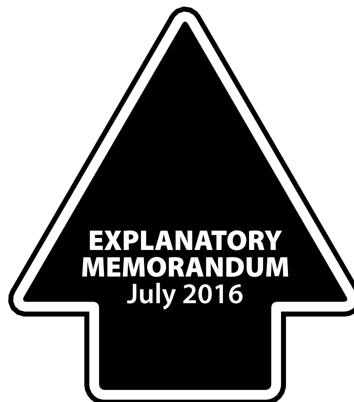
EXPLANATORY MEMORANDUM
July 2016

REGULATING OVER-THE-COUNTER DERIVATIVE MARKETS IN SOUTH AFRICA

FINANCIAL MARKETS ACT REGULATIONS 2016
made in terms of the Financial Markets Act (No. 19 of 2012)

national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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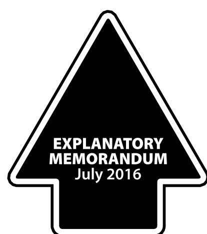

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INTRODUCTION

National Treasury is publishing a third draft of the Ministerial Regulations (the Regulations) made in terms of the Financial Markets Act No. 19 of 2012 to enhance the governance, operational and risk management requirements for market infrastructures and to provide for matters relating to the provision of securities services in over-the-counter (OTC) derivatives. The Regulations were developed and first published in 2014, and again in 2015. This memorandum provides background to, and an explanation of, the proposed Regulations and proposed amendments to certain provisions of the Financial Markets Act.

The document must be read in conjunction with:

- The Financial Markets Act
- The Financial Sector Regulation Bill and related documents on Twin Peaks available on the National Treasury website at http://www.treasury.gov.za/twinpeaks/
- The National Treasury Response Document to inform consequential amendments to the Financial Markets Act published on the website at http://www.treasury.gov.za/twinpeaks/
- The draft Regulations and related documents available on the NT website at www.treasury.gov.z/otc
- The draft Board Notices available on the Financial Services Board website at www.fsb.co.za
- CPSS-IOSCO Principles for Financial Market Infrastructure available at http://www.bis.org/publ/cpss101a.pdf
- IMF FSAP Technical Note on reforms in the South African OTC derivatives market available at https://www.imf.org/external/pubs/ft/scr/2015/cr1552.pdf

Comments may be submitted to Ms. Petula Sihlali via email at: financial.policy@treasury.gov.za with the subject title '**FMA Ministerial Regulations (Round 3)**'.

The deadline for submissions is 31 August 2016.

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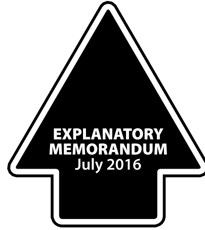

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ACRONYMS AND ABBREVIATIONS

BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
CCP	Central Counterparty
COU	Central Operating Unit
CPMI	Committee on Payments and Market Infrastructures
CPSS	Committee on Payment and Settlement Systems
CVA	Credit Valuation Adjustment
FMA	Financial Markets Act No. 19 of 2012
FSPAG	Financial Stability Policy Advisory Group
G20	Group of 20 Finance Ministers and Central Bank Governors
GLEIF	The Global LEI System Foundation
IOSCO	International Organization of Securities Commissions
IRD	Interest Rate Derivatives
ISO	International Organisation for Standardisation
LEI	Legal Entity Identifier
LOU	Local Operating Unit
ODP	OTC Derivative Provider
OTC	Over-the-counter
ROC	Regulatory Oversight Committee
SIFI	Systemically Important Financial Institution
TR	Trade Repository
UPI	Unique Product Identifiers
UTI	Unique Transaction Identifier

EXECUTIVE SUMMARY AND OBJECTIVES

At the Pittsburgh summit in September 2009, the G20 Leaders noted that OTC derivatives had contributed significantly to the global financial crisis and that certain features of the market had the potential to exacerbate systemic risk. The Leaders committed to reform the global OTC derivatives markets, specifically stating that:

> *"All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements."*[1]

As a member jurisdiction of the G20, South Africa committed to developing and integrating an appropriate legislative and regulatory framework informed by recommendations from the Financial Stability Board and relevant international standard setting bodies: the Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Markets Infrastructures (CPMI), and the International Organization of Securities Commissions (IOSCO). Given that a significant share of South Africa's OTC derivatives transactions are cross-border, it is important to be mindful of domestic and international economic developments to ensure consistency with international best practice.

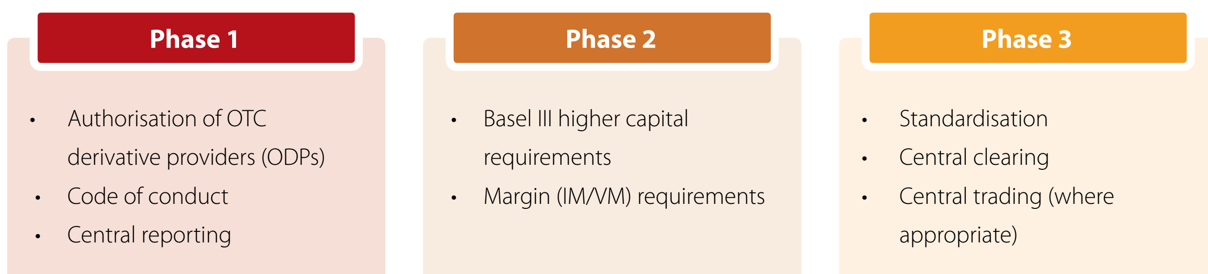
Reforms are necessary to ensure the safety, efficiency and integrity of financial markets, reduce vulnerabilities and increase transparency, and consistent with the objects of the Act, aim to:

- ensure the fairness, efficiency and transparency of the market,
- promote confidence and enhance protection of regulated persons, clients and investors,
- reduce systemic risk, and
- promote domestic and international competitiveness.

The Regulations and accompanying Board Notices will ensure that South Africa can meet its obligations.

A phased approach to implementation

In March 2012 Treasury published a consultation document, *Reducing the risks of over-the-counter derivatives in South Africa*[2] to outline the proposed policy approach to reforming the South African OTC derivatives market. The document focused on key components of the reforms, and in that context proposed a phased implementation:



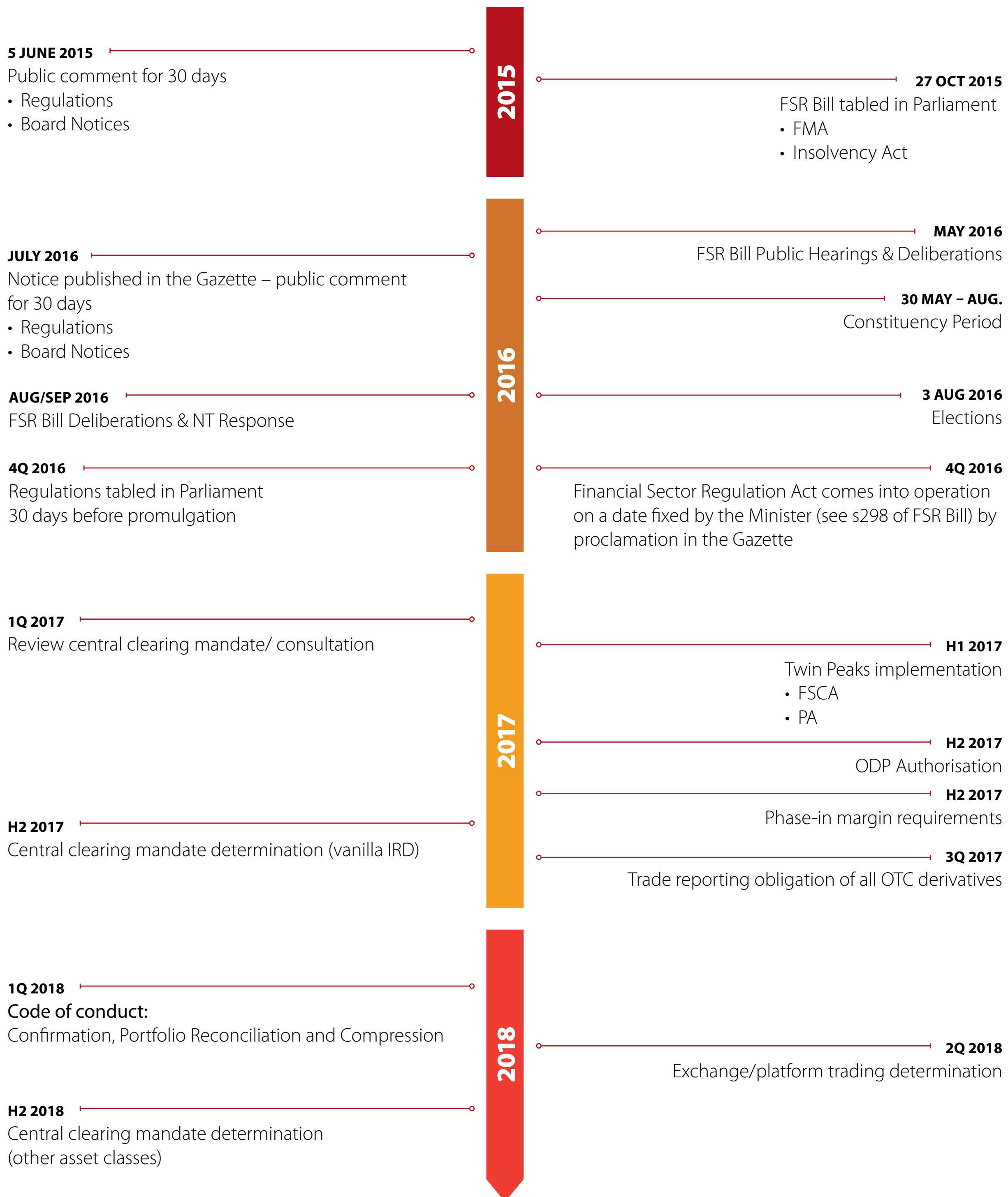
EXECUTIVE SUMMARY AND OBJECTIVES

National Treasury has since constituted working groups, co-chaired by National Treasury, the Financial Services Board and the South Africa Reserve Bank, under the auspices of the Financial Stability Policy Advisory Group (FSPAG – also chaired by National Treasury) to consider and make policy recommendations to the Minister of Finance on the most appropriate framework. A summary of the reforms is provided in Table 1.

This document is intended to provide guidance on the overall implementation of the reforms, however it should also be viewed as a work in progress. The implementation timeline (Figure 1) provides an indication of expected outcomes up to 2018, and highlights key events and processes, and milestones that need to be met, in order to ensure that the required framework is in place. It is expected that implementation will continue beyond 2018. Based on the scope of each aspect of the reforms, processes may run in parallel, or be considered for sequencing in due course. National Treasury, the Financial Services Board and the South Africa Reserve Bank will continue to monitor and review this approach, and later versions of this document will provide additional details of the implementation process.

