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
• 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
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
• **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)
• 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
• **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)
• **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.
• 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
• 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
• **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)**
• 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:
  – 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
• 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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