

South African Reserve Bank

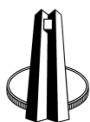


**Report of the Foreign Exchange Review Committee  
on the Operations of Authorised Dealers in the  
South African Foreign Exchange Market**

**October 2015**

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South African Reserve Bank



## **1. Executive summary**

### **1.1 Background**

- 1.1.1 The rand is a globally traded currency, but the global rand market has less depth and liquidity than the major internationally traded currencies. Some 20 per cent of daily turnover in the rand takes place in South Africa, and turnover with non-residents accounts for about 60 per cent of domestic turnover. Figures published by the Bank for International Settlements indicate that for the month of April 2013, the worldwide turnover in the foreign exchange market involving the rand was approximately USD\$60 billion per day. This represented just over 1,0 per cent of total turnover in the international foreign exchange markets. While 25 banks are licensed to act as Authorised Dealers in foreign exchange in South Africa, seven play a major role and account for 95 per cent of the total South African turnover.
- 1.1.2 In 2013 whistle-blowing and investigative journalism pointed to misconduct by major international banks in the largely unregulated foreign exchange markets. A number of regulatory authorities worldwide investigated the possible manipulation of foreign exchange benchmarks, the sharing of confidential information among foreign exchange dealers as well as possible collusion and order manipulation to the detriment of clients. The investigations resulted in a number of jurisdictions imposing large financial penalties on certain banks.
- 1.1.3 Against the background of the reports from other jurisdictions, the South African Reserve Bank (SARB) and the Financial Services Board (FSB) were concerned that this might render trading in the rand more vulnerable to manipulation and misconduct observed with other currencies in other jurisdictions. Notwithstanding the absence of allegations, it was deemed appropriate to be proactive and conduct a review of the foreign exchange

trading practices among South African Authorised Dealers. The objective of the review was to establish whether there was any misconduct or malpractice in the South African foreign exchange market, and to put forward recommendations on how foreign exchange trading practices may be strengthened so as to enhance the efficiency, integrity and credibility of the local foreign exchange market.

1.1.4 In October 2014 the SARB and the FSB appointed the Foreign Exchange Review Committee (FXRC) under the guidance of Mr J H Cross, a former Senior Deputy Governor of the SARB, to conduct the review. The FXRC determined that the major activities required to give effect to its Terms of Reference would be as follows:

- interacting with the Treasury, Compliance and Internal Audit departments of the Authorised Dealers in foreign exchange (banks) on the basis of a questionnaire;
- requesting the Compliance and Internal Audit departments of the major Authorised Dealers to investigate the trading activities of their foreign exchange dealers over selected periods for any evidence of malpractice;
- determining the current legal powers of the SARB and the FSB to regulate the foreign exchange market in South Africa and make appropriate recommendations in this regard; and
- drafting a Code of Conduct for the Over-the-Counter Financial Markets in South Africa in conjunction with market participants.

1.1.5 The SARB consulted with a number of overseas regulators, which revealed that:

- whistle-blowers played an important role in facilitating a more targeted approach in overseas investigations;

- much of the evidence of malpractice by foreign exchange dealers was found in the so-called 'chat rooms' used by dealers;
- overseas regulatory authorities relied heavily on the internal investigative capacity of banks; and
- there was no indication during these interviews that either trading in the rand or any of the South African Authorised Dealers had featured directly in their investigations to date.

1.1.6 Prior to the commencement of the review and as international investigations unfolded, the SARB engaged the 25 Authorised Dealers on various occasions requesting information on the domestic foreign exchange market. No evidence of widespread misconduct came to light, but there was some evidence of inappropriate sharing of confidential client information. Much of the offshore investigations were initially focused on the manipulation of benchmark fixings. The SARB's subsequent enquiries revealed that South African Authorised Dealers do not play a significant role in the daily benchmarking of exchange rates.

1.1.7 On 21 January 2015 the FXRC held a meeting with the Authorised Dealers, chaired by Deputy Governor Mminele, in order to discuss the review process. Following this meeting, a questionnaire covering subjects such as governance, compliance, monitoring, training and remuneration was introduced as a precursor to bilateral meetings with the FXRC. Bilateral discussions were held with the seven major Authorised Dealers. Following these discussions, these Authorised Dealers submitted their formal response to the FXRC.

1.1.8 Based on information submitted to the SARB, the FXRC requested specific Authorised Dealers to analyse a period of two weeks surrounding a major transaction or transactions involving the relevant Authorised Dealer. Where no particular transaction was identified, a market event was specified by the FXRC. The Compliance and Internal Audit departments of the relevant Authorised Dealers were then tasked with investigating the trading activities

of their professional foreign exchange dealers for the given review period for any evidence of front-running, collusion, market manipulation, inappropriate sharing of confidential information or otherwise unethical or unlawful behaviour.

1.1.9 Following the submission of results of the internal investigations, Deputy Governor Mminele met with the responsible Executive Committee members of each institution, together with their investigative teams. Each institution was requested to explain in detail the governance arrangements pertaining to their foreign exchange trading operations, with particular emphasis on market conduct, compliance, escalation procedures and training. Furthermore, Mr Mminele sought to gain an understanding of the processes followed in the internal investigations and validate some of the information submitted to the FXRC.

1.1.10 As part of the review, the FXRC members and the Legal Services Department of the SARB researched the legal, regulatory and supervisory powers that are currently available in South Africa to address improper market conduct by participants in the foreign exchange market.

## **1.2 Findings**

1.2.1 The FXRC found no evidence of malpractice or serious misconduct in the South African foreign exchange market; nonetheless, there is scope for improvement in overall market conduct. Furthermore, the committee found that the foreign exchange market in South Africa is competitive.

1.2.2 The Authorised Dealers have acceptable governance arrangements and structures in place as well as whistle-blowing policies and complaints procedures for clients.

1.2.3 Authorised Dealers have an array of policies and procedures covering market conduct in place. However, the implementation of these policies and procedures is not always routinely monitored.

1.2.4 Some Authorised Dealers have maintained high standards of training and

recurrent training. Others, however, have not given this sufficient priority.

- 1.2.5 Furthermore, the FXRC, based also on international experience, found early in the process that the market would benefit from a unified Code of Conduct for the Over-the-Counter Financial Markets in South Africa and a decision was made to start drafting the Code of Conduct alongside the ongoing review.
- 1.2.6 The majority of Authorised Dealers take cognisance of market conduct, governance and compliance in performance assessments, promotions and bonus calculations.
- 1.2.7 Some Authorised Dealers are implementing automated electronic monitoring systems.
- 1.2.8 The current legal framework in South Africa does not provide specifically for the regulation and/or supervision of foreign exchange traders in their individual capacity. Authorised Dealers, however, are subject to a host of requirements as prescribed by the Banks Act, regulations relating to Banks published under the Banks Act, Exchange Control Regulations as well as the Orders and Rules published under the Exchange Control Regulations. The National Prosecuting Authority may also prosecute dealers criminally for fraud as a result of foreign exchange manipulation.
- 1.2.9 The authorisation and regulation of treasury outsourcing companies (TOCs) and interdealer brokers may need to be clarified and updated.
- 1.2.10 In anticipation of the implementation of the Twin Peaks regulatory framework as well as the market conduct area of the FSB and the SARB's Financial Markets Department, the Bank Supervision Department and Financial Surveillance Department would benefit from a forum where they meet regularly and exchange information. Currently no single institution in the official sector takes specific responsibility for monitoring market conduct in the domestic foreign exchange market.
- 1.2.11 Some of the Authorised Dealers were delayed in submitting the results of

their internal investigations due to administrative and record-keeping issues. In certain instances, the banks' control and governance arrangements required improvement. In all cases these institutions have taken the necessary steps to rectify the shortcomings.

