national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

COMMENTS AND RESPONSE DOCUMENT

RESPONSE TO COMMENTS SUBMITTED FOR THE FIRST PUBLIC CONSULTATION PROCESS FOR

DRAFT MINISTERIAL REGULATIONS ISSUED IN TERMS OF THE FINANCIAL MARKETS ACT (ACT, 19 OF 2012)

DATE: 5 June 2015

1. Background

INTRODUCTION

On 4 July 2014, the National Treasury together with the South African Reserve Bank ('SARB') and Financial Services Board ('FSB-SA') published draft Ministerial regulations for OTC derivatives markets and participants. The consultation period lapsed on 3 September 2014. Comments were received from various market participants including banks, corporates, associations, the exchange, central securities depository, international clearing houses, and asset managers.

Subsequently, the comments received were reviewed by a working group comprising of representatives from the National Treasury, SARB and the FSB-SA and amendments were made where appropriate to the draft Ministerial regulations and specific notices issued by the Registrar of Securities Services ('the registrar'). The amendments took into account the comments received from the various market participants.

The working group made every effort to address the concerns and clarify contents proposed in the draft Ministerial regulations. In making these changes, future amendments proposed under the Financial Sector Regulation Bill ('FSR Bill') and Financial Markets Act ('FMA') consequential amendments were also taken into account, the second draft of the Ministerial regulations has been designed to make for less complex transition to comply with the FSR Bill and the consequential amendments once it is promulgated and effective. The changes made in the Ministerial regulations give effect to the principles for regulating OTC derivative markets and the participants.

The National Treasury, SARB, and FSB-SA believe in having a consultative approach in drafting regulations to ensure that they encompass the principles of the Act and that the framework properly captures the aim of the regulations, and are drafted with high standards that are aligned internationally to create a level playing field. The National Treasury, SARB and FSB-SA therefore appreciate all the participants and their effort in submitting informative comments and contributing to the success of the consultative process.

2. Comments and Responses

Concerted effort has been made by the working group to review the comments received, at least 13 respondents from various sectors commented on the draft FMA Ministerial regulations released on 4 July 2014 (this excludes internal respondents from the regulators).

Comments included general comments on the Ministerial regulations, the definitions, structures and specific aspects in the chapters proposed. In addition there were also numerous grammatical, numbering errors and/or reference errors noted in the comments by the respondents. These have been corrected in the second draft of the Ministerial regulations. The second draft of the Ministerial regulations reflects clearly thought-out and highly consulted on regulations.

The following responses are with regards to comments on the material aspects of the Ministerial regulations.

SECTION	COMMENTS	RESPONSES
COMMENTS ON THE POLICY DOCUMENT		
The document does not inform interested parties of the rationale for the inclusion of concepts and sections, nor does it inform the reason for the exclusions of requirements. For example, *"portfolio compression"* is used in the definitions but nowhere else.		Agreed, all definitions not included in the Regulations have been deleted.
We recommend that a detailed guidance note is provided with the next version of the proposed Regulations, which sets out, *inter alia*, the enabling purpose of the proposed Regulations in respect of the comprehensive framework regarding OTC derivatives, the regulatory powers and responsibilities of the Registrar and, specifically, the concepts and requirements that will be published by the Registrar under Board Notices.		Please refer to the policy document.
GENERAL COMMENTS		
The current legislative and regulatory environment places no duty on the Minister for publishing regulatory standards in respect of Regulations. Furthermore, no mandated public involvement is required in respect of further standards. It is our view that the practical implications of Regulations/standards need to be understood by the regulator to avoid arbitrage and undue requirements of market participants.		The comment is not understood. Consultation is required by the Financial Markets Act. It is not clear what is intended with the comment "regulatory standards in respect of Regulations".
Generally, the provisions of the Regulations place onerous obligation on market infrastructure. We believe that the increased obligations and the costs implications of fulfilling these obligations would prevent international market infrastructure involvement and further impair local competition. In addition to the aforementioned, it would be reasonable to expect that increased running costs of market infrastructure would be filtered through to clients of market infrastructure having the ultimate effect of reducing the number of OTC derivative transactions and consequently, the hedging benefit institutions derive. There may be negative consequences and unnecessary market disruptions in the existing listed equity and derivative		Disagreed, please refer to the policy document. The Regulations and other legislative instruments are aligned to meet international requirements.

South African markets where the existing and well-functioning infrastructure is provided by the JSE. We would like to see specific engagement and commentary on this area.	
From Chapter I and Chapter II it is clear that the net has been cast wide and a "catch all" approach has been taken. We understand the approach, but also think it appropriate that there would be a range of exemptions for the Central Clearing requirement where the nature of the OTC instruments, the way that they are transacted and priced and where these OTC products and clients pose no systemic risk and where adequate protections against market abuse are already in place. In the absence of clarity on the ODP requirements and what exemptions may apply for central clearing, there is insufficient information to comment completely on the detailed regulation with regards to resource and capital requirements or the capital and exposure calculations for infrastructure providers. The proposed Regulations appear to treat retail clients, natural people and non-systemic juristic people (who are not financial market participants) as "clients". There is no express exclusion for these people from the potential obligation to trade on exchange or have their trades centrally cleared. National Treasury is requested to consider expressly exempting transactions with retail clients from mandatory trading on exchange or central clearing. This could be achieved by setting a minimum threshold to ensure that only systemically significant transactions are caught.	The registrar's notices in respect of OTC derivatives will be published together with the revised Ministerial Regulations. The clearing mandate is being considered. Guidance will follow in due course.
Set the Regulations at a more principle-based level and then use some form of subordinate legislation to deal with more detailed requirements e.g. capital requirements.	The Regulations are subordinate legislation as per the Act, but we believe a balance has been struck to provide for more detailed requirements in both the registrar's notices and the Regulations.
It is submitted that in general, the draft Regulations are more extensive than we believe they should be, where in our view many of the provisions should rather be issued by the registrar in Board Notices.	Disagreed, please see response above.
We note that no provision is made in the draft Regulations for an equivalence assessment for external market infrastructure. In the spirit of international harmonisation, an equivalence framework is paramount. We recommend that the Regulations must provide for requirements to be recognised as a market infrastructure	Please refer to revised Regulations on equivalence.

must subject to an equivalence assessment. The requirements should include detail relating to timing, costs and relevant procedures be clarified. For example, a central counterparty must be required to comply with the provisions of Chapter VII, unless the Registrar has assessed the regulatory environment and supervisor of the external central counterparty and found that that regulatory environment and supervisor equivalent to the standards and requirements provided for in the Act and the Regulations. It is also necessary for the Regulations to set out the process to seek equivalence for external market infrastructures and their supervisors. The Regulations seem to suggest that external market infrastructure may fulfil functions and duties in South Africa without being licensed to do so. External market infrastructures are indeed defined in the FMA but are not dealt with in the body of the FMA itself, apart from the reference to the Minister's powers to prescribe Regulations in respect of the functions that may be exercised by external FMIs. Section 1 of the FMA merely defines these entities as being authorised to perform functions in terms of the laws of a foreign jurisdiction. The FMA does not provide that these entities may perform these services in South Africa without applying for a licence nor does it state that these entities may fulfil the duties and functions of a clearing house without meeting the peremptory requirements of the FMA. The Minister may prescribe further requirements that may be applicable to an external clearing house if it wishes to fulfil the functions of a clearing house in South Africa. But these requirements are additional requirements over and above the other peremptory requirements that these entities have to meet (such as licensing). It is not clear what standard or process will be used by registrar to "recognise" external TR. When can draft Board Notice be expected? Will "recognise" be different from "license" with regard to the South African TR and if yes, how will it differ?	
Chapter VII appears to attempt to amend (by expanding) the provisions of section 50 of the FMA that sets out the statutory duties and functions of clearing houses ("*In addition to the functions prescribed under section 50 of the Act…"*). This is, in our view, not legally permissible. The functions and duties of licensed market infrastructures are recorded in the FMA as the empowering statute and superordinate piece of legislation with the functions and duties of clearing houses specifically recorded in sections 50(1), (2) and (3). The Draft Regulations may therefore only deal with the practical implementation of these statutory duties and functions and cannot therefore extend or amend these statutory duties and functions.	We do not agree. This provision (now paragraph 7) is enabled by s48(1)(a) which allows for the Minister to prescribe assets and resources.
The Regulations are silent on the practical working of market infrastructure i.e. very little is mentioned about how the regulator envisages the practical workings of market infrastructure. For example, Regulations mandate that all trade repositories (TRs) will need to maintain interoperability to	The comment is not understood. The Regulations and Notices

ensure that reporting obligations (in different jurisdictions or to different TRs are aggregated and matched) however, the Regulations do not envisage how this is going to happen. This is specifically important for matters relating to monitoring and oversight which are further referenced below.	set the standards for practical implementation.
Note in FMA (s 1) that a "licensed TR" is a "market infrastructure" (MI is defined in s 1) and "regulated person". But, the "recognised" "external TR" will not be a "market infrastructure". If this is correct, how will the following matters be dealt with by the registrar in the case of the "external TR": • delegation of functions of MI in FMA (s 68)?; • carrying on of additional business of MI in FMA (s 61)? Is it intended that Regs 11(2)(a), 12(1)(f), 13(8) on "ancillary services", and Reg 13(10) in the context of "close links" deal with this issue?; • limitation in shareholding in FMA (s 67)?; • report of MI to registrar in FMA (s 69)?; see for example Reg 12(1)(g) , Reg 13(7)(d), Reg 14(4)(c) etc. • Reg 15(1)(j) see outsourcing Reg 15(1)(b)? • attendance by registrar of meeting of MI in FMA (s70)?; • no limitation of liability as for MI in FMA (s72)?; • disclosure of information by MI in FMA (s73)? – cf Reg 11(1)(d). Reporting obligation still to be prescribed by Registrar (Reg 12(1)(g)) • duty of members of controlling body of MI in FMA (s65)	The intention is not to treat a recognised TR as a market infrastructure or regulated person. Please see the revised regulation in respect of external market infrastructures.
We have noted the reporting requirement to the trade repository by ODPs and we wish to raise the concern relating to the disclosure of client information. Has an impact assessment been made to indicate the implications of the POPI Act in terms of the prescribed format required for reporting purposes? The Regulations are silent on this aspect and we are uncertain if there will be any exemption granted to the trade repository in this regard.	Consent requirements will be incorporated into agreements with the clients where necessary. - A TR is required to share aggregate information and not individual information (personal information as contemplated in the POPI Act).
The policy document and the proposed Regulations are silent as to National Treasury's approach to the implementation of the BIS-IOSCO margin requirements for non-centrally cleared derivatives. As the approach is	Refer to registrar's notices.

integral to the regulation of the OTC derivatives market, we recommend that National Treasury's intended approach and relevant timelines are included in, at least, the policy document.	
The Act defines "market infrastructure" as a licenced central securities depository, clearing house, exchange, and trade repository, however the proposed Regulations prescribe prudential Regulations only for a clearing house (CCP). If it is deemed appropriate to impose onerous banking Regulations on a CCP, we question why the same requirements are not imposed on equally systemic important market infrastructures e.g. central security depository and an exchange.	The other market infrastructures do not require the same extent of prudential regulation. There are however Regulations pertaining to assets and resources for exchanges and central securities depositories (reference in policy document).
It is clear that the drafters of the proposed Regulations have sourced sections/paragraphs from different international regulatory provisions and the language style and terminology is not constantly applied throughout the proposed Regulations e.g. "derivative instrument" and "financial instrument". We recommend that the drafters of the next version ensure that the terms used are consistent with the definitions in the Act and the proposed Regulations.	Derivative instrument is now used consistently throughout the document, and financial instrument has been defined.
In many instances, the draft Regulations seek to enforce a specific business model provided by relevant market infrastructure provider. For instance prescribing that TR's charge are limited to cost-related prices and fees. This should be a commercial decision and it is important that the service provider retains executive accountability for the financial decisions required to run the market infrastructure. The regulator should rather provide a framework for good governance and risk management and not actively interfere with the workings of the market infrastructure.	The specific provision referred to was deleted.
On a whole, the strong prudentially orientated nature of the draft domestic Regulations is encouraging and position central counterparties as mono-line bank-like entities whose risk management activities are aligned to Basel III. That said, the financial resources and protection mechanisms available to a central counterparty are not identical to banks, and consequently the Regulations should look more to the strength of the default waterfall, than pure equity capitalisation within the entity itself.	This is in line with international requirements. Requirements imposed are for those positions not covered by the

The requirement to ensure that capital, including retained earnings and reserves, is proportionate to the risk stemming from the activities of the central counterparty is not appropriate given the defensive resources of a central counterparty are in the default waterfall, including initial margin and the default fund. The Regulations should rather prescribe that the financial resources available to the central counterparty is sufficient to provide for the risks it is exposed to (and not strictly capital).	waterfall etc.
We understand that the purpose of the OTC Derivative Regulations is to provide a robust regulatory framework for, inter alia, the central clearing of OTC derivatives where required and is to be prescribed by the Registrar. At this time, the issue of whether a local CCP will be established has not been finalised. The Regulations therefore need to be designed with sufficient flexibility to accommodate whichever clearing solution emerges for the South African market, taking into account the extent to which OTC derivatives trade occurs with offshore CCPs subject to Dodd Frank and EMIR.	Noted
Insofar as these Regulations concern OTC derivatives, the central counterparty becomes a counterpart to each trade. In this context there is no asset to be held in custody, merely a principal obligation. This is to be clearly distinguished from collateral arrangements (where custody may be relevant).	Noted
We submit that restrictions such as forcing the central counterparty to report its high-quality liquid assets in Rand makes no sense in the context of global providers. A central counterparty's reporting currency should thus be accepted.	Agreed, the requirement has been removed.
Throughout the draft Regulations, reference is made to mandating: • pre-authorization from the Registrar; and • reporting frequency and form This will become operationally problematic when market infrastructure providers participate globally and thus are regulated by multiple Regulators. Instead, the Registrar should consider the effectiveness of a market infrastructure provider, rather than being prescriptive on how effectiveness should be achieved.	The global nature of market infrastructures was taken into consideration.
The issue of the insolvency protections available to external CCPs has not been addressed. S35A of the Insolvency Act, 1936 applies to clearing houses licensed under s49 of the FMA. An external CCP would not in the normal course of events be licensed under s49 of the FMA.	This matter is currently being considered and guidance will follow.

CHAPTER I		
REGULATION 1: DEFINITIONS		
CVA is not defined – insert definition		Agreed Definition provided
EAD is not defined – insert definition		Agreed Definition provided
	"central counterparty" means a licensed clearing house, whether associated or independent, as defined in the Act, or an external clearing house, that: (a) interposes itself between ~~**counterparties**~~ **parties** to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts; and (b) becomes a counterparty to trades with market **participants parties** through novation, an open offer system or through a legally binding agreement	Agreed- wording has been amended.
	Clarity is required on how the CCP definition aligns with the FMA's clearing house definition.	A central counterparty is a clearing house, as defined in the FMA that conforms to the other requirements of the definition of a central counterparty.

