

COMMENTS AND RESPONSE DOCUMENT

RESPONSE TO COMMENTS SUBMITTED FOR THE PUBLIC CONSULTATION PROCESS FOR THE
DRAFT MARGIN REQUIREMENTS FOR OTC DERIVATIVE TRANSACTIONS

The following comments as per the matrix below have been captured as at 20 September 2017.

COMMENTATOR	SECTION	COMMENTS	RESPONSE
GENERAL COMMENTS			
Banking Association of South Africa (BASA)		<p>Under Twin Peaks, the FSB will be the regulatory authority responsible for the supervision of market conduct while the SARB will be the Prudential Regulator.</p> <p>Please advise who will be the regulatory authority responsible for the enforcement of the Margin requirements?</p>	The margin requirements will be issued as a joint standard by the FSCA and PA. The two authorities may enter into a MOU to delegate responsibilities in respect of the margin requirements.
Banking Association of South Africa (BASA)		<p>The 1st page of the Draft Notice 2017 refers to “Margin Requirements for OTC Derivative Transactions and not “Margin requirements for non-centrally cleared OTC Derivative Transactions”</p> <p>The 1st page of the Draft Notice 2017 refers to “Under section 6(7)(d) of the FMA, however on page 2 “regulations” means the Regulations prescribed under section 5(1)(a) of the Act?</p>	<p>Noted. The draft Joint Standard has been amended accordingly.</p> <p>The previous draft Board Notice was issued pursuant to section 5(1)(a) read with s6(7)(d) of the FMA. The former relates to the powers of the Minister to make Regulations, which the Minister has done. In the previous Board Notice, the margin requirements related to the securities services as prescribed by the Minister in the Regulations, and represented the further requirements the Authority sought to impose in terms of s6(7)(d). The latest draft Joint Standard that is being published for public consultation is issued in terms of the Financial Sector Regulation Act and extends to the financial institutions that are defined as “covered entities”.</p>
Banking Association of South Africa (BASA)	.	We understand that based on the previous scope representations made, a number of entities now fall outside of the scope of the amended margin rules. These non-impacted entities include particularly non-	The comment is noted. Please see the revised Joint Standard.

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		<p>financial firms (corporates) using derivative markets to hedge commercial risk, multilateral development banks, and sovereign market participants, including central banks and other state-backed bodies.</p> <p>We believe that these scope limitations more closely align with international requirements, and the purpose of the reduction of systemic risk</p>	
HSBC		<p><u>Place for Holding Collateral</u></p> <p>We request clarification regarding where collateral must be held and whether it can be held in an offshore account.</p>	The Joint Standard would need to comply with existing legal requirements, including the Exchange Control regulatory framework.
INVESTEC	Timelines	The timelines contemplated in this draft seem overoptimistic and aggressive, especially the 1 July 2018 deadline for variation margin. It would seem unreasonable for the Regulator to expect industry to adequately plan and prepare based on a draft version, especially since it is not clear which entities are in scope (see comments in respect of definitions). The amount of work required would be substantial for some market participants. Also consider that those entities with global remit will be focussing on compliance with MiFID by 1 January 2018.	Please see the revised timelines in the Joint Standard. The margin requirements were initially released in the public in 2015, and again in 2017.
Old Mutual Invest		The timing of the publication and coming into effect of this Notice is crucial – it is critical that the regulations dealing with Central Clearing of OTC derivatives is finalised first and for the central clearer(s) to be up and running before this notice comes into effect. This Notice only applies to OTC transactions that are not centrally cleared and therefore, if promulgated before central clearing comes into effect would mean compliance with significant operational impacts.	The comment is noted. The regulatory framework for the licensing of a CCP is in place. The Authorities are currently conducting an assessment of the OTC derivative market in order to be a position to provide further guidance on which transactions to mandate for central clearing. The margin framework will provide additional measures to deal with the build-up of systemic risks in the market. .

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		Central Clearing (with enough time to transition to central clearing) should be in effect before this Notice.	
DEFINITIONS			
Banking Association of South Africa (BASA)	Counterparty	We understand that “retirement funds” are not included in the definition of counterparty?	At this stage, pension funds will not be specifically included as “covered entities”. However, the Authorities may expand on the scope of covered entities in the future.
Banking Association of South Africa (BASA)	Counterparty	(a) The definition is restrictive and recognises a counterparty within the South African context. The definition must be wide enough to apply to equivalent categories of “covered entities” in other jurisdictions. <ul style="list-style-type: none"> We interpret these requirements as having a cross-border implication as envisaged in 2.3. 	Please see the revised definition of “covered entity”.
		(b) The definition must clearly reflect Regulator intent and must align similar intent with the overall regulations intended for counterparties to establish appropriate market conduct standards especially in the wholesale environment.	The comment is noted.
		(d) The categorisation of counterparty does not include Corporate client. <ul style="list-style-type: none"> Please advise if this category of client type has been deliberately excluded from the scope of definition. Is it the intention that a corporate client who is active in the affected transactions may be caught within the scope of application under paragraph (i)? If the response is yes, what then would be the circumstances under which such provision will apply? If a FI deals with a Corporate Client and the applicable 	Please see the revised definition of “covered entity”. The entities listed in the definition will be captured in terms of the framework.

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		thresholds are met, what are the implications?	
		(e) We believe that the margin requirements can be applied with due regard to the other related OTC regulations to which the affected providers are subject.	The comment is noted.
Banking Association of South Africa (BASA)	Counterparty	<ul style="list-style-type: none"> •All financial service providers (FSPs) authorised to provide financial services in derivative instruments in terms of the FAIS Act are currently caught within the definition of “counterparty”. This would presumably include those FSPs that are not regarded as systemically important and do not introduce significant systemic risk into the financial system. This is at odds with the main objective of margin requirements, being the reduction of systemic risk. This will also create the risk of arbitrage of trading away from South Africa – if entities are not impacted under offshore rules, and required to exchange margin only pursuant to the South African rules, this could encourage these entities to trade away from South African banks (which will in turn have an unintended negative impact on liquidity locally). We recommend that the scope of impacted FSPs should be limited through appropriate thresholds to ensure that only “systemically important” FSPs are subject to the margin requirements. •We would note that a number of offshore jurisdictions currently apply their margin requirements to “covered entities” (including financial institutions) belonging to groups exceeding certain derivative trading thresholds (by way of example, the Canadian margin rules include a threshold of \$12 billion dollars, Hong Kong employs a HKD 15 billion dollar threshold, and Australia employs a 3 billion AUD threshold). Employing a similar threshold locally would alleviate the operational burden 	The comment is noted. Please see the revised definition of “covered entity” in the draft Joint Standard. The margin requirements will be applicable to covered entities that breach the relevant thresholds i.e. see the thresholds set out in the phasing in of initial margin requirements and the thresholds applicable for the exchange of variation margin. In addition, the Joint Standard prescribes a further R500 million threshold for initial margin and a R50 million threshold for all margin.

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		<p>on non-systemic parties, who would not be required to exchange margin.</p> <ul style="list-style-type: none"> • This would align more closely with the true intention of margining rules, being the mitigation of systemic risk, whilst not being unnecessarily onerous or inadvertently impacting liquidity. 	
Banking Association of South Africa (BASA)	Group	<ul style="list-style-type: none"> • This definition makes reference to that defined in the Companies Act. • We are of the view that within the context of these requirements, a literal application of the Companies Act will bring within scope of application, the entities which are separately managed or operated. The FSR Act provides for financial conglomerates to be “designated” and for entities in a group of companies to contest their inclusion and to make representations to the Regulator in this regard. We are of the view that the OTC Regulations should be harmonised to ensure a proper application of and calculation of the IM/VM thresholds. • What would be a proper consideration or application of these requirements within the context of a group? 	<p>Covered entities in the same group structure that enter into a non-centrally cleared OTC derivative transaction will be impacted by the Joint Standard.</p> <p>In circumstances where a covered entity enters into a non-centrally cleared OTC derivative transaction with a non-covered entity in the same group, the Joint Standard is not applicable.</p>
HSBC	Foreign Counterparties	Section 1 of the Requirements defines a counterparty as, inter alia, banks and other financial institutions established and authorised under South African Acts of Parliament. Are we to assume that if an OTC derivatives provider trades with foreign banks and financial institutions established and authorised under foreign legislation that margining is not required?	Please see the revised definition of “covered entity”.
INVESTEC	Provider	We assume it is the Regulator’s intention to primarily bring banks into scope for most of the provisions under the regulations and that therefore the reference to	Provider refers to ODPs – as defined in the FMA Regulations. An ODP may not necessarily only be a bank.

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		<p>“provider” is intended to cover banks. Global regulation has drawn a clear distinction between banks and all other market participants. The obligations that follow from this distinction for each group are therefore clearly defined. This is a fundamental issue that must be resolved as throughout the regulations obligations are in some places placed on “providers” only.</p>	
INVESTEC	Counterparty	<p>The definition of “counterparty” must be more clearly defined to reflect the Regulator’s intention. From this it should then follow through the document which obligations belong to which counterparty type.</p> <p>Based on the current draft we have assumed that pension funds and quasi-sovereigns are <u>not</u> in scope.</p> <p>(d) – must be clarified to refer to a <u>portfolio</u> of a collective investment scheme (not the manager of a CIS).</p> <p>(e) – clarify what entities are intended to be captured and clarify further that this is only where these FSPs are acting as principal</p>	Please see the revised definition of “covered entity”
INVESTEC	Group	<p>Given that IM and VM thresholds are determined on a group basis, we would like to understand what the Regulator’s intention is in aggregating exposure at group level. This grouping may have unintended consequences in situations where the purpose for which they are set up and operate are inherently different both from a capital reserving and risk profile perspective. The consequence is that companies will be brought into scope in respect of IM purely by virtue of this grouping which will inadvertently burden entities that would otherwise fall well below the threshold. The notice needs to make provision for groups within groups, especially where entities are not inter-related or interdependent and are separately managed. The FSR</p>	In terms of the BCBS-IOSCO framework, the requirement that the threshold be applied on a consolidated group basis is intended to prevent the proliferation of affiliates and other legal entities within larger entities for the sole purpose of circumventing the margin requirements. In addition, covered entities in the same group structure that enter into non-centrally cleared OTC derivative transactions will be impacted by the Joint Standard.

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		Act makes provision for financial conglomerates to be “designated” and for entities in a group of companies to contest their inclusion and make representations to the Regulator in this regard. We would suggest that a similar mechanic be utilised in the OTC Regulations to determine whether an entity(ies) fall within the definition of “group” for the purposes of calculating the IM/VM threshold. Alternatively, we would suggest that a mechanic be included whereby entities are permitted to motivate to the FSB to be excluded from a “group” or be included as part of a separate sub-group.	
Macquarie Securities	Clause 1(e)	Please confirm that when such an entity is merely acting as agent it is not captured as a counterparty, and the margin requirements are not applicable if the underlying principal for which it acts is not captured under the definition of counterparty.	Agreed. The entity will be captured if it is transacting as principal.
Old Mutual Invest	Counterparty	The definition is not aligned to the definition in the draft Regulations and in particular excludes foreign counterparties. The definition of “counterparty” in this Notice should be aligned to the definition in the draft Regulations.	The comment is noted. Please see the amended definition of “covered entity”.
Peregrine	Counterparty 1(d)	It is our understanding that each portfolio (as defined in the Collective Investment Scheme's Act) is a single ring-fenced liquidation remote entity. The "manager" of the portfolio act as fiduciary manager for each scheme. It would be more appropriate to include the portfolio in the definition of "counterparty" rather than to include the manager of the CIS scheme.	Not accepted. The intention is to capture the individual or entity responsible and not the product or portfolio.
	1(e)	A financial services provider ("FSP") authorised for derivatives in terms of the FAIS Act may registered for three types of services: Intermediary, Advice and Discretionary investment services.	Please see earlier comment. The intention is to capture these entities if they transact as principal.

