

**CONSULTATION REPORT: FMA CONDUCT STANDARD 3 OF 2018 (THE REPORTING OBLIGATIONS IN RESPECT OF TRANSACTIONS OR POSITIONS IN OVER-THE-COUNTER DERIVATIVES)**

**FINANCIAL MARKETS ACT NO 19 OF 2012**

1. In this consultation report, the following definitions apply:  
“**Authority**” means the Financial Sector Conduct Authority;  
“**Financial Markets Act**” means the Financial Markets Act, 2012 (Act No. 19 of 2012);  
“**Financial Markets Act Regulations**” means the Financial Markets Act Regulations promulgated under the Financial Markets Act on 9 February 2018;  
“**Financial Sector Regulation Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); and  
“**Prudential Authority**” means the Prudential Authority established by section 32 of the Financial Sector Regulation Act.
2. The Authority, hereby under section 104(1) of the Financial Sector Regulation Act, publishes this report on consultation undertaken during the making of **FMA Conduct Standard 2 of 2018** as set out in comment matrix in the Schedule.
3. In March 2012, National Treasury published the discussion document “*Reducing the risks of over-the-counter derivatives in South Africa*”<sup>1</sup> to outline the proposed policy approach to regulating OTC derivatives markets.
4. This was followed by the enactment of the Financial Markets Act setting out the empowering provisions catering for the licensing of market infrastructures relevant for these reforms in OTC derivative markets i.e. introduction of licensing requirements for clearing houses, trade repositories and recently in the consequential amendments that include licensing frameworks for central counterparties and provision for external market infrastructures. In addition a regulatory framework was developed jointly by National Treasury, the Financial Services Board (now the Financial Sector Conduct Authority) and

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<sup>1</sup> Reducing the risks of over-the-counter derivatives in South Africa, 2012. Available at <http://www.treasury.gov.za/legislation/bills/2012/FMB/Annexure%20B%20Reducing%20the%20Risks%20of%20OTC%20Derivatives.pdf>

the South African Reserve Bank. The regulatory framework includes the Financial Markets Act Regulations and the following regulatory instruments:

- 4.1 Criteria for Authorisation of OTC derivative providers (FMA Conduct Standard 1 of 2018)
  - 4.2 Requirements and additional duties of a trade repository (FMA Joint Standard 1 of 2018)
  - 4.3 Conduct Standard for OTC derivative providers
  - 4.4 The reporting obligations in respect of transactions or positions in over-the-counter derivatives (Joint Standard)
  - 4.5 Margin requirements for non-centrally cleared OTC derivative transactions to be set out in a Joint Standard.
5. This consultation report relates to the FMA Conduct Standard 3 of 2018: The Reporting Obligations in respect of transactions or positions in Over-The-Counter Derivatives. This Standard has been published a number of times for public comments and in addition extensive stakeholder engagement has taken place. More specifically, the Standard was first published on 4 July 2014 and a second draft was published on 5 June 2015. Comments were incorporated and the standard was published for a final round of comments on 6 April 2018.
  6. The Minister of Finance promulgated the Financial Markets Act Regulations on 9 February 2018. After the commencement of the Financial Sector Regulation Act on 1 April 2018, the regulatory instruments were submitted to Parliament as required in section 103 of that Act. In addition, prior to submission for the parliamentary process, numerous and extensive engagements were held with market participants.
  7. The issues raised by commentators were of a technical nature and engagement has taken place with industry to address their comments. There were no substantive policy issues to be addressed. A combined comment matrix as per the Schedule includes the comments raised during the consultation periods referred to in paragraph 5 and sets out the comments on each particular paragraph of the Standard and the Authority's response to the issues.

## SCHEDULE

### COMMENT MATRIX: CONDUCT STANDARD ON THE REPORTING OBLIGATIONS IN RESPECT OF TRANSACTIONS OR POSITIONS IN OVER-THE-COUNTER DERIVATIVES

#### COMMENT MATRIX 6 APRIL 2018: REPORTING OBLIGATIONS IN RESPECT OF TRANSACTION IN OVER THE COUNTER DERIVATIVES

**Commentators:**

Standard Bank

HSBC

Banking Association of South Africa

Macquarie Securities

| Commentator          | Section   | Comment  | Response  |
|----------------------|---|--|---|
| Macquarie Securities | Items 19, 20, 21 and 22 of Annexure A Data Form and Description- Initial margin | We note that other international regulators, such as the Singapore regulator, MAS, have deferred the requirements for collateral reporting on the basis that there have been no international standards for collateral reporting in place. In the event that a deferment until international standards are finalized is not possible, we propose that a collateral report be separate, as in other markets | We have aligned the standards with EMIR requirements as well as requirements set by the Ontario Securities Commission (OSC). In addition, the reporting obligations are aligned to the guidance issued by CPMI-IOSCO. |