EXECUTIVE SUMMARY AND OBJECTIVES

Figure 1: Implementation timeline



EXECUTIVE SUMMARY AND OBJECTIVES

Table 1: Summary of proposed reforms

Obligation	Regulations/ Board Notice	In force	Application	Product	Comment
Requirement to be authorised	Regulation 2 & Board Notice	2H 2017	OTC Derivative Providers (ODPs)	OTC Derivatives	Authorisation of ODPs will begin from the 12 month transition period after coming into force of FMA and the Regulations/ Board Notices
Prudential Capital Framework	Bank Regulations/ Prudential standard	In force	Banks have to meet capital requirements in terms of Basel III requirements	OTC Derivatives	Banks fully-compliant
Margin Requirements for Non-Centrally Cleared	Board Notice/ Joint/ Prudential standards	Phased-in	All ODPs not prudentially regulated elsewhere. Exemptions for certain institutions may be considered	All uncleared OTC transactions	ODPs must comply with Board Notices once authorisation has been approved by the FSB.
Code of Conduct: Confirmation, Portfolio Reconciliation and Compression	Board Notice/ Conduct standard	1Q 2018	All ODPs		ODPs must comply with Board Notices once authorisation has been approved by the FSB.
Equivalence Framework & Licensing for external CCP and TR	Equivalence determination under 6A Licensing under 49A & 56A Joint standards	2Q 2017	External CCPs and TRs		The framework to enable recognition with conditional or partial deference to foreign supervisory authorities. South African Authorities must enter into appropriate regulatory and co-operation arrangements with the foreign Authorities
Trade Reporting	Regulation 3 & Board Notice/ Joint standard	3Q 2017	All ODPs	All OTC Derivatives	Mandated central reporting relies on the implementation of an effective equivalence framework for the recognition / authorisation of external TRs
Clearing Mandate	Regulation 4 & Board Notice/ Joint standard	2H 2017	Exemptions for certain institutions may be considered or where no licensed CCP is authorised to clear products subject to the clearing mandate	Clearing eligible products	NT will review the exclusive reliance on incentives to migrate contracts into central clearing arrangements in 1Q 2017

LEGAL AND REGULATORY FRAMEWORK

The Financial Markets Act (the FMA or the Act) provides the enabling legal foundation to the reforms. The process for the promulgation of Regulations is prescribed in section 107 of the FMA, which generally empowers the Minister of Finance to make any Regulations with respect to matters that are required or permitted by the Act. The Regulations are aimed at supporting the objectives of the Act and ensuring South Africa meets its international commitments to making regulatory and legislative reforms to the OTC derivatives market to align with international standards.

The proposed regulatory framework has been developed jointly by National Treasury, the Financial Services Board and the South African Reserve Bank, and should be considered in conjunction with the draft Board Notices issued by the Financial Services Board, the Financial Sector Regulation Bill and consequential amendments to the Financial Markets Act (FMA), and the *CPSS-IOSCO Principles for Financial Market Infrastructures*.

Enabling legislation

Regulations with respect to requirements for the regulation of unlisted securities are made in terms of section of 5(1)*(a)* of the FMA. For the purposes of the Regulations, an 'OTC derivative' means an unlisted derivative instrument, other than foreign exchange spot contracts and physically-settled commodity derivatives.

Section 5(1)*(b)* enables the Minister to designate a category of 'regulated person' in relation to the provision of securities services in unlisted securities. This is necessary to extend the scope of regulatory oversight, and to enable the regulation of participants in the South African OTC derivatives markets. For the purpose of the Regulations, an 'authorised OTC derivative provider' is a regulated person in terms of section 5(1)*(b)* (see Regulation 5).

Providing securities services in OTC derivatives is a regulated activity. To narrow the scope of application of the Regulations in that regard, the securities service relates to originating, issuing, selling or making a market in an OTC derivative. A person who, as a regular feature of their business and transacting as principal, conducts/ engages in the regulated activity, must be authorised by the Authority in terms of section 6(8) of the Act or cease operations in OTC derivatives (see Regulation 2).

Regulations relating to the asset and resource requirements applicable to market infrastructures are made under the empowering provisions contained in sections 8(1)*(a)*, 28(1)*(a)*, 48(1)*(a)*, 48(1A)[1], and 55(1)*(a)* of the Act. Broadly, these Regulations set out:

- asset and resource requirements applicable to market infrastructures to fulfil functions and duties (see Regulation 8),
- requirements with which a central securities depository (CSD) must comply for approval of an external CSD for the purposes of establishing link arrangements (see Regulations 6 and 7),
- the governance, organisational resource and risk management requirements to govern the functions and activities of central counterparties (CCPs) (see Regulations 10 – 42), including roles and requirements of the controlling body and senior management of CCPs, and additional financial and risk management safeguards applicable to CCPs.

[1] This is a new subsection proposed to be inserted through consequential amendments to the FMA.

6 LEGAL AND REGULATORY FRAMEWORK

Financial Sector Regulation 'Twin Peaks' Bill

Development of the Regulations has taken into consideration the transition to a Twin Peaks regulatory architecture that is being established through the Financial Sector Regulation Bill.

- The **Financial Sector Conduct Authority** will replace the Registrar of Securities Services as the primary authority responsible for licensing and supervision of market infrastructures and regulating market participants under the FMA.
- The **Prudential Authority** will be established and have oversight responsibilities in the prudential supervision of market infrastructures and financial institutions that provide securities services.
- The **South African Reserve Bank**, through its enhanced role of monitoring and maintaining financial stability, is empowered to designate and exercise oversight of systemically important financial institutions (SIFIs), and will be responsible for assessing the observance on international principles developed for market infrastructures, including the CPSS-IOSCO *Principles for Financial Market Infrastructures.*

Amendments to the Financial Markets Act

Amendments to the FMA (see Schedule 4 of the Financial Sector Regulation Bill) are necessary to enhance the capacity of, and to delineate the functional roles and responsibilities of the Financial Sector Conduct Authority, the Prudential Authority and the South African Reserve Bank (the Authorities). These amendments include provisions to widen the regulatory scope and oversight of market infrastructures and the OTC derivatives market. Upon the enactment of the Financial Sector Regulation Bill, the Authority and the Prudential Authority may develop joint standards to determine matters, among others, with respect to:

- licensing and ongoing supervision of market infrastructure, domestic and where applicable foreign,
- regulation of market participants in relation to provision of securities services, whether in listed or unlisted securities,
- equivalence recognition of foreign jurisdictions, and
- additional criteria for the approval for authorisation of external (foreign) market participants

Although the Financial Sector Conduct Authority will remain the licensing and responsible Authority for administering the Act, certain matters will require the concurrence of both the South African Reserve Bank and the Prudential Authority. Amendments also provide for the repeal of certain Regulations made under the current framework for the determination of assets and resources requirements applicable to market infrastructures where it is appropriate. This is to accommodate the respective roles and additional mandate of the Authorities. Joint standards as contemplated in the Financial Sector Regulation Bill may then be made with respect to those matters. The Financial Sector Regulation Bill provides for a thorough consultation process with respect to making standards, and certain matters will be grandfathered once the standards are made.

LEGAL AND REGULATORY FRAMEWORK

Principles for Financial Market Infrastructures

The proposed reforms as they apply to the governance and risk management of market infrastructures are strongly aligned to the *Principles for Financial Market Infrastructures* (the *Principles*) with the necessary modifications for the South African context. This is consistent with international jurisdictions that are in various stages of adopting regulatory measures that are in line with the standards set out in the *Principles*. These *Principles* are designed to enhance the resilience of market infrastructures and to ensure that these entities contribute positively to financial stability. Market infrastructures are expected to have objectives that place a high priority on safety and efficiency, and explicitly support financial stability and relevant public interest considerations. It should be noted that the *Principles* are designed to be applied holistically because of the significant interaction between the principles and not in isolation. The G20 will monitor jurisdictions' implementation of these and other standards to ensure that market infrastructures, and particularly CCPs, establish comprehensive and effective risk management frameworks.

8 CONSULTATION PROCESS AND OUTCOME

The first draft of the Regulations[3] was published on 4 July 2014 accompanied by the policy document[4] outlining the framework. Commenters highlighted the challenge regarding the regulation of CCPs as a category of clearing house, without CCPs being explicitly defined in the FMA. While the majority of respondents were supportive of the structure, concerns were raised that certain provisions contained in the Regulations should be in primary legislation.

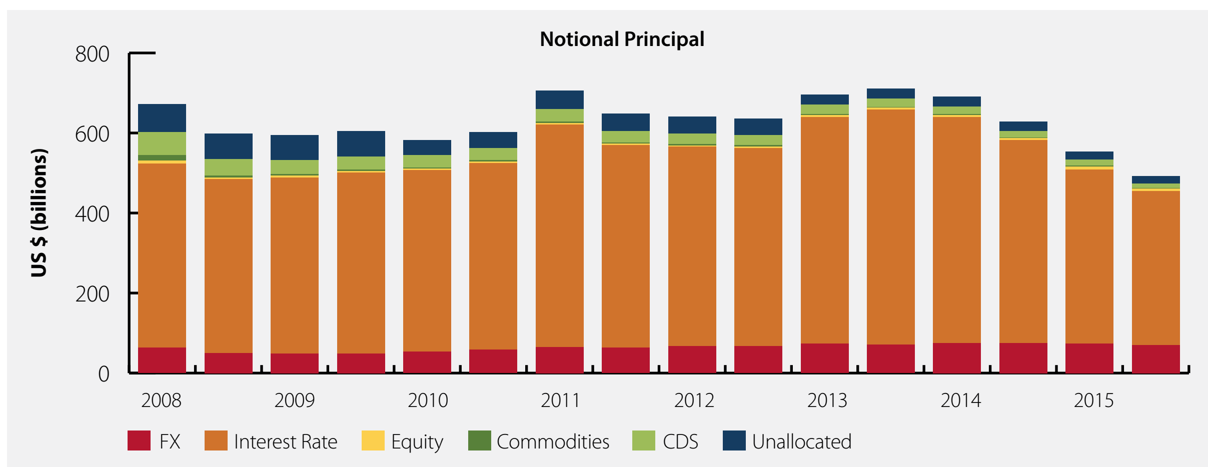
It was subsequently decided that amendments to the FMA be brought through the Financial Sector Regulation Bill that was released for public comment on 10 December 2014. The proposed amendments to the FMA introduce CCPs as a category of market infrastructure and related matters governing the regulation of CCPs. An equivalence recognition framework for external market infrastructures was also introduced under section 6A to facilitate access for South African market participants to international financial markets, and sections 49A and 56A introduce a foreign licensing regime that provides for conditional or partial deference to the home (foreign) regulator following an assessment of the foreign jurisdiction's regulatory regime by the South African Authorities. This is important in order to balance regulatory oversight of foreign supervised entities. Thereafter, revised draft Regulations[5] and accompanying policy statement[6] and draft Board Notices were published on 5 June 2015 for a second round of comments.

Extensive comments from various market participants and stakeholders were received throughout the various consultation phases. In response to stakeholder feedback, a revised draft of proposed Regulations has been developed, and is being released for public comment together with related draft Board Notices. Further discussions are planned with all the relevant stakeholders as the National Treasury, the Financial Services Board and the South African Reserve Bank undertake to refine and finalise the Regulations.