- 1.2.12 Some of the major Authorised Dealers expressed the opinion that the market would benefit from a forum where broad compliance issues are openly discussed 'for the benefit of all market participants'.

### **1.3 Consequential issues that may arise from the Competition Commission investigation**

- 1.3.1 While the FXRC review was underway, the Competition Commission (CC) made it known that it had initiated an investigation, as announced on 19 May 2015, against several international financial institutions who had allegedly been directly or indirectly fixing prices in respect of spot, futures and forward currency trades in offshore financial centres. The review by the FXRC focused on the operations of authorised dealers in the domestic foreign exchange market, while the investigation by the CC is mainly concerned with possible violations in offshore markets allowed by its area of jurisdiction. At the time of concluding the FXRC review, the CC investigation was still underway. Should any irregularities be revealed as part of the CC investigation, which link violations in other international financial centres to operations of local Authorised Dealers, regulators will take the appropriate steps.

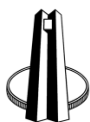
### **1.4 Recommendations**

- 1.4.1 The FXRC recommends that:

- legislation in South Africa be amended to give the FSB sufficient powers to declare Codes of Conduct as subsidiary legislation. Furthermore, sections 78, 80 and 81 of the Financial Markets Act, 2012, should be equally applicable to the over-the-counter foreign exchange market;



- the domestic Code of Conduct must be in line with the principles enshrined in the single Global Code of Conduct, Standards and Principles for the Foreign Exchange Market when it has been agreed upon by the Markets Committee of the Bank for International Settlements (BIS);
- the authorisation and regulation of TOCs should be reviewed;
- the authorisation and regulation of interdealer brokers should be reviewed;
- most major Authorised Dealers experienced difficulties in retrieving all the relevant records during their internal investigations. In view of these difficulties, it is recommended that the SARB and the FSB undertake an equivalent exercise during 2016. The regulatory authorities have been made aware of these deficiencies in each instance. Market enquiries could be conducted throughout the year whenever market events merit further investigation. These individual ad hoc enquiries need not necessarily involve all the major market participants in every instance; and
- in order to ensure ongoing compliance and best practice, it is recommended that a group of senior market professionals and compliance officers form a Financial Markets Standards Group akin to the Treasury Markets Practice Group in the United States and the Fixed Income, Currency and Commodities Markets Standards Board in the United Kingdom. This Group would be established and sponsored jointly by the SARB, the FSB and market participants. It is recommended that this Group be formed under the auspices of the FSB and the SARB.



South African Reserve Bank



## **2. Introduction**

- 2.1 In 2013 whistle-blowing and investigative journalism pointed to misconduct by major banks in the largely unregulated international foreign exchange markets. This followed intense investigations into the manipulation of the London Interbank Offered Rate (LIBOR) reference interest rates by major banks. The foreign exchange investigations originally focused on the possible manipulation of foreign exchange benchmarks such as the WM Reuters exchange rate benchmark determined every working day at 4 pm London time. The investigations soon extended to the sharing of confidential information among foreign exchange traders and possible collusion and order manipulation to the detriment of customers.
- 2.2 The foreign exchange probes involved about 20 regulatory authorities worldwide investigating more than 15 banks. The consequences of these investigations have been far-reaching. It was reported that about a dozen banks had dismissed or suspended a number of foreign exchange traders and other employees. The operations of official-sector institutions were also reviewed in some instances.
- 2.3 A number of large banks with a major presence in the foreign exchange market have agreed to pay sizable fines to regulatory authorities in the United States, the United Kingdom and Switzerland. The end is not yet in sight as some authorities still have to conclude their investigations. In various jurisdictions, actions against individuals are in the pipeline and some arrests have been made.
- 2.4 The rand is a globally traded currency, but the global rand market has less depth and liquidity than the major internationally traded currencies. The SARB and the FSB were concerned that this might render trading in the rand more vulnerable to manipulation and deemed it appropriate to conduct a

review of the foreign exchange trading practices among South African banks.

- 2.5 The objective of the review was to establish whether or not there had been any misconduct or malpractice in the South African foreign exchange market, and to put forward recommendations on how foreign exchange trading practices may be strengthened so as to enhance the efficiency, integrity and credibility of the local foreign exchange market.
- 2.6 In October 2014 the SARB and the FSB appointed a Task Team, the Foreign Exchange Review Committee (FXRC), to conduct the review. Mr J H Cross was appointed to guide the activities of the FXRC. The FXRC was tasked with completing the review by the end of June 2015.
- 2.7 The objective of the review was to establish any possible misconduct, collusion and/or malpractice in foreign exchange markets, and also to establish if there are ways in which foreign exchange practices in South Africa can be strengthened so as to enhance the efficiency, integrity and credibility of South Africa's foreign exchange market.
- 2.8 The FXRC was to inform and advise the SARB and the FSB of its findings and to recommend the implementation, in line with international best practice, of the most suitable remedial measures and/or further actions to be taken. The FXRC was specifically tasked to advise on how best to strengthen governance arrangements and standards of practice for market practitioners.
- 2.9 The Terms of Reference of the FXRC are appended as Annexure A, while the list of members of the FXRC is reflected in Annexure B.
- 2.10 At the outset of its work, the FXRC determined that the main activities required to give effect to the Terms of Reference would be as follows:
  - 2.10.1 Interact with the Treasury departments of the Authorised Dealers in foreign exchange on the basis of a questionnaire.

- 2.10.2 Request the Compliance and Internal Audit departments of the major Authorised Dealers to investigate the trading activities of their foreign exchange dealers over a selected period for any evidence of malpractice.
- 2.10.3 Determine the current legal powers of the SARB and the FSB to regulate the foreign exchange market in South Africa and make appropriate recommendations in this regard.
- 2.10.4 Draft a Code of Conduct for the Over-the-Counter Financial Markets in South Africa in conjunction with market participants.

### **3. Background**

- 3.1 According to the triennial survey on global foreign exchange and derivative market activity by the BIS, the total daily global foreign exchange turnover had increased to US\$5,3 trillion in April 2013. Of this amount, some US\$60 billion, or approximately 1,2 per cent, involved trading in the rand.
- 3.2 The earlier statement that the rand is a globally traded currency is borne by the fact that only 21,1 per cent of this turnover takes place in South Africa. London accounts for 42,5 per cent of the total turnover, and is the most important foreign centre for trading the rand.
- 3.3 Besides the significant percentage of total rand trading that takes place outside of South Africa, trading with non-residents also dominates domestic turnover figures at about 60 per cent of the total daily turnover. A further salient feature of rand trading in South Africa is that trading in the forward and foreign exchange swap market accounts for approximately 80 per cent of total market turnover.

### **4. Authorised Dealers, treasury outsourcing companies and interdealer brokers**

- 4.1 The domestic foreign exchange requirements of the South African economy are served by 25 Authorised Dealers in foreign exchange. In practice, Authorised Dealers are banks that have been authorised by the Minister of

Finance and National Treasury to deal in foreign exchange in terms of exchange control legislation and regulations. Of the 25 Authorised Dealers, seven play a significant role in the foreign exchange market and represent about 95 per cent of the total South African turnover.

