs they supervise, all CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer, which positions must be filled by dedicated employees of the CCP.²¹</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. A CCP must have a sound framework for the comprehensive management of all ma- 	<p>members.⁴⁷</p> <p>The Board of a CCP should comprise suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board members.⁴⁸</p> <p>Where a CCP is part of a larger organisation or corporate group, consider any conflicts of interest or other issues that may arise from its relationship to its parent or to other affiliated entities. Where relevant, any cross-border issues should also be appropriately identified, assessed and dealt with in the CCP’s governance arrangements, both at the CCP level and at the level of its parent. A CCP’s ownership structure and organisational form may also need to be considered in the preparation and implementation of its recovery or wind-down plans or in assessments of its resolvability.⁴⁹</p> <p>Where a CCP forms part of a corporate group, some of the roles and responsibilities of the board may be carried out on a group-wide basis, for instance by the board of the CCP’s parent company. However, the CCP must be able to demonstrate that any such alternative governance arrangements are effective. In particular, the CCP should be able to demonstrate that such arrangements uphold its capacity to meet its regulatory and other obligations, and in no way compromise or subordinate the CCP’s interests to the interests of the group.⁵⁰</p>	<p>EMIR regime.</p> <p>An Australian CCP is also not specifically required to have a chief technology officer or a chief compliance officer or specifically required to ensure that the chief risk officer is a “dedicated employee” of the CCP. However, an Australian CCP is required to have sufficient resources (including human resources) to carry out its functions and is required to consider any conflicts of interest or other issues such as the availability of resources where it utilises staff that are employed by other group entities.</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. In this regard, the Australian regime includes legally binding requirements that are broadly equivalent to those of EMIR. • Compliance policy, procedures and Compliance function. Australian CCPs are not specifically required to establish and maintain a compliance function, operating independently from the other functions of the CCP. However the board of a CCP must establish arrangements for detecting potential or actual non-compliance with the law or the CCP’s operating rules. • Organisational structure and separation of reporting lines. <p>In this regard, the Australian regime includes legally binding requirements that are broadly equivalent to those of EMIR.</p>
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<p>terial risks, and must establish documented policies, procedures and systems and controls to identify measure, monitor and manage such risks. These must be structured to ensure that Clearing Members properly manage and contain the risks they pose to a CCP.²²</p> <p>A CCP must take an integrated and comprehensive view of, and ensure that its risk management tools can manage and report on, all relevant risks, including risks from and to its Clearing Members (and to the extent practicable, their clients), and risks from and to other entities including interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depositories, trading venues served by the CCP and other critical service providers.²³</p> <p>A CCP must have robust information and risk-control systems which allow the CCP and where appropriate, its Clearing Members, and to the extent practicable, their clients, to obtain timely information and apply risk management policies and procedures appropriately (including sufficient information to ensure that credit and liquidity exposures are monitored continuously at CCP-level, Clearing Member-level and, to the extent practicable, client-level).²⁴</p> <p>A CCP must ensure that its risk management function has the necessary authority, expertise and access to all relevant information, and that it is sufficiently independent from the CCP's other</p>	<p>Where a CCP is part of a group of companies, ensure that measures are in place such that decisions taken in accordance with its obligations as a CCP cannot be compromised by the group structure or by board members also being members of the board of other entities in the same group. In particular, such a CCP should consider specific procedures for preventing and managing conflicts of interest, including with respect to intra-group outsourcing arrangements.⁵¹</p> <p>Where a CCP utilises staff or other resources that are employed or owned by other group entities, there may be circumstances in which it is in the interests of the group to withhold the provision of those resources – for instance, if it appears likely that the CCP may enter external administration. Conflicts could also arise between the risk management objectives of a CCP and the business interests of other group entities. A CCP should therefore ensure that potential conflicts will not prevent it from appropriately managing its risks and fulfilling its regulatory and other obligations.⁵²</p> <p>Outsourcing of services must be undertaken in accordance with FSS 2 and FSS 16.</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p>	<ul style="list-style-type: none"> • Remuneration policy. An Australian CCP is not specifically required to have a remuneration committee. However, an Australian CCP is required to have compensation arrangements that promote the soundness and effectiveness of risk management. • Information technology systems. In this regard, the Australian regime includes legally binding requirements that are broadly equivalent to those of EMIR. • Disclosure. In this regard, the Australian regime includes legally binding requirements that are broadly equivalent to those of EMIR. . • Auditing. In this regard, the Australian regime includes legally binding requirements that are broadly equivalent to those of EMIR. <p>On balance, the differences highlighted above do not undermine the consistency of the objectives of the Australian and EMIR regimes.</p>
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<p>functions.</p> <p>The chief risk officer must implement the CCP’s risk management framework.²⁵</p> <p>A CCP must have adequate internal control mechanisms to assist the board in monitoring the adequacy and effectiveness of its risk management policies, procedures and systems (including sound administrative and accounting procedures, a robust compliance function and an independent internal audit function).²⁶</p> <p>A CCP’s financial statements must be prepared annually and audited by statutory auditors / audit firms within the meaning of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.²⁷</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. A CCP must establish, implement and maintain adequate policies and procedures to detect any risk of failure by the CCP and its managers and employees to comply with the CCP’s obligations under EMIR.²⁸ <p>A CCP must ensure that its rules, procedures and contractual arrangements are clear and comprehensive and ensure compliance with EMIR, as well as all other applicable regulatory and supervisory requirements. These rules, procedures and contractual arrangements should be accurate, up-to-date and readily available to the CCPs Competent Authority, Clearing Members and (where appropriate) Clients. A CCP must have a</p>	<ul style="list-style-type: none"> • Have governance arrangements that ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board, including through the maintenance of a separate and independent internal audit function. The reporting lines for risk management should be clear and separate from those for other operations of the CCP, and there should be an additional direct reporting line to a non-executive director on the board via a chief risk officer (or equivalent).⁵³ <p>A CCP should have risk management policies, procedures and systems that enable it to identify, measure, monitor and manage the range of risks that arise in or are borne by the CCP. This risk management framework should be subject to periodic review.⁵⁴</p> <p>To establish a sound risk management framework, a CCP should first identify the range of risks that arise within the CCP and the risks it directly bears from or poses to its clearing members, its clearing members' customers and other entities. It should identify those risks that could materially affect its ability to perform or to provide services as expected. Typically these include legal, credit, liquidity and operational risks. A CCP should also consider other relevant and material risks, such as market (or price), concentration and general business risks, as well as risks that do not appear to be significant in isolation, but when combined with other</p>	
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<p>process for proposing and implementing changes to its rules and procedures and, prior to implementing any material changes, should consult with all affected Clearing Members and submit the proposed changes to its CCPs Competent Authority.</p> <p>A CCP must identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risks resulting from such issues.²⁹</p> <p>A CCP must establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP and has the necessary authority, resources, expertise and access to all relevant information.</p> <p>A CCP's chief compliance officer must, <i>inter alia</i>: (i) monitor the adequacy and effectiveness of a CCP's compliance policies; (ii) administer the compliance policies established by senior management and the board; (iii) report regularly to the board on compliance by the CCP and its employees with EMIR; (iv) establish procedures for the remediation of instances of non-compliance; and (v) ensure that persons involved in the compliance function do not perform the services or activities they monitor.</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. A CCP must define the composition, role and responsibilities of board and senior management, and any board committees (including an audit committee and a remuneration committee).³⁰ <p>A CCP's board must be responsible for: (i)</p>	<p>risks become material. The consequences of these risks may have significant reputational effects on the CCP and may undermine the CCP's financial soundness as well as the stability of the broader financial markets. In identifying risks, a CCP should take a broad perspective and identify the risks that it bears from other entities, such as other FMIs, money settlement agents, liquidity providers, service providers and any entities that could be materially affected by the CCP's inability to provide services.⁵⁵</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. <p><i>Under s821A(c) of the Corporations Act, CCPs are required to have adequate arrangements for supervising the facility, including for handling conflicts of interest and for enforcing compliance with the facility's operating rules.</i></p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have a clear, documented risk management framework (an obligation on the board of the CCP) that includes the CCP's risk tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision-making in crises and emergencies. Governance arrangements should ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board, including through the 	
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<p>establishing the CCP’s objectives and strategies; (ii) monitoring of senior management; (iii) establishing appropriate remuneration policies; (iv) establishment of the risk management function and oversight of the risk management, compliance, internal control and outsourcing functions; (v) oversight of compliance with EMIR; and (vi) accountability to shareholders, employees, customers and other stakeholders.³¹</p> <p>A CCP’s senior management must be responsible for: (i) ensuring consistency of a CCP’s activities with the objectives and strategies determined by the board; (ii) designing and establishing compliance and internal control procedures promoting the CCP’s objectives; (iii) regularly reviewing and testing internal control procedures; (iv) ensuring that sufficient resources are devoted to risk management and compliance; (v) the risk control process; and (vi) ensuring that risks posed to the CCP by its clearing and related activities are addressed.³²</p> <p>A CCP must maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.³³</p> <p>A CCP must have clear and direct reporting lines between its board and senior management. The reporting lines for risk management, compliance and internal audit must be clear and separate from those of a CCP’s other operations.³⁴</p> <ul style="list-style-type: none"> • Remuneration policy. A CCP must adopt, implement and maintain a remuneration policy which 	<p>maintenance of a separate and independent internal audit function. ⁵⁶</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. <p><i>Under the Corporations Act, as articulated in ASIC Regulatory Guide:</i></p> <p>CCPs are required to have sufficient resources (including financial, technological and human resources) to operate properly and must have adequate arrangements for supervising the facility, including for handling conflicts of interest and for enforcing compliance with the facility’s operating rules. ⁵⁷</p> <p>Commercial and reporting activities should be separated from supervisory activities.⁵⁸</p> <p>Other activities should not adversely affect, or have the potential to adversely affect, compliance with obligations as a CCP, including having sufficient human, financial and technical resources for the proper operation of the CCP at all times.⁵⁹</p> <p>CCPs are required to continuously assess the financial and human resources needed for the on-going effective operation of the CCP, its supervisory arrangements and all its other activities and adjust such resources accordingly. ⁶⁰</p> <p>Where a CCP operates another facility by which parties to transactions in things that are not fi-</p>	
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<p>promotes sound and effective risk management and does not create incentives to relax risk standards.³⁵ The policy must be designed, overseen and reviewed at least annually by the remuneration committee. The remuneration policy should be designed to align the level and structure of remuneration with prudent risk management, taking into account prospective risks as well as existing risks. In the case of variable remuneration, the policy must take into account possible mismatches of performance and risk periods, and ensure payments are deferred appropriately. The fixed and variable components of total remuneration must be balanced and must be consistent with risk alignment. The remuneration of staff engaged in risk management, compliance and internal audit should be independent of the CCP's business performance.³⁶</p> <p>The remuneration policy should be independently audited on an annual basis (with the results being made available to the relevant CCPs Competent Authority).³⁷</p> <ul style="list-style-type: none"> • Information technology systems. A CCP must maintain information technology systems which are adequate to deal with the complexity, variety and type of services and activities it performs.³⁸ In particular, a CCP should ensure that its systems are reliable, secure and resilient (including in stressed market conditions), are scalable, and have sufficient redundancy capacity to process all remaining transactions before the end of the day in circumstances in which a major disruption has occurred.³⁹ 	<p>financial products (e.g. commodities) can meet the obligations arising out of those transactions, the CCP will not require a CCP licence in respect of its conduct in operating that other facility.⁶¹</p> <p>If the CCP operates a facility for non-financial products (which would constitute a CCP if it involved provision of services in relation to obligations arising out of transactions in financial products), clearing members and users of the unlicensed facility must be told that the unlicensed facility is operated separately from the CCP.⁶²</p> <p>Where a CCP provides services in respect of transactions that do not involve financial products through the same CCP through which they provide services in respect of transactions that do involve financial products, the CCP operator must ensure that the supervisory resources it has to supervise the transactions for which it is authorised to operate the CCP are sufficient, in light of the resources it requires to operate the unregulated aspect of the CCP.⁶³</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Ensure that it can reliably access and utilise well-trained and competent personnel, as well as technical and other resources. ⁶⁴ <p>Have governance arrangements that provide clear and direct lines of responsibility and ac-</p>	
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<p>A CCP must base its information technology systems on internationally recognized technical standards and industry best practices.</p> <p>A CCP must maintain a robust information security framework that appropriately manages its information security risk, including policies to protect information from unauthorised disclosure, ensure data accuracy and integrity and guarantee the availability of the CCP’s services.⁴⁰</p> <ul style="list-style-type: none"> • Disclosure. A CCP must make information relating to the following available to the public free of charge: (i) its governance arrangements; (ii) its rules (including default procedures, risk management systems, rights and obligations of Clearing Members and Clients, clearing services and rules governing access to the CCP (including admission, suspension and exit criteria for clearing membership), contracts with Clearing Members and Clients, interoperability arrangements and use of collateral and default fund contributions); (iii) eligible collateral and applicable haircuts; and (iv) a list of all current Clearing Members.⁴¹ • Auditing. A CCP must be subject to frequent and independent audits, the results of which must be communicated to the board and made available to the CCP’s Competent Authority.⁴² <p>A CCP must establish and maintain an internal audit function which is separate and independent from the other functions (including management) and reports directly to the board. Its role is to (i) establish, implement and maintain an audit plan to</p>	<p>countability. These arrangements should be disclosed to owners, the RBA and other relevant authorities, clearing members and, at a more general level, the public.⁶⁵</p> <p>Have governance arrangements in which the roles and responsibilities of a CCP’s board of directors (or equivalent) should be clearly specified. There should also be documented procedures for the board’s functioning, including procedures to identify, address and manage member conflicts of interest. The board should regularly review both its overall performance and the performance of its individual board members.⁶⁶</p> <p>The Board of a CCP should comprise suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board members.⁶⁷</p> <p>The roles and responsibilities of the management of a CCP should be clearly specified. A CCP’s management should have the appropriate experience, mix of skills and integrity necessary to effectively discharge its responsibilities for the operation and risk management of the CCP.⁶⁸</p> <p>Have governance arrangements that ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board, including through the maintenance of a separate and</p>	
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<p>examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements, (ii) issue recommendations based on the result of work carried out in accordance with item (i), (iii) verify compliance with those recommendations and (iv) report internal audit matters to the board.</p> <p>Internal audit must assess the effectiveness of a CCP's risk management processes and control mechanisms, in a manner proportionate to the risks faced by the different business lines.</p> <p>Internal audit assessments must be based on a comprehensive audit plan that is reviewed and reported to its CCPs Competent Authority at least annually.</p> <p>A CCP should also ensure that audits may be performed on an event-driven basis at short notice.⁴³</p> <p>A CCP's clearing operations, risk management processes, internal control mechanisms and accounts must be subject to independent audit at least annually.⁴⁴</p>	<p>independent internal audit function. The reporting lines for risk management should be clear and separate from those for other operations of the CCP, and there should be an additional direct reporting line to a non-executive director on the board via a chief risk officer (or equivalent).⁶⁹</p> <ul style="list-style-type: none"> • Remuneration policy. <i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i> • Have compensation arrangements that promote the soundness and effectiveness of risk management.⁷⁰ • Information technology systems. <i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i> • Have policies that include comprehensive physical and information security policies that address all potential vulnerabilities and threats.⁷¹ <p>Where a CCP relies upon, outsources some of its operations to, or has other dependencies with a related body, another FMI or a third-party service provider (for example, data processing and information systems management), ensure that those operations meet the resilience, security and operational performance requirements of these CCP Standards and equivalent requirements of any other jurisdictions in</p>	
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	<p>which it operates.⁷²</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide, ASIC is responsible for supervision of Principle 22 (Communication procedures and standards):</i></p> <p>Use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, recording.⁷³</p> <ul style="list-style-type: none"> • Disclosure. <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have clear, understandable and consistent rules, procedures and contracts.⁷⁴ <p>Have clear and comprehensive rules, policies and procedures and should provide sufficient information and data to enable clearing members to have an accurate understanding of the risks they incur by participating in the CCP. All relevant rules and key policies and procedures should be publicly disclosed.⁷⁵</p> <p>Have governance arrangements that ensure that the CCP's design, rules, overall strategy and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Governance arrangements should provide for consultation and stakeholder engagement</p>	
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	<p>through appropriate forums on operational arrangements, risk controls and default management rules and procedures. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.⁷⁶</p> <p>Have publicly available copies of governance structure and procedures regarding the appointment of board members.⁷⁷</p> <p>Where a CCP is linked to one or more other CCPs, maintain arrangements that are effective in managing the risks arising from the link. The contributing CCP should further ensure that any consequent exposure of its own clearing members to the risk of a participant default in the linked CCP is fully transparent to and understood by its clearing members.⁷⁸</p> <p>A CCP should have clear and comprehensive rules, policies and procedures and should provide sufficient information and data to enable clearing members to have an accurate understanding of the risks they incur by participating in the CCP. All relevant rules and key policies and procedures should be publicly disclosed.⁷⁹</p> <p>A CCP should provide all necessary and appropriate documentation and training to facilitate clearing members' understanding of the CCP's rules, policies, and procedures and the risks they face from participating in the CCP⁸⁰.</p> <p>Have a clear, documented risk management</p>	
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	<p>framework.⁸¹</p> <p>Disclose relevant information for clearing members and, more generally, the public, which could include general information on the CCP's full range of activities and operations, such as the names of direct clearing members in the CCP, key times and dates in its operations, and its overall risk management framework (including its margin methodology and assumptions), the CCP's financial condition, financial resources to withstand potential losses, timeliness of settlements, and other performance statistics. With respect to data, a CCP should, at a minimum, disclose basic data on transaction volumes and values, margin and collateral holdings, prefunded default resources, and liquid resources. The CCP should also disclose any additional data that the RBA may direct it to disclose from time to time.⁸²</p> <p>Provide sufficient disclosure such that customers can understand how much customer protection is provided, how segregation and portability are achieved, and any risks or uncertainties associated with such arrangements.⁸³</p> <ul style="list-style-type: none"> • Auditing. <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • A CCP's operations, risk management processes, internal control mechanisms and accounts should be subject to internal audit and, where 	
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	<p>appropriate, periodic external independent expert review. Internal audits should be performed, at a minimum, on an annual basis. The outcome of internal audits and external reviews should be notified to the RBA and other relevant authorities.⁸⁴</p> <p>A CCP should have an effective internal audit function, with sufficient resources and independence from management to provide, among other activities, a rigorous and independent assessment of the effectiveness of the CCP's risk management and control processes. Governance arrangements should typically establish an audit committee to oversee the internal audit function. In addition to reporting to senior management, the audit function should have regular access to the board (or equivalent) through an additional reporting line.⁸⁵</p>	
<p>Senior Management and the Board</p> <p>The senior management of a CCP must be of sufficiently good repute and have sufficient experience to ensure the sound and prudent management of the CCP.⁸⁶</p> <p>A CCP must have a board. At least one third, and no less than two, members of the board must be independent.⁸⁷</p> <p>"Independent member" of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had</p>	<p>Senior Management and the Board</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide :</i></p> <ul style="list-style-type: none"> • A CCP is required to inform ASIC if a person becomes or ceases to be a director, secretary or executive officer of the CCP, or the holding company of the CCP, and must provide certain information to ASIC about each of these people.⁹² • ASIC and the RBA have the power to in- 	<p>Senior Management and the Board</p> <p><i>The Australian regime for CCPs includes requirements for senior management and the Board which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>EMIR requires that the composition of a CCP's board meets specified composition requirements, whereas the Australian regime follows a more general approach. In particular the board of an Australian CCP is not mandated to have at least one</p>