"client"	Delete definition of client. It is not clear of the intention with the inclusion of the definition of "client" and why some persons will be excluded as counterparties.	Refer to Notices where the reason for the distinction is clear.
"complex product"	Delete the word "bespoke". All OTC derivatives are "bespoke".	Disagreed – there is a clear distinction between standardised products that can be cleared or traded on a platform and bespoke products.
"confirmation"	The words "legally binding" and "signed" signify the completion of a legal agreement between the parties and therefore the word "consummation" is not necessary for inclusion.	Definition has been removed.
"counterparty	**"counterparty"** in relation to an OTC derivative provider, means – (e) a person outside the Republic who - (i) (ii) is registered licensed, recognised, approved or otherwise authorised **to conduct the business of a bank or** to render services ~~**or conduct the business of bank or**~~ of a business referred to in sub-regulation (d) by a supervisory authority with functions similar to those of the registrar, the Registrar of Banks, the Registrar of Financial Services Providers, …"	Agreed
	"counterparty" in relation to an OTC derivative provider, means –	Agreed

	(e) a person outside the Republic who - (i) (ii) is registered licensed, recognised, approved or otherwise authorised **to conduct the business of a bank or** to render services ~~**or conduct the business of bank or**~~ of a business referred to in sub-regulation (d) by a supervisory authority with functions similar to those of the registrar, the Registrar of Banks, the Registrar of Financial Services Providers, …**the Registrar of Collectives Investment Schemes"**	
"direct clearing client"	The wording is confusing. We propose the definition to read "a client of a clearing member". It is clear from the Regulations that the clearing member will be authorised by/will be affiliated to or have a direct relationship with the central counterparty. The definition seeks to explain the tripartite relationship that exists between the client, the clearing member and the central counterparty which is already clarified in terms of the Regulations.	Definition and reference to direct clearing client has been removed.
"indirect clearing"	Same comment as in 2.1.2.	We believe that the removal of the definition and reference to direct clearing client addresses the issue and provides more clarity.
"intermediary"	Who will be allowed to operate as an	Definition has been

	intermediary in the OTC market? Will intermediaries have to be authorised to act in this capacity and who will provide such authorisation? Should authorisation be required, what would be the criteria? Preference should be given to locally domiciled intermediaries in a similar manner to s17(2)(ee)	removed
"ISDA Product Taxonomy"	This definition is problematic and should be deleted as it is unclear which versions of the taxonomies are applicable as these are changed or updated from time to time. Do we have permission to use the taxonomy? Is it publicly available? Further the product list under Regulation 2 is broad enough to cater for the different products so why have a specific definition outlining the same.	Reference to ISDA taxonomy has been removed in the Regulations.
"OTC derivative"	All securities lending and repurchase agreements be regarded as OTC derivatives and be reported through to a trade repository	We disagree; the definition of a derivative excludes securities lending and repurchase agreements.
	To ensure clarity in respect of the scope of the definition of an OTC derivative, we propose the following amendments : OTC derivative" means an unlisted derivative instrument, ~~**categorised in regulation 2,**~~ excluding –	See amended definition of OTC derivative. We do not believe that it is necessary to expressly exclude deposits as a deposit is not captured by the definition of a derivative instrument.

	(a) insurance contracts, as provided for in the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998); (b) foreign exchange spot contracts; ~~and~~ (c) physically settled or physically deliverable commodity contracts; **(d) deposits; or** **(e) any similar instrument prescribed by the registrar;**	
"OTC derivative provider"		
	It is clear from the policy document that the regulatory framework does not apply to foreign OTC derivative providers (ODPs) and the proposed Regulations do not provide for recognition of or an equivalence framework for foreign ODPs operating in the South African market. This is contrary to "Principle 2: Developing Harmonised and Equivalent Regulatory Frameworks" espoused in the policy document. The possibility of an ODP located in a non-EU, non-US or non-G20 jurisdiction provides an opportunity for regulatory arbitrage, un-level playing fields and the introduction of risk in the South African market.	This position is currently being considered. Guidance will follow in due course.
	It is submitted that the definition is confusing in that the terms "regular feature", "makes a market", "principal" and "originates" could have a variety of	See amended definition "regular feature" is a standard term, also used in the FAIS Act.

	meanings. Does originate mean establish the derivative contract or does it mean trade the derivative? Due to the wideness of the definition, it could also include providers that were never contemplated under the definition: such as corporate clients who originate derivative contracts by virtue of the fact that they have a need to hedge certain risks. It is unclear whether such hedging will be deemed "origination "on the part of the corporate. The CFTC regulation refers to the definition of a swap dealer, inter alia, to dealing activity in that a person is not considered a swaps dealer if they engage in dealing activity that is below a de minimus threshold. It is proposed that the Regulations take a similar approach for the definition of OTC derivative provider. In addition the CFTC regulation stipulates inter alia the following indicators of dealing activity: • Liquidity – seeking to profit by providing liquidity • Clients – presence of active clientele and actively soliciting clients • Brokers – use of inter-dealer brokers • Market maker – acting as a market maker on an organised exchange or trading system • Set prices – helping to set prices	Making market includes all the elements proposed.

	offered in the market. We therefore propose that the definition be worded as follows: "OTC Derivative Provider", means a person who as a regular feature of its business and transacting as principal – (a) makes a market in OTC derivatives; (b) seeks to profit by providing liquidity; (c) maintains a presence of active clientele and actively solicits clients; or (d) helps to set prices offered in the market.	
	The definition will capture a CCP transacting as a principal under the principal-to-principal clearing model. This will mean the CCP will be subject to all of the obligations of an ODP, including the reporting obligation under regulation 4.	We do not agree that CCP is captured in the definition
	It is proposed that the definition of OTC derivative provider be adjusted, or the term "originates" be defined, so as to clearly exclude corporates concluding intra-group transactions.	We are not clear what 'inter-group transaction' means? See amended definition
CHAPTER II: REQUIREMENTS FOR THE REGULATION OF UNLISTED SECURITIES		
REGULATION 2: CATEGORISATION OF OTC DERIVATIVES		
	The ISDA taxonomies provide standardised nomenclature and definitions (per asset class) that are internationally accepted and	The section has been removed. The registrar however is not

	ISDA is currently developing unique product identifiers for each of the products in the standardised taxonomy. Consequently in the interests of international harmonisation, it is preferred that the ISDA taxonomies are adopted by the Register for the categorisation of product types. However, we believe that this adoption should be a policy decision by the Registrar and reference to the ISDA taxonomies should not be included in the Regulations: not all market participants are members of ISDA and are unable to access the taxonomies and it is not appropriate to prescribe regulatory standards that are not transparent and freely available to market participants. Furthermore, we submit that the table should be deleted as it is incomplete and possibly will become inaccurate and redundant over time. We recommend that the Registrar prescribe, under section 6(8)(b), in a Board Notice, the categorisation of product types per asset class and include a definition of each product type categorised. This approach will provide clarity and the flexibility required in a rapidly changing market and will provide the basis for the reporting and clearing mandates provided for in proposed Regulations 4 and 5, respectively. We recommend that regulation 2 be amended as follows:	empowered to prescribe the categories as the Act confers this power to the Minister.

	2. Categorisation of OTC derivatives OTC derivatives regulated under these Regulations are categorised by asset class and by product type as prescribed ~~**in the table below or as included in the ISDA product taxonomy:**~~ **by the registrar in terms of section 6(8)(b) of the Act.** The listing in the Regulations is problematic because one gets caught between too much detail (290 classifications) or too little (just the 5 asset classes). The ISDA product taxonomy has a middle ground, called "base product". Since it appears that the Regulations is a mix of types and categories (e.g. a "rate lock" seems to be a marketing label and probably describes a "fixed for floating interest rate swap") the ISDA product taxonomy may rather be adopted, but then the definition for "product type" would need to be replaced with a definition for "base product" as used in the ISDA product taxonomy.	
	Add the following wording: "**In the case of OTC Derivatives not falling into a specific Asset Class or Product Type, transactions will be categorised on the basis of the Asset Class or Product Type that the derivative contract most closely resembles**" Not all OTC derivatives can be categorised according to the existing table or the ISDA	Section has been removed.

	product taxonomy, therefore it would make sense to have a mechanism to allow those that fall outside the existing tables (but are not classified as a 'complex product') to be matched with the closest Asset Class/Product Type. Identifying products may not make regulation "sustainable".	
	Include Overnight index swap in the Table.	Section has been removed.
"FX swap", 'FX forward", "FX forward NDF", "FX option deliverable" and "FX option NDO"	These should be excluded from the asset types as corporates use the FX spot market to settle their foreign-currency denominated transactions and for cash management and liquidity purposes but these commercial FX transactions do not bear the same risks as those that do not have an underlying commercial rationale.	Section has been removed.
REGULATION 3: REQUIREMENT TO BE AUTHORISED		
REGULATION 4: REPORTING OBLIGATIONS		
	Due to the limited size of South Africa's OTC derivatives market and the limited number of potential ODPs, it is not desirable that the data reported to a trade repository be made available or transparent to the market. Appropriate and adequate privacy controls are therefore to be in place which trade repositories are to comply with in order to protect the details of all reported trades to ensure confidentiality.	In terms of section 73 of the Act a TR is duty bound to keep the information confidential.
	There is a need for clear and detailed	This will be prescribed by

	guidelines on the use of data formats and data conventions to avoid unnecessary technical issues. The data format and conventions must allow for automated data validation to facilitate data consolidation and reliability.	the registrar.
REGULATION 5: CLEARING		
	In terms of the draft Regulations, ODPs are required to ensure that OTC derivatives transactions are cleared through a CCP. Clearing should typically impact only products that are mandated for clearing by the regulator, and operationally only works if both parties clear the transaction through the same CCP. It is unclear whether the regulator would also expect transactions mandated for clearing, and executed between a local counterparty (who is not an ODP) and an offshore counterparty, to be cleared. This is not currently provided for in the clearing obligation in the draft Regulations which appears to extend only to ODPs. In addition we do not expect that all OTC derivatives should be caught under the clearing obligation.	The clearing mandate is currently being considered and guidance will follow.
CHAPTER III: CATEGORY OF REGULATED PERSON		

REGULATION 6: CATEGORY OF REGULATED PERSON		
CHAPTER IV: SECURITIES SERVICES TO BE PROVIDED BY AN EXTERNAL CENTRAL SECURITIES DEPOSITORY AND EXTERNAL CLEARING MEMBERS, AND THE FUNCTIONS AND DUTUES THAT MAY BE EXERCISED BY AN EXTERNAL CLEARING HOUSE, CENTRAL COUNTERPARTY OR EXTERNAL TRADE REPOSITORY		
REGULATION 7: SECURITIES SERVICES THAT MAY BE PROVIDED BY AN EXTERNAL CENTRAL SECURITIES DEPOSITORY		
7	Suggest re-number to (7)(1)	There is no 7(2)
	Replace [~~**authorise**~~] with [**approve]**.	Authorised is wording used in the Act.
REGULATION 8: FUNCTIONS AND DUTIES THAT MAY BE EXERCISED BY A CENTRAL COUNTERPARTY OR EXTERNAL TRADE REPOSITORY		
Language suggests a line-by-line assessment of whether external CCPs meet each specific requirement under Chapter VII. This could prevent external CCPs from obtaining external clearing house status where there were any differences between the 2 jurisdictions. This is in contrast to the language of s6 of the FMA where the registrar "must have regard to international supervisory standards" and the definition of external clearing houses which suggests the ability to utilise an equivalence-based test for recognition rather than a line item assessment.		Noted
(1)(a)	Licensing of a CCP that is an external clearing house should be dependent on it being regulated and supervised in a jurisdiction that has had its home jurisdiction's requirements successfully tested for equivalence against the Chapter	Agreed

	VII requirements.	
(1)(a) and 2(a)	The wording of Reg 8 should be aligned with the FMA i.e. delete "recognised" and use the terms "authorised" or "licensed". In FMA (s 1) see definition "trade repository" and compare with definition of "external trade repository". The "external trade repository" is authorised by a "supervisory authority" (s 1) and "recognised by registrar". See FMA (s 54(1); FMA (s 1) definition and Reg 8 on "external TR".	See revised section
2(b)	While s 57(2)(e) addresses confidentiality of information to some extent, s73 places a restriction on a market infrastructure from disclosing certain confidential information. What is the position with regard to the external TR? Please compare Article 80 of the ESMA Regulations. The Minister prescribes functions and duties of an external TR in terms of s 5(1)(c)). Regulation 8(2)(b) states those functions would be the same functions and duties as for licensed TR, but that Minister may add to this. Could a better indication be given or more context on what else the external TR could be allowed to do? Is the power of the Minister unrestricted in this regard? The concern is also that the list of "external" entities in the FMA are not "regulated persons" or "market	See revised section

	infrastructures" as defined in the FMA. To what extent will level playing fields be required by the Minister for all these entities?	
REGULATION 9: SECURITIES SERVICES THAT MAY BE PROVIDED BY AN EXTERNAL CLEARING MEMBER		
General comment		
No framework for the recognition of external clearing members has been provided – it is unclear how these entities will be regulated and supervised		Regulation 9 has been deleted. Enabling provisions provided in the consequential amendments in the FSR Bill.
CHAPTER V: ASSETS AND RESOURCES REQUIREMENTS APPLICABLE TO MARKET INFASTRUCTURES		
REGULATION 10: ASSETS AND RESOURCES		
	FMA (s 55(1)(a)) doesn't require assets and resources "in Republic". On "Financial" aspect, see Reg 10, for example, operating expenses required for 6 months. The 6 month-requirement is not applied to the CCP in these Regulations (see Reg 37(2)(b)) and the motivation for the different criteria is not clear.	Disagreed – 6 months requirement is linked to business risk and capital required for an orderly wind down- clarify that this does not include CCP. A central counterparty has been excluded. The provision has been amended to provide that

		the assets must be maintained in the Republic in all instances.
(1)(c)(ii) and (iii)	The assets and resources should be appropriate and proportionate to the type of business of the market infrastructure in question and these requirements should clearly state to which model these requirements apply, as they may be, depending on the type of model, be too onerous. In addition hereto, we are of the view that the maximum requirement should be that the market infrastructure is only required to hold equity capital equal to four months of operating expenses. The Regulator also needs to provide further guidance here. There is a need to specify the capital calculation methodology to be used (i.e. should historical or projected numbers be used). It is suggested that the calculation should incorporate a projected number instead of an historical.	The assets and resources proportionate to the risks realign to the functions and duties.
(1) (d)	Delete the “s” at the end of “safeguards” It is agreed, as long as the basis for doing the estimation/calculation is explicitly stated (as per comment relating to (10)(1)(c)(ii) above).	Agreed
(2)(a) and (b)	The required format of reporting is required. What key considerations would the Registrar use to determine the sufficiency	See Regulations

	of liquid assets held?	
CHAPTER VI: REGULATIONS APPLICABLE TO THE LICENSING OF TRADE REPOSITORIES		
Check Regs 11(1)(c)-(d) and 13(2)(b) for use of different terms, like "user requirements" and "participation requirements". It is not clear which term includes what, for example "user", "other user" (Reg 12(1)(b)), "relevant stakeholder", "registrar", "public", "reporting entities" (Compare Reg 12(1)(j) and Reg 14(7)(c)). Why distinguish between "relevant stakeholders" and "registrar and the public"? Please clarify.		Agreed – wording aligned TR section has been moved to registrar's Notice.
REGULATION 11:LEGAL BASIS		
(1)(a)	Reg 11(1)(c) refers to "data stored" and Reg 11(1)(a) refers to "transaction records" only, was this (different terminology/context?) intended? Not clear. "transaction records" – delete [transaction records], insert "data"	Terminology aligned to 'transaction data' TR section has been moved to registrar's Notice.
(1)(b)	Please clarify what "all relevant jurisdictions" refers to?	The provision has been substantially amended – refer paragraph 2(c) of the Notice TR section has been moved to registrar's Notice.
(1)(c)	Who does "relevant stakeholders" include? Please clarify. Instead rather define the duties and obligations of TR with regard to stored data.	The registrar's notice will prescribed duties and obligations. This provision requires rights of stakeholders to be defined. TR section has been moved to registrar's

		Notice.
(1)(d)	Please note in general that whereas the ESMA Regulations address data confidentiality in some detail under Article 80 (particularly with regard to using such information for commercial purposes), there is no mention of this in these Regulations. Reg deals with "access of data" received (For received data (data IN), see Reg 11(1)(d).?) (if yes, this is a repeat of FMA (s 57(2)(e)). Is this when the TR "collects and maintains" (also see Reg 13(8))/ having "access" to the received data? Or is the word "access" in the Reg part of giving "access" to third parties? This is not clear and should be clarified. Reg also deals with "disclosure" of data (data OUT) – and "protection and confidentiality issues". Please elaborate or clarify what is expected from the TR. Reg refers to "disclosure" to "users, registrar and public". "Registrar" and "public" are in line with IOSCO Principle 24 – the disclosure to "users" must be clarified further. Is it the intention to restrict disclosure to "registrar" and not "Governor"?	A TR is subject to section 73 of the Act. The registrar's notice provides for this. TR section has been moved to registrar's Notice.
(1)(e)	Please insert a cross-reference to Reg 14(7).	Agreed -TR section has been moved to registrar's Notice.

