

# FINANCIAL MARKETS BILL

PUBLIC FORUM, 5 OCTOBER 2011



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA



# TOPICS TO BE DISCUSSED

1. Purpose of Bill
2. Process and Upfront Clarifications
3. Main Objectives
4. Policy/Principle Issues
5. Registrar's Powers
6. Market Abuse
7. Technical/Functional Issues
8. Legislative Impact
9. Comments Received
10. Engagement Going Forward



# PURPOSE OF BILL

- Replace Securities Services Act
- Alignment with International developments
  - G20 & FSB
  - IOSCO
  - FSAP
- Changes in principles, laws, e.g. UNIDROIT Convention, and international regulatory practices
- Technical/functional issues

# PROCESS

- SSA Review (2010-11)
- Publication of FMB on 4 August 2011
- Public Forum on 5 October 2011
- NT/FSB/SRO Working Group to review comments
- Consultative workshop
- Finalisation of the revised Bill
- Submission of the revised Bill to Cabinet
- Parliament tabled Q4 2011, heard Q1 2012

# MAIN OBJECTIVES

Bill aims to

- increase confidence in the South African Financial Markets;
- promote the protection of regulated persons and clients;
- reduce systemic risk; and
- promote international competitiveness of securities services in

the Republic

# UPFRONT CLARIFICATIONS

- Twin peaks
- SRO model
- Engagement process
- Concern about the principle vs. how principle is drafted
- Policy implementation, the beginning of a long road

# POLICY / PRINCIPLE ISSUES I

- **Regulatory Model/Effectiveness**

- Strengthen and enhance efficiency and effectiveness of SRO regulatory approach
- Effectiveness of Exchange functions & systems - **s10 (1) (k&l)** & CSD functions - **s30(1)(s)**
- Conflict of Interest **s63** – Prohibition or requirements iro additional business/function/service – **s63**
- Fit and Proper requirements for directors and senior management of SROs - **s8(1)(b), s28(1)(b) & s48(1)(b)**
- Directors duties in Companies Act apply - **s66**
- Securities & securities services (**definition** authorised user, Participant, clearing member)

# POLICY / PRINCIPLE ISSUES II

- **Investor/Client protection**
  - Segregation of securities & Balancing and Reconciliation - **s22(1) & (2) & 32(k) & (l)**
  - Rights of clients and authorised users - **s10(1) (j)**
  - Code of conduct for authorised users, participants and clearing members - **s75**
- **Systemic risk**
  - Registrar to inform Minister & SROs to inform the Registrar- **s5 (3) (m)**
  - SROs to consult with registrar iro new business **s63**



# POLICY / PRINCIPLE ISSUES III

- **Central Counterparty**
  - SRO status extended to independent clearing houses to promote the central clearing of OTC derivatives (G20) - **s47-53**
- **Financial Stability**
  - Insolvency Proceedings (Unidroit) - **s17(2)(bb & cc) & s35(2) (u) & (v)**
- **Cross-border Participation**
  - Remote membership (**definition** of authorised users, clearing members, CSD, Participants, etc) - **s 17 (3) & s 35 (3)**
  - Linkages between local CSDs and foreign CSDs (**Definition of External CSD**) - **s35 (1) (w)**

# POLICY/PRINCIPLE ISSUES IV

- **Securities Ownership Register**
  - **s26** – Definition of CSA: Enables a SOR
- **IFRS (G20)**
  - S97** prescribes that AFS must conform to the financial reporting standards prescribed under the Companies Act.

# POLICY / PRINCIPLE ISSUES V

- **OTC regulation (G20)**

- Prescribe standards, code of conduct or reporting requirements, clearing and settlement standards - **s77**

- Licensing of a Trade Repository for the reporting of all OTC derivatives transaction data to the TR and disclosed to the registrar and other relevant supervisory bodies **s55 – s59**

# POLICY / PRINCIPLE ISSUES VI

- **Settlement assurance and certainty**

- Finality of Settlement: Revocation of settlement instruction, balancing and reconciliation - **s17 (2) (bb) & s35(2)(i & u)**
- Protection of the bona fide purchaser - **s38**
- Pledges and Cessions – **s39**
- Priority/Ranking of Interest - **S40**
- Attachments: level of holding & entry in relevant account - **s45**

# POLICY / PRINCIPLE ISSUES VII

- **Regulatory Cooperation**

- Registrar may enter into MoU with a supervisory authority to strengthen co-operation with regards to the exchange of information - **s5(5)(b)**
- Power to request information from any person - **s5(3)(d)** (IOSCO MMoU)

- **Competition/Ownership issues:**

- May not acquire more than 15% interest in a SRO without the Registrar's approval - **s68(3)**
- 15-49% shareholding – Registrar's approval **s68(4)**
- Over 49% shareholding – Minister's approval - **s68(5)**

# POLICY/PRINCIPLE ISSUES VIII

- **Limitation of liability (s73)**
  - SROs may be held accountable for mala fide and grossly negligent acts - **s73(1)(a)**
  - Authorised users, Participants – negligent & intentional liability iro nominee - **s73(1)(b)**

# REGISTRAR'S POWERS

- **Powers of Registrar**

- Enforcement powers : Conduct on-site visits - **s101(1)(a)**
- Registrar must approve of amendments to Listings Requirements - **s11(6) (FSAP)**
- Institute or approve business rescue plan /liquidation proceedings - **s106,109**
- Referral of contraventions to the Enforcement Committee - **s105**
- Registrar to prescribe fees – operational (FSAP) - **s114**
- Issue directives and guidelines - **s5(3)(k) & 5(4)**

# MARKET ABUSE

- Removing two outdated defences (affected transaction and dealing on behalf of a public sector body)
- Creating a new statutory defence: insiders may deal if all parties to the transaction has the same level of inside information, and the transaction was not designed to benefit from the inside information.
- Created an additional insider trading offence: *Dealing on behalf of an insider, if a person had reason to suspect that such person was an insider.*
- Created an additional price manipulation offence: *Participating if person has reason to suspect that it was a manipulative scheme.*



# TECHNICAL/FUNCTIONAL ISSUES

- **Technical/Functional issues:**
  - Alignment of nominee approval - **s7**
  - Publication of detail, status and outcome of inspection and on-site visits - **s102(f)**
  - Auditor's appointment - regulated persons, including private companies - **s96**

# LEGISLATIVE IMPACT

- Alignment between the Bill and the Companies Act, 2008 & Consequential amendments – mergers include reference to FM Bill
- Exclusion from the provisions of the Consumer Protection Act, 2008 - **s3(7)**
- Amendment to the Insolvency Act, 1936 to align with UNIDROIT Principles
- Amendment to the Competition Act, 1998 to make provision for Minister's Certification, no order by CT & decision by CC;
- Removal of reference to exclusion of FAIS;
- Overriding provision; **s3(4)**

# COMMENTS RECEIVED

- SRO model:
  - conflicts of interest, limited liability, complaints mechanisms
- SRO requirements
  - Engagement process on rules/listing requirements, selling of information, rules around debit balances, pledges & cessions clarity, revocation of settlement instruments, role of stand-alone clearing house
- Remote membership
- OTC derivatives, including role of trade repository

# ENGAGEMENT GOING FORWARD

- Can submit any additional comments by 12 October 2011
- Continued *ad hoc* engagement
- Consultative workshop on revised Bill – industry associations to represent
- Parliament a transparent process, another opportunity to be involved

# THANK YOU, QUESTIONS?

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