- 4.2 Annexure C to this report lists the names of all the Authorised Dealers in foreign exchange in South Africa.
- 4.3 The South African foreign exchange market is also served by TOCs. South African corporates sometimes prefer to outsource or transfer some of their treasury activities or functions to a TOC.
- 4.4 The services provided by TOCs may include identifying, monitoring and managing foreign exchange risks as well as the completion and handling of documentation, monitoring of customers' foreign exchange exposure and conclusion of spot/forward transactions with Authorised Dealers. All transactions initiated by TOCs may only be entered into in the names of their clients.
- 4.5 The Financial Surveillance Department of the SARB clarified the role of TOCs in the foreign exchange market in Exchange Control Circular No. 13/2012. A copy of this circular is appended to this report as Annexure D.
- 4.6 TOCs must obtain approval from the Financial Surveillance Department of the SARB, through an Authorised Dealer, prior to commencing any foreign exchange business. In terms of this dispensation, 132 TOCs have been so authorised. The full extent of the role played by TOCs in the foreign exchange market is, however, not clear as no official figures are available. It is not clear how many of the authorised TOCs are actively involved in the foreign exchange business.
- 4.7 There is scope for improving and clarifying the regulation of TOCs. The latter seem to be authorised and regulated by both the Financial Surveillance Department in the SARB and the FSB. There is some concern that TOCs constitute a threat to the regulatory chain when TOCs act as the principal and not as agent.

- 4.8 Technology is playing a far bigger role in the foreign exchange market than a number of years ago. This trend extends to foreign exchange broking which has become largely electronic when compared with voice broking practices of the past. Nonetheless, foreign exchange brokers, or interdealer brokers as they are referred to in this report, still play a role in the market.
- 4.9 There are a number of interdealer brokers active in the South African foreign exchange market. As is the case with TOCs, interdealer brokers are regulated in accordance with Exchange Control Circular No. 13/2012. The names of interdealer brokers currently active in the South African foreign exchange market are reflected in Annexure E to this report.
- 4.10 In line with the opinion expressed on TOCs, the licensing and supervision of interdealer brokers needs to be revised.

## **5. Prior actions by the SARB**

- 5.1 Prior to the commencement of the review, the SARB met with a number of regulators in Europe and North America.
- 5.2 The following insights were gained from these visits:
- 5.2.1 Whistle-blowers played an important role in overseas investigations. By contrast, whistle-blowers played no role in the deliberations of the FXRC. The South African foreign exchange market is relatively small. As a consequence, whistle-blowers could be more reticent in coming forward as this may impact on their employability. In reviewing compliance activities at major Authorised Dealers, a great deal of emphasis was placed on the need for appropriate whistle-blowing policies and procedures.
- 5.2.2 Much of the evidence of malpractice by foreign exchange dealers in other jurisdictions was found in the so-called 'chat rooms' used by dealers. As a consequence, the FXRC asked that the internal investigations by the Authorised Dealers give specific attention to chat rooms.

- 5.2.3 Overseas regulatory authorities relied heavily on the internal investigative capacity of banks. In pursuance of this approach, the FXRC requested the Compliance and Internal Audit departments of the Authorised Dealers to undertake certain investigations.
- 5.2.4 There was no indication during the discussions with overseas regulators that either trading in the rand, or any of the South African Authorised Dealers, had been singled out in their investigations. Subsequently it has emerged that the anti-trust authorities in some of these jurisdictions are investigating certain offshore transactions involving the rand. At the time of writing, the FXRC had not been privy to any further information on this issue.
- 5.2.5 The overseas investigations focused on the manipulation of foreign exchange rate benchmarks, such as the WM Reuters exchange rate benchmark determined at 4 pm London time, the sharing of confidential customer information by dealers, front-running of client transactions, collusion and 'order jamming, that is, manipulating the markets towards stop-loss levels on client orders or strike levels of options.
- 5.3 As international events unfolded, the Registrar of Banks and Deputy Governor Mminele requested information from the South African Authorised Dealers regarding their trading activities. From the various responses received by the Authorised Dealers, a number of impressions were gleaned:
- 5.3.1 While there appeared to be no evidence of widespread misconduct, some evidence of sharing confidential client information did come to light. It thus seemed that there was room for improvement in market conduct, which supported the case for a review.
- 5.3.2 South African Authorised Dealers do not play a significant role in the 4 pm London WM Reuters exchange rate fix. Consequently, this review placed less emphasis on this aspect of potential market misconduct.
- 5.3.3 Authorised Dealers confirmed the impression gained from the overseas authorities, namely that they were not aware of instances where trading in

the rand or South African Authorised Dealers were being directly targeted in overseas investigations.

## **6. Review approach**

- 6.1 In addition to the information session that the FXRC held with the Authorised Dealers in January 2015, chaired by Deputy Governor Mminele, a delegation of the FXRC held bilateral discussions with each of the major Authorised Dealers to discuss their internal policies and processes in response to the questionnaire.
- 6.2 Based on information submitted to the SARB, the FXRC requested specific Authorised Dealers to analyse a period of at least two weeks surrounding a major transaction or transactions involving the relevant Authorised Dealer. Where no particular transaction was identified, a market event was specified by the FXRC. The Compliance and Internal Audit departments of the relevant Authorised Dealers were then tasked with investigating the trading activities of their professional foreign exchange dealers for the given review period for any evidence of front-running, collusion, market manipulation or inappropriate sharing of confidential information or otherwise unethical or unlawful behaviour.
- 6.3 The internal investigations covered chat rooms, e-mails and telephone communications, and included both internal and external communications. The Authorised Dealers were in general allowed about a month to submit their reports, but at least three of them were delayed due to technical difficulties.
- 6.4 Following the submission of the results of the internal investigations, Deputy Governor Mminele met with Executive Committee (Exco) members of each of the major Authorised Dealers who conducted the investigations. The purpose of these meetings was twofold: (i) the responsible Exco member had to explain in detail the governance arrangements pertaining to their treasury operations, in particular market conduct, compliance, escalation procedures and training; and (ii) the Exco member and the Head of



Compliance were required to verify the processes followed and validate the information submitted to the FXRC.

- 6.5 Once the above process was completed, the FXRC provided feedback to all the Authorised Dealers that were involved in the review process. The feedback session focused on the FXRC's impressions of the various Authorised Dealers' policies and processes relating to foreign exchange trading operations.

## **7. The legal framework**

### **7.1 Introduction**

- 7.1.1 With input from other FXRC members, the Legal Services Department of the SARB researched the legal, regulatory and supervisory powers that are currently available in South Africa to combat improper conduct by market participants in the foreign exchange market.

### **7.2 Relevant regulatory architecture**

- 7.2.1 Financial regulation in South Africa is mainly the responsibility of the Minister of Finance, although certain added responsibilities have been assigned to the Minister of Trade and Industry in recent years.
- 7.2.2 The relevant institutions or organisations responsible for financial regulation and/or supervision within the area of responsibility of the Minister of Finance include:

#### **7.2.2.1 Bank Supervision Department**

The Office for Banks, which is established by section 3 of the Banks Act 94 of 1990 (Banks Act) and headed by the Registrar of Banks (Registrar), forms part of the SARB as its Bank Supervision Department (BSD). (Although the SARB is afforded constitutional independence and the Registrar is the principal functionary of the Banks Act, the Minister of Finance is ultimately responsible for financial regulation and is also required to approve certain applications in terms of the Banks Act.)

#### 7.2.2.2 Financial Surveillance Department

The Financial Surveillance Department (FinSurv) of the SARB is responsible for the day-to-day administration of exchange controls. The Minister of Finance has delegated to the Governor and/or a Deputy Governor as well as to the Head of FinSurv (and to other officials in the department) all the powers, functions and duties assigned to, and imposed on, National Treasury under the Exchange Control Regulations (with certain exceptions). The Minister of Finance also appoints certain banks to act as Authorised Dealers in foreign exchange. This appointment gives these banks the right to buy and sell foreign exchange, subject to conditions and within limits prescribed by FinSurv. Authorised Dealers are not agents for FinSurv, but act on behalf of their clients.