| Commentator          | Section  | Comment   | Response  |
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| Macquarie Securities | Item 23 Annexure A Data Form and Description - Contract or instrument type | The standard for other regulators is to generally use the UPI naming convention, we propose alignment with other regulators.  | We have aligned the standards with EMIR requirements as well as requirements set by the OSC which both provide for contract information as well as a UPI reporting field in the Common Data Section. In addition, the reporting obligations are aligned to the guidance issued by CPMI-IOSCO. |
| Macquarie Securities | Items 97, 98 and 99 Annexure A Data Form and Description- Valuation data   | We note that other jurisdictions have valuation data as a separate report, not on the transaction report. We propose that it be aligned to other jurisdictions and stand as a separate report.  | We have aligned the standards with EMIR requirements as well as requirements set by the OSC whom both provide for valuation data. In addition, the reporting obligations are aligned to the guidance issued by CPMI-IOSCO.  |
| Standard Bank        | <b>General Comment</b>   | The notice presents the authorisation as an ODP as a legally indispensable action, and not merely a parallel process. In effect, without the authorisation of ODPs, the reporting obligation does not arise. This may place some banks in the situation where they are uncertain whether they require to be authorised, or they may not know whether they would be granted an ODP licence after | Comment noted. Authorisation as an ODP is required, and the Authorities have included the transitional arrangements The Authority will determine the effective date of the trade reporting obligations considering the authorisation process.   |

| Commentator   | Section                     | Comment  | Response   |
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|               |                             | <p>application. This creates a situation where banks may potentially build reporting infrastructure under conditions of uncertain authorisation.</p> <p>Under the Twin Peaks framework, a separate licensing process for market makers in derivatives is contemplated. It is unclear whether this process supersedes the ODP licensing under the FMA, or is a separate licensing process (which may cause unnecessary duplication). We understand that consideration is being given to merging these two separate processes. But it is not clear whether this will only be possible once the Financial Sector Regulation Bill is passed, and therefore the obligations for licensed entities (which include trade reporting) will only be required after that process is completed. We would appreciate further engagement on this aspect.</p> | <p>If licensed under sectoral law, there will not be a separate licensing requirement under the FSRA.</p>                |
|               |                             | <p>Standard Bank has raised concerns regarding the timing of the various developments, including authorisation of trade repositories, and we appreciate that these delays will require a reporting “big bang”. We are working towards building trade reporting capabilities across all OTC derivatives asset classes in tandem.</p>  | <p>The concern is noted. Transitional arrangements are considered in terms of the implementation of the Regulations.</p> |
| Standard Bank | <b>Section 4: Reporting</b> | We note that the obligation for CCPs to report cleared   | Agreed. The obligation to report is on   |

| Commentator | Section                                      | Comment  | Response   |
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|             | <p><b>Obligation: reporting entities</b></p> | <p>transactions can legally only bind CCPs that have been licensed under the FMA. Currently, South African banks do enter into cleared transactions (either because clearing is required for offshore regulations when trading with offshore counterparties or for risk mitigation and capital reasons), where those SA banks employ indirect clearing arrangements (the use of a clearing broker). In these instances, although the transaction is actually cleared, that offshore CCP (which is not, nor is required to be, authorised locally) is not bound to report the trade under the FMA.</p> <p>This clause needs to specify whether the FSB will require the ODP to report the cleared transactions itself, using the CCP data. If this is the case, then the timing of this reporting will be an additional consideration which must be addressed.</p> <p><i>Requirement to “agree” which ODP reports – Clause (4)(2)</i></p> | <p>the ODP where the counterparty is another ODP. Where the transaction is cleared through a CCP the CCP is obliged report. In the case highlighted in your comment, the ODP is responsible to report those indirectly cleared trades.</p> |
|             |  | <p>We note that there may be practical problems in requiring ODPs to agree on which counterparty reports. This section would also need to specify whether this agreement is performed at a counterparty or trade level. As an example,</p>   | <p>The Trade reporting framework proposed is actually a dual reporting framework i.e. both ODPs must report and the ODPs by agreement may</p>  |

| Commentator | Section  | Comment   | Response  |
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|             |  | <p>would ODPs be required to agree that, when X and Y trade, Y will always perform reporting, or alternatively, agree a method of determining who should report based on the underlying trade)? It is our view that there should be agreement on the methodology for determining the reporting party per asset class, based on the ISDA waterfall/asset tie-breaker logic.</p> <p>This would obviate the need for lengthy legal negotiations and accord with accepted industry practice that has developed. Further, we believe that having an internationally accepted approach per asset class will assist in enhancing accountability, ensuring that there is not a misunderstanding around which party is required to report, which could result in trades not being reported at all or being reported late. Employing this logic will also assist in determining the ODP party responsible for generating the UTI.</p> | <p>decide on how to facilitate the reporting. The notice is not prescriptive on how . However, provisions for delegation are included in order for the reporting entities to meet the reporting obligation.</p> |
|             | <p><b>Sharing of UTIs with offshore counterparts</b></p> | <p>In addition to trading with ODPs locally South African ODPs do, and will continue to, trade with ODP-like entities offshore (generally banks). OTC derivatives reporting has already commenced in most offshore jurisdictions with</p>   | <p>UTI generation and communication should occur at the earliest possible point in the trade flow. The list below is ordered in preference:</p>   |