AN OVERVIEW OF THE OTC DERIVATIVES MARKET

The market for OTC derivatives is significant and global by nature. According to the Bank for International Settlements (BIS)[7], the size of the global OTC derivatives market as measured by the total notional amount of outstanding contracts (an indicator of activity) amounted to $493 trillion as at December 2015, of which interest rate derivatives contracts comprised 78% of the global market (see figure 2).

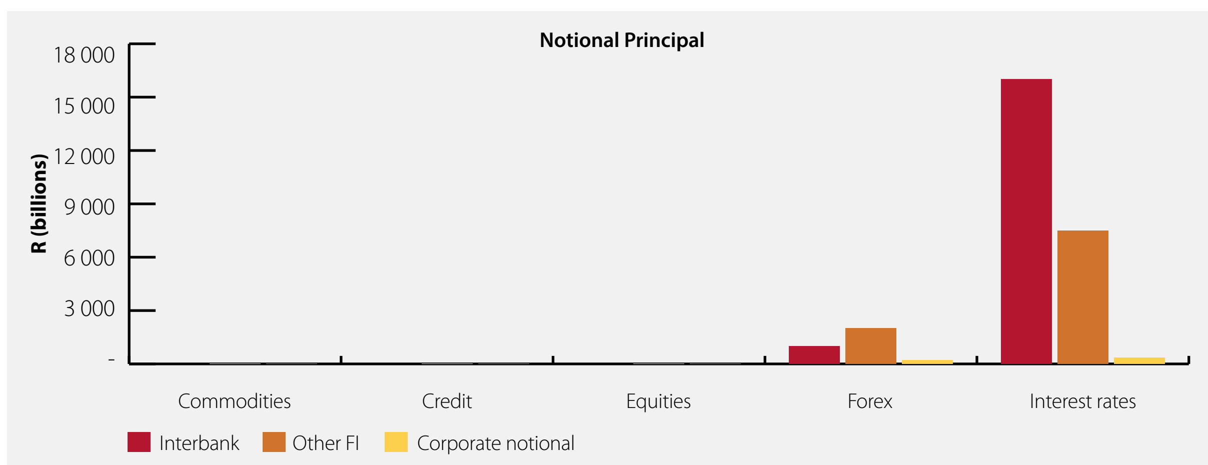
Figure 2: Global OTC derivatives market



Source: BIS Semi-annual survey of global OTC derivatives market 2015

As a share of the global market, the South African OTC derivatives market is fairly small (less than 1%) – the total notional outstanding balance in 2012 was estimated at R27.7 trillion. Potential netting benefits for South Africa are estimated at 62% of gross positive market value. Interest rate derivatives comprise more than 85% of the notional outstanding and monthly average volume executed in 2012, of which more than 58% of that volume represented local interbank interest rate trades (see figure 3)[2].

Figure 3: South African OTC interest rate derivatives market



Source: PwC Report 2013

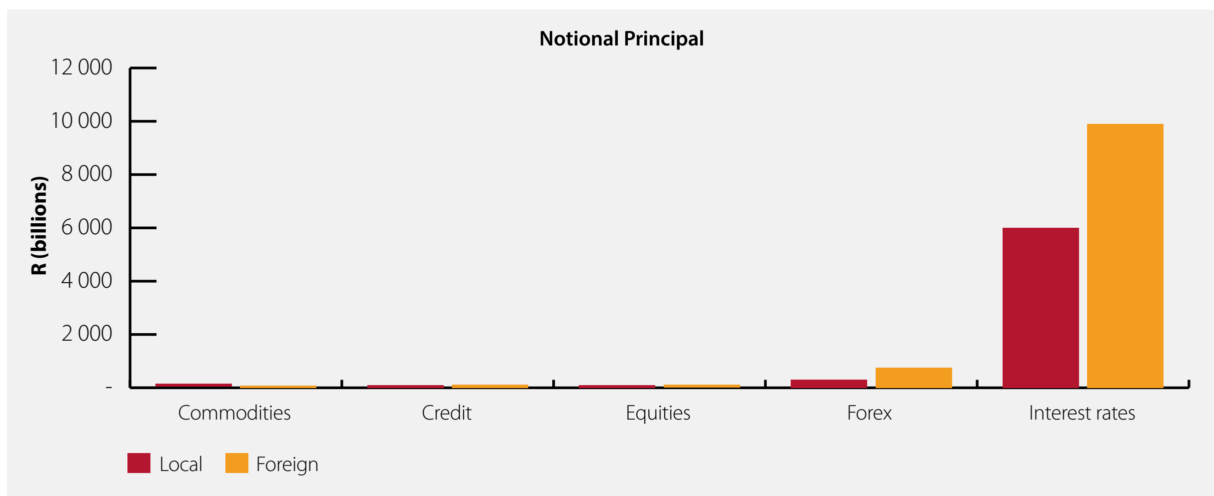
2 PwC Report, *"OTC Derivatives - South Africa"*, May 2013 (unpublished)

AN OVERVIEW OF THE OTC DERIVATIVES MARKET

The microstructure of the South African OTC derivatives market is not completely unique and shares similar characteristics to other emerging OTC markets. Domestic participants are mainly banking institutions and corporates. The OTC derivatives market plays an important role in domestic financial markets and the economy, particularly as these institutions use derivative products primarily for risk-hedging.

Consistent with global trends, the market is primarily characterised by interbank trades between domestic and foreign banks (see figure 4).

Figure 4: South African OTC interbank trades executed with international counterparties



Source: PwC Report 2013

About 61% of the outstanding interbank interest rate trades in 2012 were with international banks. South African banks are significantly exposed to the global markets. South Africa therefore has a vested interest in ensuring that markets are safe and efficient.

REVIEW OF OTC DERIVATIVES MARKETS REFORMS

Authorisation of OTC Derivatives Providers

The categorisation of OTC derivative providers (ODPs) as regulated persons that conduct regulated activity in relation to OTC derivatives (that is market participants that originate, issue, sell, or make a market in OTC derivatives as regular business) is necessary to provide the scope of coverage of the regulatory framework. Derivatives market participants may not conduct the activity of an ODP in South Africa unless authorised by the Authority in terms of section 6(8) of FMA. To be authorised as an ODP, an applicant must meet the criteria prescribed in the Board Notice, and prove its financial soundness as part of fit and proper requirements.[8] All ODPs will be required to, amongst other things, observe the proper standards of business and market conduct, and to establish, maintain and implement written policies and procedures for the categorisation of clients and counterparties. The requirements aim to ensure an adequate level of financial and operational resources are maintained at these institutions in order to minimise potential losses to clients and other financial market participants. ODP authorisation is expected to begin 6 months after coming into force of the FMA and the Regulations. An application must be lodged with the Authority, and after 12 months of commencement date a person may not act as an ODP unless authorised.

ODP Code of Conduct

All ODPs are required to comply with the code of conduct requirements set out in the draft Board Notice.[9] The code of conduct is aligned to the IOSCO risk mitigation standards for non-centrally cleared OTC derivatives, and is complementary to the margin requirements for non-centrally cleared OTC derivatives[10] developed by BCBS-IOSCO. The code of conduct requires ODPs to establish, maintain and implement written policies and procedures for proper risk management, and to manage operations and activities. The framework proposes additional risk management requirements covering the following:

- **Trading relationship documentation**: ODPs must enter into written agreements that will govern the trading relationships between the ODPs and the clients or counterparties, which must stipulate the economic terms of the transaction, including payment obligations, netting of payments, and events of default or other termination events.
- **Trade confirmation:** Confirmation is necessary to promote legal certainty to the transaction. ODPs must ensure the timely confirmation of all the material terms of non-centrally cleared OTC derivatives transactions after execution. If transactions are not confirmed within specified timelines, the OPD must provide a monthly account of such incidents to the Authority.
- **Portfolio reconciliation:** ODPs must perform portfolio reconciliation at specified intervals to enable early identification of any discrepancies in the material terms of non-cleared open OTC derivative transactions, including valuation. The portfolio reconciliation may be performed bilaterally between the ODP and its counterparty or client, or by a third party mandated by the counterparty or client.
- **Portfolio compression:** Portfolio compression of non-cleared open OTC derivative transactions enables early termination of transactions with similar economic terms without changing the risk profile of the portfolio, thus reducing the size of OTC derivatives notional amounts. In fact, the BIS reports that trade compression of interest rate swaps cleared through CCPs has been a key driver in the decline in notional amounts of global OTC derivatives since 2014 (see figure 2). A significant benefit of portfolio compression is the reduction in operational risk, costs, and counterparty credit risk exposure. ODPs must perform portfolio compression, whether bilateral or multilateral portfolio compression, at least twice annually where appropriate and technologically possible.
- **Dispute resolution:** ODPs must determine when discrepancies in material terms or valuations are considered disputes, as well as how such disputes should be resolved. If any dispute relating to an OTC derivative transaction with a valuation or an exchange of collateral value upwards of R100 million is not resolved within 10 business days, the ODP must promptly notify the Authority.

- **Safeguarding collateral:** All collateral that is collected in the form of initial margin is required to be segregated from proprietary assets on the books and records of the custodian (or third-party) that is holding it.

The code of conduct is aligned with international best practice and will be binding on all OTC derivatives providers, their directors, officers and employees, clients and counterparties.

Reporting obligation

The objective of the central reporting mandate is to monitor concentration build-ups that may pose systemic risk. It is important that market participants report details regarding OTC derivative transactions to a licensed TR to be centrally stored and easily accessible for the Authorities. According to the Financial Stability Board's 10th Progress report on OTC derivatives market reforms implementation, only 19 of the 24 member jurisdictions had OTC derivatives trade reporting requirements in force with respect to more than 90% of transactions as at end-September 2015.[11] The Financial Stability Board further reports that in jurisdictions where reporting requirements are in force and TRs are available in a given asset class, requirements are estimated to cover 80–100% of new transactions. South Africa is cited as one of several jurisdictions, along with Argentina, that is lagging with respect to trade reporting requirements.

Regulation 3 provides for all transactions in OTC derivatives to be reported to a TR. In addition to the draft Regulations, a revised draft Board Notice will be issued by the Financial Services Board in due course, which aims to address ongoing reporting obligations to licensed TRs by ODPs. Reporting requirements are closely aligned with other jurisdictions and introduce reporting requirements across all asset classes. Comprehensive reporting requirements will also increase the value of the information maintained by TRs, including for ancillary services such as trade confirmation, trade matching, portfolio reconciliation or portfolio compression. It is expected that requirements will be adopted by mid-2017 and in force by end-2017.

Trade repositories

The reporting mandate requires OTC derivatives transactions be reported to a licensed domestic or foreign TR. Though TRs have not been designated as systemically important, these entities are key market infrastructures in systemic risk management under the OTC derivatives reform agenda, and fall within the scope of the *Principles*. Authorities need to monitor and understand the functionality and microstructure of the OTC derivatives markets to enable the identification of potential areas of systemic risk.

