

**CONSULTATION REPORT: FMA JOINT STANDARD 1 OF 2018 (REQUIREMENTS AND  
ADDITIONAL DUTIES OF A TRADE REPOSITORY)  
FINANCIAL MARKETS ACT NO 19 OF 2012**

1. In this consultation report, the following definitions apply:  
“**Authorities**” means the Financial Sector Conduct Authority and the Prudential Authority;  
“**Financial Sector Conduct Authority**” means the Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act;  
“**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);  
“**FMA Joint Standard 1 of 2018**” means FMA Joint Standard 1 of 2018: Requirements and Additional Duties of a Trade Repository; and  
“**Prudential Authority**” means the Prudential Authority established by section 32 of the Financial Sector Regulation Act.
2. The Authorities, acting in terms of section 104(1) of the Financial Sector Regulation Act, hereby publish this report on the consultation undertaken during the making of **FMA Joint Standard 1 of 2018** as set out in the comments 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

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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>

regulating the OTC derivative market in South Africa with the following proposed phased-approach to limit market disruption:

Phase 1 – Code of conduct, registration of market participants and central reporting

Phase 2 – Regulatory requirements for non-centrally cleared derivatives

Phase 3 – Standardisation, appropriate central clearing requirements and potentially central trading.

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, 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 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
  - 4.3 Conduct Standard for OTC derivative providers
  - 4.4 The reporting obligations in respect of transactions or positions in over-the-counter derivatives
  - 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 Joint Standard 1 of 2018: Requirements and Additional Duties of a Trade Repository. This Joint Standard has been published a number of times for public comments and in addition extensive stakeholder engagement has taken place. More specifically, the Joint Standard was first published on 4 July 2014 and a second draft was published on 5 June 2015. The Joint Standard was published for a third round of public comments on 21 July 2016. Comments were incorporated and the draft instruments were 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. Prior to submission for the parliamentary process, numerous and extensive engagements were held with market participants as outlined above.
  
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 Authorities' response to the issues.

## SCHEDULE

### COMMENT MATRIX: REQUIREMENTS AND ADDITIONAL DUTIES OF A TRADE REPOSITORY

#### RESPONSE TO COMMENTS SUBMITTED FOR THE FIRST PUBLIC CONSULTATION PROCESS FOR THE DRAFT MINISTERIAL REGULATIONS ISSUED IN TERMS OF THE FINANCIAL MARKETS ACT (ACT, 19 OF 2012)

DATE: 5 June 2015

CHAPTER VI: REGULATIONS APPLICABLE TO THE LICENSING OF TRADE REPOSITORIES		
Check Regs 11(1)(c)-(d) and 13(2)(b) for use of different terms, like “user requirements” and “participation requirements”. It is not clear which term includes what, for example “user”, “other user” (Reg 12(1)(b)), “relevant stakeholder”, “registrar”, “public”, “reporting entities” (Compare Reg 12(1)(j) and Reg 14(7)(c)). Why distinguish between “relevant stakeholders” and “registrar and the public”? Please clarify.		Agreed – wording aligned. TR section has been moved to Registrar’s Notice.
REGULATION 11: LEGAL BASIS		
(1)(a)	Reg 11(1)(c) refers to “data stored” and Reg 11(1)(a) refers to “transaction records” only, was this (different terminology/context?) intended? Not clear. “transaction records” – delete [transaction records], insert “data”	Terminology aligned to “transaction data”. The TR section has been moved to the Registrar’s Notice.

(1)(b)	Please clarify what “all relevant jurisdictions” refers to?	<p>The provision has been substantially amended – refer paragraph 2(c) of the Notice</p> <p>The TR section has been moved to the Registrar’s Notice.</p>
(1)(c)	Who does “relevant stakeholders” include? Please clarify. Instead rather define the duties and obligations of TR with regard to stored data.	<p>The Registrar’s notice will prescribed duties and obligations. This provision requires rights of stakeholders to be defined.</p> <p>TR section has been moved to Registrar’s Notice</p>

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

(2)(a)	Is this in connection with Reg 13(8)? Please clarify.	Both provides for duties in case of performing ancillary services. TR section has been moved to Registrar’s Notice.
(2)(b)	It is not clear to which risk “this risk” refers, please compare to Reg 12(1)(b).	See redrafted paragraph 2(3). The TR section has been moved to the Registrar’s Notice.