#### 7.2.2.3 Financial Services Board

The Financial Services Board (FSB) is established by the Financial Services Board Act, 97 of 1990 (FSB Act) and the Minister of Finance exercises certain functions in respect of the FSB, especially with regard to facilitating proposed legislative amendments administered by the FSB. The FSB regulates and supervises compliance with laws relating to the non-bank financial services industry (including insurers, collective investment schemes, financial intermediaries, pension funds and financial markets). The FSB also supervises market abuse legislation and the self-regulators of certain financial markets such as STRATE and the JSE Limited (JSE), which includes the Bond Exchange of South Africa (BESA) and the South African Futures Exchange (SAFEX).

### 7.3 Relevant legislative frameworks

Although there is no legal framework in South Africa that deals specifically with dealers in the foreign exchange market, there are a number of enactments empowering certain regulators to take action against improper conduct of such dealers. It is important to note that the National Prosecuting

Authority may also prosecute dealers criminally for fraud as a result of foreign exchange manipulation.

#### **7.4 The Banks Act and regulations issued in terms thereof**

- 7.4.1 Although the Banks Act principally aims to regulate the prudential requirements of banks, it also regulates corporate governance requirements and certain defined risk areas within banks.
- 7.4.2 Regulation 28 of the Regulations relating to Banks, 2013 (Banks Act Regulations) comprehensively prescribes requirements that banks have to comply with in respect of their market risk. Regulation 67 of the Banks Act Regulations defines market risk as the “... risk of loss in on balance sheet and off balance sheet positions arising from movements in market prices”. Banks are required to submit a monthly form BA 320 to BSD which includes information relating to foreign exchange risk. Banks are also required to submit a daily form BA 325 to the BSD providing details of selected risk exposures which includes foreign currency exposure.
- 7.4.3 Regulations 33 and 34 of the Banks Act Regulations comprehensively prescribe requirements that banks have to comply with in respect of their operational risk. Regulation 67 of the Banks Act Regulations defines operational risk as “...risk of loss resulting from inadequate or failed internal processes, people, systems or from external events, including legal risk, such as exposure to fines, penalties, punitive damages resulting from supervisory actions and private settlement ...”. Banks are required to submit six monthly returns (forms BA 400 and BA 410) to the BSD providing details pertaining to their operational risk profile.
- 7.4.4 Regulation 39 of the Banks Act Regulations comprehensively prescribes requirements pertaining to corporate governance in managing the banks as well as its numerous risk areas, including market and operational risk.
- 7.4.5 The above-mentioned risks and requirements are not only supervised on a regular basis, but the Banks Act also empowers the Registrar to take further action in specific identified cases:

- 7.4.5.1 In terms of section 6(1) of the Banks Act, the Registrar has the power to inspect a bank and has the powers conferred or imposed by the Inspection of Financial Institutions Act 80 of 1998 (IFI Act).
- 7.4.5.2 In terms of section 6(6) of the Banks Act, the Registrar may issue a directive to, among others, a bank or controlling company, including the issue of a non-financial sanction.
- 7.4.5.3 In terms of section 7(1)(a) of the Banks Act, the Registrar may by written notice compel a bank, controlling company or any of their subsidiaries to provide such information as the Registrar may reasonably require in the performance of his or her duties in terms of the Banks Act.
- 7.4.5.4 In terms of section 7(1)(b) of the Banks Act, the Registrar may by written notice compel a bank, controlling company or any of their subsidiaries to supply the Registrar with a report by a public accountant as defined in section 1 of the Auditing Professions Act. 26 of 2005, or by any other person with appropriate professional skill, on any matter about which the Registrar has directed.
- 7.4.5.5 In terms of section 91A of the Banks Act, the Registrar may impose a financial penalty on a bank or controlling company that has contravened or failed to comply with the Banks Act (including the Banks Act Regulations) to an amount not exceeding R10 million for every day during which the contravention or non-compliance continues.

## **7.5 South African Reserve Bank Act**

- 7.5.1 In addition to the powers conferred and duties imposed on the Registrar in terms of the Banks Act, section 11 of the South African Reserve Bank Act 90 of 1989, as amended (SARB Act) affords the Governor or a Deputy Governor of the SARB with additional powers to appoint inspectors to carry out inspections of the affairs, or of any part thereof, of a bank or a mutual bank. The provisions of the IFI Act shall apply in respect of an inspection carried out in terms hereof.

## **7.6 Exchange Control Legislation**

- 7.6.1 The Exchange Control Regulations as promulgated by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.9 in *Government Gazette* No. 33926 of 14 January 2011 in essence contain prescriptions relating to dealing with foreign currency by residents in South Africa and do not contain prescriptions applicable to dealers in this regard.
- 7.6.2 The Orders and Rules issued by the Minister of Finance under the Exchange Control Regulations, and published in Government Notice R1112 of 1 December 1961 and amended up to Government Notice R.663 in *Government Gazette* No. 31153 of 17 June 2008 do, however, contain more detailed prescriptions relating to the appointment of Authorised Dealers and certain reporting requirements applicable to such Authorised Dealers.
- 7.6.3 Cross-border foreign exchange transactions executed by Authorised Dealers on behalf of their customers are reported via an online same-source system directly to FinSurv on a daily basis and are called 'reportable transactions'.
- 7.6.4 In addition to the above-mentioned prescriptions, the Minister of Finance, through FinSurv, may also issue guidelines in respect of the Exchange Control Regulations.

## **7.7 Financial Markets Act**

- 7.7.1 The non-bank financial services industry in South Africa (including insurers, pension funds, collective investment schemes etc.) is regulated and supervised by the FSB.
- 7.7.2 The Financial Markets Act 19 of 2012 (FMA) confers jurisdiction on the FSB in respect of all persons who engage in market abuse offences in respect of securities that are listed on a regulated market.
- 7.7.3 The Market Abuse Department is a department within the FSB which carries out the mandate of the Directorate of Market Abuse (DMA). The DMA is a committee of the FSB with the statutory mandate to investigate cases of

market abuse and to enforce the prohibitions against market abuse contained in the FMA.

- 7.7.4 Market abuse in terms of the FMA consists of insider trading (prohibited by section 78), market manipulation (prohibited by section 80), and false reporting (prohibited by section 81) relating to securities listed on a regulated market.
- 7.7.5 If the DMA believes that the FMA has been contravened, it may refer the matter to the Enforcement Committee of the FSB for enforcement action to be instituted against the offender and/or to the National Prosecuting Authority for criminal prosecution. In relation to any matter referred to in Chapter X of the FMA, it may also apply to a court for an interdict or attachment order of assets or evidence.
- 7.7.6 The prohibitions against market abuse, the DMA's powers to investigate and the administrative sanctions/penalties which the DMA may impose in respect of market abuse are set out in Chapter X (sections 77 to 89) of the FMA for offences committed after 3 June 2013, read with section 6 of the Financial Institutions (Protection of Funds) Act 28 of 2001. If an offence took place prior to 3 June 2013 then the provisions of Chapter VIII (sections 72 to 87) of the Securities Services Act 36 of 2004 and section 6 of the Financial Institutions (Protection of Funds) Act 28 of 2001 will apply.
- 7.7.7 The administrative penalty that can be imposed by the FSB Enforcement Committee for a contravention of section 80 is unlimited, while the maximum criminal sanction for a contravention of this section is a fine not exceeding R50 million, or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

## **7.8 Financial Advisory and Intermediary Services Act**

- 7.8.1 The Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act) regulates the rendering of certain financial advisory and intermediary services to clients and is administered by the FSB.