| Commentator | Section | Comment   | Response   |
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|             |         | <p>which we trade. Our offshore bank counterparties are accustomed to reporting, and with generating the necessary data required to be included in a report such as a UTI. Additionally, offshore jurisdictions, such as the US, have mandatory requirements to trade certain derivatives over electronic platforms. This greatly facilitates trade reporting, as it is the platform that generates the necessary information (such as the UTI) and shares this with both parties to facilitate their reporting. This ensures that parties are able to meet their reporting obligations timeously, and also ensures consistency in the data being reported, thus supporting meaningful data aggregation.</p> <p>However, like South Africa, not all jurisdictions mandate electronic trading. In the EU, mandatory electronic trading will only come into existence under MIFID II. At present, therefore, when trading a non-cleared trade between a South African and an EU entity, counterparties will have to determine how best to generate and share the UTI (possibly using email or other confirmation methods) to meet the T+1 reporting deadlines. As hundreds, if not thousands of trades occur daily, this will be an extremely</p> | <ul style="list-style-type: none"> <li data-bbox="1619 316 2085 595">□ Centrally executed trades – reference is generated and communicated at the point of execution on a platform that can generate a UTI and ensure its uniqueness.</li> <li data-bbox="1619 643 2085 818">□ Up-front affirmed – reference is generated and communicated at the point of submission to an affirmation platform or service.</li> <li data-bbox="1619 866 2085 1098">□ Electronic confirmation matched (post-trade) – reference is generated at submission and communicated at point of confirmation.</li> <li data-bbox="1619 1145 2085 1425">□ Paper trades – unless otherwise communicated, a reference is generated by individual firms who share via paper and update their reporting to reference the UTI</li> </ul> |



| Commentator | Section | Comment   | Response  |
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|             |         | <p>difficult task. Of course, as the counterparties in this case are bound under separate legal obligations, they could each decide to generate their own separate UTI and report in time to fulfil their own reporting obligation – this will however run contrary to the stated intention of trade reporting - facilitating an understanding of all open derivative positions and aggregation across TR's (matching will not be possible using separate UTIs and this will result in double-counting of exposures).</p> <p>Anticipating the need for a globally consistent approach to creation and use of UTI for multi-jurisdictional transaction reporting, ISDA worked with market participants to develop standards that address the creation and exchange of a single UTI for global reporting (<i>UTI: Generation, Communication and Matching Best Practise Guide</i>). Essentially, this guidance advocates for the UTI generating party to be determined using accepted asset-class specific logic. This UTI should then be communicated at the earliest possible point. Acknowledging that this UTI communication may occur after the relevant reporting deadline, the non-generating</p> | <p>for the trade once agreed by counterparties.</p> |

| Commentator   | Section  | Comment  | Response  |
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|               |  | <p>party may report the trade using its own internal reference, which should subsequently be updated once the UTI is received from the generating party. We recommend that this guidance is followed and authorised locally to facilitate data aggregation across TRs when trading with offshore counterparties. This will ensure that all that regulators have the most accurate picture of total exposures of their regulated entities.</p>  |   |
| Standard Bank | <b>Section 6: Frequency of trade reporting</b> | <p>We disagree with Clause 6(3) which requires all information listed in Annexure A to be reported on a daily basis or as it occurs. This is a substantial deviation from accepted reporting practices (and from Clause 3), where data is only reported once a reportable event occurs (conclusion, modification, termination etc.) and no reporting is required where such event does not occur. The only data that should be required to be reported daily is valuations data (mark to market and collateral). We respectfully request that this clause is modified accordingly.</p> | Disagree, only applicable to 'other' details as set out in item 89 of annexure A and not all information. |
| Standard Bank | <b>Section 7: Use of LEI's</b>                 | <p>Clause 7 mandates the use of LEIs in trade reports. The use of LEIs is not standard practise in South Africa, and we anticipate that many of our clients will not be in a</p>   | Disagree. On 18 December 2015 Strate (Pty) Ltd (Strate) was endorsed as a pre-Local Operating Unit (pre-  |

| Commentator   | Section                             | Comment   | Response   |
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|               |                                     | <p>position to provide LEIs when the reporting obligations arise. We recommend that the use of BIC codes, pre-LEIs and client codes be endorsed, as was the case under the previous draft regulations.</p>  | <p>LOU). As of the date of this endorsement, all certified codes issued by Strate are globally recognised by the ROC for reporting purposes.</p> <p>Strate (as a pre- LOU) went live with the LEI application programme in February 2016.</p> <p>Strate has been accredited as a Local Operating Unit (LOU) by the GLEIF</p> |
| Standard Bank | <b>Single-sided reporting model</b> | <p>We understand from discussions with the FSB, that the regulator favours a single-sided reporting model. This is the industry’s preferred approach as well. However, we note that, nowhere in the regulations is it specifically stated that reports are single sided and the requirements to “avoid duplication” with counterparties by sharing data indicates that dual reporting may be contemplated. We recommend that this is clearly stated.</p> <p>Further, we agree that only ODPs should be required to report when trading with non-ODP’s, but do not see any</p> | <p>The framework the Authorities envisioned is a dual reporting framework. The Standard has been amended to reflect this, a single reporting framework will be considered at a later stage.</p>  |