<p>no such relationship during the five years preceding his membership of the board.⁸⁸</p> <p>All members of a CCP's board (including independent directors) must be of good repute and have adequate expertise in financial services, risk management and clearing services.⁸⁹ Representatives of Clients must be invited to board meetings for matters relating to transparency and segregation requirements. The compensation of independent and other non-executive board members may not be linked to the business performance of the CCP.</p> <p>A CCP's board's roles and responsibilities should be clearly defined. Minutes of board meetings should be made available to a CCP's competent authority.⁹⁰</p> <p>A CCP's governance arrangements must ensure that the board assumes final responsibility and accountability for managing the CCP's risks. The board must define, determine and document an appropriate level of risk tolerance and risk bearing capacity; the board and senior management must ensure that the CCP's policies, procedures and controls are consistent with such levels.⁹¹</p>	<p>spect all minutes of CCP board meetings.⁹³</p> <ul style="list-style-type: none"> • A CCP must ensure no disqualified person acts as a director, senior manager or secretary of the CCP. A disqualified person includes a person that ASIC considers not fit and proper under the s853C of the Corporations Act: <ol style="list-style-type: none"> (1) ASIC may declare in writing that an individual, who is involved in a market licensee, a CS facility licensee or a derivative trade repository licensee, or in an applicant for a licence of any of those kinds, is disqualified for the purposes of this Division. (2) ASIC may make such a declaration only if ASIC is satisfied that, because the individual is unfit to be involved in the licensee or applicant, there is a risk that the licensee or applicant will breach its obligations under this Chapter if the declaration is not made. (3) In deciding whether an individual is unfit as mentioned in subsection (2), ASIC must take into account such matters as the individual's fame, character and integrity, rather than his or her competence, experience, knowledge or other 	<p>third, and no less than two, independent members of its board. However the CCP is required to demonstrate that its board composition provides a sufficient degree of independence from the views of management. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>An Australian CCP is also not specifically required to ensure that compensation of independent and other non-executive board members is not linked to the business performance of the CCP. However, a CCP is required to have compensation arrangements that promote the soundness and effectiveness of risk management. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>An Australian CCP is not specifically required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements. However, the CCP is required to have governance arrangements that ensure that the CCP's design, rules, overall strategy and major decisions reflect appropriately the legitimate interests of its indirect participants and provide for consultation and stakeholder engagement through appropriate forums on operational arrangements, risk controls and default management rules and procedures. Major decisions are required to be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public. CCPs are also required to provide sufficient disclosure such that customers can understand how</p>
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	<p>such attributes.</p> <p>(4) A declaration may be expressed to remain in effect for a specified period or until a specified event occurs. Otherwise, it remains in effect indefinitely (unless it is revoked under section 853E).⁹⁴</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • A CCP should have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, the Reserve Bank and other relevant authorities, clearing members and, at a more general level, the public.⁹⁵ • Have a board comprised of suitable members including independent members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board member(s).⁹⁶ • The board should establish a clear, documented risk management framework that includes the CCP's risk tolerance policy.⁹⁷ • Have a Board with a risk committee, an audit committee and a compensation committee.⁹⁸ • Have a board composed of suitable mem- 	<p>much customer protection is provided, how segregation and portability are achieved, and any risks or uncertainties associated with such arrangements. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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	<p>bers with an appropriate mix of skills (including strategic and relevant technical skills), experience, competence and knowledge of the entity (including an understanding of the CCP’s interconnectedness with other parts of the financial system). The nature and degree of the skills, experience and expertise required of board members will depend on the size, scope and nature of the business conducted by the CCP. Board members should also have a clear understanding of their roles in corporate governance, be able to devote sufficient time to their roles, ensure that their skills remain up to date, and have appropriate incentives to fulfil their roles. Board members should be able to exercise objective and independent judgement. A CCP should be able to demonstrate that its board composition provides a sufficient degree of independence from the views of management. This typically requires the inclusion of non-executive board members, including independent board members. The key characteristic of independence is the ability to exercise objective, independent judgement after fair consideration of all relevant information and views and without undue influence from executives or from inappropriate external parties or interests. The precise definition of independence used by a CCP should be specified and publicly disclosed. Further, a CCP should publicly disclose</p>	
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	<p>which board members it regards as independent. The appropriate number of independent non-executive directors on a CCP's board will depend on the size, scope and nature of the business conducted by the CCP.⁹⁹</p> <ul style="list-style-type: none"> • The roles and responsibilities of the management of a CCP should be clearly specified. A CCP's management should have the appropriate experience, mix of skills and integrity necessary to effectively discharge its responsibilities for the operation and risk management of the CCP.¹⁰⁰ • Compensation arrangements should be structured in such a way as to promote the soundness and effectiveness of risk management.¹⁰¹ • Have governance arrangements that ensure that the CCP's design, rules, overall strategy and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Governance arrangements should provide for consultation and stakeholder engagement through appropriate forums on operational arrangements, risk controls and default management rules and procedures. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.¹⁰² 	
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	<ul style="list-style-type: none"> • Provide sufficient disclosure such that customers can understand how much customer protection is provided, how segregation and portability are achieved, and any risks or uncertainties associated with such arrangements. ¹⁰³ 	
<p>Risk committee</p> <p>All CCPs must establish a risk committee, composed of representatives of its Clearing Members, independent members of the board and representatives of its Clients. None of these groups may have a majority of members. CCPs Competent Authorities may request to attend risk committee meetings, and be informed of the risk committee’s activities and decisions.¹⁰⁴</p> <p>The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.¹⁰⁵</p> <p>The risk committee must advise the board on any arrangements that may impact the risk management of the CCP. The risk committee’s advice must be independent of any direct influence by the management of the CCP.¹⁰⁶ A CCP must promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee.</p>	<p>Risk committee</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have a Board with a risk committee.¹⁰⁷ • Establish (an obligation on the CCP’s board) a clear, documented risk management framework that includes the CCP’s risk tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision-making in crises and emergencies. Governance arrangements should ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board, including through the maintenance of a separate and independent internal audit function. ¹⁰⁸ • Have a risk committee responsible for advising the board on the CCP’s overall current and future risk tolerance and strategy, or equivalent. A CCP’s risk committee should be chaired by a sufficiently knowledgeable individual who is typically inde- 	<p>Risk committee</p> <p><i>The Australian regime for CCPs includes risk committee requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>EMIR requires CCPs to establish a risk committee that meets specified composition requirements whereas the Australian regime does not mandate that a CCP’s risk committee includes representatives of the CCP’s clearing members or representatives of clients. However, the RBA has issued an interpretation of its FSS requirements such that CCP’s should have an independent risk committee which should comprise representatives of clearing members, and depending on the scale and nature of client clearing activity, also indirect clearing members.¹¹³ On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>EMIR requires CCPs to promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee whereas the Australian regime does not</p>

	<p>pendent of the CCP's executive management and should typically be composed of a majority of members who are non-executive members. The committee should have a clear and public mandate and operating procedures and, where appropriate, have access to external expert advice.¹⁰⁹</p> <ul style="list-style-type: none"> • Governance arrangements should provide for consultation and stakeholder engagement through appropriate forums on operational arrangements, risk controls and default management rules and procedures. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.¹¹⁰ • The guidance to this CCP Standard, in 2.6.3, states that "...a central counterparty should have a risk committee responsible for advising the board on the central counterparty's overall current and future risk tolerance and strategy, or equivalent..." <p>It is the RBA's judgement that, in accordance with the guidance, establishment of an independent risk committee is the most appropriate way to help the board discharge its risk-related responsibilities. The risk committee should comprise of representatives of clearing members, and depending on the scale and nature of client clearing activity, also indirect participants.¹¹¹</p> <ul style="list-style-type: none"> • A CCP should inform the RBA in a timely 	<p>mandate this. However, an Australian CCP should inform the RBA in a timely manner of any events or changes to its operations or circumstances that may materially impact its management of risks or ability to continue operations. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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	<p>manner of any events or changes to its operations or circumstances that may materially impact its management of risks or ability to continue operations. ¹¹²</p>	
<p>Record keeping</p> <p>A CCP must maintain, for at least 10 years, records relating to the services and activities it provides which are sufficient to enable its CCPs Competent Authority to monitor the CCP's compliance with EMIR.¹¹⁴</p> <p>A CCP must maintain, for at least 10 years following the termination of a contract, all information relating to that contract (including sufficient information to enable the CCP to identify the original terms of that contract pre-clearing).¹¹⁵</p> <ul style="list-style-type: none"> • General requirements. Such records must be available upon request to the competent authorities, ESMA and the relevant members of the ESCB. ¹¹⁶ <p>Records kept by CCPs should facilitate a thorough knowledge of CCPs' credit exposure towards Clearing Members and allow monitoring of the implied risk. They should enable Competent Authorities, ESMA and the relevant members of the ESCB to adequately re-construct the clearing process, in order to assess compliance with regulatory requirements.¹¹⁷</p> <ul style="list-style-type: none"> • Transaction records. A CCP must maintain records of all transactions in all contracts it clears, including sufficient information to comprehensively and accurately reconstruct the clearing process 	<p>Record keeping</p> <ul style="list-style-type: none"> • General requirements. <p>CCPs are subject to the general record keeping and financial reporting requirements under the Corporations Act 2001.</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> At a minimum, disclose basic risk and activity data, as directed by the Reserve Bank from time to time. ¹²² Have a clear, documented risk management framework.¹²³ <ul style="list-style-type: none"> • Transaction records. <p><i>Under ASIC Rules:</i></p> <ul style="list-style-type: none"> Under ASIC Derivative Transaction Rules (Reporting) 2013¹²⁴ (which entered into force on 11 July 2013, CCPs are subject to a reporting obligation. Under Part 2.3 of the Rules, a reporting entity (which includes a CCP) is required to keep for 5 years all records that show they have complied with the reporting obligation, and all information that they are required to report under the reporting obligation. 	<p>Record keeping</p> <p><i>The Australian regime for CCPs includes record keeping requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are equivalent to those of EMIR.</i></p> <p>Where the Australian regime prescribes a minimum timeframe for record retention this is 5 or 7 years whereas under EMIR a CCP must maintain records for at least 10 years. While there is a difference in the length of record retention, the record keeping requirements of the Australian regime are broadly equivalent in scope to EMIR and on balance, the objectives of the Australian regime can be considered broadly equivalent to the objectives of the EMIR regime.</p>

<p>for each contract;¹¹⁸</p> <ul style="list-style-type: none"> • Position records. A CCP must maintain records of all positions held by each Clearing Member, including sufficient information to comprehensively and accurately reconstruct the transactions that established the position. Separate records must be kept for each account held for a Clearing Member on an “omnibus client segregation” and “individual client segregation” basis;¹¹⁹ • Business records. A CCP must maintain records of all activities relating to its business and internal organisation (which must be updated every time there is a material change to the relevant document);¹²⁰ and • Records of data reported to a trade repository. A CCP must maintain records of all information and data required to be reported to a trade repository (including time and date reported).¹²¹ 	<p>Under Rule 2.2.2, reporting entities (including CCPs) need to report updated mark-to-market valuations to trade repositories each time the reporting entity updates the mark-to-market valuation, but no more than once per day. Reporting entities also need to report changes to collateral held, but no more than once per day.</p> <p>This would result in CCPs needing to report to TRs and keep records for 5 years of all changes to mark-to-market valuations and collateral.</p> <p><i>Under the Corporations Act 2001:</i></p> <p>CCPs need to comply with general provisions for companies, including the requirement to maintain for 7 years written financial records that correctly record and explain the CCP’s transactions and financial position and performance and would enable true and fair financial statements to be prepared and audited.¹²⁵</p> <ul style="list-style-type: none"> • Position records. <p><i>Under ASIC Rules:</i></p> <p>Under ASIC Derivative Transaction Rules (Reporting) 2013¹²⁶ (which entered into force on 11 July 2013, CCPs are subject to a reporting obligation.</p> <p>Under Part 2.3 of the Rules, a reporting entity (which includes a CCP) is required to keep for 5 years all records that show they</p>	
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	<p>have complied with the reporting obligation, and all information that they are required to report under the reporting obligation.</p> <p>Under Rule 2.2.2, reporting entities (including CCPs) need to report updated mark-to-market valuations to trade repositories each time the reporting entity updates the mark-to-market valuation, but no more than once per day. Reporting entities also need to report changes to collateral held, but no more than once per day.</p> <p>This would result in CCPs needing to report to TRs and keep records for 5 years of all changes to mark-to-market valuations and collateral.</p> <p><i>Under the Corporations Act 2001:</i></p> <p>CCPs need to comply with general provisions for companies, including the requirement to maintain for 7 years written financial records that correctly record and explain the CCP’s transactions and financial position and performance and would enable true and fair financial statements to be prepared and audited.¹²⁷</p> <ul style="list-style-type: none"> • Business records. <p><i>Under the Corporations Act :</i></p> <p>The Corporations Regulations requires a CCP to keep certain records for the purposes of s854A(1)(b) of the Act (records that are relevant to determining whether any</p>	
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	<p>disqualified individual is involved in a CCP).¹²⁸</p> <p>A CCP is required to keep a list of names and contact details of the directors, secretaries and executive officers of the licensee and of any individuals who hold more than 15% of the voting power in the licensee. These records must be kept for at least 5 years.¹²⁹</p> <p>A CCP must have procedures for the exchange of appropriate information with:</p> <ul style="list-style-type: none"> ○ Other clearing and settlement facilities; and ○ Financial markets ○ ASIC and the RBA <p>relating to clearing members and their activities that are relevant to the CCP.¹³⁰</p> <p>CCPs need to comply with general provisions for companies, including the requirement to maintain for 7 years written financial records that correctly record and explain the CCP's transactions and financial position and performance and would enable true and fair financial statements to be prepared and audited.¹³¹</p> <p>Financial records are further defined to include: "working papers and other documents needed to explain... the methods by which financial statements are made up".¹³²</p>	
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	<p>CCPs are also required to provide ASIC with an annual report on the extent to which they comply with their obligations as a CS facility licensee. The annual report is required to include:</p> <p>(a) a description of the activities the CCP has undertaken in the financial year;</p> <p>(b) the resources (including financial, technological and human resources) that the CCP had available, and used, in order to ensure that it has complied with its obligations; and</p> <p>(c) an analysis of the extent to which the CCP considers that the activities undertaken, and resources used, have resulted in full compliance with all its obligations.¹³³</p> <ul style="list-style-type: none"> • <i>Records of data reported to a trade repository.</i> <p><i>Under the relevant ASIC Rules:</i></p> <p>Under ASIC Derivative Transaction Rules (Reporting) 2013¹³⁴ (which entered into force on 11 July 2013, CCPs are subject to a reporting obligation.</p> <p>Under Part 2.3 of the Rules, a reporting entity (which includes a CCP) is required to keep for 5 years all records that show they have complied with the reporting obligation, and all information that they are required to report under the reporting obligation.</p>	
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	<p>Under Rule 2.2.2, reporting entities (including CCPs) need to report updated mark-to-market valuations to trade repositories each time the reporting entity updates the mark-to-market valuation, but no more than once per day. Reporting entities also need to report changes to collateral held, but no more than once per day.</p> <p>This would result in CCPs needing to report to TRs and keep records for 5 years of all changes to mark-to-market valuations and collateral.</p>	
<p><i>Shareholders and members with qualifying holdings</i></p> <p>A Competent Authority must not authorise a CCP unless it has been informed of the identities of the CCP’s shareholders or members (whether direct or indirect, natural or legal persons) which have qualifying holdings¹³⁵ (“Qualifying Shareholders”).¹³⁶</p> <p>A Competent Authority must refuse authorisation if it is not satisfied of the suitability of Qualifying Shareholders, taking into account the need to ensure the sound and prudent management of the CCP.¹³⁷</p> <p>If a CCP’s Qualifying Shareholders exercise influence over it which is likely to be prejudicial to the CCP’s sound and prudent management, the Competent Authority must take appropriate measures to remedy the situation (including by withdrawing the CCP’s authorisation).¹³⁸</p> <p>A Competent Authority must not authorise a CCP with</p>	<p><i>Shareholders and members with qualifying holdings</i></p> <p><i>Under the Corporations Act :</i></p> <ul style="list-style-type: none"> • ASIC may prohibit individuals from being involved in a CCP (i.e. director, senior manager or owner of greater than 15% voting power).¹⁴¹ • A CCP must take all reasonable steps to ensure that an unacceptable control situation does not exist in relation to the CCP.¹⁴² • A CCP must take all reasonable steps to ensure that no disqualified individual becomes, or remains, involved in the CCP.¹⁴³ • Before a CCP can be licensed in Australia, the Australian authorities need to have established that no unacceptable control situation exists and no disqualified person is involved with the CCP.¹⁴⁴ 	<p><i>Shareholders and members with qualifying holdings</i></p> <p><i>The Australian regime for CCPs includes requirements for shareholders with qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p>

<p>close links to other natural or legal persons if:</p> <ul style="list-style-type: none"> • those links prevent the effective exercise of the Competent Authority’s supervisory functions;¹³⁹ or • (i) the laws, regulations or administrative provisions of a third country which apply to such persons, or (ii) difficulties associated with the enforcement of such provisions, prevent the effective exercise of the Competent Authority’s supervisory functions.¹⁴⁰ 	<ul style="list-style-type: none"> • A person is disqualified from acting as a director, secretary, senior manager or having more than 15% voting power in a CCP (or a holding company of a CCP) if the person is generally disqualified from managing a corporation, or if ASIC disqualifies the person on the basis that the individual is unfit to be involved in the CCP.¹⁴⁵ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • A CCP should have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, the RBA and other relevant authorities, clearing members and, at a more general level, the public.¹⁴⁶ 	
<p>Information to competent authorities</p> <ul style="list-style-type: none"> • Changes to Management. A CCP must report to its CCPs Competent Authority any changes to its management, and must provide the competent authority with all the information necessary to assess the compliance of the new management with EMIR’s obligations relating to the board and senior management of a CCP.¹⁴⁷ When the conduct of a member is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority must take appropriate measures, which may include removing the member from the 	<p>Information to competent authorities</p> <p><i>Under the Corporations Act :</i></p> <ul style="list-style-type: none"> • Notification to authorities: <ul style="list-style-type: none"> ○ A CCP must inform ASIC if it becomes aware that a person has come to have, or has ceased to have, more than 15% of the voting power in the CCP or in a holding company of the CCP.¹⁵³ ○ A CCP must inform ASIC if a person becomes or ceases to become a 	<p>Information to competent authorities</p> <p><i>The Australian regime for CCPs includes requirements for the provision of information on qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>While EMIR prescribes a range of specific reporting obligations concerning changes to management and shareholders, the circumstances in which information which must be reported under the Australian regime is different. However, the Australian regime covers the same type of</p>

<p>board.¹⁴⁸</p> <ul style="list-style-type: none"> • Changes to Shareholders. Any natural or legal person (or persons acting in concert) (the “proposed acquirer”) who decides to (i) acquire a qualifying holding¹⁴⁹ in a CCP, or (ii) to increase a qualifying holding as a result of which (x) the proportion of voting rights or capital held would reach or exceed 10%, 20%, 30% or 50% or (y) the CCP would become the subsidiary of the proposed acquirer (the “proposed acquisition”), must first notify the relevant CCPs Competent Authority and provide certain relevant information. <p>Any natural or legal person (the “proposed vendor”) who decides to (i) dispose of a qualifying holding, or (ii) reduce its qualifying holding as a result of which (x) the proportion of voting rights or capital held would fall below 10%, 20%, 30% or 50% or (y) the CCP would cease to be the subsidiary of the proposed vendor, must first notify the relevant CCPs Competent Authority and provide certain relevant information.</p> <p>Within two working days of receipt of the notifications referred to above, the CCPs Competent Authority must acknowledge receipt. Within a further 60 working days (the “assessment period”) the CCPs Competent Authority must assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, in accordance with the criteria set out in EMIR, Art. 32.¹⁵⁰ Within the first 50 working days of the assessment period, the CCPs Competent</p>	<p>director, secretary or executive officer of the CCP, or changes from one of those positions to another, and must provide ASIC with certain information about the individual, including whether the CCP is aware of any convictions the person has received, and whether the person is an undischarged bankrupt.¹⁵⁴</p> <ul style="list-style-type: none"> • ASIC may prohibit individuals from being involved in a CCP (i.e. director, senior manager or owner of greater than 15% voting power).¹⁵⁵ • A person is disqualified from acting as a director, secretary, senior manager or having more than 15% voting power in a CCP (or a holding company of a CCP) if the person is generally disqualified from managing a corporation, or if ASIC disqualifies the person on the basis that the individual is unfit to be involved in the CCP.¹⁵⁶ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Inform the RBA as soon as reasonably practicable if any matter arises which has or is likely to have a significant impact on its risk control arrangements.¹⁵⁷ 	<p>information and has the same objectives as EMIR, namely to enable the Australian authorities to assess the CCP’s continued compliance with its regulatory obligations. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>Authority may request any further information necessary to complete the assessment.¹⁵¹</p> <p>If the CCPs Competent Authority decides to oppose the proposed acquisition, it must inform the proposed acquirer within two working days. If the CCPs Competent Authority does not oppose the proposed acquisition within the assessment period, the proposed acquisition must be deemed approved.¹⁵²</p>		
<p>Assessment of qualifying holdings</p> <p>When assessing the notifications referred to above, a CCPs Competent Authority must consider the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against the following criteria, having regard to the likely influence of the proposed acquirer on the CCP:</p> <ul style="list-style-type: none"> the reputation and soundness of the proposed acquirer and any person who will direct the CCP's business as a result of the proposed acquisition (with particular regard to the type of business pursued by the CCP); whether the CCP will be able to comply and continue to comply with EMIR (with particular regard to whether the corporate group which the CCP will enter post-acquisition has a structure which makes it possible for the CCPs Competent Authority to exercise effective supervision, to exchange information with other Competent Authorities and to determine the allocation of responsibility among Competent 	<p>Assessment of qualifying holdings</p> <p><i>Under the Corporations Act :</i></p> <ul style="list-style-type: none"> ASIC may prohibit individuals from being involved in a CCP (i.e. director, senior manager or owner of greater than 15% voting power).¹⁶³ The Minister (acting on the advice of ASIC) must approve any person who is seeking to hold more than 15% of the voting power in a CCP or the holding company of a CCP. The Minister must consider the overall national interest in determining whether to provide this approval.¹⁶⁴ A person is disqualified from acting as a director, secretary, senior manager or having more than 15% voting power in a CCP (or a holding company of a CCP) if the person is generally disqualified from managing a corporation, or if ASIC disqualifies the per- 	<p>Assessment of qualifying holdings</p> <p><i>The Australian regime for CCPs includes requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p>