- 7.8.2 Section 1 of the FAIS Act defines the terms ‘advice’ and ‘intermediary service’ in some detail, which includes advice provided in respect of the purchase of, or investment in, any financial product or the buying, selling or otherwise dealing in a financial product. The definition of the term ‘financial product’ includes, among others things, a foreign currency-denominated investment instrument or deposit.
- 7.8.3 Apart from the obligation to register as a financial services provider under the FAIS Act, such service providers are also subject to the supervision of the FSB.
- 7.8.4 Section 34 of the FAIS Act provides that the FSB may, by notice in the *Government Gazette*, declare a particular business practice to be undesirable. The guiding principles for declaring a business practice as undesirable in terms of section 34(2)(a) of the FAIS Act are, among other things, that the practice concerned, directly or indirectly, has or is likely to have the effect of harming relations between financial service providers, unreasonably prejudicing any client, deceiving any client or unfairly affecting any client.
- 7.8.5 If the FSB has issued a notice as contemplated above, it may direct any financial services provider not complying with the notice to rectify any offending practice. A service provider that does not rectify the offending practice within 60 days to the satisfaction of the FSB is committing an offence and is on conviction liable to a fine not exceeding R1 million or to such imprisonment not exceeding 10 years, or to both such fine and imprisonment.
- 7.8.6 As far as could reasonably be ascertained, no notice has been issued by the FSB in terms of the FAIS Act dealing specifically with the conduct or practices of dealers in the foreign exchange market in South Africa.

## **7.9 Conclusion**

- 7.9.1 The current legal framework in South Africa does not provide for the regulation and/or supervision of foreign exchange dealers directly or specifically.
- 7.9.2 Authorised Dealers, however, are subject to a host of requirements as prescribed by the Banks Act, regulations relating to Banks published under the Banks Act, Exchange Control Regulations as well as the Orders and Rules published under the Exchange Control Regulations. Foreign currency participants that are either banks or non-banks, including institutional investors, insurance companies and managers of pension, money, mutual and hedge funds are also subject to certain requirements in terms of laws administered by the FSB, such as the FMA and FAIS.
- 7.9.3 The provisions also provide the SARB, the Registrar, FinSurv and the FSB with adequate powers to demand information and inspect the affairs of banks in this regard.
- 7.9.4 In order to ensure a fully coordinated and comprehensive legal framework and system to supervise and regulate Authorised Dealers, other market participants and foreign exchange dealers directly and specifically, it is recommended that specific provisions pertaining to their conduct be enacted. Any such enactments or amending enactments should, however, also take cognisance of the provisions of the Financial Sector Regulations Bill, 2013.

## **8. Code of Conduct**

- 8.1 Based on discussions with the international regulators, it became apparent that there was a need for a Code of Conduct for the South African Over-the-Counter Financial Markets in South Africa (the Code). A decision was taken to develop such a code alongside the review being undertaken.
- 8.2 The FXRC has, in consultation with market participants, drafted the Code for the South African markets.



- 8.3 In preparing a first draft of the Code, the FXRC summarised other codes used in international financial markets, in particular the Hong Kong Treasury Markets Association Code of Conduct and Practice, March 2014; the Guidelines for Foreign Exchange Trading Activities of the New York Foreign Exchange Committee, November 2010; the London Non-Investment Products Code for Principals and Broking Firms in the Wholesale Markets, November 2011; and the Model Code of the Financial Markets Association (ACI), November 2013.
- 8.4 Furthermore, the draft Code was aligned with the International Organization of Securities Commission's (IOSCO) Principles for Financial Benchmarks.
- 8.5 The members of the Financial Markets Liaison Group (FMLG) were requested to make an initial input to the draft Code by appointing an informal working group to consult with the FXRC on the draft Code. This informal working group met with members of the FXRC on a number of occasions.
- 8.6 In May 2015 an amended copy of the draft Code was submitted to the FMLG and the FMLG was requested to formally appoint members to a working group tasked with finalising the draft Code with the FXRC.
- 8.7 The interaction between the working group and the FXRC contributed greatly to transforming the document into a more general Code, applicable to all the over-the-counter financial markets.
- 8.8 The draft Code was submitted to the following professional associations for comment: The Banking Association of South Africa (BASA), the International Banking Association (IBA), the Association of Corporate Treasurers of Southern Africa (ACTSA), the Association for Savings and Investment South Africa (ASISA), and the South African Institute of Chartered Accountants (SAICA).

## **9. Findings of the FXRC**

- 9.1 The FXRC found no evidence of malpractice or serious misconduct in the South African foreign exchange market. No evidence was found of front-

running client transactions, collusion or the manipulation of any foreign exchange benchmarks. Hence, no criminal investigations or punitive measures were called for as a consequence of this review.

- 9.2 Some instances were reported of sharing confidential client information among foreign exchange dealers. Hence, there is clearly room for improvement in market conduct. The standard of surveillance and compliance needs to be improved.
- 9.3 On balance, South African Authorised Dealers appear to have acceptable governance arrangements and structures in place. Compliance and Internal Audit are independent, and appropriate escalation procedures are in place.
- 9.4 The governance arrangements of the Authorised Dealers include whistle-blowing policies and complaints procedures for clients. In quite a few instances, the whistle-blowing policies of the Authorised Dealers determine that employees are obliged to blow the whistle when they are aware of wrongdoing or they will be held jointly accountable.
- 9.5 South African Authorised Dealers have an array of policies and procedures covering market conduct. It is apparent that some of these policies and procedures were implemented fairly recently as a result of an increased focus on market conduct internationally.
- 9.6 Notwithstanding governance structures and extensive policies and procedures regarding market conduct, it was clear to the FXRC that the Authorised Dealers do not routinely monitor the communications of their foreign exchange dealers. The majority of the Authorised Dealers had difficulty in retrieving some of the requisite records for their internal investigations. Provided that the existing policies and procedures are rigorously applied, misconduct involving foreign exchange dealers should not go undetected.
- 9.7 The use of automated electronic systems for monitoring communication by dealers is in its infancy in South Africa. Some of the Authorised Dealers are

implementing these automated systems while others are considering doing so.

- 9.8 Different Codes of Conduct are currently subscribed to by the Authorised Dealers. The FXRC, based also on international experience, found that the foreign exchange market would benefit from a unified Code of Conduct for the Over-the-Counter Financial Markets to level the playing fields. Some Authorised Dealers suggested that this Code should clarify certain contentious issues such as 'market colour', that is, material pieces of information that inform professional investors and traders about what is happening in the market.
- 9.9 Certain Authorised Dealers have maintained high standards of training and recurrent training. In the main, technical training, together with governance and market conduct training, take place regularly and employees are obliged to participate and meet high standards. There are instances, however, where training and recurrent training are not given sufficient priority.
- 9.10 The majority of Authorised Dealers take into consideration market conduct, governance and compliance in performance assessments, promotions and bonus calculations.
- 9.11 Currently no single institution in the official sector takes specific responsibility for monitoring market conduct in the domestic foreign exchange market. (This particular finding will be addressed by the implementation of the Twin Peaks regulatory framework.)
- 9.12 TOCs are regarded by Authorised Dealers as an extension of their clients' offices. From the statistics made available by the Authorised Dealers it is clear that they play a fairly significant role in the foreign exchange market. Provided that the TOCs abide by the rules as set out in Exchange Control Circular No 13/2012, the FXRC does not believe they constitute a threat to the regulatory chain. Nonetheless, a number of the Authorised Dealers advocated stricter regulation and monitoring of TOCs. Currently, the responsibility for authorising and regulating these institutions is divided

between the SARB (FinSurv) and the FSB. It further appears that some of the TOCs are regarded as institutions in terms of the Financial Intelligence Centre Act 38 of 2001 (FICA), requiring them to perform certain duties in terms of the aforementioned Act, that is. complete the FICA process regarding the customer. There is a possibility that in some instances the FICA process is not complied with. Furthermore, there are instances where Trade Finance Houses, authorised as TOCs, manage the foreign exchange exposure in respect of finance extended to South African clients. The Trade Finance Houses hedge foreign exchange risk (spot and forward) as a principal in respect of certain import- or export-related business entered into by their clients. The FXRC found that the authorisation and regulation of TOCs should be revised.