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		<p>In all three cases the FSP delivers agency services to its clients (e.g. private individuals, trusts, retirement funds, CISCA funds, companies.) The FSP do not act as a principal in these client transactions.</p> <p>It is proposed that FSP's are not included in the definition of "counterparties" as their relevant clients are already specified as counterparties.</p> <p>See also paragraph 4.1 (3) (d) of the draft notice that discusses the relationship between a financial services provider and the investment funds.</p> <p>If it is the intention of the regulator to include all FSP's in the definition of counterparties due to the key role that FSP's play in financial markets it would be more appropriate to include all FSP's and not only those that are registered for derivatives.</p>	
Peregrine	"retirement funds"	We are of the opinion that pension funds, provident preservation funds and retirement annuity funds as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956) should be included in the definition for "counterparty".	The intention is not to capture these entities at this stage.
Standard bank	Counterparty	All financial service providers (FSPs) authorised to provide financial services in derivative instruments in terms of the FAIS Act are currently caught within the definition of "counterparty". This would presumably include those FSPs that are not regarded as systemically important and that do not introduce significant systemic risk into the financial system .This is at odds with the main objective of margin requirements, being the reduction of systemic risk. This will also create the risk of arbitrage of trading away from South Africa - if entities are not impacted under offshore rules, and required to exchange margin only pursuant to the South African rules, this could encourage these	Please see earlier response and the revised definition of "covered entity".

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		<p>entities to trade away from South African banks (which will in turn have an unintended negative impact on liquidity locally). We recommend that the scope of impacted FSPs should be limited through appropriate thresholds to ensure that only "systemically important" FSPs are subject to the margin requirements.</p> <p>We would note that a number of offshore jurisdictions currently apply their margin requirements to "covered entities" (including financial institutions) belonging to groups exceeding certain derivative trading thresholds (by way of example , the Canadian margin rules include a threshold of \$12 billion dollars, Hong Kong employs a HKD 15 billion dollar threshold, and Australia employs a 3 billion AUD threshold) . Employing a similar threshold locally would alleviate the operational burden on non-systemic parties, who would not be required to exchange margin. This would align more closely with the true intention of margining rules, being the mitigation of systemic risk, whilst not being unnecessarily onerous or inadvertently impacting liquidity.</p> <p>In the definition of "covered entity", please clarify that "provider" is a reference to an authorized OTC derivative provider.</p>	
APPLICATION AND EXCLUSIONS			
Banking Association of South Africa (BASA)	Clause 2.1 (3)	<ul style="list-style-type: none"> •The inclusion of FX forwards and swaps in the scope of the requirement to exchange variation margin is not reflective of the final global standards and most major jurisdictions have not finalised the standards in this way. •We encourage a level playing field globally to avoid regulatory arbitrage and competitive distortions. 	The BCBS-IOSCO framework provides that "the margin requirements described in this paper do not apply to physically settled FX forwards and swaps. However, the BCBS and IOSCO recognise that variation margining of such derivatives is a common and established practice...accordingly the BCBS and IOSCO agree that standards

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		<ul style="list-style-type: none"> •As a result, FX forwards and swaps should not be in scope of VM. •We recommend the definitions used in EMIR be used in this Draft Notice 	<p>apply for VM to be exchanged on physically settled FX forwards and swaps in a manner consistent with the final policy framework set out in this document...the BCBS has updated the supervisory guidance for managing settlement risk in FX transactions. The update to the supervisory guidance covers margin requirements for physically settled FX transactions and swaps.”</p> <p>The Joint Standard will allow for a transitional period for FX forwards and swaps to be subject to VM.</p>
Banking Association of South Africa (BASA)	Clause 2.2	<ul style="list-style-type: none"> •Section 2.2 includes a reference to “<i>relevant transactions</i>” when calculating aggregate gross notional amounts – what are relevant transactions? These should include only non-centrally cleared derivatives transactions between related entities 	Agreed – it is intended to refer to non-centrally cleared OTC derivative transactions.

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Banking Association of South Africa (BASA)	Clause 2.2 (2) (a)	<ul style="list-style-type: none"> •We require the clarification with respect to the definition of “group” to enable the determination as to whether the affected transactions fall within or out of scope in relation to the R1 billion threshold applicable to covered entities within the group. •We recommend that a branch of a foreign bank based in SA remains exempt for all transactions with any branch in the same group •Provided that both of the group entities located in appropriate jurisdictions and subject to appropriate netting agreements it makes no sense to limit the exposure to a specific outstanding notional amount. •We also recommend that if this is not accepted, such margin to be calculated on an outstanding mark to market basis. (I.e. when outstanding market to market exposure reaches for example R100m). •Alternatively we would recommend an intragroup threshold of R100 billion notional. <p>Both the IOSCO principals and EMIR regulations do not included a threshold level.</p>	<p>The Authorities do not support a complete exemption from the margin requirements for intra-group transactions.</p> <p>The BCBS-IOSCO framework recognises that “transactions between a firm and its affiliates should be subject to appropriate regulation in a manner consistent with each jurisdiction’s legal and regulatory framework.”</p> <p>We note that different jurisdictions have adopted different approaches on intra-group transactions. For example in Canada intra-group trades are not subject to the margin requirements, whilst in the UK provision is made for certain conditions for the exemption of intra-group transactions and an application for an exemption for intra-group transactions in certain instances.</p> <p>The preferred approach of the Authorities is that intra-group transactions below a certain threshold as set out in the draft Joint Standard are exempt from margin requirements, but transactions above the threshold will be subject to margin requirements.</p>
Banking Association of South Africa (BASA)	Clause 2.3 (1)	<ul style="list-style-type: none"> •The equivalence regime is a positive step, but as proposed it is very onerous. •We are concerned that the process associated with determining equivalence is complex, costly and time-consuming – namely that the derivative “provider” must lodge an application for permission, which has to 	<p>The Joint Standard does not expressly provide for a substituted compliance framework. However, the framework would allow for a cross-border OTC derivative transaction to take place, if the domestic covered entity has complied with the</p>

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		<p>include an estimate of its likely trading activity with the non-SA counterparty and a legal opinion that the foreign jurisdiction has implemented BCBS-IOSCO equivalent rules.</p> <ul style="list-style-type: none"> •Furthermore, it is not clear whether these steps have to be taken for each cross-border trade or to each cross-border counterparty relationship. <p>We read section 2.3.1 as requiring a trade by trade approval of OTC derivatives with foreign counterparties. This is extremely onerous and in a fast-moving global markets environment and would halt trading. This approval requirement would have an enormous disruptive effect, and should be reconsidered.</p> <p>We recommend that a list of margin compliant jurisdictions and/or laws be compiled, and that trading with counterparties in these jurisdictions under their margin rules be deemed to comply with the margin notice (for example, when trading with EU counterparties under EMIR margin rules, we should not be required to additionally comply with the margin notice).</p> <p>Alternatively, covered entities should be required to make this decision (which should be based on some kind of equivalence of outcomes) and keep a record of their reasons. Any decision, whether made by the covered entity or the regulator (which we do not support), should be made on the basis of the counterparty, and trade-by-trade (i.e. deal-specific) approval should be avoided.</p>	<p>requirements as set out in the Joint Standard.</p> <p>It is not intended that the requirements set out in 2.3 relate to each cross-border trade - but rather to each counterparty or covered entity in the foreign jurisdiction – we therefore do not anticipate a trade by trade approval process.</p> <p>Please see the revisions to the draft Joint Standard.</p> <p>In terms of the Joint Standard, a domestic covered entity will be allowed to trade with a foreign covered entity, even where the foreign covered entity is located in a non-netting jurisdiction, provided the transaction falls below the threshold to be determined by the Authorities. If the threshold is exceeded, the trade can still take place provided the covered entity has submitted an application to the Authority to proceed</p>

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		<ul style="list-style-type: none"> •The de minimus threshold of activity with counterparties in jurisdictions with no netting enforceability should replicate offshore thresholds to ensure a level playing field. This threshold should be set in a way that is easy to calculate and verify. If the thresholds are exceeded, there should be the possibility to collect margin (on a gross basis) without posting it. Where there is no possibility to post or collect margins, the trade should be allowed if the ratio of non-margined trades entered into by the covered entity does not exceed a percentage of total trades (as incorporated in EMIR). This will give the covered entity some leeway to trade with entities in non-netting jurisdictions, and will not exclude the majority of our current African business. As with the comment above, the covered entity should be required to make the relevant determination in terms of its own legal review and procedures, without recourse to the registrar, which recourse will likely be time consuming and may have the unintended consequence of halting trade. •We encourage our Regulator to adopt an approach to equivalence that facilitates SA entities' access to global OTC derivative markets. Jurisdictions that have implemented rules in line with the BCBS-IOSCO standards should be automatically equivalent and this status should not be subjected to repeated, independent legal ratification. Under such an approach, a foreign covered entity in an equivalent jurisdiction that is required to apply its home jurisdiction's rules could do so for its trades with local SA entities, or SA branches of other foreign entities. This approach to equivalence has been adopted in other jurisdictions' margin rules and eases market 	with the transaction/s.

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		<p>participants' concerns about their ability to continue trading on a cross-border basis without interruption or duplicative requirements.</p> <ul style="list-style-type: none"> •We would also suggest that the Registrar could also look to approve certain market standard agreements, such as an ISDA with a specific Credit Support Annexure entered into with counterparties in specified jurisdictions. (This is by no means a suggestion to ignore the equivalence process as referred to in the points above) •Approval for exotic jurisdictions can then be subject to specific approval if no equivalence regime is available. •The Registrar could also engage with the SA ISDA working group to leverage-off the netting legal opinions obtain by this association. <p>We recommend that the ISDA netting opinions could also be used in applying for equivalence, unless expressly rejected by the Registrar</p>	
Banking Association of South Africa (BASA)	Clause 2.3 (3)	<ul style="list-style-type: none"> •Reference to the words "...<i>deemed to comply with the margin requirements of the foreign jurisdiction...</i>" should rather read, "<i>deemed to comply with the margin requirements of this Notice...</i>" 	Please the revisions to the draft Joint Standard.
Banking Association of South Africa (BASA)	Clause 2.3 (4) (a)	<ul style="list-style-type: none"> •The threshold should be determined by the registrar in consultation with authorised OTC derivative providers. •We recommend (as an alternative to setting thresholds), that for non-netting jurisdictions, we follow the EMIR approach. 	The threshold will be determined by the Authority and the Authority may consult as it deems necessary.

