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COMMENTS AND RESPONSE DOCUMENT

RESPONSE TO COMMENTS SUBMITTED FOR THE THIRD PUBLIC CONSULTATION PROCESS FOR THE

DRAFT MINISTERIAL REGULATIONS FOR OVER-THE-COUNTER (OTC) DERIVATIVE MARKETS ISSUED IN TERMS OF THE FINANCIAL MARKETS ACT (19 OF 2012)

DATE: FEBRUARY 2018

1. Background

INTRODUCTION

On the 21st of July 2016 the Minister of Finance issued draft Regulations for public comment in terms of section 107 of the Financial Markets Act, 2012 (Act No. 19 of 2012). The consultation period lapsed on 31 August 2016 and comments were received from various market participants including corporates, associations, the exchange and central securities depository, asset managers as well as international trade repositories. This was the third round of public consultation on the draft Regulations.

2. List of Commentators

- Association of Corporate Treasurers of Southern Africa (ACTSA) and SABMiller
- Banking Association of South Africa (BASA)
- Depository Trust & Clearing Corporation (DTCC)
- Global Foreign Exchange Division (GFXD)
- Granite Central Securities Depository (Granite CSD)
- Johannesburg Stock Exchange (JSE)
- Macquarie Securities (Round 2 and 3)
- Standard Bank Group Limited

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3. Comments and Responses

The following comments as per the matrix below have been captured as at 31 August 2016.

COMMENTATOR	COMMENTS	RESPONSE
GENERAL COMMENTS		
ACTSA/ SABMiller	The Parties earlier submission (the First Submission) in respect of the second draft of the Financial Markets Act Regulations (the Second Draft) related to concerns from the corporate community that corporates providing a treasury function in that they regularly provide derivatives to their group companies in order to consolidate and/or hedge commercial risk of the group (a Treasury Company) may be required to become authorised OTC derivative providers and that certain non-systematically risky hedge transactions would be included in the central clearing mandate. The Parties suggest that more clarity is required in respect of the applicability of the Draft Regulations to Treasury Companies and derivatives used for commercial and hedging purposes. The Parties submit that clarity in the Regulations is required regarding the treatment of intragroup transactions both from the point of view of whether a Treasury Company must become authorized as an OTC derivatives provider and what reporting and clearing obligations will apply to intragroup transactions. In particular the Parties propose that Treasury Companies not be required to be authorized as OTC derivative providers and that foreign exchange transactions generally (including FX forward, FX swap, FX forward NDF, FX option deliverable, FX option NDO), where used to hedge or mitigate commercial risk, be added to the foreign exchange spot contracts exclusion from the definition of OTC derivative.	The definition of an ODP provides that persons who as a regular feature of their business and transacting as principal- originate, issue, sell or make a market in OTC derivatives must be authorised. The intention of including such a requirement is to not capture derivatives used for hedging purposes and that are not part of a business. FX spot and physically settled commodities are the only transactions that have been excluded from the definition of OTC derivatives

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	As a point of reference the European Market Infrastructure Regulation (EMIR) defines different categories of entities that trade in derivatives including non-financial counterparties (NFC) while the US Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requirements that apply to "swap dealers" and "major swap participants" would only apply to swap dealing activity (which activity does not include FX swaps generally) in excess of USD 3 billion or USD 8 billion, pending the outcome of certain legislative processes. Under either regime, many Treasury Companies would be exempt from a large portion of the regulations applying to OTC derivatives. Under EMIR NFCs are able to avail themselves of clearing exemptions for commercial hedging, treasury activities and intra-group transactions. Similarly, under Dodd-Frank non-financial entities using swaps to hedge or mitigate risk can exempt themselves from the clearing requirements by providing certain information to the US Commodities and Futures Trading Commission (CFTC).	in line with international frameworks.
BASA	We have reviewed the international best practice in respect of derivatives reform. We would note that domestic regulations in respect of that area do not currently contain sufficient detail regarding the implementation of the enhanced requirements (relating to clearing, reporting and risk mitigation techniques), but rather sets out a framework for these reforms. The EU reform framework is set out in EMIR, and then enhanced through various regulatory technical standards, implementing technical standards and guidance notes. We recommend that a similar approach is taken locally, to provide essential guidance to ODPs which is currently not provided. We feel that the provision of this detail is critical to the success of the reforms under consideration.	The framework is empowering and allows for the Authorities to issue standards or joint standards and further guidance.

BASA	As it currently stands, there are potentially three Codes of Conduct applicable to ODPs in South Africa, namely the Global FX Code of Conduct, the proposed ODP Code of Conduct and the SARB/FSB OTC Code of Conduct released in October 2015 for comment. As set out in our detailed comments in respect of the SARB/FSB Code in November 2015, we recommend that the 2 local codes be rationalised to avoid duplication and inconsistencies in respect of conduct matters. We are also of the view that all other matters included in the local codes which relate to technical standards, such as risk mitigation, should not be included in a code of conduct but in separate regulatory technical standards, in terms of Section 6(8)(c) of the Financial Markets Act (2012), which provides for "standards" to be prescribed by the Registrar (soon to be carried out by the Prudential Authority, the Financial Sector Conduct Authority, or jointly). We further recommend that: • a single code of conduct to FX be applied, based on the Global FX Code • a single code of conduct for the derivative market apply in South Africa	The ODP Code of Conduct as contemplated in the FMA is subordinate legislation. The OTC Code of Conduct is more general in application. In future, it is anticipated that the OTC Code of Conduct and the ODP Code of Conduct will be issued by the FSCA and we will endeavour to align the respective codes.
BASA	Whilst we believe that a transitional period for authorisation of ODP's (before any requirements commence) is extremely beneficial to the financial industry, we caution against allowing too much time to pass before finalising the requirements in respect of trade reporting and central clearing. We are concerned that not having sight of final regulations, or at the very least amended draft regulations, will have a negative outcome in that it will create uncertainty around the details to be included in those final regulations thereby	In respect of central clearing requirements, the FMA Regulations include provisions for central clearing requirements should the Authorities make the determination to mandate. However, it is incentive based and the Authorities will