(2)(a)	Is this in connection with Reg 13(8)? Please clarify.	Both provides for duties in case of performing ancillary services. TR section has been moved to registrar's Notice.
(2)(b)	It is not clear to which risk "this risk" refers, please compare to Reg 12(1)(b).	See redrafted paragraph 2(3) TR section has been moved to registrar's Notice.
(3)	Does this mean that a TR can choose that some aspects of its South African operations are not governed by South African law? This provision needs to be made much clearer as to what can be excluded and what not. Replace "rules" with "contracts"? Insert: "apply to each **material** aspect". Delete [~~operations~~] and insert "services" to be consistent with Reg 12(1)(a).	This provision has been redrafted – please refer paragraph 2(3) in the Notice TR section has been moved to registrar's Notice.
(4)	A legal opinion is not sufficient. Regulators should require that they have jurisdiction over all South African issues. Insert "When, **in the view of the TR**, uncertainty exists" – otherwise who determines this?	See paragraph 2(3) TR section has been moved to registrar's Notice.
REGULATION 12: ACCESS		
Insert in heading "Access and participation requirements" to make it consistent with rest of Regulation headings.		Agreed – corrected. "user requirements are defined as requirements

In general, note inconsistency in use of phrase "user requirements" (Reg 12(1)(a), 12(1)(d), 12(1)(e), Reg 12(2)), then "participation requirements" in Reg 12(1)(b), 12(1)(c), then in Reg 12(1)(g) "requirements for access by users", and in Reg 12(1)(f) "terms of use". Please correct. Please note that it is difficult to comment particularly when it is not clear who will be reporting. Are corporates contemplated, as they are under ESMA Regulations? Or is it only OTC derivative providers? If the former, then rules on access need to be binding on corporates as well. In which way will TR get the authority to sanction those that don't adhere to the requirements? How will this be enforced on users?		for access and participation. The Reporting Obligation Notice provides who must report. TR section has been moved to registrar's Notice.
(1)(a)	Combine with 12(1)(c) Does the use of the word "fair" imply "non-discriminatory" as per s55(1)(g) in the FMA? Is the phrase "and the markets it serves" the "public interest" or does it refer to the Registrar's needs? Please clarify.	Agreed This 'market it serves' relates to specific markets for example equities, interest rates etc.
(1)(b)	Change wording to say "…to fulfil their obligations to the trade repository, (delete)[~~including other users~~] (insert) and other users of the trade repository, on a timely basis. Combine with Reg 12(2)(b)	Agreed Disagreed- Sub (2) relates to the trade repository's risk

		TR section has been moved to registrar's Notice
(1)(e)	With regard to "suspension and exit", it is unclear whether 'rules" are required? These provisions could also be contained in the contract or elsewhere, which can be seen as "private". Yet, this regulation requires not only that it must be "clearly defined" (as required in the IOSCO FMI principle), but it links it by using the word "and" to "publicly disclosed". The word "open" in FMA (s55(1)(g)) equates to "publicly disclosed" in the Reg. Again, note that art 78 of ESMA does not require disclosure of all rules and procedures. Please redraft to ensure the two different concepts of "clearly defined" and "publicly disclosed" are correctly interpreted.	Rules are not required but procedures. IOSCO requires that these procedures are publicly disclosed. TR section has been moved to registrar's Notice.
(1)(f)	It is not clear what is meant with "commercially reasonable" in the post-trade processing space. The aspect of "interconnectivity" should be clearly spelled out. Could this also refer to a scenario where more than one TR is licensed and reporting to the registrar? Will the local TR be responsible for the data aggregation or will the Registrar combine the data?	See amended wording TR section has been moved to registrar's Notice.
(1)(g)	This is aligned to IOSCO FMI Principle 18. The participation criteria are made subject to the reporting obligations. There is no explanation of reporting obligations in	Agreed, the Notice clarifies the position. TR section has been moved to registrar's

	Regulations and therefore the Board Notice is key in this regard. It is difficult (or impossible) to interpret this clause without the benefit of knowing what would be in the Board Notice. Is this clause necessary?	Notice.
(1)(h) and (i)	The Reg does not give detail on fees. What is meant by "cost related" – is this cost plus reasonable mark-up? Is the intention not that a "reasonable" price be charged? Please clarify. It is not clear why specific mention is made of "discounts, benefits, reductions". Is the detail or principle relevant?	This provision has been removed. TR section has been moved to registrar's Notice.
(1)(i)	Covered under s57(2)(d) of FMA. Who are the "reporting entities"? Replace instead with "user".	This provision has been removed. TR section has been moved to registrar's Notice. Please refer to Notice.
(2)(c)	Please indicate what exactly are requirements in terms of publication (see also FMA (s55(1)(g))?	Please refer to Notice.
REGULATION 13: GOVERNANCE		
The governance provisions in the FMA (s55(1)(b)) are intended to support stability of the financial system (in broad terms) and also deal with the public interest consideration (also broad). This should be balanced with the objectives of the relevant stakeholders. It is not clear from the Regulations if the TR should be hosted in a separate legal entity and what the policy considerations are. Could this be clarified upfront? It may be envisaged that a TR would be a division within another market infrastructure and hence its capital requirements would be calculated within those of the total enterprise. Reg 13 only refers to the ownership structure (also 13(1)(d)), organisational structure (Reg 13(1)(e)) and controlling body (Reg 13(3)) and internal governance policy without giving policy direction on what the ideal TR		The Act requires that a trade repository must be a juristic person. This implies that it must be a separate legal entity. A specific structure will not be prescribed. TR section has been moved to registrar's

structure would be. The "suitability of shareholders" must be proven to the Registrar (Reg 13(9)), and also see s 67 FMA on limitation of shareholding. It is submitted that the ideal structure should be clarified upfront.		Notice.
The governance requirements for a trade repository ("TR") are onerous and not appropriate or proportional given the function, purpose and risk profile of a TR. For example, it is submitted that the requirement for both an internal audit function and compliance is excessive. Inappropriately onerous requirements will discourage established TRs from licensing or seeking recognition from the South African regulators.		The requirements are aligned to international requirements as well as other financial institution requirements.
(1)(g)	Duplication with Reg 14	Disagreed – the provision has been amended somewhat however. Please refer to Requirements and Duties of a Trade Repository Notice.
(1)(h) and (i)	With regard to "performance evaluation" and "performance accountability", is it the intention to drill down to such a detailed level in the Regulations? Compare this to Regulations 11 to 15 which are more principles based.	We believe these requirements are necessary for proper governance.
(2)(a)	All governance requirements should be "clear" so why restrict it to certain sub-regulations?	This requirement relates to 'clear' reporting lines specifically
(2)(b)	Transparent to "public" is too broad, and in some cases transparency to "users" may also be too broad. Not all governance arrangements are reflected in public documents. Full transparency to Registrar is in order. Delete "~~shareholders~~" and replace with "**members**". Any juristic person may apply to become a TR, not only a company (FMA). See for consistency Reg 13(3)(b).	It is an international requirement that the governance arrangements are publicly available. Agreed.

(4)(b)	Duplication with regulation 13(5).	Disagree
(4)(c) and (f)	Duplication with regulation 14.	Agree w.r.t. to (f), internal audit must be separate. Risk control is only one of the functions.
(4)(d)	Duplication with s55(1)(i) under FMA.	Agreed, the provision has been deleted.
(7)(b), (c), (e) and (f)	Repetition with 13(5)	Disagree
(8)	Definitions must be provided for clarity	Some of the expressions are defined, other concepts are clear enough.
(9)	Replace "~~shareholders~~" with "**members**". Define "qualifying holding" with reference to s67 of the FMA.	Members has been included but Act refers to 'shareholders also.
(11)	Clarify who these "persons" are referred to in sub-regulation (6)….. Incorrect cross-reference. Should it be (10)?	Agreed
(10) to (12)	It is not clear if the same provisions will apply to the "external TR", since these provisions refer to the "licence" and "supervisory functions of the registrar". Please clarify.	The provisions do not apply to external trade repositories.
REGULATION 14: RISK MANAGEMENT		
Regulation 14 deals with risk management. This is in line with IOSCO FMI Principle 3, and ESMA art 79 as to operational risk. Note that TR business risk is not covered for FMI Principle 15. The requirements regarding systems, policies, procedures and controls come from Principle 17. There is a lot of repetition in the Regulations as compared to the provisions in the FMA.		Principle 15 is provided for in paragraph 4 of the Registrar's Notice.

(2)(a)	Repeat of s55(1)(h) of FMA.	Regulation 14 (or the substitution in the Notice) is intended to enhance (and further prescribe as per s55(2)(c)) the general duty contained in 55(1)(h)
(2)(b)	Repeat of Reg 14(2)(a) and 14(2)(c). Compare Reg 10 with Reg 14(2)(b) (dealing with cash flows, liquidity and capital), read with Reg 14(2)(d) on "going concern", etc. The phrase "going concern" is again used in Reg 14(7)(a).	Disagree (a) refers to potential sources of risk, (b) refers risk profile and (c) requires the trade repository to measure and monitor identified risks. Regulation 10 is intended at the capital that must be held whilst Regulation 14 deals with risks management. We do not understand the comment relating to going concern.
(2)(c)	The phrase "to develop appropriate information systems" is contained in FMI Principle, but it is also a repeat of FMA (s55(1)(f)). Check phrase "information system" in Reg and "information **processing** system" in FMA for consistency.	As stated above Regulation 14 is intended to enhance the provisions contained in the Act. Agreed
(3)	Duplication with regulation 13(1)(h) and (i)	The comment is unclear – does not appear to be

		repetition.
(5)(a) and (c)	Repeat of s55(1)(i) and what is expected under an emergency situation is not clear.	Agreed – provision has been removed
(7)(c)	The section envisages portability to another trade repository but does not require a standard format of data to allow for effective portability. Furthermore, no obligation is placed on market infrastructure to ensure that it aligns to international standards (as envisaged by the FSB in their TR interoperability consultation paper). TR's are not required to align on an operational level to ensure that their data may be aggregated (to do this data would need to be in a specified format- not included in the regulation). It is suggested that the regulator direct respective trade repositories to maintain information/data in a standard format to allow for interoperability and portability as investigated by the Financial Services Board's study on these subjects.	Agreed the standard formatting has been clarified in the Notice on Reporting Obligations.
(8)	The Registrar plays an active role, approving of the independent third party for the review. Is this also not part of the supervisory role?	The comment is not understood.
REGULATION 15: OUTSOURCING (Now contained in paragraph 8 of the Requirements and Duties of a Trade Repository Notice)		
(1)(a)	Who will do the "evaluation and approval"? The Registrar? Please clarify.	It must be approved by controlling body.

(1)(b)	It does not make sense that the TR must provide a report to its own "controlling body". The Registrar?	We do not agree. The provision is necessary for proper governance.
(1)(c)	This is rather a contract issue.	The aim of this provision is to ensure that outsourcing arrangements are properly governed.
(1)(e)	Insert additional wording: "(e) maintain access to the books and records of the service provider relating to the outsourced activities and **ensure that the registrar is able to access the records to the same extent and within the same periods as if they were maintained within the Republic**." Please note that this principle should also apply to the CCP in Reg 58.5.	Agreed
(1)(j)	This section merely requires the requisite market infrastructure to registrar all the necessary in (a) to (i) and is adhered to and places no positive obligation on the registrar to verify that these outsourcing arrangements are compliant. While it is implied that the registrar will have ultimate oversight of these functions, we do not believe that it is prudent to allow a relaxation of any form especially where a potential outsourcer may not fall within the ambit of the registrar ordinarily.	In terms of section 6(2) of the Act the registrar must supervise compliance with the Act (which includes these Regulations). Accordingly the registrar must supervise this obligation. TR section has been moved to Registrar's Notice.

	It is therefore suggested that the regulation be amended to include a review of these arrangements by the registrar in its review of the trade repositories operations.	
CHAPTER VII: ASSETS AND RESOURCES AND THE REQUIREMENTS AND FUNCTIONS OF A CLEARING HOUSE THAT IS A CENTRAL COUNTERPARTY		
Chapter VII is applicable to the existing South African clearing house as the functions of JSE Clear, in the exchange traded derivative market, meet the definition of a central counterparty. No distinction is made in Chapter VII of the application of the requirements in respect of an associated or independent clearing house (where the independent CH takes on principal risk in transactions) Our concern is that in order to comply with the onerous banking regulatory requirements that are set out in Chapter VII, the existing clearing house would incur enormous costs that would inevitably be passed on to the end-users (investing public). This increase in the cost of trading derivatives on an exchange could lead to less hedging of risk in the market or more bilateral OTC derivative hedging: neither outcomes are desirable and are contrary to the G20 commitments. If it is intended that the provisions of Chapter VII are not applicable to a central counterparty in the exchange traded market, we would question the rationale for the distinction and would advocate for level playing fields in the clearing environment as the systemic risk posed by a CCP clearing exchange traded securities or a CCP clearing OTC derivatives is equivalent. We however, reiterate the point that it is necessary to distinguish between the requirements for an associated and independent clearing house, where appropriate.	The concerns are noted, however transitional provisions are provided for to ensure full compliance.
We are cognisant that much of the proposed regulation has been drawn from the CPSS-IOSCO Principles for Financial Market Infrastructures, however in respect of the application of banking Regulations to a central counterparty (Chapter VII), we are of the view that the requirements overreach and are not appropriate given the size and complexity of the local OTC derivatives market. Promulgation of the proposed Regulations, as is, would place South Africa in the invidious position of justifying the assessment by the Registrar of JSE Clear as an IOSCO qualified CCP.	See above.
Particularly in relation to the organizational and governance aspects of the Regulations – that the Regulations should adopt a more outcomes-based approach similar to that adopted in Australia, but that the degree of	Noted

flexibility should not jeopardise our ability to be deemed equivalent to other relevant jurisdictions such as the EU.		
Provisions of Chapter VII are contradictory, fractured and repetitive e.g. all audit, review and reporting requirements be consolidated in a single section.		See revised Regulations
Risk principles are repeated in several places and critical definitions are not provided e.g. counterparty credit risk; liquidity risk; business and wind-down risks, settlement risk, custody and investment risks.		See revised Regulations
REGULATION 16: FUNCTIONS OF A CENTRAL COUNTERPARTY		
(1)(b)	The responsibility for managing and processing these transactions lies with the counterparties (clearing members), not the CCP.	Agreed, the provisions have been deleted.
(2)(b)	In a principal-to-principal clearing structure, the obligations of clients will be to their clearing member, not to the CCP. We do not therefore think that the CCP should collect and manage collateral for the clients' obligations which are to the clearing member, but rather for the members' obligations to the CCP that arise from the business they have transacted for clients.	Agreed, clients of clearing members removed.
(2)(g)(i)	The exact obligation is not clear and we suggest should refer to subsequent Regulations addressing credit risk and default resources.	Agreed, the provision has been removed.
REGULATION 17: LEGAL BASIS		
The central counterparty can be "associated" and is not a "self-regulatory" organisation required to have rules. Is the word "rules" now used as an umbrella term for policies, procedures and contractual arrangements? Or is this only applicable for the counterparties that must have rules? Please clarify. The FMA makes provision for the rules of clearing houses. Given that in terms of the definition of CCP, a CCP		Agreed, the reference to rules has been removed.

is a clearing house, does this mean that CCPs would have 2 rulebooks or one rulebook?		
(1)(f)	While this sub-section envisages that the central counterparty must take all the necessary steps to ensure that member's assets are fully protected from insolvency - there exists no positive obligation placed on a central counterparty to ensure that member's assets are placed in a bankruptcy remote vehicle or SPV. It is suggested that the obligation in this regulation be extended beyond the existing, to accommodate the above referenced arrangement by the central counterparty. In cases where either cash or securities are passed via full title transfer to the CCP, it is unlikely to be protected from the insolvency of the CCP. In such cases, regulated entities will generally have to reflect this risk in their prudential capital requirements. We believe that such treatment, together with full disclosure on the part of the CCP, is sufficient, and it is not necessary to require that assets are fully protected from the insolvency of the CCP.	We disagree. It is important that the central counterparty takes steps to protect the assets. It is up to the central counterparty to decide what steps and the registrar will supervise whether the steps are appropriate.
(1)(h)	There is no definition offered for this action. The market is used to the term "wind-up" which usually refers to a process applicable to a company after an insolvency determination or business rescue procedures. It is suggested that a definition for the action of "winding-down" be included, which may	Agreed, however the term 'wind-down' is not used as a synonym for wind-up in this instance.

	refer to the process of reducing exposure to either credit, market or other risk or the ending of existing business practices. Referred to in Section 14 (c) - for example	
(3)	Replace “sound and transparent” with “**valid and enforceable**”	Agreed
REGULATION 18: ACCESS AND PARTICIPATION		
The unique manner in which the associated clearing house is structured and operates has not been accommodated. Per FMA definition, an associated clearing house clears on behalf of the exchange and does so in accordance with the rules of the exchange with which it is associated. An associated clearing house does not approve or regulate clearing members, as such approval and regulation of its clearing members is conducted by the exchange, in accordance with part (a) of the FMA definition of "clearing member".		The associated clearing house should ensure that the exchange meets the requirements.
It is our understanding that this regulation provides for indirect clearing but it is not clear whether this is optional or mandatory. Indirect clearing should be an optional service which neither clearing members nor the CCP are obliged to offer. Indirect clearing can be encouraged by understanding the complexities and supporting process that might facilitate the process. The issue regarding the application of the insolvency regime (refer above) to CCPs and indirect clients must be resolved.		Indirect clearing is not mandated but empowered in paragraph 4.
(1)(a)	Comments in relation to an Associated Clearing House apply. There is nothing contentious about the requirement for fair and equitable access to the services of the clearing house. In terms of the rules of the associated clearing house (which are the rules of the JSE), this is already a requirement of section 17(2)(a) of the FMA, which requires that the rules of an exchange must provide for equitable criteria for membership.	Noted – see revised definition of CCP.