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<p>Global Foreign Exchange Division (GFXD)</p>		<p><u>Margin requirements for deliverable FX transactions</u></p> <p>The GFXD welcomes and supports the FSB-SA's exemption of physically-settled FX forwards and swaps from the initial margin requirements in the Draft Margin Notice. As indicated in the March 2015 Margin requirements for non-centrally cleared derivatives by the Basel Committee on Banking Supervision and International Organization of Securities Commissions (the International Margin Framework), these products merit exclusion from the scope of the margin requirements due to their unique characteristics.</p> <p>However, in order to avoid inconsistency with the treatment of physically-settled FX forwards and swaps in other jurisdictions, potentially creating an uneven playing field and incentivizing regulatory arbitrage, we urge the FSB-SA to exclude physically-settled FX forwards and swaps from the scope of the variation margin provisions as well.</p> <p>The International Margin Framework excepts physically-settled FX forwards and swaps from its margin requirements entirely, although stating that standards apply for variation margin for physically-settled FX forwards and swaps and citing the 2013 "BCBS Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions"</p> <p>The FSB-SA's application of the variation margin requirements to physically-settled FX forwards and swaps (Section 2.3(3) of the Draft Margin Notice) contrasts with the treatment of these deliverable FX products in the US and most other jurisdictions around the world. As illustrated below, the EU is the only</p>	<p>Please see the previous response on the FMA Ministerial Regulations. The Joint Standard must be read with the FMA Regulations.</p>

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		<p>jurisdiction to include physically-settled FX forwards and swaps within scope of its uncleared margin rules. Other jurisdictions have excluded physically-settled FX forwards and swaps in respect of both IM and VM, though in several jurisdictions local bank supervisors have instead indicated certain expectations regarding VM for these FX contracts via adoption of, or reference to, the FX Supervisory guidance. We are currently actively engaged in advocacy with the European Commission urging them to do the same.</p> <table><tr><th colspan="6">Physically-settled FX forwards and swaps included or excluded for VM under local uncleared margin rules</th></tr><tr><td>U.S.</td><td>Excluded</td><td>Singapore</td><td>Excluded</td><td>Europe</td><td>Included</td></tr><tr><td>Japan</td><td>Excluded</td><td>Australia</td><td>Excluded</td><td>Hong Kong</td><td>Excluded</td></tr><tr><td>Canada</td><td>Excluded</td><td>Switzerland</td><td>Excluded</td><td>Korea</td><td>Excluded</td></tr></table> <p>An important element of the International Margin Framework is the goal of promoting global consistency and reducing regulatory arbitrage opportunities with respect to the treatment of physically-settled FX forwards and swaps. If jurisdictions are to differ in their approach to physically-settled FX forwards and swaps, this may well result in different requirements applying across borders. If this were to result, we would have significant concerns about potential impacts on pricing and liquidity.</p> <p>Physically-settled FX forwards and swaps are relied</p>	Physically-settled FX forwards and swaps included or excluded for VM under local uncleared margin rules						U.S.	Excluded	Singapore	Excluded	Europe	Included	Japan	Excluded	Australia	Excluded	Hong Kong	Excluded	Canada	Excluded	Switzerland	Excluded	Korea	Excluded	
Physically-settled FX forwards and swaps included or excluded for VM under local uncleared margin rules																											
U.S.	Excluded	Singapore	Excluded	Europe	Included																						
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		<p>upon by entities around the world to hedge currency risk exposures. In addition to the challenges which arise where regulatory approaches are inconsistent as between jurisdictions, mandatory and prescriptive variation margin requirements for physically-settled FX forwards and swaps raise liquidity, operational, documentation and regulatory risks and burdens for those relying on these types of FX contracts for their hedging needs - for example, pension fund managers investing in diverse securities. Implementing necessary capabilities for mandatory exchange of variation margin for physically-settled FX forwards and swaps requires significant infrastructure build, as well as the commitment of cash or other liquid assets as collateral. These entities may, due to the variation margin requirements, be deterred from managing their currency risk through the use of physically-settled FX forwards and swaps with entities within scope of the Draft Margin Notice.</p> <p>In light of the above, in order to achieve better global consistency across jurisdictions, both to maintain the competitiveness of entities subject to the FSB-SA's margin requirements and to avoid potential jurisdictional conflicts, in our view a preferable and more globally consistent approach to variation margin for physically-settled FX forwards and swaps would be to exclude physically-settled FX forwards and swaps from the Draft Margin Notice, and instead establish any variation margin expectations for such FX forwards and swaps via reference to the FX Supervisory Guidance.</p> <p>For example, in Singapore the Monetary Authority of Singapore (MAS) in its October 2015 Policy Consultation on Margin Requirements for Non-Centrally Cleared OTC Derivatives states that physically-settled</p>	

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		<p>FX forwards and swaps are exempted from the margin requirements, but that entities are expected to appropriately manage the risks associated with such FX transactions, referencing the BCBS FX Supervisory Guidance. In Canada, physically-settled FX forwards and swaps are excluded from the entirety of the uncleared margin requirements, however the Office of the Superintendent of Financial Institutions Canada (OSFI) has separately issued an Advisory which establishes OSFI's expectations regarding the management of FX settlement risk by banks, on the basis of the BCBS FX Supervisory Guidance. In the US, the BCBS FX Supervisory Guidance is adopted by way of a Federal Reserve System Supervisory Letter.</p> <p>On a related but separate note, we see that in the Press Release accompanying the Draft Margin Notice, the FSB-SA references the FMA regulations and, specifically, provides the following, “. . . In terms of this revised notice, [foreign exchange spot contracts . . .] are excluded from initial margin requirements, however the exchange of variation margin is still applicable to such instruments.”</p> <p>Is what is meant in the Press Release, rather than FX spot, physically-settled foreign exchange forwards and swap contracts (ie. Section 2.1(3) of the draft Margin Notice)? FX spot is not a derivative and should not be in scope for mandatory margin regulations at all. We would appreciate the FSB-SA's clarification/confirmation regarding this point on FX spot.</p>	<p>Agreed. The reference is meant to be to physically-settled FX forwards and swaps. FX spot contracts are excluded from the definition of “OTC derivative” in terms of the FMA Regulations.</p>

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Global Foreign Exchange Division (GFXD)		<p><u>Exclusion of FX transactions linked to securities settlements from the margin requirements</u></p> <p>We also urge that FX transactions that are incidental to and for the purpose of effecting customers' foreign security transactions, entered into in connection with the funding of a purchase or sale of a foreign security (FX security conversion transactions), be deemed spot transactions and therefore not included within the scope of derivatives regulation in South Africa, including uncleared margin requirements, even if they are settled on a longer than T+2 basis. We note that in South Africa, for example, we understand securities</p>	The comment is noted. The Authorities will consider this going forward.

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		<p>settlement cycles can take up to seven days (T+7).</p> <p>In this regard, we refer to our letter dated August 31, 2016 to Ms. Petula Sihlali at the South African National Treasury on the Third Draft of the Ministerial Regulations on Regulating OTC Derivative Markets, available at this link: http://www.gfma.org/correspondence/item.aspx?id=838.</p>	
HSBC	Section 2	<p><u>Exemption/ Grace Period for Options</u></p> <p>We request that options on securities be exempt from the scope of the Requirements as such products are exempt under the US margin rules. In this regard the EU has a 3 year delay before single-stock equity opinions and options on equity indices become subject to margining. However, this may change as there are moves to align margin rules globally. It would therefore be prudent to align the Requirements with the US from the start.</p>	The comment is noted; however the Joint Standard is aligned to the BCBS-IOSCO framework which is the international standard.
HSBC	Section 2.2	<p><u>Full Exemption for Intra-Group Transactions</u></p> <p>In the first instance, we submit a request for the Requirements be amended to include a full intra- group exemption in line with other jurisdictions such as Canada, Hong Kong and Japan) or alternatively a full exemption is available on specified conditions (for example impediments of a legal or practical nature) as is the case in the EU. At a minimum the Requirements should clarify that margining is not required between a branch and its parent as they are part of the same legal entity.</p>	Please see the earlier comment. The Authorities do not support an outright exemption from the margin requirements for intra-group transactions. In this regard, we note the different approaches adopted by the various jurisdictions to intra-group transactions. The BCBS-IOSCO framework recognises that “transactions between a firm and its affiliates should be subject to appropriate regulation in a manner consistent with each jurisdiction’s legal and regulatory framework.” We note that different jurisdictions have adopted different approaches on intra-group transactions. For

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			<p>example in Canada intra-group trades are not subject to the margin requirements, whilst in the UK provision is made for certain conditions for the exemption of intra-group transactions and an application for an exemption for intra-group transactions in certain instances.</p> <p>The preferred approach of the Authorities is that intra-group transactions below a certain threshold as set out in the draft Joint Standard are exempt from margin requirements, but transactions above the threshold will be subject to margin requirements.</p>
		<p><u>Alternative. Increase in Daily Trading Limit for Intra-Group Transactions</u></p> <p>In the second instance, if the full exemption is not granted as requested, we consider that the trading threshold above which margining between group members becomes obligatory be increased substantially. We consider that the daily limit of ZAR 1 billion of aggregate outstanding gross notional amount of transactions between the group members is too low in the South African trading market and this threshold will be breached relatively easily. Also, there is no mechanism within the Requirements for this threshold to be increased on a regular basis and we recommend that such a mechanism be included in the Requirements.</p>	<p>The comment is noted. Please see the revisions to the draft Joint Standard.</p>

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HSBC	Section 2.3	<p><u>Removal of Requirement for Transactions with Cross-Border Entities</u></p> <p>Section 2.3 provides that OTC derivative providers are required to lodge an application with the Registrar for approval for transactions with foreign entities. We submit that this requirement should be removed. We are not aware of any equivalent requirement in the margin rules of any other jurisdiction and we believe that this requirement would create logistical problems and result in trading delays.</p>	<p>The comment is noted. Please see the revisions to the Joint Standard. We note that in Canada for example, a covered entity must consult with OFSI regarding its documentary evidence and assessment of comparability of the foreign jurisdiction's margin requirements to the BCBS-IOSCO framework. In Australia, APRA may also approve substituted compliance in relation to margin requirements of a foreign jurisdiction.</p>
		<p><u>Alternatively. Request for Clarity if Approval is Required at Transaction Level</u></p> <p>If the above requirement is not removed, we request clarity on whether it is merely the umbrella ISDA agreement which must be approved or whether each transaction thereunder must be approved. If the ISDA agreement must be approved, it will not always be possible to know in advance the expected extent of transactions. In addition, if each transaction must be approved, we believe that this would be logistically impossible and would place an onerous burden on providers and delay transactions in a market which is extremely time-sensitive.</p>	<p>Please see the earlier response.</p>

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HSBC		<p><u>Clarification of Exemption from Margin in Respect of Transactions with Sovereign Entities Registered as OTC Derivatives Providers</u></p> <p>We note the comments provided by the FSB (in response to market submissions on the first draft of the Requirements) state that state-owned entities are not in-scope of the Requirements. Further, the BCBS/IOSCO Requirements advocate that the requirements are not applied in such a way that would require sovereigns, central banks or multilateral development banks (MOBs) to either collect or post margin. We request clarity as to whether such entities would be subject to the Requirements, if they are obliged to be authorised as OTC derivatives providers. If such entities sell, issue etc. derivatives as a regular feature of their business they would technically be caught by the Requirements through the definition of "OTC derivatives provider". We therefore request clarity within the Requirements (rather than by comments on the submission) that such entities are not within scope of the Requirements.</p>	The margin requirements are not applicable to SOEs.

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ISDA	Intra-group exemption	<p>In the first instance, we submit that section 2.2 of the Margin Requirements be amended to include a full intra-group exemption (in line with other jurisdictions such as Europe, Hong Kong and Japan) on the following basis:</p> <ul style="list-style-type: none"> • Automatic exemption in respect of trades between a branch and its parent given as they form part of the same legal entity; and • Exemption on application in respect of trades between group affiliates if adequate risk management procedures are in place and there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the group counterparties. EMIR sets out a list of defined restrictions that it deems to be impediments of a legal or practical nature. <p>In the second instance, if the full exemption is not granted as requested, we submit that the trading threshold above which margining between group members kicks in is too low in the South African trading context and should be substantially increased. The exemption only applies if the aggregate outstanding gross notional amount of all relevant transactions between the group members is below R1 billion at the close of business on each relevant day. Entities with larger trading books will breach this threshold relatively easily. We propose that a threshold of R100 billion would be more appropriate. Also, we note that there is no mechanism within the Margin Requirements for this threshold to be increased on a periodic basis in order to maintain a level appropriate for the South African</p>	Please see earlier response and the revisions to the Joint Standard.

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		market at a given time.	
ISDA	Cross-border transactions	The equivalence regime provided in the Margin Requirements is a positive step, but as proposed it is onerous and does not appear to cover South African branches of foreign banks. ISDA is very supportive of the provisions that allow local banks to trade with foreign counterparties while applying foreign rules that are equivalent to the Margin Requirements. We request that this relief be extended so that it is also available to South African branches of foreign banks.	Please see the revisions to the Joint Standard in respect of cross-border transactions. In terms of the banking regulatory framework, branches are regulated in the same manner as registered banks.