	hindering the ability of ODPs to build the required infrastructure in order to meet the enhanced obligations once these become effective through the regulations. Without having the detail on the trade reporting or clearing regulations, ODPs are left to complete most of the necessary infrastructure build based only on a best guess scenario regarding what will be required by the regulations. This is not ideal and could potentially lead to costly amendments once the regulations are finalised with the unintended consequence of negatively affecting the market. It would therefore be beneficial for industry to have sight of the trade reporting and clearing regulations as soon as feasibly possible, to enable ODPs to continue with their infrastructure build, some of which had begun on the basis of prior timelines set out in the June 2015 tranche of draft regulations and amendments.	make a final determination following a full market assessment. The Authority published for comment a draft notice for trade reporting requirements.
BASA	EMIR currently includes requirements for CCPs and trade repositories to publicly disclose their fees for providing the services as contemplated. The draft FMA regulations and notice in respect of trade repositories provided to us do contain requirements relating to disclosure of fees by CCPs and TRs, but the Regulations do not include requirements in respect of the calculation of fees and no applicable limits on the fees that may be charged. We are concerned that, due to the limited choice in respect of reporting and clearing service providers locally, this may result in exorbitant fees to ODPs. We recommend that, as in the case with the European Market Infrastructure Regulation (EMIR), fees should be “cost-related”.	CCPs and trade repositories are required to meet transparency and disclosure requirements. The Authorities agree that disclosure requirements include fees associated with the services provided by the CCP or TR, however disagree with the insertion on the extent of how the fees must be calculated. There are provisions in the Regulations related to the disclosure of fees by CCPs

		see provisions in the Regulations.
BASA	The Regulations contain significant detail in respect of authorisation of CCPs and their specific requirements. The requirements relating to Trade Repositories, however, are included in a separate FSB Board Notice. Would it not be clearer to have the provisions for both these market infrastructures included in the FMA Regulations?	The framework for licensing a TR was provided for in the FMA. However, the FMA did not initially provide for a CCP. The FMA was subsequently amended to allow for CCPs and the licensing requirements are set out in the FMA regulations as well as the asset and resources requirements.
DTCC	DTCC recommends that the National Treasury should consider leveraging reporting processes already established through trade repositories globally and where possible, adhere to data standardization and harmonization efforts currently underway. Aligning South African trade reporting requirements with international standards, and the developing harmonized and equivalent regulatory frameworks are critical steps towards realization of the Group of 20 ("G20") goals outlined in the 2009 Pittsburgh Summit. Cumulatively, these efforts would increase transparency in the South African derivatives market and minimize the cost burden placed on market participants	A revised notice on the trade reporting obligations was published for final comment; the notice aligns as closely as possible to the international reporting standards especially standards proposed by CPSS-IOSCO and considering the domestic framework.

DTCC	DTCC Believes that the National Treasury would benefit from considering a substituted compliance approach by permitting participants to meet South African reporting obligations by reporting to a prescribed trade repository. The prescribed trade repository – having been recognized as operating under a regulatory framework equivalent to National Treasury requirements – would then submit the required reporting information on behalf of the reporting parties. This is consistent with and is an extension of the policy rationale behind the proposed section 6A of the Financial Markets Act. This approach would minimize disruptions for reporting parties and best leverage frameworks that have already been established globally. DTCC welcomes the opportunity to discuss alternatives such as foreign recognition or a prescribed approach.	The FMA regulations provide for reporting through a licensed trade repository or a licensed external trade repository. In addition, the amended Financial Markets Act includes provisions/framework for licensing external TR through an equivalence approach.
DTCC	National Treasury should consider extending its approach to allow for “substituted compliance,” which would provide additional options to permit OTC derivative providers (“ODP”) to report trades.	Please see the equivalence framework as provided for in the FMA and the consequential amendments.
DTCC	If a local trade repository is appointed in South Africa pursuant to Chapter VI of the Financial Markets Act, we recommend the National Treasury consider a mutually beneficial “Agency” relationship. Under this arrangement, trades submitted through a trade repository acting as agent to the local repository would be validated against an existing industry standard and would reflect international best practices on formats and content. This information would be delivered via a standard and automated interface to the local trade repository operator. The South African authorities would interact directly only with the local operator who would be able to provide both agency reported and direct reported data in an integrated report.	Please see the equivalence framework as provided for in the FMA. The framework provides for reporting of transactions to licensed TR or licensed external TR.

DTCC	Under these proposals, the reporting firms would be required to self-identify South Africa as a reporting obligation on each submission. If such an approach were pursued, DTCC suggests the following action items: • Clarification regarding which trades can be reported via an equivalent jurisdiction would be needed to assist with implementation of a reporting framework for entities under the National Treasury's jurisdiction. • To ensure that such South African data flows solely to South Africa and not the home jurisdiction regulatory authorities, section 6A cooperation agreements, or any other necessary regulatory agreements, would have to be carefully crafted. • To allow for substituted compliance, the rules that require ODPs to report to a licensed trade repository must be amended to allow for reporting to a foreign trade repository not licensed in South Africa but licensed in an deemed equivalent jurisdiction.	Noted. The FMA creates a framework for the licensing of an external TR. The trade reporting obligations specify the asset classes for reporting and there is no distinction between domestic TR or external TRs. The comment regarding the cooperation arrangements is acknowledged, however, the Authorities disagree with the suggestion that SA data flows solely to SA authorities, considering the need to have frameworks that address legal barriers for reporting and the authorities' access to information.
DTCC	Given the high percentage of cross border trades to be reported in South Africa, DTCC notes that the use of equivalent foreign licensed trade repositories, either acting as an agent or through a prescribed type of approach, for reporting is the most efficient and effective approach. This would allow for South African reportable trades already reported in equivalent jurisdictions to flow through to South African	The comment is noted. The framework provides for licensed domestic TRs or licensed external TRs and an equivalence framework is

	authorities. This approach would also provide a cost effective method of adding South Africa to the global trade reporting ecosystem.	provided for in the Financial Markets Act.
DTCC	To ensure effectiveness, the National Treasury would need to recognize multiple trade repositories across the globe. DTCC notes, however, that using multiple equivalent trade repositories for such trades would create data aggregation challenges as South African regulators would need to aggregate data from multiple trade repositories in order to fully maximize the usefulness of the data. The burden of this can be mitigated by requiring trade repositories to submit data to the regulatory authorities in the exact same format regardless of the home country requirements. Use of an agency model could mitigate this potential issue, as all data would flow through the agent to the one local trade repository.	The comment is noted. The framework provides for the recognition of external TRs and reporting requirements include standardised formats. The Authorities will consider additional reporting requirements that support data aggregation processes.
DTCC	Finally, it is DTCC's experience that trade repository service providers and industry participants require a minimum of one year from the complete confirmation of regime requirements to successfully plan, implement and test a new reporting process and infrastructures. While leveraging reporting in existing regimes may simplify the implementation in addition to reducing cost and effort, the planning, scheduling and testing tasks remain.	The Authorities will provided for appropriate transitional arrangements considering that market participants must have sufficient time to meet the requirements.
DTCC	As an operator of trade repositories in all asset classes globally, DTCC continues to collaborate with the industry and regulators to work towards establishing a globally standardized data reporting solution. DTCC previously provided the National Treasury with specific comments for consideration, and offers the below as additional information for review as efforts progress to bring transparency to the South African OTC derivatives market.	In April 2017, the Authorities issued a board notice for the reporting of derivatives transactions – the board notice requirements emulate CPSS-IOSCO international standards for reporting in order to support the establishment of globally