| Commentator   | Section  | Comment   | Response   |
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|               |  | <p>issues with both ODPs reporting when ODPs trade with each other (with the proviso that they only report using consistent information to avoid mismatch and regulatory double-counting). This will facilitate regulatory oversight, and minimise the chances that trades are not reported if there is disagreement/misunderstanding between ODPs as to who is required to report.</p>   |  |
| Standard Bank | <p><b>Reporting of complex derivatives</b></p> | <p>We appreciate the further detail provided in Annexure A regarding the format of the required data fields. We note however, that no information is provided on how the reporting of complex/exotic derivatives should be performed. The reporting of exotics under EMIR is dealt with under their “complex trades” definition. EMIR uses the term “complex trades” to cover the situations both where there is a <b>structured deal</b> (comprising more than 1 underlying trade or transactions with 2 legs) as well as the use of <b>trading strategies</b> (such as straddles and butterflies). South African ODPs make use of both in their trading activities. In both the instances mentioned above, ESMA has favoured multiple reports. In essence, these complex derivatives should be decomposed and reported as multiple derivative contracts. ESMA has amended the</p> | <p>Agreed, the Standard was amended to include a field on complex trade component identifiers.</p> |

| Commentator   | Section          | Comment  | Response |
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|               |                  | <p>reporting standards to facilitate the use of multiple reports by the introduction of the field “Complex trade component ID”. This field must be used to identify all the reports related to the same execution of a combination of financial instruments. The counterparties involved in the strategy must agree on the number of reports to be submitted. We recommend that further detail be provided in respect of complex trades, and that consideration be given to including a “complex trade” identifier.</p>  |          |
| Standard Bank | <b>ISDA FPML</b> | <p>The regulators have mentioned that South Africa is currently “lagging behind” most jurisdictions in implementing trade reporting. Although this is unfortunate for our international commitments, it does afford us the opportunity to learn from practises that have developed in this space. One such development is the use of ISDA FPML (Financial Products Markup Language), which has become the business information exchange standard for electronic dealing and processing of financial derivatives instruments. It establishes a new protocol for sharing information on, and dealing in swaps, derivatives and structured products, and is based on XML (Extensible Markup Language), the standard meta-language for</p> | Noted    |

| Commentator   | Section                          | Comment  | Response  |
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|               |                                  | <p>describing data shared between applications. We support the use of XML, and the move towards reporting according to the ISDA FPML, which we believe will provide derivative participants with certainty and the ability to report consistently with our offshore counterparts (which will facilitate the necessary data sharing and agreement required for trade reporting). This will also be the method of communication with any global trade repository.</p>  |   |
| Standard Bank | <b>Reporting of blank fields</b> | <p>It is not clear whether all fields listed in the annex to the reporting regulations are mandatory or whether some may be left blank.</p> <p>Two different scenarios are conceivable in which blank fields may arise:</p> <ol style="list-style-type: none"> <li>1. The field is <b>not relevant</b> for a specific type of contract/trade (e.g. a settlement date field where the underlying is an index) or</li> <li>2. The field is <b>relevant</b> for a given type of contract/trade, but there is a legitimate reason why the actual value of this field is not being provided at the time the report is being submitted.</li> </ol> | <p>Common information is required in terms of the schedule and must be provided. Other fields are specific to the type of contract or trade reported and information should be provided where relevant or applicable.</p> |

| Commentator   | Section      | Comment  | Response   |
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|               |              | <p>We understand that most offshore reporting regimes treat blank fields differently depending on whether they are relevant or not, and that a report may be successful with blank fields depending on the circumstances. We recommend that further guidance, and perhaps FMA validation tables, be provided to ODP's for clarity and to enable compliance with the trade reporting rules.</p>   |  |
| Standard Bank | <b>Other</b> | <p>Where a CCP is performing the trade reporting under the regulations, how will National Treasury compel that CCP to use the TR that it has elected locally? It is unlikely that offshore CCPs will sign up to local TRs, where they already have access to offshore TRs. This is a critical consideration in TR appointment.</p> <p>Finally, in the event that no TR has been appointed at the date the reporting regulations are finalized, will the regulator expect trade reports to be provided directly to it? We appreciate the opportunity to provide comment on this important matter. Please contact us to discuss any matters further. We look forward to engaging with you on these issues, and would appreciate an opportunity to meet with you to outline our concerns.</p> | <p>Please refer to the FMA Regulations. .</p> <p>The availability of a TR will be considered before the reporting obligation is imposed.</p> |

