

 P O Box 427 Pretoria 0001 South Africa
 370 Helen Joseph Street Pretoria 0002
 +27 12 313 3911 / 0861 12 7272
 www.resbank.co.za



SOUTH AFRICAN RESERVE BANK

File ref. no.: 11/11/11/2

Record of proceedings of the South African Foreign Exchange Committee virtual meeting held Thursday, 6 April 2023 at 10:00–11:30

Record of proceedings no. 01/2023

Members in attendance	Apologies
<p>Zafar Parker (Chairperson), SARB Richard de Roos (Deputy Chairperson), Standard Bank Lucy Mabuza (Secretariat of the SAFXC), SARB Chris Tsotsa (Secretariat of the SAFXC), SARB Andries Tshishonga, SARB Samantha Springfield, SARB Lesego Malehopo, SARB Chris Paizis (Authorised Dealer), ABSA Bank Gerald Katsenga, ACI South Africa Atli Khaas, ACTSA Mark Schwartz, ACTSA Gill Raine, ASISA Gary Haylett, BASA Steven Panos, Capitec Bank Paul Wilson (Interdealer Broker), ICAP Brice Parise (Authorised Dealer), JP Morgan Elaine Mabiletsa (Exchange), JSE Limited Carlos Martins, SAATA</p>	<p>Marius de Jongh (Observer), FSCA</p>
<p>Invitees: Eugene Du Toit, FSCA Richard Beddow, SAATA</p>	

1. Overview

The South African Foreign Exchange Committee (SAFXC) discussed:

- 1.1 the presentation on the Conduct of Financial Institutions (CoFI) bill; and
- 1.2 feedback from SAFXC members.

2. Summary of discussions

2.1 An official of the Financial Sector Conduct Authority (FSCA) presented on the CoFI bill. The summary of the presentation was as follows:

2.1.1 The CoFI bill focused on consumer protection and market conduct issues, as well as advancing the critical elements of the Twin Peak reform. The bill was intended to consolidate and harmonise conduct law that would ensure consistent outcomes across the financial sector. The main changes on the bill were that it

- i. adopted a functional approach to licensing and introducing an outcome and principle-based framework, compared to the historic rules-based approach;
- ii. focused on retail, SMMEs and wholesale, and provided a distinctive attribute. It also focused on transformation, financial inclusion, innovation, and competition; and
- iii. introduced a single consolidated contract law that streamlined the legal landscape for conduct regulation.

2.1.2 The Financial Sector Regulation Act 9 of 2017 (FSR Act) sets out the licensing activities which were divided into three parts, namely: the provision of financial products; financial services; and financial markets activities. The guiding principle was that one license would be granted per legal entity/person but could encompass various activities in sub-activities linked to the license.

2.1.3 Legal and financial institutions that function as intermediaries in executing deals on behalf of their clients would also fall under the FSCA jurisdiction, if financial advice was linked to a recommendation on the purchase of a financial product.

2.1.4 Licensing activities in the CoFI bill did not provide a distinction on a product level. The licensing approach regarding dual-regulated institutions was premised on

guiding principle that institutions regulated by FSCA and another regulatory authority would have two licenses. That is,

- i. Institutions such as banks, insurers and societies would have a credential license issued by the Prudential Authority (PA) of the South African Reserve Bank (SARB) and a conduct license issued by the FSCA under the FSR Act.
- ii. Retirement funds would be required to have two licenses issued by the FSCA concurrently with the PA. Collective investment schemes would have one license issued by the FSCA alongside with the PA.
- iii. Credit institutions would be licensed under National Credit Regulator (NCR) and FSCA, while payment service providers would be licensed under National Payment System and FSCA. Similarly, debt collection would be licensed by Council for Debt Collectors and FSCA, and foreign-currency related activities licensed by FSCA alongside the Financial Surveillance (FinSurv) of the SARB.

2.1.5 Licensing transitional arrangement was split into two categories. The first category was for financial institutions with licensing requirements under existing financial sector laws, such as banking or insurance license. These institutions would still be licensed under the FSR Act unless it was not in the public interest. The second category was for financial institutions which required no licensing under financial sector law. For example, institutions conducting FX-related businesses would be required to submit license application within four months of the effective date of the CoFI bill.

2.1.6 The development of the new framework consisted of three phases

- i. **Phase I:** Overarching design of the subordinate legislation framework. The initial design was finalised.
- ii. **Phase II:** Development of theme frameworks. The FSCA had prepared a draft report and would commence with internal and external consultations.
- iii. **Phase III:** Transition of existing sectoral laws. FSCA was working on transitioning sectoral laws into the CoFI bill framework.

2.1.7 The legal framework would be supported by interpretation rulings, guidance notices and legal notices.

2.1.8 The National Treasury would finalise the bill for submission to Parliament sometime in 2023 (this year). On the subordinate legislative framework focusing on themed

frameworks, the FSCA aimed to start informal consultations with the Market Conduct Committee in 2023 and publish formal consultation document at the beginning of 2024.

2.2 Feedback from SAFXC members

2.2.1 On the SAFXC outreach to the SADC region, it was mentioned that Mozambique, Botswana, Eswatini, Madagascar, Tanzania, Seychelles and Zimbabwe had adopted the FX Global Code (Code). The SAFXC, SARB and ACI South Africa had committed continuous support to the SADC members in the adoption and adherence to the Code.

2.2.2 Concerns were raised about a lack of compliance or adoption of the Code by some hedge funds, particularly those with advanced technological capabilities and developed super algos and were growing in becoming liquidity providers. However, education and learning, usage of tags in anonymous venues, transaction cost analysis tools, and improved analysis were necessary in discouraging predatory behaviours of such market participants. The electronic communication networks (ECNs) also required that market participants and liquidity providers (LPs) using their platforms should be signatories to the Code. This had limited the market liquidity impact of such hedge funds who were not signatories to the Code.

2.3 The Global Foreign Exchange Committee (GFXC) would launch its proportionality tool in June 2023. The tool would be useful to the SAFXC outreach programme, both locally and across the continent.

3. **Date of the next meeting**

The next SAFXC meeting was scheduled for Tuesday, 20 June 2023.