		standardised data reporting solution.
DTCC	We recommend that the National Treasury considers adopting an existing data set and associated life cycle event standards established in another jurisdiction. This approach would enable reuse of technology and facilitate adoption of equivalent reporting regimes. A globally consistent core set of data elements and trade life cycle events allows for a more complete and harmonized view of the OTC derivatives market and facilitates efforts by regulators to share and aggregate data. It is well understood that the ability to standardize, access, share and aggregate data is paramount to global market oversight and global systemic risk analysis. Therefore, the National Treasury should leverage existing reporting frameworks and join regulators globally in creating a standard approach for reporting an agreed core group of data elements. DTCC welcomes the opportunity to discuss these options with the National Treasury.	International standards and reporting frameworks have been reviewed in developing our domestic framework for Trade Repositories and Trade reporting requirements.
DTCC	DTCC cautions that continuing the disjointed jurisdictional adoption of data standard initiatives for reporting will result in further fragmentation of trade reporting and will pose significant challenges for market oversight and data aggregation. Without consistent adoption at the domestic rulemaking level, many of the obstacles complicating efforts to achieve cross-border data harmonization for market transparency purposes will remain unaddressed. Therefore, it is critical that consistent and harmonized rulemaking is adopted and implemented by regulatory bodies globally. Doing so will increase efficiency and reduce the reporting and cost burden on all market participants including reporting entities, regulatory authorities and trade repositories. For reporting entities, commonality of process and data standards will assist in facilitating more effective and efficient compliance with local regulatory requirements.	The comment is noted – the Authorities aim is to develop a framework that supports harmonisation of reporting requirements to minimise data aggregation challenges.

Global Foreign Exchange Division	The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation, which we believe will be of benefit to both regulators and market participants alike.	Noted. The Authorities welcome further engagement with all market participants affected by these regulations and in addition, the approach for these regulations is consistent with international standards to ensure alignment.
Global Foreign Exchange Division	Many of our members act as custodian for their customers who are asset managers. Due to increased access to and investor interest in foreign financial markets, growing numbers of these customers are invested in foreign securities. To facilitate the purchase or sale of these foreign securities, these custodians, as part of their service offering, often enter into an FX transaction that is incidental to and for the purpose of effecting their customer's foreign security transaction ("FX Security Conversion transaction"). For example, when a non-South African customer wishes to purchase a South African rand-denominated security, its broker-dealer or bank custodian will enter into a corresponding FX transaction so that the customer has South African rand (ZAR) available to meet the cash currency requirements necessary to complete the purchase or sale of the security. These FX transactions are, therefore, integral to the settlement of the security. Typically, the settlement cycle for most non-ZAR denominated securities is trade date plus three days (T+3). Accordingly, the bank custodian or broker-dealer would enter into a FX transaction with its customer on a T+3 basis as well. We note that in South Africa, the securities settlement cycle can take up to seven days (T+7).	We note the concern regarding the length of the local settlement cycle. Please see response below in relation to the foreign security conversion transaction.

Global Foreign Exchange Division	In the European Commission's Delegated Act published on 25th April, 2016, an FX spot contract includes "a contract for the exchange of one currency against another currency….where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, [and delivery is scheduled to be made within] the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking is the standard delivery period or trading days, whichever is shorter." By being classified as a spot transaction, these FX Security Conversion transactions are not a "financial instrument" for the purposes of, and therefore are outside the scope of, European Derivatives regulation. Similarly, in the United States, the CFTC considers transactions for the sale or purchase of an amount of foreign currency to effect the actual delivery of a security by the relevant securities deadline to be a bona fide spot FX transaction, and therefore outside of the definition of a "swap". The GFXD has historically supported the above position with regulatory authorities in other global jurisdictions. We note that regulatory authorities in Canada have included FX Security Conversion transactions as FX spot and thus outside the scope of Canadian derivatives regulation. Regulatory authorities in Hong Kong, Singapore and Australia have also excluded FX Security Conversion transactions from trade reporting obligations. We are currently in discussions with regulatory authorities in Australia and Hong Kong on the application of variation margin to FX Security Conversion transactions.	Similarly in the domestic framework the definition of derivatives excludes FX spot contracts and physically settled commodity derivatives- The approach mirrors the international approach i.e. under EMIR/Mifid II. The length of the settlement time determines what is considered as spot. These products are therefore excluded from all requirements (central clearing, margin requirements and central reporting) except for [conduct requirements] and reporting requirements. The Authorities will make the final determination on the exclusion of FX security conversion transactions at a later stage once full assessment is conducted.

Global Foreign Exchange Division	We consider that global regulatory efforts - and therefore domestic derivatives legislation - cannot have been intended to cover spot transactions in actual currencies affected in connection with securities transactions that might not, because of the settlement cycle of the relevant securities, result in an exchange of currencies within two days (T+2). Such transactions are entered into for the purpose of, and result in an exchange of currencies to be used to settle the related securities transactions denominated in a foreign currency. Subjecting these spot transactions that are incidental to related securities transactions to derivatives regulation would expose bank custodians, broker-dealers and their customers to needless operational, price, credit and other risks. As a result, participants may restrict FX Security Conversion transactions to T+2 FX spot transactions, even when the securities settlement takes longer, thereby exposing the customer to FX risk while exposing the bank to certain operational risks and changing – and disrupting – the long-standing and well-functioning securities settlement processing that exists today. Derivatives regulation simply should not be applied to the types of incidental transactions at issue here and will not provide any meaningful protection to participants (in the form of disclosures), meaningful information to the regulatory authorities (in the form of regulatory reporting), or meaningful risk mitigation (in the form of daily variation margin). Furthermore, inconsistent treatment of these transactions globally should be avoided to ensure that the lack of an exclusion for FX Security Conversion transactions from derivatives regulation in some jurisdictions (e.g., South Africa) doesn't create unnecessary disincentives from transacting in securities in those jurisdictions by raising their transactional costs relative to other jurisdictions which have excluded them from derivatives regulations (e.g. in the United States and Europe). For the reasons set out above, we strongly urge that regulatory authorities in South Africa confirm that FX Security Conversion transactions are deemed spot	FX spot transactions are excluded from the definition of derivatives, risk management and reporting requirements will still need to be met for such transactions. However, the Authorities will make further determination on the amendment of the definition of OTC derivatives and the exclusion of the FX securities conversion transactions at a later stage once full assessment is completed.