<p>(3)</p>	<p>Does this mean that a TR can choose that some aspects of its South African operations are not governed by South African law? This provision needs to be made much clearer as to what can be excluded and what not.</p> <p>Replace “rules” with “contracts”?  Insert: “apply to each <b>material</b> aspect”.  Delete [<del>operations</del>] and insert “services” to be consistent with Reg 12(1)(a).</p>	<p>This provision has been redrafted – please refer paragraph 2(3) in the Notice.</p> <p>The TR section has been moved to the Registrar’s Notice.</p>
<p>(4)</p>	<p>A legal opinion is not sufficient. Regulators should require that they have jurisdiction over all South African issues.  Insert “When, <b>in the view of the TR</b>, uncertainty exists” – otherwise who determines this?</p>	<p>See paragraph 2(3)  The TR section has been moved to the Registrar’s Notice.</p>
<p><b>REGULATION 12: ACCESS</b></p>		
<p>Insert in heading “Access and participation requirements” to make it consistent with rest of Regulation headings.</p>		<p>Agreed – corrected.  “user requirements are defined as requirements</p>

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

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

	Regulations and therefore the Board Notice is key in this regard. It is difficult (or impossible) to interpret this clause without the benefit of knowing what would be in the Board Notice. Is this clause necessary?	Notice.
(1)(h) and (i)	The Reg does not give detail on fees. What is meant by “cost related” – is this cost plus reasonable mark-up? Is the intention not that a “reasonable” price be charged? Please clarify. It is not clear why specific mention is made of “discounts, benefits, reductions”. Is the detail or principle relevant?	This provision has been removed.  The TR section has been moved to the Registrar’s Notice.
(1)(i)	Covered under s57(2)(d) of FMA.  Who are the “reporting entities”? Replace instead with “user”.	This provision has been removed.  The TR section has been moved to the Registrar’s Notice. Please refer to the Notice.
(2)(c)	Please indicate what exactly are requirements in terms of publication (see also FMA (s55(1)(g))?	Please refer to the Notice.

## REGULATION 13: GOVERNANCE

<p>The governance provisions in the FMA (s55(1)(b)) are intended to support stability of the financial system (in broad terms) and also deal with the public interest consideration (also broad). This should be balanced with the objectives of the relevant stakeholders. It is not clear from the Regulations if the TR should be hosted in a separate legal entity and what the policy considerations are. Could this be clarified upfront? It may be envisaged that a TR would be a division within another market infrastructure and hence its capital requirements would be calculated within those of the total enterprise.</p> <p>Reg 13 only refers to the ownership structure (also 13(1)(d)), organisational structure (Reg 13(1)(e)) and controlling body (Reg 13(3)) and internal governance policy without giving policy direction on what the ideal TR structure would be. The “suitability of shareholders” must be proven to the Registrar (Reg 13(9)), and also see s 67 FMA on limitation of shareholding. It is submitted that the ideal structure should be clarified upfront.</p>		<p>The Act requires that a trade repository must be a juristic person. This implies that it must be a separate legal entity.</p> <p>A specific structure will not be prescribed.</p> <p>The TR section has been moved to the Registrar’s Notice.</p>
<p>The governance requirements for a trade repository (“TR”) are onerous and not appropriate or proportional given the function, purpose and risk profile of a TR. For example, it is submitted that the requirement for both an internal audit function and compliance is excessive. Inappropriately onerous requirements will discourage established TRs from licensing or seeking recognition from the South African regulators.</p>		<p>The requirements are aligned to international requirements as well as other financial institution requirements.</p>
<p>(1)(g)</p>	<p>Duplication with Reg 14</p>	<p>Disagreed – the provision has been amended somewhat however. Please refer to Requirements and Duties of a Trade Repository Notice.</p>
<p>(1)(h) and (i)</p>	<p>With regard to “performance evaluation” and “performance accountability”, is it the intention to drill down to such a detailed level in the Regulations? Compare this to</p>	<p>We believe these requirements are necessary for proper governance.</p>
<p>(2)(a)</p>	<p>All governance requirements should be “clear” so why restrict it to certain sub-regulations?</p>	<p>This requirement relates to “clear” reporting lines specifically</p>