(1)(e)	Clearing members should also be obliged to adhere to relevant risk requirements in their fulfilment of their obligations to the CCP.	Agreed
(3)(a)	It is not clear what is meant with "commercially reasonable" in the post-trade processing space. The aspect of "interconnectivity" should be clearly spelled out. What is meant by "post-trade processing"?	In our view the references are clear. Post-trade processing has been removed.
(3)(c) to (h)	While we support the objective on enabling participants to access specific services separately, we believe this should refer to clearing members rather than reporting entities. The sub-regulations refer to direct and indirect clearing clients. We believe that these references should be to clearing members and direct clearing clients respectively.	Agreed, paragraph (c) has been removed. Agreed – see amended definitions and amended provisions in paragraph (3)((d) and (e)
(3)(d) to (f)	How will a CCP need to meet this requirement in the event of Omnibus accounts?	See amended wording
(3)(h)	What is meant by "tiered participation arrangements"? Group "tiered participation" requirements under one set of Regulations.	Disagreed- a central counterparty will have different participants i.e. direct/indirect participants. Some entities may rely on services provided by the

		direct clearing members in order to access the central counterparty and different risks exposures are presented by each arrangement.
REGULATION 19: GOVERNANCE		
(1)(e) and (f	It is agreed that the internal audit must be independent, however audit scope for a CCP must be risk based. Audits must not be prescribed if there is no material risk. External CCPs with an established foreign operating framework should be allowed to outsource its internal audit function.	We disagree – see above.
(l)	Duplication: outsourcing is addressed in detail in Regulation 23.	This provision merely requires a framework to include. The details of outsourcing are provided for in Regulation 23.
(3)(a)	Unclear	Wording has been amended to specify 'sufficient independence'
(5)(a)	An associated clearing house may not need a dedicated and distinct CRO/CIO. The appointment of a dedicated and distinct CRO for multiple CCPs within the same group could fragment risk oversight in a way that actually compromises risk management. For example, a single group may provide CCP/clearing services for equity markets as well as derivatives markets. Our view is that there is distinct	See amended wording which now refers to a function.

	risk benefits associated with having a unified view of risk across markets. Given that no restriction exists in relation to the outsourcing of technology (regulation 23) there is no need to have a dedicated chief information officer in instances where this role can be outsourced effectively.	
REGULATION 20: RENUMERATION POLICY		
20	For consistency in numbering, we suggest this section be numbered (20)(1).	No number (2) Combined with risk management framework section.
(j)	It is agreed, if the intention is that it is in reference to variable remuneration only.	Disagreed. The intention is to avoid conflicting interests at all times. Combined with risk management framework section.
REGULATION 21: RISK COMMITTEE		
(1)(c)	In the case of an associated clearing house, management would include the management of the exchange in terms of whose rules the CCP performs the associated clearing functions. Again, this is an area where the distinction between an ACH and an ICH is critical.	Do not agree, we are of the view that it is important that a central counterparty has its own risk committee.
(3)	It is not practical to have all arrangements "publicly available". Does provision refer to Reg 21(2) ("the governance arrangements	This provision has been deleted.

	to ensure its independence")?	
(4)	It may not be practical to consult the risk committee in respect of all developments, but it would be appropriate to require the CCP to make reasonable efforts to consult the risk committee in these circumstances. During a crisis, consultation with the committee could delay procedures putting the CCP, market participants and the market at risk. The risk committee should be empowered to formally delegate some of the duties	Section 68 of the Act empowers a market infrastructure to delegate.
REGULATION 22: SHAREHOLDERS AND MEMBERS WITH QUALIFYING HOLDINGS		
The restrictions placed on shareholders are too onerous.		Disagreed. The responsibility is on the central counterparty to provide the registrar with standard information on its shareholders and the qualifying holdings to allow the registrar to make objective assessments.
(3)	The Regulations, while impliedly, seek to introduce the use of substitutive compliance determinations by the South African regulator (specifically 22(3)), no mention in the regulation is made of how these determinations will be made or the process by which a foreign regulator may apply for a determination.	Agreed, the provision has been removed.

	This idea is inconsistent with the international standards employed by both the United States of America as well as the European Union. It is suggested that the regulation be amended to speak to this process.	
REGULATION 23: OUTSOURCING		
(1)(a)	It seems in terms of this regulation that it is only the outsourcing of the operational functions, services and activities of a central counterparty that is permitted. No mention is made of the outsourcing of the functions that are to be performed by the other structures that the Regulations contemplate e.g. Governance and Compliance. We believe that there are distinct efficiencies and risk benefits to be gained from allowing - particularly within a group structure - these to be outsourced as well (or more specifically, provided within the group). Again, the point re a more outcomes-based approach refers.	Under section 68 of the Act any function may be outsourced.
(2)	How are “significant activities” defined? Refer comment above.	It will depend on the circumstances; the central counterparty must apply its mind and may ask for guidance from the registrar when in doubt.
(4)	While it is agreeable that any central counterparty, whose oversight and	Noted

	supervision is carried out by the registrar, is enabled by access to information and the removal of oversight hindrances (envisaged by subsection (k) and (l) of this regulation. The reliance on information, supplied by a party who has a vested interest in the matter is not as prudent a measure as independent oversight and verification. This will ensure that the outsourced functions are held to an equivalent standard that would normally be required of a central counterparty.	
REGULATION 24: COMPLIANCE FUNCTION		
(3)(d)	What is the reporting format required? What level of detail is anticipated?	Wording has been amended to require annual reporting to the registrar. Such must be done in accordance with section 59 of the Act.
REGULATION 25: EFFICIENCY, DISCLOSURE AND TRANSPARENCY		
(1)(g)	Refer to comment on regulation 21(3).	Disagreed; refer to 20(h) in new Regulations. Such disclosure requirements are necessary for transparency.
(1)(h)	What are the frequency and nature of the disclosure suggested? This also indicates the type of CCP contemplated in the	Regulation amended to require quarterly disclosure.

	Regulations, it being a CCP that takes on principle risk.	
(1)(k)(ii)	Does (k)(ii) relate to specific parties or to public disclosure? Inconsistent requirements in 21(3), 25(1)(g) and 25(1)(k).	See revised Regulations.
(1)(k)(ii)(dd) and (ee)	Proprietary and risk-sensitive data disclosure requirements should limited to regulatory disclosure. More general, principle-based disclosure should be adopted for the broader market.	Aligned with international standards.
(2)	Refer point above on proprietary and risk-sensitive data.	Aligned with international standards.
(4)	Define "crisis" and how does it relate to "emergency" in other Regulations.	Regulations have been aligned to 'crisis' in all instances. It is in our view not necessary to define crisis.
(5)	Currently regulation 25 does not provide enough detail on the level of disclosure required i.e. what needs to be disclosed to Registrar, clients, public. Additionally, very little is provided on the frequency of disclosure.	Please refer amended Regulations.
REGULATION 27: BUSINESS RISK		
Applying separate capital calculations to wind down risk and business risk creates a potential unnecessary duplication of capital adequacy requirement - In addition, this text could possibly be incorporated with the regulation 37 text. See regulation 37 text for additional business risk and wind down risk clarifications.		Agreed –the capital requirements were merged with regulation

		37. Business risk and orderly wind down are not duplicated. The EU paper prescribes capital of 25% of operating expenses for business risk and a minimum capital of 6 months operating expenses for wind down. It is 2 different risks based on operating expenses. Combined with risk management framework section.
REGULATION 28: INFORMATION TECHNOLOGY SYSTEMS		
(1)(e)	Missing word before scalable.	Agree. Combined with risk management framework section.
(4)(a)	For an ACH, this should form part of the overall review of the Group entity which would include the exchange.	It would be sufficient if it is part of an overall review. Combined with risk management framework section.
(4)(b)	We would suggest that the five day	Wording has been

	requirement should only apply to material findings of a review; otherwise it should be sufficient that the reports are submitted to the Registrar as part of the reporting to the controlling body. Requirement is too onerous, with the likely costs of such valuations outweighing any operational benefit The 5 days are impractical and is inconsistent with later provisions – use similar wording to that under Reg 30(6)(b).	amended and aligned accordingly. We disagree that the requirement is onerous. The assessment may be done by an internal audit function. Combined with risk management framework section.
(5)	Threshold of materiality - this should be approved by the controlling body.	The obligation is placed on the central counterparty, therefor implicit that approval by controlling body is necessary. Materiality will depend on the circumstances. Combined with risk management framework section.
REGULATION 29: OPERATIONAL RISK		
Combine with regulation 31 and 38.		Disagreed – the Regulations cover different aspects. Regulation 31 refers to business continuity requirements and 38 refer to capital

		calculation requirements for operational risk.
(4)(a)	The CCP would typically issue market notices in this regard. We assume this would meet the requirement as specified.	Disagreed- advise/notification is required to be given to the Registrar therefore market notice is not sufficient. Combined with risk management framework section.
(6) and (6)(a)	Regulation 6 is too onerous with likely cost outweighing any operational benefit (refer Article 10 of ESMA RTS). Within an ACH structure, the management system for operational risk will be defined at a Group level.	Disagreed, must be able to track risk/losses. We are of the view that this requirement is not too onerous as this would be fundamental to managing operational risk for any organisation. Combined with risk management framework section.
(6)(b)	Suggest that this is an internal audit team.	Clarified - Independent party includes internal audit and or external audit. Combined with risk management framework section.
(7)(a)	Assume that "system" in this sentence refers to as a process of governance?	Correct. Combined with risk management framework

		section.
REGULATION 30: AUDITING		
(1)(a)	It is suggested that this audit plan be aligned to the processes of the CCP and should not require the annual review of every control in place.	Disagree – all controls should be reviewed.
(2)(c)	Correction (numbering):This should be (2)(a).	Agreed.
(2)(d)	Correction (numbering):This should be (2)(b).	Agreed.
(2)(e)	Correction (numbering):This should be (2)(c).	Agreed.
(4)	Point made in covering letter that auditor appointed in terms of s89 of the FMA deals with a financial audit, not an operational or other audit. We would argue that this should be done as part of an internal audit process rather than an external audit. External reviews should only occur if there is a market event or a significant change	See amended wording.
(5)	Refer comment above.	See amended wording.
(6)	Is the intention here only to review the operational risk system? - Should this item not reference sub-regulation 4, which requires a CCP to undergo an external audit?	Amended wording. Regulation 30 on Auditing is not just specific to Operational Risk but rather refers to auditing in general for the organisation.
(b)	We would suggest that the five day requirement should only apply to material findings of a review; otherwise it should be sufficient that the reports are submitted to the Registrar as part of the reporting to the controlling body.	Disagree – unclear as to what the commentator's suggestion entails.

REGULATION 31: BUSINESS CONTINUITY		
(1)(f), (1)(f)(i) and (ii)	The maximum acceptable down time will depend on the crisis and the time limits should rather be goals than hard limits.	Disagreed – this is an IOSCO CCP requirement (2hours).
(3)(a)	Meaning of "fail over" is not clear.	Disagreed - Failover means switch to another site – It is an industry term.
(3)(c) and (d)	It may not be viable to maintain dual sites of identical scale and operational capabilities; this requirement may have to be reconsidered in light of local constraints (cost, availability of appropriate resources etc.).	Wording clarified.
(4)(a)	Under an ACH structure this would form part of a Group business continuity process and policies. The point re recovery times above refers.	Noted.
(5)(c)	We would argue that this should be done as part of an internal audit process rather than an external audit. External reviews should only occur if there is a market event or a significant change.	Wording clarified. Independent review includes internal and or external audit.
REGULATION 32: CUSTODY, SETTLEMENT AND PHYSICAL DELIVERIES		
(21)(e)	Meaning unclear	Wording clarified.
(2)(c)	Clarify what "no or little principal risk" means. Refer Article 47 of EMIR.	We are of the view that the meaning is clear.
(3)(a)	The premise should be that cash	Meets international

	settlement in Central Bank funds is an imperative. It is therefore submitted that the Regulations should not provide for commercial bank settlement. This flows into 32(2)(b) and 32(4)(c) as well.	standards.
(4)(g)	Does not link with opening statement.	Wording clarified.
(5)(c)	Delete [**to the extent possible**]	Disagreed.
(6)(d)	Scenarios exist that complicate the enforcement of this requirement. In addition hereto, it once again only contemplates one type of CCP model and one type of relationship between the CCP, as independent clearing house and its members. In a model, such as JSE Clear, clearing members do not have any positions, margin, as collateral is segregated down to client level and both JSE Clear and the clearing members act as custodian of these clearing members.	This will be up to the CCP to decide so long as they meet the requirements under the Act and the Regulations.
REGULATION 33: CREDIT AND LIQUIDITY RISK		
We suggest that the entire regulation be combined with the more detailed Regulations on credit and liquidity risk in Regulations 50 – 53. Define “complex risk profile” and “a CCP that is systemically important in multiple jurisdictions”		See revised Regulations.
Regulations 33(2) and (3) and 50(a) make reference to liquid assets in various forms which are inconsistent.		
(2)	This (as well as regulation (33)(3)) contradicts the default fund rules under regulation (50)(a), "*maintain a prefunded default fund to cover losses that exceed the losses to be covered by margin requirements laid down in Regulation 48, which default fund must at least enable the central counterparty to withstand,*	See revised Regulations.

	under extreme but plausible market conditions, the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger; and...". Activities with a more complex risk profile need to be defined in the definitions. - How would the materiality of this activity be measured against others?	
(4)(a)	Refer comment on 32(3)(a) above.	See revised Regulations.
(5)(c)	We suggest that these tests should be determined by the CCP but of course will be subject to the registrar's approval.	Agreed, wording amended.
(5)(a)-(e)	Duplication: duplicated in regulation 46, (5)(i)(i)-(v).	Agreed.
(5)(e)	Replace "cusion" with "**reserve/buffer**" as "cushion" is colloquial.	Agreed.
(7) and (7)(a)	Should be covered under regulation 51.	Agreed.
(8)(c)	Correction (numbering): This should be (8)(a).	Agreed.
(8)(d)	Correction (numbering): This should be (8)(b).	Agreed.
(8)(e)	Correction (numbering): This should be (8)(c).	Agreed.
(8)(f)	Correction (numbering): This should be (8)(d).	Agreed.
(9)(b)	Agree with the proposal in terms of credit stress testing. Liquidity stress tests are performed quarterly as they are based on historical cash flow needs and do not fluctuate as often for a CCP.	Disagreed – internationally daily testing is required– PFMIs principle 7.