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		<p><u>Equivalence Determination.</u></p> <p>We are concerned that the process associated with determining equivalence is complex, costly and time-consuming – namely that the derivative “provider” entity needs to apply for permission, which has to include an estimate of its likely trading activity with the foreign covered entity and a legal opinion that the foreign jurisdiction has implemented BCBS-IOSCO equivalent rules. Furthermore, it is not clear whether these steps have to be taken for each cross-border trade or to each cross-border counterparty relationship. We are not aware of any requirement in the margin rules of any other jurisdiction that requires OTC derivatives transactions with an entity in a foreign jurisdiction to be formally approved by a regulator, and we believe that this requirement would create logistical problems and result in trading delays. We request the removal of the requirements in 2.3(1), (2) and (3).</p>	Please see earlier response and the revised Joint Standard.
		<p>If these requirements are not removed, we request clarity on whether it is merely the enabling ISDA Master Agreement which must be approved or whether each transaction must be approved. If just the ISDA Master Agreement must be approved, it will not always be possible to know in advance the expected extent of transactions. If each transaction must be approved, we believe that this would be logistically impossible and would place an onerous burden on providers and delay transactions in a market which is extremely time-sensitive. A one-off application should be allowed provided the foreign regime is substantial similar to the Margin Requirements.</p>	Please see earlier response and the revised Joint Standard.

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		<p>We encourage the FSB to adopt an approach to equivalence that facilitates South African entities' access to global OTC derivative markets. Jurisdictions that have implemented rules in line with the BCBS-IOSCO global framework should be automatically equivalent and this status should not be subjected to repeated, independent legal ratification. Under such an approach, a foreign covered entity in an equivalent jurisdiction that is required to apply its home jurisdiction's rules could do so for its trades with local South African entities, or South African branches of other foreign entities. This approach to equivalence has been adopted in other jurisdictions' margin rules and eases market participants' concerns about their ability to continue trading on a cross-border basis without interruption or duplicative requirements.</p>	
		<p><u>Non-netting Provisions.</u></p> <p>Section 2.3(4) allows a provider to enter into transactions with a counterparty in a foreign jurisdiction to which an enforceable netting agreement may not apply in the event of insolvency or default (a "non-netting counterparty") provided the aggregate outstanding notional amount of transactions between the parties is below a threshold which will be determined by the registrar. This implies that notwithstanding the circumstances of the non-netting counterparty, both two-way IM and VM would apply to the covered transactions.</p> <p>Instead we suggestion that the Margin Requirements for non-netting counterparties be aligned with the approach in other regulations (e.g. EMIR) which permit a covered entity from electing to exchange collateral</p>	<p>Paragraph 2.3(4)(a) states that the covered entity would not be required to post IM and VM in respect of the transaction. The threshold will be determined by the Authorities.</p>

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		with the counterparty in the non-netting jurisdiction either on a one-way or two-way basis notwithstanding the uncertainty around netting. In addition, the rules allow an amount of trading to be conducted on a non-collateralised basis provided that the amount is below a trading volume ratio of 2.5%. The trading volume ratio compares the amount of an EU entity's new non-collateralised OTC derivatives with entities in non-netting jurisdictions against the EU entity's total OTC derivatives portfolio.	
ISDA	Exemptions for certain products	<p><u>Physically-settled FX Forwards and Swaps.</u></p> <p>The inclusion of physically settled FX forwards and swaps in the scope of the requirement to exchange variation margin is not reflective of the global framework, and all major jurisdictions (aside from the EU) have not adopted the standards in this way. We encourage a level playing field globally to avoid regulatory arbitrage and competitive distortions. As a result, FX forwards and swaps should not be in scope of VM.</p>	Please see earlier response.
		<p><u>FX Security Conversion Transactions.</u></p> <p>We also request that FX transactions which are entered into solely for the purpose of funding a purchase or sale of a foreign security transaction ("FX security conversion transactions") be recognized as spot transactions and therefore outside the scope of the Margin Requirements even in the event the settlement cycle exceeds T+2.</p>	The comment is noted and the Authorities will provide further guidance on this issue. In addition, the FMA Regulations do not specifically define a spot contract as a contract with a settlement cycle of T+2.

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		<p><u>Pre-paid Options.</u></p> <p>We request that option contracts which have been entered into upon payment of an option premium, be excluded from the Margin Requirements. The payment of an upfront option premium eliminates the risk of counterparty default, and it would not be necessary to require further margin in addition to the option premium.</p> <p>If pre-paid options are not excluded, we request a grace period before the Margin Regulations must be applied.</p>	<p>In terms of the BCBS-IOSCO framework, derivatives transactions between covered entities with zero counterparty risk require zero initial margin and may be excluded from the initial margin calculation. However, to the extent that the option purchaser faces counterparty risk, the option purchase must collect initial margin in a manner consistent with the draft Joint Standard.</p>
ISDA	Applicability to certain entities	<p>While the Margin Requirements helpfully clarify the status of certain entities (including “clients”) and provide definitions of counterparties and providers, market participants would appreciate certainty regarding the non-application of the rules to certain entities – particularly non-financial firms using derivative markets to hedge commercial risk, multilateral development banks, and sovereign market participants, including central banks and other state-backed bodies.</p> <p>In addition, we request clarity as to whether, and in what manner, the Margin Requirements are intended to apply to offshore entities.</p>	<p>Please see the revisions to the draft Joint Standard and the proposed definition of “covered entity”</p>
INVESTECH	<p>Paragraph 2.1 (2)</p> <p>Foreign exchange spot contracts.</p>	<p>Whilst the Notice does not speak to spot FX transactions, the press release that accompanied the draft Notice stated that variation margin is applicable to foreign exchange spot contracts. Globally, spot contracts are not documented under ISDA and therefore not collateralised, and bringing spot in scope will cause an issue in cross-border transactions when dealing with counterparties in the EU and US. This</p>	<p>Agreed. The reference is meant to be to physically-settled FX forwards and swaps. FX spot contracts are excluded from the definition of “OTC derivative” in terms of the FMA Regulations.</p>

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		should be made clear in the Notice.	
INVESTEC	Paragraph 2.3	<p>The notion of “substituted compliance” must be in effect. The regulations are wholly impractical in this regard as under both EMIR and Dodd-Frank this concept is accepted and understood. With regard to legal opinions these cannot be sourced at transaction level - globally the market operates on industry wide opinions which market participants pay for through membership in ISDA. In addition, under EMIR in respect of substituted compliance counterparties are obliged to have regard to the industry netting opinions. From a commercial perspective this needs to operate in a similar way.</p> <p>As per point above re a “provider” we assume that the whole of clause 2.3 is intended to cover banks only. To the extent that 2.3 only applies to “providers” how does the Regulator propose dealing with conflicts between various regulatory regimes in respect of covered entities not caught under 2.3?</p> <p>In addition, the Regulations should clarify what constitutes a “foreign entity” - i.e. which foreign entities are in scope. The Regulations currently only refer to SA entities in the definition of “covered entities” and a concept of foreign equivalence should be included. The EMIR concept of “third country entity” may be helpful</p>	<p>Please see earlier response.</p> <p>Please see the revisions to the draft Joint Standard.</p> <p>Please see the revisions to the draft Joint Standard.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		<p>here.</p> <p>2.3(4) releases the provider from posting collateral (and not the counterparty) where there is no netting agreement. Is this deliberate?</p>	Please see the revisions to the draft Joint Standard.
Macquarie Securities	Clause 2.1(2)(b)	Please provide examples of what is meant by indirectly cleared derivate transactions intermediated through a clearing member on behalf of a non-member client.	This refers to instances where derivative transactions are cleared through a direct clearing member on behalf a client of the clearing member.
Macquarie Securities	Clause 2.2	Clause 2.2 exempts intra-group transactions which meet certain requirements from the margin requirements. We would ask that intra-group transactions be given full exemptions from margin requirements, this would align with the approach taken by other regulators in Singapore, Hong Kong and the European Union. Alternatively we would ask that if no full exemption is granted that the aggregate outstanding gross notional amount of all relevant transactions in OTC derivative transactions between any two covered entities in the same group at the close of business of each relevant day stated in 2.2(a) be relative to the size of the group's total aggregate average gross notional size of OTC derivative transactions, instead of the ZAR1 billion figure, as this figure may be considered a low figure relative to the quantum traded by entities with high OTC derivative transactions trading volumes.	Please see earlier response.

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Macquarie Securities	Clause 2.3	Kindly confirm that cross-border intra-group transactions that are exempt per clause 2.2 are not subject the provisions of clause 2.3.	Please see the revisions to the Joint Standard.
Old Mutual invest	Paragraph .2 (2) (a)	<p>1) A definition is required for “gross notional amount”;</p> <p>2) The threshold/limit of R1billion is very low for large groups and we believe should be revised based on size.</p>	<p>The “gross notional amount” refers to the aggregate of all outstanding non-centrally cleared derivative transactions across all entities within the group.</p> <p>Please see the proposed revisions to the draft Joint Standard.</p>
Old Mutual invest	Paragraph 2.3 (1)	<p>(1) <i>Before a provider enters into an <u>initial</u> OTC derivative transaction with a covered entity in a foreign jurisdiction, the provider must lodge an application—notification with the registrar in accordance with sub-paragraph (2) <u>except for covered entities in foreign jurisdictions where substituted compliance has been granted.</u></i></p> <p>1) We propose that this should be applicable at initial transaction level and not every transaction level.</p> <p>2) Given the need for a legal opinion to satisfy the requirement that foreign jurisdiction has implemented appropriate margin requirements, we propose this is a notification process to the FSB rather than an approval process. If approval is required, we require clarity on what the approval will be based on.</p> <p>3) With regard to foreign jurisdictions, we would urge the FSB to provide a list of countries/jurisdictions which has an equivalent regulatory regime rather than exemption on a case by case/counterparty basis. As an example of such a list the major G7 jurisdictions</p>	Please see the revised Joint Standard.

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		<p>specifically US and where EMIR is in place?</p> <p>4) We require certainty on how existing bilateral agreements and transactions will be treated</p>	
Peregrine securities	Paragraph 2.3(1) and 3(1)	<p><u>Scope of Margin Requirements for OTC Derivatives</u></p> <p>The BCBS-IOSCO framework requires that bilateral margin should be exchanged between <u>all</u> "covered entities".</p> <p>Consistent with the BCBS-IOSCO framework it is our understanding that the bilateral margin requirements proposed in the draft regulation is applicable to OTC derivative transactions between any two "covered entities".</p> <p>Some wording of the draft regulation may be interpreted that bilateral margining only applies to derivative transactions between OTC "providers" and their "counterparties" (as defined) - and not between all "covered entities".</p> <p>Both these paragraphs (and other paragraphs) should refer to "covered entity" rather than "provider" (which is defined to exclude counterparties).</p>	The comments are noted. Please see the proposed revisions to the revised Joint Standard.
Standard bank	Section 2	<p><u>Clearing</u></p> <p>Indirectly cleared derivative transactions are exempt from the application of this notice under section 2.1.2. Both direct and indirect clearing arrangements should be exempt - some SA banks are direct clearing members, and in future , clearing will be required for the South African market and it is likely that SA banks will become direct clearing members of a local FMA</p>	The comment is noted. The Joint Standard is aligned to the BCBS-IOSCO framework (please see page 7 fn 6 of the international framework)

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		clearing house.	
	Section 2	<p><u>Intra-group transactions</u></p> <p>Section 2.2 includes a reference to "relevant transactions" when calculating aggregate gross notional amounts - what are the relevant transactions? These should include only non- centrally cleared derivatives transactions between related entities.</p> <p>Further, please clarify that the R1 billion threshold for intra-group transactions applies to the OTC transactions between the covered entities actually transacting. Section 2.2 provides that the aggregate notional outstanding in trades between "any two covered entities" should not exceed R1 billion - on a literal reading, this would imply that a trade between SBSA and Stanbic Kenya would be prohibited if the total aggregate notional outstanding between SBSA and Stanbic Nigeria exceeds the R1 billion threshold. We do not support this extremely wide interpretation and request that clarity is provided.</p> <p>In addition, for the purposes of calculating gross notional outstanding derivatives positions throughout this notice (for the purpose of IM and VM thresholds), only non-cleared derivatives transactions should be included in these calculations .</p>	Please see earlier responses and the proposed revisions to the draft Joint Standard.