	transactions and therefore not included within the scope of derivatives regulation in South Africa even if they are settled on a longer than T+2 basis.	
JSE	We acknowledge the importance of JSE Clear transitioning to an independent clearing house in order to meet all of the future licensing requirements applicable to a central counterparty ("CCP") in the revised Financial Markets Act (as proposed under the Financial Sector Regulation Bill) and we recognise the value in transitioning as soon as possible. However, the transition period for CCPs of 12 months provided for in the draft regulations is not consistent with the 5 year transition period as provided for in the proposed consequential amendments to the Financial Markets Act. We recognise that the transitional provisions in the FMA and the regulations apply to different requirements (transitioning to an independent clearing house in the FMA and complying with the requirements for CCPs in the regulations) but there is a significant overlap in what JSE Clear needs to achieve to transition to an independent clearing house, on the one hand, and to meet all of the CCP requirements in the regulations, on the other. The proposed transitional provision in the FMA which will enable JSE Clear to transition to an independent clearing house within 5 years takes into account the significant effort required to give full effect to that transition. However, based on our interpretation of the draft regulations, the effort required and the extent of the arrangements that need to be put in place to fully comply with all of the regulations applicable to a CCP is also significant. Apart from needing to create a separate rulebook for JSE Clear and have the clearing members of the JSE transition to becoming clearing members of JSE Clear, most of the other requirements that are applicable to an independent clearing house are also applicable to a CCP as contained in the draft regulations for CCPs. We believe that the effort required to put in place the necessary arrangements to fully comply with the draft regulations for	Amendment of section 110 of the FMA consequential amendments states that despite any other provision in the Act a clearinghouse performing the functions of a CCP must comply with any requirements imposed by regulations or standards. Therefore the FMA regulations and standards issued must be complied with 18 months from the effective date of the regulations – be licensed by January 2022 as an independent clearing house and CCP – the 5 year transition period stands – there is separation between meeting the requirements and transitioning to independent clearing house and the licensing thereof. The FMA regulations are still applicable to an associated

	CCPs is also significant and it would require a transition period of longer than 12 months. We are cognisant of National Treasury and the SARB's concern regarding a lengthy transition period to fully comply with the CCP requirements, given that JSE Clear will continue to function as a CCP during such transition period. Therefore we are proposing that a phased approach over an appropriate period should be adopted which recognises the reasonable amount of time that would be required for JSE Clear to fully comply with the various requirements applicable to CCPs. To facilitate this approach, we have made suggested recommendations to the transition provision in our detailed comments.	clearinghouse conducting CCP functions within the 5 year transition period. The Authority will issue a guidance note on the transitional aspects and applicability of the Regulations to the existing market infrastructures.
Macquarie Securities (Round 2)	Given Section 2 prevents derivative providers from conducting business without being approved there needs to be transitional period that affords current providers sufficient time to apply and be approved before compliance is required – see commentary re **"Criteria for Authorisation as an OTC Derivatives Provider"**.	A transitional provision has been provided for in the Regulations.
Macquarie Securities (Round 3)	We note the absence of a 2nd draft of the margining requirements for non-centrally cleared derivatives - the last publication was made in June 2015 and no further details have been provided. We note National Treasury/FSB's comments in the matrix and the timelines set out in the explanatory memorandum as to timing. Internal technology and other infrastructure changes that will be required to be made in response to reforms in respect of margining will be significant and it is therefore imperative that these are published, debated and finalised well in advance of commencement – at the very least 12 months should be targeted as a transitional period. At the very least we would like to see more detailed guidance from National Treasury/FSB on the phase-in approach with reference to ZAR notional thresholds	The margin requirements notice was released for final public comment 8 August 2017. Transitional periods have been considered by the Authorities and phase-in approach is also proposed in the margin notice. The Authority will determine the effective date of the notice.

	and the factor by which they will decrease per year (in ZAR terms) in line with the IOSCO and BCBS paper.	
Macquarie Securities (Round 3)	We note the absence of a 2nd draft of the reporting obligations – the publication was in June 2015. Internal technology and other infrastructure changes that will be required to be made in order to ensure compliance with reporting obligations will be significant and it is therefore imperative that these are published, debated and finalised well in advance of commencement – at the very least 12 months should be targeted as a transitional period. We respectfully urge National Treasury/FSB to draw on international "prescribed forms" for reporting such that the local offices of international derivatives businesses (or even local South African banks already reporting in other jurisdictions) can leverage off internal work already done/being done to comply with similar reforms in other parts of the world.	The board notice on the reporting obligations was published for comment in April 2017, an appropriate transitional period has been considered by the Authority, the Authority will determine the appropriate effective date of the notice and provide for sufficient time to the market participants.
Macquarie Securities (Round 3)	We note the comments of National Treasury in response to market feedback concerning the proposed amendments to the definition of "intermediary services" in Schedule 4 of the FSR Bill – we propose that a "carve-out" be provided such that OTC derivative providers will not be subject to FAIS but will rather be governed by the FMA read with the respective subordinate legislature.	The intention of these regulations is to capture only OTC derivative providers defined as principals and who meet the criteria specified in the Regulation. OTC derivative providers will be captured by the definition of 'intermediary services' as amended. The amended definition will not be effective immediately. Once effective

		ODPs will be exempted from the relevant provisions of the FAIS Act with respect to their business as ODPs, to the extent that the rendering of financial services are regulated under the FMA.
COMMENTS ON THE EXPLANATORY MEMORANDUM		
BASA	The Explanatory Memorandum provided with the draft FMA regulations indicates that trade reporting regulations will be adopted mid-2017 and in force by the end of 2017. In respect of clearing, a determination of the products to be mandated for clearing will seemingly only be made in the second half of 2017.	The Authority will determine the effective dates of the reporting obligations. The central clearing mandate determination is pending review of the domestic market assessment.
DTCC	In the Explanatory Memorandum to the proposed regulation, the National Treasury points out that "[c]*onsistent with global trends, the market is primarily characterised by interbank trades between domestic and foreign banks*." It was further noted that "*[a]bout 61% of outstanding interbank interest rate trades in 2012 were with international banks.*" In recognition of these facts and to best support a trade reporting regime in South Africa, the National Treasury should continue its approach towards recognizing foreign jurisdictions as equivalent and establish a list of regimes that meet South African supervisory and trade reporting requirements. However, the….National Treasury should consider extending its approach to allow	The FMA consequential amendments provide for a framework for recognition and equivalence. In terms of the FMA regulations market participants may report to a licensed TR or an external TR, there is no restriction on the reporting. The Authorities will consider the available avenues in terms of the