The design of the TR must ensure that it operates with effective risk controls and can serve the important role of enhancing the transparency of information to relevant Authorities and the public, promote financial stability, and support the detection and prevention of risk concentration and market abuse. For that purpose, the Regulations prescribe additional assets and resource requirements for a domestic TR in terms of section 55(1)*(a)*. Additionally, the Board Notices make provision for governance arrangements and additional duties of a TR and on-going obligations, including access for regulatory Authorities to stored data, how TRs provide data and the safeguarding of data. The requirements are aligned with the *Principles* which prescribe requirements for the governance, general business risk, operational risk, fair and open access to TRs, communication procedures and standards, disclosure of market data by the TR, and coordination between relevant Authorities to ensure timely and effective access to transaction data recorded in the TR.

Authorities must have access to all the details of OTC derivative contracts which they need to monitor risk concentration and exercise regulatory oversight. Access to TR-held data will enable the Authorities to move away from decentralised access to information (that is, directly from reporting entities or from each other) to centralised data access through TRs that collect, store data and facilitate access by Authorities to that data. At present, there are no licensed TRs for the provision of OTC derivatives services to the South African market, and the lack of available data limits the ability of monitoring changes in the size, concentration, interconnectedness, and structure of OTC derivatives markets. In order to assess systemic risk the Authorities, particularly the South African Reserve Bank, will require access to transaction-level TR-held data. The CPSS-IOSCO report on Authorities access to TR data provides additional guidance to TRs and Authorities.[12]

Given that a significant share of South Africa's OTC derivatives transactions are cross-border, the likelihood is that foreign OTC derivative counterparties may already be reporting to existing international TRs. Cooperation and collaboration with foreign regulators is critical to facilitate mechanisms for South African Authorities to have access to South African data held in foreign TRs and to receive reports pursuant to South African requirements. A lack of access to data stored in a foreign TR would significantly impair Authorities' ability to observe market developments and monitor systemic risk build up. Legislative amendments are being proposed to the FMA to empower Authorities to license foreign TRs that are subject to equivalent regulatory regimes. New section 56A prescribes the requirements and process for licencing of foreign TRs to perform duties or provide services in South Africa. The Authorities may prescribe in joint standards additional criteria for the licensing of an external TR, and must take into consideration relevant factors, such as the foreign TR's observance of relevant international standards, the impact and the degree of systemic risk posed to the South African financial system and any other factors considered relevant by the Authorities.

The framework will enable South African market participants to report pursuant to domestic and foreign requirements, and is designed to enhance the ability of Authorities to monitor and detect risks, as foreign reporting may also be permitted if at least one of the counterparties to the transaction is established in an equivalent foreign jurisdiction. If reporting is made to a licensed foreign TR rather than to a South African TR, the equivalence framework will enable Authorities to recognise the foreign reporting requirements. South African Authorities must enter into appropriate regulatory and cooperation arrangements with the foreign authorities. This approach is supported by Principle 24 on the disclosure of market data by TRs and Responsibility E on cooperation with other authorities, whether domestic or international, of the *Principles*.

A global identifier system

The practical reality of requiring trades to be reported to TRs is that data is fragmented across jurisdictions and stored in a variety of formats, and subject to many different rules for authorities' access. Authorities will be forced to analyse vast amounts of data from several sources that may comply with different reporting standards and data formats.

The Financial Stability Board strongly supports the development and implementation of a global LEI system of standardised identifiers, i.e. legal entity identifiers (LEIs), unique product identifiers (UPIs) and unique transaction identifiers (UTIs) are advanced.

- **Legal Entity Identifier:** The LEI is a 20-character, alpha-numeric code, to uniquely identify legally distinct entities that engage in financial transactions. The LEI definition currently relies on a standard published by the International Organisation for Standardisation (ISO). LEIs are increasingly being used for regulatory reporting around the world, in accordance with applicable national laws, as well as other public and private sector purposes.

- **Unique Transaction Identifier:** The role of the UTI is to uniquely identify each OTC derivatives transaction required by authorities to be reported to TRs, in particular to minimise the likelihood that the same transaction will be counted more than once.
- **Unique Product Identifier:** The purpose of the UPI is to uniquely identify OTC derivatives products that authorities require to be reported to TRs. The UPI consists of a product classification system and associated code. A product classification system would allow regulators to perform data aggregation to monitor exposures to, or positions in, various groupings of products.

The global LEI system will be critical to Authorities ability to monitor activity and concentration risks. International initiatives are underway to develop and implement a common methodology and mechanism for the aggregation of data on a global basis, and standardisation of reporting formats through a system of LEIs. The Financial Stability Board has proposed a three-tier structure for system:

- **Regulatory Oversight Committee.** The ROC was established in January 2013 as a group of over 70 public authorities from more than 40 countries to coordinate and oversee a worldwide framework for the global LEI System. The ROC has the ultimate responsibility for the governance of the global LEI system.
- **Central Operating Unit.** The COU constitutes the operational arm of the global LEI system and has responsibility for delivering high quality operations. The Global LEI System Foundation (GLEIF) was established by the Financial Stability Board in 2014 as a non-profit organisation to assume the role of the COU of the system, and on 7 October 2015 was designated as the COU responsible for accrediting and monitoring organisations seeking to become LEI issuers (the LOUs). The GLEIF is overseen by the ROC. Prior to the designation of the GLEIF as the COU, the ROC had assumed certain tasks of operational oversight and coordination of the global LEI system, including endorsing pre-LOUs. The ROC and sponsoring authorities will continue to assist the GLEIF in monitoring compliance by endorsed pre-LOUs (existing LEI issuers endorsed by the ROC) until they are accredited by the GLEIF.
- **Local Operating Units.** The LOUs provide the primary interface for entities wishing to register for LEI. The LOU is responsible for issuing LEIs to legal entities engaging in financial transactions and offer facilities such as local registration, validation, and maintenance of reference data. As of end January 2016, over 415,000 entities from 195 countries had obtained LEIs from 29 operational issuers endorsed by the ROC. Strate is accredited by the ROC as a pre-LOU in South Africa.

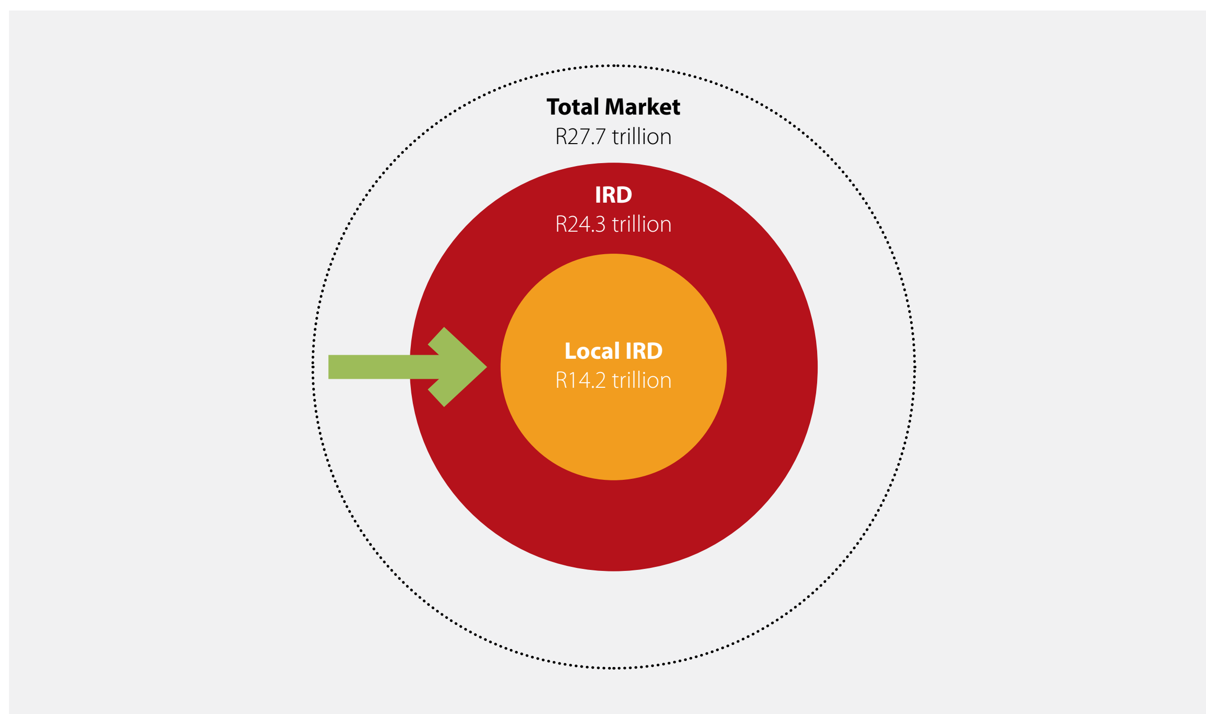
Going forward, South Africa will need to consider the economics of opening the market up to competition for TRs and the associated costs of accessing and aggregating data from multiple sources. Data fragmentation will complicate aggregation and reconciliation of data owing to legal obstacles such as confidentiality requirements and restrictions on disclosure to third parties. Given that South African entities may already be making use of foreign TRs to report derivative transactions with foreign counterparties, and from a cost perspective, global scale providers may be considered by the market and Authorities alike.

Central clearing mandate

The degree of standardisation of the contractual terms and operational processes is a key condition for determining whether a product is suitable for clearing, and for maximising clearing benefits. Standardisation of OTC derivative contracts is necessary for mandating central clearing of trades and trading on an electronic trading platform. To date, a number of initiatives for local OTC derivatives clearing have been considered (PwC Report) within which it is anticipated that certain OTC derivatives products can be subject to standardised requirements, in line with global standards.

REVIEW OF OTC DERIVATIVES MARKETS REFORMS

Figure 5: Size of the local clearable market



Source: PwC Report 2013

Based on the PwC assessment of the market and size of the clearable market, 61% of interbank interest rate trades are executed with international banks. These banks' inter-bank transactions are already subject to European and US clearing mandates. Under the assumption that trades with international banks will clear through international CCPs in order to maximise multilateral netting benefits and optimum capital savings, the size of the domestic clearable market is reduced by R10 trillion or a further 37% of the total OTC market.

The Authority may in terms of section 6(7)*(d)* prescribe conditions and requirements related to the provision of securities services of specified types of unlisted securities (i.e. OTC derivatives transactions). Securities services, as defined, include the provision of clearing services by clearing members in terms of clearing house rules. South Africa had initially undertaken to rely on an incentives-based approach to central clearing, and would instead rely on capital requirements and margin requirements with on-going assessments of the market to determine whether further clearing obligations would be required.

Going forward, the Authorities will review the incentives-based approach and the market to determine further regulatory standards to be implemented. The Authorities will determine eligibility criteria for OTC derivative transactions to be subject to mandatory clearing and conduct assessments into other categories of OTC derivative transactions upon which additional mandatory clearing requirements could be based (see Regulation 4). The viability of products for central clearing is greatly influenced by the standardisation and liquidity of the products. The Authorities could consider potentially starting with more standardised ZAR denominated interest rate derivatives. Market assessments by PwC in 2013 reported that 99% of Swaps and Forward Rate Agreements (FRAs) traded between local counterparties to be ZAR denominated. In terms of liquidity, the

REVIEW OF OTC DERIVATIVES MARKETS REFORMS

PwC reported that the Swaps and FRA market comprises 92% of the local interest rate derivatives market with respect to local trades. Further investigation could then be conducted into other categories of OTC contracts eligible for clearing. Consultation with industry is expected to begin in 2017 to assess whether or which products can be mandated for central clearing, with a determination to be made by 2H 2017.