<p>Authorities); and</p> <ul style="list-style-type: none"> • whether there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed in connection with the proposed acquisition, or that the proposed acquisition could increase the risk thereof.¹⁵⁸ <p>A Competent Authority may only oppose a proposed acquisition where (i) there are reasonable grounds for doing so on the basis of the criteria set out above, or (ii) the proposed acquirer has provided incomplete information.¹⁵⁹</p> <p>Member States must not impose any conditions on the levels of holdings in CCPs that may be acquired, or allow their Competent Authorities to examine proposed acquisitions in terms of the economic needs of the market.¹⁶⁰ Member States must specify publicly the information necessary to carry out the assessment, which information must be (i) proportionate and appropriate to the nature of the proposed acquirer and acquisition, and (ii) limited to information relevant for a prudential assessment.¹⁶¹</p> <p>If the proposed acquirer is (i) another CCP, a credit institution, an assurance, insurance or reinsurance undertaking, an investment firm, a market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State, or (ii) the parent undertaking of or a natural or legal person controlling an entity specified in subparagraph (i), the relevant Competent Authorities must cooperate closely in carrying out the assessment, and provide each other with all essential</p>	<p>son on the basis that the individual is unfit to be involved in the CCP.¹⁶⁵</p> <ul style="list-style-type: none"> • Before a CCP can be licensed in Australia, the Australian authorities need to have established that no unacceptable control situation exists and no disqualified person is involved with the CCP.¹⁶⁶ • A CCP must ensure (including in respect of proposed acquirers) that no disqualified person acts as a director, senior manager or secretary of the CCP. A disqualified person includes a person that ASIC considers not fit and proper under the s853C of the Corporations Act: <ol style="list-style-type: none"> (1) ASIC may declare in writing that an individual, who is involved in a market licensee, a CS facility licensee or a derivative trade repository licensee, or in an applicant for a licence of any of those kinds, is disqualified for the purposes of this Division. (2) ASIC may make such a declaration only if ASIC is satisfied that, because the individual is unfit to be involved in the licensee or applicant, there is a risk that the licensee or applicant will breach its obligations under this Chapter if the declaration is not made. 	
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<p>information (on their own initiative) and all relevant information (upon request) without undue delay.¹⁶²</p>	<p>(3) In deciding whether an individual is unfit as mentioned in subsection (2), ASIC must take into account such matters as the individual's fame, character and integrity, rather than his or her competence, experience, knowledge or other such attributes.</p> <p>(4) A declaration may be expressed to remain in effect for a specified period or until a specified event occurs. Otherwise, it remains in effect indefinitely (unless it is revoked under section 853E).¹⁶⁷</p>	
<p>Conflicts of interest</p> <p>A CCP must maintain effective written organisational and administrative arrangements¹⁶⁸ to identify and manage potential conflicts of interest between (i) itself, including its management, employees, and close associates, and (ii) its Clearing Members, including Clients of a Clearing Member which are known to the CCP. It must maintain and implement adequate procedures to resolve possible conflicts of interest.¹⁶⁹</p> <p>If such arrangements are not sufficient to ensure that damage to the interests of a Clearing Member or Client are prevented, the CCP must clearly disclose the general nature or source of conflicts of interest to the Clearing Member (and, if known to the CCP, the Client) before accepting new transactions from that Clearing Member.¹⁷⁰</p>	<p>Conflicts of interest</p> <p><i>Under the Corporations Act as articulated in the ASIC Regulatory Guide:</i></p> <ul style="list-style-type: none"> • There are obligations on a CCP's directors to act for proper purpose and not misuse position or information imposed under the Corporations Act and the common law.¹⁷² • A CCP must have adequate arrangements for supervising its services, including arrangements for handling conflicts between the commercial interests of the CCP and the need for the CCP to ensure that its services are provided in a fair and effective way.¹⁷³ • CCPs must meet the following obligations: 	<p>Conflicts of interest</p> <p><i>The Australian regime for CCPs includes binding conflicts of interest requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p>

<p>A CCP must take reasonable steps to prevent any misuse of information held in its systems and must prevent the use of that information for other business activities.</p> <p>CCPs should adequately assess and monitor the extent to which board members that sit on the boards of different entities have conflicts of interest, whether within or outside the group of the CCP.¹⁷¹</p>	<ul style="list-style-type: none"> ○ Handling conflicts between commercial interests and ensuring that the CCP's services are provided in a fair and effective way; ○ Detecting potential or actual non-compliance with the law or operating rules; ○ Dealing with actual or suspected breaches of the law or operating rules, including remedial, disciplinary and other deterrent measures; ○ Dealing with complaints about the CCP or its clearing members.¹⁷⁴ <ul style="list-style-type: none"> ● In order to identify and appropriately respond to actual or potential conflicts of interest, CCPs should have arrangements in place to anticipate when conflicts may arise and handle them properly. Conflicts may arise when making decisions relating to: <ul style="list-style-type: none"> ○ admitting a person to the CCP as a clearing member; ○ commercial interests and supervisory or regulatory interests; ○ monitoring of a clearing member; ○ taking investigative or disciplinary action; ○ exercising discretions, such as granting waivers from the CCP's operating rules 	
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	<p>or charging variable fees;</p> <ul style="list-style-type: none"> ○ a related party within the same group, such as a market operator for whose participants the CCP provides services; or ○ providing the CCP's services in respect of transactions in financial products which take place in a particular financial market that is competing with a financial market operated by a related party.¹⁷⁵ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Clearly specify the roles and responsibilities of a CCP's board of directors (or equivalent), and have documented procedures for its functioning, including procedures to identify, address and manage member conflicts of interest.¹⁷⁶ • Have governance arrangements to protect against the misuse of confidential information.¹⁷⁷ • Have governance arrangements that ensure that the CCP's design, rules, overall strategy and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Governance arrangements should provide for consultation and stakeholder engagement through appropriate forums on operational arrangements, risk con- 	
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	<p>trols and default management rules and procedures.¹⁷⁸</p> <ul style="list-style-type: none"> • A CCP should have clear and comprehensive rules, policies and procedures and should provide sufficient information and data to enable clearing members to have an accurate understanding of the risks they incur by participating in the CCP.¹⁷⁹ • Where a CCP is part of a larger organisation or corporate group, consider any conflicts of interest or other issues that may arise from its relationship to its parent or to other affiliated entities.¹⁸⁰ • Where a CCP forms part of a corporate group, some of the roles and responsibilities of the board may be carried out on a group-wide basis, for instance by the board of the CCP's parent company. However, the CCP must be able to demonstrate that any such alternative governance arrangements are effective. In particular, the CCP should be able to demonstrate that such arrangements uphold its capacity to meet its regulatory and other obligations, and in no way compromise or subordinate the CCP's interests to the interests of the group.¹⁸¹ • Where a CCP is part of a group of companies, ensure that measures are in place such that decisions taken in accordance with its obligations as a CCP cannot be compromised by the group 	
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	<p>structure or by board members also being members of the board of other entities in the same group. In particular, such a CCP should consider specific procedures for preventing and managing conflicts of interest, including with respect to intra-group outsourcing arrangements.¹⁸²</p> <ul style="list-style-type: none"> • Where a CCP utilises staff or other resources that are employed or owned by other group entities, there may be circumstances in which it is in the interests of the group to withhold the provision of those resources – for instance, if it appears likely that the CCP may enter external administration. Conflicts could also arise between the risk management objectives of a CCP and the business interests of other group entities. A CCP should therefore ensure that potential conflicts will not prevent it from appropriately managing its risks and fulfilling its regulatory and other obligations.¹⁸³ 	
<p>Business continuity</p> <p>The CCP must maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.¹⁸⁴</p> <p>A CCP must implement and maintain a business continuity policy and disaster recovery plan to ensure the preservation of its functions, the recovery of operations and the fulfilment of its obligations. The disaster recovery plan must at least allow the recovery of all transactions at the time of disruption to allow the</p>	<p>Business continuity</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide:</i></p> <p>Involve the directors of the CCP closely in the development of plans for operating the CCP and monitoring compliance with its rules.¹⁹³</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p>	<p>Business continuity</p> <p><i>The Australian regime for CCPs includes business continuity requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>The Australian regime does not specifically require CCPs to have a crisis management function to act in case of emergency. However, CCPs must have clearly defined roles and responsibilities for addressing crystallised operational risk and a board</p>

<p>CCP to continue to operate with certainty and to complete settlement on the scheduled date.¹⁸⁵</p> <ul style="list-style-type: none"> • Strategy and policy. The business continuity policy and disaster recovery plan must be approved by the board and subject to independent reviews that are reported to the board. The business continuity policy must identify all critical business functions and related systems, and take into account external links and interdependencies within the financial infrastructure, including trading venues cleared by the CCP, securities settlement and payment systems and credit institutions used by the CCP or a linked CCP. It should also take into account critical functions or services which have been outsourced. The business continuity plan should, <i>inter alia</i>, identify the maximum acceptable down time for critical functions and systems, which must not be higher than two hours. End of day procedures and payments should be completed on the required day in all circumstances.¹⁸⁶ • Business impact analysis. A CCP must conduct a business impact analysis to identify its critical functions and have in place arrangements to ensure the continuity of its critical functions based on various disaster scenarios¹⁸⁷. • Disaster recovery. A CCP must maintain a secondary processing site capable of ensuring continuity of all of its critical functions, which must have a geographical risk profile which is different from that of the primary site.¹⁸⁸ • Testing and monitoring. A CCP must test and 	<ul style="list-style-type: none"> • Establish (an obligation on the board of the CCP) a clear, documented risk management framework that includes the CCP's risk tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision-making in crises and emergencies. Governance arrangements should ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the board, including through the maintenance of a separate and independent internal audit function.¹⁹⁴ • Have board and governance arrangements that support the use of clear and comprehensive rules and key procedures, including detailed and effective clearing member default rules and procedures. Governance arrangements should ensure that procedures are in place to support the board's capacity to act appropriately and immediately if any risks arise that threaten the CCP's viability as a going concern. The governance arrangements should also provide for effective decision-making in a crisis and support any procedures and rules designed to facilitate the recovery or orderly wind-down of the CCP.¹⁹⁵ • Involve the board in decisions regarding new crisis management frameworks, adoption of processes and templates for reporting significant risk exposures, and adoption of processes for considering adherence to relevant market protocols.¹⁹⁶ 	<p>approved crisis management framework. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>monitor its business continuity policy and disaster recovery plan at regular intervals taking into account scenarios of large scale disasters and switch-overs between primary and secondary sites.¹⁸⁹</p> <ul style="list-style-type: none"> • Maintenance. A CCP must regularly review and update its business continuity policy and disaster recovery plan to include the most suitable recovery strategy, taking into consideration the outcome of tests and the recommendations of independent reviews and of the relevant CCPs Competent Authority.¹⁹⁰ • Crisis management. A CCP must have a crisis management function to act in case of emergency, which function must be monitored and reviewed by the board.¹⁹¹ • Communications. A CCP must have clear procedures to manage internal and external crisis communications and a communication plan documenting how management and relevant external stakeholders will be kept adequately informed during a crisis).¹⁹² 	<ul style="list-style-type: none"> • Clearly define (an obligation on the board of the CCP) the roles and responsibilities for addressing operational risk and endorse the CCP's operational risk management framework. Systems, operational policies, procedures and controls should be reviewed, audited and tested periodically and after significant changes.¹⁹⁷ • Have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology systems can resume operations within two hours following disruptive events. Business continuity arrangements should provide appropriate redundancy of critical systems and appropriate mitigants for data loss. The business continuity plan should be designed to enable the CCP to facilitate settlement by the end of the day of the disruption, even in case of extreme circumstances. The CCP should regularly test these arrangements.¹⁹⁸ • Implement a business continuity plan aimed at rapid recovery, timely resumption of critical operations.¹⁹⁹ • Regularly test and review the business continuity plan and its associated arrangements including training of CCP employees, clearing members, critical service providers and linked 	
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	<p>FMIs.²⁰⁰</p> <ul style="list-style-type: none"> • Maintain at least one secondary site with sufficient resources, capabilities, and functionalities and appropriate staffing arrangements that would not be affected by a wide-scale disruption and would allow the secondary site to take over operations if needed. The secondary site should provide the level of critical services necessary to perform the functions consistent with the recovery time objective and should be located at a sufficient geographical distance from the primary site that it has a distinct risk profile.²⁰¹ • To the extent reasonably practicable under prevailing law, structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting clearing member's customers will be transferred to one or more other clearing members.²⁰² 	
<p>Outsourcing</p> <p>Where a CCP outsources operational functions, services or activities, it remains responsible for discharging all of its obligations and must ensure that, <i>inter alia</i>: (i) outsourcing does not result in the delegation of its responsibilities; (ii) the CCP's relationship and obligations towards its Clearing Members and their Clients are not altered; (iii) the conditions for authorizing of the CCP do not effectively change, (iv) outsourcing does not prevent the exercise of the CCP's supervisory and oversight functions, or deprive the CCP</p>	<p>Outsourcing</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide:</i></p> <ul style="list-style-type: none"> • Have adequate processes for monitoring and assessing the performance of any outsourced licensee obligations.²⁰⁵ • Contact ASIC about any intention to move or outsource critical functions overseas in order to assess any potential regulatory impact and ensure any necessary measures are put in place to 	<p>Outsourcing</p> <p><i>The Australian regime for CCPs includes outsourcing requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p>

<p>of necessary systems and controls to manage its risks; (v) the service provider implements equivalent business continuity requirements to those required under EMIR; (vi) the CCP retains necessary expertise and resources to evaluate the quality of services provided, the organisational and capital adequacy of the service provider, and to manage the risks associated with outsourcing on an ongoing basis; (vii) the CCP has direct access to relevant information relating to the outsourcing functions; and (viii) the service provider cooperates with the relevant CCPs Competent Authority, and (viii) .the service provider protects any confidential information relating to the CCP and its clearing members and clients or, where the service provider is established in a third country, ensures that the data protection standards of that third country, or those set out in the agreement between the parties concerned, are comparable to the data protection standards in effect in the Union.²⁰³</p> <p>A CCP may not outsource major activities linked to risk management without approval from its Competent Authority. The Competent Authority will require the CCP to allocate and set out its rights and obligations and those of the service provider, clearly in a written agreement. ²⁰⁴</p>	<p>ensure ASIC has appropriate regulatory oversight of all the components of the CCP.²⁰⁶</p> <ul style="list-style-type: none"> • ASIC may advise the Minister to impose a conditions to ensure ASIC can exercise appropriate regulatory influence in certain circumstances, by imposing a requirement that a CCP sets controls around how it deals with outsourcing of critical functions (e.g. core risk management functions).²⁰⁷ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Remain responsible for outsourced systems and processes and to consult with the RBA prior to entering into an outsourcing or service provision arrangement for critical functions.²⁰⁸ 	
<p>Conduct of business rules – general provisions When providing services to its Clearing Members and their Clients, CCPs must act fairly and professionally in line with the best interests of such Clearing Members and Clients and sound risk management.²⁰⁹</p>	<p>Conduct of business rules – general provisions <i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide,:</i></p> <ul style="list-style-type: none"> • Do all things necessary to ensure that the 	<p>Conduct of business rules – general provisions <i>The Australian regime for CCPs includes general business conduct requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly</i></p>

<p>A CCP must have accessible, transparent and fair rules for the prompt handling of complaints. ²¹⁰</p>	<p>CCP's services are provided in a fair and effective way, to the extent that it is reasonably practicable to do so.²¹¹ Cost by itself will not make any action 'not reasonably practicable', unless the cost is manifestly excessive or unreasonable when compared to the regulatory outcomes sought. ²¹²</p> <ul style="list-style-type: none"> • Meet their supervisory obligations including dealing with complaints about the CCP or its clearing members.²¹³ • Have operating rules that deal with matters including: <ul style="list-style-type: none"> • the regulated services to be provided by the CCP; • matters relating to risk in the CCP; • access to the CCP, including the ongoing requirements for clearing members; • suspension and expulsion of clearing members; • disciplinary action against clearing members; • procedures for clearing members to address risks that are relevant to the CCP; • requirements to facilitate monitoring of clearing members' compliance with operating rules; and • handling of defaults.²¹⁴ 	<p><i>equivalent to those of EMIR.</i></p>
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	<p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Handle complaints in accordance with the provisions of the CCP’s operating rules, which have legal effect as set out in section 822B of the Corporations Act 2001.²¹⁵ Furthermore, CCPs must submit an annual licence report to ASIC which accounts for all such instances.²¹⁶ • Have objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access.²¹⁷ • Disclose publicly procedures facilitating the suspension and orderly exit of a clearing member that breaches or no longer meets the participation requirements of the CCP. Disclose to clearing members sufficient information to enable them to have an accurate understanding of the risks they incur by participating in a CCP.²¹⁸ 	
<p><i>Participation requirements</i></p> <p>A CCP must establish categories of admissible Clearing Members and admission criteria, following the advice of the risk committee. Such criteria must be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and must ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria</p>	<p><i>Participation requirements</i></p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Do all things necessary to ensure that the CCP’s services are provided in a fair and effective way, to the extent that it is reasonably practicable to do so.²²⁴ • Have operating rules that deal with matters 	<p><i>Participation requirements</i></p> <p><i>The Australian regime for CCPs includes participation requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p>

<p>that restrict access may only be permitted if their objective is to control risk.²¹⁹</p> <p>Clearing members that clear transactions on behalf of their clients must have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing Members must, upon request, inform the CCP about the criteria and arrangements they adopt to allow their Clients to access the services of the CCP. Responsibility for ensuring that Clients comply with their obligations remains with Clearing Members.²²⁰</p> <p>A CCP must have objective procedures for the suspension and exit of clearing members that no longer meet its admission criteria. A CCP may only deny access to Clearing Members meeting the criteria where justified in writing, based on a comprehensive risk analysis.²²¹</p> <p>A CCP may impose additional obligations on Clearing Members, such as participation in auctions of a Defaulting Clearing Member's (as defined below) position. Such additional obligations must be proportional to the risk brought by the Clearing Member and must not restrict participation to certain categories of Clearing Members.²²²</p> <p>A CCP must ensure the application of the above criteria on an ongoing basis and must annually conduct a comprehensive review of compliance with these provisions by its Clearing Members.²²³</p>	<p>including:</p> <ul style="list-style-type: none"> • the regulated services to be provided by the CCP; • matters relating to risk in the CCP; • access to the CCP, including the ongoing requirements for clearing members; • suspension and expulsion of clearing members; • disciplinary action against clearing members; • procedures for clearing members to address risks that are relevant to the CCP; • requirements to facilitate monitoring of clearing members' compliance with operating rules; and • handling of defaults.²²⁵ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access.²²⁶ • Monitor compliance with its participation requirements on an on-going basis and have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a clearing member that breaches, or no longer meets, the participation requirements. ²²⁷ • Disclose publicly procedures facilitating the suspension and orderly exit of a clearing mem- 	
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	<p>ber that breaches or no longer meets the participation requirements of the CCP. Disclose to clearing members sufficient information to enable them to have an accurate understanding of the risks they incur by participating in a CCP.²²⁸</p> <ul style="list-style-type: none"> • Ensure that its rules, procedures and agreements allow it to gather basic information about indirect participation in order to identify, monitor and manage any material risks to the CCP arising from such tiered participation arrangements.²²⁹ • Identify indirect participants responsible for a significant proportion of transactions processed by the CCP and indirect participants whose transaction volumes or values are large relative to the capacity of the direct clearing members through which they access the CCP in order to manage the risks arising from these transactions.²³⁰ 	
<p>Transparency</p> <p>A CCP and its Clearing Members must publicly disclose the prices and fees associated with each service provided separately (including discounts and rebates and the conditions to benefit from such reductions).²³¹</p> <p>A CCP must also publicly disclose (i) on an aggregated basis, the volumes of cleared transactions for each class of instruments cleared, (ii) the operational and technical requirements relating to communication protocols used with third parties, and (iii) any breaches by clearing</p>	<p>Transparency</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide:</i></p> <ul style="list-style-type: none"> • A CCP must give written notice to ASIC, as soon as practicable, if the CCP has reason to suspect that a clearing member has committed, is committing, or is about to commit a significant contravention of the CCP's rules.²³⁶ 	<p>Transparency</p> <p><i>The Australian regime for CCPs includes transparency requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>An Australian CCP is not specifically required to disclose to the public any breaches by clearing members of the CCP's participation requirements. However, an Australian CCP is required to notify the Australian authorities of any breaches by</p>

<p>members of its participation requirements, except where the competent authority, after consulting ESMA, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved.²³²</p> <p>A CCP must allow its Clearing Members and Clients separate access to the specific services provided.²³³</p> <p>A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.²³⁴</p> <p>A CCP must disclose (i) to its Competent Authority the costs and revenues of the services and (ii) to its Competent Authority and Clearing Members the price information used to calculate its end-of-day exposures to its Clearing Members.²³⁵</p>	<ul style="list-style-type: none"> • A CCP must do all things necessary to ensure that the CCP's services are provided in a fair and effective way, to the extent that it is reasonably practicable to do so.²³⁷ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access.²³⁸ • Disclose publicly procedures facilitating the suspension and orderly exit of a clearing member that breaches or no longer meets the participation requirements of the CCP. Disclose to clearing members sufficient information to enable them to have an accurate understanding of the risks they incur by participating in a CCP.²³⁹ • Disclose basic risk and activity data, as directed by the RBA from time to time. ²⁴⁰ • A CCP should disclose clear descriptions of the system's design and operations, as well as the CCP's and clearing members' rights and obligations, so that clearing members can assess the risks they would incur by participating in the CCP. ²⁴¹ • A CCP should provide all necessary and appropriate documentation and training to facilitate clearing members' understanding of 	<p>clearing members. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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	<p>the CCP's rules, policies and procedures and the risks they face from participating in the CCP.²⁴²</p> <ul style="list-style-type: none"> • Disclose relevant information for clearing members and, more generally, the public, which could include general information on the CCP's full range of activities and operations, such as the names of direct clearing members in the CCP, key times and dates in its operations, and its overall risk management framework (including its margin methodology and assumptions), the CCP's financial condition, financial resources to withstand potential losses, timeliness of settlements, and other performance statistics. With respect to data, a CCP should, at a minimum, disclose basic data on transaction volumes and values, margin and collateral holdings, prefunded default resources, and liquid resources. The CCP should also disclose any additional data that the RBA may direct it to disclose from time to time.²⁴³ • Provide sufficient disclosure such that customers can understand how much customer protection is provided, how segregation and portability are achieved, and any risks or uncertainties associated with such arrangements.²⁴⁴ • Inform the RBA as soon as reasonably practicable if a clearing member defaults or if 	
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	<p>the CCP has reasonable grounds for suspecting that a clearing member will not be able to meet its future obligations.²⁴⁵</p>	
<p><i>Segregation and portability</i></p> <p>A CCP must keep separate records and accounts that enable it to identify and segregate the assets and positions of one Clearing Member from the assets and positions of any other Clearing Member and from its own assets. In addition, a CCP must offer to keep separate records and accounts enabling each Clearing Member to either (i) distinguish the assets and positions of that Clearing Member from those held for the accounts of its Clients (“omnibus client segregation”) or (ii) distinguish the assets and positions held for the account of a Client from those held for the accounts of other Clients (“individual client segregation”).²⁴⁶</p> <p>A Clearing Member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its Clients.</p> <p>A Clearing Member must offer its Clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection (as further described below) associated with each option. The Client must confirm its choice in writing. When a Client opts for individual client segregation, any margin in excess of the Client’s requirement must also be posted to the CCP and</p>	<p><i>Segregation and portability</i></p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • At a minimum, have segregation and portability arrangements that effectively protect a participant’s customers’ positions and related collateral from the default or insolvency of that participant. If the CCP additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, the CCP should take steps to ensure that such protection is effective.²⁵² • Structure their portability arrangements in a way that makes it highly likely that a customer’s positions and collateral are portable.²⁵³ • Employ an account structure that enables it readily to identify positions of a participant’s customers and to segregate related collateral. A CCP should maintain customer positions and collateral in individual customer accounts or in omnibus customer accounts, or equivalent.²⁵⁴ • CCP Standards 13.2 and 13.3, which come 	<p><i>Segregation and portability</i></p> <p><i>The Australian regime for CCPs includes segregation and portability requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>Australian CCPs are required to offer the same minimum level of client asset protection as CCPs under EMIR (omnibus client segregation). The concept of individual segregation also features in the Australian regime, albeit CCPs have some discretion over whether or not they offer accounts with such an additional level of client asset protection. The offer of individually segregated client accounts is compulsory under EMIR.</p> <p>However, associated RBA guidance draws out the relevant considerations for a CCP in determining appropriate account structures. The RBA has also issued an interpretation of its FSS requirements such that CCPs which clear a range of derivatives products with different characteristics (including levels of liquidity), and for a range of clearing members and underlying customer types, are expected to offer account structures that enable clearing members to offer their clients a choice between individual and omnibus segregation.²⁶¹</p>