(2)(b)	<p>Transparent to “public” is too broad, and in some cases transparency to “users” may also be too broad. Not all governance arrangements are reflected in public documents. Full transparency to Registrar is in order.</p> <p>Delete “shareholders” and replace with “<b>members</b>”. Any juristic person may apply to become a TR, not only a company (FMA). See for consistency Reg 13(3)(b).</p>	<p>It is an international requirement that the governance arrangements are publicly available.</p> <p>Agreed.</p>
(4)(b)	Duplication with regulation 13(5).	Disagree
(4)(c) and (f)	Duplication with regulation 14.	<p>Agree w.r.t. to (f), internal audit must be separate.</p> <p>Risk control is only one of the functions.</p>
(4)(d)	Duplication with s55(1)(i) under FMA.	Agreed, the provision has been deleted.
(7)(b), (c), (e) and (f)	Repetition with 13(5)	Disagree
(8)	Definitions must be provided for clarity	Some of the expressions are defined, other concepts are clear enough.
(9)	<p>Replace “shareholders” with “<b>members</b>”.</p> <p>Define “qualifying holding” with reference to s67 of the FMA.</p>	Members has been included but Act refers to shareholders also.
(11)	<p>Clarify who these “persons” are referred to in sub-regulation (6).....</p> <p>Incorrect cross-reference. Should it be (10)?</p>	Agreed

(10) to (12)	It is not clear if the same provisions will apply to the “external TR”, since these provisions refer to the “licence” and “supervisory functions of the registrar”. Please clarify.	The provisions do not apply to external trade repositories.
<b>REGULATION 14: RISK MANAGEMENT</b>		
Regulation 14 deals with risk management. This is in line with IOSCO FMI Principle 3, and ESMA art 79 as to operational risk. Note that TR business risk is not covered for FMI Principle 15. The requirements regarding systems, policies, procedures and controls come from Principle 17. There is a lot of repetition in the Regulations as compared to the provisions in the FMA.		Principle 15 is provided for in paragraph 4 of the Registrar’s Notice.
(2)(a)	Repeat of s55(1)(h) of FMA.	Regulation 14 (or the substitution in the Notice) is intended to enhance (and further prescribe as per s55(2)(c)) the general duty contained in 55(1)(h)

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

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

(1)(b)	It does not make sense that the TR must provide a report to its own “controlling body”. The Registrar?	We do not agree. The provision is necessary for proper governance.
(1)(c)	This is rather a contract issue.	The aim of this provision is to ensure that outsourcing arrangements are properly governed.
(1)(e)	Insert additional wording: “(e) maintain access to the books and records of the service provider relating to the outsourced activities and <b><u>ensure that the registrar is able to access the records to the same extent and within the same periods as if they were maintained within the Republic.</u></b> ” Please note that this principle should also apply to the CCP in Reg 58.5.	Agreed

<p>(1)(j)</p>	<p>This section merely requires the requisite market infrastructure to registrar all the necessary in (a) to (i) and is adhered to and places no positive obligation on the registrar to verify that these outsourcing arrangements are compliant.</p> <p>While it is implied that the registrar will have ultimate oversight of these functions, we do not believe that it is prudent to allow a relaxation of any form especially where a potential outsourcer may not fall within the ambit of the registrar ordinarily.</p> <p>It is therefore suggested that the regulation be amended to include a review of these arrangements by the registrar in its review of the trade repositories operations.</p>	<p>In terms of section 6(2) of the Act the registrar must supervise compliance with the Act (which includes these Regulations). Accordingly the registrar must supervise this obligation.</p> <p>The TR section has been moved to the Registrar's Notice.</p>
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July 2016

**Commentators:**

- DTCC
- Banking Association of South Africa (BASA)

Respondents	Section	Comments	Responses
DTCC	General comments	<p><b>Requirements and duties of a Trade Repository- Establishment of equivalent reporting regimes</b></p> <p>With reference to the requirements and duties of a trade repository set out in the Trade Repository Requirements Schedule, DTCC recognizes that they are largely similar with those of other jurisdictions and are in line with the CPMI-IOSCO guidelines for financial market infrastructures. This is good basis to enable trade repositories that are operating in other jurisdictions to support South African reporting obligations.</p> <p>In order to further facilitate the process of recognizing external trade repositories, we would propose that the National Treasury discuss with other foreign regulators who love a live trade reporting regime to establish list of equivalent regimes that meet both your supervisory and trade reporting requirements.</p> <p>Proposal for supporting South African reporting regime DTCC has established the technology and required governance for reporting of derivatives trades in the following jurisdictions:</p> <ul style="list-style-type: none"> <li>• US — Reporting started October2012</li> <li>• Japan—Reporting started April 2013</li> <li>• Australia—Reporting started October 2013</li> <li>• Singapore — Reporting started November 2013</li> <li>• Hong Kong — Reporting started December 2013</li> <li>• Europe — Reporting started February 2014</li> <li>• Canada — Reporting (Ontario, Quebec and Manitoba) started October 2014</li> </ul> <p>However, even with this global network of trade repositories in place,</p>	The comments are noted.