Central counterparties

CCPs have become systemically significant since measures to mandate central clearing of OTC derivatives have been introduced. CCPs have a pivotal role in reducing systemic risk through centralised risk management, and multilateral netting and risk mutualisation capabilities that contribute to reducing total counterparty risk exposure.

A challenge for the South African market has been the general lack of market infrastructure to provide central clearing services for OTC derivatives to South African market participants. Consequently, banks registered in South Africa have no alternative but to absorb the full impact of the increased capital requirements for domestically traded OTC derivatives. An added complication is the cross-border nature of the OTC derivatives market. South African market participants have large foreign exposures, with most OTC derivatives transactions concluded between a domestic bank and a foreign counterparty (61% of the interbank interest rate trades according to the PwC Report). A domestic CCP may only be able to capture a small portion of the domestic clearable OTC derivatives market. On the other hand, there are a few large global CCPs that offer multicurrency clearing across multiple jurisdictions but it may be complicated for the Authorities to exercise oversight over global CCPs.

The extent of risk mitigation however also depends on the level of capitalisation and sophistication of risk management associated with a CCP, whether domestic or foreign. Accordingly, the draft Regulations therefore introduce a rigorous framework for the regulation of CCPs, and contain stringent prudential, governance and conduct requirements. Prudential regulatory standards for CCPs aim to ensure the sufficiency of financial resources of these institutions to minimise potential losses to their stakeholders and other financial markets participants.

In light of the above, the policy paper released on June 5, 2015 explored five central counterparty clearing solutions that market participants could consider. Option 1, referred to an international central counterparty solution with no local presence where domestic participants clear directly through an international CCP. Option 2, explored a solution that requires an international CCP to establish a local branch and must be subject to domestic legislation and regulations. Option 3, was for a fully domestic CCP to be established for the South African market. Option 4, highlighted the partnership or hybrid model between an international CCP and a domestic entity such as an Exchange to provide domestic clearing services. Lastly option 5, which required an international CCP to have some local presence i.e. through a local representative office, but would require an equivalence framework to be established in order to allow for an international CCP to provide clearing services to domestic participants.

Having reviewed the CCP options, option 5 was the most preferred option given the feasibility and ease of establishing such a structure under the regulatory framework given the constraints faced as the recognition framework is not complete. The consequential amendments will therefore reflect an accommodative domestic framework for licensing of foreign CCPs that will enable them to offer clearing services to local participants.

Legislative amendments have been proposed through the Financial Sector Regulation Bill for licensing of foreign CCPs. The new section 49A prescribes requirements for licencing of foreign CCPs. It is important to recognise that global CCPs are already

subject to extensive regulatory and supervisory oversight in their home jurisdictions. The framework introduces a graduated licensing regime to enable Authorities to defer to the other jurisdictions regulatory standards, recognising the cross-border systemic risk that these institutions pose, and at the same time balancing the need to facilitate access for South African market participants, most of whom are already clients of international banks that are clearing members of global CCPs and whose inter-bank transactions are subject to foreign clearing mandates. A CCP from an equivalent jurisdiction may apply to be licensed in terms of 49A. In order to be licensed as an external CCP, an applicant must either be a company as defined in section 1(1) of the Companies Act, or an external company as defined in section 1(1) of the Companies Act that is registered as required by section 23. Furthermore, the Insolvency Act protections are crucial to CCP's ability to provide clearing services and to containing systemic risk in the event of default. This is true whether the CCP is domestic or foreign, and providing services South African market participants. Consequently, amendments are being proposed to provide foreign CCPs the same protections as domestic rule-making market infrastructures. Accordingly the external CCP will have to have some local presence.

Market participants will be able to use either domestic or global CCPs, depending on the offer of clearing services and capabilities of the CCP. Domestic participants with foreign affiliate trade more with foreign counterparties who are significant OTC liquidity providers for interest rate and FX derivatives. London operations of foreign participant dealers are already members of foreign clearing houses, such as LCH.Clearnet and CME, and there is a strong preference to clear ZAR denominated transactions through the foreign CCPs in order to minimise risk on long-dated transactions. The risk of resisting use of international CCPs will deprive the market of a source of liquidity, and reduce foreign involvement in the South African market. Therefore, the proposed recognition framework under the Financial Markets Act will enable South African Authorities to consider a global framework to clear trades through global CCPs, while balancing the systemic impact of such activity on the safety and efficiency of the South African market.

National Treasury has always supported the view that the cross-border nature of financial markets necessitates an appropriate regulatory framework that promotes the efficiency and competitiveness of the South African financial markets without significantly undermining stability. The proposed approach is consistent with international jurisdictions which have adopted frameworks for cross-border equivalence recognition regimes, such as Australia and Canada. Again, South African Authorities must enter into appropriate regulatory and co-operation arrangements with the foreign Authorities.

Higher capital requirements for non-centrally cleared derivatives

In the years preceding the crisis, it was found banks had held insufficient capital to cover their risk exposures. In response part of the Basel III reforms developed by the BCBS[13] require prudentially regulated institutions to increase capital holdings relative to the risks inherent in their portfolio. These reforms will significantly change the counterparty credit risk regime associated with OTC derivatives market activities. The standard introduces a risk-weighted Credit Valuation Adjustment (CVA) as an additional capital requirement to counterparty credit risk taking into account the credit quality of participants in the derivatives markets, and applies to risk exposures to CCPs arising from OTC derivatives, exchange-traded derivatives transactions, Securities Financing Transactions (SFTs) and long settlement transactions.[14] The standard also introduces the concept of a qualifying CCP that is an entity licensed to operate as a CCP and is subject to prudential supervision and where the relevant regulator applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the *Principles*. The framework allows bank supervisors to give banks preferential capital treatment to exposures to qualifying CCPs. These new capital standards are aimed at encouraging the use of standardised, centrally-cleared transactions. The final standard will apply from 1 January 2017.

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Regulations relating to banks for higher capital requirements, as part of the revised prudential standards under Basel III are in force. As of 1 April 2015, South African Banks are fully compliant with the higher capital requirements for non-centrally cleared derivatives in accordance with the Basel III CVA capital rules.

Margin requirements for non-centrally cleared derivatives

Implementing a margining framework is important for mitigating risks arising from bilateral trades that are not cleared through a CCP. In November 2011, G20 Leaders in Cannes called on international standard setting bodies, the BCBS and IOSCO to develop standards on margining for non-centrally cleared OTC derivatives, stating:

> *"We call on the Basel Committee on Banking Supervision (BCBS), the International Organization for Securities Commissions (IOSCO) together with other relevant organizations to develop for consultation standards on margining for non-centrally cleared OTC derivatives by June 2012..."*[15]

In March 2015, the BCBS and IOSCO[16] released a paper with recommendations on the approach to margins for non-centrally cleared derivatives. The Registrar of Securities Services issued for public comment a draft Board Notice[17] on 5 June 2015 in respect of margin requirements for non-centrally cleared OTC derivative transactions. The margin requirements apply to all ODPs and non-ODP financial and non-financial counterparties that are trading OTC derivatives in excess of specified *de minimis* thresholds – i.e. the covered entities. Covered entities will be required to collect initial and variation margin with respect to non-cleared OTC derivative contracts. The margin framework is closely aligned with the international standards provided by the BCBS and IOSCO in order to create a level playing field amongst participants by ensuring there is limited international arbitrage. The BCBS and IOSCO paper has proposed 1 September 2016 as the phase in period: Starting on 1 March 2017, all covered entities will be required to exchange **variation margin**, regardless of their outstanding derivatives positions. Covered entities with aggregate month-end average notional outstanding non-centrally cleared derivatives positions exceeding €3 trillion are due to start exchanging **initial margin** from 1 September 2016. From 1 September of each subsequent year, the outstanding derivatives positions condition will be reduced by €0.75 trillion per year, with the permanent outstanding derivatives positions condition of €8 billion falling on phase-in date of 1 September 2020.

It is expected that the margin requirements will be phased in for South African market participants after the coming into effect of the Regulations. A challenge for an economy the size of South Africa is indirectly related to the prescribed thresholds as well as the scope of coverage proposed in respect of non-centrally cleared OTC derivatives. An appropriate framework will be given due consideration, to ensure a consistent policy approach that does not undermine the competitiveness and efficiency of South African market.

Exchange and electronic platform trading

Lack of transparency in the OTC derivatives market has been cited one of the major factors that contributed to the uncertainty that exacerbated the crisis. The historically unregulated market is perceived to be opaque with limited price discovery where, unlike traditional exchange-traded futures and equity markets, trades are negotiated bilaterally between counterparties and executed either through voice-brokering or request-for-quote (RFQ) procedures. The G20 Leaders call for standardised derivatives contracts to be traded on exchanges or electronic trading platforms where appropriate is aimed at addressing this lack of transparency.

REVIEW OF OTC DERIVATIVES MARKETS REFORMS

Automation of trade execution can transform the landscape of the derivatives market, resulting in obvious benefits such as potentially lower trading costs. A challenge for the South African financial market is the restriction under the FMA which limits the regulation of electronic trading platforms. An electronic trading system would either have to be licensed as an exchange and fulfil all the functions and duties imposed by the law; otherwise all trades executed on such platform would legally be only valid once reported to a licensed exchange. A technology provider would, short of being a full exchange, have to be declared as a regulated person or become a member of a licensed exchange, and all trades executed on that platform would have to be reported to the exchange.

While no determination has been made to adopt and enforce trading on electronic platforms, going forward it is envisioned that a decision will be made whether or not to require OTC derivatives trades to move to exchange or electronic trading platforms, if Authorities consider it appropriate, and will naturally evolve from the market review of the size and scope of the standardised OTC derivatives market.

SUMMARY OF THE REGULATIONS

Chapter I: Interpretation

1. Definitions

Regulation 1 sets out the definitions and clarifies certain terms to assist with the interpretation of this Regulation. For the purposes of these Regulations, any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it and, unless the context indicates otherwise. An 'OTC derivative' is provided for in the definitions to mean an unlisted derivative instrument that is executed, whether confirmed or not confirmed, but excludes foreign exchange spot contracts, and physically-settled commodity derivatives.

Chapter II: OTC Derivatives

2. Requirement to be authorised

Chapter 2 of the Regulations provides for the authorisation of certain OTC derivatives market participants in order to provide scope of regulatory oversight over these entities. The Minister may in terms of section 5(1)*(b)* designate a category of regulated person in relation to the provision of securities services, whether in relation to listed or unlisted securities, if such category is not already regulated under the Act. For the purposes of these Regulations, an **'OTC derivative provider'** designated as a category of regulated person that is a person who as a regular feature of business and transacting as principal originates, issues, sells or makes a market in OTC derivatives. Regulation 2 prohibits persons from acting as an OTC derivative provider, or advertising or holding themselves out as such, without being authorised in terms of section 6(8) of the Act. The Authority may prescribe requirements for an application to be an **'authorised OTC derivative provider'**.