<p>distinguished from the margins of other Clients or Clearing Members and must not be exposed to losses connected to positions recorded in another account.²⁴⁷</p> <p>CCPs and Clearing Members must publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection and must offer those services on reasonable commercial terms.²⁴⁸</p> <p>A CCP must have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of Article 2(1)(c) of Directive 2002/47/EC on financial collateral arrangements, provided that the use of such arrangements is provided for in its operating rules. The Clearing Member must confirm its acceptance of the operating rules in writing. The CCP must publicly disclose that right of use, which shall be exercised in accordance with Article 47 (Investment Policy).²⁴⁹</p> <p>The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:</p> <ul style="list-style-type: none"> (a) the assets and positions are recorded in separate accounts; (b) the netting of positions recorded on different accounts is prevented; (c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.²⁵⁰ <p>For purposes of the above, assets refer to collateral held</p>	<p>into force on 31 March 2014, do not explicitly require that a CCP offer the choice between individual and omnibus account structures. However, associated guidance (particularly 13.2.2-13.2.9) draws out the relevant considerations for a CCP in determining appropriate account structures, while the guidance in 13.3.1 observes that “in order to achieve a high likelihood of portability, a central counterparty will need to: have the ability to identify positions that belong to customers; identify and assert rights to related collateral held by or through the central counterparty; transfer positions and related collateral to one or more other participants...”.</p> <p>Where a CCP that clears a range of derivatives products with different characteristics (including levels of liquidity) and for a variety of participant and underlying customer types, the Bank will interpret CCP Standards 13.2 and 13.3 as requiring that the CCP employ an account structure that enables its clearing members to offer their customers a choice between individual and omnibus segregation. Such choice should be sufficient to enable customers to choose clearing arrangements that deliver protections appropriate to the scale, scope and nature of their business.</p> <p>Accordingly, such CCPs will be expected to make available to their clearing members</p>	<p>Such CCPs will be expected to make available to their participants an account structure that enables the participants to offer their customers, in addition to a net omnibus client account structure, an option that allows for separate identification and protection of individual customers’ gross positions and collateral (or collateral value). On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>With regards to the specific features of an individually segregated account, the Australian regime does not require that clearing members pass to the CCP excess margin received from clients. However, the RBA has issued an interpretation of its FSS requirements such that CCPs which clear a range of derivatives products with different characteristics (including levels of liquidity), and for a variety of clearing members and underlying customer types, are expected to make available an account structure that enables excess customer collateral to be held directly with the CCP.²⁶²</p> <p>The Australian regime does not specifically prescribe the legal mechanism through which a CCP has the right to use margin or default fund contributions, but CCPs are required to have policies that provide for an enforceable legal framework for the reuse of collateral.</p> <p>The Australian regime also does not specifically require CCPs to publicly disclose a right of use with respect to margins or default fund contributions, however a CCP must disclose its rules, which would</p>
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<p>to cover positions and include the right to the transfer of assets equivalent to that collateral or the proceeds of the realization of any collateral, but does not include default fund contributions.²⁵¹</p>	<p>an account structure that enables the clearing members to offer their customers, in addition to a net omnibus client account structure, an option that allows for separate identification and protection of individual customers' gross positions and collateral (or collateral value). To further protect customers, the CCP will be expected to make available an account structure that enables excess customer collateral to be held directly with the CCP.²⁵⁵</p> <ul style="list-style-type: none"> • Have clear and transparent rules regarding the reuse of collateral. In particular, the rules should clearly specify when a CCP may reuse its clearing member collateral and the process for returning that collateral to clearing members. In general, a CCP should not rely on the reuse of collateral as an instrument for increasing or maintaining its profitability. However, CCP may invest any cash collateral received from clearing members on their behalf.²⁵⁶ • Have a robust legal basis for the CCP's activities. The legal basis defines, or provides the foundation for relevant parties to define, the rights and obligations of the CCP, its clearing members, and other relevant parties, such as its clearing members' customers, custodians, money settlement agents and service providers.²⁵⁷ • Disclose its rules, policies and procedures 	<p>include provisions regarding the use of margin and default fund contributions upon default, as well as any other matters relevant to clearing and settlement. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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	<p>relating to the segregation of a clearing member's customers' positions and related collateral.</p> <ul style="list-style-type: none"> • Disclose its rules, policies and procedures relating to the segregation of a clearing member's customers' positions and related collateral. In particular, the CCP should disclose whether customer collateral is segregated on an individual or omnibus basis. In addition, a CCP should disclose any constraints, such as legal or operational constraints, that may impair its ability to segregate or port a clearing member's customers' positions and related collateral.²⁵⁸ • Provide sufficient disclosure such that customers can understand how much customer protection is provided, how segregation and portability are achieved, and any risks or uncertainties associated with such arrangements. Customers should have sufficient information about which of their positions and collateral held at or through a CCP are segregated from positions and collateral of the clearing member and the CCP. Disclosure regarding segregation should include: whether the segregated assets are reflected on the books and records at the CCP or unaffiliated third-party custodians; who holds the customer collateral; and under what circumstances customer collateral may be used by the CCP. In particular, the CCP should disclose whether customer col- 	
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	<p>lateral is protected on an individual or omnibus basis.²⁵⁹</p> <p>According to the RBA interpretation of its FSS requirements, there are advantages and disadvantages to each type of account structure that the CCP should consider when designing its segregation regime. The individual account structure provides a high degree of protection to the clearing level collateral of customers of clearing members in a CCP, even in the case where the losses associated with another customer's default exceed the resources of the clearing member. Under this approach, each customer's collateral is held in a separate, segregated individual account at the CCP, and depending on the legal framework applicable to the CCP, a customer's collateral may only be used to cover losses associated with the default of that customer (that is, customer collateral is protected on an individual basis). This account structure facilitates the clear and reliable identification of a customer's collateral, which supports full portability of an individual customer's positions and collateral or, alternatively, can expedite the return of collateral to the customer. Since all collateral maintained in the individual customer's account is used to margin that customer's positions only, the CCP should be able to transfer these positions from the customer account of a defaulting clearing member to that of another clearing member with sufficient collateral to cover the exposures. The use of individual accounts and the collection of margin on a gross basis provide flexibility in how a</p>	
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	<p>customer's portfolio may be ported to another clearing member or group of clearing members. Maintaining individual accounts, however, can be operationally and resource intensive for the CCP in settling transactions and ensuring accurate bookkeeping. Finally, effectively achieving the advantages of maintaining individual accounts may depend upon the legal framework applicable to the insolvency of the clearing member.²⁶⁰</p>	
<p>Exposure management</p> <p>A CCP must measure and assess its liquidity and credit exposures to each Clearing Member and to any CCPs with which it has entered into interoperability arrangements (“Interoperable CCPs”), on a near to real-time basis.²⁶³</p>	<p>Exposure management</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to clearing members.²⁶⁴ • A CCP in a link arrangement should be able to cover, at least on a daily basis, its current and potential future exposures to the linked CCP and its clearing members, if any, fully with a high degree of confidence without reducing the CCP’s ability to fulfil its obligations to its own clearing members at any time.²⁶⁵ 	<p>Exposure management</p> <p><i>The Australian regime for CCPs includes binding management requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p>
<p>Margin requirements</p> <p>A CCP must impose, call and collect margin to limit credit exposures from its Clearing Members and Interoperable CCPs. Margins must cover potential</p>	<p>Margin requirements</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p>	<p>Margin requirements</p> <p><i>The Australian regime for CCPs includes margin requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and</i></p>

<p>exposures that the CCP estimates will occur until the liquidation of the relevant positions. They should be sufficient to cover losses that result from at least 99% of the exposures movements over an approximate time horizon and they must ensure that a CCP fully collateralizes its exposures with all its Clearing Members and Interoperable CCPs, at least on a daily basis.²⁶⁶</p> <p>CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.²⁶⁷ CCPs must regularly monitor and if necessary revise the level of their margins to reflect market conditions taking into account any potential procyclical effects of such revisions.²⁶⁸ A CCP must adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters must be validated by the Competent Authority and subject to an opinion in accordance with Article 19.²⁶⁹</p> <p>A CCP must call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. A CCP must call and collect margins that are adequate to cover the risk stemming from the positions registered in each account with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments provided that the methodology used is prudent and robust.²⁷⁰</p> <p>The initial margin (“IM”) to be required by a CCP is defined as the amount of margin necessary to cover the</p>	<ul style="list-style-type: none"> • Mark clearing member positions to market and collect variation margin at least daily.²⁸⁰ • Cover their current and potential future exposures to each clearing member fully with a high degree of confidence using margin and other prefunded financial resources.²⁸¹ • Have the authority and operational capacity to make intraday margin calls, both scheduled and unscheduled, from clearing members. Further, have the ability to place limits on credit exposures, even where these are collateralised. Limits on concentrations of positions or additional collateral requirements may also be warranted.²⁸² • In the event that projected stress-test losses exceed available financial resources, obtain additional financial resources by ensuring that its rules and procedures support timely action to increase financial resources. The nature of the additional financial resources called may depend on the distribution of projected stress-test losses. If projected stress-test losses exceed available financial resources for only a single, or few clearing members, then it may be appropriate to call for additional margin or other non-pooled financial resources from those clearing members. The CCP should clearly articulate the circumstances in which it will call for additional margin or non-pooled financial resources from clearing members, and both the form (that is, cash or eligible non-cash collateral) and the 	<p><i>which are broadly equivalent to those of EMIR.</i></p> <p>When calculating its initial margin requirements, an Australian CCP must use at least a 99% minimum confidence interval, whereas under EMIR a CCP must use (i) a 99.5% minimum confidence interval for OTC derivatives, unless they have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market in which case the minimum confidence interval is 99%, and (ii) a 99% minimum confidence interval for other financial instruments. However, the RBA has issued an interpretation of its FSS requirements such that a CCP should apply a confidence interval of at least 99.5% in relation to less liquid products such as OTC derivatives.³⁰⁶ On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>The Australian regime does not specifically require a CCP to calculate its initial margin requirements using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress. However a CCP is required to select an appropriate sample period based on the theoretical properties of the margin model and empirical tests on these properties using historical data. The RBA has also issued an interpretation of its FSS requirements such that a CCP should consider a range of time horizons in calibrating its margin requirements.³⁰⁷ On balance, the objectives of the Australian regime are broadly equivalent to the</p>
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<p>exposures arising from market movements for each financial instrument margined on a product basis, expected to occur, based on data from an appropriate look back period, with a specified confidence interval and assuming a specified time period for the liquidation of positions (as all defined below).²⁷¹</p> <ul style="list-style-type: none"> Percentage. When calculating IM, a CCP must use at least the following minimum confidence intervals: (i) for OTC derivatives, 99.5%; and (ii) for other financial instruments, 99%.²⁷² All classes of financial instruments are also subject to a criteria-based approach that could increase the required confidence interval. The criteria-based approach should take into account factors including: (i) the complexities and level of pricing uncertainties of the class of financial products; (ii) the risk characteristics of the class (including volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk); (iii) the degree to which other risk controls do not adequately limit credit exposure; and (iv) the inherent leverage of the class of financial instrument (including volatility, concentration and difficulties in closing out).²⁷³ <p>However, CCPs may apply an alternative confidence interval of 99% to OTC derivatives that have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market, provided that the risks of the OTC derivatives contracts cleared are appropriately mitigated, taking into account the criteria listed above.²⁷⁴</p>	<p>time frame in which calls must be satisfied. The CCP should periodically engage with clearing members to ensure that they understand their potential obligations and have taken appropriate steps to ensure that they would be able to meet them. Where projected stress-test losses are consistently widely dispersed across clearing members, then it may be appropriate for the CCP to augment pooled financial resources.²⁸³</p> <ul style="list-style-type: none"> CCPs should ensure that in conducting stress testing, the CCP considers the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods.²⁸⁴ A CCP should regularly review and validate its margin system.²⁸⁵ Have its risk management model validated annually.²⁸⁶ A full validation of a CCP's risk management model should be performed at least annually.²⁸⁷ Independently validate, on an on-going basis, the models and their methodologies used to quantify, aggregate and manage the CCP's risks. Such validation including an evaluation of the conceptual soundness of (including developmental evidence supporting) the models; an on-going monitoring process that includes verification of processes and benchmarking; and an analysis of outcomes that includes back-testing.²⁸⁸ 	<p>objectives of the EMIR regime.</p> <p>EMIR prescribes minimum liquidation times of 5 business days for OTC derivatives and 2 business days for other financial instruments and OTC derivatives that have the same risk characteristics as derivatives executed on regulated market or equivalent third country market. The Australian regime is more general, requiring a liquidation period of at least two business days, or at least five business days for less liquid markets. However, the RBA has also issued an interpretation of its FSS requirements such that a CCP should use a liquidation period of at least five days for less liquid products, such as OTC derivatives and the higher of a one or two business day liquidation period for more liquid exchange-traded products.³⁰⁸ On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>With regards to portfolio margining, unlike CCPs under EMIR, an Australian CCP is not limited to a maximum reduction of 80% of the difference between (i) the sum of the initial margin requirement for each instrument calculated on an individual basis and (ii) the initial margin requirement calculated based on a combined estimation of the exposure for the combined portfolio. However portfolio margining is required to be based on an economically meaningful methodology that reflects the degree of price dependence between the products and ensures that margin continues to meet or exceed a confidence</p>
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<p>CCPs must inform the Competent Authority and their Clearing Members of the criteria used to determine the margin percentage for each class of financial instruments.</p> <ul style="list-style-type: none"> • Time horizon for the calculation of historical volatility. A CCP must calculate IM using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress. CCPs may decide how different observations are weighted in the model and may use other look back periods, provided that they result in IMs which are at least as high as those which would be required under the prescribed period. Margin parameters for financial instruments without historical observation period must be based on conservative assumptions.²⁷⁵ • Time horizons for the liquidation period. The liquidation period used to calculate IM must be at least: (i) for OTC derivatives, 5 business days; and (ii) for other financial instruments, 2 business days, it being specified that the CCP must take into account relevant criteria (including characteristics of the financial instruments, markets where they are traded, period for calculation and collection of margin).²⁷⁶ However, CCPs may use an alternative liquidation period of at least 2 business days for OTC derivatives that have the same risk characteristics as derivatives executed on regulated market or equivalent third country market, provided that it can prove to its competent authority that such a period would be more appropriate in view of the spe- 	<ul style="list-style-type: none"> • Have its margin methodology reviewed and validated by a qualified and independent party at least annually or more frequently if there are material market developments. Any material revisions or adjustments to the methodology or parameters should be subject to appropriate governance processes and validated prior to implementation.²⁸⁹ • A CCP must inform the RBA as soon as reasonably practicable of any internal audits or independent external expert reviews of its operations, risk management processes or internal control mechanisms, including providing the conclusions of such audits or reviews.²⁹⁰ • A CCP should inform the RBA in a timely manner of any events or changes to its operations or circumstances that may materially impact its management of risks or ability to continue operations. A CCP should also regularly provide information to the RBA regarding its financial position and risk controls on a timely basis.²⁹¹ • In accordance with CCP Standard 21.1(j), which requires notification of “...any internal audits or independent external reviews are undertaken of its operations, risk management processes or internal control mechanisms, including providing the conclusions of such audits or reviews”, a CCP will be expected to provide the RBA with a copy of any review of its margin methodology.²⁹² • Percentage. Margin models and parameters 	<p>level of at least 99 per cent during periods of actual and simulated market stress. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>With regards to the validation of a CCP’s models and parameters, unlike CCPs under EMIR, an Australian CCP is not required to submit material changes to its models and parameters to the Australian authorities for validation. However, an Australian CCP is required to have its margin methodology reviewed and validated by a qualified and independent party at least annually, or more frequently if there are material market developments, and to have any material revisions or adjustments to the methodology or parameters validated prior to implementation. The RBA has issued an interpretation of its FSS requirements such that a CCP must provide the RBA with a copy of any review of its margin methodology.³⁰⁹ On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>cific features of the relevant OTC derivative.²⁷⁷ In all cases, for the determination of the appropriate liquidation period, the CCP must evaluate and sum at least (i) the longest period that may elapse from the last collection of margins up to the declaration of default or activation of default management process by the CCP and (ii) the estimated period needed to design and execute the strategy for the management of default of a Clearing Member according to the characteristics of each class of financial instruments and (iii) where applicable, the period needed to cover the counterparty risk to which the CCP is exposed.</p> <ul style="list-style-type: none"> • Portfolio margining. A CCP may allow for offsets or reductions to the required margin across financial instruments cleared by the CCP if the price risk of one or a set of instruments is significantly and reliably correlated, or based on equivalent statistical parameters of dependence, with other instruments. The CCP must document its approach on portfolio margining and must at least establish that the relevant correlation is reliable over the relevant look back period and demonstrates resilience over stressed scenarios. The maximum reduction is 80% of the difference between (i) the sum of the IMs for each instrument calculated on an individual basis and (ii) the IM calculated based on a combined estimation of the exposure for the combined portfolio. Where a CCP is not exposed to any potential risk from the margin reduction, it may apply a reduction of up to 100% of this difference.²⁷⁸ 	<p>must be sufficient to cover at least 99% with respect to the estimated distribution of future exposure.²⁹³</p> <p>The method selected by a CCP to estimate its potential future exposure should be capable of measuring and incorporating the effects of price volatility and other relevant product factors and portfolio effects over a close out period that reflects the market size and dynamics for each product cleared by the CCP²⁹⁴</p> <ul style="list-style-type: none"> • The guidance to this CCP Standard elaborates further. In particular, the guidance in paragraphs 6.3.1 – 6.3.3 and 6.5.1 requires that: <ul style="list-style-type: none"> “...the method selected by the central counterparty to estimate its potential future exposure should be capable of measuring and incorporating the effects of price volatility and other relevant product factors and portfolio effects over a close out period that reflects the market size and dynamics for each product cleared by the central counterparty...” “...close out periods should be set on a product-specific basis because less liquid products might require significantly longer close out periods...” “...a central counterparty should select an appropriate sample period for its margin model to calculate required margin for each product that it clears...” “...selection of the period should be carefully examined based on the theoretical properties of the margin model and empirical tests on these properties using historical data...” 	
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<ul style="list-style-type: none"> • Procyclicality. A CCP must ensure that its policy for selecting and revising the confidence interval, liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent the soundness and financial security of the CCP are not affected. A CCP must choose from a menu of margin-setting options to address procyclicality risks: (i) applying a margin buffer of at least 25% that the CCP allows to be temporarily exhausted in periods where IM requirements are rising significantly; (ii) assigning at least a 25% weight to stressed observations in the look back period; and (iii) ensuring that the CCP's IM requirements are not lower than those that would be calculated using a volatility estimated over a ten-year historical look back period.²⁷⁹ 	<p>“...a central counterparty should base [margin] offsets on an economically meaningful methodology that reflects the degree of price dependence between the products...”, and should make “...prudent assumptions...about product offsets.”</p> <p>In accordance with the guidance summarised above, the RBA will interpret CCP Standards 6.3 and 6.5 in such a way that a CCP which clears a range of derivatives products with varying degrees of liquidity and provides services to systemically important financial institutions headquartered in multiple jurisdictions – would typically be expected to apply a higher confidence interval, of at least 99.5 per cent, in relation to less liquid products, such as OTC derivatives, to reflect increased uncertainty around potential future exposure for products with such characteristics.²⁹⁵</p> <ul style="list-style-type: none"> • Time horizon for the calculation of historical volatility. Select an appropriate sample period for its margin model to calculate required initial margin for each product that it clears and document the period and related analysis for each product type. Selection of the period should be carefully examined based on the theoretical properties of the margin model and empirical tests on these properties using historical data. In certain instances, a CCP may need to determine margin levels using a shorter historical period to reflect new or current volatility in the market more effectively. Conversely, a CCP may need to determine margin levels based on a longer historical period in order to 	
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	<p>reflect past volatility. A CCP should also consider simulated data projections that would capture plausible events outside of the historical data especially for new products without enough history to cover stressed market conditions.²⁹⁶</p> <p>A CCP should select an appropriate sample period for its margin model to calculate required initial margin for each product that it clears and should document the period and related analysis for each product type. Selection of the period should be carefully examined based on the theoretical properties of the margin model and empirical tests on these properties using historical data²⁹⁷</p> <ul style="list-style-type: none"> • The guidance to this CCP Standard elaborates further. In particular, the guidance in paragraphs 6.3.1 – 6.3.3 and 6.5.1 requires that: <ul style="list-style-type: none"> “...the method selected by the central counterparty to estimate its potential future exposure should be capable of measuring and incorporating the effects of price volatility and other relevant product factors and portfolio effects over a close out period that reflects the market size and dynamics for each product cleared by the central counterparty...” “...close out periods should be set on a product-specific basis because less liquid products might require significantly longer close out periods...” “...a central counterparty should select an appropriate sample period for its margin model to calculate required margin for each product that 	
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	<p>it clears...”</p> <p>“...selection of the period should be carefully examined based on the theoretical properties of the margin model and empirical tests on these properties using historical data...”</p> <p>“...a central counterparty should base [margin] offsets on an economically meaningful methodology that reflects the degree of price dependence between the products...”, and should make “...prudent assumptions...about product offsets.”</p> <p>In accordance with the guidance summarised above, the RBA will interpret CCP Standards 6.3 and 6.5 in such a way that a CCP which clears a range of derivatives products with varying degrees of liquidity and provides services to systemically important financial institutions headquartered in multiple jurisdictions – would typically be expected to consider a range of sample periods to inform the calibration of margin requirements.²⁹⁸</p> <ul style="list-style-type: none"> • <i>Time horizons for the liquidation period.</i> Hold initial margin to cover conservative estimates of the time horizons for the effective hedging or close out of the particular types of products cleared by the CCP (including in stressed market conditions).²⁹⁹ <p>A CCP should select an appropriate close out period for each product that it clears and document the close out periods and related analysis for each product type. A CCP should base its determination of the close out periods for its initial margin model upon historical price and li-</p>	
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	<p>quidity data, as well as reasonably foreseeable events in a default scenario. The close out period should account for the impact of a clearing member's default on prevailing market conditions. Inferences about the potential impact of a default on the close out period should be based on historical adverse events in the product cleared, such as significant reductions in trading or other market dislocations. The close out period should be based on anticipated close out times in stressed market conditions but may also take into account a CCP's ability to hedge effectively the defaulter's portfolio. Further, close out periods should be set on a product-specific basis because less liquid products might require significantly longer close out periods. As a general guide, a CCP should assume a close out period of at least two business days, or at least five business days for less liquid markets. A CCP should also consider and address position concentrations, which can lengthen close out time frames and add to price volatility during close outs.³⁰⁰.</p> <ul style="list-style-type: none"> • The guidance to this CCP Standard elaborates further. In particular, the guidance in paragraphs 6.3.1 – 6.3.3 and 6.5.1 requires that: <p>“...the method selected by the central counterparty to estimate its potential future exposure should be capable of measuring and incorporating the effects of price volatility and other relevant product factors and portfolio effects over a close out period that reflects the market size and dynamics for each product cleared by the</p> 	
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	<p>central counterparty...”</p> <p>“...close out periods should be set on a product-specific basis because less liquid products might require significantly longer close out periods...”</p> <p>“...a central counterparty should select an appropriate sample period for its margin model to calculate required margin for each product that it clears...”</p> <p>“...selection of the period should be carefully examined based on the theoretical properties of the margin model and empirical tests on these properties using historical data...”</p> <p>“...a central counterparty should base [margin] offsets on an economically meaningful methodology that reflects the degree of price dependence between the products...”, and should make “...prudent assumptions...about product offsets.”</p> <p>In accordance with the guidance summarised above, the RBA will interpret CCP Standards 6.3 and 6.5 in such a way that a CCP which clears a range of derivatives products with varying degrees of liquidity and provides services to systemically important financial institutions headquartered in multiple jurisdictions – would typically be expected to use a close out assumption of at least five days for less liquid products, such as OTC derivatives, and the higher of a one or two day close-out period for more liquid exchange-traded products.³⁰¹</p> <ul style="list-style-type: none"> • Portfolio margining. In calculating margin requirements, and where the CCP allows offsets or reductions in required margin across products that it clears or between products that it 	
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	<p>and another CCP clear, ensure that the risk of one product is significantly and reliably correlated with the risk of the other product.³⁰²</p> <p>A CCP should base offsets on an economically meaningful methodology that reflects the degree of price dependence between the products. Often, price dependence is modelled through correlations, but more complete or robust measures of dependence should be considered, particularly for products with non-linear risks. In any case, the CCP should consider how price dependence can vary with overall market conditions, including stressed market conditions. Following the application of offsets, the CCP needs to ensure that the margin continues to meet or exceed the single-tailed confidence level of at least 99 per cent with respect to the estimated distribution of the future exposure of the portfolio. If a CCP uses portfolio margining, it should continuously review and test offsets among products. It should test the robustness of its portfolio method on both actual and appropriate hypothetical portfolios. It is especially important to test how correlations perform during periods of actual and simulated market stress to assess whether the correlations break down or otherwise behave erratically. Prudent assumptions informed by these tests should be made about product offsets.³⁰³</p> <ul style="list-style-type: none"> • The guidance to this CCP Standard elaborates further. In particular, the guidance in para- 	
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	<p>graphs 6.3.1 – 6.3.3 and 6.5.1 requires that:</p> <p>“...the method selected by the central counterparty to estimate its potential future exposure should be capable of measuring and incorporating the effects of price volatility and other relevant product factors and portfolio effects over a close out period that reflects the market size and dynamics for each product cleared by the central counterparty...”</p> <p>“...close out periods should be set on a product-specific basis because less liquid products might require significantly longer close out periods...”</p> <p>“...a central counterparty should select an appropriate sample period for its margin model to calculate required margin for each product that it clears...”</p> <p>“...selection of the period should be carefully examined based on the theoretical properties of the margin model and empirical tests on these properties using historical data...”</p> <p>“...a central counterparty should base [margin] offsets on an economically meaningful methodology that reflects the degree of price dependence between the products...”, and should make “...prudent assumptions...about product offsets.”</p> <p>In accordance with the guidance summarised above, the RBA will interpret CCP Standards 6.3 and 6.5 in such a way that a CCP which clears a range of derivatives products with varying degrees of liquidity and provides services to systemically important financial institutions headquartered in multiple jurisdictions – would typically be expected to make prudent assump-</p>	
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	<p>tions regarding margin offsets between products and ensure the value of such offsets does not exceed 80 per cent of the estimated reduction in exposure due to price dependencies between the products.³⁰⁴</p> <ul style="list-style-type: none"> • Procyclicality. Have initial margin models that, to the extent practicable and prudent, limit the need for destabilising pro-cyclical changes.³⁰⁵ 	
<p>Default fund</p> <p>A CCP must maintain a pre-funded default fund to cover losses that exceed those losses to be covered by margin requirements arising from the default (including insolvency procedure) of one or more Clearing Members. A CCP must establish (i) a minimum amount below which the size of the default fund may not fall in any circumstances, and (ii) a minimum size and criteria to determine Clearing Member contributions to the default fund, which must be proportionate to the exposures of each Clearing Member.³¹⁰</p> <p>The default fund must enable to the CCP to withstand, under extreme but plausible market conditions, the default of (i) the Clearing Member to which it has the largest exposure, or (ii) the Clearing Members to which it has the second and third largest exposures, if the sum of their exposures is greater. A CCP must develop scenarios of extreme but plausible market conditions, which take into account past volatility and scenarios of sudden sales of financial resources and rapid reductions in market liquidity.³¹¹ A CCP may establish more than</p>	<p>Default fund</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments and meet other payment obligations on time 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 clearing member and its affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions. 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 to cover a wide range of potential stress scenarios that should include, but not be lim- 	<p>Default fund</p> <p><i>The Australian regime for CCPs includes default fund requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>EMIR prescribes a specific list of items to be incorporated into a CCP’s framework for determining the size of the default fund, whereas the Australian regime is more general. Nevertheless, a CCP is required to perform rigorous stress testing to determine the amount and sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions. Stress tests are required to be performed daily using standard and predetermined parameters and assumptions. A CCP is also required to perform a comprehensive and thorough analysis its stress-testing scenarios, models and underlying parameters and assumptions on a monthly basis and a full validation of a CCP’s risk management</p>