(9)(c) and (d)	Suggest that this is overly prescriptive. Stress testing scenarios, parameters and models should be reviewed when back-testing thresholds are breached or when a material event occurs.	Disagreed, internationally daily testing is required– PFMIs principle.
(9)(e)	What is defined as the risk-management model? (It is agreed that internal validation of certain changes is required, however, the scope needs clarification).	Wording has been clarified.
(10)(a)	Duplication: see (56)(1)(e)(i)(aa).	Paragraph 56 does not address stress- testing for liquidity risk.
(10)(b)	Duplication: see (56)(1)(e)(i)(bb).	See above.
(10)(c)	Duplication: see (56)(1)(e)(i)(cc).	See above.
REGULATION 34: QUALIFYING CAPITAL		
Sub-regulation (1)(b)(ii) includes, in the definition of qualifying capital, an amount allocated by a foreign CCP to a branch established in South Africa.	We would prefer it to be clear that if a foreign CCP allocates capital to a branch in South Africa, then that can count as qualifying capital, not that a foreign CCP is required to allocate capital to a branch in South Africa. There is significant overlap between Regulation 33 and Regulation 44 in respect of liquidity risk management, and we suggest that these are combined and rationalised. We have not performed a full analysis on all of the requirements contained in these Regulations but would query any requirements that exceed those applied to CCPs in other jurisdictions.	Deleted.

	We would suggest that the funds would in fact need to be located within the South African jurisdiction, governed by SA law and accessible to SA regulators.	
(2)(a)	Due to the different liquidity rules, it is not clear what is really deemed "highly liquid securities". The Regulations should define liquid securities/minimal market or credit risk. Alternatively, an appropriate cross reference should be inserted for clarity. Within this context, a distinction is required between a central counterparty and the rest of the corporate group of companies to which it belongs (where applicable). Also, "financial resources" have to be defined.	Disagree, we are of the opinion that the terms are clear. The requirement is applicable to the central counterparty only.
(2)(b)(i)	This contradicts regulation 39, which states that an additional capital charge would apply. Such a capital charge could potentially be quite large and could deter such an arrangement, which could prove beneficial to the South African market. EMIR also excludes this requirement of additional capital to be held for trade exposures and default fund exposures under an interoperability agreement.	It is in line with Regulation 39(5). EU No 152/2013 (Dec 2012) – Article 4(5) requires a risk weight of 1250% i.r.o. exposures to the default fund of another CCP.
(2)(b)(ii)	It is our understanding that (b)(i) and (b)(ii) both merely state that the portion of default fund contributed to another CCP must be deducted from the CCP's own qualifying capital. We think this should only be the case if the exposure to the default fund of	Correct – this is clear in the Regulation.

	another CCP	
(2)(m)	Not sure what this is intended to cover?	Capital must be fully paid up; otherwise the amount would be deducted from capital.
(3)(b)	We would suggest a different approach - rather than a prescriptive negative obligation on the CCP we would suggest the adoption of a principle-based approach which says that the CCP cannot undertake these activities without having due regard to necessary capital adequacy/solvency requirements.	We prefer the existing approach- to provide the Registrar the opportunity to decline a capital reduction, to preserve capital.
(3)(b)(i)	The buffer of 10% (R10 million) is a specified add-on by the regulators. Is this buffer intended to be applied to regulation 35(2) (in relation to the credit, market, operational and business risk) or is this intended to apply to (35)(1)(a), i.e. the R100 million?	It applies to the prescribed minimum Requirement in place (i.e. whichever is the highest. Buffer should be on the R100 million. It applies to the highest minimum requirement whichever is the highest.
REGULATION 35: GENERAL CAPITAL REQUIREMENTS		
The requirements applicable to entities applying for recognition as an external clearing house would have to be clarified as part of the recognition process. An important consideration in this regard would include whether an external CCP would be able to rely on capital reserves held pursuant to their foreign licence holding.		Two regulators cannot rely on the same capital.
(1)(a)	It would appear that this permanent level of capital has been set at an international level. Large international market players can easily meet a EUR 7,5 million	The default waterfall should be sufficient to cover the default of a

	threshold, as the average regulatory capital burden is passed through to more market players. For instance, LCH Ltd has 163 clearing members, with much larger balance sheets. It would be difficult for the South African market to attain a minimum amount of R100 million. In addition, if market size and risk are not taken into account, the requirement can result in two CCPs of varying profiles being required to hold the same level of permanent capital.- What is the reason for the minimum permanent capital charge if a default fund already exists?- Was the South African market size taken into account in setting this minimum amount?	clearing member, but Capital requirements cover other risks than the default of a clearing member. Article 16 (2) – (EU Regs 648 2012) – capital should be sufficient to cover risks which are not covered financial resources referred to in Articles 41 to 44. (i.e. margin requirements and default fund.
	What is meant by the "appropriate buffer"? How will the buffer be calculated and what would be deemed appropriate? Regulation 35(6)(b)(ii)(gg) refers to "any additional buffer of qualifying capital above the notification threshold as the controlling body and the senior management of the central counterparty may determine" but no test is provided.	Board buffer – to accommodate growth and stress testing. The size will differ from CCP to CCP. No methodology prescribed, however, it must be clear that no CCP can operate at the minimum requirement; any loss would then cause a breach.
(4)(a)	The Regulations should state that this would always be subject to a minimal time frame that allows CCPs to rectify errors or omissions. It would be very difficult for the	Impose additional capital requirement – the registrar is conscious of the fact and aware of the

	CCP to raise additional equity capital at short notice due its structure and function. If one were to compare a bank and a CCP, a bank could improve its capital adequacy requirement drastically by ensuring that it curbs its risk appetite (for example by placing funds with better rated institutions or by closing out risky open ended trades). This can be done in a very short period of time as risk appetite can be curbed. In contrast a CCP starts out by not running any outright risk; rather it has limited risk appetite and charges for its services. Hence, if an increased capital requirement were to be imposed (even by a small fraction) at short notice, it would be very difficult for the CCP to attain the CAR without going to the market to raise equity capital. Giving the market incorrect guidance or stimuli would not support financial stability.	existing buffer.
(4)(b)	As per comment under (35)(4)(a).	See above response.
REGULATION 36: SPECIFIC CAPITAL REQUIREMENTS FOR CREDIT RISK, COUNTERPARTY CREDIT RISK AND MARKET RISK WHICH ARE NOT ALREADY COVERED BY SPECIFIC FINANCIAL RESOURCES AS REFERRED TO IN REGUALTIONS 48, 49, 50		
(2)	We interpret the Regulations as follows. Kindly confirm or correct our interpretation.- When margins sufficiently cover the clearing house's counterparty credit risk exposure, it will not have to hold additional capital. - If we do not engage in trading activities on behalf	Correct, if there is no residual market risk (above what is covered by the margins) then capital for market risk

	of the CCP (i.e. an open trade), nor invest any of the CCPs funds in available-for-sale assets , equities or commodities, the market risk capital will not be required.	would not be required.
(2)(a)	It is agreed that a CCP's functions in terms of its clearing service should be capped to disallow any outright market risk. If any residual market risks remain, it is our view that they should be addressed in the CCP's investment policy by limiting investments of the CCP to highly liquid investments. This is similar to the framework proposed by ESMA. The latter requires a 1250% RW (i.e. a deduction from capital) if the CCP does not invest in liquid assets. This acts as a substantial deterrent not to run market risks with the CCP's resources. If this framework does remain in the text it is our understanding that the CCP will not need to hold a market risk capital charge as long as its investments are liquid and held-to-maturity.	Agreed.
(2)(b) and (c)	It is our interpretation that risk capital will only be held above the default fund threshold.	Credit risk capital would be held for residual risk not covered by the default fund.
REGULATION 37: SPECIFIC CAPITAL REQUIREMENTS FOR BUSINESS RISK AND FOR WINDING DOWN OR RESTRUCTURING		
(1)	General business risk capital requirements should take into account the CCP's specific	Agreed on the blanket approach.

	business model and its prudential environment, and not be applied as a blanket approach.	CCP's own estimate is therefore allowed.
(2)(b)	Is the business risk capital requirement additional to the capital requirement for winding down or restructuring (regulation (37) (4)) - if so, this should be made more explicit. Business risk can be mitigated in a variety of ways beyond just capital for example diversification of revenue streams. Consequently, the 25% floor may be too restrictive and a more principles-based approach would be more appropriate. If business risk capital requirements are calculated as per regulation (37)(2)(b), then we suggest gross operational expenses should exclude non cash (depreciation, lease adjustments) and discretionary spend (bonuses, marketing etc.). Clarity is required on the treatment of intercompany transactions, as capital can be duplicated (e.g. business risk capital in one entity and operational risk capital in another). Further clarity is required on "CCPs" operating within a larger corporate group. Costs and revenue may need to be ring-fenced for the purposes of capital calculations. Why is the requirement only 25%, or effectively 3 months, instead of the more acceptable 6 months?	It is two different risks even though calculated on the same operational risk. Disagreed – 6 months is recommended.

(3)(b)	We propose to use forecasts. Historical figures do not make intuitive sense. However, it is agreed that a forecast figure should be estimated and agreed based on the historical figures. Items that would be excluded from a historic event in terms of wind down would include among others:- Noncash items (depreciation).- Discretionary spend such as bonuses, travel expenses, marketing expenses, temporary staff expenses.	Disagreed. Historical figures will ensure more consistency.
(4)	Is it the intention to require capital floors for only business risk or both business and wind down? - If the intention is to only have one capital floor that will capture wind down within business risk, will it be the 25% (3-month) floor stated in regulation 37?- In addition, do the Regulations intend to suggest that wind down timespans should cater only for activities mentioned in regulation (36)(2)? We believe costs that would not be required in a wind down situation should be excluded. In this regard a forecast figure should also be used.	These are two different risks, therefore 6 months is recommended.
(5)	This section requires that the central counterparty only estimate the time necessary for the "wind-down" process. This provision does not take into account (i) independent verification of the method used to determine the time-span (ii) any objectivity of data (iii) the potential variation of the time	The time span shall be at least six months. A limit was therefore imposed. Furthermore, the Registrar must approve the time span, by implication the Registrar can also

	span that may change from time to time.	impose conditions, or not approve the time span if for example there was no independent verification. Furthermore, the time span cannot change without the Registrar's approval. On this aspect, further guidance and clarification can be provided via Circulars.
REGULATION 38: CAPITAL CALCULATION REQUIREMENTS FOR OPERATIONAL RISK		
Regulations 38 to 44 should be in Directives or Board Notices because process to amend Notices is less protracted than for Regulations and the requirements in these Regulations are likely to need changing often.		
(3)(a)	It is agreed, if this is balanced with the requirements of business risk and wind down risk. This needs to cross reference to regulation 45, to prevent double counting within a group. As already pointed out in comments relating to regulation (37)(2)(b), the Regulator should clarify how to deal with related parties or intercompany transactions. Clarity is also required on "CCPs" operating within a larger corporate group, in which instance costs and revenue may need to be ring-fenced for the purposes of capital calculations. Reference should also be made to our comments regarding the peculiarities of the ACH structure.	Disagreed. These are separate risks which must be dealt with separately.

(3)(b) and (c)	It is agreed, if this is balanced with the requirements of business risk and wind down risk.	See above. Disagree - Business risk is not part of daily operational risk.
(3)(d)	It is agreed, if this is balanced with the requirements of business risk and wind down risk. The cost to income ratio of a CCP must also be taken into account.	See above.
(3)(e)	It is agreed, if this is balanced with the requirements of business risk and wind down risk.	See above.
(3)(f)	Remove "to" (after must) in this sentence.	Agreed.
(3)(j)(ii)	What is the definition of “extraordinary or irregular items”?	Income not derived in the normal course of business or a once-off which could inflate income and subsequently capital.
The duplication of the use of the gross operational expenditure item in the Basic Indicator Approach (Regulation 38), the Business risk estimation (Regulation 37) as well as the wind down estimation (Regulation 37) is extremely onerous and not in line with the expectation of the market that capital should be risk sensitive. We agree that a prudent form of operational and business risk management should be incorporated, however, we dispute that this amount should be as high as 90% - 105% of annual gross operational expenses. A more principled approach is recommended that gives recognition to the protection of a CCP provided by the local legislation.		Operational expenditure is not included Gross income – NII + NIR (before any provisions or expenses).
REGULATION 38.1: ADDITIONAL QUALITATIVE CRITERIA FOR THE ADVANCED MEASUREMENT APPROACH		
(2)(c)	Which major business lines would be applicable to a CCP? Refer also to our	Refer to Table 38 (A) which specifies which

	comment under (38.2.2)(2)(a).	business lines are applicable.
(3)(b)	How is "regular reporting" defined? What would be the required format of such reporting?	This is internal reporting – wording clarified. In line with governance in CCP.
REGULATION 38.2: ADDITIONAL QUANTITATIVE CRITERIA FOR THE ADVANCED MEASUREMENT APPROACH		
38.2.1. PROCESS		
(10)(a)	Correction (numbering): numbering goes from (38.2.1)(2) to (38.2.1)(10). The (10) should be changed to (3).	Noted.
(10)(b)	Correct numbering as above	Noted.
(11)	Correction (numbering): if (10) changes to (3) as per our comment above, then (11) has to be changed to (4).	Noted.
38.2.2. INTERNAL DATA		
(2)(a)	Table 38(A) should be updated to appropriately reflect the business of a CCP.	List of activities is not intended to be exhaustive.
38.2.3. EXTERNAL DATA		
(2)(3)	For consistency in numbering, we suggest this section be numbered (38.2.3)(1).	Noted.
38.2.4. SCENARIO ANALYSIS		
(2)(4)	For consistency in numbering, we suggest	Noted.

	this section be numbered (38.2.4)(1).	
REGULATION 39: CAPITAL CALCULATION REQUIREMENTS FOR CREDIT RISK		
In general, the large number of incorrect table references (in Schedule A) makes it difficult to review and to comment on the credit risk Regulations. In estimating initial impacts we have applied the tables we believe are relevant to the text. Incorrect references (i.e. footnotes) are highlighted in our comments; with regards to the CEM table references, there is no Table 46 in Schedule A. If the intention of this section is to apply to the risk generating portions or business portion of a CCP - then similar to the market risk section. This should only apply to the business section rather the investment portion (risk mitigating portion). I.e. additional capital should not be charged on capital held. It is assumed that this was the intention of this section.		Credit risk requirements should be applied to all risk generating exposures (including business portion of a CCP). Capital should also be held against investment of funds received by CCP. Collateral received by CCP will be treated in accordance with CRM and or CCR requirements.
(2)(c)	Does the mention of regulation 40 here imply that the CEM method must be applied? If so, this cross reference needs to be expanded to Regulations 40 and 42, as regulation 42 includes the CEM methodology.	Agreed, Regulation 40 (Capital requirements for CCR) to 42 (Calculation of a CCPs credit exposure in terms of the current exposure method) should be included.
(2)(d)(a)	If a CCP has a counterparty credit risk exposure to a client, due to better client segregation and margining at a client level, this would be the case - we net on a client level. Clarity is requested.	The comment is not clear.

(7)(b)	We note that Tables 39D and 39F have been standardised to reflect the holding periods that a bank needs to capitalise for. There is insufficient research to suggest that similar holding periods are appropriate for CCPs. The Registrar should utilise its discretion to define shorter holding periods that are more suitable for CCPs.	Due to insufficient research - no basis of amending holding periods.
(9)(a)	"other than a collateralised OTC derivative transaction" essentially means that only OTC derivatives are excluded here, i.e. exchange traded derivative products should be included under the comprehensive approach. It is our view that this might not have been the intention of the regulation. We therefore suggest that the text of regulation (39)(2)(c) be amended to state that all exchange traded derivatives need to be capitalised under regulation 42, i.e. the CEM method.	Agreed. Refer to Regulation 30 to 32. (CCR (reg30), CVA(reg31), CEM(reg32))
(9)(c)	The credit text makes reference to "other than a collateralised OTC derivative transaction" which essentially means that no framework has been highlighted for ET derivatives. This essentially means that JSE clear would have to apply this formula in lieu of the CEM, which does not make sense to apply intuitively.	Agreed. Wording amended - removed “OTC” and referred only to “derivative instruments”.
39(10(d)(ix)(ff)	The term “mutual fund” is confusing.	Agreed; change to CIS or money market fund.