	for "substituted compliance", which would provide additional options to permit OTC derivative providers ("ODP") to report trades.	domestic framework in order to assist market participants to fulfil such requirements.
Global Foreign Exchange Division	We note that there is reference within the Trade Repository section of the July 2016 Explanatory Memorandum to equivalence frameworks allowing for the recognition of trade counterparts established in equivalent foreign jurisdictions. Whilst we support such an approach, we would like to emphasise that it would be helpful for the industry to understand the timetable for granting equivalence. If equivalence is not granted the technical builds to implement trade reporting requirements in Q3 2017 will be significant, both for trade repositories and market participants alike. Explicit technical guidance will be required to facilitate technical builds and we would strongly suggest that any technical standards are as closely harmonised with established reporting regimes and leverage current analysis being performed by the BCBS IOSCO Data Harmonisation working group. We therefore request that guidance on the granting of equivalence is provided to market participants as soon as possible.	The FMA consequential amendments provide for a framework for recognition/equivalence determination. Once this framework is effective, the Authorities will initiate the equivalence process and consider appropriate timelines for transition.
REGULATION 1: DEFINITIONS		
ACTSA/ SABMiller	In the First Submission the Parties proposed that the definition of OTC derivative provider should exclude a person that, as a regular feature of such person's business and transacting as principle, originates, issues or sells OTC derivatives but does so primarily to entities within its group (where group is defined as a group of entities that are consolidated for purposes of the relevant international accounting standard. The Comments Matrix indicates that the Old Mutual Investment Group voiced a similar concern that no exemption has been provided for a Treasury Company.	The definition for ODPs has been retained, however, intragroup transactions exemption may be provided following application and approval by the Authority. The Authority is empowered in the Act.

ACTSA/ SABMiller	The Parties also proposed in the First Submission that the exclusion from the definition of OTC derivative be expanded to incorporate other derivatives used to hedge commercial risk.	Disagree with suggestion to out rightly exclude additional derivatives from the definition. The current exclusion is intended to scope out products that have similar features as derivatives but are not themselves derivatives, FX spot transactions used for payment purposes and physically settled commodity FX forwards that pose minimal settlement risk.
ACTSA/ SABMiller	In the Comment Matrix Treasury indicated that the concerns relating to authorisation of OTC derivative providers were noted and that an appropriate regime will be put in place whereby a Treasury Company "*only has to comply with requirements appropriate to it".* It is not clear whether this means that Treasury Companies will or will not be required to become authorised as OTC derivative providers. In the Comment Matrix Treasury also indicated that it would not widen that exclusion to the definition of OTC derivative to incorporate all derivatives used to hedge or mitigate risk (i.e. non-speculative) derivatives. Furthermore Treasury indicated that it is intended that such intragroup transactions will nevertheless be captured for reporting purposes, with some exemptions to apply.	Treasury companies affected by these regulations must apply to the Authority who will make a determination on a case-by-case basis for derivatives transactions. Similarly for intra-group transactions exemptions – market participants will need to apply to the Authority for

		determination on a case-by-case basis.
JSE	The terms “qualifying central counterparty” and non-qualifying central counterparty” are not defined. We recommend that, as a minimum, “qualifying central counterparty” is defined (See Regulation 27.2 and 27.4)	The definition for qualifying counterparty has been included. Refer to the regulations.
JSE	The following terms used in the Regulations should be defined “offsetting”; “qualified central counterparty”	A definition for “offsetting” has not been included as it is a generally used term.
Macquarie Securities (Round 2)	**“counterparty”** (1) (d) should, for the avoidance of doubt, include a reference to “acting as agent or principal” given that, for example managers of Collective Investment Schemes are agents on behalf of beneficiaries (2) (h) may then require some clarification as the “excluded persons” who appoint duly authorised Financial Services Providers (for example) to deal in derivatives in on their behalf should not be treated as “clients”.	The definition for counterparty is clear in the regulations referring to persons who administer the collective investment scheme and does not distinguish the agency or principal capacity. The definition is for the purposes of the code of conduct – the CIS administrator will be facing the ODP irrespective of the underlying counterparty.

Macquarie Securities (Round 3)	**"counterparty" in relation to an OTC derivative provider, means-** For the avoidance of doubt, we propose that the exclusions set out in (h) be limited to persons who have not appointed an FSP to "*provide financial services in derivative instruments in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)*" (as envisaged in (d)(ii)). In this regard we propose adding "…*unless such person is duly represented by a person contemplated in (d)(ii) above*" at the end of (h). Pension funds almost always appoint FSPs to advise on derivative transactions to be concluded by the pension fund – these FSPs are appointed on account of their knowledge and expertise and the ODP should not be obliged to treat them as a "client" (i.e. nonsophisticated investor). It would may be necessary to include an additional paragraph that makes it clear that one does not have to "look through" to the principal contracting party where a "regulated person" is contracting on behalf of a principal.	Disagreed to include the amendment, as the intention of such client and counterparty distinction is for the purposes of the code of conduct, the purpose of (h) is to classify those specified as clients and to afford them more protection whether represented by the an authorised FSP or CIS manager.
Standard Bank (round 2)	**Authorization Of An OTC Derivative Provider (OPD)** In order to be able to provide the services of an ODP one would be required to apply for authorization from the Registrar, in the form and manner provided for in the Regulations. We are not opposed to the introduction of this authorization process. However, certain measures should be taken to avoid disruption of existing trading activities of ODPs while the application process takes its course. Specifically, following logic similar to that introduced in the US under the Dodd Frank Act, a timeframe for authorization should be introduced. ODPs should be allowed a "grace" period for making this application to the Registrar, to be calculated from the date of publication of the final Regulations. This would ensure that ODPs continue their trading activities, undisrupted, while the authorization process takes place.	Transitional arrangements for the authorisation of ODPs have been considered and included in the FMA regulations. Participants that meet the definition of ODPs must apply within 6 months from the commencement date of the final regulations.