<p>one default fund for the different classes of financial instruments that it clears.³¹²</p> <ul style="list-style-type: none"> • Framework and governance. In order to determine the minimum size of default fund, a CCP must implement an internal policy framework for defining the types of extreme but plausible market conditions that could expose it to the greatest risk.³¹³ • Identifying extreme but plausible market conditions. This framework must: <ul style="list-style-type: none"> (a) reflect the risk profile of the CCP, taking into account cross-border and cross-currency exposures; (b) identify the market risks to which a CCP would be exposed following the default of one or more Clearing Members for all relevant markets; (c) reflect additional risks to the CCP arising from the simultaneous failure of entities in the same group as the Defaulting Clearing Member; (d) individually identify all of the markets to which a CCP is exposed in a Clearing Member default scenario, and for each identified market specify extreme but plausible conditions based on (i) a range of historical scenarios, including periods of extreme market movements observed over the previous 30 years (or as long as reliable data is available); and (ii) a range of potential future scenarios, considering the extent to which extreme price movements could occur on multiple markets 	<p>ited to, the default of the two clearing members and their affiliates that would generate the largest aggregate credit obligation for the CCP in extreme but plausible market conditions.³¹⁶</p> <ul style="list-style-type: none"> • Framework and governance, identifying extreme but plausible market conditions and reviewing extreme but plausible scenarios. Through rigorous stress testing, determine the amount and regularly test the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions. Stress tests should be performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, CCPs should perform a comprehensive and thorough analysis of stress-testing scenarios, models and underlying parameters and assumptions used. CCPs should perform this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by a CCP's clearing members increases significantly. A full validation of a CCP's risk management model should be performed at least annually.³¹⁷ • In conducting stress testing, a CCP should consider the effect of a wide range of relevant stress scenarios in terms of both de- 	<p>model at least annually. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>simultaneously.³¹⁴</p> <ul style="list-style-type: none"> • Reviewing extreme but plausible scenarios. The framework must be discussed by the risk committee, approved by the board and subject to review at least annually and more frequently if justified by market developments or material changes to the contracts cleared by the CCP. Material changes to the framework must be reported to the board.³¹⁵ 	<p>faulters' positions and possible price changes in liquidation periods. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. ³¹⁸</p> <ul style="list-style-type: none"> • Have clearly documented and effective rules and procedures to report stress-test information to appropriate decision-makers and ensure that additional financial resources are obtained on a timely basis in the event that projected stress-test losses exceed available financial resources. ³¹⁹ • In all cases, a CCP should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains. ³²⁰ • Ensure (an obligation on the board of the CCP) that there is adequate governance surrounding the adoption and use of models, such as for credit, collateral, margining and liquidity risk management systems. ³²¹ 	
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<p>Other financial resources</p> <p>A CCP must maintain sufficient pre-funded available financial resources (“pre-funded financial resources”) to cover potential losses that exceed losses to be covered by margin requirements and the default fund. The combination of a CCP’s default fund and pre-funded financial resources must be sufficient to cover the default of the two Clearing Members to which it has the largest exposure under extreme but plausible market conditions. Pre-funded financial resources must include dedicated resources of the CCP, must be freely available to the CCP and may not be used to meet a CCP’s regulatory capital requirements under EMIR, Art. 16.³²²</p> <p>A CCP may require a non-defaulting Clearing Member to provide additional funds in the event of a default of another Clearing Member. The Clearing Members of a CCP must have limited exposure to the CCP.³²³</p>	<p>Other financial resources</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments and meet other payment obligations on time 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 clearing member and its affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions. 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 to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two clearing members and their affiliates that would generate the largest aggregate credit obligation for the CCP in extreme but plausible market conditions.³²⁴The guidance in 4.4.2, states that “...determinations of whether a CCP is systemically important in multiple jurisdictions should include consideration of, among other factors: the location of the CCP’s clearing members; the aggregate volume and value of transactions that originate in each jurisdiction in which it operates; the proportion of its total volume and val- 	<p>Other financial resources</p> <p><i>The Australian regime for CCPs includes other financial resource requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>An Australian CCP is required to maintain financial resources sufficient to cover the default of the two clearing members (plus their affiliates) to which the CCP has the largest exposure under extreme but plausible market conditions where the CCP is involved in activities with a more complex risk profile or is systemically important in multiple jurisdictions. The RBA has issued an interpretation of its FSS requirements such that a systemically important domestic CCP which requires recognition in the EU and has material participation of EU-headquartered financial institutions is also systemically important in the EU and therefore must maintain financial resources sufficient to cover the default of the two clearing members (plus their affiliates) to which the CCP has the largest exposure under extreme but plausible market conditions.³²⁸ The Australian regime is therefore broadly equivalent to the EMIR regime.</p> <p>Clearing members are required to have limited exposure to a CCP under EMIR. Clearing members are not specifically required to have limited exposure to an Australian CCP, but obligations on non-defaulting clearing members in an Australian CCP are required to be proportionate and a CCP is</p>
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	<p>ue of transactions that originate in each jurisdiction in which it operates; the range of currencies in which the instruments it clears and cleared or settled; any links it has with FMIs located in other jurisdictions; and the extent to which it clears instruments that are subject to mandatory clearing obligations in multiple jurisdictions...”</p> <p>In forming a judgement on systemic importance with reference to these factors, the RBA will take into account the (implicit or explicit) views of the relevant overseas regulatory authorities. In the case of a foreign CCP that provides services to EU-headquartered institutions, the need to obtain recognition under EMIR is evidence that the EU authorities deem such a CCP to be a vehicle for the transmission of risks to the EU. The RBA would therefore expect to deem a systemically important domestic CCP that required recognition in the EU and had material participation of EU-headquartered financial institutions to also be systemically important in that jurisdiction – and therefore systemically important in multiple jurisdictions.³²⁵</p> <ul style="list-style-type: none"> • Ensure that financial and other obligations created for non-defaulting clearing members in the event of a clearing member default are proportional to the scale and nature of individual clearing members’ activities.³²⁶ • The actions that a CCP takes in the event of a default, such as closing out a defaulter's posi- 	<p>required to consider the wider market impacts of its default management actions, and take mitigating action to minimise market impacts. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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	<p>tions or auctioning or allocating open positions to surviving clearing members, could potentially impact on pricing, liquidity and stability in relevant financial markets. A CCP should consider these wider market impacts of its default management actions, and take mitigating action to minimise market impacts as appropriate.³²⁷</p>	
<p>Liquidity risk controls</p> <p>A CCP must at all times have access to adequate liquidity to perform its services and activities.³²⁹ To this effect, it must obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available. A CCP must measure its potential liquidity needs daily, taking into account the liquidity risk generated by the default of at least the two Clearing Members to which it has the largest exposures.³³⁰</p> <p>A CCP must establish a robust liquidity risk management framework to identify measure and monitor its settlement and funding flows, including its use of intraday liquidity. The CCP's liquidity risk management framework must ensure with a high level of confidence that the CCP is able to effect payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday.</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. The framework should also include: (i) the assessment of potential future liquidity needs under a wide range of stress scenarios, including the default of the two Clearing Members to which it has the largest exposure from the date of default until the end of the liquidation 	<p>Liquidity risk controls</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Have a sound risk management framework for comprehensively managing legal, credit, liquidity, operational and other risks.³³⁴ • Have a robust framework to manage its liquidity risks from its clearing members, commercial bank money settlement agents, nostro agents, custodians, liquidity providers and other entities.³³⁵ • Assessment of liquidity risk, access to liquidity and concentration risk. Effectively measure, monitor and manage their liquidity risk to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence and taking into account the default of the clearing member and its affiliates that would generate the largest aggregate liquidity obligation for the CCP.³³⁶ • Have effective operational and analytical tools 	<p>Liquidity risk controls</p> <p><i>The Australian regime for CCPs includes liquidity risk control requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>An Australian CCP is required to maintain liquidity resources sufficient to cover the default of the two clearing members (plus their affiliates) to which the CCP has the largest exposure under extreme but plausible market conditions where the CCP is involved in activities with a more complex risk profile or is systemically important in multiple jurisdictions.</p> <p>The RBA has issued an interpretation of its FSS requirements such that a systemically important domestic CCP which requires recognition in the EU and has material participation of clearing participants established in the EU and clears a range of derivatives products with different characteristics (including levels of liquidity), must maintain financial resources sufficient to cover the default of the two clearing members (plus their affiliates) to which the CCP has the largest exposure under extreme but plausible market conditions.³⁵¹ The</p>

<p>period; and (ii) the liquidity risk generated by its investment policy in extreme but plausible conditions.³³¹</p> <p>The framework must include a liquidity plan approved by the board after consultation of the risk committee containing procedures relating to the monitoring and management of liquidity risk (including inter alia identification of sources of liquidity risk, daily assessment and valuation of liquid assets to cover liquidity needs, assessing timescales over which liquid financial resources should be available, processes in the event of liquidity shortfalls, etc.).</p> <p>The CCP should assess the liquidity risk it faces including where the CCP or its Clearing Members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the CCP’s investment activities. The risk management framework must address the liquidity needs stemming from the CCP’s relationship with any entity towards which the CCP has a liquidity exposure, including settlement banks, payment systems, securities settlement systems, liquidity providers, custodian banks, etc. as well as interdependencies between such entities.</p> <ul style="list-style-type: none"> • Access to liquidity. A CCP must maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, which are limited to: (i) cash deposited at a central bank; (ii) cash deposited at authorised credit institutions; (iii) committed lines of credit with non-Defaulting 	<p>to identify, measure and monitor its settlement and funding flows on an on-going and timely basis, including its use of intraday liquidity.³³⁷</p> <ul style="list-style-type: none"> • Include the following provisions in its liquidity risk management framework: <ul style="list-style-type: none"> ○ Clearly identify its sources of liquidity risk and assess its current and potential future liquidity needs on a daily basis.³³⁸ ○ Maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios.³³⁹ • For a CCP that is involved in activities with a more complex risk profile or that is systemically important in multiple jurisdictions, consider maintaining additional liquidity resources to cover a wider range of potential stress scenarios that should include, but not be limited to, the default of the two clearing members and their affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions.³⁴⁰ • Consistent with the equivalent requirement in relation to credit risk, the RBA will, in determining whether a CCP is systemically important 	<p>Australian regime is therefore broadly equivalent to the EMIR regime.</p> <p>The liquidity plan of an Australian CCP is not specifically required to be approved by the CCP’s board after consultation with the risk committee, but the CCP’s board must set the CCP’s overall risk management framework. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>Clearing Members; (iv) committed repurchase agreements; and (v) highly marketable financial instruments which can demonstrably be converted into cash on a same-day basis including in stressed market conditions.³³²</p> <ul style="list-style-type: none"> • Concentration risk. A CCP must closely monitor the concentration of its liquidity risk exposure, and the framework should include the application of exposure and concentration limits.³³³ 	<p>in multiple jurisdictions, take into account the (implicit or explicit) views of the relevant overseas regulatory authorities. In the case of a foreign CCP that provides services to EU-headquartered institutions, the need to obtain recognition under EMIR is evidence that the EU authorities deem such a CCP to be a vehicle for the transmission of risks to the EU. The RBA would therefore expect to deem a systemically important domestic CCP that requires recognition in the EU and has material participation of EU-headquartered financial institutions to also be systemically important in that jurisdiction.³⁴¹</p> <ul style="list-style-type: none"> • Obtain a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a clearing member of the CCP or an external party, has sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment.³⁴² • Safeguard its own and its clearing members' assets and minimise the risk of loss on and delay in access to these assets. A CCP's investments should be in instruments with minimal credit, market and liquidity risks.³⁴³ • Maintain liquid resources in each currency including cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, committed foreign exchange 	
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	<p>swaps and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions.³⁴⁴</p> <ul style="list-style-type: none"> • For outright holdings of qualifying instruments, such as cash and assets eligible for pledging as collateral to (or for conducting other collateralised transactions with), use the central bank of issue which should form a substantial part of a CCP's qualifying liquid resources.³⁴⁵ • In addition to outright holdings of qualifying instruments, negotiate committed lines of credit and repos on commercial terms with external third parties. A CCP may also conclude contractual agreements with its clearing members to provide additional qualifying liquid resources in specified circumstances. Such resources may, for example, be provided under committed lines of credit or committed repos. Any such arrangements should be highly reliable and explicitly included in the CCP's rules and procedures, ensuring that they have at least as robust a contractual basis as any equivalent commercial arrangement that might be reached with non-participant counterparties.³⁴⁶ • Because the value of a CCP's investments may need to be realised quickly, investments should allow for quick liquidation with little, if any, adverse price effect. For example, a CCP could in- 	
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	<p>vest in overnight reverse repo agreements backed by liquid securities with low credit risk. In allowing for quick liquidation with minimal adverse price effect, a CCP should also impose limits on the concentration of certain assets in its investment portfolio.³⁴⁷</p> <ul style="list-style-type: none"> • When making its investment choices, a CCP should not allow pursuit of profit to compromise its financial soundness and liquidity risk management. Investments should be secured by, or be claims on, high-quality obligors to mitigate the credit risk to which the CCP is exposed. Within these parameters, a CCP should, to the extent reasonably practicable, have a high degree of confidence that its own capital would be sufficient to withstand losses associated with the failure of any individual non-government investment counterparty. This implies the imposition of conservative limits on the size and concentration of counterparty exposures. In considering its overall credit risk exposures to individual obligors, a CCP should also take into account other relationships with the obligor that create additional exposures, such as where an obligor is also a clearing member or an affiliate of a clearing member in the CCP. In addition, a CCP should ensure that any investment of clearing member assets in the securities of clearing members or their affiliates is subject to appropriate controls for specific wrong-way risk.³⁴⁸ • In all cases, a CCP should document its sup- 	
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	<p>porting rationale for, and should have appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains.³⁴⁹</p> <ul style="list-style-type: none"> • Ensure (an obligation on the board of the CCP) that there is adequate governance surrounding the adoption and use of models, such as for credit, collateral, margining and liquidity risk management systems.³⁵⁰ 	
<p>Default waterfall</p> <p>Losses caused by the default of a Clearing Member (a “Defaulting Clearing Member”) should be covered by, in order: (i) the margins posted by the Defaulting Clearing Member; (ii) the default fund contribution of the Defaulting Clearing Member; (iii) the CCP’s dedicated financial resources; and (iv) the default fund contributions of other Clearing Members (the “default waterfall”). A CCP must use its own dedicated resources before using the default fund contributions of non-defaulting Clearing Members and may not use margin posted by non-defaulting Clearing Members to cover losses caused by a Defaulting Clearing Member.³⁵²</p> <ul style="list-style-type: none"> • Calculation of the amount of the CCP’s own resources to be used in the default waterfall. A CCP must keep, and indicate separately in its balance sheet, an amount of dedicated financial resources for the purposes of item (iii) of the default waterfall. This amount should at least equal 25% of the CCP’s minimum capital (including re- 	<p>Default waterfall</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide:</i></p> <p>A CCP must have sufficient resources (including financial, technological and human resources) to operate properly.³⁵⁵</p> <p>A CCP must give written notice to ASIC, as soon practicable, if it becomes aware that it may no longer be able to meet, or has breached, an obligation under section 821A.³⁵⁶</p> <p>A CCP must give written notice to the RBA, as soon as practicable, if the CCP has failed to comply with standards determined under section 827D, may no longer be able to meet, or has breached, its obligations under subparagraph 821A(aa)(ii)³⁵⁷.</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p>	<p>Default waterfall</p> <p><i>The Australian regime for CCPs includes default waterfall requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>An Australian CCP is not specifically required to include a prescribed amount of its own resources as part of the default waterfall whereas under EMIR a CCP is required to maintain an amount of dedicated own financial resources in the default waterfall for the purpose of providing an adequate incentive for the CCP to properly structure its risk management.</p> <p>However, the RBA has issued an interpretation of its FSS requirements such that a material portion of the CCP’s pooled financial resources should comprise the CCP’s own resources. The intention of this interpretation is stated to be to ensure that the CCP faces appropriate incentives to set robust risk management standards.³⁶⁹ On balance, the objectives of the Australian regime are broadly</p>