12(d)(i)(dd)	We suggest including a reference to the possibility to scale down.	Disagreed. The initial percentages are set as minimums therefore no room for scaling down.
(15)(k) to (u)	Only applicable if the CCP enters into this form of risk mitigation.	Noted.
(16)(e)(ii)	Meaning is unclear?	Regulation 39(16)(e)(ii) was combined with Regulation 39(16)(e) and reworded such as: "If a central counterparty obtains protection that differs in maturity from the underlying credit exposure, because the central counterparty may be unable to obtain further protection or to maintain its capital adequacy when the protection expires, the central counterparty must monitor and control its roll-off risks, that is, the fact that the central counterparty will be exposed to the full amount of the credit

		exposure when the protection expires."
REGULATION 40: CAPITAL CALCULATION REQUIREMENTS FOR COUNTERPARTY CREDIT RISK		
REGULATION 40.1 GOVERNANCE		
(1)(b)	In agreement with the proposal, as specified in regulation 48.	Noted.
(1)(k)	Is this sentence needed regulation 48?	Noted.
(1)(p)	Which portion should be kept as prefunded financial resources and which as other financial resources? See difference between regulation 40.1 and regulation 51 (taking into account the set CIs proposed in regulation 48).	This regulation provides that the CCP must maintain additional pooled funded financial resources to cover the tail risks.
(1)(q)	The provision allows the clearing house to impose controls per counterparty. The central counterparty should rather establish a risk management framework (which can be approved by the Regulator) and apply this framework on a consistent basis. The provision allows for subjective assessments to be made by the clearing house on the financial state and credit worthiness of a clearing member. It is suggested that the regulation allows for either dispute procedure with regard to the provision or require the clearing house to disclose the credit assessment factors considered in order to make a determination	Footnote 4 (referenced under 40.1 (1)(b) makes reference to a robust risk management framework which a CCP should establish. This provision allows for the CCP to have authority to impose activity restrictions or additional credit risk controls on a clearing member in respect of transactions with that clearing member where the CCP determines that the

	in terms of this section i.e. this could be based on a rating agency down-grade for example (which is independent).	clearing member's credit standing may be in doubt. This would ensure that the CCP actively risk manages and its processes are sufficiently robust to determine if it's clearing members' credit standing is in doubt. Credit assessment factors to be made available might be made available if it is practical to do so. The Regulation makes reference that the CCP robust must have risk framework.
(1)(t)	Cover 1 is already deemed an appropriate level in the South African markets, given the small number of clearing members that need to absorb the additional burden of maintaining a default fund.	Noted.
(1)(w)	On page 80 there is a Footnote (7). However, in the text, there is no reference to the footnote. What does the Footnote relate to? Is it the initial margin mentioned in (40.1)(1)(w)?	Noted. Inserted to accommodate footnote reference.
(1)(x)	Materiality should be kept in mind if a CCP does not split its default fund into funds per product.	Reference is made to a CCP that is involved in activities that are of a

		complex nature or is systemically relevant in multiple jurisdictions. Materiality is indirectly considered, a CCP that is systemic has materiality – comment not applicable.
(1)(y)	Cover 1 is already deemed an appropriate level in the South African markets, given the small number of clearing members that need to absorb the additional burden of maintaining a default fund.	Noted
(2)(c)	Please refer to our comments in relation to 33(9)(c) and (d). This is also a duplication of the wording in these sections.	See revised Regulations.
(2)(f)(i)	On page 82 there is a Footnote (8). However, in the text, there is no reference to the footnote. What does the Footnote relate to? Is it section (40.1)(2)(f)(i)-(ii)?	Noted. Inserted to accommodate footnote reference.
(2)(h)	Duplication - see (39)(10).	See revised Regulations.
(2)(h)(i)	Duplication - see (56)(1)(e)(i)(aa) and (39)(10)(a).	See revised Regulations.
(2)(h)(ii)	Duplication - see (56)(1)(e)(i)(bb) and (39)(10)(b).	See revised Regulations.
(2)(h)(iii)	Duplication - see (56)(1)(e)(i)(cc) and (39)(10)(b).	See revised Regulations.
(2)(h)(iv)	Duplication - see (56)(1)(e)(i)(cc) and	See revised

	(39)(10)(b).	Regulations.
(2)(h)(v)	Duplication - see (56)(1)(e)(i)(dd) and (39)(10)(b).	See revised Regulations.
(3)	There are some typing errors in this section. Also, parts of this section duplicate previous sections. From the subsequent numbering (i.e. (6)) it would appear that this paragraph needs to be split up. We also believe that this section should include a reference to exchange traded derivatives. On page 83 there is a Footnote (10). However, in the text, there is no reference to the footnote. What does the Footnote relate to?	Noted. Inserted to accommodate footnote reference. The Regulations are drafted on the basis that exchange traded instruments are included.
(6)	This numbering might need to change in the event that the preceding paragraph (numbered (3) is not split up to include paragraphs numbered (4) and (5).	Noted.
(6)(b)	Is this intended to apply exclusively to OTC?	Yes. CVA capital is to be held specifically for OTC derivative transactions that are entered into by the CCP for hedging purposes.
REGULATION 40.2: EXPOSURES TO CENTRAL COUNTERPARTIES AND RELATED MATTERS		
	It is our view that exposures to other central counterparties should not be capitalised under a banking framework. The only way that one CCP can be exposed via trade to another CCP is through interoperability agreements, and hence these exposures	Agreed.

	should be managed within the bounds of these interoperability agreements. The European authorities also supported this approach by expressly stating that a CCP must not hold capital for exposures to another CCP if the requirements for risk management and provision of margins among CCPs are met, and only when these conditions are not fulfilled, a standard risk weight must be applied to the default fund and trade exposures.	
REGULATION 40.3: EXPOSURES TO QUALIFYING CENTRAL COUNTERPARTIES		
	Refer above	Agreed.
REGULATION 40.4: EXPOSURES TO NON-QUALIFYING CENTRAL COUNTERPARTIES		
	Refer above	Agreed.
REGULATION 41: CALCULATION REQUIREMENTS OF THE MINIMUM REQUIRED CAPITAL FOR CVA RISK		
	The CVA is by definition the difference between the risk-free portfolio and the agreed portfolio value that takes into account the possibility of a counterparty's default. In other words, CVA represents the monetized value of the counterparty credit risk. The CVA charge would be the difference between the counterparty risky derivative and the counterparty risk-free derivative. As a CCP is required by regulation 48 to margin all contracts, this section would only apply to CCPs that take on principle risk via hedging	Agreed. Referencing corrected.

	activities. We also note that references in this regulation are missing. For consistency in numbering, we suggest this section be numbered (41)(1).	
REGULATION 42: CALCULATION OF A CENTRAL COUNTERPARTY'S CREDIT EXPOSURE IN TERMS OF THE CURRENT EXPOSURE METHOD		
REGULATION 42.1: MATTERS RELATING TO THE EXPOSURE AMOUNT OR EXPOSURE-AT-DEFAULT		
In general any CCP will hold minimal counterparty credit risk due to the margining arrangements. We agree that a standardised approach should exist for estimating the counterparty credit risk run by a CCP, however the standardised tables provided are based on a 10-day holding period and are aligned mostly to an OTC framework, which differs to that of a CCP dealing with exchange-traded derivatives. A CCP has been given standard close outs under regulation 48. It is our request that the CCP be allowed to scale the CCF factors provided to the appropriate close out days (2 days for exchange traded derivatives and 5 days for OTC). Terminology not consistent in Regulations 42.2. to 42.3.		Disagreed. These tables refer to exposures whereby the CCP enters into an OTC trade with another counterparty. In such an instance the CCP would have to apply the CCF factors prescribed in these Regulations.
42.1	For consistency in numbering, we suggest this section be numbered (42.1)(1).	Noted
(b)	There is no Table 46(B).	Table included. Incorrectly referenced in the Regulation which has been corrected
(c)	Which sections of regulation 39 or 54 are applicable?	Referenced in such a manner such that the relevant framework is not to exclude any regulatory

		condition under the credit risk and collateral framework that may need to be considered.
(d)	There is no Table 46(C).	Table included. Incorrectly referenced in the Regulation which has been corrected.
(g)	See general point in relation to this section above. Request to adjust the add-tables to include holding periods relevant to the underlying market i.e. exchange-traded and OTC	See response provided to the general point.
REGULATION 42.2: MATTERS RELATING TO BILATERAL NETTING		
42.2	For consistency in numbering, we suggest this section be numbered (42.2)(1).	See revised Regulations
(b)(ii)	Must these opinions come from external parties?	May be internal or external.
REGULATION 42.3: LEGAL AND OPERATIONAL CRITERIA		
42.3	For consistency in numbering, we suggest this section be numbered (42.3)(1).	Agreed.
	Please insert " . . . which agreement must create a single legal obligation covering all relevant . . ., such that **in accordance with its terms** the central counterparty would have either a claim to receive or obligation to pay only the net sum…" Please insert **termination** before "event" to make it clear this is the termination event or	See revised wording.

	close-out. Please insert **<u>insolvency proceeding</u>** (as defined in the FMA) after "default"; delete [**~~bankruptcy, liquidation or~~**] (thus: "…whether or not the failure relates to default, insolvency proceeding or similar circumstances . . .") It is not clear if "failure to perform" would also include situations where parties are solvent, or where there is a restructuring, or in external circumstances beyond the control of a party or the downgrading of one of the parties' credit rating following for example a merger. Can the parties also agree to such circumstances as the triggering event? Please clarify and compare to s 35B of the Insolvency Act, is the intention to widen the scope in line with international guidelines? Please delete [**~~bilateral master agreements and transactions~~**] and insert "close-out netting provisions", so as to encompass the various possibilities that may range from standard master documentation, or part of the agreement, or a self-standing customised agreement, or several interrelated arrangements. It would then also include the internal rules of clearing, settlement and payment systems and CCP rules. It has been proven that it is not feasible to only protect the enforceability of closeout netting provisions that are part of standard documentation, particularly in a	Disagreed; the term 'event' is not used in that sense. Check regulation 32.3(2) The requirement is not restricted to insolvent scenarios. Agreed. Bilateral could still be used because

	cross-jurisdictional context. Please insert after "a netting set relating to a particular counterparty **and the central counterparty**, exposures ….." This is so to clarify that the bilateral obligation that exists between the system's participants are entirely replaced by bilateral obligations between each participant and the CCP. The net risk exposure is calculated on a bilateral basis so that each participant's exposure exists exclusively against the CCP. With reference to "relevant positive and negative close-out amounts and mark to market values", - are the parties not free to define in the agreement the valuation mechanism? Can it be "replacement value" or market value" or any other mutually accepted method of valuation? Is it understood that the resulting net obligation must represent the aggregate value of the combined obligation? If yes, please re-word to make it clear (see for example draft Reg 42.3(b)(vi)). Please insert new provision, based on UNIDROIT Principles on Close-Out Netting, Principle 6, namely **'(c) This Regulation do not make the close-out netting provision or the obligation thereunder enforceable and valid, if it would have been unenforceable or invalid in whole or in**	effectively the nature of the contract remains bilateral. Agreed. Agreed.

	part in terms of the relevant law on grounds of fraud or other reasons affecting the validity and enforceability'.	Agreed see Regulation 32.3(3).
(a)(i)	Please insert a new provision, based on UNIDROIT Principles on Close-Out Netting, Principle 5, namely **'(cc) state that the applicable law does not make the operation of the close-out netting provision and the obligations covered by the provision dependent on the compliance with any requirement to report data relating to those obligations to a trade repository or similar organisation for regulatory purposes'.**	Agree. See regulation 32.3(4)
(a)(i)(aa)	The wording "any included bilateral master agreement" is not clear. Should it not read "impact of the cross-product netting agreement on the material close-out netting provisions". The rest of the wording "of any included bilateral master agreement" can then be deleted.	Disagreed. The intention of the wording is not to reference specifics pertaining to bilateral netting agreements.
(b)(iv)	Same comment as above applies to on "bilateral master agreement and transaction".	Disagreed. The intention of the wording is not to reference specifics pertaining to bilateral netting agreements.
REGULATION 43: SPECIFIC CAPITAL REQUIREMENTS FOR MARKET RISK		
43	It is agreed that a CCP's functions in terms of	Disagree. Even though

	its clearing service should be capped to disallow any outright market risk. If any residual market risks remain, it is our view that they should be addressed in the CCP's investment policy by limiting investments of the CCP to highly liquid investments. This is similar to the framework proposed by ESMA. The latter requires a 1250% RW (i.e. a deduction from capital) if the CCP does not invest in liquid assets. This acts as a substantial deterrent not to run market risks with the CCP's resources. If this framework does remain in the text it is our understanding that the CCP will not need to hold a market risk capital charge as long as its investments are liquid and held-to-maturity.	investment policy will address what can be invested in, it does not stipulate that capital should not be kept for residual market risks. In addition, holding liquid, held-to-maturity investments does not imply that market risks may not arise and capital should not be kept because of this.
(1)(b)	It is our interpretation that this section implies all market risk from investment activities should be capitalised with the below framework if it is invested in AFS assets. Is this interpretation correct?	Interpretation is correct.
REGULATION 43: AGGREGATE REQUIRED AMOUNT OF CAPITAL RELATING TO MARKET RISK		
(2)(b)	Market risk capital must be capitalised separately.	Wording in draft regulation is correct.
(2)(d)	Is it acceptable if the investment mandates are viewed as these policies? Due to limited risk appetite, creation and adoption of policies would not make sense.	Disagree, investment mandate is not the same as investment policy
(2)(d)(vi)(ee)(BB)	Numbering appears incorrect. This should be	Corrected to reflect

	(AA).	correct referencing.
(2)(d)(vi)(ee)(CC)	Numbering appears incorrect. This should be (BB).	Corrected to reflect correct referencing.
(2)(d)(vi)(ee)(DD)	Numbering appears incorrect. This should be (CC).	Corrected to reflect correct referencing.
REGULATION 43.2: THE STANDARDISED APPROACH		
General and Specific Risk		
(4)(a)	If a CCP runs a matched book at all times it will not have residual positions. The only additional market risks that will remain will be from the investment activity undertaken with own funds or hedging activity. These own funds should then be used as net positions referred to in (43.2)(4)(b) only if they attract a MR charge.	Correct.
(6)(g)(i)(aa)(DD)	On page 112 there is a Footnote (16). However, in the text, there is no reference to the footnote. What does the Footnote relate to?	Reference to footnote included.
(6)(g)(i)(bb)	Which section is being referenced by "(12) above"? - Should part of this paragraph be sub-numbered (i)? The following paragraph is numbered (ii).	Referencing corrected.
(6)(g)(ii)(ff)	As per our comment under (43.2)(6)(g)(i)(bb), the numbering is incorrect	Referencing corrected.
(6)(g)(ii)(gg)	As per our comment under (43.2)(6)(g)(i)(bb), the numbering is incorrect	Referencing corrected
REGULATION 44: SPECIFIC REQUIREMENTS FOR LIQUIDITY RISK		

Inconsistencies between Regulation 44 and 53 in the definitions relating to eligible liquid assets. Reg 53 applies less stringent guidelines. Guidelines in Reg 53 should be adopted. In general, a large portion of the liquidity rules in regulation 44 have been drafted to cater for an institution with a funding mismatch and funding liquidity risk. This should not apply to a CCP. A CCP will only have market liquidity risk contingent on the credit risk (i.e. CM/CL default, or default of custodian) and a small portion of liquidity risk relating to investments.		See revised Regulations
(1)(a)(i)	We require clarity on what would be the appropriate and applicable liquidity risk framework. Is it appropriate to limit the requirements to those applicable to a banking environment? Should we not rather follow an approach as specified in Regulation 53, where principles are provided and the CCP must ensure its investments align?	See revised Regulations.
(2)(a)	How are level two assets defined?	Reference removed.
(9) and (10)	We support the use of principles rather than strict rules, as increased liquidity requirements will place strain on accessing these assets in the South African market.	Noted
(11)	How are level one assets defined?	Reference removed.
(16)	This has already been stated elsewhere (e.g. Regulation 34). It is our view that principles based liquidity framework should rather be pursued.	Agreed
(17) to (19)	This should be principles based and the investment mandate of the CCP should be prudent and take account of global investment practices.	Removed, as it is covered in the stress testing.