Standard Bank (round 2)	**Client/counterparty classification** Classification appears to turn on the type of identity, rather than whether (or not) an entity is of systemic importance to the South African market, or holds OTC derivatives positions that are in size regarded as proportionally significant to our market. It appears that both counterparties and clients may be impacted by, the proposed framework and, in particular, are in scope for clearing and margining requirements. We are concerned that this approach is not practical, and not in line with the approach followed by offshore regulatory frameworks. We therefore recommend that the classification logic in the draft FMA regulations be amended to ensure that only authorized ODPs and those non-ODP entities who are most systemically significant to the South African financial markets be impacted by the full scope of the proposed framework. To achieve this we prose that the classification logic be amended as follows: a. The authorized ODP be in scope with the entire FMA regulatory framework – i.e., as per the definition, anyone who is a regular feature of its business and transacting as principal originates or sells OTC derivatives , or makes a market in OTC derivatives; b. That every local incorporated/established entity who is not an authorized ODP be classified as a "counterparty"; c. That "counterparties" who have a gross notional amount of open positions in the OTC derivatives activity that exceeds any of the five specified classification thresholds, measured over a 30 working days average and aggregate at group level, be "in scope" for the entire proposed framework;	The client/counterparty definition is necessary for the code of conduct standards applicable to the ODPs. The definitions have been specified considering the unique setup of the domestic framework. We note the reference in your comment to adopt a similar approach to the EU framework; however, we disagree with the suggestion to use classifications for non-financial counterparties or financial counterparties and the thresholds as proposed in your comment, considering the complexities of our domestic framework. The client and counterparty definition in the regulations is for the purposes of the conduct standards, and for the margin requirements, the specific counterparties or covered entities are specified including the applicable

	d. That all "counterparties" who do not meet the requirement per (c) above, be "out of scope" for the clearing and margining requirements of the proposed framework; e. On the assumption that transactions with individuals who are not of systemic importance size to the South African financial market, that all OTC derivatives transactions with the individuals be entirely out of scope for the proposed scope; f. Those offshore entities are only indirectly impacted by any requirements imposed under the proposed FMA regulatory framework. This aligns with the approach that, the EU and Canadian regulators take with regards to offshore entities. In particular and the following numbering per the above, we propose that each counterparty/client/customer of an individual ODP be classified as one of the following: a) "Authorized OTC Derivatives Provider" ("Authorised ODP" or "provider") b) "Counterparty" ("CP") (each counterparty to be further classified as either CP+ or CP-, per (c) or (d); c) "Counterparty plus"; d) "Counterparty minus"; e) "Client"; f) "Third Country Entity" or "TCE". The following "classification thresholds" are to be introduced for the purpose of this classification logic (i.e. for classifying CP+ and CP- entities): a) Credit Derivatives: ≥ ZAR 10 billion b) Interest Rate Swaps: ≥ ZAR 30 billion c) Equity Derivatives: ≥ ZAR 10 billion d) Foreign Exchange: ≥ ZAR 30 billion	thresholds. Clearing requirements are placed on the ODP, please refer to the regulations. The authorities will continue to assess the regulatory landscape and market in order to make further determination or amendments were warranted.

	e) Commodities: ≥ ZAR 30 billion And authorized ODP should not be left having to determine for itself the appropriate classification of its counterparties /clients, and should be able to rely on the self-certification it received from its counterparties/clients in this regard. This should minimize the risk of counterparty/clients receiving conflicting classifications from different authorized ODPs, and would provide certainty to both the counterparty/client and authorized ODP as to its obligations under the FMA regulations.	
REGULATION 2: REQUIREMENTS TO BE AUTHORISED		
Macquarie Securities (Round 3)	The reforms will require a significant compliance effort and we would propose a 12 month ODP registration period and a 24 month compliance period – we are concerned that 6 months for the Authority to process applications will not be sufficient and ODPs may be left "stranded" due to lack of capacity at the Authority's office.	A 12 month transition period is envisioned from the time of application (within 6 months of the effective date), therefore the authorisation process will not be 24 months.
REGULATION 3: REPORTING OBLIGATIONS		
ACTSA/ SABMiller	Section 3 of the Draft Regulations provides that an "OTC derivative provider" must report an "OTC derivative" to a trade repository and Section 4 of the Draft Regulations provides that an "OTC derivative provider must clear certain "OTC derivatives" through a central counterparty. The implication that if neither party is an "OTC derivative provider, and/or the relevant transaction is not an "OTC derivative", the reporting and clearing obligations would not apply.	Correct. The ODPs are the regulated persons. Therefore, a counterparty dealing with an ODP may fulfil the reporting requirement through the

		ODP it is dealing with. Similarly, transactions with ODPs may require compliance with clearing obligations if mandated.
REGULATION 4: CLEARING		
BASA	The section introduces the consideration of the "conduct assessments into other categories of OTC derivative transactions upon which additional mandatory clearing requirements" in the regulations. It is unclear what the content or criteria of the assessments will be and the nature thereof. We are as a result unable to make a proper assessment on the impact of these conduct assessments and the outcome of such assessments. We seek further clarity in this regard. (d) the resources and suitability of the central counterparty availability to clear the relevant OTC derivatives transactions;	The National Treasury, and the Authorities (PA and FSCA) will undertake a market assessment to determine an appropriate framework for central clearing mandates and the derivatives products that must be mandated for central clearing. At this stage, the regulations only provide for central clearing requirements, should this be mandated at a future date. The outcome of the assessment will be communicated with market participants at a later stage.

		d) refers to the determination being made considering the availability of a central counterparty to clear OTC derivatives products for the South African market.
Macquarie Securities (Round 2)	We propose that a reference be made here to "non-centrally cleared OTC derivative transactions" to be "specified by the registrar" to empower the registrar to make regulations in this regard – see below for further comments.	The Authority is empowered to make standards, see the amendment effected in the 3rd round of consultation– determined by the Authority and manner prescribed by the Authority.
Macquarie Securities (Round 2)	Section 4 of the Financial Markets Act Regulations where it provides that "An authorised OTC derivative provider must ensure that an OTC derivative transaction specified by the registrar is cleared through a central counterparty in the manner prescribed by the registrar". On a plain reading this notice shall apply to all "other" OTC derivative transactions – this is simply too wide.	Disagree with interpretation, as the Authority will specify the appropriate OTC derivative transactions to be centrally cleared.
Macquarie Securities (Round 3)	We would urge National Treasury to publish guidance on whether there are any "asset classes" that intended to be targeted sooner rather than later. One assume that, given current notionals, interest rate derivatives will be accelerated.	A market assessment is underway, and the determination will be made. Specifically, standardised OTC derivatives transactions i.e. Interest rate derivatives might be specified as the clearable asset classes after

		the assessment and if central clearing is mandated.
REGULATION 6: APPROVAL OF AN EXTERNAL CENTRAL SECURITIES DEPOSITORY AS A SPECIAL CATEGORY OF PARTICIPANT		
BASA	The rationale behind the Regulation states that the relationship is one in which the domestic licensed CSD establishes a link with an external CSD in which securities are issued to enable a participant in the domestic CSD to access the services of the external CSD through the participant's existing relationship with the domestic CSD. This purpose does not come across clearly in Clauses 6 and 7 nor the definition of "link" which is described more broadly as "a set of contractual and operational arrangements between a CSD and another CSD whereby one CSD opens an account with another in order to facilitate the transfer of securities from its participants to the participants of the latter CSD". The definition does not specify whether a local or foreign CSD is contemplated nor the scope of securities services to be performed by the external CSD (see below). With regard to the definition of "securities services" in the FMA, none of the aforementioned provisions specify which securities services will be performed by the external participant. Reference is only made in the definition of "link" to a "transfer of securities" which is not a "securities service" as contemplated by the FMA. Section 5(1)(c) of the FMA states the Minister must prescribe the "securities services" and functions and duties that may be exercised by an external central securities depository. We believe that such securities services are not set out with sufficient certainty in the definition of "link", nor in Clauses 6 and 7. On the current wording and in relation to the consideration of the definition and scope of the securities services that may	Please see revised definition and wording in Regulation 6. The revised Regulation 6 now makes it clear that the external central securities depository <u>will perform settlement services.</u>