<p>tained earnings and reserves) pursuant to EMIR, Art. 16.³⁵³ This amount will be revised on a yearly basis. Where the CCP has established more than one default fund for the different classes of financial instruments it clears, the total dedicated own resources must be allocated to each default fund in proportion to its size, to be separately indicated in the balance sheet and used for defaults arising in the relevant market segments. No resources other than capital can be used to comply with this requirement.</p> <ul style="list-style-type: none"> • Maintenance of the amount of the CCP's own resources to be used in the default waterfall. A CCP must immediately inform its CCPs Competent Authority if the amount of dedicated financial resources falls below the required amount, together with the reason for the breach and a description of the measures to be taken to remedy the breach (which must be remedied within one month).³⁵⁴ 	<ul style="list-style-type: none"> • Hold a combination of margin and pooled prefunded resources to control credit risks.³⁵⁸ • Use a sequence of prefunded financial resources, often referred to as a 'waterfall', to manage its losses caused by clearing member defaults. The waterfall may include a defaulter's initial margin, the defaulter's contribution to a prefunded default arrangement, a specified portion of the CCP's own funds, and other clearing members' contributions to a prefunded default arrangement.³⁵⁹ • Have default rules and procedures that enable the CCP to take timely action to contain losses and liquidity pressures, before, at and after the point of clearing member default. Specifically, a CCP's rules and procedures should allow the CCP to use promptly any financial resources that it maintains for covering losses and containing liquidity pressures arising from default, including liquidity facilities. The rules of the CCP should specify the order in which different types of resources will be used, enabling clearing members to assess their potential future exposures from using the CCP's services. A CCP should first use assets provided by the defaulting clearing member, such as margin or other collateral, to provide incentives for clearing members to manage prudently the risks, particularly credit risk, they pose to a CCP. The application of previously provided collateral should not be subject to prevention, stay or reversal under applicable law and the 	<p>equivalent to the objectives of the EMIR regime.</p> <p>Under EMIR a CCP must use its dedicated own financial resources before using the default fund contributions of non-defaulting clearing members. This requirement does not feature in the Australian regime. However, the RBA has issued an interpretation of its FSS requirements such that in the event that a defaulting clearing member's margin and other contributions are exhausted, a CCP should use a sufficient proportion of its own contribution to the default waterfall before using the default fund contributions of non-defaulting clearing members. The intention of this interpretation is stated to be to ensure that the CCP faces appropriate incentives to set robust risk management standards³⁷⁰ On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>Under EMIR a CCP is explicitly prevented from using margin posted by non-defaulting clearing members to cover losses caused by a defaulting clearing member. This prohibition does not feature in the Australian regime but obligations on non-defaulting clearing members in an Australian CCP are required to be proportionate and a CCP is required to consider the wider market impacts of its default management actions, and take mitigating action to minimise market impacts. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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	<p>rules of the CCP. A CCP should also have a credible and explicit plan for replenishing its resources over an appropriate time horizon following a clearing member default so that it can continue to operate in a safe and sound manner. In particular, the CCP's rules and procedures should define any obligations of the non-defaulting clearing members to replenish the financial resources depleted during a default so that the time horizon of such replenishment is anticipated by non-defaulting clearing members.³⁶⁰</p> <ul style="list-style-type: none"> • Establish explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its clearing members with respect to any of their obligations to the CCP.³⁶¹ • Analyse and plan for how it would address any uncovered credit losses. A CCP should establish explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its clearing members with respect to any of their obligations to the CCP. These rules and procedures should address how potentially uncovered credit losses would be allocated, including the repayment of any funds a CCP may borrow from liquidity providers. A CCP's rules and procedures should also indicate its process to replenish any financial resources it may employ during a stress event, so that it can continue to operate in a safe and sound 	
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	<p>manner.³⁶²</p> <ul style="list-style-type: none"> • Not include as ‘available’ to cover credit losses from clearing member defaults those resources that are necessary to meet the CCP’s capital requirements.³⁶³ • Calculation of the amount of the CCP’s own resources to be used in the default waterfall. Use a sequence of prefunded financial resources, often referred to as a ‘waterfall’, to manage its losses caused by clearing member defaults. The waterfall may include a defaulter’s initial margin, the defaulter’s contribution to a prefunded default arrangement, a specified portion of the CCP’s own funds, and other clearing members’ contributions to a prefunded default arrangement.³⁶⁴ • The guidance in 4.2.4 discusses the role of prefunded financial resources in managing losses caused by clearing member defaults. The guidance recognises that the default waterfall may include “...a defaulter’s initial margin, the defaulter’s contribution to a prefunded default arrangement, a specified portion of the CCP’s own funds, and other clearing members’ contributions to a prefunded default arrangement.” The guidance does not prescribe a particular composition of prefunded financial resources, nor does it prescribe the order in which such funds should be drawn. Nevertheless, the RBA would expect that a 	
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	<p>material proportion of pooled financial resources comprised a CCP's own resources, and further, that a sufficient proportion of such resources would be drawn first in the event that a defaulting clearing member's margin and other contributions were exhausted, so as to ensure that the CCP faced appropriate incentives to set robust risk management standards.³⁶⁵</p> <ul style="list-style-type: none"> • <i>Maintenance of the amount of the CCP's own resources to be used in the default waterfall.</i> A CCP should have explicit rules and procedures to address how potentially uncovered credit losses would be allocated; including the repayment of any funds a CCP may borrow from liquidity providers. These rules and procedures should also indicate the CCP's process to replenish any financial resources that the CCP may employ during a stress event, so that the CCP can continue to operate in a safe and sound manner.³⁶⁶ <p>A CCP should inform the RBA in a timely manner regarding its financial position and risk controls on a timely basis.³⁶⁷</p> <p>A CCP should inform the RBA as soon as reasonably practicable if it plans to make significant changes to its risk control requirements or its rules, policies and procedures.³⁶⁸</p>	
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<p>Collateral requirements</p> <p>A CCP must only accept highly liquid collateral with minimal credit and market risk to cover initial and ongoing exposure to its Clearing Members. Bank guarantees may be posted as collateral by non-financial counterparties, provided that the CCP takes such guarantees into account when calculating exposure to a bank that is a Clearing Member. A CCP must apply adequate haircuts to reflect the potential for collateral's value to decline over the interval between their last revaluation and the time by which they can be liquidated, taking into account the liquidity risk that may follow the default of a market participant and the concentration risk on certain assets.³⁷¹</p> <ul style="list-style-type: none"> • General policies and valuing collateral. A CCP may accept as collateral, where appropriate and sufficiently prudent, the underlying asset of a derivative contract or the financial instrument that generates the CCP exposure. A CCP must establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral and take remedial action where appropriate. For the purpose of valuing highly liquid collateral, a CCP must establish and implement policies and procedures to monitor on a near to real-time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. These policies must be reviewed at least annually and whenever a material change occurs that affects the CCP's risk exposure. A CCP must mark-to-market its collateral on a near to real-time basis and, where not possible, a CCP must be able to demonstrate to the competent 	<p>Collateral requirements</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • General policies and valuing collateral. And cash collateral, financial instruments and gold. Generally limit the assets they (routinely) accept as collateral to (a) assets commonly accepted in the relevant jurisdiction in which the CCP operates and (b) to accept only those with low credit, liquidity and market risks.³⁷⁷ • Bank guarantees. In general not accept bank guarantees as acceptable collateral. However, bank guarantees may be acceptable under certain circumstances subject to approval from the Reserve Bank or other relevant authorities.³⁷⁸ • Regularly review its requirements for acceptable collateral in accordance with changes in underlying risks. ³⁷⁹ • Establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions. ³⁸⁰ • In order to reduce the need for procyclical adjustments, establish stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent. ³⁸¹ • To the extent practicable and prudent, limit the 	<p>Collateral requirements</p> <p><i>The Australian regime for CCPs includes collateral requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>The Australian regime is not as prescriptive as EMIR with regards to the criteria for financial instruments that may be accepted as collateral. However an Australian CCP is restricted to accepting only those financial instruments with low credit, liquidity and market risks which are the underlying minimum criteria under EMIR. . On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>The circumstances in which a CCP may accept bank guarantees is not necessarily restricted to those same circumstances in which it is possible to do so under EMIR. However, an Australian CCP may only accept a bank guarantee as collateral where such guarantee has been approved on a case-by-case basis by the RBA. In doing so, the RBA will consider the credit standing of the bank providing the guarantee, the legal certainty of the arrangement and whether there is any collateral supporting the guarantee. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>A CCP is not specifically required to determine concentration limits at the levels of individual issuers, types of issuer, types of assets, each</p>
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<p>authorities that it is able to manage the risks.³⁷²</p> <ul style="list-style-type: none"> • Cash collateral. Cash must be deemed highly liquid collateral if it is denominated in: (i) a currency in which the CCP clears transactions (in the limit of the collateral required to cover the CCP’s exposure in that currency); or (ii) a currency the risk of which the CCP can demonstrate with a high degree of confidence to its competent authority that it is able to manage.³⁷³ • Financial instruments, bank guarantees and gold. A criteria-based approach should be followed to determine other types of assets that can be considered highly liquid (including financial instruments, bank guarantees, and gold). There is no requirement for a minimum amount of collateral to be in cash.³⁷⁴ • Haircuts. A CCP must establish and implement policies to determine prudent haircuts to apply to collateral value. The CCP must demonstrate to the competent authorities that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects, taking into account relevant criteria (including the type of asset and level of credit risk associated with the financial instrument based on the CCP’s internal assessment, which must not rely exclusively on external opinions and which must take into account risk arising from the establishment of the issuer in a particular country; the maturity of the asset; the historical and hypothetical future price volatility of the asset in stressed market conditions; the liquidity of the underlying market, 	<p>need for destabilising, procyclical changes in its margining model.³⁸²</p> <ul style="list-style-type: none"> • Haircuts. Set and enforce appropriately conservative haircuts and concentration limits for collateral.³⁸³ <p>At a minimum, mark collateral to market daily. Haircuts should reflect the potential for asset values and liquidity to decline over the interval between their last revaluation and the time by which a CCP can reasonably assume that the assets can be liquidated. Haircuts also should incorporate assumptions about collateral value during stressed market conditions and reflect regular stress testing that takes into account extreme price moves, as well as changes in market liquidity for the asset.³⁸⁴</p> <p>A CCP should use a well-designed and operationally flexible collateral management system. Such a system should accommodate changes in the ongoing monitoring and management of collateral. Where appropriate, the system should allow for the timely calculation and execution of margin calls, the management of margin call disputes, and the accurate daily reporting of levels of initial and variation margin. Further, a collateral management system should track the extent of reuse of collateral (both cash and non-cash) and the rights of a CCP to the collateral provided to it by its counterparties. Where appropriate, a CCP’s collateral management system should also have functionality to</p>	<p>Clearing Member and all Clearing Members for collateral accepted as initial margin. However, an Australian CCP must apply appropriately conservative concentration limits for collateral and avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>including bid/ask spreads: foreign exchange risk, if any; and wrong way risk). A CCP must review the haircut policies at least annually and whenever a material change occurs that affects the CCP’s risk exposure but should avoid as far as possible disruptive or big step changes that introduce procyclicality. Such procedures must be independently validated at least annually.³⁷⁵</p> <ul style="list-style-type: none"> • Concentration limits. A CCP must establish and implement policies to ensure that the collateral remains sufficiently diversified to allow its liquidation within a defined holding period without a significant market impact; such policies must include risk mitigation procedures to be applied when the concentration limits are exceeded. <p>A CCP must determine concentration limits at the levels of individual issuers, types of issuer, types of assets, each Clearing Member and all Clearing Members, in a conservative manner, taking into account all relevant criteria (including economic sector, geographic region and activity of issuers, levels of credit risk of instruments and issuers and liquidity and price volatility of instruments). Moreover, a CCP must ensure that no more than 10% of its collateral (25% if more than 50% is in the form of bank guarantees) is guaranteed by a single credit institution or entities of the same group. In calculating the limits, a CCP must include the total exposure of the CCP to an issuer (credit lines, deposits, savings accounts, money-market instruments, reverse repurchase facilities, etc.) and must aggregate and treat as a single risk its</p>	<p>accommodate the timely deposit, withdrawal, substitution and liquidation of collateral in each jurisdiction in which it operates. In particular, where the scope of Australian participation in the CCP is material, and where market conventions dictate, a CCP’s collateral management system should have the capacity to accommodate the timely deposit, withdrawal, substitution and liquidation of collateral during Australian market hours. A CCP should allocate sufficient resources to its collateral management system to ensure an appropriate level of operational performance, efficiency and effectiveness. Senior management should ensure that the CCP’s collateral management function is adequately staffed to ensure smooth operations, especially during times of market stress, and that all activities are tracked and reported, as appropriate, to senior management.³⁸⁵</p> <ul style="list-style-type: none"> • Concentration limits. Avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.³⁸⁶ <p>A CCP should avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects, including in stressed market conditions. High concentrations within holdings can be avoided by establishing concentration limits or imposing concentration charges. Concentration limits</p>	
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<p>exposures to all instruments issued by the issuer or by a group entity, explicitly guaranteed by the issuer or a group entity, as well as instruments issued by undertakings whose exclusive purpose is to own means of production that are essential for the issuer's business. A CCP must review its concentration limit policies at least annually and whenever a material change occurs that affects the risk exposure of the CCP. A CCP must inform the Competent Authority and the Clearing Members of the applicable concentration limits. It must inform the Competent Authority immediately if it breaches such limits and must rectify the breach as soon as possible.³⁷⁶</p>	<p>restrict clearing members' ability to provide certain collateral assets above a specified threshold as established by the CCP. Concentration charges penalise clearing members for maintaining holdings of certain assets beyond a specified threshold as established by the CCP. Further, concentration limits and charges should be constructed to prevent clearing members from covering a large share of their collateral requirements with the most risky assets acceptable. Concentration limits and charges should be periodically reviewed by the CCP to determine their adequacy.³⁸⁷</p>	
<p>Investment policy</p> <p>A CCP's investments must be capable of being liquidated rapidly with minimal adverse price effect. Capital not invested in accordance with these rules must not be taken into account for purposes of capital requirement under EMIR, Art. 16 or the default waterfall under EMIR, Art. 45(4).</p> <p>A CCP may not invest its capital or the sums arising from the requirements laid down in Article 41, 42, 43 or 44 (margin, default fund, dedicated own resources, liquidity risk management) in its own securities or those of its parent undertaking or its subsidiaries.³⁸⁸</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. A CCP must only invest its financial resources in cash or highly liquid financial instruments with minimal 	<p>Investment policy</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Highly liquid financial instruments. Safeguard their own and their clearing members' assets and minimise the risk of loss on and delay in access to these assets through: <ul style="list-style-type: none"> ○ instruments with minimal credit, market and liquidity risks³⁹⁵; and ○ investments in a manner that ensures the CCP has prompt access when required.³⁹⁶ <p>A CCP's strategy for investing its own and its clearing members' assets should be consistent with its overall risk management strategy and</p>	<p>Investment policy</p> <p><i>The Australian regime for CCPs includes investment policy requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those of EMIR.</i></p> <p>The Australian regime is not as prescriptive as EMIR with regards to the criteria for the financial instruments in which a CCP may invest. However an Australian CCP is restricted to investing in only those financial instruments with low credit, liquidity and market risks which are the underlying minimum criteria under EMIR. . On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>