3. Reporting obligations

In line with the G20 recommendations to enhance transparency and ensure that information is available disclosed to the Authority and other relevant supervisory bodies, the Regulation 3 also provides that an authorised OTC derivative provider must report all transactions in OTC derivatives reported to a domestic or external TR that is licensed in terms of the Act.

4. Clearing

Regulation 4 prescribes requirements in relation to clearing of OTC derivatives transaction. The Authority may, subject to section 6(7), prescribe conditions and requirements in standards developed in conjunction with the Prudential Authority for the provision of securities services in respect of unlisted securities prescribed by the Regulations for that purpose. The Regulation provides that where an OTC derivative has been specified by the Authority to be eligible for clearing, the authorised OTC derivative provider must ensure that those transactions are cleared through a licensed domestic or external CCP.

For the purpose of this Regulation the Authority may determine eligibility criteria OTC derivative transactions to be subject to mandatory clearing and conduct assessments into other categories of OTC derivative transactions upon which additional mandatory clearing requirements could be based. In making a determination for mandatory clearing eligibility, the Authority

must have regard to relevant considerations, which include:

- the suitability of the OTC derivative transaction for clearing, i.e. the level of contractual and operational standardisation, volume and liquidity of the relevant OTC derivative transactions,
- the effect on the efficiency, integrity and stability of the South African financial system,
- the interconnectedness between counterparties to the relevant classes of OTC derivative transactions and the impact on the levels of counterparty credit risk,
- the resources and suitability of the CCP available to clear the relevant OTC derivative transactions, and
- the impact on the competitiveness of the South African market of imposing a clearing requirement in relation to the relevant OTC derivative transactions.

Chapter III: Category of regulated persons

5. Category of regulated person

The Act empowers the Minister to designate a category of regulated person that is not regulated in terms of the Act. The purpose of the Regulation 5 is to designate an **'OTC derivative provider'** as a category of **'regulated person'** in terms of section 5(1)*(b)*.

Chapter IV: External Central Securities Depositories

6. Approval of an external central securities depository as a special category of participant

This Chapter provides for the securities services that may be provided by an external central securities depository that is approved by a licensed CSD. Section 35(4) of the Act permits a licensed CSD to approve an external CSD as a category of participant in the CSD, subject to Regulations prescribed under section 5(1)*(c)*, provided that the external CSD is from an equivalent jurisdiction in terms of section 6A. Regulation 6 applies for the purposes of establishing a link arrangement with an external CSD. A licensed CSD may establish a link with a foreign-licensed CSD through a set of contractual and operational arrangements between the CSDs. The *Principles* describe this relationship as one in which the domestic licensed CSD (or investor CSD) establishes a link with the external CSD in which securities are issued (the issuer CSD) to enable a participant in the investor CSD to access the services of the issuer CSD through the participant's existing relationship with the investor CSD. The link is for the primary purpose of expanding the CSDs services.

7. Requirements for an external link

The Regulation 7 provides for the requirements with which the CSD must comply for approving an external CSD as a special category of participant. Before entering into a link arrangement as contemplated in Regulation 6, and on an ongoing basis once the link is established, the licensed CSD must have processes to identify, assess, monitor and manage all risks or potential sources of risk arising from the link arrangement, including legal, operational, and custody risks. Furthermore the CSD must ensure that it and the external CSD have adequate processes and procedures for the segregation and protection of assets in the event of their insolvency or default.

SUMMARY OF THE REGULATIONS

Chapter V: Assets and resources requirements applicable to certain market infrastructures

8. Assets and resources requirements for exchanges, central securities depositories, clearing houses and trade repositories

Sections 8(1)*(a)*, 28(1)*(a)*, 48(1)*(a)* and 55(1)*(a)*, provide that Regulations may prescribe matters related to the financial resources, management and human resources requirements of the market infrastructure. Regulation 8 sets out the assets and resource requirements for market infrastructures other than CCPs. Market infrastructures are required to hold sufficient capital and liquid net assets in the Republic to cover potential general business losses. The purpose of the requirement is to ensure that the applicable market infrastructures are adequately protected against operational, legal, custody and investment risks related to the activities of the market infrastructures so that they can continue providing services as a going concern.

Chapter VI: Central counterparties

9. Legal Basis

Requirements set out in Regulation 9 relate to the legal basis with respect to the functions and activities of the CCP. The legal basis provides the foundation for the CCP's clearing functions and activities, and there must be certainty for each material aspect of its activities. To establish the legal basis of its functions, a CCP must have rules, policies, procedures and contracts that are clear, understandable and consistent with relevant laws, including these Regulations. Rights and obligations of the CCP, the clearing members, clearing member's clients, custodians, service providers and other relevant parties must be clearly defined on matters including collateral held in custody, default rules and procedures, enforceability of the CCPs netting and collateral arrangements, and settlement finality. Given that risk management is a core function of the CCP, enforceability of rights and obligations relating to the CCP and its risk management function must be established with a high degree of certainty. This requirement is consistent with Principle 1 of the *Principles*.

10. Access and participation

Regulation 10 requires a CCP to allow for fair and open, and non-discriminatory access to its functions based on reasonable risk-related membership and participation requirements. This requirement is consistent with Principle 18 of the *Principles*. Open access has advantages in terms of enhancing competition in the provision of clearing services, and lowering overall costs. Participation requirements should be justified in terms of the safety and efficiency of the CCP and the markets it serves, and be tailored to the CCPs specific risks. Section 53(2)*(b)* of the Act provides that clearing house rules to provide for equitable criteria for authorisation and exclusion of clearing members. Rules are binding on clearing members. In addition to direct clearing membership, use of a CCP's services may extend to client clearing (indirect clearing) and to direct use by other market infrastructures (e.g. CSDs, TRs) and other relevant service providers (e.g. matching and portfolio compression service providers). The CCP must also regularly monitor risks arising from participation arrangements and ensure that its members and any linked

market infrastructures have the necessary operational capacity, financial resources, legal powers, and risk-management expertise to avert improper risk exposures to the CCP, its clearing members, indirect clearing clients and other market infrastructures. The CCP may impose additional requirements to ensure that its clearing members have the capacity to act for indirect clearing clients, and must identify dependencies between clearing members and indirect clearing clients that might affect the CCP.

11. Governance

Governance arrangements are what define the structure under which the controlling body of the CCP and senior management operate. Decisions of the CCP can have far-reaching and systemic implications affecting multiple financial institutions, markets and the wider financial system. Regulation 11 requires a CCP to put in place robust governance arrangements that are clear and transparent, promote the safety and efficiency of the CCP, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders. The CCP's governance arrangements should also include appropriate consideration of the interests of its clearing members and their clients, the relevant Authorities, and other stakeholders.

Governance arrangements should provide for the roles, responsibilities, term and composition of the controlling body, senior management and any committees of the controlling body or other committees of relevance to the CCP that enable it to perform its functions in a continuous and orderly manner.

Although the controlling body of the CCP is ultimately responsible and accountable for managing the CCP's risks, there must be clear and direct reporting lines between the controlling body and senior management in order to ensure that the senior management is accountable for its performance.

The establishment and oversight of key functions: the risk management, compliance and internal control function, is the responsibility of the controlling body which must ensure that these functions have the necessary level of independence, authority, resources and access to the controlling body to fulfil their obligations. In addition, the CCP must have at least a risk, compliance and information technology function under the direction of a chief risk officer, a chief compliance officer and a chief information technology officer (or equivalent), to ensure that the CCP operates with the necessary level of human resources to meet all of its obligations.

The CCP must have a dedicated chief risk officer responsible for ensuring the implementation of the risk management framework set by the controlling body. In particular, the reporting lines for risk management should be clear and separate from those for other operations of the CCP. The controlling body of the CCP is ultimately responsible and accountable for managing the CCP's risks and must set the risk management framework for the CCP.

12. Risk committee

Additionally, Regulation 12 requires a CCP to establish a risk committee to assist the controlling body in discharging its risk-related responsibilities. The risk committee must be chaired by an independent member of the controlling body, and must be composed of representatives of clearing members, and independent members of the controlling body, and have direct access to the controlling body to ensure that the operations of the CCP are consistent with the risk-management framework. The risk committee serves in an advisory capacity. These requirements are consistent with Principle 2 of the *Principles*.

SUMMARY OF THE REGULATIONS

13. Risk management framework

Regulation 13 requires a CCP to put in place a comprehensive and documented risk management framework approved by the controlling body to identify, measure, monitor, control, and appropriately report on all risks associated with its activities, including business risk and counterparty credit risk, liquidity and the potential impact on operations and services, cash flows, liquidity, and capital positions. The risk management framework must be aligned with the business strategy, goals and objectives, and the risk appetite of the CCP.

14. Related parties, subsidiaries and associates.

A CCP must manage and regularly review the material risks it bears from and poses to other entities as a result of interdependencies and should develop appropriate risk-management tools to address these risks. Regulation 14 restricts the CCP from acquiring or establishing subsidiaries or associates, without prior written approval of the Authority, and must manage the relationship between itself and associated entities, and any conflicts of interest that arise as a result. Importantly, any relationship between the CCP and its related parties, subsidiaries and associates should not interfere with the effective exercise of the supervisory functions by the Authority.

15. Outsourcing

A CCP must manage the risks associated with, and ensure that any conflicts of interest arising as a result of, outsourcing arrangements with its related parties, subsidiaries and associates are mitigated or reduced. This is especially critical where functions are outsourced to another market infrastructure that is part of the same group and conflicts of interest arise as a result of organisational or ownership structure. Regulation 15 requires a CCP to establish and maintain written policies and procedures for the selection of service providers to which key services and systems may be outsourced. A CCP may not outsource significant activities linked to risk management unless without prior approval by the Authority. This is important to ensure continuation of critical operations. If the CCP does outsource some of its functions, it is the responsibility of the CCP to ensure that those functions meet the same standard and requirements as if they were provided internally, and allow the CCP and the Authority to full access to relevant information of the outsourced functions. The governance arrangements must ensure that the decisions of associated entities are not detrimental to the CCP.

16. Compliance function

A CCP must establish and maintain a permanent and effective compliance function under the direction of a chief compliance officer, which must operate independently from the other functions of the CCP with the necessary authority, resources, expertise and access to all relevant information. The compliance function administer the compliance policies and procedures established by senior management and the controlling body, and must monitor and regularly assess the adequacy and effectiveness of the measures put in place and the actions taken to address any deficiencies in the CCP's compliance with its obligations.

17. Efficiency, disclosure and transparency

A CCP must be efficient and effective in meeting the requirements of its clearing members and the markets it serves, and to establish mechanisms to regularly review its efficiency and effectiveness. A CCP that operates inefficiently can be a source of market distortion, to the detriment of market participants. Generally the CCP must balance between efficiency and

effectiveness with the need for prudence; however efficiency and effectiveness should not be placed above the establishment of prudent risk-management. Regulation 17 requirements are consistent with Principle 21 of the *Principles*, and require the CCP to be efficient and effective in choice of clearing and settlement arrangements, operating structure, product scope, and use of technology and procedures.