Respondents	Section	Comments	Responses
		<p>there remain challenges to the implementation of the original G20 mandate due to fundamental differences in reporting processes and reportable content.</p> <ul style="list-style-type: none"> <li>• Reporting process: There is no common scope across jurisdictions for the processes supporting the reporting e. g. OTC and/or Exchange Traded D, T+1 or 'real time' reporting, or reporting by one or both counterparties.</li> <li>• Reporting content There is limited common agreement across jurisdictions on the data fields to be reported or sometimes the format in which the fields should be reported Where possible, DTCC recognizes internationally agreed open standards such as ISO for legal Entity Identifiers, currencies etc.</li> </ul> <p>As a result of this disaggregation of data and difference in process, as well as the significant costs to the industry of trade repository development and support, and in order to further the original goal of the G20, DTCC's intent with regard to offering Trade Repository solutions in new jurisdictions is as follows:</p> <p>1. Location of data center and associated Trade Repository: DTCC operates 3 global data centers, one in the Americas (US), one in Europe (NL) and one in Asia (Singapore). Using these data centers, we can operate 2 models.</p> <ul style="list-style-type: none"> <li>• A 'hub and spoke' model such as that for Australia (hubbed from Singapore) and Canada (hubbed from the US) where services are provided for the market from a TR associated with one of those data centers and located outside of the local jurisdiction Notwithstanding issues of data confidentiality, future DTCC TR services will only be developed from one of these 3 global hubs. This may require specific local reporting regulations and revisions of laws to allow data to be stored off-shore (jurisdictions can decide on their primary and secondary site locations).</li> </ul>	

Respondents	Section	Comments	Responses
		<ul style="list-style-type: none"> <li>• An 'agency' model such as that in place for Hong Kong where the global DTCC service can be used to capture relevant transactions that are then fed into the locally built and operated TR</li> </ul> <p>2. Reportable data fields: DTCC will provide a single standard reporting template from the currently supported jurisdictions. This template will reflect the experience and best practices for trade reporting that have evolved since inception. Adoption of a standardized template will encourage the process of harmonization of reporting across jurisdictions.</p> <p>3. Reportable data standards: Data submission validation would be conducted to ensure a high standard of data is ingested by the TR and reflected on the standard reports templates provided to the new jurisdiction regulator.</p> <p>4. Data sharing: Whilst not a prerequisite, we would encourage all regulatory authorities to consider the establishment of data sharing agreements such as that between MAS in Singapore and ASIC in Australia. As a matter of course, such agreements should be made with the regulator of the jurisdiction in which their selected 'hub' operates.</p> <p>5. TR approval via 'Passporting': We refer here to the activity of passporting as recently defined by the IOSCO cross border working group. As all 3 hub locations are within the regulatory jurisdiction of a member of the OTC Derivatives Regulators' Forum (ODRF) and the OTC Derivatives Regulators Group (ODRG), we suggest that TR services already authorized in these jurisdictions should be considered to meet 'international' standards for operation and as such can be passported into other jurisdictions that are members of the same regulators' groups or aspire to join these groups.</p>	

Respondents	Section	Comments	Responses
		<p>6. Recognized Agents: Where an agency model is implemented, the TR entities operating in the 3 hubs would be recognized by the new jurisdiction as reporting “agents” for those firms that wish to centralize their OTC reporting processes in that region.</p> <p>From a user perspective, commonality of process and data standards will also facilitate a more effective and cost efficient compliance with local regulatory requirements using common technology solutions globally.</p> <p>In this manner, we would hope to encourage the global community of counterparties and regulators to move towards an increasingly common core set of reporting standards and processes in facilitation of ultimately meeting the transparency and systemic risk goal of the G20. This should logically also make implementation of reporting in new jurisdictions a more standardized process that is easier to execute.</p> <p>DTCC believes the “hub and spoke” model is most appropriate for South Africa. In this model, we would propose to support South African reporting compliance as an external trade repository. As mentioned above, we would recommend that the National Treasury establish a list of equivalent regimes that meet your supervisory and trade reporting requirements. Upon the establishment of equivalent reporting regimes, DTCC believes that we would be able to support South African reporting compliance using our global network of TRs. All of our TRs globally are licensed and regulated by G20 regulators and we follow the CPMI-IOSCO principles for financial market infrastructures.</p> <p>Alternatively, should a local TR be appointed in South Africa, we would propose a mutually beneficial “Agency” relationship with that local TR operator such that international firms already reporting to a DTCC TR could leverage their existing investment to meet South African obligations. Under this arrangement, trades submitted through a</p>	