<p>market and credit risk. Only debt instruments with low credit and market risk are eligible investments and only where they are issued or guaranteed by a government, central bank, multilateral development bank, the EFSF or the ESM; the debt instruments must be freely transferable, with price data published regularly and with a diverse group of buyers and sellers including in stressed conditions. The average time-to-maturity of the CCP’s portfolio must not exceed two years and the currency of the debt instruments must be one in which the CCP clears transactions or is able to risk manage. Derivative contracts can only be invested in by a CCP as part of the CCP’s default management procedure.³⁸⁹</p> <ul style="list-style-type: none"> • Highly secured arrangements for the deposit of financial instruments. Financial instruments posted with a CCP as margin or default fund contributions must be deposited with operators of securities settlement systems that ensure the full protection of such financial instruments. If unavailable, other highly secure arrangements at a central bank or an authorised financial institution may be used (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions).³⁹⁰ • Highly secured arrangements for maintaining cash. Cash may only be deposited by a CCP through the use of central banks’ standing deposit facilities or through highly secure arrangements with authorised financial institutions (subject to the institution having low credit risk and, in the case of 	<p>fully disclosed to its clearing members. When making its investment choices, the CCP should not allow pursuit of profit to compromise its financial soundness and liquidity risk management. Within these parameters, a central counterparty should, to the extent reasonably practicable, have a high degree of confidence that its own capital would be sufficient to withstand losses associated with the failure of any individual non-government investment counterparty.³⁹⁷</p> <p>Although not explicitly stated in CCP Standard 15.4 or associated guidance (15.4.1), the RBA will interpret this requirement as applying in all market conditions, including in periods of market stress. Furthermore, since CCP Standard 15.4 also requires that a CCP’s investment strategy should be “consistent with its overall risk management strategy” and that “investments should be secured by, or be claims on, high-quality obligors”, and since the guidance (15.4.1) notes that investments should be subject to appropriate controls for wrong-way risk, the RBA would not consider investments in a CCP’s own, or an affiliated entity’s, securities to be consistent with these requirements.³⁹⁸</p> <p>Because the value of a CCP’s investments may need to be realised quickly, investments should allow for quick liquidation with little, if any, adverse price effect. For example, a CCP could invest in overnight reverse repo agreements backed by liquid securities with low credit risk.³⁹⁹</p> <ul style="list-style-type: none"> • Highly secured arrangements for the 	<p>The third party entities at which a CCP deposits its own and its clearing member’s assets are not required to be the operators of securities settlement systems except where such systems are not available to the CCP. However, the market structure in Australia is such that financial instruments which may be accepted by a CCP as collateral and financial instruments in which a CCP may invest are already deposited with the operator of a securities settlement system. In Australia debt securities are held at ASX Austraclear which is the sole central securities depository for debt securities in Australia. Equity securities are held at the Clearing House Electronic Settlement System (CHES) which is the sole securities depository for equity and equity-related securities. The policy objective of EMIR is therefore already achieved in Australia through the existing market structure.</p> <p>Under EMIR, where a CCP maintains cash other than with a central bank it is required to collateralise 95% of such cash. The Australian regime does not include such a requirement.</p> <p>The RBA has previously encouraged Australian CCPs to review possible measures to reduce the size and concentration of their unsecured exposures to the large domestic Australian banks. Alternative measures considered include disincentivising the use of cash collateral and increasing investment on a secured basis by entering into repurchase arrangements backed by Commonwealth Government Securities (CGS). It was, however, determined at that time that a lack of depth in the CGS market at</p>
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<p>third-country institutions, robust accounting practices, internal controls and segregation provisions). Where secure arrangements with authorised financial institutions are used then the deposit must be in a currency in which the CCP clears transactions or is able to risk manage and at least 95% of the cash must be collateralised with highly liquid financial instruments meeting most of the requirements under Article 45³⁹¹.</p> <p>Where a CCP deposits assets with a third party, it must ensure that the assets belonging to the Clearing Members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP must have prompt access to the financial instruments when required.³⁹²</p> <ul style="list-style-type: none"> • Concentration limits. A CCP must take into account its overall credit risk exposures to individual obligors in making its investment decisions and must ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.³⁹³ A CCP must establish and implement policies and procedures to ensure that the financial instruments in which its resources are invested remain sufficiently diversified. To this effect, a CCP must determine concentration limits at the levels of individual financial instruments, types of financial instruments, individual issuers, types of issuers, and counterparties with which financial instruments and cash have been deposited on a highly 	<p>deposit of financial instruments. Hold their own and their clearing member’s assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures and internal controls that fully protect these assets. Assets held in custody should be protected against claims of a custodian's creditors. The custodian should have a sound legal basis supporting its activities, including the segregation of assets. The custodian also should have a strong financial position to be able to sustain losses from operational problems or ancillary non-custodial activities. ⁴⁰⁰</p> <ul style="list-style-type: none"> • A CCP has the responsibility to safeguard its assets, such as cash and securities, as well as the assets that its clearing members have provided to the CCP. Assets that are used by a CCP to support its operating funds or capital funds or that have been provided by clearing members to secure their obligations to the CCP should be held at supervised or regulated entities that have strong processes, systems and credit profiles, including other FMIs (for example, central securities depositories). In addition, assets should generally be held in a manner that assures the CCP of prompt access to those assets in the event that the CCP needs to draw on them. ⁴⁰¹ <p>Have an investment strategy that is consistent with the CCP’s overall risk management strategy and be fully disclosed to its clearing members, and investments should be secured by, or</p>	<p>that time would limit the ability to achieve secured investment without having an adverse liquidity risk implication for the CCPs.</p> <p>However, in light of a decrease in cash margins held by Australian CCPs, increased issuance of CGS and greater depth in the Australian repo market, the RBA has now requested Australian CCPs to revisit their investment policies to reduce the size and concentration of their unsecured exposures. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>
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<p>secured basis, taking into account relevant factors such as geographic distribution, interdependencies and multiple relationships that a CCP may have with a CCP, level of credit risk and exposures to the issuer through products cleared by the CCP. In calculating the limits for exposure to an issuer or custodian, a CCP must aggregate and treat as a single risk its exposures to all instruments issued by, or explicitly guaranteed by the issuer and all financial resources deposited with the custodian. A CCP must review its concentration limit policies at least annually and whenever a material change occurs that affects the risk exposure of the CCP. A CCP must inform the Competent Authority and the Clearing Members of the applicable concentration limits. It must inform the Competent Authority immediately if it breaches such limits and must rectify the breach as soon as possible.³⁹⁴</p>	<p>be claims on, high-quality obligors. These investments should allow for quick liquidation with little, if any, adverse price effect.⁴⁰²</p> <p>Although not explicitly stated in CCP Standard 15.4 or associated guidance (15.4.1), the RBA will interpret this requirement as applying in all market conditions, including in periods of market stress. Furthermore, since CCP Standard 15.4 also requires that a CCP’s investment strategy should be “consistent with its overall risk management strategy” and that “investments should be secured by, or be claims on, high-quality obligors”, and since the guidance (15.4.1) notes that investments should be subject to appropriate controls for wrong-way risk, the RBA would not consider investments in a CCP’s own, or an affiliated entity’s, securities to be consistent with these requirements.⁴⁰³</p> <ul style="list-style-type: none"> • Highly secured arrangements for maintaining cash. Deposit cash: <ul style="list-style-type: none"> ○ through central bank facilities – an Exchange Settlement Account⁴⁰⁴; and ○ in a way that imposes conservative limits on the size and concentration of counterparty exposures⁴⁰⁵. <p>Have a legal basis that clearly defines the rights and interests of a CCP, its clearing members, and, where relevant, its clearing members’ customers in the financial instruments, such as cash and securities, or other relevant assets held in custody, directly or indirectly, by the CCP. It is not sufficient for key rights and obli-</p>	
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	<p>gations to be implied. The legal basis should fully protect both a clearing member's assets held in custody by the CCP and, where appropriate, a clearing member's customer's assets held by or through the CCP, from the insolvency of relevant parties and other relevant risks. It should also protect these assets when held at a custodian or linked FMI. In particular, the legal basis should protect the assets and positions of a clearing member's customers. In addition, the legal basis should provide certainty with respect to: a CCP's interests in, and rights to use and dispose of, collateral; a CCP's authority to transfer ownership rights or property interests; and a CCP's rights to make and receive payments, in all cases, notwithstanding the bankruptcy or insolvency of its clearing members, clearing members' customers, or a custodian bank. Also, the CCP should structure its operations so that its claims against collateral provided to it by a clearing member should have priority over all other claims, and the claims of the clearing member to that same collateral should have priority over the claims of third-party creditors.⁴⁰⁶</p> <p>Evaluate and understand its exposures to custodians, taking into account the full scope of its relationships⁴⁰⁷.</p> <ul style="list-style-type: none"> • Concentration limits. Must ensure collateral is invested in a way that imposes conservative limits on the size and concentration of counterparty exposures⁴⁰⁸. 	
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	<ul style="list-style-type: none"> • A CCP should evaluate and understand its exposures to its custodians, taking into account the full scope of its relationships with each custodian. A CCP should carefully consider all of its relationships with a particular custodian to ensure that its overall risk exposure to an individual custodian remains within acceptable limits. Where feasible, a CCP could consider using multiple custodians for the safekeeping of its assets to diversify its exposure to any single custodian. In any event, a CCP should monitor the concentration of risk exposures to, and financial condition of, its custodians on an ongoing basis.⁴⁰⁹ • This implies the imposition of conservative limits on the size and concentration of counterparty exposures. In considering its overall credit risk exposures to individual obligors, a CCP should also take into account other relationships with the obligor that create additional exposures, such as where an obligor is also a clearing member or an affiliate of a clearing member in the CCP. In addition, a CCP should ensure that any investment of clearing member assets in the securities of clearing members or their affiliates is subject to appropriate controls for specific wrong-way risk.⁴¹⁰ • Although not explicitly stated in CCP Standard 15.4 or associated guidance (15.4.1), the RBA will interpret this requirement as applying in all market conditions, including in periods of market stress. Furthermore, since CCP Standard 15.4 also requires that a CCP's investment strat- 	
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	<p>egy should be “consistent with its overall risk management strategy” and that “investments should be secured by, or be claims on, high-quality obligors”, and since the guidance (15.4.1) notes that investments should be subject to appropriate controls for wrong-way risk, the RBA would not consider investments in a CCP’s own, or an affiliated entity’s, securities to be consistent with these requirements. ⁴¹¹</p>	
<p>Default procedures</p> <p>A CCP must have detailed procedures in place to be followed where a Clearing Member does not comply with the participation requirements of the CCP within the time limit and in accordance with the procedures established by the CCP. The CCP must set out in detail the procedures to be followed in the event the default of a Clearing Member is not declared by the CCP. Those procedures must be reviewed annually.⁴¹²</p> <p>A CCP must take prompt action to contain losses and liquidity pressures arising from defaults, and must ensure that the closing out of any Clearing Member’s positions does not disrupt its operations or expose non-defaulting Clearing Members to losses that they cannot anticipate or control.⁴¹³</p> <p>Where a CCP considers that a Clearing Member will not be able to meet its future obligations, it must promptly inform the competent authority before the default procedure is declared or triggered. The competent authority must promptly communicate that information to ESMA, to the relevant members of the ESCB and to</p>	<p>Default procedures</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide:</i></p> <p>A CCP must give written notice to ASIC, as soon as practicable, if the CCP has reason to suspect that a clearing member has committed, is committing, or is about to commit a significant contravention of the CCP’s rules.⁴¹⁹</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Maintain effective and clearly defined default rules and procedures that enable the CCP to manage a clearing member default, ensure that the CCP can take timely action to contain losses and liquidity pressures and continue to meet its obligations in the event of a clearing member default, and that address the replenishment of resources following a default. CCPs should have the ability to close out, hedge or transfer, a 	<p>Default procedures</p> <p><i>The Australian regime for CCPs includes default procedure requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those in EMIR.</i></p> <p>EMIR contemplates different mechanisms for the transfer of client positions upon a clearing member default, based on the type of segregation, whereas the Australian regime does not draw such a distinction. However, an Australian CCP is required to structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting clearing member’s clients will be transferred to one or more other clearing members. Combined with the segregation and portability requirements which are assessed to be broadly equivalent, on balance the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p>

<p>the authority responsible for the supervision of the defaulting Clearing Member.⁴¹⁴</p> <p>A CCP must verify that its default procedures are enforceable, and take all reasonable steps to ensure that it has the legal power to liquidate the proprietary positions of the Defaulting Clearing Member and to transfer or liquidate the positions of the Clients of the Defaulting Clearing Member.⁴¹⁵</p> <p>Where a CCP keeps records and accounts for a Clearing Member on an:</p> <ul style="list-style-type: none"> • omnibus client segregation basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for its clients to another Clearing Member designated by all those Clients, on their request and without the need for the Defaulting Clearing Member’s consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Clients to do so. If for any reason such transfer does not take place within the timeframe specified in the CCP’s operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the Defaulting Clearing Member for the relevant Clients.⁴¹⁶ • individual client segregation basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for the ac- 	<p>clearing member’s open contracts in order to appropriately control risk that a clearing member:</p> <ul style="list-style-type: none"> (i) Becomes subject to external administration; or (ii) Breaches a risk control requirement of the CCP.⁴²⁰ <ul style="list-style-type: none"> • Have rules, procedures and contracts that are enforceable in all relevant jurisdictions. There should be a high degree of certainty that actions taken by the CCP under such rules and procedures will not be voided, reversed or subject to stays, including in the event that the CCP enters into external administration or that one or more of its clearing members defaults or is suspended.⁴²¹ • Have default rules and procedures that enable the CCP to take timely action to contain losses and liquidity pressures, before, at and after the point of clearing member default. Specifically, a CCP’s rules and procedures should allow the CCP to use promptly any financial resources that it maintains for covering losses and containing liquidity pressures arising from default, including liquidity facilities.⁴²² • Structure their portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting clearing member’s customers will be transferred to one or more other clearing members.⁴²³ 	
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<p>count of the relevant Client to another Clearing Member designated by the Client, on its request and without the need for the Defaulting Clearing Member's consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Client to do so. It for any reason such transfer does not take place within the timeframe specified in the CCP's operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the Defaulting Clearing Member for the Client. ⁴¹⁷</p> <p>Clients' collateral distinguished by a CCP in accordance with EMIR's requirements for omnibus client segregation and individual client segregation must be used only to cover positions held for their account. Any balance owed by the CCP after the completion of a Defaulting Clearing Member's default management process must be returned to those Clients (if known to the CCP), or to the Clearing Member for the account of its Clients (if not).⁴¹⁸</p>	<ul style="list-style-type: none"> • Disclose their rules, policies and procedures relating to the segregation of a clearing member's customers' positions and related collateral. In particular, any constraints, such as legal or operational constraints, that may impair its ability to segregate or port a clearing member's customers' positions and related collateral. ⁴²⁴ • Inform the RBA as soon as reasonably practicable if a clearing member defaults or if the CCP has reasonable grounds for suspecting that a clearing member will not be able to meet its future obligations. ⁴²⁵ 	
<p>Review of models, stress testing and back testing</p> <ul style="list-style-type: none"> • Model validation and testing programmes. A CCP must regularly review the models and parameters it has adopted to calculate margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. Such models must be subject to frequent stress tests 	<p>Review of models, stress testing and back testing</p> <p><i>Under the Corporations Act, as articulated in the ASIC Regulatory Guide:</i></p> <ul style="list-style-type: none"> • If the CCP provides services relating to financial products traded in the OTC markets and those financial products are not traded on a licensed 	<p>Review of models, stress testing and back testing</p> <p><i>The Australian regime for CCPs includes review of models, stress testing and back testing requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those in EMIR.</i></p>

<p>to assess resilience in extreme but plausible market conditions and back tests to assess the reliability of the underlying methodology. Material revisions or adjustments to the CCP's models and parameters, valuation models and validation policies should be subject to risk committee review, independent validation and validation from the CCP's Competent Authority and ESMA. The adopted models and parameters, including any significant change thereto, must be subject to an opinion of the college pursuant to Article 19 of EMIR. ESMA will ensure that information on the results of the stress tests is passed on to the ESAs to enable them to assess the exposure of financial undertakings to the default of CCPs. A CCP shall regularly assess the theoretical and empirical properties of its models.⁴²⁶</p> <ul style="list-style-type: none"> • Back testing. A CCP must have in place a programme in relation to back testing of margin coverage on a daily basis based on an ex-post comparison of observed outcomes with expected outcomes derived from margin models. Back testing results must be periodically reported to the risk committee and made available to clearing member and clients.⁴²⁷ • Sensitivity testing and analysis. A CCP must have in place a programme in relation to sensitivity testing and analysis to assess the coverage of the margin model under various market conditions, including realized stressed market conditions and hypothetical unrealized stressed market conditions, and to determine the sensitivity of the system to errors in the calibration of such parameters and assumptions.⁴²⁸ Sensitivity analysis must be per- 	<p>market, or the traded price and other post-trade data of those products are not readily available to the public in general, in order to ensure a transparent clearing and settlement process, ASIC may require the CCP to make available to the current and potential users of the CCP and to ASIC:</p> <ul style="list-style-type: none"> ○ all end-of-day settlement prices of those products that are used for margin calculation; ○ aggregate open interests of those products accepted for clearing and settlement by the CCP; ○ any other pricing or valuation information on those products; and ○ any other information that is necessary to enable the current and potential users of the CCP to evaluate the costs and risks associated with using the CCP.⁴³⁶ <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Model validation and testing programmes. Independently validate, on an ongoing basis, the models and their methodologies used to quantify, aggregate and manage the CCP's risks. Such validation including an evaluation of the conceptual soundness of (including developmental evidence supporting) the mod- 	<p>In particular, an Australian CCP is not specifically required to submit material revisions or adjustments to its models to its risk committee or to submit the results of back testing to its risk committee or clearing members; however, the board of a CCP is required to ensure that there is adequate governance surrounding the adoption, use and changes to, its models, and a CCP's governance arrangements should provide for consultation and stakeholder engagement through appropriate forums on risk controls. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>An Australian CCP is not specifically required to test its collateral haircut policies at least monthly but is required to do so regularly, and to have such policies independently validated annually. On balance, the objectives of the Australian regime are broadly equivalent to the objectives of the EMIR regime.</p> <p>An Australian CCP is not specifically required to publicly disclose the nature of the tests it performs, a high level summary of test results or any corrective actions undertaken. However, Australian CCPs are required to publicly disclose information on the CCP's risk management framework including its margin methodology and assumptions, financial condition, financial resources to withstand potential losses, margin and collateral holdings, prefunded default resources, and liquid resources. On balance, the objectives of the Australian regime are broadly</p>
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<p>formed on a number of actual and representative clearing member portfolios. Back testing results must be periodically reported to the risk committee.</p> <ul style="list-style-type: none"> • Stress testing – total and liquid financial resources. A CCP must have in place a programme to stress test its total financial resources and liquid financial resources to ensure that they are sufficient⁴²⁹. • Maintaining sufficient coverage. A CCP must have in place a programme to recognise changes in market conditions and, if necessary, to adapt its margin requirements, including the haircuts it imposes⁴³⁰. • Review of models using test results. A CCP must have in place a programme to review the coverage provided by its margin models and, if necessary, to recalibrate them⁴³¹. • Reverse stress tests. A CCP must have in place a reverse stress testing programme designed to identify under which market conditions the combination of its margin, default fund and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modelling extreme market conditions beyond what is considered plausible. The results of the stress testing programme should periodically be reported to the risk committee.⁴³² • Testing default procedures. A CCP must regularly test the key aspects of its default procedures, 	<p>els; an on-going monitoring process that includes verification of processes and benchmarking; and an analysis of outcomes that includes back-testing.⁴³⁷</p> <p>Independently validate its haircut procedures at least annually.⁴³⁸</p> <p>Have clearly documented and effective rules and procedures to report stress-test information to appropriate decision makers.⁴³⁹</p> <p>Report to the RBA, on a regular basis and at least quarterly, risk management reports, including detailed information on margining and stress testing and any other information as specified by the RBA from time to time.⁴⁴⁰</p> <p>Ensure (an obligation on the board of the CCP) that there is adequate governance surrounding the adoption and use of models, such as for credit, collateral, margining and liquidity risk management systems.⁴⁴¹</p> <p>Governance arrangements should provide for consultation and stakeholder engagement through appropriate forums on operational arrangements, risk controls and default management rules and procedures. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.⁴⁴²</p> <p>A CCP should inform the RBA in a timely manner of any events or changes to its operations or circumstances that may materially impact its</p>	<p>equivalent to the objectives of the EMIR regime.</p>
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<p>and take all reasonable steps to ensure that Clearing Members (and, where relevant, Clients, service providers and Interoperable CCPs) understand them and have appropriate procedures in place to respond to a default.⁴³³</p> <ul style="list-style-type: none"> • Frequency. A CCP must conduct a comprehensive validation of its models and their methodologies, its liquidity risk management framework, valuation models, correlation performance in relation to portfolio margining and testing programmes at least annually. A CCP must analyse and monitor its model performance and financial resources coverage in the event of default and its liquidity risk management framework by back-testing margin coverage and conducting stress tests at least daily. A CCP must conduct a detailed thorough analysis of testing results at least monthly (and more frequently if market conditions are stressed or expected to be stressed) to ensure that stress testing scenarios, models, underlying parameters and assumptions are correct. A CCP must conduct sensitivity analysis at least monthly (and more frequently if markets are unusually volatile or less liquid). A CCP must test collateral haircut policies at least monthly. A CCP must conduct reverse stress tests and review its default procedures at least quarterly with simulation exercises at least annually.⁴³⁴ • Information to be publicly disclosed. A CCP must publicly disclose the general principles underlying its models and their methodologies, the nature of the tests performed, and a high level summary of the test results and any corrective actions undertaken 	<p>management of risks or ability to continue operations.⁴⁴³</p> <ul style="list-style-type: none"> • Back testing. Independently validate, on an on-going basis, the models and their methodologies used to quantify, aggregate and manage the CCP’s risks. Such validation including an evaluation of the conceptual soundness of (including developmental evidence supporting) the models; an on-going monitoring process that includes verification of processes and benchmarking; and an analysis of outcomes that includes back-testing.⁴⁴⁴ • Sensitivity testing and analysis, stress testing – total and liquid financial resources and review of models using test results. Through rigorous stress testing, determine the amount and regularly test the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions. A full validation of a CCP’s risk management model should be performed at least annually. Stress tests should be performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, CCPs should perform a comprehensive and thorough analysis of stress-testing scenarios, models and underlying parameters and assumptions used. CCPs should perform this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentra- 	
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<p>en. A CCP must also make available key aspects of its default procedures, including: (i) the circumstances in which action may be taken and by whom, (ii) the scope of actions which may be taken; (iii) mechanisms to address a CCP’s obligations to non-defaulting Clearing Members; and (iv) mechanisms to help address the Defaulting Clearing Member’s obligations to its Clients.⁴³⁵</p>	<p>tion of positions held by a CCP’s clearing members increases significantly. A full validation of a CCP’s risk management model should be performed at least annually.⁴⁴⁵</p> <ul style="list-style-type: none"> • Maintaining sufficient coverage. Establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions. ⁴⁴⁶ • Reverse stress tests. Conduct, as appropriate, reverse stress tests aimed at identifying the extreme scenarios and market conditions in which its total financial resources would not provide sufficient coverage of tail risk. Such reverse stress tests requiring a CCP to model hypothetical positions and extreme market conditions that may go beyond what are considered extreme but plausible market conditions in order to help understand margin calculations and the sufficiency of financial resources given the underlying assumptions modelled. ⁴⁴⁷ • Testing default procedures. Test and review its default procedures, including any close out procedures at least annually and following material changes to the rules and procedures to ensure that they are practical and effective, with such testing involving clearing members and other stakeholders, including members of the appropriate board committees, clearing members, linked or interdependent FMIs, the RBA and other relevant authorities, and any related service providers. The results of 	
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	<p>these tests and reviews are to be shared with the CCP's board of directors, risk committee, the RBA and other relevant authorities.⁴⁴⁸</p> <ul style="list-style-type: none"> <p>Information to be publicly disclosed. Publicly disclose key aspects of its default rules and procedures, including: the circumstances in which action may be taken; who may take those actions; the scope of the actions which may be taken, including the treatment of both proprietary and customer positions, funds and other assets; the mechanisms to address a CCP's obligations to non-defaulting clearing members; and, where direct relationships exist with clearing members' customers, the mechanisms to help address the defaulting clearing member's obligations to its customers.⁴⁴⁹</p> <p>Publicly disclose general information on the CCP's full range of activities and operations, such as the names of direct clearing members, key times and dates in its operations, and its overall risk management framework (including its margin methodology and assumptions), the CCP's financial condition, financial resources to withstand potential losses, timeliness of settlements, and other performance statistics. With respect to data, at a minimum, basic data on transaction volumes and values, margin and collateral holdings, prefunded default resources, and liquid resources. Also any additional data that the RBA may direct it to disclose from time to time.⁴⁵⁰</p> 	
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	<p>The margin methodology, including the initial margin models and parameters used by a CCP, should be made as transparent as possible. At a minimum, the basic assumptions of the analytical method selected and the key data inputs should be disclosed to clearing members. A CCP should make details of its margin methodology available to its clearing members for use in their individual risk management efforts.⁴⁵¹</p>	
<p>Settlement</p> <ul style="list-style-type: none"> • Cash settlement risk. A CCP must, where practical and available, use central bank money to settle its transactions. Where central bank money is not used, steps must be taken to limit cash settlement risk.⁴⁵² • Securities settlement risk. A CCP must clearly state its obligations with regard to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of such instruments. If so, it must (as far as possible) eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.⁴⁵³ • Settlement finality rules also apply in accordance with the Settlement Finality Directive⁴⁵⁴. 	<p>Settlement</p> <p><i>Under the RBA Financial Stability Standards for Central Counterparties, CCPs are required to:</i></p> <ul style="list-style-type: none"> • Cash settlement risk. Use central bank money to settle transactions where practical and available to avoid credit and liquidity risks.⁴⁵⁵ • Ensure clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, a CCP should facilitate final settlement intraday or in real-time.⁴⁵⁶ • Securities settlement risk. Clearly state their obligations with respect to the delivery of physical instruments or commodities and should identify, monitor and manage the risks associated with these deliveries.⁴⁵⁷ • Eliminate principal risk associated with the settlement of linked obligations by ensuring that it employs an appropriate delivery versus payment (DvP), delivery versus delivery (DvD) or payment versus payment (PvP) settlement mechanism.⁴⁵⁸ 	<p>Settlement</p> <p><i>The Australian regime for CCPs includes settlement requirements which are applicable, at a jurisdictional level, to CCPs in Australia, and which are broadly equivalent to those in EMIR.</i></p>



¹ The Minister's power of disallowance of operating rule changes relates only to domestic CCPs licensed under s824B(1) of the Corporations Act

² In practice, ASIC's assessment reports with regards to CCPs within the ASX group have formed part of its broader market assessment of market licensees, and clearing and settlement facility licensees, within that group.

³ Under section 824B(2) of the Corporations Act 2001

⁴ ASIC Regulatory Guidance 211.114

⁵ In accordance with its obligations under section 823CA of the Corporations Act 2001 - <http://www.rba.gov.au/payments-system/clearing-settlement/standards/201212-new-fss-ris/pdf/attachment-6.pdf>

⁶ Section 821B(3) of the Corporations Act 2001

⁷ ASIC Regulatory Guidance 211.173

⁸ Section 821BA(1) of the Corporations Act 2001

⁹ RBA FSS 21.1

¹⁰ <http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2013/Council%20of%20Financial%20Regulators%20advice%20on%20competition/Downloads/Letter%20-%20CFR%20to%20DPM.ashx>

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<http://ministers.treasury.gov.au/wmsDisplayDocs.aspx?doc=pressreleases/2013/022.htm&PageID=003&min=wms&Year=&DocType=0>

¹² <http://www.rba.gov.au/payments-system/clearing-settlement/standards/201212-new-fss-ris/index.html> .