| Commentator | Section                      | Comment   | Response  |
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| HSBC        | <b>Client Classification</b> | <p>We note that the Reporting Obligations appear to require the reporting of all transactions. In this regard the Reporting Obligations would differ from the trade reporting obligations under the European Markets Infrastructure Regulation ("EMIR") which only requires trade reporting of OTC derivatives in respect of counterparties which are classified either as financial counterparties ("FC") or non-financial counterparties plus ("NFC+").</p> <p>An NFC+ counterparty is a counterparty whose rolling average of notional positions in OTC derivatives (other than 'hedging' derivatives) over 30 working days of that NFC and any other non-financial entity in that NFC's group exceed any of the clearing thresholds in any derivatives asset class, the clearing thresholds being:</p> <ul style="list-style-type: none"> <li>(a) EUR 1 billion for credit derivatives;</li> <li>(b) EUR 1 billion for equity derivatives;</li> <li>(c) EUR 3 billion for interest rate derivatives;</li> <li>(d) EUR 3 billion for FX derivatives; and</li> <li>(e) EUR 3 billion for commodity and other</li> </ul> | <p>We disagree that the reporting obligation under EMIR is limited to the transactions indicated. The thresholds refer to clearing not reporting.</p> <p>In our framework the reporting obligation is placed on the ODP or central counterparty as the case may be.</p> |



| Commentator | Section                                      | Comment  | Response                       |
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|             |  | <p>derivatives.</p> <p>If clients are not classified under the Reporting Obligations in a similar manner this will effectively mean that all OTC derivatives transactions will be swept into the net and will have to be reported to and monitored by the trade repository placing an unnecessary burden on the trade repository.</p> <p>We submit that the ambit of the Reporting Obligations is therefore too wide and that only the OTC trades of financial counterparties or large OTC derivative trading counterparties should be reported. We believe that this would better accord with the rationale behind the CPSS-IOSCO standards (which is to reduce the systemic risk posed by large market participants) and would also accord with the CPSS-IOSCO standards for harmonisation and a reduction of data reporting fragmentation</p> |                                |
| HSBC        | <b>Hierarchy and rules to determine UTIs</b> | We note that there does not appear to be a hierarchy or set of rules to determine an unique trade identifier ("UTI") for a particular trade. The Reporting Obligations require a UTI to be allocated that is unique for each   | The UTI provision was amended. |

| Commentator | Section                  | Comment  | Response  |
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|             |                          | <p>particular trade. The Reporting Obligations do not, however, deal with the party responsible for the generation of the UTI and what occurs if the parties are unable to agree on the UTI and ensuring that each trade is reported only once and with the same UTI.</p> <p>This problem occurred in Europe with the first drafts of the EMIR reporting framework lacking such rules. This was subsequently remedied with when the European Commission laid down technical standards with regard to the format and frequency of trade reports and introduced rules regarding the issue of UTIs.</p> |   |
| HSBC        | <b>Excluded Products</b> | <p>We note that the Reporting Obligations appear to cover all OTC derivative products and transactions. We further note the response of the FSB (to the comments from the market in regard to the first draft of the Reporting Obligations), that FX spot and physically settled commodity derivatives are to be excluded from the ambit of the Reporting Obligations.</p> <p>The above exclusion is welcomed for various reasons. However, we submit that physically settled FX forwards</p>  | <p>Physically settled commodity derivatives and FX spot contracts are excluded as derivatives in the regulatory framework – please refer to the definition of an OTC derivative in the Regulations.</p> |

| Commentator | Section                      | Comment   | Response  |
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|             |                              | and swaps should also be excluded from the ambit of the Reporting Obligations as they are under EMIR.   |   |
| HSBC        | <b>Intra-group exemption</b> | We note that trades between affiliates with the same group do not appear to be excluded from the Reporting Obligations. In this regard, EMIR does provide for such an exemption and we submit that an intra-affiliate exemption also be provided for in the next draft of the Reporting Obligations.  | Disagree, oversight of these transactions is required.  |
| HSBC        | <b>Dual Reporting</b>        | <p>We welcome the decision taken to recognise reporting to equivalent regulators as this will substantially reduce the system build requirements of market participants that form part of international groups that already report trades to regulators and therefore have robust systems in place. Equivalence will also encourage more harmonised reporting.</p> <p>However, it will need to be clarified how South African transactions will be separated from foreign trades and whether any additional fields will be required for this.</p> | Annexure A of the Standard refers. The reporting fields require information on the jurisdiction and counterparty. |
| HSBC        | <b>Commercial hedging</b>    | We note that provision has not been made to enable market participants to flag commercial hedging flags as there is under EMIR.   | Disagree that EMIR excludes hedging derivatives for reporting purposes. In terms of this framework – there is no  |

| Commentator | Section | Comment   | Response  |
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|             |         | <p>Under EMIR, hedges done for commercial purposes (as defined in EMIR) are not included in the EMIR clearing or reporting requirements.</p> <p>Derivatives are classed as 'hedging' derivatives under EMIR if the transaction/s covers risks arising from the potential change in the value of assets, services, commodities, liabilities etc. (or the indirect impact that fluctuations in interest rates, inflation rates, FX rates or credit, may have on the value of such assets, services etc.) owned, produced, incurred etc. 1</p> <p>EMIR refers to derivatives that are "objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity"2 of an NFC or its group in the normal course of the NFC/group's business, or it qualifies as a hedging contract pursuant to the International Financial Reporting Standards ("IFRS").</p> <p>The definition of "hedging" under EMIR is broader than the definition of hedging under IFRS. Accordingly, if a derivative fits within the definition of a hedging derivative</p> | <p>definition included for hedging for commercial purposes – please refer to the FMA regulations on the derivatives excluded.</p> |