Respondents	Section	Comments	Responses
		<p>DTCC TR would be validated against an existing industry standard template and would reflect international best practices on formats and content. This information would be delivered via a standard and automated interface to the local TR operator. The South African authorities would interact directly with the local operator from whom agency-reported and direct reported data would be presented in an integrated report.</p> <p>We would be happy to work with you to find the most appropriate model for your regime.</p>	
Banking Association of South Africa	Section 55(2) (c) and 57 (3)	<p><b>Transparency</b></p> <p>We do not believe that it is, given the size and relative illiquidity of the South African financial market, in the best interest of market participants to introduce real time trade reporting and/or full transparency to the public and its users.</p>	Please see responses below.
Banking Association of South Africa	Section 55(2) (c) and 57 (3) – 10(d) Safeguarding and recording	<p>This provision should be amended as follows:</p> <p>“set a service-level target to record to its central registry, transaction data it receives from users, at a minimum, within one business day”.</p>	Agreed, paragraph has been amended 11(d) to provide for reporting within one business day.
Banking Association of South Africa	11(a) Disclosure of transaction data by trade repository	<p>This provision should be amended as follows:</p> <p>“have objectives, policies and procedures that support the effective and appropriate disclosure of transaction data to the registrar and other supervisory authorities, as required;”</p>	Disagree, the market transparency supports investor protection. This is required in Principle 24 of the CPSS-IOSCO Principles for Financial Market Infrastructures

**April 2018**

**Commentators:**

- Banking Association of South Africa
- JSE Limited

Respondents	Section	Comment	Response
Banking Association of South Africa	<b>General</b>	<p>We note that the Notice is only applicable to an applicant for a trade repository licence and a licensed trade repository. Given the consequential amendments to the FMA with the introduction of the licensing regime of an external trade repository, we are of the view that this Notice should be aligned with those changes. As such, we propose that this Notice also be applicable to the external trade repository as that market infrastructure (if granted a licence by the South African regulators), we assume, will have to comply with the requirements as set out in this Notice.</p> <p>There remains uncertainty in the market with regards to whether there will be a licensed trade repository in our South African market by the time this Notice comes into effect. The authorised ODPs will have an obligation to report its transactions to a licensed trade repository and will be unable to comply with this requirement in the absence of a licensed trade repository.</p> <p>We seek clarity or guidance from the regulators in this regard.</p>	<p>The comment is noted. Please see attached the revised Joint Standard. Paragraph 2 has been inserted to clarify that the requirements apply to a licensed external TR or an applicant.</p> <p>Noted with regards to availability of a licensed TR - see the transitional requirements.</p>

Respondents	Section	Comment	Response
JSE Limited (round 2)	<b>s2(1)(c)</b>	Incorrect referencing to paragraph 7(6)	Reference amended - paragraph 5(6)
JSE Limited (round 2)	<b>Outsourcing 1(h)</b>	<p>This section has not been numbered and should be numbered as '8'. The succeeding sections should thus be numbered sequentially.</p> <p>Amend as follows:</p> <p>(h)take appropriate measures to determine that a service provider to which key services or systems are outsourced-</p> <p>(i) establishes an equivalent business continuity plan including disaster recovery plan to that, which the trade repository must fulfil under this Notice;</p> <p>(ii) maintains and periodically tests its business continuity plan, including a disaster recovery plan; and</p> <p>(iii) ensures that the service provider protects the trade repository users' confidential information.</p>	Amendments have been incorporated, please refer to the revised Joint Standard.
JSE Limited (round 2)	<b>Section 11(2)</b>	The reference to paragraph 4(a)(iii) and (iv) is incorrect.	Noted. Please see the revised Joint Standard.
Banking Association of South Africa	<b>Definition</b>	<p><b>“Financial Services Board”</b></p> <p>The Financial Services Board will cease to exist in the new Twin peaks regulatory regime and the Financial Sector Conduct Authority will be established. In light therefore, we propose the deletion and substitution of the definition of “Financial Services Board” with the definition of the “Financial Sector Conduct Authority”.</p> <p>“Financial Sector Conduct Authority” means the authority established in terms of section 56 of the Financial Sector Regulation Act;</p>	Amended - deleted reference to FSB.