The Regulation also requires a CCP to have transparent processes, including having clear and comprehensive rules and procedures, and providing sufficient information to enable clearing members and clients to have an accurate understanding of the risks, fees, and other material costs incurred by participating in the CCP. The CCP must complete and publicly disclose in accordance with CPMI-IOSCO *Disclosure framework for financial market infrastructures*[18] its rules, key procedures and market data expected of market infrastructures to support their overall transparency. These requirements are consistent with Principle 23 of the *Principles.*

18. Internal audit function

A CCP must establish and maintain an internal audit function, which is separate and independent from its other functions and activities and, must have the necessary authority, resources, expertise and access to carry out its functions. The internal audit must establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements, issue recommendations and report internal audit matters to the controlling body.

19. Business continuity and disaster recovery

A CCP must establish, implement, maintain and enforce a business continuity policy and a disaster recovery plan for timely recovery of operations and fulfilment of the CCP's obligations in a systemic event or major disruption. The business continuity policy and disaster recovery plan prescribed in Regulation 19 must have the objective of ensuring that the physical, technological, and human resources are sufficient to enable the CCP to recover critical functions. The maximum recovery time for the CCP's critical functions following any disruptions to be included in the business continuity policy may not be longer than two hours, and end of day procedures and payments must be completed on the required time and day in all circumstances.

A CCP's disaster recovery plan must also include maintaining a secondary processing site, with a geographically distinct risk profile from that of the primary site, and capable of ensuring continuity of all critical functions of the CCP. The business policy and a disaster recovery framework must be approved by the controlling body. These requirements are consistent with Principle 17 of the *Principles.*

20. Custody, settlement and physical delivery

Regulation 20 provides for custody, settlement and physical delivery processes requirements for the CCP. A CCP must hold its own and the assets of clearing at a custodian that has robust accounting practices, safekeeping procedures, and internal controls that fully protect the assets. The CCP is responsible for safeguarding its assets as well as the assets that its clearing members have provided to the CCP, and must therefore ensure that it mitigates its custody risk by using only supervised and regulated entities. These requirements are consistent with Principle 16 of the *Principles.*

In addition, the rules and procedures of the CCP should clearly define the point at which settlement is final and, at a minimum, by the end of the value date and where necessary, must provide final settlement intra-day or in real time. Therefore any payment

or transfer instructions or other obligations that have been submitted to and accepted by a CCP in accordance with its risk management criteria should settle on the planned value date, which is the day on which the payment or transfer instructions are due. These requirements are consistent with Principle 8 of the *Principles*.

With respect to settlement, in practice CCPs may settle transactions using physical delivery, which is the delivery of an asset, such as a security, in physical form. For the purposes of these Regulations, the rules of the CCP must articulate its obligations with respect to deliveries of cash and securities, including whether it has an obligation to make or receive delivery of cash or securities or whether it indemnifies participants for losses incurred in the delivery process.

Furthermore cash settlements must be conducted in central bank money where practical, otherwise the CCP must take appropriate measures to minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money. Where a CCP is licensed to provide functions in respect of commodities, it may match clearing members that have physical delivery obligations with those due to receive the commodities, in so doing removing itself from direct involvement in the storage and physical delivery process. The CCP must ensure that its clearing members have the necessary systems and resources to be able to fulfil their physical delivery obligation. These requirements are consistent with Principles 9 and 10 of the *Principles*.

21. Qualifying capital

The Regulation 21 specifies the qualifying capital applicable to the CCP, and includes capital, retained earnings and reserves, and the deductions to which it is subject. For purposes of this Regulation, **'capital'** means, in relation to a CCP, subscribed capital on the annual accounts and consolidated accounts of the CCP in so far as it has been paid up ordinary shares, plus the related share premium accounts, if applicable, which is of a permanent nature and able to fully absorb losses in going concern situations, and, in the event of insolvency or liquidation, it ranks after all other claims.

22. General capital requirements

In order to ensure that a CCP is safe and sufficiently robust, the Regulations prescribe capital and additional financial resources that the CCP must comply with at all times. The CCP must hold capital at all times sufficient to ensure an orderly winding-down or restructuring of the activities over an appropriate time span and an adequate protection of the CCP against credit risk, counterparty, market risk, operational risk, legal and business risks. Regulation 22 establishes, among other matters, prudential capital requirements for a CCP to ensure the safety and soundness of the CCP. The CCP must have permanent and available initial capital of at least R50 million and an appropriate buffer, and must ensure that capital, including retained earnings and reserves, is proportionate to the risk stemming from its activities.

23. Specific capital requirements

Regulation 23 refers to how a CCP should calculate its capital requirements for credit risk, counterparty credit risk and market risk which are not already covered by specific financial resources in relation to those risks. The CCP must use the methods of calculation as specified.

24. Specific capital requirements for business risk and for winding down or restructuring

Regulation 24 prescribes capital requirements for general business risks, and for winding down or restructuring of the CCP's activities. A CCP must manage its general business risk and is required to hold sufficient liquid assets funded by equity to cover losses so that it can continue operations and services as a going concern. General business risk and potential losses are those arising from the business operations of the CCP that are not related to member defaults, and are not separately covered by financial resources under Regulation 26 and Regulation 30 for credit risk and liquidity risk respectively. Capital for business risk must cover at least three months of operating expenses. Assets held to cover general business risk must enable the CCP to meet its current and projected operating expenses and based on reasonably foreseeable adverse scenarios relevant to its business model. These requirements are consistent with Principle 15 of the *Principles*.

25. Capital calculation requirements for operational risk

Regulation 25 prescribes the methods to apply in calculating capital requirements for operational risk. A CCP must utilise either the Basic Indicator Approach or Advanced Measurement Approach as approved by the Authority. The requirements are consistent with Principle 15 of the *Principles*.

26. Capital calculation requirements for credit risk

Credit risk refers generally to the risk that a counterparty will be unable to meet fully its financial obligations when due. Regulation 26 requires that a CCP use the standardised approach for the measurement of its exposure to credit risk (but not prescriptive about counterparty credit risk – a subset of credit risk). A CCP must apply the ratings or assessments issued by an eligible credit rating agency to calculate its risk exposure. The Regulation also gives direction to a CCP when measuring exposures and applying techniques to control and reduce the risk, including obtaining appropriate collateral arrangements and legally enforceable netting agreements.

Collateralising credit exposures protects the CCP and clearing members against potential losses in the event of default, however the CCP may be exposed to risk from certain types of collateral (those that are not considered to have low credit, liquidity, and market risks). A CCP that obtained eligible financial collateral must adjust exposure in accordance with changes in underlying risks, and apply prudent haircuts to the value of the collateral.

27. Capital calculation requirements for counterparty credit risk

Regulation 27 relates to the governance and robustness of the CCPs framework to monitor, manage and assess credit exposures to its clearing members and the credit risks arising from its clearing processes. The type and level of credit exposure faced by a CCP will vary based on its design and the credit risk of the counterparties concerned. A CCP must ensure it has the capacity to calculate exposures to its clearing members and must monitor any changes in the creditworthiness of its clearing members.

SUMMARY OF THE REGULATIONS

The CCP must mitigate its credit risk to the extent possible and ensure that it is able to cover its current and potential future exposures to each clearing member with a high degree of confidence by holding a combination of margin (see Regulation 32) and pooled prefunded resources, and additional pooled prefunded financial resources to cover a portion of the tail (or residual) risk where losses exceed the defaulting clearing member's posted margin. A default waterfall of prefunded financial resources may be employed to manage losses caused by clearing member defaults.

The CCPs financial resources must be sufficient to cover a wide range of potential stress scenarios involving extreme but plausible market conditions. Potential stress scenarios must include the default of the largest clearing members and their related persons that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. To determine the amount and test the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions, the CCP must regularly perform rigorous stress testing. These requirements are consistent with Principles 4 and 6 of the *Principles*.

28. Calculation requirements of the minimum required capital for CVA risk

Credit exposure may arise in the form of current exposure. Current exposure is the loss that the CCP would immediately face in the event of a clearing member default, and is technically defined as the larger of zero or the market value (or replacement cost) of a transaction or portfolio of transactions subject to netting agreements with the defaulting member. In addition to any capital requirements for default risk related to counterparty credit risk, the CCP must determine the relevant amount of required capital to cover risk related to mark-to-market losses on the CCP's expected exposure to counterparty risk. For purposes of these Regulations, such losses are referred to as CVA risk or CVA losses in respect of OTC derivatives. Regulation 28 specifies how the CCP must calculate the minimum additional amount of required capital for CVA risk on a portfolio basis, calculated in terms of the standardised approach.

29. Calculation of a central counterparty's credit exposure in terms of the current exposure method

Where a CCP that adopts the current exposure method for the measurement of its exposure to counterparty credit risk, Regulation 29 specifies how it should treat matters relating to (i) the exposure amount or exposure at default (i.e. the extent to which the CCP would be exposed to in the event of, and at the time of, default) such as the replacement cost of transactions and recognition of eligible collateral; and (ii) bilateral netting of transactions, whether subject to novation or legally binding bilateral agreements.

30. Specific capital calculation requirements for market risk

A CCP's exposure to market risk may be due to trading with its clearing members, and may also arise from its investment or hedging activities. Regulation 30 requires the CCP to hedge out all open market risk and if any market risk remains, this must be covered by matching or moving the trades to another clearing member. For the measurement of exposure to market risk, a CCP must use the standardised approach and capital should be held according to such method. The CCP must have in place written policies and procedures approved by the controlling body to govern the CCPs risk management with respect to exposures to market risk, and must be sufficiently robust to ensure the CCP's continued compliance with the Regulations.

SUMMARY OF THE REGULATIONS

31. Liquidity risk

Liquidity risks may arise for a CCP when clearing members cannot settle their payment obligations when due as part of the clearing process. It is particularly important that the CCP carefully manage its liquidity risk if there is heavy reliance on incoming payments from clearing members or other entities during the settlement process in order to make payments to other members. A CCP must ensure with a high level of confidence that it is able to effect payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday. Regulation 31 requires the CCP to put in place appropriate measures to control liquidity risks which must include effective operational and analytical procedures to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis. The CCP must establish a liquidity risk management framework which specifies the CCP's procedures for, among other matters, managing and monitoring at least on a daily basis its liquidity needs across a range of market scenarios; maintaining sufficient liquid financial resources to cover its liquidity needs and distinguish among the use of the different types of liquid financial resources; the daily assessment and valuation of the liquid assets available to the CCP and its liquidity needs; and identifying sources of liquidity risk. The CCP must regularly assess the design and operation of the liquidity risk management framework. These requirements are consistent with Principle 7 of the *Principles*.

32. Segregation and portability

Regulation 32 requires a CCP to provide arrangements for the segregation and portability of funds and securities held as collateral that effectively protect a clearing member's clients' positions and related collateral from the default or insolvency of that clearing member. Segregation is important for safeguarding client collateral and positions, and minimising the impact of a clearing member's default or insolvency on its clients.