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Standard bank	Section 2	<p><u>Availability of initial margin</u></p> <p>We note that, due to the amendments required under the Insolvency Act to cater for the realization of IM upon insolvency , IM posted by South African covered entities does not currently meet the standards of "availability " in the case of default.</p>	The concerns in respect of the Insolvency Act are noted. The Authorities are working with National Treasury and the Department of Justice regarding the proposed amendments to the Insolvency Act.
Standard bank	Section 2	<p><u>Cross border transactions</u></p> <p>It is not clear which entities will qualify as covered entities in foreign jurisdictions, as these will not be classified according to the same criteria as our local entities (as provider etc). We recommend that only those entities that would have qualified under the South African rules had they been established in South Africa should be included (counterparties will have to self--certify to this fact).</p> <p>We read section 2.3.1 as requiring a trade by trade approval of OTC derivatives with foreign counterparties. This is extremely onerous, and in a fast-moving global markets environment, would halt trading. This approval requirement would have an enormous disruptive effect, and should be reconsidered. We recommend that a list of margin compliant jurisdictions and/or laws be compiled, and that trading with counterparties in these jurisdictions under their margin rules be deemed to comply with the margin notice (for example, when trading with EU counterparties under EMIR margin rules, we should not be required to additionally comply with the margin notice). Alternatively, covered entities should be required to make this decision (which should be based on some kind of equivalence of outcomes) and keep a record of their reasons. Any decision,</p>	Please see earlier response and proposed revisions to the draft Joint Standard.

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		whether made by the covered entity or the regulator (which we do not support), should be made on the basis of the counterparty, and trade-by-trade (ie deal-specific) approval should be avoided.	
Standard bank		The de minimus threshold of activity with counterparties in jurisdictions with no netting enforceability should replicate offshore thresholds to ensure a level playing field. This threshold should be set in a way that is easy to calculate and verify . If the thresholds are exceeded, there should be the possibility to collect margin (on a gross basis) without posting it. Where there is no possibility to post or collect margins, the trade should be allowed if the ratio of non-margined trades entered into by the covered entity does not exceed a percentage of total trades (as incorporated in EMIR). This will give the covered entity some leeway to trade with entities in non-netting jurisdictions , and will not exclude the majority of our current African business. As with the comment above, the covered entity should be required to make the relevant determination in terms of its own legal review and procedures, without recourse to the registrar, which recourse will likely be time consuming and may have the unintended consequence of halting trade.	The comment is noted. The threshold will be determined by the Authorities with due consideration to creating level playing fields.
Standard bank		<p>Variation margin</p> <p>The exchange of variation margin for all entities other than the largest market participants commences on 1 July 2018. However, this applies to all new contracts entered into after 1 January 2018. Whilst we appreciate the transitional period provided, these dates should ideally align. This is because the terms of the Credit Support Annex regulating the exchange of variation</p>	The comment is noted. Please see the revised timelines.

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		<p>margin will have to be agreed prior to the deals being concluded, for legal certainty. This means that, even though a transitional period is provided, this is of limited practical benefit to covered entities, as all legal agreements will in fact need to be agreed before 1 January 2018. With only 4 months until the end of the year, this will not be sufficient to negotiate the required CSAs. We recommend that the requirements to exchange margin commence on 1 July 2018 on contracts entered into on or after that date.</p> <p>It is also necessary to emphasise that CSA negotiation would need to be preceded by an information gathering process – banks will not be able to prepare or complete CSAs without knowing key information regarding their trading counterparties, such as their jurisdiction , regulatory status and size of their (and their group's) derivatives trading activity. While some banks may have certain information concerning their counterparties on record, they will unlikely be in possession of the information required pursuant to the margin rules and will require their counterparties to provide additional information so that the correct margin documentation can be prepared. The client outreach and documentation process will require additional processes to be implemented to send out margin questionnaires , receive completed documentation and follow up where required. Although ISDA has prepared standardised client margin self- disclosure letters pursuant to the rules of various jurisdictions , the South African requirements are not included – requiring bespoke counterparty classification documentation to be prepared by South African banks.</p>	
GENERAL REQUIREMENTS			

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Banking Association of South Africa (BASA)	Clause 3(1)(b)(viii)(aa) and (bb)	These two paragraphs appear to be different descriptions of the same issues and should be consolidated	Please see the proposed revisions to the Joint Standard.
HSBC	(Section 3(J)(b)(ii))	<p><u>Apparent Prohibition on Transactions with Counterparties in Non-Netting Jurisdictions</u></p> <p>This section provides that OTC derivatives providers must ensure that all relevant netting agreements are effective under the laws of the relevant jurisdiction. We submit that the approach in other jurisdictions be adopted instead. The approach taken in other jurisdictions with regard to transactions with counterparties in non-netting jurisdictions is to permit such transactions within certain parameters. For example, the EU margin rules provide that variation and initial margins are not required to be posted or collected with non-netting counterparties, subject to certain conditions. This includes the condition that there is a trading volume ratio of lower than 2.5%. The trading volume ratio compares the amount of an EU entity's new non-collateralised OTC derivatives with entities in non-netting jurisdictions against the EU entity's total OTC derivatives portfolio.</p>	Please see earlier comment.
INVESTEC	Paragraph 3.1(b)(viii)(aa)	Global regulation is explicit in obligations around demand and transfer of initial margin and variation margin. The draft Notice proposes T+1 for initial margin but does not specify transfer obligations for variation margin – the Regulator needs to eliminate ambiguous phrases such as “in a timely manner”, particularly in light of the fact that (bb) refers to the daily exchange of collateral. We have assumed that the Regulator's intention is that VM is calculated and <u>transferred</u> on a daily basis. Will the Regulator make a distinction between transfer times of cash and securities or will all collateral require to be transferred under the same	Please see the revised Joint Standard.

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		timeframe? Will VM be transferred (settled) on the date of demand or the next Local Business Day?	
INVESTECH	Paragraph 3.2	Dispute resolution procedures: We would expect to see regulation around dispute resolution procedures in respect of trade reporting, confirmation exchange and matching. The dispute resolution process is documented under the New York and English Law CSAs – it is contractually arranged and agreed between the parties. They are separate processes and it is unclear as to why the Regulator references dispute resolution in these regulations which deal with uncleared margin only.	The draft Joint Standard does not exclude the reliance on a CSA.
Old Mutual invest	Paragraph 3(1)(v)(aa) – Credit Comment	1) We require a definition of “cliff edge triggers”. 2) Clarify the meaning of “conservative” as this introduces ambiguity and uncertainty.	Please see the BCBS-IOSCO framework for further context on these terms.
Old Mutual invest	3(1)(vi)	<p><i>vi) initial margin is provided and collected by no later than the business day <u>two business</u> days following the execution of a non-centrally cleared OTC derivative transaction <u>for electronically affirmed transactions and 5 business days transactions for which other methods of confirmation are agreed/signed</u>, and thereafter collected on a routine and consistent basis upon changes in the measured potential future exposure;</i></p> <p>The timeframe specified is not practical and not consistent with market standard. Please consider proposed wording and relaxing this requirement. We have proposed two business days for electronically affirmed transactions and 5 business days transactions that are not confirmed electronically.</p>	The Joint Standard is aligned to the BCBS-IOSCO framework.

COMMENTATOR	SECTION	COMMENTS	RESPONSE
[Old Mutual invest	Paragraph 3(1)(viii)	In order ease the operational burden associated with the movement of variation margin we propose a Minimum Transfer Amount (ZAR 5 million) and Rounding (ZAR 10,000) is applied with respect to the application of variation margin?	The draft Joint Standard is aligned to the internationally agreed standard as set out in the BCBS-IOSCO framework. The regulators have also taken a decision to adopt a fixed conversion rate.
INITIAL MARGIN			
Banking Association of South Africa (BASA)	Clause 4.1 (3)(c)	<ul style="list-style-type: none"> • “<i>aggregate amount</i>”, Is this Gross or Net aggregate amount? • Is this notional amount or margin amount? Include the words “of the initial margin” before the words “of all relevant transactions....” <p>“<i>relevant transactions</i>”. Please elaborate</p>	The threshold of R500 million is applied at the level of the consolidated group to which the threshold is being extended and is based on all non-centrally cleared derivatives between the two consolidated groups. Initial margin must be exchanged on a gross basis and the aggregate amount refers to a gross amount.
Banking Association of South Africa (BASA)	Clause 4.1 (3)(d)	<ul style="list-style-type: none"> • Within the context of the definition of “group” how do we reconcile and apply this provision which intends to exclude an investment fund which is managed by an FSP within the definition of the “GROUP”. • Please provide clarity in light of the fact that the FSP is categorised as a covered entity in the context. • How will the exclusion apply for the purpose of determining the accurate threshold amounts under clause 4.2? • We recommend that “covered entities” include their “holding companies on a consolidated basis.” • We propose that clarity is provided in relation to what constitutes an “investment fund”. 	Please see the revised draft Joint Standard.
Banking	Clause	To avoid disruption and confusion it is important that	The comment is noted. Please see the

COMMENTATOR	SECTION	COMMENTS	RESPONSE
Association of South Africa (BASA)	4.2	the SA phase-in mirrors as closely as possible the globally-agreed timelines, so that single bank to bank cross-border trades are not subject to multiple, conflicting effective dates.	revised timelines for implementation.
Banking Association of South Africa (BASA)	Clause 4.2 (1) – (5)	<ul style="list-style-type: none"> •We propose that the paragraphs be re-worded as follows: •As from (date) to (date), when two covered entities each with an average gross notional OTC derivative exposure for (date) exceeding (amount) must comply with the margin requirements when transacting with each other. •Please confirm our understanding that the gross notional OTC portfolio estimation per covered entity is to be applied on a total portfolio basis against all counterparties and not on a bilateral portfolio basis between the two covered entities. 	Agreed – it is not on a bilateral basis.
Banking Association of South Africa (BASA)	Clause 4.2 (7) (b)	<ul style="list-style-type: none"> •Please provide clarification as it is not practical to obtain the Registrar's opinion and we recommend to rather just state the principal 	Agreed. Please see the proposed revisions to the draft Joint Standard.
Banking Association of South Africa (BASA)	Clause 4.2 (8) (b)	<ul style="list-style-type: none"> •Please provide further clarification as we recommend that once the threshold amount is collected then the full outstanding margin must be collected 	There is a discretion based on the risk management principles and policies as approved by the covered entity.
Banking Association of South Africa (BASA)	Clause 4.3 (1)(d)(i)	<ul style="list-style-type: none"> •These requirements should be incorporated into a master agreement rather than on a transaction by transaction basis. <p>In addition we propose the following changes to the wording:</p> <p>(i) The initial margin provider is as part of its contractual agreement...</p>	Disagree. The draft Joint Standard does not specify the form of the legal agreement.