- 9.13 The authorisation and regulation of interdealer brokers may need to be updated. Although interdealer brokers act as intermediaries in the foreign exchange market, they may inadvertently have to act as the principal in the event that they miss a quote and have a resultant foreign exchange exposure. This raises questions regarding capital adequacy which may need to be addressed. Furthermore, as intermediaries in the market, the FSB may have an interest in their market conduct.
- 9.14 The current legal framework in South Africa does not provide for the regulation and/or supervision of foreign exchange dealers in their individual capacity. The Registrar of Banks has the power to apply 'fit and proper' principles at executive level, but that power does not extend to foreign exchange dealers. The BSD of the SARB does not have the power to sanction these individuals in the event of serious market conduct malpractices. Thus, the regulators do not necessarily have the power to prosecute a foreign exchange dealer for insider trading, front-running of client transactions, collusion or manipulation of benchmarks.
- 9.15 The South African foreign exchange market is competitive. This high level of competition is a consequence of multi-banked corporate clients and technological developments that keep clients informed on market conditions.

- 9.16 In anticipation of the implementation of the Twin Peaks regulatory framework, the market conduct area of the FSB as well as the SARB's Financial Markets Department (FMD), BSD and FinSurv would benefit from a forum where they meet regularly and exchange information.
- 9.17 The bilateral discussions between the FXRC and some of the major Authorised Dealers as well as their internal reviews highlighted a number of instances in which the Authorised Dealers' control and governance arrangements required improvement.
- 9.18 It would appear that some Authorised Dealers do not currently have sufficient record-keeping capacity to implement thorough compliance and internal audits. These Authorised Dealers have recently updated their systems. A further review of their monitoring and record-keeping processes should be conducted in 2016.
- 9.19 While each Authorised Dealer has compliance policies and regulations which meet the requirements of their regulators, there is insufficient evidence of international benchmarking. In certain instances, the Authorised Dealers have undertaken such an exercise and updated their policies accordingly. Furthermore, the Authorised Dealers are of the opinion that the market would benefit from a forum where broad compliance issues are openly discussed 'for the benefit of all market participants'.
- 9.20 While the FXRC review was underway, the CC made it known that it had initiated an investigation, as announced on 19 May 2015, against several international financial institutions who had allegedly been directly or indirectly fixing prices in respect of spot, futures and forward currency trades in offshore financial centres. The review by the FXRC focused on the operations of authorised dealers in the domestic foreign exchange market, while the investigation by the CC was mainly concerned with possible violations in offshore markets allowed by its area of jurisdiction. At the time of concluding the FXRC review, the CC investigation was still underway. Should any irregularities be revealed as part of the CC investigation, which

link violations in other international financial centres to operations of local Authorised Dealers, the regulators will take the appropriate steps.

## **10. Recommendations by the FXRC**

- 10.1 The FXRC recommends that legislation in South Africa be amended to achieve the following:
  - 10.1.1 The FSB be given sufficient powers to declare Codes of Conduct as subsidiary legislation.
  - 10.1.2 Sections 78 (insider trading), 80 (market manipulation) and 81 (false reporting) of the FMA should apply to the foreign exchange market, thereby enabling the authorities to prosecute individuals for instances of wrongdoing.
- 10.2 The FXRC recommends that the authorisation and regulation of TOCs be reviewed.
- 10.3 The FXRC further recommends that the authorisation and regulation of interdealer brokers be reviewed.
- 10.4 In view of the difficulties that most of the major Authorised Dealers experienced in retrieving the relevant records during their internal investigations, it is recommended that the SARB and FSB undertake an equivalent exercise during 2016. The Authorised Dealers should by then have made sufficient progress with implementing the improvements they committed themselves to.
- 10.5 In order to ensure ongoing compliance and best practice, it is recommended that a group of senior market professionals and compliance officers form a Financial Markets Standards Group. This Group would be akin to the Treasury Markets Practice Group in the United States ([www.newyorkfed.org/tmpg](http://www.newyorkfed.org/tmpg)). A similar group has been constituted in the United Kingdom, namely the Fixed Income, Currency and Commodities Markets Standards Board. The United Kingdom Standards Board includes a

range of banks, non-banking firms such as interdealer brokers, investment managers, infrastructure providers, corporate issuers and asset owners.

- 10.6 It is recommended that this group be established and sponsored jointly by the SARB, the FSB and market participants. The official sector would provide the Chair and the secretariat as this group would seek to closely interact with the regulators. The group would be responsible for setting benchmark standards for compliance, training and certification of management. The group would seek to resolve market issues such as conflict and ambiguity and keep abreast of international developments by interacting with similar groups in other countries. Furthermore, the group would be responsible for regularly updating the Code of Conduct. The initial task of this group should be to undertake an exercise similar to the Fair and Efficient Markets Review in the United Kingdom. Such a benchmark review would take approximately 18 months to complete and would be a public document.
- 10.7 The BIS recently announced a project under the auspices of the Market Committee to establish a single Global Code of Conduct, Standards and Principles for the foreign exchange markets. It is recommended that the principles enshrined in this Code, once established, should be incorporated into the domestic Code of Conduct.
- 10.8 It is instructive to note that in the United Kingdom, certain of the Competition Market Authority's powers are shared with the Financial Conduct Authority. To quote from the Fair and Effective Markets Review (10 June 2015): "the Competition and Markets Authority (CMA) and Financial Conduct Authority (FCA) share enforcement powers in relation to the provision of financial services in the United Kingdom. (Although only the CMA is responsible for the UK cartel offence). The FCA's competition functions are not limited merely to FCA regulated activity and firms, but extend to financial services as a whole, including parts of the Fixed Income, Currency and Commodity Markets, which currently fall outside the United Kingdom's financial services." It is recommended that the SARB continues to pursue close cooperation with the CC on matters pertaining to financial markets.

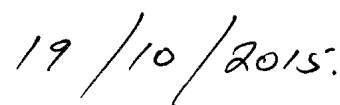
## **11. Chairperson's remarks of appreciation**

In closing, I would like to thank the executives of the SARB and the FSB, along with the members of the FXRC for their support and contribution during the review process. Furthermore, I would like to thank the members of the FMLG and the various professional associations for their contribution in developing the draft Code of Conduct for Over-the-Counter Financial Markets in South Africa.

I received timely responses from most of the Authorised Dealers through provision of the required reports on their activities in the foreign exchange market as well as from their respective Executive Committee members. Furthermore, various members of the Authorised Dealers have been instrumental in their contribution to the Code of Conduct for Over-the-Counter Financial Markets in South Africa.