The CCP must keep separate records and accounts to distinguish the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets. Additionally, the CCP must offer to maintain client positions and collateral in individual client accounts or in omnibus client accounts.

The CCP must also 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. Effective portability arrangements lessen the need for closing out positions, especially during times of market stress, and reduces the costs and potential market disruption associated with closing out positions, and the impact on client' s ability to continue to obtain access to central clearing.

33. Margin requirements

Regulation 33 requires a CCP to implement a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves. A margining system is an essential tool to manage the credit exposures posed by clearing member's open positions, and should be risk-based and regularly reviewed. The CCP should mark to market clearing member's open positions, and collect variation margin at least daily to limit the build-up of current exposures, and must have the operational capacity to make intraday margin calls to clearing members. Initial margin models and parameters must be risk-based and generate margin requirements sufficient to cover its potential future exposure to clearing members. Initial margin used to cover the CCP' potential future exposures, as well as current exposures not covered by variation margin, must be designed to meet an established single-tailed confidence level of at least 99.5% for OTC derivatives, and 99% for securities other than OTC derivatives.

SUMMARY OF THE REGULATIONS

34. Default procedures

A CCP must have default procedures that are publically available to enable it to continue to meet its obligations in the event of a clearing member default. These should be designed to ensure that the CCP can take appropriate action to contain losses and liquidity pressures, limit the effects of a default spreading to other clearing members and ensure that the CCP continue to meet its obligations. Action the CCP could take may include closing out or transfer of a defaulting clearing member's positions or auctioning positions or portfolios to the market. Also, the CCPs procedures should allow it to use any financial resources that it maintains for covering losses, such as the default fund.

35. Default fund

A CCP must maintain a prefunded default fund to cover losses that exceed the losses covered by margin requirements which as a minimum must enable the CCP to withstand, under extreme but plausible market conditions the default of the clearing member to which it has the largest exposures; or in the case where the CCP is involved in activities with a more complex risk profile, the default of the second and third largest clearing members, if the sum of their exposures is larger than that of the largest clearing member. The CCP must implement an internal policy framework for defining the types of extreme but plausible market conditions that could expose it to greatest risk to determine the minimum size of the default fund and the amount of other financial resources, taking into account group dependencies.

36. Other financial resources

Additionally, the CCP must maintain sufficient prefunded available financial resources to cover potential losses that exceed the losses to be covered by margin requirements. The financial resources must include dedicated resources of the CCP, and must be freely available to the CCP. The default fund and the additional financial resources must at all times enable the CCP to withstand the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions.

37. Default waterfall

The CCP must ensure that default waterfall follows a sequence of prefunded financial resources:

(i) the margins posted by a defaulting clearing member,
(ii) default fund contributions of the defaulting member where the margins posted by the defaulting clearing member are not sufficient to cover the losses incurred,
(iii) dedicated own resources, i.e. 'skin-in-the-game', and
(iv) default fund contributions of non-defaulting clearing members.

Margins posted by non-defaulting clearing members may not be used to cover the losses resulting from the default of another clearing member.

SUMMARY OF THE REGULATIONS

38. Collateral requirements

When determining collateral, a CCP must accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. The CCP must be confident of the collateral's value in the event of liquidation and of its capacity to use that collateral quickly, and must avoid concentrated holdings of certain assets. A CCP that accepts collateral with credit, liquidity, and market risks above minimum levels must demonstrate that it sets and enforces appropriately conservative haircuts and concentration limits.

If the CCP accepts cross-border collateral, it must have appropriate legal and operational safeguards to ensure that it can use the collateral and take steps to mitigate the risks associated with its use. Eligible collateral that the CCP may accept include–

- sovereign bonds of the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Norway, South Africa, Spain, Sweden, United Kingdom and the United States of America,
- Land Bank bills,
- Separate Trading of Registered Interest and Principal of Securities (STRIPS),
- debentures issued by the South African Reserve Bank,
- treasury bills,
- cash of the following currencies: Rand, dollars, sterling and euros, and
- any other instruments approved by the Authority.

Furthermore, a CCP must establish and implement a collateral management system. The system must have the appropriate functionality to among other things, calculate and execute margin calls, track the extent of reuse of securities held as collateral, and accommodate the timely deposit, withdrawal, substitution, and liquidation of collateral. A CCP must establish and implement transparent and predictable policies and procedures which must be reviewed at least annually, and whenever a material change occurs that affects the CCP's risk exposure. These requirements are aligned with Principle 5 of the *Principles*.

39. Investment strategy and safeguarding of assets

A CCP's investment strategy must be consistent with its overall risk-management strategy and must be disclosed to its clearing members and to the Authority. The CCP must invest its financial resources only in cash or in highly liquid securities with minimal market and credit risk, and may not without prior written approval of the Authority acquire or invest in commercial paper of securitisation schemes or strategic long-term investments in any venture. These requirements are aligned with Principle 16 of the *Principles*.

40. Review of models, stress testing and back testing

The CCP must regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. The models must be subjected to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and perform back tests to assess the reliability of the methodology adopted. The CCP must annually conduct a comprehensive validation of its models, which must be documented and specify the policies used to test the CCP's margin, default fund and other financial resources methodologies and framework for calculation. Key information on the CCP's risk-management framework and assumptions adopted to perform the stress tests must be publicly disclosed.

SUMMARY OF THE REGULATIONS

41. Interoperability arrangements

A CCP may enter into interoperability arrangements with CCPs, provided that requirements set out in the Regulations have been met. An interoperability arrangement is subject to the prior approval of the Authority and the supervisory authority of the CCP involved, and only where the CCPs have been licensed for a period of at least three years. The Regulation provides additional matters that the Authority must consider in assessing the proposed interoperability arrangements. The CCP must put in place adequate policies, procedures and systems to effectively identify, monitor and manage the risks arising from the arrangement so that the CCP can meet its obligations in a timely manner. These requirements are aligned with Principle 20 of the *Principles*.

42. Record keeping

The Regulation specifies the records and information the CCP must maintain in relation to its functions and activities, which must be made available to the Authority and other supervisory authorities to enable supervisory oversight and monitoring of the CCP's with its regulatory obligations. Furthermore, the CCP must identify and retain all information and data required to be reported to a TR and ensure that the Authority is able to access the records.

Chapter VII: Transitional arrangements and commencement

43. Transitional arrangements

i. A person conducting the business of an OTC derivative provider must, within 6 months from the commencement date of Regulation 2, lodge with the Authority an application for registration as an 'OTC derivative provider' in the manner prescribed by the Authority.
ii. A licensed exchange, central securities depository, clearing house and trade repository must comply with Regulation 8, within 6 months from the commencement date of the Regulations.
iii. A licensed central counterparty, or a licensed clearing house approved by the registrar, the South African Reserve Bank and the Registrar of Banks to perform the functions of a central counterparty, must comply with the requirements set out in Chapter VI of the Regulations, within 12 months from the commencement date of the Regulations.

44. Commencement and short title

The Regulations are called the Financial Markets Act Regulations and come into effect on the date of publication.

RELATED MATERIAL AND READING

1 G20 Pittsburgh Summit Leaders' Declaration, September 2009. Available: http://www.fsb.org/wp-content/uploads/g20_leaders_declaration_pittsburgh_2009.pdf

2 See NT document, ***"Reducing the risks of over-the-counter derivatives in South Africa"*** March 27, 2012 Available: http://www.treasury.gov.za/legislation/bills/2012/FMB/Annexure%20B%20Reducing%20the%20Risks%20of%20OTC%20Derivatives.pdf

3 See NT, draft Financial Markets Act Regulations 2014, July 4, 2014 Available: http://www.treasury.gov.za/otc/Draft%20FMA%20Regulation%20for%20public%20consultation.pdf

4 See NT policy document, ***"Regulating Over-the-counter Derivative Markets in South Africa"*** July 4, 2014. Available: http://www.treasury.gov.za/otc/Policy%20Statement%204%20July%202014.pdf

5 See NT, second draft Financial Markets Act Regulations 2015, June 5, 2015. Available: http://www.treasury.gov.za/otc/Financial%20Markets%20Act%20Regulations.pdf

6 See NT second draft policy document, ***"Regulating Over-the-counter Derivative Markets in South Africa"*** June 5, 2015. Available: http://www.treasury.gov.za/otc/Regulating%20over-the-counter%20(OTC)%20derivates%20markets%20in%20South%20Africa.pdf

7 BIS, "***OTC derivatives statistics at end-December 2015***", May 2016. Available: http://www.bis.org/publ/otc_hy1605.pdf

8 FSB Draft Board Notice, "***Criteria for authorisation as an over-the-counter derivatives provider***", 2nd draft 2015. Available:https://www.fsb.co.za/Departments/capitalMarkets/Documents/Draft%20Criteria%20for%20authorisation%20ODPs%20for%20publication.pdf

9 FSB Draft Board Notice, "***Code of Conduct***", 2nd draft, June 2015. Available: https://www.fsb.co.za/Departments/capitalMarkets/Documents/Draft%20Code%20of%20Conduct%20for%20OTC%20derivative%20Providers%20(05%20June%202015).pdf

10 IOSCO, "***Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives***" January 2015. Available: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf

11 Financial Stability Board, "***OTC Derivatives Market Reforms: Tenth Progress Report on Implementation***", 4 November 2015. Available: http://www.fsb.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf

12 CPSS-IOSCO, ***"Authorities' access to trade repository data"***, August 2013, Available: http://www.bis.org/cpmi/publ/d110.pdf

13 BCBS, "***Basel III: A global regulatory framework for more resilient banks and banking systems***", revised June 2011, Available: http://www.bis.org/publ/bcbs189.pdf

14 BCBS, "***Capital requirements for bank exposures to central counterparties***", April 2014. Available: http://www.bis.org/publ/bcbs282.pdf

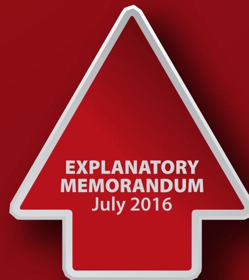
15 G20 Cannes Summit Leaders' Declaration, November 2011. Available: http://www.fsb.org/wp-content/uploads/g20_leaders_declaration_cannes_2011.pdf

16 BCBS-IOSCO, "***Margin requirements for non-centrally cleared derivatives***", March 2015. Available: http://www.bis.org/bcbs/publ/d317.pdf

17 FSB Draft Board Notice, "***Margin requirements for non-centrally cleared OTC derivative transactions***", 1st draft, June 2015. Available: https://www.fsb.co.za/Departments/capitalMarkets/Documents/Draft%20Margin%20requirements%20(05%20June%202015).pdf

18 CPSS-IOSCO 2012, ***"Principles for financial market infrastructures: Disclosure framework and Assessment methodology"***, Available: http://www.bis.org/cpmi/publ/d106.pdf

NOTES



REGULATING OVER-THE-COUNTER DERIVATIVE MARKETS IN SOUTH AFRICA

FINANCIAL MARKETS ACT REGULATIONS 2016
made in terms of the Financial Markets Act (No. 19 of 2012)

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