| Commentator | Section | Comment   | Response   |
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|             |         | <p>under IFRS it will be classed as a hedging derivative under EMIR.3</p> <p>Further, under EMIR, the hedging derivative must meet the requirements of a hedging derivative at the time the transaction is entered into but is not required to meet these criteria throughout the tenor of the derivative. On the contrary, a non-hedging derivative may, over time, develop into a hedging derivative.</p> <p>We submit that in order to facilitate global harmonisation the Reporting Obligations with EMIR and should exclude an obligation to report hedging derivatives.</p> |  |
| HSBC        |         | <p>The Reporting Obligations refer to a Legal Entity Identifier ("<b>LEI</b>") as is the case under EMIR. We request clarity as to whether this is a unique LEI for South Africa or whether branches or subsidiaries of a foreign institutions can use the LEI numbers of their parents.</p>  | <p>The Regulatory Oversight Committee (ROC) defined through a policy document a standard<sup>2</sup> for the Global LEI System that will allow LEIs to be issued to branches under the following conditions:</p> <ol style="list-style-type: none"> <li>1. The branch is a lead international</li> </ol> |

<sup>2</sup> Policy standards, as foreseen in FSB Recommendation 11, are defined by the ROC pursuant to Article 2 of the ROC Charter. Article 30 of the Global LEI Foundation (GLEIF) Statutes (<https://www.gleif.org/en/about/governance/statutes#>) specifies that the ROC defines the framework, principles and standards under which the GLEIS shall operate, in accordance with the purpose clause of the foundation. The GLEIF defines in turn the operational and technical standards ensuring consistent implementation by the Local Operating Units of the GLEIS.

| Commentator | Section | Comment | Response  |
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|             |         |         | <p>branch or international branch network outside of the head office's jurisdiction. For purposes of the policy document, jurisdiction is synonymous with "country" and a lead international branch or international branch network outside of the head office's jurisdiction is defined as a non-incorporated establishment of a head office legal entity, when this establishment is located in a separate jurisdiction from the jurisdiction in which the head office legal entity is located, i.e., in a host jurisdiction outside of its home jurisdiction. Under this definition, an establishment may consist of a single office or other business premises, or of several offices (i.e., a branch network) in different locations of the same host jurisdiction: even in the latter case, only one LEI would be issued per host jurisdiction, essentially amounting to,</p> |

| Commentator | Section | Comment | Response  |
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|             |         |         | <p>“one country-one LEI.” Unlike foreign subsidiaries of a parent entity, which are separately incorporated or organised under the laws of the host jurisdictions, an international branch, as defined here, is legally dependent on the head office legal entity and cannot exist without its head office legal entity;</p> <p>2. The branch is registered in a publicly accessible local business registry or local regulatory registry or tax registry;</p> <p>3. The head office (or headquarters) of the branch already has an LEI so that the LEI of the head office entity can always be associated with the LEI of the international branch in the GLEIS; and</p> <p>4. The reference data of the branch in the LEI system always specifies that the entity is a branch, in a way that is easily accessible to users.</p> |

| Commentator                                | Section   | Comment  | Response  |
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|  |   |  | For purposes of LEI issuance, international branches satisfying the conditions given are taken to constitute a type of legal entity under host country rules or regulations |
| HSBC                                       | <b>Disclosure Protection</b>                          | <p>Under EMIR, statutory protection is afforded to market participants who report trades in accordance with EMIR.</p> <p>There does not appear to be such a similar protection in the Reporting Obligations and we believe that a statutory protection would be important as this would obviate the need for parties to rely on consent clauses in bilateral agreements relating to trade reporting.</p> | There is no protection provision included; however, reporting obligations now include the standing consent for reporting to be obtained from counterparties.                |
| <b>Banking Association of South Africa</b> | <b>Section 2: Application</b>                         | What is the definition of licensed external central counterparty?  | A definition is provided for in the Act – see consequential amendments through the FSR Act  |
|  |   | What is the exact definition of entities defined to be a “provider” (financial institutions, non-bank financial institutions, etc.)?   | Please refer definitions of an ODP in the FMA Regulations.  |
|  | <b>Section 3: Reporting Obligation: asset classes</b> | What is a “position” and how is this different from a “transaction”?   | The reference to ‘positions’ has been deleted   |
|  |   | What is a transaction or position that is “not confirmed” or   | Please refer to amendments in the   |