	be provided by an external central securities depository, we feel that the following merits consideration - (a) the settlement model for such securities and the cash and settlement risk related thereto; (b) the potential for trading and settlement of securities to occur offshore in the jurisdiction of the external CSD thereby detracting from the local capital market; (c) the disintermediation of local participants. As the scope of the services to be performed by the external CSD is unclear, there is the potential that existing business of local participants will be moved to an external CSD; (d) to maintain the competitiveness of the market, it should be clear that as regards the recognition of an equivalent jurisdiction, the requirements and regulatory regime applicable to the external CSD in its capacity as a CSD must be comparable to the local requirements and regulatory regime applicable to a participant in South Africa rather than a local CSD. If the securities services that may be provided by the external participant are intended to be limited to certain instruments or only certain services then this should be specified. As regards the requirements for an external link under Clause 7, it follows that such requirements must be in place at the time of establishing the link, as the contractual relationship between the licensed CSD and the external CSD will need to include certain of these provisions. Such an amendment would be in line with the explanation in paragraph 7 (Requirements for an External Link) in the Explanatory Memorandum.	

Granite Central Securities Depository	This Regulation makes reference to an external central securities depository being authorised as a "special category of participant" for the purposes of establishing a "link". Whilst "link" is clearly defined, a "special category of participant is not and this causes confusion. For example, must an external CSD be authorised as an external participant before establishing a link? There seems to be a deliberate difference made between the two terms yet they seem to imply the same thing?	The external CSD will be a participant of the CSD as contemplated in the Act, except it will be different in comparison to other CSDPs since it is a contractual /operational relationship to facilitate settlement services. The external CSD participant's jurisdiction must be assessed as equivalent in terms of section 6A of the Act, only then can it be authorised as a participant by the local CSD as provided for in the Act before the links can be established. Please see the revised regulations.
REGULATION 7: REQUIREMENTS FOR AN EXTERNAL LINK		
Granite Central Securities Depository	Are these the only requirements with which an external securities depository must comply with to establish a link? In the instance where a link is created does this mean that the external securities depository is authorised as a special category of participant? It is not clear from the Regulations either, whether an external securities depository will have to comply with Section 32 of the Financial Markets Act which	As a participant performing settlement services some of the requirements in section 32 of the Act maybe applicable to a market

	refers to duties of a participant . What will the duties of a special category of participant be? 7(f) refers only to the "adequate systems" of the local CSD. It is submitted that the Regulation should state that the external CSD must also have adequate systems in place to ensure effective communication between the CSD and External CSD. As the regulation stands it appears it is the responsibility of the local CSD alone to ensure adequate systems are in place for effective communication.	infrastructure (external CSD) that is a participant in a CSD. Refer to provisions under section 35(4) of the FMA and the provisions in the FMA regulations.
REGULATION 8: ASSETS AND RESOURCES REQUIREMENTS FOR CERTAIN MARKET INFRASTRUCTURES		
JSE	Our interpretation of the minimum capital requirement for an exchange is as follows: **Capital = max (Risk Capital; Wind-down Capital)** *Where -* ▪ **Risk Capital** = at least 6 months operating expenses, and ▪ **Wind-down Capital** = sufficient for a wind-down or reorganisation over 6 months Please would you confirm that our interpretation is correct?	Note that the requirements in Regulation 8 have been amended please see the amendments for clarity.
REGULATION 11: GOVERNANCE		
JSE	We note that Regulation 15(2) provides "A central counterparty may not outsource significant activities linked to risk management unless such outsourcing is approved by the Authority." We would like to engage with the Regulators regarding whether it would be acceptable for certain control functions or "significant activities linked to risk	It is preferred that each separate legal entity has its own resources for the significant activities linked to risk management functions,

	management" to be performed by resources at a group level. For example, the Chief Information Technology Officer is responsible for all of the JSE's information technology including JSE Clear, the entity to be licensed as an independent clearing house and central counterparty. We are comfortable with establishing matrix reporting lines from the heads of the group control functions (Risk, Compliance, Information Technology and Internal Audit) to the relevant JSE Clear Board Committees, however if the requirement is to establish dedicated control functions in the separate legal entity (JSE Clear), the operational costs of clearing would increase significantly and these additional costs would be borne by the JSE and market participants which would disincentivise trading and clearing of derivatives on a regulated exchange and clearing house.	especially in the case of an independent clearing house that offers central counterparty functions in derivatives markets. However, the Authority will make the determination or approve such outsourcing requirements on a case-by-case basis, as provisioned in the FMA regulations.
REGULATION 22: GENERAL CAPITAL REQUIREMENTS		
JSE	Our interpretation of the minimum capital requirement for a central counterparty is as follows: Capital = max (Initial Capital; Risk Capital; Wind-down Capital) *Where -* ▪ Initial Capital = R50 million + buffer; ▪ Risk Capital = sum (capital for operational risk, credit risk, counterparty credit risk, market risk, business risk), and ▪ Wind-down Capital = sufficient for a wind-down or reorganisation over 6 months. Please would you confirm that our interpretation is correct?	Chapter VI deals with CCPs, minimum capital requirements specified in section 22. CCP capital must be equal to or greater to the amount specified in 22(1); initial capital of at least R50 million and appropriate buffer, or risk capital and winding-up capital. Please refer to the relevant sections in the FMA regulations.