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		(ii) The initial margin collector is subject to ... (iii) The initial margin collector is subject to ...	
Banking Association of South Africa (BASA)	Clause 4.3 (1)(e)	•We propose the deletion of the word 'so' at the end of this sentence.	Agreed. Please see the proposed revision to the draft Joint Standard.
Banking Association of South Africa (BASA)	Clause 4.3 (2)	•“available to the person that collected the initial margin”. In terms of current insolvency law, this is only available to the liquidator.	The point is noted. The amendments to the Insolvency Act are part of a separate legislative process that is being discussed between the Department of Justice, the NT and the Authorities.
Banking Association of South Africa (BASA)	Clause 4.3 (2)(b)	•We propose that switches from model to grid or vice versa are permitted subject to approval from Registrar given that circumstances and risk management may change over time	In terms of the BCBS-IOSCO framework “derivative market participants should not be allowed to switch between model and schedule based margin calculation in an effort to cherry-pick the most favourable initial margin terms. At the same time, it is quite possible that a market participant may use a model-based initial margin calculation for one class of derivatives in which it commonly deals and a scheduled based initial margin in the case of some derivatives that are less routinely employed in its trading activities.” The draft Notice is aligned to the BCBS-IOSCO framework. Please see paragraphs 4.4(2)(b) with 4.4(3) of the draft Joint Standard.
Banking Association of South Africa (BASA)	Clause 4.5	•The standardised CEM method (clause 4.5) is in the process of being replaced by the new Standardised Approach to Counterparty Credit Risk (SACCR). The SACCR method should be implemented long before any exchange of IM is required locally, and likely by 1 Jan 2018 (i.e. at the same time as the earliest effective	Clause 4.5 of the Joint Standard refers to a simpler and less risk-sensitive approach to initial margin calculations. The BCBS-IOSCO framework recognises that some market participants may value simplicity and transparency in initial margin calculations,

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		date under this margin notice), and as such we recommend that the reference to the standardised method is replaced with the SACCR method.	without resorting to the more complex quantitative model. The required initial margin will be computed by referencing the standardised margin rates as specified and by adjusting the gross initial margin amount by an amount that relates to the net-to-gross ratio (NGR) pertaining to all derivatives in the legally enforceable netting set. The SA CCR is subject to a delayed implementation date. The reference to the standardised margin schedule therefore remains. Please also see footnote 17 of the BCBS-IOSCO framework.
Banking Association of South Africa (BASA)	Clause 4.6 (b)	<ul style="list-style-type: none"> We suggest the following wording: (iii) <i>The threshold amount of R500 million specified in this Notice is applicable in all cases.</i> 	Not accepted as this is not aligned to the BCBS-IOSCO framework.
Global Foreign Exchange Division (GFXD)		<p><u>Implementation schedule</u></p> <p>The introduction of margin requirements for uncleared FX transactions is a significant policy change for most FX market participants. These new requirements will call for legal and operational enhancements, and additional amounts of collateral for which liquidity planning will have to be undertaken by covered entities within scope of the margin rules.</p> <p>Although the FSB-SA contemplates a phasing-in of margin requirements, we are concerned that the January 1, 2018 start date for first phase entities to comply with the margin requirements does not provide sufficient lead time. Final rules are required before firms will be able to begin necessary work, including legal, documentary, technology systems, operational and risk management work, and even once this works begins, time will be needed for testing.</p>	Please see the revised timelines for implementation.

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		To avoid what could be significant disruption to the FX market, we urge the FSB-SA to provide further lead time before the margin requirements take effect, so that there is the opportunity for covered entities' legal and infrastructure needs and challenges to be properly and adequately addressed.	
HSBC	Section 4	<p><u>Approval ISDA SIMM model for IM calculation purposes</u></p> <p>We request clarity on whether the ISDA SIMM model will be approved by the Registrar for IM calculation purposes</p>	According to the BCBS – IOSCO document (requirement 13; para 3.3), models may be developed internally or sourced from counterparties or third party vendors, but in all cases these models must be approved by the appropriate supervisory authority. Moreover, in the event that a third party provided model is used for initial margin purposes, the model must be approved for use within each jurisdiction and by each institution seeking to use the model.
ISDA	Time to implementation	We take cognisance of the importance of implementing the Margin Requirements as other global jurisdictions have done in accordance with the standards for margin requirements for non-centrally cleared derivatives transactions issued by BCBS-IOSCO (the “global framework”), however we are concerned that the time allowed for market participants to understand and fully comply with the Margin Requirements is not sufficient.	Please see the revised timelines for implementation.
		The proposed implementation dates do not provide sufficient lead time for ISDA members and other market participants to develop and build the required infrastructure, legal arrangements and operational processes required to give effect to the Margin Requirements. Indeed, many of these steps cannot be fully undertaken until a final version of the Margin Requirements is published. Experience in the global	Please see the revised timelines for implementation.

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		<p>arena has shown that it takes a minimum of six to nine months (and usually longer) to complete the steps necessary to comply with regulatory margin requirements, including:</p> <ul style="list-style-type: none"> o negotiating or amending collateral agreements; o on-boarding to custodians; o implementing, testing and obtaining approval for an initial margin (IM) model; and o developing the operational capacity to comply with regulatory margin requirements. 	
		<p>Even where covered entities are already complying with regulatory margin requirements in another regime, many of these steps would still be necessary to continue trading with other covered entities after January 1, 2018.</p>	<p>Noted. Please see the revised timelines for implementation.</p>
		<p><u>Phasing in of Variation Margin Requirements.</u></p> <p>The value of the second phase to comply with variation margin requirements (“VM”) as of July 1, 2018 for covered entities which do not exceed the initial R30 trillion threshold, is undermined by the expectation that VM apply retroactively to transactions entered into after January 1, 2018.</p> <p>The retroactive application of regulatory VM requirements means that covered entities that qualify for this second phase will nonetheless need to have the legal and operational capability to price derivatives transactions from January 1, 2018 taking into account regulatory VM requirements. With very limited time to put in place the necessary legal agreements, policies, procedures and operational tools, trading disruptions</p>	<p>Please see the revised timelines for implementation.</p>

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		<p>are likely, and South African market participants may find it difficult to access the liquidity they need in the derivatives market to hedge their exposures.</p> <p>We request that the requirement to apply regulatory VM requirements be prospectively applied to transactions entered into on or after each VM compliance date.</p>	
		<p><u>Phasing in of Initial Margin Requirements.</u></p> <p>The implementation timelines should reflect the global approach to phase-in. To avoid disruption and confusion it is important that the phase-in for South Africa mirrors as closely as possible the globally-agreed timelines, so that single cross-border trades are not subject to multiple, conflicting effective dates.</p> <p>The establishment of rolling phase-in dates as of January 1st of each year misaligns with the global framework and the phase-in schedule already established in all other major global jurisdictions which rolls on September 1 of each year. Retaining an alternative compliance schedule for IM will add both complexity and significant effort for covered entities which trade globally as they would need to manage two new IM phase-in cycles each year instead of one.</p> <p>The calculation period to determine aggregate month-end average gross notional amount ("AANA") of July, August and September also misaligns with calculation period in the global framework and existing global margin regulations (i.e., March, April and May of each year). As a result, covered entities that trade with foreign entities will need to conduct two AANA calculation periods each year and obtain separate</p>	

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		representations from their domestic and global counterparties on different time scales. In addition, there is the potential that due to variations in derivatives volumes a different result could be realized with respect to whether a party has passed the threshold to qualify for regulatory IM requirements, notwithstanding the apparent intention to align the IM thresholds in the Margin Requirements for the first four phases of IM with the global framework. Such a misalignment may lead to trading arbitrage.	
ISDA	Initial margin	<p><u>Custodial requirements.</u></p> <p>We request clarity on whether there are any restrictions with respect to how IM must be held and whether it must be held on a pledge / security interest by a custodian under a tri-party structure, as is the case in other jurisdictions.</p> <p>In addition, we request clarity as to what types of custodians are permissible for the holding of IM in a South African context.</p>	Please see the revised Joint Standard.
		<p><u>Re-hypothecation.</u></p> <p>We submit that re-hypothecation of IM should be prohibited as it is in other jurisdictions. The fundamental objective underpinning of IM is to create a protected pool of assets managed and controlled by approved custodians and permitting the re-hypothecation of IM defeats that objective.</p>	Not accepted. The draft Joint Standard allows for re-hypothecation of IM in limited instances. This approach is aligned to the BCBS—IOSCO framework.
ISDA	IM Method	<p><u>NGR.</u></p> <p>Under the standardized initial margin schedule (“Grid”), the net to gross ratio (“NGR”) calculation differs from international convention. The current international convention is that only transactions pertaining to the</p>	The calculation for the standardised margin schedule is aligned to the BCBS-IOSCO framework. The Authorities welcome ISDA to provide further clarity on the approaches adopted in other jurisdictions that have seemingly adopted an approach which is

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		<p>Grid calculation will form the NGR. We have concerns that this will cause a mis-match with international transactions subject to the Grid calculation and South African transactions subject to a different calculation</p> <p>Model Choice. We request that 4.4(2) be amended to permit a pair of covered entities to agree to change their choice of either a quantitative portfolio margin model or the Grid for an asset class over time.</p>	<p>different to the internationally agreed standard and highlight the potential mismatch between such jurisdictions and the approach in SA.</p> <p>The comment is noted. However, please see paragraph 4.4.(3) of the Joint Standard.</p>
		<p><u>Model Approval.</u></p> <p>Requirement 4.4(1)(b) states prior written approval is required for the use of a quantitative portfolio margin model. The ISDA Standard Initial Margin Model ("SIMM") has been approved by regulators in the US and Japan and is accepted by regulators in the EU for use by market participants for calculating regulatory initial margin. SIMM has been adopted for use by all market participants which became subject to regulatory IM requirements since September 1, 2016. We anticipate that South African covered entities will wish to use SIMM as well, and we are concerned that there is insufficient time for model approval to be granted. Although we understand that the scope of market participants subject to the first compliance date proposed for IM on January 1, 2018 is likely to be limited, any such parties are likely global market participants which are already using SIMM.</p> <ul style="list-style-type: none"> At present, the South African Registrar of Banks has not yet approved the ISDA SIMM model and the status of its review is unclear. We request that interim relief be granted so that the ISDA SIMM model can be used by South African covered entities may apply a globally-consistent approach to IM calculation on the initial IM 	<p>See earlier comment on the SIMM Model</p>

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		<p>compliance date.</p> <ul style="list-style-type: none"> Alternatively, we request that the ISDA SIMM model be approved upfront or that the requirement to obtain formal approval of the ISDA SIMM model be dispensed with. Our concern is that South African counterparties may suffer a competitive disadvantage in respect of certain trades with offshore entities where they are not permitted to adopt the ISDA SIMM model at the outset. 	
ISDA	The ISDA SIMM Model	<p>On 1 September 2016, ISDA announced the launch of the SIMM, an industry standard methodology that is being widely adopted by market participants to calculate initial margin for non-cleared derivatives trades. The ISDA SIMM was created in response to the new initial margin calculation requirements issued pursuant to the global framework. The development of ISDA SIMM was led by an ISDA working group that included representatives from the largest global firms included in the first phase of implementation, as well as broad representation from other sell-side and buy-side participants that will eventually be subject the margin rules.</p> <p>Unlike the calculation of variation margin, which is based on day-to-day valuation changes that are often directly observable, initial margin calculations very much depend on the choice of model and the assumptions used. Under the global framework, firms can use their own internal models to calculate initial margin as long as they meet certain criteria. These models have the potential to differ significantly, raising the possibility that counterparties will arrive at a different initial margin figure for the same trade. The</p>	See earlier comment on the SIMM Model