¹³ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.

¹⁴ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf> .

¹⁵ EMIR, Art. 26(1) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3 and 4.

¹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).

¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).

¹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(7).

¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(5).

²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(3).

²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 12 and Art. 3(4).

²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(1).

²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(2).

²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(4).

²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(5).

²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(6).

²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(7).

²⁸ EMIR, Art. 26(2) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5(1).

²⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5.

³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(1).

³¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(2).

³² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(3).

³³ EMIR, Art. 26(4).

³⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(6).

³⁵ EMIR, Art. 26(5).

³⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(1) to (3).

³⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(4).

³⁸ EMIR, Art. 26(6).

³⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.

⁴⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.

⁴¹ EMIR, Art. 26(7); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 10.

⁴² EMIR, Art. 26(8).

⁴³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(1) to (4).

⁴⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(5).

⁴⁵ RBA FSS 2

⁴⁶ RBA FSS 2.2

⁴⁷ RBA FSS 2.3

⁴⁸ RBA FSS 2.4

⁴⁹ RBA FSS 2.2.3

⁵⁰ RBA FSS 2.3.1

⁵¹ RBA FSS 2.9

⁵² RBA FSS 2.9.1

⁵³ RBA FSS Guidance 2.6.3

⁵⁴ RBA FSS 3.1

⁵⁵ RBA FSS 3.1.1

⁵⁶ RBA FSS 2.6

⁵⁷ Section 821A of the Corporations Act 2001

⁵⁸ ASIC Regulatory Guide 211.184

⁵⁹ ASIC Regulatory Guide 211.185

- ⁶⁰ ASIC Regulatory Guide 211.189
⁶¹ ASIC Regulatory Guide 211.186
⁶² ASIC Regulatory Guide 211.187
⁶³ ASIC Regulatory Guide 211.188
⁶⁴ RBA FSS 16.4
⁶⁵ RBA FSS 2.2
⁶⁶ RBA FSS 2.3
⁶⁷ RBA FSS 2.4
⁶⁸ RBA FSS 2.5
⁶⁹ RBA FSS Guidance 2.6.3
⁷⁰ RBA FSS 2.5
⁷¹ RBA FSS 16.3
⁷² RBA FSS 16.9
- ⁷⁴ RBA FSS 1.3
⁷⁵ RBA FSS 20
⁷⁶ RBA FSS 2.8
⁷⁷ RBA FSS 2.2
⁷⁸ RBA FSS 19.4.6
⁷⁹ RBA FSS 20
⁸⁰ RBA FSS 20.4
⁸¹ RBA FSS 2
⁸² RBA FSS Guidance 20.5.2
⁸³ RBA FSS Guidance 13.4.1
⁸⁴ RBA FSS 2.7
⁸⁵ RBA FSS Guidance 2.7.1
⁸⁶ EMIR, Art. 27(1).
⁸⁷ EMIR, Art. 27(2).
⁸⁸ EMIR, Art. 2(28).
⁸⁹ EMIR, Art. 27(2).
⁹⁰ EMIR, Art. 27(3).
⁹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(3).
⁹² Corporations Act 2001 Regulation 7.3.01
⁹³ Section 821C(1) and (2) of the Corporations Act 2001 gives ASIC the power to inspect such documents. Section 821C(3) and (4) gives the RBA the power to inspect such documents.
⁹⁴ Section 853C of the Corporations Act 2001.
⁹⁵ RBA FSS 2.2
⁹⁶ RBA FSS 2.4
⁹⁷ RBA FSS 2.6
⁹⁸ RBA FSS Guidance 2.3.2
⁹⁹ RBA FSS Guidance 2.4.1
¹⁰⁰ RBA FSS 2.5
¹⁰¹ RBA FSS 2.5
¹⁰² RBA FSS 2.8
¹⁰³ RBA FSS Guidance 13.4.1
¹⁰⁴ EMIR, Art. 28(1).
¹⁰⁵ EMIR, Art. 28(2).
¹⁰⁶ EMIR, Art. 28(3).
¹⁰⁷ RBA FSS Guidance 2.3.2
¹⁰⁸ RBA FSS 2.6
¹⁰⁹ RBA FSS Guidance 2.6.3
¹¹⁰ RBA FSS 2.8
¹¹¹ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
¹¹² RBA FSS 21
¹¹³ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
¹¹⁴ EMIR, Art. 29(1).
¹¹⁵ EMIR, Art. 29(2).
¹¹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 12.
¹¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 16.
¹¹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 13.
¹¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 14.
¹²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 15.
¹²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 16.
¹²² RBA FSS 20.5
¹²³ RBA FSS 2
¹²⁴ <http://www.comlaw.gov.au/Details/F2013L01345>
¹²⁵ Section 286 of the Corporations Act 2001.

- ¹²⁶ <http://www.comlaw.gov.au/Details/F2013L01345>
- ¹²⁷ Seciton 286 of the Corporations Act 2001.
- ¹²⁸ Corporations Act 2001 Regulation 7.4.03
- ¹²⁹ Corporations Act 2001 Regulation 7.4.03
- ¹³⁰ Corporations Act 2001 Regulation 7.3.06(d)
- ¹³¹ Seciton 286 of the Corporations Act 2001.
- ¹³² Section 9 of the Corporations Act 2001.
- ¹³³ Seciton 821E of the Corporations Act 2001 and Corporations Regulation 7.3.04.
- ¹³⁴ <http://www.comlaw.gov.au/Details/F2013L01345>
- ¹³⁵ Any direct or indirect holding in a CCP representing at least 10% of its voting rights or capital, as set out in Articles 9 and 10 of Directive 2004/109/EC; EMIR, Art. 2(20).
- ¹³⁶ EMIR, Art. 30(1).
- ¹³⁷ EMIR, Art. 30(2).
- ¹³⁸ EMIR, Art. 30(4).
- ¹³⁹ EMIR, Art. 30(3).
- ¹⁴⁰ EMIR, Art. 30(5).
- ¹⁴¹ Part 7.4, Division 2 of the Corporations Act 2001
- ¹⁴² Seciton 821A(g) of the Corporations Act 2001
- ¹⁴³ Section 821A(h) of the Corporations Act 2001
- ¹⁴⁴ Sections 824B and 827A of the Corporations Act 2001
- ¹⁴⁵ Sections 853 of the Corporations Act 2001
- ¹⁴⁶ RBA FSS 2.2
- ¹⁴⁷ EMIR, Art. 31(1).
- ¹⁴⁸ EMIR, Art. 31(1).
- ¹⁴⁹ Any direct or indirect holding in a CCP representing at least 10% of its voting rights or capital, as set out in Articles 9 and 10 of Directive 2004/109/EC; EMIR, Art. 2(20).
- ¹⁵⁰ EMIR, Art. 31(2).
- ¹⁵¹ EMIR, Art. 31(3).
- ¹⁵² EMIR, Art. 31(5) and (6).
- ¹⁵³ Section 821B(4) of the Corporations Act 2001
- ¹⁵⁴ Corporations Act 2001 Regulations 7.3.01 and 7.3.02
- ¹⁵⁵ Part 7.4, Division 2 of the Corporations Act 2001
- ¹⁵⁶ Sections 853 of the Corporations Act 2001
- ¹⁵⁷ RBA FSS 21.1
- ¹⁵⁸ EMIR, Art. 32(1).
- ¹⁵⁹ EMIR, Art. 32(2).
- ¹⁶⁰ EMIR, Art. 32(3).
- ¹⁶¹ EMIR, Art. 32(4).
- ¹⁶² EMIR., Art. 32(6), (7).
- ¹⁶³ Part 7.4, Division 2 of the Corporations Act 2001
- ¹⁶⁴ Part 7.4, Division 2 of the Corporations Act 2001 and section 851B of the Corporations Act 2001
- ¹⁶⁵ Sections 853 of the Corporations Act 2001
- ¹⁶⁶ Sections 824B and 827A of the Corporations Act 2001
- ¹⁶⁷ Section 853C of the Corporations Act 2001.
- ¹⁶⁸ Where the CCP is a parent or subsidiary undertaking, these written arrangements should also take into account any circumstances of which the CCP is or should be aware which may give rise to conflicts of interest arising as a result of the structure and business activities of other undertakings with which it has a parent or subsidiary undertaking relationship; EMIR Art. 33(3).
- ¹⁶⁹ EMIR, Art. 33(1).
- ¹⁷⁰ EMIR, Art. 33(2).
- ¹⁷¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 13.
- ¹⁷² Sections 181-184 of the Corporations Act 2001
- ¹⁷³ Section 821A(c)(i) of the Corporations Act 2001
- ¹⁷⁴ ASIC Regulatory Guide 211.182
- ¹⁷⁵ ASIC Regulatory Guide 211.183
- ¹⁷⁶ RBA FSS 2.3
- ¹⁷⁷ RBA FSS Guidance 2.7.1
- ¹⁷⁸ RBA FSS 2.8
- ¹⁷⁹ RBA FSS 2.0
- ¹⁸⁰ RBA FSS 2.2.3
- ¹⁸¹ RBA FSS 2.3.1
- ¹⁸² RBA FSS 2.9
- ¹⁸³ RBA FSS 2.9.1
- ¹⁸⁴ EMIR, Art. 26(3).
- ¹⁸⁵ EMIR, Art. 34 (1) and (2).
- ¹⁸⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 17.
- ¹⁸⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 18.
- ¹⁸⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 19.
- ¹⁸⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 20.
- ¹⁹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 21.
- ¹⁹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 22.

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- ¹⁹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 23.
¹⁹³ ASIC Regulatory Guide 211.222-226
¹⁹⁴ RBA FSS 2.6
¹⁹⁵ RBA FSS Guidance 2.6.2
¹⁹⁶ RBA FSS Guidance 2.6.1
¹⁹⁷ RBA FSS Guidance 16.2
¹⁹⁸ RBA FSS 16.7
¹⁹⁹ RBA FSS Guidance 3.4.1
²⁰⁰ RBA FSS 16.7
²⁰¹ RBA FSS 16.7
²⁰² RBA FSS 13.3
²⁰³ EMIR, Art. 35(1).
²⁰⁴ EMIR, Art. 35(2).
²⁰⁵ ASIC Regulatory Guide 211.226
²⁰⁶ ASIC Regulatory Guide 211.233
²⁰⁷ ASIC Regulatory Guide 211.219
²⁰⁸ RBA FSS 16.10
²⁰⁹ EMIR, Art. 36(1).
²¹⁰ EMIR, Art. 36(1) and (2).
²¹¹ Section 821A(a) of the Corporations Act 2001
²¹² ASIC Regulatory Guide 211.181
²¹³ ASIC Regulatory Guide 211.182
²¹⁴ ASIC Regulatory Guide 211.203
²¹⁵ Corporations Act 2001
²¹⁶ Section 821E of the Corporations Act 2001
²¹⁷ RBA FSS 17
²¹⁸ RBA FSS 17.3 and FSS 20
²¹⁹ EMIR, Art. 37(1).
²²⁰ EMIR, Art. 37(3).
²²¹ EMIR, Art. 37(4) and (5).
²²² EMIR, Art. 37(6).
²²³ EMIR, Art. 37(2).
²²⁴ Section 821A(a) of the Corporations Act 2001
²²⁵ ASIC Regulatory Guide 211.203
²²⁶ RBA FSS 17
²²⁷ RBA FSS 17.3
²²⁸ RBA FSS 17.3 and RBA FSS 20
²²⁹ RBA FSS 18.1
²³⁰ RBA FSS 18.1
²³¹ EMIR, Art. 38(1).
²³² EMIR, Art. 38(3) to (5).
²³³ EMIR, Art. 38(1).
²³⁴ EMIR, Art. 38(2).
²³⁵ EMIR, Art. 38(1) and (3).
²³⁶ Section 821B of the Corporations Act 2001
²³⁷ Section 821A(a) of the Corporations Act 2001
²³⁸ RBA FSS 17
²³⁹ RBA FSS 17.3 and RBA FSS 20
²⁴⁰ RBA FSS 20.5
²⁴¹ RBA FSS 20.3
²⁴² RBA FSS 20.4
²⁴³ RBA FSS Guidance 20.5.2
²⁴⁴ RBA FSS Guidance 13.4.1
²⁴⁵ RBA FSS 21.1
²⁴⁶ EMIR, Art. 39(1) to (3).
²⁴⁷ EMIR, Art. 39(4) to (6).
²⁴⁸ EMIR, Art. 39(7).
²⁴⁹ EMIR, Art. 39(8).
²⁵⁰ EMIR, Art. 39(9).
²⁵¹ EMIR, Art. 39(10).
²⁵² RBA FSS 13.1
²⁵³ RBA FSS 13.3
²⁵⁴ RBA FSS 13.2
²⁵⁵ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
²⁵⁶ RBA FSS 5.7.2
²⁵⁷ RBA FSS Guidance 1
²⁵⁸ RBA FSS 13.4
²⁵⁹ RBA FSS Guidance 13.4.1
²⁶⁰ RBA FSS 13.2.4.

- ²⁶¹ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ²⁶² RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ²⁶³ EMIR, Art. 40(1).
- ²⁶⁴ RBA FSS 6.4
- ²⁶⁵ RBA FSS 19.5
- ²⁶⁶ EMIR, Art. 41(1).
- ²⁶⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 21.
- ²⁶⁸ EMIR, Art. 41(1).
- ²⁶⁹ EMIR, Art. 41(2).
- ²⁷⁰ EMIR, Art. 41(3) and (4).
- ²⁷¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
- ²⁷² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
- ²⁷³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(2).
- ²⁷⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(4).
- ²⁷⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 25.
- ²⁷⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(1).
- ²⁷⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(4).
- ²⁷⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 27.
- ²⁷⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 28.
- ²⁸⁰ RBA FSS 6.4
- ²⁸¹ RBA FSS 4.4
- ²⁸² RBA FSS Guidance 4.2.3
- ²⁸³ RBA FSS Guidance 4.7.1
- ²⁸⁴ RBA FSS 4.6
- ²⁸⁵ RBA FSS 6.7
- ²⁸⁶ RBA FSS 4.5
- ²⁸⁷ RBA FSS 4.5
- ²⁸⁸ RBA FSS 2.6.4
- ²⁸⁹ RBA FSS Guidance 6.7.1
- ²⁹⁰ RBA FSS 21.1(i)
- ²⁹¹ RBA FSS 21
- ²⁹² RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ²⁹³ RBA FSS Guidance 4.4.1
- ²⁹⁴ RBA FSS Guidance 6.3.1
- ²⁹⁵ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ²⁹⁶ RBA FSS 6.3.3
- ²⁹⁷ RBA FSS Guidance 6.3.3
- ²⁹⁸ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ²⁹⁹ RBA FSS 6.3
- ³⁰⁰ RBA FSS Guidance 6.3.2
- ³⁰¹ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ³⁰² RBA FSS 6.5
- ³⁰³ RBA FSS Guidance 6.5.1
- ³⁰⁴ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ³⁰⁵ RBA FSS 6.3
- ³⁰⁶ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ³⁰⁷ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ³⁰⁸ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ³⁰⁹ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
- ³¹⁰ EMIR, Art. 42(1) and (2).
- ³¹¹ EMIR, Art. 42(3).
- ³¹² EMIR, Art. 42(4).
- ³¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 29.
- ³¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 30.
- ³¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 31.
- ³¹⁶ RBA FSS 4.4
- ³¹⁷ RBA FSS 4.5
- ³¹⁸ RBA FSS 4.6
- ³¹⁹ RBA FSS 4.7

- 320 RBA FSS 7.8
321 RBA FSS 2.6.4
322 EMIR, Art. 43.
323 EMIR, Art. 43(3).
324 RBA FSS 4.4 and 7.3
325 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
326 RBA FSS 12.1
327 RBA FSS Guidance 12.5.1
328 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
329 EMIR, Art. 44(1).
330 EMIR, Art. 44 (1).
331 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 32.
332 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 33.
333 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 34.
334 RBA FSS 3
335 RBA FSS 7.1
336 RBA FSS 7
337 RBA FSS 7.6
338 RBA FSS Guidance 7.1.1
339 RBA FSS 7.3
340 RBA FSS 7.3
341 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
342 RBA FSS 7.6
343 RBA FSS 15
344 RBA FSS 7.4
345 RBA FSS Guidance 7.4.1
346 RBA FSS Guidance 7.4.2
347 RBA FSS Guidance 15.4.2
348 RBA FSS Guidance 15.4.1
349 RBA FSS 7.8
350 RBA FSS 2.6.4
351 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
352 EMIR, Art. 45(1) to (4).
353 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 35.
354 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 36.
355 Section 821A(d) of the Corporations Act 2001 and ASIC Regulatory Guide 211.191
356 Section 821B of the Corporations Act 2001
357 Section 821BA of the Corporations Act 2001
358 RBA FSS Guidance 4.2.4
359 RBA FSS Guidance 4.2.4
360 RBA FSS Guidance 12.1.3
361 RBA FSS 4.8
362 RBA FSS 4.8.2
363 RBA FSS Guidance 4.8.1
364 RBA FSS Guidance 4.2.4
365 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
366 RBA FSS 4.8
367 RBA FSS 21
368 RBA FSS Guidance 21.1(g)
369 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
370 RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
371 EMIR, Art. 46(1).
372 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 37 and 42.
373 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 38.
374 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 39 to 41.
375 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 43.
376 Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 44.
377 RBA FSS 5.1
378 RBA FSS Guidance 5.1.2
379 RBA FSS 5.1.3
380 RBA FSS 5.3
381 RBA FSS 5.4
382 RBA FSS 6.3

- ³⁸³ RBA FSS 5
³⁸⁴ RBA FSS Guidance 5.3.1
³⁸⁵ RBA FSS Guidance 5.7.1
³⁸⁶ RBA FSS Guidance 5.5
³⁸⁷ RBA FSS Guidance 5.5.1
³⁸⁸ EMIR, Art. 47(6)
³⁸⁹ EMIR, Art. 47(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 45.
³⁹⁰ EMIR, Art. 47(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 46.
³⁹¹ EMIR, Art. 47(4); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 47.
³⁹² EMIR, Art. 47(5).
³⁹³ EMIR, Art. 48(7). Under Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 48, a CCP must determine concentration limits at the levels of individual financial instruments, types of financial instruments, individual issuers, types of issuers, and counterparties with which financial instruments and cash have been deposited on a highly secured basis.
³⁹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art 48.
³⁹⁵ RBA FSS 15
³⁹⁶ RBA FSS 15.2
³⁹⁷ RBA FSS 15.4.1
³⁹⁸ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
³⁹⁹ RBA FSS 15.4.2
⁴⁰⁰ RBA FSS 15.1
⁴⁰¹ RBA FSS Guidance 15
⁴⁰² RBA FSS 15.4
⁴⁰³ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
⁴⁰⁴ RBA FSS 9.1
⁴⁰⁵ RBA FSS Guidance 15.4.1
⁴⁰⁶ RBA FSS Guidance 1.1.2
⁴⁰⁷ RBA FSS 15.3 and FSS 2.9
⁴⁰⁸ RBA FSS Guidance 15.4.1
⁴⁰⁹ RBA FSS Guidance 15.3.1
⁴¹⁰ RBA FSS 15.4.1
⁴¹¹ RBA letter to ASX Clear (Futures) Limited dated 16 August 2013 - <http://www.rba.gov.au/payments-system/clearing-settlement/pdf/supplementary-guidance-domestic-derivatives-ccps.pdf>.
⁴¹² EMIR, Art. 48(1).
⁴¹³ EMIR, Art. 48(2).
⁴¹⁴ EMIR, Art. 48(3).
⁴¹⁵ EMIR, Art. 48(4).
⁴¹⁶ EMIR, Art. 48(5).
⁴¹⁷ EMIR, Art. 48(6).
⁴¹⁸ EMIR, Art. 48(7).
⁴¹⁹ Section 821B of the Corporations Act 2001
⁴²⁰ RBA FSS 12
⁴²¹ RBA FSS 1.5
⁴²² RBA FSS 12.1.3
⁴²³ RBA FSS 13.3
⁴²⁴ RBA FSS 13.4
⁴²⁵ RBA FSS 21.1
⁴²⁶ EMIR, Art. 49(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 50 and 51.
⁴²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 52.
⁴²⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 53.
⁴²⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 56 and 57.
⁴³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 58.
⁴³¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 59.
⁴³² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 60.
⁴³³ EMIR, Art. 49(2); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 61.
⁴³⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 62.
⁴³⁵ EMIR, Art. 49(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 64.
⁴³⁶ ASIC Regulatory Guide 211.217
⁴³⁷ RBA FSS 2.6.4
⁴³⁸ RBA FSS 5.3.1
⁴³⁹ RBA FSS 4.7
⁴⁴⁰ RBA FSS 21.2(c)
⁴⁴¹ RBA FSS 2.6.4
⁴⁴² RBA FSS 2.8
⁴⁴³ RBA FSS 21
⁴⁴⁴ RBA FSS 2.6.4
⁴⁴⁵ RBA FSS 4.5
⁴⁴⁶ RBA FSS 5.3
⁴⁴⁷ RBA FSS 4.6.2

⁴⁴⁸ RBA FSS 12.4

⁴⁴⁹ RBA FSS 12.3

⁴⁵⁰ RBA FSS 20.5.2

⁴⁵¹ RBA FSS Guidance 6.7.1

⁴⁵² EMIR, Art. 50(1).

⁴⁵³ EMIR, Art. 50(2) and (3).

⁴⁵⁴ Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2009/44/EC amending the Settlement Finality Directive and the Financial Collateral Arrangements Directive.

⁴⁵⁵ RBA FSS 9

⁴⁵⁶ RBA FSS 8

⁴⁵⁷ RBA FSS 10

⁴⁵⁸ RBA FSS 11.2