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SOUTH AFRICAN RESERVE BANK

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Record of proceedings of the South African Foreign Exchange Committee virtual meeting held on Tuesday, 14 September 2021, from 14:00 to 15:30

Record of proceedings no. 03/2021

Members in attendance	Apologies
<p>Zafar Parker (Chairperson), SARB</p> <p>Richard de Roos (Deputy Chairperson), Standard Bank</p> <p>Lucy Mabuza (Secretariat of the SAFXC), SARB</p> <p>Mpumi Ngwenya (Secretariat of the SAFXC), SARB</p> <p>Andries Tshishonga, SARB</p> <p>Aurelia Makgato, SARB</p> <p>Lesego Malehopo, SARB</p> <p>Samantha Springfield, SARB</p> <p>Chris Paizis (authorised dealer), Absa Bank</p> <p>Michael Galatis, ACI South Africa</p> <p>Mark Schwartz, ACTSA</p> <p>Gill Raine, ASISA</p> <p>Gary Haylett, BASA</p> <p>Marius de Jongh (observer), FSCA</p> <p>Paul Wilson (interdealer broker), ICAP</p> <p>Brice Parise (authorised dealer), JP Morgan</p> <p>Udesh Moodley (Exchange), JSE Limited</p> <p>Carlos Martins, SAATA</p> <p>By invitation:</p> <p>Gizelle Boyce, Standard Bank</p>	

1. Overview

The South African Foreign Exchange Committee (SAFXC) discussed:

- 1.1 the presentation on the regulatory gaps in the current legislative framework relating to spot foreign exchange (FX) transactions; and
- 1.2 feedback from SAFXC members.

2. Summary of discussions

2.1 The presentation on the regulatory gaps in the current legislative framework relating to spot FX transactions

2.1.1 A local commercial bank presented on the regulatory gaps in the current legislative framework relating to spot FX transactions. The following legislations were identified as containing regulatory gaps pertaining to spot FX:

- i. The Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act)
- ii. The Financial Markets Act 19 of 2012 (FMA)
- iii. The Financial Sector Regulation Act 9 of 2017(FSR Act) (Twin Peaks)
- iv. Conduct of Financial Institutions Bill (CoFI Bill)

2.1.2 Regulatory gaps in the current legislative framework had created uncertainty as some entities remained unregulated, while other regulated entities could rely on provisions of certain exemptions to avoid compliance.

2.1.3 The market had evolved with time, among other things, reflecting changing microstructure and technology advancement; new entrants; and changes in conduct requirements, but legislation had not kept pace. Furthermore, many FX participants were not regulated locally, but in the offshore jurisdictions where they operated.

2.1.4 Spot FX transaction was not included under FMA, which regulated financial market activities, securities and market abuse. Many entities (banks and asset managers) also relied on 'merchant banking exemption' to avoid compliance to the provisions of FAIS Act, which regulated spot FX.

2.1.5 Spot FX was also excluded in the new regulation for over-the-counter derivative

providers. The FSR Act (Twin Peaks) was aimed at closing the legislative gap in spot FX, however, the conduct standards, which were expected to apply, were not yet finalised, pending the promulgation of the CoFI Bill.

2.1.6 The existing regulatory gaps were unlikely to be resolved soon, hence the intention to use the FX Global Code (Code) as a basis for the development of comprehensive market standards going forward. Accordingly, market participants were encouraged to only execute FX transactions with counterparties that had signed the Code.

2.1.7 The exclusion of spot FX from various pieces of legislation had been perceived to be purely historic, and the Financial Surveillance Department (FinSurv) of the South African Reserve Bank (SARB) was entrusted with ensuring that market participants complied with the exchange control regulations.

2.1.8 It was envisaged that even after the promulgation of the CoFI Bill, the regulatory gap would still exist due to the difficulty and complexity of regulating dynamic and innovative entities. It would be a challenge to design and develop a principle-based legislation wide and flexible enough to regulate each entity and new entrants as the market constantly evolved.

2.1.9 Various jurisdictions – including the United Kingdom – were gradually migrating towards a principles or outcome-based legislation framework from a fixed regulatory regime, in order to facilitate prudent enforcement. A market-principle based regulatory framework would be suitable for the FX market, given its global nature. The South African regulatory environment was also gradually moving towards an outcome-based legislative environment.

2.2 Feedback from SAFXC members

2.2.1 The buy-side outreach was aimed at targeting relevant firms and counterparts active in the FX market within the sector. The Association of Corporate Treasurers of Southern Africa (ACTSA), the Association for Savings and Investment South Africa (ASISA) and the South African Association of Treasury Advisors (SAATA) would lead the initiatives within their respective constituencies.

2.2.2 The Global Foreign Exchange Committee's (GFXC) three-year review of the Code had been completed, with focus shifting towards the buy-side outreach. The GFXC also released the final papers on last-look and pre-hedging.

3. Date of the next meeting

The next SAFXC meeting was scheduled for Thursday, 13 January 2022.