**J H Cross**  
**Chairperson: Foreign Exchange Review Committee**



**Date**



## **12. Annexures**

Annexure A	FXRC Terms of Reference
Annexure B	List of FXRC members
Annexure C	List of Authorised Dealers in Foreign Exchange
Annexure D	Exchange Control Circular No 13/2012
Annexure E	List of Interdealer Brokers

**Annexure A**

**FXRC Terms of Reference**

**CONFIDENTIAL**  
**TERMS OF REFERENCE FOR MARKETS INVESTIGATION**

**1.     PREAMBLE**

- 1.1.     Since the outbreak of the cases involving the manipulation of Libor in 2012, regulators of a number of countries have been investigating banking institutions over various improper practices. Large fines have been levied on banks for transgressions that include manipulation of interest rate benchmarks, insider trading, breaches of anti-money laundering laws, and violation of financial sanctions.
- 1.2.     More recently, the focus has shifted to allegations of the manipulation of foreign exchange markets by bank traders. This may yet prove to become the largest probe of the financial industry in recent history and media reports suggest that up to 40 traders have already been suspended, placed on leave, or dismissed on the back of internal investigations by banks.
- 1.3     The fact that the rand is a globally traded currency, but with not as much depth and liquidity as the major international currencies, and thus being able to be moved by large players in any particular direction, renders rand trading vulnerable to being manipulated. Information has also become available that certain traders trading the rand in their basket of currencies are the subject of investigations by regulators in other jurisdictions.
- 1.4     Preliminary enquiries made by the South African Reserve Bank (the "SARB") suggest that it may be appropriate to conduct an investigation of foreign exchange trading practices among South African banks. The objective of the investigation is to establish any possible misconduct, collusion and/or malpractice in foreign exchange markets, and also to establish if there are ways in which foreign exchange trading practices in South Africa can be strengthened so as to enhance the efficiency, integrity and credibility of our foreign exchange market.

## 2. **PURPOSE**

- 2.1. The purpose of this document is to constitute a Task Team ("Team") and to set out its terms of reference for its operations and as such the document is confidential and intended for internal purposes only. The terms and conditions of this document shall therefore apply and be binding in the same measure to the Team collectively as it is binding on each and every member of the Team individually.
- 2.2. The purpose of the Team is to investigate, examine, consider and report on possible actual or potential failures, deficiencies or contraventions by financial market participants and/or individual officers or employees of such financial market participants and/or related parties, as more fully described hereunder.
- 2.3. Against the above background, the aim is to establish the relevant facts and to inform and advise the Governor or Deputy Governor of the SARB responsible for Financial Markets (the "relevant Deputy Governor") about the background and circumstances pertaining to the findings made and to recommend the implementation, in line with international best practice standards, of the most suitable remedial measures and/or further actions to be taken.

## 3. **CONSTITUTION, APPOINTMENT, PERIOD OF SERVICE AND REMUNERATION**

- 3.1. Members of the Team are appointed, in writing, by the Governor or relevant Deputy Governor of the SARB in terms of section 11 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989 – the "SARB Act") and by the Chief Executive Officer of the Financial Services Board ("FSB") in terms of section 2 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998 – the "IFI Act").
- 3.2. The period of service of the Team shall be for such a period of time as the Governor or relevant Deputy Governor, after consultation with the Team

and the FSB, determines: Provided that such term may at any time, by written notice of the Governor or relevant Deputy Governor to the Team, be terminated forthwith.

- 3.3. The remuneration of each member of the Team, where relevant or appropriate, shall be as the Governor or relevant Deputy Governor, after consultation with each relevant team member, determines.
- 3.4. All members of the Team so appointed shall be bound by the confidentiality provisions as reflected in this document as well as provided for by the IFI- and SARB Acts.
- 3.5. The Team shall consist of the following members:
  - 3.5.1. Mr JH Cross (Consultant) – Team Leader;
  - 3.5.2. Mr. Lambertus van Zyl (Consultant)
  - 3.5.3. Mr CK Chan<sup>4</sup>esta (DEO Investment Solutions, FSB);
  - 3.5.4. Ms E Hamman (Senior Research Analyst, FSB); and
  - 3.5.5. Ms P Pillay (Senior Forensic Investigator, Market Abuse)
4. The Team shall be supported by SARB staff from the Financial Markets, Financial Surveillance, Banking Supervision and Legal Services Departments
5. **AUTHORITY**
  - 5.1. The Team conducts its investigation in terms of the provisions of the IFI Act.
  - 5.2. The Team shall have reasonable access to the relevant records of the SARB, facilities and any other resources necessary to discharge its duties and responsibilities.
  - 5.3. The Team, or any of its members, may, in consultation with the Governor or relevant Deputy Governor and the FSB, take such independent professional advice as it deems necessary.

- 5.4. The Team may make recommendations to the Governor or relevant Deputy Governor that it deems appropriate on any aspect within the ambit of its terms of reference where action or improvement is required.

## 6. **DUTIES AND RESPONSIBILITIES**

- 6.1. The Team shall exercise all powers and all functions as may be required to fulfil its stated purpose and as contemplated in this document, which shall specifically include any action or inaction by any financial market participant and/or individual officers or employees of such financial market participants and/or related parties that may constitute “market abuse” as provided for in Chapter X (sections 77-88) of the Financial Markets Act, 2012 (Act No. 19 of 2012 – the “FM Act”).
- 6.2. Duties and responsibilities of the Team include the following:
- 6.2.1. Collate internal investigative reports of the Authorised Dealer Banks (“ADB”)
- 6.2.1.1. Collate internal investigative reports of the ADBs;
- 6.2.1.2. Collate transcripts of electronic chatrooms of senior currency traders from the ADBs since at least January 2011.
- 6.2.1.3. Investigate incidents of front-running of client orders by ADBs;
- 6.2.1.4. Investigate incidents of manipulation of the foreign exchange benchmark (e.g. the WM/Reuters rates or other benchmarks used to determine price fixing for client transactions) by colluding with counterparts, or by executing transactions on their own, with the intention or effect to influence the setting of the benchmark rate in such a way that is financially beneficial to the ADB;

- 6.2.1.5. Investigate incidents in which currency dealers discussed with competitors at other banks the types and volume of the trades they planned to conduct, or had some expectation of conducting, on behalf of customers;

#### 6.2.2. Benchmarking of Standards

- 6.2.2.1. Based on existing code of conduct for forex dealers (ACI Standards, regulatory framework, etc.) – establish a technical guide on rules of misconduct, collusion and/or malpractice;

- 6.2.2.2. Establish what constitutes misconduct, collusion, malpractice, etc.

#### 6.2.3. Analysis and Research Methodology

- 6.2.3.1. Guide the analysis of information received from ADBs and align the analysis with the purpose of the investigation;

- 6.2.3.2. Prepare work plans of the overall investigation and assign resources to relevant tasks;

#### 6.2.4. Investigative Reports

- 6.2.4.1. Provide monthly interim reports to the relevant Deputy Governor which is also copied to the General Counsel of SARB regarding progress of the investigation;

- 6.2.4.2. Report on findings of the investigation as outlined in clause 2.3 above including advice on possible punitive measures and whether criminal investigations ought to be initiated;

- 6.2.4.3. The report must also advise on how best to strengthen governing rules and standards of practice for market practitioners

- 6.3. The Team will by virtue of its functions from time to time be exposed, given access to, and be privy to confidential information of the SARB. For purposes of this document confidential information ("Confidential Information") includes all information pertaining to the business, affairs, management and operations of the SARB or its subsidiaries, reporting institutions, customers, members, employees or suppliers and the policies, strategic concepts, principles and philosophies of the SARB, including technical, financial, information and communication technology, commercial and other information, codes and data in whatever form they exist or will exist in the future, which is of a nature which is confidential to the SARB (that is to say, information which is not public knowledge, has not been published by the Bank and which is legally protectable as being confidential to the SARB), including all copyright works and intellectual property of the Bank;
- 6.4. Members of the Team shall not at any time, unless with the prior written consent of the Governor or relevant Deputy Governor, directly or indirectly, divulge or make known to any person Confidential Information of the SARB that may have come to their knowledge in the performance of its functions and shall take all such steps as are reasonably necessary to ensure and maintain such confidentiality at all times (including the physical and/or electronic security of the Confidential Information) and shall not make any unauthorized use of such Confidential Information at any time.
- 6.5. All Confidential Information that come into the Team's possession in the course of its activities will remain the exclusive property of the SARB and the FSB jointly, and the Team shall take all steps, insofar as it may be reasonably possible, to return such information to the SARB and the FSB, once their functions are concluded and shall prevent the publication or disclosure of such Confidential Information.
- 6.6. Should the Team have any doubt, for the purposes of this document, whether it is authorised to disclose information to a particular person, or whether any information constitutes Confidential Information, or whether any use of information of the Bank is authorised, the Team is obliged to



obtain and abide by a written decision of the Governor or relevant Deputy Governor.