REGULATION 45: CONSOLIDATED SUPERVISION REQUIREMENTS		
How is regulation 45 intended to apply to group entities? Will it only apply to the level of a CCP if it were to have subsidiaries? Will it apply to the level of a group entity owning a CCP and if so how will it apply to the subsidiaries under the group entity, especially if these entities are different market infrastructures with different capital rules applying to them? This requires amendment to cater for an ACH model. Regulation is too onerous and there is no similar provision under EMIR.		See revised Regulations
(1)	It is not clear what the definition of "direct" or "indirect" participation is with reference to the required scope of consolidated supervision. Please clarify.	Indirect for subs of subs CCP acquires a subsidiary it's direct- when a subsidiary acquires a CCP it's indirect.
(2)	It is not clear to us that it would be either helpful or practical for CCP supervision to extend to, for example a CCP holding company that does not itself conduct any regulated activities – particularly a foreign holding company. This is not workable when either the holding company or the CCP itself is a listed company.	Disagreed. Consolidated supervision requirements will apply to a CCP regardless of whether its holding company conducts regulated activities or not. Disagreed
(8)	This provision makes no caveat for a substitutive compliance determination that would need to be made before this provision becomes effective. Clarity is required as to whether a substitutive compliance assessment is	Only applies to licensed CCPs.

	needed before a central counterparty must comply with host supervisor's requirements. Clarity is also requested on what exactly is being referred to by the word "supervisor's requirements" Does this refer to requirements to be met before an entity may operate as a clearing house? Or on-going compliance requirements and other regulation? Clarity is also requested on whether a foreign authorised clearing house may choose to abide by South Africa Regulations (for its South African operations) if a substitutive compliance equivalence determination by its host country is made on South Africa	
(9) (d) acquire a[~~n~~] <u>commercial</u> interest in any <u>business</u> undertaking having its registered office or principal place of business outside the Republic;	This section envisages that activities contemplated in (a) - (g) will only be new ventures and not existing arrangements. While in the case of a South African central counterparty, it may not have engaged in activities contemplated in this section, it may however still be in the realm of a foreign central counterparty. Furthermore, it would be unnecessary exercise of power to require a foreign central counterparty to apply to a host jurisdiction before acquiring or establishing a branch in a foreign jurisdiction. It is therefore suggested that a possible carve-out is made for central counterparties established in foreign jurisdictions who have had a positive substitutive compliance	Only applies to licenced entities. Included – to work with supervisor in that country- therefore

	determination. The reference to "an interest in any undertaking" is too broad and may create uncertainties that affect the operations of the CCP. Please see our proposed insertions to narrow the nature of the activity that would require the prior approval of the registrar.	foreign CCPs to apply for branches (applies to licensed entities
REGULATION 46: RISK GOVERNANCE		
There is overlap between this Regulation and earlier Regulations addressing risk management, remuneration, governance, operational risk. In addition, it appears that not all elements are relevant to the activity of a CCP: e.g., sub-regulation(5)(d)(i) implies that a CCP can grant credit; (ii) refers to “loans and advances”; (xiii) refers to “impairment” and “problem assets”; (e)(ii)(dd) refers to “margin lending”; (f)(i) refers to “incoming calls” from “OTC derivative and securities financing counterparties”;(g)(i) refers to a “borrower”; (x) refers to “off-balance-sheet exposures, including guarantees, liquidity lines or other commitments; (7)(a)(iv)(HH) refers to “the similarity between the instrument, contract and position sold in a transaction and the instrument, contract or position held by the CCP”, all of which seem more appropriate to the activities of a bank rather than of a CCP. More generally it is not clear to what extent the regulation is intended to refer to a CCP’s investment activities or its clearing activities or both, e.g. (7) on valuation. It appears to be intended to capture a CCP’s investment activities, and (to the extent relevant) belong with regulation 55. Regulation is too onerous and EMIR adopts a wider approach to governance in general and is not prescriptive in relation to risk governance.		See revised Regulations
(1)	While it is understood that the list offered in this section is not exhaustive but rather an indication, it is requested that "legal risks" are included in this Section as it is specifically referred to in (5)(e) of the same	Agreed

	section. It also places a greater onus on the clearing house to consider legal risks associated with the business	
(1)(a)	Can clarity be provided regarding the off-balance-sheet activities mentioned?	These include guarantees, liquidity lines and other commitments as examples.
(3)(a) - (z)	While it is understood that the list offered in this section is not exhaustive but rather an indication, it is requested that "legal risks" are included in this section as it is specifically referred to in (5)(e) of the same section. It also places a greater onus on the clearing house to consider legal risks associated with the business.	See revised Regulations
(5)(c)	It should also be noted that due to a CCP's function in the markets, it does not want to curb the hedging capacity of financial institutions, i.e. a limit structure for a CCP be managed as a cost rather than a hard limit, i.e. to limit concentration we may request higher margins for larger positions.	These limits would be for the positions that the CCP takes for their own balance sheet and not in relation to the financial institutions.
(5) (d) (xii)	This provision does not ensure disclosure of the financial state of the central counterparty to all necessary stakeholders. It is suggested that since the clearing members have a vested economic interest in the prudent financial management of the clearing house, that the members are privy to the disclosures made in terms of this	Disagreed – this requirement is not prudential. Financial position will be in financial statements.

	provision.	
(5) (d) (xvii)	This should be captured under regulation 23.	Disagreed- this relates to oversight governance functions.
(5) (e) (ii) (aa)	The CCP must manage the counterparty credit risk of the clearing members and the clearing members must manage the counterparty credit risk of the clients.	Agreed, the CCP must manage its own counterparty credit risk in relation to its clearing members.
(5)(h)(i)	"end-to-end counterparty" basis in this section is not defined. If end-to-end counterparty basis includes the group/parent of the direct clearing member, then clarity is requested as to what extent the country risk of a foreign parent of a direct clearing member will be considered? See also 53.3	The CCP should assess the country risk of the clearing member is based in a foreign jurisdiction.
(5)(i)	This is already covered under regulation 44. Our comments with regards to the latter are applicable.	See revised Regulations
(5)(j)	This should be captured under regulation 23	Disagreed. This relates to oversight we do not expect compensation policies to be outsourced.
(6)(a)(iv)	This process in not similar to that of a bank - a CCP will measure its credit to a clearing member and the clearing member will manage its clients in a credit review. We may review these processes as part of our CM rules and reviews.	Noted

(7)	It is agreed that best practice needs to be followed when valuing investments; however a CCP's investments will be restricted to the extent that a large portion of these principles might not apply.	Agree that some will not apply but we are making provisions for If they do.
(8)	It is agreed that governance arrangements need to be put in place for operational risk. However, some of the items listed under this section have been duplicated from prior sections of the Regulations that deal with operational risk.	See revised Regulations
REGULATION 47: SEGREGATION AND PORTABILITY		
(1)(a)	A CCP is able to provide this protection only to the extent that where the identity of the client is known to the CCP, it will attempt to effect the transfer of these positions and assets to an alternative clearing member; and in the event that that is not possible, close out the positions and return any remaining net assets to the client. It should be made clear by clearing members to clients what their potential exposure would be upon the default of the clearing member, and regulated clients' capital requirements should reflect this risk.	Agreed
(1)(b) and (c)	How should omnibus client accounts be treated/dealt with? Identification of a clearing member's client positions is not always possible and should not be mandated.	It is not mandated – Regulations allow for two types of account structures.

(1)(d)	The issue around Insolvency protection for external CCPs must be addressed to ensure that CCPs cannot be challenged by the trustee of the insolvent estate of the market participant when they start performing porting or close-out.	Noted
(1)(e)	There is insufficient detail on how the monitoring of this provision will be conducted. Should be obligations on the clearing members, not the CCP.	The obligation is on the CCP to ensure – CCP to decide how monitoring will take place.
(3)(a)	Clarity is requested if this is an implicit requirement on the central counterparty to ensure that there is a possibility for elections in client clearing agreements? It is important that the monitoring of these provisions is set out in these Regulations to cater for a situation where a clearing member may be a member of two central counterparties- it would be inconsistent to have more than one standard of monitoring if these systems need to be implemented internally by members as well. Should be obligations on the clearing members, not the CCP.	We believe that the Regulations are sufficiently clear in this regard. CCP to decide on monitoring.
REGULATION 48: MARGIN REQUIREMENTS		
REGULATION 48.1: EXPOSURE MANAGEMENT		
48.1	For consistency in numbering, we suggest	The numbering has

	this section be numbered 48.1(1).	been checked.
REGULATION 48.2: MARGIN SYSTEM		
There is duplication in this regulation, e.g. across sub-regulations (1)(*d*)(ii) and (3)(*h*)(ii); (2)(*c*) and (3)(*j*); (3)(*a*) and (3)(*i*); (3)(*b*) and (3)(*l*). In general it would help for this regulation to refer to the subsequent ones on percentages, time horizons, portfolio margining, and pro-cyclicality. Whilst we agree that the CCP must have enough prefunded resources to cover "extreme but plausible conditions", we believe that the CCP's risk waterfall should dictate whether such scenarios should be covered through initial margin or default fund contributions. Product specific risk characteristics should be addressed by the liquidation period.		We disagree – cannot pick up any duplication.
(3)(c)	While this section allows offsets if risks are significantly correlated, further on the practice is limited to the extent that certain positions will be over collateralized.	The comment is unclear.
(3)(e)	If the market is stable and products are unchanged, is a detailed review necessary? - Should this not be informed by back testing?	Disagreed; a detailed review is still required.
(3)(g)	Can this review be completed by an independent person not involved in the creation of margin models, i.e. internal audit?	Noted
(3)(h) to (j)	This duplicates the requirements stated earlier.	Disagreed – No duplicates.
REGULATION 48.3: PERCENTAGE		
(2)	Duplicative of and more specific than regulation 48.2(1)(d)(ii) and 48.2(3)(h)(ii); we suggest that the references in regulation 48.2	Disagreed

	are removed. Propose the use of one confidence interval, with different liquidation periods to take the different risk profiles of each product into consideration. Propose a principles-based requirement whereby the CCP needs to use back testing to prove that modelling assumptions (using a combination of confidence interval, holding period and history) are appropriate.	
(2)(a)	According to 48.2(h)(ii) margin requirements on 99% as per all usual calculations. 48.3(4) say if OTC has same risk considerations as listed then can use 99%. 99% should be the standard.	Disagreed.
(3)	The confidence interval should be a function of the CCP's chosen risk waterfall: - Under a "defaulter pays" model, the CCP will adopt a high confidence interval, with the relatively small remainder of the "tail" distribution covered by the default fund. - Under a "survivor pays" model, the CCP will adopt a low confidence interval, with the relatively large remainder of the "tail" distribution covered by the default fund.	Disagreed.
REGULATION 48.4: TIME HORIZON FOR THE CALCULATION OF HISTORICAL VOLATILITY		
48.4	For consistency in numbering, we suggest this section be numbered (48.4)(1).	Disagreed.

(a)(iii)	A 12-month lookback period is insufficient for any reliable and statistically coherent risk measure. An appropriate lookback period should additionally include a stress period.	See wording – 12 months not restrictive.
(c)	Just to be clear, this is only if the CCP wants to use a shorter time horizon, as (a)(iii) states "at least".	Agreed.
REGULATION 48.5: TIME HORIZONS FOR THE LIQUIDATION PERIOD		
The credit and counterparty credit tables as detailed in the FMA Draft Regulations use a 10-day close out period for all trades. These tables have been standardised to the OTC markets where variation margin is not paid daily as stated in banking regulations. We suggest that these tables be aligned to the framework suggested for CCPs in accordance with Regulation 48.5(2)(b) . A CCP may have the right to legally and rapidly close out transactions. In this regard it is suggested that the Regulator allows a CCP to utilize its internal models for capital calculation (if any residual risk remains).		Disagreed
REGULATION 48.6: PORTFOLIO MARGINING		
48.6	We suggest that for consistency in numbering, this section be numbered (48.6)(1).	Disagreed
(f)	This requirement is dependent on the interpretation of the relevant regulator. Clarification is required. We recommend that the final Regulations not prescribe a maximum permitted offset, because these amounts are not appropriate or meaningful risk management tools with respect to many derivative instruments. For	Noted

	example, the fixed 80% maximum permitted offset would result in significant over-collateralization of: (i) an option that is delta-hedged with the underlying instrument; (ii) two identical (other than the fixed rate) offsetting swaps; or (iii) index futures hedged with single name futures in all the underlying instruments. The maximum offset implied by the counterparty credit risk calculation is currently set at 60% due to A-net being fixed. [insert equations]This is inconsistent with the maximum offset allowed being 80% as in 48.6(f). It is proposed that the netting allowance be aligned with netting in banking Regulations under a CCP arrangement as the same legal basis applies.	
REGULATION 48.7: PROCYCLICALITY		
(2)(b)	Imposes a look-back period (10 years) beyond that which is used for the non-stressed component of margin calculation (typically 5 years), as opposed to imposing sourcing stressed observations from a 5 year look back only. This should be clarified.	The comment is unclear.
REGUALTION 49: DEFAULT PROCEDURES		
(3)(e)	Is it practically possible to put an obligation of informing the registrar before declaring a default? Who has authority to call default? What happens if notification to registrar takes	Disagreed – the CCP declares the default and the obligation is to inform the registrar

	too long? What is the impact on market if calling default is delayed? Please clarify.	before declaring the default procedure.
(5)(a) to (c)	Duplication – see (49(4)(a)	Disagreed. They cross reference the different sections dealing with the different account structures.
(6)	The term 'client' should be explained in more detail. Does this refer to an end user client, or the lowest level of transparency in the clearing infrastructure? Ensuring that the collateral of all end user clients is used exclusively to cover the said client's position is impossible in the instances where multiple clients are grouped together into a single omnibus account.	Disagreed. The referenced sections acknowledge both omnibus and segregated account structures.
REGULATION 50: DEFAULT FUND		
A CCP's risk waterfall should dictate whether such scenarios should be covered through initial margin or default fund contributions.		
(a)	We suggest that for consistency in numbering, this section be numbered (50)(1). A CCP is currently required to provide for Cover 1, as per CPSS-IOSCO guidelines. This is also aligned to the proposed framework outlined in regulation 33.	Disagreed
(b)(i)	There has to be a cap on the look-back period that can be used to determine these "most volatile periods". It is not sensible to compare today's returns to the returns that were observed at a time when the market dynamics were fundamentally different.	The cap is left to the CCP to decide.

REGULATION 51: OTHER FINANCIAL RESOURCES		
(1)	"Financial resources" and "other financial resources" need to be defined. An indication of what would be considered "sufficient" is also required. Do not agree that these resources must be pre-funded. It is already very stringent for a CCP in South Africa to maintain Cover 1; it may not prove possible to charge Cover 2 for a default fund with limited market players. A more affordable solution should be considered (than a pre-funded one), e.g. liquidity lines which are committed funds.	Aligned with international standards.
(1)(b)	What would be considered "dedicated resources"?	Ordinary meaning of the term must be applied.
(2)	We do not agree that these resources must be pre-funded. It is already very stringent for a CCP in South Africa to maintain Cover 1; it may not prove possible to charge Cover 2 for a default fund with limited market players.	Aligned with international standards.
(5)(f)(i)	A 30 year historical scenario is excessive when evaluating impacts as market dynamics can shift over time. A CCP should be allowed to use appropriate scenarios per market as approved by the risk governance committees of the CCP.	See wording – allows for variation to the 30 year period.
REGULATION 52: DEFAULT WATERFALL		
(1)(a)	The structure of the default waterfall seems strictly defined by this regulation. A CCP	Aligned with international standards –

	should have the freedom to set the terms of the default waterfall. We are more comfortable with a principle of "defaulter pays model" rather than a "survivor pays model".	defaulter pays model.
(2)(a)	Should this amount not rather be a function of the total default fund, as agreed with the market? We support having the portion of own funds placed in the default fund by an agreement between market players and the governance committees of the CCP (for annual review) rather than be a function of its capital base; this would also reduce fluctuations in the default fund provided.	Agreed.
(2)(b)	Suggest the reference to sub-regulation (a) be more specific, i.e. (2)(a).	Agreed.
(2)(c)(i)	Should this amount not rather be a function of the total default fund, as agreed with the market? We support having the portion of own funds placed in the default fund by an agreement between market players and the governance committees of the CCP (for annual review) rather than be a function of its capital base; this would also reduce fluctuations in the default fund provided. Suggest the reference to sub-regulation (a) be more specific, i.e. (2)(a).	Agreed.