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		<p>result would be a surge in the number of disputes – and no obvious way currently in place to quickly resolve them. The ISDA SIMM provides an open, transparent, standard methodology that is available to all.</p> <p>If pre-approval is required, ISDA staff are happy to provide documentation and answer questions which may assist with the regulatory review of the SIMM model and help to expedite the approval process for covered entities which want to use SIMM to comply with the Margin Requirements.</p>	
INVESTEC	Paragraph 4.1(3)(d)	The notice needs to be explicit as to which types of funds are contemplated here and that each fund/portfolio is regarded as a distinct legal entity.	Noted – reference to investment fund is under consideration
JSE		<p>It is our understanding that segregation of initial margin is not required. However, we note that paragraph 4.3(1)(d)(iii) may be interpreted to mean that all initial margin should be segregated from the provider's assets until re-hypothecated. This sub-paragraph is within the provision that sets out the conditions under which initial margin may be re-hypothecated and we have interpreted it to mean that initial margin collected to be re-hypothecated (i.e. provider of collateral has provided explicit consent to re-hypothecation) must be segregated from the collector's proprietary assets until it is re-hypothecated. If it is the drafter's intention that <u>all</u> initial margin collected must be segregated, we recommend that this requirement is made clearer and requirements regarding the manner in which collateral must held should be provided for in the Board Notice. For example, as set out in our letter dated 6 July 2015, it is unclear how a Bank will separate initial margin in the form of cash from</p>	<p>The initial margin collected should be held in such a manner to ensure that the collected margin must be subject to arrangements that protect the posting party to the extent possible under applicable law in the event that the collecting party enters bankruptcy. The BCBS-IOSCO framework provides that the collected collateral must be segregated from the initial margin collector's proprietary assets. In addition, the initial margin collector must give the customer the option to segregate the collateral that it posts from the assets of all the initial margin collector's other customer's and counterparties (i.e. individual segregation). If the collateral is re-hypothecated the third party must treat the collateral as a customer asset and must segregate it from the third parties proprietary assets.</p>

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		We strongly urge the Registrar to publish, for consultation before the implementation, all of the revised Board Notices at the same time to enable commentators to consider the full scope and impact of the OTC derivatives subordinated legislation.	
Macquarie Securities	Clause 4.2 and 5(3)	The calculation of the aggregate month-end average gross notional amount (AANA) references the “Group” as defined in the Companies Act, and does not carve out foreign holding companies, therefore attributing the AANA value of foreign bank’s on their South African controlled foreign companies that are not registered banks but are OTC derivative providers that fall within the definition of “counterparty”. It is proposed that the AANA reference the “Group” of companies in South Africa only when determining the AANA for purposes of phasing in. This will ensure that CFC OTC derivative providers are not subject to early phasing in date of 1 January 2018, whereas their AANA in South Africa falls way below R30 trillion, and their foreign holding company is subject to foreign margining requirements that go live on 1 September.	The comment is noted. The threshold for exchanging margin is applied at the level of the consolidated groups and is based on all non-centrally cleared derivatives between the two consolidated groups. The reference to “group” means a group as defined in the Companies Act. The intention of the margin requirements is to reduce systemic risk, including the risk posed by entities operating in a host jurisdiction. The revised Joint Standard has increased the threshold for intra-group transactions.
Old Mutual invest	Paragraph 4.1(3)(b)	The phrase “initial margin threshold amount” has not been defined and requires definition. How should this threshold be treated? Is this consistent with the ISDA CSA defined threshold? Does the threshold align to foreign jurisdictions as we could find inconsistencies to other jurisdictions that could potentially require the posting of initial margin whereas locally this would not be required and vice versa. Surely 2-way exchange of initial margin would be applicable?	The initial margin threshold amount refers to the R500 million and is based on the BCBS-IOSCO framework. The Authorities have taken the decision to adopt a set conversion rate in respect of all the amounts reflected in euros in the BCBS-IOSCO framework. The reference to R500million in the Joint Standard is based on the €50million in the BCBS-IOSCO framework.
Old Mutual invest	Paragraph 4.1(3)(c)	Define aggregate amount and provide guidance on the application of this amount. Should the threshold amount be applied on a bilateral agreement basis with the relevant counterparty?	The requirement that the threshold be applied on a consolidated group basis is intended to prevent the proliferation of affiliates and other legal entities within larger entities for the sole purpose of

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			circumventing the margin requirements. In terms of paragraph 2(iii) of the BCBS-IOSCO text the following example is cited: A firm enters into separate derivative transactions with 3 counterparties (A1;A2 &A3) that all belong to the same consolidated group such as a banking holding company. If the IM is R100m for each of the firm's netting sets with A1; A2 and A3 the firm must collect at least R250m (i.e.100+100+100 – 50) from the consolidated group. The firm may not extent the 50m threshold to each netting set with A1; A2 and A3 so that the total amount of IM is only 150m.
Old Mutual invest	Paragraph 4.2(1)	<p>1) Initial Margin requirements in US and EU make reference to March, April and May months. Please consider aligning this as it will create cross jurisdictional inconsistencies.</p> <p>2) Clarify that initial margin requirements for each phase in period noted apply in the case only where both covered entities transacting exceed the margin requirement limit provided? Would this translate into the application of a 2-way exchange of initial margin?</p> <p>(The above comments equally relates to 4.2(1), 4.2(2), 4.2(3), 4.2(4), 4.2(5))</p>	<p>We will take the request under consideration.</p> <p>Agreed that the margin requirements apply between covered entities and where the transaction exceeds the limits as set out in the margin notice. The Joint Standard requires a two-way exchange of margin.</p>
Old Mutual invest	Paragraph 4.2(6)	Define and provide guidance on the application of the “aggregate month-end average gross notional amount”. Please define the extent of OTC derivative coverage? Is this aligned to all transactions per ISDA taxonomy?	This is aligned to the BCBS-IOSC framework. Please see the definition of OTC derivative in the FMA Regulations.
Old Mutual invest	Paragraph 4.4(1)(a) And	Is the “standardised margin schedule approach” aligned to the best practice Standard Initial Margin Method (SIMM) established by ISDA in an effort to establish an	The standardised approach as set out in the margin notice is based on the BCBS-IOSCO framework. To the extent that a covered

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	4.5	industry standard in calculating the Initial Margin requirement? If not, we would advocate that it should be.	entity wishes to adopt any quantitative portfolio-based model it would need to obtain the prior approval of the Authority.
Old Mutual invest	4.5(a) – Credit Comment	The term “credit” as it applies to “asset class” has not been defined and requires definition in order to ensure no ambiguity is created.	The comment is noted. However, the reference is aligned to the BCBS-IOSCO framework.
	4.5(a)	Define “gross notional exposure of each relevant derivative contract”/ “% of notional exposure”	The Authorities are of the view that the meaning of the phrase can be ascertained from the Joint Standard read with the BCBS-IOSCO framework or further context.
Old Mutual Invest	4.5(b)	<p>1) Is this approach aligned to the best practice Standard Initial Margin Method (SIMM) established by ISDA in an effort to establish an industry standard in calculating the Initial Margin requirement? If not, we propose it should be.</p> <p>2) Is “Net-to-gross ratio” a defined term within the ISDA Initial Margin Annexure? Please provide clarity and define further?</p> <p>3) Provide rationale for including the 0.4 and 0.6 factors within the formula.</p>	<p>Please see earlier comment on the standardised versus quantitative model as the basis for the methodology for calculating margin requirements.</p> <p>The use of the net-to-gross ratio is an accepted practice in the context of bank capital regulation. Please see the BCBS-IOSCO framework for further details on the NGR.</p>
Old Mutual invest	4.5(c)	Define gross notional exposure with respect to Inflation and amortising swaps due to the capitalisation and reduction in notional values. Is the gross notional exposure in relation to the market value?	The gross notional exposure is distinct from the market value. Please see the BCBS-IOSCO framework for further context on the requirement.
Old Mutual invest	4.5(d)	<i>(d) must finally calculate the total required amount of initial margin by aggregating the calculated net standardised initial margin amounts <u>per counterparty</u> of all derivative instruments in the provider’s relevant portfolio of derivative contracts <u>as transacted with another covered entity</u>.</i>	The proposed amendments are not accepted and they are not aligned to the principles in the BCBS-IOSCO framework.

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		We propose alternate wording as this should be applied at each separate covered entity/counterparty level (not in aggregate across all counterparties) in relation to a bilateral agreement.	
VARIATION MARGIN			
Banking Association of South Africa (BASA)	Clause 5 (a)	<ul style="list-style-type: none"> The exchange of variation margin for all entities other than the largest market participants commences on 1 July 2018. However, this applies to all new contracts entered into after 1 January 2018. Whilst we appreciate the transitional period provided, these dates should ideally align. This is because the terms of the Credit Support Annex regulating the exchange of variation margin will have to be agreed prior to the deals being concluded, for legal certainty. <p>This means that, even though a transitional period is provided, this is of limited practical benefit to covered entities, as all legal agreements will in fact need to be agreed before 1 January 2018. With only 4 months until the end of the year, this will not be sufficient to negotiate the required CSAs. We recommend that the requirements to exchange margin commence on 1 July 2018 on contracts entered into on or after that date.</p>	Please see the revised timelines for implementation.
Banking Association of South Africa (BASA)	Clause 5 (3) (a)	<ul style="list-style-type: none"> Please provide clarity as (a) stipulates “<i>the aggregate month-end gross notional...</i>” and (b) relates to gross notional amount? 	The Authorities do not understand the comment. BASA to please provide clarity to the extent that the comment remains relevant.
HSBC	Section 5	<p><u>Exemption for physically settled FX Forwards and Swaps</u></p> <p>We submit that physically settled FX forwards and swaps be exempt from VM as well as IM as is the case in the US.</p>	Please see earlier comment regarding FX forwards and swaps.
INVESTEC	Paragraph 5.3(b)	Under Dodd-Frank and EMIR the obligation to collateralise was not retrospective. Why is the	The intention is not to impose retrospective margin requirements on covered entities.

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		Regulator seeking to impose a look back period between 1 Jan 2018 and 1 July 2018? This will add unnecessary complexity.	Please see the revised timelines for implementation.
Old Mutual invest	5.3(a) and 5.3(b)	Variation margin requirements in EU and US regulations kicked in for all in scope counterparties on 1 March 2017 and no limit has been defined. By allowing a R30 trillion limit it creates non-alignment and confusion as to when variation margin is requirements to apply. In the case that it is not required this introduces Credit Risk.	The BCBS-IOSCO framework allows for a staggered implementation of margin requirements. The Joint Standard is clear on the period within which variation margin must be exchanged.
Old Mutual invest	5.3(c)	VM not stipulated as only being allowed to be rehypothecated once whereas IM is. Not sure if this is standard. (We do not currently rehypothecate non-cash collateral)	That is correct. The initial margin can be rehypothecated once, in accordance with conditions stipulated in the Joint Standard. The approach taken in the Joint Standard is aligned to the BCBS-IOSCO framework.
ELIGIBLE COLLATERAL			
Banking Association of South Africa (BASA)	Clause 6 (1) (c)	<ul style="list-style-type: none"> •More guidance needs to be provided regarding what is “reasonably diversified” 	Please see the Joint Standard which clarifies that the collateral collected must not be overly concentrated in terms of any individual issuer, issuer type or asset or instrument type.
Banking Association of South Africa (BASA)	Clause 6 (5)	<ul style="list-style-type: none"> •We note that the final draft of the margin rules applies an 8% FX haircut with respect to both variation margin and initial margin. Given that variation margin is not segregated, the effect of this haircut is to increase the credit risk that the collateral provider takes on the collateral taker: we think that this is contrary to the main principle underlying the margin rules which is to mitigate counterparty credit risk. •We recommend that any FX haircut should be applied in the case of initial margin only and, in particular, to the extent that the currency in which the collateral is denominated differs from the applicable termination 	<p>The comment is noted. Where the collateral is cash in the same currency as the underlying payment obligation under the derivative instrument then a 0% haircut can be applied. In circumstances where the cash collateral and the underlying payment obligation on the derivative is not in the same currency, then an appropriate haircut must be applied to reflect the inherent FX risk.</p> <p>The BCBS and IOSCO have established a</p>