7. **EFFECTIVE DATE AND AMENDMENTS**

- 7.1. The provisions of this document shall become effective and enforceable on the date of its signature by the Governor or relevant Deputy Governor. The individual team members shall each sign a copy of this document and thereby acknowledge that they understand its nature, contents and regard themselves bound to the provisions of this document.
- 7.2. Any amendment to this document needs to be in a written format and signed by the Governor or relevant Deputy Governor and each of the members of the Team.

Signed at Pretoria on this the 6th day of October 2014.

A handwritten signature in black ink, appearing to be 'A. J. ...', is written over a horizontal line.

**Deputy Governor**

## **Annexure B**

### **List of Foreign Exchange Review Committee members**

## **List of Foreign Exchange Review Committee members**

Mr Cross, James (Chairman)	Consultant, South African Reserve Bank
Mr van Zyl, Lambertus	Consultant, South African Reserve Bank
Mr Chanetsa, Cuthbert	DEO Investment Solutions, Financial Services Board
Mr Myburgh, Leon	Head of Financial Markets, South African Reserve Bank
Mr Blackbeard, Michael	Specialist Legal Counsel, South African Reserve Bank
Mr Hooper, Ross	Manager, Financial Surveillance, South African Reserve Bank
Mr Jeena, Faizel	Assistant General Manager, Bank Supervision, South African Reserve Bank
Mrs Hamman, Elmarie	Senior Research Analyst, Financial Services Board
Ms Pillay, Prinasha	Senior Forensic Investigator, Financial Services Board
Mr Stampu, Ntobeko	Senior Portfolio Manager, South African Reserve Bank
Mr Maronoti, Bafundi	Associate Economist, South African Reserve Bank

## **Annexure C**

### **List of Authorised Dealers in Foreign Exchange**

## **AUTHORISED DEALERS**

The offices in the Republic of the under mentioned banks are authorised to act, for the purposes of the Regulations, as Authorised Dealers in foreign exchange:

ABSA Bank Limited

Albaraka Bank Limited

Bank of Baroda

Bank of China Johannesburg Branch

Bank of Taiwan South Africa Branch

Bidvest Bank Limited

BNP Paribas SA – South Africa Branch

Capitec Bank Limited

China Construction Bank, Johannesburg Branch

Citibank, N.A., South Africa

Deutsche Bank AG, Johannesburg Branch

FirstRand Bank Limited

Habib Overseas Bank Limited

HBZ Bank Limited

Investec Bank Limited

JPMorgan Chase Bank (Johannesburg Branch)

Mercantile Bank Limited

Nedbank Limited

Sasfin Bank Limited

Société Générale

Standard Chartered Bank – Johannesburg Branch

State Bank of India

The Hongkong and Shanghai Banking Corporation Limited – Johannesburg Branch

The South African Bank of Athens Limited

The Standard Bank of South Africa Limited

## **Annexure D**

### **Exchange Control Circular No 13/2012**



South African Reserve Bank

Financial Surveillance Department

2012-09-20

**Exchange Control Circular No. 13/2012**

**Treasury Outsourcing Companies and Foreign Exchange Brokers**

Flowing from a market study of the foreign exchange dealings by Treasury Outsourcing Companies and Foreign Exchange Brokers in the domestic foreign exchange market, it has been decided to incorporate the following guidelines and procedures in the Exchange Control Rulings to ensure consistency and a level playing field for all participants.

In view of the aforementioned, Authorised Dealers are advised of the following amendments to the Exchange Control Rulings:

A new Section A.5 has been created as follows:

"A.5

**GUIDELINES AND PROCEDURES IN RESPECT OF TREASURY OUTSOURCING COMPANIES AND FOREIGN EXCHANGE BROKERS**

**(A) GENERAL**

Treasury Outsourcing Companies and Foreign Exchange Brokers must conduct their business through an Authorised Dealer. The guidelines for the conduct and regulating of Treasury Outsourcing Companies and Foreign Exchange Brokers, excluding Interbank Brokers who are appointed on application, are contained in this Section.

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**(B) LEGISLATION**

Authorised Dealers must ensure that their dealings with Treasury Outsourcing Companies and Foreign Exchange Brokers are strictly in accordance with the provisions of the Regulations, in particular Regulation 2 which stipulates *inter alia*, that no person other than an Authorised Dealer appointed by the Treasury, shall deal in foreign currency.

**(C) APPLICATION PROCEDURE**

(i) Treasury Outsourcing Companies and Foreign Exchange Brokers must obtain approval from the Financial Surveillance Department through an Authorised Dealer prior to commencing any foreign exchange business.

(ii) Applications to the Financial Surveillance Department should include, *inter alia*, the following:

a) Full details of the applicant company; and

b) the operating business model to be followed by the applicant.

**(D) CONDITIONS FOR CONDUCTING THE BUSINESS OF A TREASURY OUTSOURCING COMPANY AND FOREIGN EXCHANGE BROKER**

(i) Applicants may not buy or sell foreign currency for their own account and may not hold foreign currency or borrow or lend foreign currency;

(ii) applicants may only act in the market as intermediaries, never as principal and should accordingly match a principal client with an Authorised Dealer. Prior to such business being conducted they should be properly mandated to act as agents on behalf of their clients. In addition, the services provided by applicants may include identifying, monitoring and mitigation of foreign risks as well as completion and handling of documentation, general administration of client's foreign





exchange exposure and conclusion of spot/forward transactions with an Authorised Dealer;

- (iii) all foreign exchange transactions must be concluded and settled between the Authorised Dealer and the client, i.e. the client must at all times be principal to all the foreign exchange transactions. The settlement of foreign exchange transactions must, accordingly, be accommodated through the bank account of the client and not that of the Treasury Outsourcing Company or Foreign Exchange Broker;
- (iv) Authorised Dealers must ensure that all cross-border reporting and documentary evidence are at all times completed in the name of the client;
- (v) any fees charged for the services provided by the applicant must be invoiced and settled in Rand and be fully disclosed to the client;
- (vi) the requirements of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) should be complied with by the Authorised Dealer concerned;
- (vii) the Financial Surveillance Department has the right at any stage to carry out an inspection of the applicant's activities, records, management controls and any other aspects deemed necessary; and
- (viii) the Financial Surveillance Department may impose any further conditions it may deem necessary."

Replacement pages of the Exchange Control Rulings incorporating the relevant amendments are attached hereto.

  
**Deputy General Manager**

**Annexure E**

**List of Inter-Dealer Brokers**

## **List of Inter-Dealer Foreign Exchange Brokers**

FCB Barlow Butler (trading as ICAP South Africa)

South African International and Capital Market Brokers

Prebon Money Brokers

Protocol Treasury Services

Tradition

Reuters