(2)(d)	Suggest the reference to sub-regulation (a) be more specific, i.e. (2)(a).	Agreed.
(3)	As for (2)(c)(i) above.	See revised Regulations
(5)	We believe this timeframe may be too stringent. Shouldn't this timeframe be agreed between the CCP and the Registrar prior to the Registrar being informed of a limited own resource amount posted as per revised (3)(a)?	Disagree – it is not restrictive as the CCP can approach the registrar with a plan
REGULATION 53: LIQUIDITY RISK CONTROLS		
53	For consistency in numbering, this section be numbered (53)(1).	See revised Regulations.
(b)	Duplication - see (33)(6) and (53)(b).	See revised Regulations.
(c)	This suggests that Cover 1 is sufficient, which is also supported by regulation (33)(2), however, under the default fund rules additional cover is required. Which requirement should a CCP be guided by?	See revised Regulations.
(e)	The minimum liquid resource requirements suggested as eligible here are not as stringent as the rules proposed by Regulation 44. We propose that principle guidelines be provided rather than an outright form of collateral, given the demand for the listed (i-vii) liquid assets in the market.	See revised Regulations
(n)	Duplication – see 33(8)(c)	See revised Regulations
(n)(i)	Duplication – see 33(8(d)	See revised Regulations
(n)(ii)	Duplication – see 33(8(e)	See revised Regulations

(n)(iii)	Duplication – see 33(8(f)	See revised Regulations
(p)(iv)	This suggests that Cover 2 would be required, however, in regulation (33)(2) and above (in (33)(c)) Cover 1 appears to be sufficient. We argue that Cover 1 is sufficient.	See revised Regulations
REGULATION 53.1 ASSESSMENT OF LIQUIDITY RISK		
(2)(c)(i)	Duplication – liquidity stress testing will be performed on a quarterly basis.	See revised Regulations
(2)(d)	Already covered under 53(a)	See revised Regulations
(5)	It is deemed appropriate to run a daily credit test for a CCP, however, less frequent reports are required on liquidity risk of a CCP, as the CCP does not have a funding mismatch. The liquidity is run on historical needs and would not change frequently.	See revised Regulations
REGULATION 53.2 ACCESS TO LIQUIDITY		
53.2	We suggest that for consistency in numbering, this section be numbered (53.2)(1).	See revised Regulations.
(a) maintain, in each relevant currency, the following liquid resources commensurate with its liquidity requirements, defined in accordance with sub-regulation 53(p) and regulation 53.1(1) –	The minimum liquid resource requirements suggested as eligible here are not as stringent as the rules proposed by Regulation 44. Propose that principle guidelines be provided rather than an outright form of collateral, given the demand for the listed (i-v) liquid assets in the market.	See revised Regulations

REGULATION 53.3: CONCENTRATION RISK		
53.3	We suggest that for consistency in numbering, this section be numbered (53.3)(1).	See revised Regulations.
(a)	Which entities are being referenced here? Which sub-regulation 26?	See revised Regulations
REGULATION 54: COLLATERAL REQUIREMENTS		
Regulations should expressly state that collateral can be provided under either the title transfer or security interest arrangement.		
(2) A central counterparty may accept the following instruments as collateral- (a) Sovereign bonds of the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Norway, South Africa, Spain, Sweden, ~~**and the UK**~~; the **United Kingdom and the United States of America, provided that such instrument complies with the minimum credit quality requirements determined by the registrar from time to time;** (b) Land Bank bills; (c) Separate Trading of Registered Interest and Principal of Securities (STRIPS); (d) debentures issued by the South African	Please see proposed insertions to include SA bonds as a sovereign bond that can be accepted as collateral by the CCP and a clarification in respect of Treasury bills. It is unclear why a central counterparty may only accept certain sovereign bonds and not US or even SA bonds. Requirements are too restrictive will undermine appropriate risk judgement by CCPs. Gold and letters of credit are included under EMIR.	See revised Regulations

Reserve Bank; (e) Treasury bills issued by National Treasury; and (f) Cash of the following currencies: Rand, dollars, sterling and euros.	We recommend that the types of securities and currencies that are acceptable are not explicitly defined but that criteria are specified in a similar way to the EMIR Technical Standards, e.g. cash in "a currency for which the CCP can demonstrate to the competent authorities that it is able to adequately manage the risk". Regulations 39 and 54 have similar but contradicting rules. We propose that the less prescriptive approach in Regulation 54 is adopted. Propose that rather than an outright form of collateral, the Regulations should merely require that collateral meet certain requirements or that collateral must be subject to an appropriate haircut as defined by the CCP.	
REGULATION 54.1: HAIRCUTS		
(1)	Regulation 54 and Regulation 39 have similar as well as contradicting rules; which rules will be applied?	See revised Regulations

	This section should either be removed or should replace sections in regulation 39. EMIR (article 41 of RTS) adopts a wider approach to haircuts.	
REGULATION 54.3: RE-USE OF COLLATERAL COLLECTED AS INITIAL MARGIN		
54.3	Suggest that for consistency in numbering, this section be numbered (54.3)(1).	Disagreed.
(a)	We suggest that this read "may only re-use securities provided as collateral for margin with the consent of the member", to make it clear that this does not apply to cash, and that the securities are provided by clearing members, not clients; also securities may be accepted by a CCP for liabilities other than initial margin. Re-hypothecation should be explicitly prohibited.	Please see amended wording.
REGULATION 55: INVESTMENT POLICY		
This regulation should address the ability of a CCP to rely on the standing deposit facilities of the SARB, in particular the ability of a foreign CCP to deposit ZAR with the SARB.		
(2)	We argue in favour of a principles-based approach in line with our previous comments.	Noted
(6)	Would this also be needed in the event of cash amounts?	There is no subsection 6
REGULATION 56: REVIEW OF MODELS, STRESS TESTING AND BACK TESTING		
(1)(e)(i)(aa) to (dd)	Duplication - these stress test requirements have been duplicated in Regulations 33	Regulation 33 been deleted

	and 40. Products have different liquidity profiles and degrees of risk complexity that should be reflected the CCPs overall risk management embracing both back and stress testing.	
REGULATION 56.1: MODEL VALUATION		
	This requirement should be expanded upon and include the detail as to the frequency of such validation.	Agreed. A full validation of the FM's liquidity risk-management model should be performed at least annually.
REGULATION 56.2: TESTING PROGRAMMES		
56.2	We suggest that for consistency in numbering, this section be numbered (56.2)(1).	Disagreed
REGULATION 56.3: BACK TESTING		
56.3	We suggest that for consistency in numbering, this section be numbered (56.3)(1).	Disagreed
(h)	We do not understand what is intended with this provision? - Will clearing members be willing to provide CCPs with this information? A more general description is preferred, concentrating on the importance of varied	The provision refers to the relationship between the clearing member and its clients.

	back-testing of portfolios to examine the continued validity of current model parameters.	
REGULATION 56.4: SENSITIVITY TESTING AND ANALYSIS		
56.4	We suggest that for consistency in numbering, this section be numbered (56.4)(1).	Disagreed
REGULATION 56.5.1: STRESS TESTING – RISK FACTORS TO TEST		
(2)(a) to (e)	Can proxies not be used where appropriate?	Agreed, they can be used.
REGULATION 56.5.2: STRESS TESTING – TOTAL FINANCIAL RESOURCES		
(1)(a)	Point re Cover 1 refers	Aligned with international standards.
REGULATION 56.6: MAINTAINING SUFFICIENT COVERAGE		
	For consistency in numbering, we suggest this section be numbered (56.6)(1).	Disagreed
REGULATION 56.7: REVIEW OF MODELS USING TEST RESULTS		
(1)(g)	Is it the intention to indicate next margin call as a timeframe or may this be replenished as soon as possible as highlighted in (56.7)(1)(h)-(i)?	As soon as possible
REGULATION 56.8: REVERSE STRESS TESTS		
56.8	For consistency in numbering, we suggest this section be numbered (56.8)(1).	Disagreed

REGULATION 56.9: TESTING DEFAULT PROCEDURES		
56.9	For consistency in numbering, we suggest this section be numbered (56.9)(1).	Disagreed
REGULATION 56.10: FREQUENCY		
(1)(b) and (2)(a)	Quarterly is more appropriate	This is aligned with international standards.
REGULATION 56.12: INFORMATION TO PUBLICALY DISCLOSED		
56.12	For consistency in numbering, we suggest this section be numbered (56.12)(1).	Disagreed
REGULATION 57: INTEROPERABILITY ARRANGEMENTS		
REGULATION 57.3: APPROVAL OF INTEROPERABILITY ARRANGERMENTS		
(2)	Suggest that both CCPs would need to be recognised by SA regulators	See wording
REGULATION 58: RECORD KEEPING		
58	For consistency in numbering, we suggest this section be numbered (58)(1).	Disagreed
REGULATION 58.1: GENERAL REQUIREMENTS		
(7)	Would the registrar require the direct data feed only when conducting on-site inspections? A direct data feed to the system off-site would not be supported due to a number of technical and legal risks. Consideration must be given to amongst others applicable technology systems and	It is on request – we are cognisant of the technology and cost implications.

	associated costs.	
REGULATION 48.3: POSITION RECORDS		
(1)	Correction (numbering): should be numbered (58.3).	Agreed.
(1)(b)	Should separate records be held or should one record be able to identify various accounts?	One record that identifies the various accounts should be sufficient.
REGULATION 58.4: BUSINESS RECORDS		
The approach is to produce an exhaustive list rather than a schematic one, arranged by types of records and generic descriptions. Groupings should include governance records (board meetings, risk committee, audit committee etc.), legal agreements and legal opinions etc.		Noted
REGULATION 58.5: RECORDS OF DATA REPORTED TO A TRADE REPOSITORY		
58.5	For consistency in numbering, we suggest this section be numbered (58.5)(1).	Disagreed
	Insert additional wording: "A central counterparty must identify and retain all information and data required to be reported to a trade repository along with a record of the date and time the transaction is reported and **ensure that the registrar is able to access the records to the same extent and within the same periods as if they were maintained within the Republic.'**	See proposed wording
CHAPTER VIII: REQUIREMENTS WITH WHICH A CENTRAL SECURITIES DEPOSITORY MUST COMPLY FOR APPROVAL OF AN EXTERNAL CENTRAL SECURITIES DEPOSITORY AS A PARTICIPANT		

The wording in the FMA that describes the "external CSD" as a 'participant' (s35(4)(b)(ii)) is incorrect. Please insert in the Regulations (in terms of s107(1)(b)) a new provision that makes it clear that (i) the "external CSD" is a special CSD-to-CSD links category (see definition of "link") and (ii) is not a normal "participant" in the CSD and (iii) that therefore different CSD rules may apply to it. Even though the "external CSD" will operate in the infrastructure like a normal "participant" in the local CSD environment, it will not be regulated and supervised like a normal "participant". In the case of the external CSD, it performs similar functions in a foreign country to the functions of the CSD as set out in the Act, whereas in the case of the external participant, it performs similar services to the services of a participant or an external CSD as set out in the Act (see s1 definitions for separate definitions of "external CSD" and "external participant"). Even if the external CSD may provide certain securities services (just as in the case of the external clearing members), this does not make the external CSD a normal participant. A licensed CSD must not only comply with special requirements to approve that an external CSD can operate in South Africa as set out in s35(4)(b)(ii) and the Regulations, but the registrar must also recognise the external CSD to perform (a) custody and administration of securities and (b) settlement services (see Regulation 7). It is important to clarify this issue up-front in the Regulations in order to hinder unnecessary debates on un-level playing fields where the external CSD is equated to a normal participant. Insert in the heading "as a **<u>special category of</u>** participant". Note the definition of "link" as a pre-condition for what is to follow in Reg 59.	See proposed wording

REGULATION 59: REQUIREMENTS WITH WHICH A CENTRAL SECURITIES DEPOSITORY MUST COMPLY FOR APPROVAL OF AN EXTERNAL CENTRAL SECURITIES DEPOSITORY AS A PARTICIPANT		
59	For consistency in numbering, we suggest this section be numbered (59)(1).	Disagreed
(f)	Delete [**~~business risk~~**], since the local CSD is already fully regulated by the registrar, also with regard to business risk. The local CSD will not have processes to "identify, assess…business risk" for the	Disagreed – we would want the local CSD to identify, assess, monitor and manage all risks of the external CSD which

	external CSD with regard to the link. Delete [~~**arrangement**~~] - link is a defined term and already reflects the arrangement. Replace [~~**potential risk**~~] with "**reasonable**" or "**foreseeable** risk".	it intends establishing links Arrangement has been deleted
(g)	Delete who sub-regulation - already covered in s30(1) of FMA. "Operation of the proposed link" is too limiting and it is not clear who the "investor" is in this context.	Disagreed – this is specific to links and is line with the objects of the Act that refers to clients and investors
(h)	Not applicable to the CSD business in the South African context.	Makes provision for the different CSD operations
(j)	Is the intention to regulate in this provision the need for rules and procedures with regard to insolvency proceedings as required in section 35(4)(b)(ii)(bb) of the Act? If this is the case, the provision is not clear and must be re-phrased with the focus on insolvency proceedings. The use of "liquidity risk" is vague and must be set out in the context of the insolvency scenario. Replace [~~**potential risk**~~] with "**reasonable**" or "**foreseeable** risk".	This is an enabling provision for the CSD to ensure that the external CSD has adequate rules, procedures and processes for the management of these risks – see amended wording.
(k)	Delete [~~**linked**~~] and replace with "**external**".	Agreed
(m)	Delete [~~**and equivalent**~~]. The local CSD and the external CSD would have different holding models and account structures. Unless the Regulations are bold and prescribe a fixed standard for segregation, for example between the assets of the	Agreed

	external CSD and its client or full segregation also at client level, it would be impossible for the local CSD to ensure “adequate and equivalent‟ segregation. Also note that the FMA has not prescribed full segregation for other arrangements.	
(p)	Combine with (k).	Disagreed
CHAPTER IX: TRANSITIONAL ARRANGEMENTS		
Section 110(5) of the FMA gives power to the registrar but these are Regulations prescribed by the Minister and therefore this section is not applicable. Delete reference to s110(5)		Agreed
The proposed transition timeline of 6 months will not be adequate to ensure compliance, particularly if there are capital raising requirements. A tiered compliance approach should be adopted.		12 months is proposed.
REGULATION 60: TRANSITIONAL ARRANGEMENTS		
(2)	As a licensed market infrastructure includes a clearing house under the FMA, this should be amended to reflect that "licensed market infrastructures other than clearing houses acting as a CCP"	Agreed

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MINISTERIAL REGULATIONS: COMMENTERS

1. LCH.Clearnet Limited
2. Strate Limited
3. Johannesburg Stock Exchange (JSE)
4. CME Group Incorporated
5. The Banking Association of South Africa (BASA)
6. Association for Savings and Investment SA (ASISA)
7. Nedbank Group Limited
8. IG Markets South Africa Limited
9. ESKOM
10. Peregrine Holdings Limited
11. Inter-Dealer Broker Forum (IDBF)
12. Standard Bank Group Limited
13. Association of Corporate Treasurers of Southern Africa (ACTSA) and SAB Miller