| Commentator | Section | Comment  | Response  |
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|             |         | "unconfirmed"?   | Standard.   |
|             |         | What is the difference between "confirmed" versus "executed"?  | For definition of confirmation please refer to the Standard - acknowledgement in writing or electronically of legally binding documentation that records the agreement of the parties to all of the terms of an OTC derivative transaction and occurs when a record, in writing, of all of the terms of an OTC derivative transaction is signed manually, electronically or by some other legally equivalent means by the OTC derivative provider and client or counterparty; while "execute" is generic and refers to undertake/perform/complete/conclude. |
|             |         | c) With respect to FX, is our understanding that the scope of application is only limited to forwards and excludes "spot FX transactions" correct? | Correct – please see definition of OTC derivative in the FMA Regulations  |
|             |         | Please confirm whether futures and options products are in scope. They are in scope for EMIR but not for other                                     | Yes   |

| Commentator | Section  | Comment   | Response   |
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|             |  | GTR reporting jurisdictions.  |  |
|             | <b>Section 4: Reporting Obligation: reporting entities</b> | What is the planned reporting process between an ODP and a foreign CCP (e.g. LCH), since they would not be regulated by this?   | Please see amended wording of paragraph 4(1)   |
|             |  | Is the agreement transactional based and verbal or is the expectation to have a formal written agreement in place?  | The provision requiring agreement has been deleted   |
|             |  | Does the market have discretion on which TR to report to at this stage given that none has been approved?   | Yes  |
|             |  | Is sufficient information limited to section 5(1)(a)?   | The provision has been deleted   |
|             | <b>Section 5: Report</b>                                   | What is the definition of volumes and values?   | (Mark to market valuation of the contract, or mark to model valuation where applicable. The CCP's valuation to be used for a cleared trade.) |
|             |  | Why is there a difference between (a) and (b) versus (c)?   | Paragraphs 5(1)a) and (b) have been deleted  |
|             |  | What is the meaning of data "is consistent"?  | Wording was amended to accurate  |
|             |  | Data field values that are to be appended into each data field must be clearly defined – e.g. alpha, numeric, Yes/No, etc. data field values in order to achieve harmonised data and avoid mismatching and rejected reports. This is best developed in conjunction with a global trade repository like DTCC | Noted  |

| Commentator                          | Section  | Comment   | Response                                      |
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|                                      | <b>Section 6: Frequency of reporting</b>   | What is the difference between “execution” versus “conclusion”?   | Execution has been deleted                    |
|                                      | <b>Section 7.1: Identification of counterparties and other entities using an LEI</b> | <p>The mandatory use of an LEI is problematic currently as entities in most jurisdictions are not compelled by their local regulations to obtain an LEI.</p> <p>Where any counterparty is not subject to home regulatory obligations to obtain an LEI, it is unlikely it will voluntarily have obtained an LEI. It is also not feasible to require that a South African reporting bank force or coerce such a counterparty into obtaining an LEI.</p> <p>Use of LEI should only apply if and where the reporting bank is facing a counterparty already compelled by home regulations to obtain an LEI. Otherwise, in order to prevent possible disruptions to OTC derivative trading and/or reporting due to missing LEIs, a range of alternative identifiers like Swift/BIC code (with a fall-back to internal identifiers) should also be made acceptable for identification.</p> | Disagree – see above                          |
| Banking Association of South Africa` | <b>Section 7.2: Identification of derivative instruments</b>                         | With regards to the requirement that (1) A report must identify a derivative instrument using a unique product identifier based on the taxonomy of the derivative... It is  | Noted – ISDA taxonomy may be used for the UPI |

| Commentator | Section   | Comment   | Response |
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|             |   | suggested that the ISDA taxonomy be used.   |          |
|             | <b>Section 7.3: Unique transaction identifier</b> | <p>On 5 May 2017, ISDA and the Global FX Division of the Global Financial Markets Association jointly responded to the Financial Stability Board’s (FSB) consultation relating to proposed governance arrangements associated with the use of standardized global UTIs in the transaction reporting of OTC derivatives.</p> <p>The UTI must meet the needs of all regulators that use the data from the trade repositories, particularly facilitating the global aggregation of OTC derivatives transactions by minimizing the likelihood that the same transaction will be counted more than once.</p> <p>While mandatory OTC reporting requirements have been implemented in a number of jurisdictions presently, there has been a lack in coordination among regulators in standardizing UTIs across jurisdictions. This has made it difficult for regulators and standard setting bodies to obtain a comprehensive global view of the OTC derivatives market.</p> <p>The FSB consultation requested industry feedback on a variety of “governance” issues, in particular, (i) how a UTI</p> | Noted    |

| Commentator | Section   | Comment   | Response     |
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|             |   | <p>data standard would be constructed, (ii) who should deal with implementation issues and (iii) who should coordinate among regulators to ensure that UTIs are implemented across jurisdictions in a consistent fashion. On all three fronts, the industry emphasized the importance of the continued direction and involvement on the part of the FSB. The industry also stressed the need for an orderly sequencing of implementation efforts – i.e., finalization of governance arrangements, incorporation of the new UTI into each jurisdiction’s transaction reporting rules, followed by a reasonable implementation period enabling banks and venues to update their systems. Given the scale of the remit, it is reasonable to expect that full-scale and harmonized implementation is probably going to take a significant amount of time.</p> <p>It is suggested that the mandatory use of UTI is fully coordinated with and through the FSB and other regulators with sufficient implementation times being made available</p> |              |
|             | <p><b>Section 8: Operational standards for aggregation and comparison of data</b></p> | <p>It is suggested that the mandatory use of UTI is fully coordinated with and through the FSB and other regulators with sufficient implementation times being made available.</p>  | <p>Noted</p> |