REGULATION 23: SPECIFIC CAPITAL REQUIREMENTS FOR COUNTERPARTY,CREDIT RISK, COUNTERPARTY CREDIT RISK AND MARKET RISK WHICH ARE NOT ALREADY COVERED BY SPECIFIC FINANCIAL RESOURCES AS REFERED TO IN REGULATIONS 33,34 AND 35		
JSE	Incorrect cross-reference (1) A central counterparty must calculate its capital requirements referred to in Regulation ~~25(2)~~ 23(2) as the sum of 8 % of its risk-weighted exposure amounts for credit risk and its risk-weighted exposure amounts for counterparty credit risk and its capital requirements for market risk.	Amendments have been made; please refer to the FMA regulations.
REGULATION 29: CALCULATION OF A CENTRAL COUNTERPARTY'S CREDIT EXPOSURE IN TERMS OF THE CURRENT EXPOSURE METHOD		
BASA	This methodology is being replaced in January 2017. Our recommendation: Replace with the Standardised Approach (SA-CCR)	The new SA-CCR is under consideration, the SARB has consulted with market participants; the SARB will make the final determination on the implementation of the SA-CCR.
REGULATION 33: MARGIN REQUIREMENTS		
JSE	Incorrect cross-reference **33.3 Percentage** (1) A central counterparty must calculate initial margins to cover the exposures arising from market movements for each financial instrument that is margined on a product basis, over the time period defined in Regulation ~~37.4~~ 33.4 and	Amendments have been made, please refer to the FMA regulations.

	assuming a time horizon for the liquidation of the position as defined in Regulation ~~37.5~~ 33.5	
JSE	Incorrect cross-reference **33.4 Time horizon for the calculation of historical volatility** A central counterparty- (a) must assure that according to its model methodology and its validation process established in accordance with these Regulations, initial margins cover- (i) the confidence interval defined in Regulation ~~37.3~~ 33.3; (ii) the liquidation period defined in Regulation ~~37.5~~ 33.5; and (iii) the exposures resulting from historical volatility calculated based on data covering at least the latest 12 months;	Amendments have been made, please refer to the FMA regulations.
JSE	Incorrect cross-reference **33.5 Time horizons for the liquidation period** … (4) A central counterparty must consider, in evaluating the periods defined in sub-regulation (3), the factors indicated in Regulation ~~37.3~~ 33.3 and the time period for the calculation of the historical volatility as determined in Regulation ~~37.4~~ 33.4.	Amendments have been made; please refer to the FMA regulations.
REGULATION 35: DEFAULT FUND		
JSE	**35(5) (f)**	Written notification must be sent to FSCA.

	Please confirm that a written notification to the Authority would be sufficient to justify the omission of a historical event from the 30 year stress testing look back period from the framework? In addition, given that the Prudential Authority will be the supervisor of market infrastructures; would an application to the Prudential Authority, instead of the Authority, be more appropriate?	
REGULATION 36: OTHER FINANCIAL RESOURCES		
JSE	**36(1)(a)** We require clarity regarding why a central counterparty should require additional capital at risk over and above its contribution to the default fund and that capital which is required under sections 23, 33, 34 and 35 as the central counterparty would already be holding capital for financial risks and orderly wind-down. **36(3)(b)** We require clarity on the meaning of the term “limited uncovered exposure”.	Section 36(1)(a) requires that a CCP has adequate financial resources to cover margin requirements, which is different from capital required in section 23,33,34 and 35. 36(3)(b) refers to the non-default/default losses the clearing members are exposed to in cases where the CCP’s financial resources (i.e. end of default waterfall/margin coverage) are depleted. Therefore, the clearing member must have limited uncovered exposure in reference to 36(3)(a).

REGULATION 38: COLLATARAL REQUIREMENTS		
JSE	**38(2)(g)** We welcome the inclusion of the provision for any other instruments approved by the Authority. Please confirm that a written application to the Authority for approval would be sufficient to request the Authority to approve other instruments that may be accepted as collateral? In addition, given that the Prudential Authority will be the supervisor of market infrastructures; would an application to the Prudential Authority, instead of the Authority, be more appropriate?	A written application must be made to the Authority.
REGULATION 39: INVESTMENT STRATEGY AND SAFEGUARDING OF ASSETS		
JSE	**39(11)(d)(i)** We request clarity on whether the term "dealing room" means the treasury or investment function of a central counterparty. "Dealing room" is not an appropriate term for a central counterparty as it does not perform a dealing function.	The reference to "Dealing room" has been removed. New insertion refers to "investment function".
REGULATION 40:REVIEW OF MODELS, STRESS TESTING AND BACK TESTING		

JSE	**40.5.2(1)** We welcome the amendments to Regulations 35 (Default Fund) and Section 36 (Other Financial Resources) which now both provide for the default of "the clearing member to which it has the largest exposure or, in the case where it is involved in activities with a more complex risk profile, the default of the second and third largest clearing members". However, section 40.5.2(1) has not been aligned to the provisions in Regulations 35 and 36. Is this an inadvertent oversight? In addition the reference to Regulation 31 in Regulation 40.5.2(1)(c) appears to be incorrect.	Amendments have been made, please refer to the FMA Regulations.
REGULATION 41: CONSIDERATION BY THE AUTHORITY		
BASA	The FMA Regulations currently set out the detailed requirements that must be satisfied in respect of CCP interoperability requirements. In April of this year, a draft FSB directive on Interoperability and Co-operation was published. The draft directive applies to interoperability between all market infrastructures (MIs), including CCPs. BASA submitted comments to the FSB on the directive. The provisions in respect of CCPs overlaps and conflicts with the provisions in respect of all MIs. We would recommend that Clause 41 of the draft FMA Regulations dealing with CCP interoperability arrangements be removed, and included in the FSB draft interoperability directive, to avoid uncertainty and duplication.	Disagree with the suggestion to remove the interoperability requirements in the FMA regulations. The guide will be an additional tool and will not replace the regulations; the guidance provided by the FSB will be in alignment to the proposed framework.
REGULATION 43: TRANSITIONAL ARRANGEMENTS		
JSE	**43.3**	The FMA amendment of section 110 provides that a

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	To provide a licensed associated clearing house such as JSE Clear with sufficient time to fully meet all of the requirements in Chapter VI whilst it is transitioning to an independent clearing house in terms of the proposed transitional provision in the Financial Markets Act, we suggest the following amendment: 3) A licensed central counterparty, or a licensed clearing house approved by the ~~registrar~~ Authority, the South African Reserve Bank and the ~~Registrar of Banks~~ Prudential Authority to perform the functions of a central counterparty, must comply with the requirements set out in Chapter VI of these Regulations ~~within 12 months from the commencement date of these Regulations~~ within a time period from the commencement of these Regulations approved by the Prudential Authority in consultation with the relevant licensed central counterparty or licensed clearing house.	clearing house performing the functions of CCP must comply with any requirements imposed by the regulations or standards; and must until 31 December 2021, be licensed by the PA and by January 1, 2022 as an independent clearinghouse and central counterparty. It therefore remains that the existing licensed clearing house must comply with these requirements or certain requirements as determined by the Authority from the period specified in the Regulations. However, the requirement to be licensed will be aligned as per FMA provisions. Furthermore, the Authority will issue guidance on compliance to the FMA regulations, for existing market infrastructures.