| Commentator                         | Section  | Comment   | Response  |
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|                                     | <b>across trade repositories</b>                                     |   |   |
|                                     | <b>Section 9: Reporting start date and transitional arrangements</b> | This provision requires clarification. The intent to section 2 is to introduce a retrospective application to the reporting requirements and therefore would apply to the transactions entered into 18 months prior to the reporting date. What is the difference between that provision and section 2 to necessitate the 5 year reporting period rather than the 180 day period in section 2?  | The requirement is to report open transactions earlier whereas a more lenient approach is provided for concluded transactions, before the effective date of the requirements. |
|                                     |  | We request that the regulator allows at least 12 months after the effective date of the Notice for reporting to start.  | A longer time period may be considered for effective date   |
| Banking Association of South Africa | <b>Annexure A: Clearing exemption (13)</b>                           | Is this a Yes / No data field? Or is there an expectation to state the specific exemption   | Yes or no and provide details of which counterparty is exempt   |
|                                     | <b>Annexure A: Collateral portfolio (21)</b>                         | Is this a Yes / No data field?  | Correct   |
| Banking Association of South Africa | <b>Annexure A: Value of collateral (23)</b>                          | The complexity and effort to produce this information is extreme. This combination of no/limited benefit and high cost/effort would suggest these sections of the reporting regime should be removed (unless dual sided reporting is adopted and that would be the wrong outcome here). Similar comments were made by the DTCC in the prior round of feedback (it is not typical or in many cases possible to report collateral against trades/transactions | The reporting framework proposes dual reporting requirements and the provision is amended in the Standard as intended.  |

| Commentator | Section  | Comment  | Response  |
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|             |  | given netting (and frequent changes to the collateral against exposures too))  |   |
|             |  | Assuming no change to remove valuations and collateral, since the value of the trade and value of the collateral (if any) will change on a daily basis, is the intent here simply to reflect its value at the point in time of the trade itself (i.e. no further updates given they would be perpetual in nature)? | Amendments made to annexure – reference to valuation of collateral removed in line with EMIR requirements. Please see the revised Standard.   |
|             | <b>Annexure A: Underlying Asset identifier (26/27)</b> | What is a 'unique asset identifier'? Unlike with UTI's and UPI's where standards exist, what standard should a 'UAI' follow?   | There is no prescriptive standard for the underlying asset identifier. The description is provided in the notice-refers to the financial instrument on which price of the derivative is based on. |
|             | <b>Annexure A: Calculation basis (73)</b>              | Is there more information on this as it is not clear what this refers to?  | Please refers to calculation of the interest on the credit derivative – please refer to Standard.   |
|             | <b>Annexure A: Floating rate day count</b>             | There may be different day count conventions applicable to the 2 legs of a cross currency swap which would necessitate the inclusion of an additional data field to report this.   | Noted.  |
|             | <b>Annexure A: Timestamps</b>                          | Field 84 clearing timestamp mentions 'UCT time format',  | Corrected to UTC and time format  |

| Commentator | Section    | Comment  | Response                                |
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|             | (83/84/85) | which is different to field 85 – ‘UTC time format’   | included                                |
|             |            | Field 85 reporting timestamp simply says ‘UTC time format’ but doesn’t specify what level of time granularity (also applicable to fields 83, 84) | Please refer to Standard for amendments |



**MINISTERIAL REGULATIONS AND NOTICES COMMENT MATRIX JULY 2016**

**Commentator:**

Nedbank

| Commentator | Section                   | Comment  | Response  |
|-------------|---------------------------|--|---|
| Nedbank     | 3 – Reporting obligations | <p>In terms of this provision ODP's are required to discharge their reporting obligations to the TR, clarity is required regarding the extent of the reporting in the event that the client of the ODP is an agent (as per the FMA definition) acting on behalf of underlying clients.</p> <p>Will the ODP be required to report the respective underlying client transactions or the main transaction with the agent? Alternatively, will the provisions contained in clause 9 of the ODP Code (i.e. Portfolio reconciliation) be applicable in the instant? In terms of the policy decisions adopted it was not the intention that the client / end user would be brought within the scope of the regulations.</p> | <p>Agree as per the definition of "client" in the FMA it will depend on the contractual relationship between the parties). Legal responsibility for reporting is placed on the ODP – who can report on behalf of the agent/client The OTC transactions between counterparties, each individually and separately, need to be reported. If there is no OTC transaction between the ODP and its client then there is no requirement, in terms of these regulations, to report the agreement with the client. If, however, there is an underlying OTC transaction with the client then reporting is required.</p> |