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		<p>currency.</p> <ul style="list-style-type: none"> • While the Basel principles on margin do contain a suggested standardised schedule of haircuts (including a suggested FX haircut), these are not intended to be prescriptive and, indeed, we would draw the attention to the Registrar to the fact that it is emphasized in Element 4 of the principles that haircuts should be 'appropriate'. • Further, we note that even if the suggested standardised schedule of haircuts were thought to be prescriptive, a 0% haircut is recommended for cash. <p>We propose that any FX haircut is removed at least to the extent that it relates to cash.</p>	<p>standardised schedule of haircuts for the listed assets. The haircut levels are derived from the standard supervisory haircuts adopted in the Basel Accord's comprehensive approach to collateralised transactions framework.</p> <p>However, if a regulated entity is subject to an existing standardised haircut-based approach under its required capital regime, the appropriate supervisory authority may permit the use of the same haircuts for initial margin purposes, provided that they are at least as conservative.</p> <p>Schedule-based haircuts should be stringent enough to give firms an incentive to develop internal models. To prevent firms from selectively applying the standardised tables where this would produce a lower haircut, firms would have to consistently adopt either the standardised tables approach or the internal/third-party models approach for all the collateral assets within the same well defined asset class.</p>
HSBC	Section 6(5)(d)	<p><u>Form of Gold</u></p> <p>We request clarification in what form gold may be held as eligible collateral.</p>	<p>The reference to gold is aligned to the BCBS-IOSCO framework, which does not provide further detail on the operational detail on how such eligible collateral has to be posted between the parties. When necessary, further direction will be provided on this matter.</p>
		<p><u>Expanded List of eligible Collateral</u></p> <p>We submit that the following should be added to the list of eligible collateral:</p>	<p>The draft Standard Joint creates an enabling framework and set out the principles that allow to eligible collateral, including the internationally agreed broad categories of</p>

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		<p>(a) Designated High-quality debt securities of regional and local authorities, public sector entities and multilateral development banks, or international organisations;</p> <p>(b) Designated bonds convertible into main index equities;</p> <p>(c) Designated units in collective investment schemes registered under the Collective Investment Schemes Control Act.</p>	eligible collateral that satisfy the key principles, without attempting to provide an exhaustive list eligible collateral in the framework itself. Additional qualifying items can be assessed and communicated in due course.
HSBC	Section 6(5)(c) and (d)	<p><u>Haircut for Cash in Foreign Currency</u></p> <p>We note that under Section 6(5)(3) a "conservative haircut" must be applied to "reflect any foreign exchange risk". This appears to contradict, Section 6(5)(d) which provides that a haircut of 0% is applied to cash. If a haircut is to be applied to cash in a foreign currency what are the parameters for quantifying foreign exchange risk?</p>	Where the collateral is cash in the same currency as the underlying payment obligation under the derivative instrument then a 0% haircut can be applied. In circumstances where the cash collateral and the underlying payment obligation on the derivative is not in the same currency, then an appropriate haircut must be applied to reflect the inherent FX risk. Potential methods for determining appropriate haircuts could include either internal or third party quantitative model based haircuts or schedule-based haircuts.
ISDA	Collateral and settlement	<p><u>Eligible Collateral.</u></p> <p>Given the timing of the proposed implementation, we urge the registrar to issue a list of the permitted eligible collateral referred to in section 6(2) of the Margin Requirements as soon as possible to facilitate the negotiation of the relevant Credit Support Annexes and the establishment of custodial arrangements.</p>	See earlier comment
		We submit that the following should be added to the list of eligible collateral:	See earlier comment

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		<ul style="list-style-type: none"> Designated High-quality debt securities of: regional and local authorities; public sector entities; multilateral development banks or international organisations Designated bonds convertible into main index equities; Designated units in collective investment schemes registered under the Collective Investment Schemes Control Act. 	
		<p><u>Holding Collateral.</u></p> <p>We request clarification with respect to the form in which gold may be held as eligible collateral.</p> <p>Additionally, we request clarification as to whether there are any restrictions on where collateral must be held. For instance, can it be held in an offshore account?</p>	<p>The reference to gold is aligned to the BCBS-IOSCO framework, which does not provide further detail on the operational detail on how such eligible collateral has to be posted between the parties. When necessary, further direction will be provided on this matter.</p>
		<p><u>Haircuts.</u></p> <p>In accordance with other global requirements, we contend that an FX haircut should not apply to the use of cash in any major currency rather than limiting such exemption to cases where the collateral currency is the same as the settlement currency.</p> <p>ISDA recognizes that additional risk is created when collateral is denominated in a different currency to the underlying derivative, but we believe that applying an FX haircut is not the optimal methodology to mitigate this risk. Instead such an approach will materially</p>	<p>Please see the earlier comment.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		accentuate, rather than mitigate, the cure period risk. Please see ISDA's Analysis and Counter-proposal ² on the matter to the European Supervisory Authorities for further details.	
ISDA		<p><u>Minimum Transfer Amount.</u></p> <p>The Margin Regulations propose a de minimis minimum transfer amount ("MTA") of R5 million, to be applied to the exchange of both initial margin and variation margin. This is a relatively low MTA and is not comparable to the MTA's used in other jurisdictions. This mis-match of MTA's could be cured by increasing the MTA to an amount which, when converted to foreign currency, would be more closely aligned with the MTA's applied in other jurisdictions with which South African market participants trade (i.e., EUR 500,000).</p>	This is based on a set conversion factor of 10:1 which has been adopted in respect of all amounts denominated in euros in the BCBS-IOSCO framework.
INVESTEC	Paragraph 6.1(e)	It is unclear why the Regulator sought to include provisions around substitution or exchange of collateral when this process is covered in detail in the CSAs.	The proposals are aligned to the BCBS-IOSCO framework.
INVESTEC	Paragraph 6.3	It appears as though the Regulator is trying to emulate the US methodology around application of haircuts in situations where different currencies are posted as collateral. We assume that the Regulator will eliminate ambiguous phrases such as "highly liquid" and "conservative haircuts" which are open to interpretation and do not make compliance obligations certain. The Regulator should have regard to the US rules (or EU rules) in the next draft.	The Joint Standard will not be that prescriptive.
Old Mutual invest	6.1(c)	<i>(c) the provider's portfolio of eligible non-cash collateral for purposes of initial and variation margin is reasonably diversified, that is, the collateral collected must not be overly concentrated in terms of any individual issuer, issuer type or asset or instrument</i>	<p>Not accepted – please see the discussion on Element 4 (Eligible collateral for margin) in the BCBS-IOSCO framework.</p> <p>The list of eligible collateral is set out in the</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSE
		<i>type</i> ; We propose this applies to non-cash collateral.	Joint Standard, and it is aligned to the BCBS-IOSCO framework, which includes cash as collateral.
Old Mutual invest	6(1)(c)	We agree that issuer risk should be mitigated but cash and government bonds are infinitely more preferable as collateral. Accordingly, we require legislative certainty around the requirement for “reasonable diversification”.	Please see earlier comment. In addition, the Joint Standard will not prescribe what is “reasonable diversification”. This will be determined by each covered entity in accordance with its risk management framework.
Old Mutual invest	6(1)(d)	This term, without clarification, lends itself to ambiguity and subjectivity and requires clarity.	Which term is being referenced?
Old Mutual invest	6(1)(g)	This paragraph seems to refer to correlation between value of collateral and counterparty. Eg. If we accept govt bonds from a bank, the downgrade of a sovereign with impact bond spreads and it is highly likely that the bank will be downgraded in line with sovereign. Accordingly, a distinction must be made between the actual issuer of the collateral and the counterparty.	In terms of the Joint Standard, securities issued by the counterparty or its related entities should not be accepted as collateral.
Old Mutual invest	6(2)(c)	The term high-quality lends itself to ambiguity and subjectivity and requires clarification. In particular, would a government guarantee be considered “high quality”?	The comment is noted. Please see the revised Joint Standard.
Old Mutual invest	6(2)(d) - credit comment	High-quality corporates: The term high-quality lends itself to ambiguity and subjectivity and requires clarification.	The comment is noted however the Joint Standard will not be that prescriptive.
Old Mutual invest	6(5)(d) - credit comment	A liquidity haircut is provided in draft doc. Consideration to be given to be given to individual credit	

1. BACKGROUND

INTRODUCTION

On 5 June 2015 the Registrar of Securities Services issued the draft Notice on Margin requirement for OTC Derivative transactions for public comment in terms of Section 6(7)(d) of the Financial Markets Act (Act No. 19 of 2012). The consultation period lapsed on 6 July 2015 and comments were received from various market participants including corporates, associations, investment banks and asset managers.

2. LIST OF COMMENTATORS

- ACTSA/SABMiller
- Banking Association of South Africa (BASA)
- Barclays Group
- Global Foreign Exchange Division (GFXD)
- HSB
- IG Markets South Africa Limited
- International Swaps and Derivatives Association (ISDA)
- Investec Asset Management
- JSE Limited
- Macquarie Securities South Africa Limited
- Old Mutual Investment Group
- Peregrine Securities
- Purple Group
- Standard Bank

3. Comments and Responses

The following comments as per the matrix below have been captured as at 31 July 2017.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Margin requirements for Non-centrally Cleared OTC Derivatives			
General Comments			
IG Markets	Framework Alignment	<p>We consider that there are areas, where the draft regulations materially differ from other countries that have adopted regulations to adhere to these G20 obligations in relation to the scope of these regulations and in relation to the application of the initial margin rules and the when they are introduced from.</p> <p>Considering the draft margin requirements for non-centrally cleared OTC derivative transactions:</p> <ul style="list-style-type: none"> • We support increased regulation to limit excessive and opaque risk-taking through OTC derivatives by large systemic OTC derivatives traders. • We support regulation to reduce the systemic risk posed by large systemic OTC derivatives traders. <p>We thoroughly support the efforts to ensure consistency in regulation across various jurisdictions so as to reduce the opportunity for regulatory arbitrage.</p>	<p>Thank you for the comments and the support, indeed it is of utmost importance to develop frameworks that are consistent and aligned in order to minimise disruptions while supporting the objectives of the Financial Markets Act and meet the G20 obligations for OTC derivatives market reforms.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine	Framework Alignment	<p>We have found the principles outlined in the National Treasury Policy Statement on OTC derivatives comprehensive, balanced and in line with international best practice.</p> <p>In general, the Regulations translate these principles into a workable framework for registration, market conduct and reporting obligations.</p> <p>However, we have found that the draft initial margin requirements contained in the Notice deviate significantly from principles set forth in the international guidelines contained in the document entitled “Margin requirements for non-centrally cleared derivatives” developed by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions (the “BCBS-IOSCO Framework”).</p> <p>The requirement that ALL entities (banks, as well as other financial and non-financial entities) must post and receive initial margin is in direct contrast to the international guidelines. The proposed requirement will have a devastating impact on the delivery of essential financial products, will drive users of these products to other jurisdictions and will negatively impact employment and the tax revenue generated by South Africa’s sophisticated financial services sector. We propose that clients (as defined in the Regulations) are exempted from the initial</p>	<p>The comments are noted. The revised Notice seeks to align as closely as possible to the BCBS- IOSCO recommendations but also reflects the unique domestic framework.</p> <p>A definition for “covered entities” has been included, which includes authorised OTC derivative providers and specified counterparties.</p> <p>Under the revised requirements, re-hypothecation is allowed subject to the specified requirements and conditions - please see paragraph 4.3.</p> <p>The phasing in of the requirements is further provided for in paragraph 4.2.</p> <p><i>Please refer to the revised Notice.</i></p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>margin requirement and that other thresholds be set to bring the initial margin requirement in line with international guidelines.</p> <p>The absolute prohibition on the re-hypothecation of collateral contained in the Notice will have a severe dampening effect on the market's ability to effectively raise capital and hedge risks, and will further diminish liquidity in South African financial markets. The BCBS-IOSCO Framework allows providers to re-hypothecate collateral under controlled conditions. We support the limiting provisions and controlled arrangements under which the BCBS-IOSCO Framework suggests that re-hypothecation of collateral should be allowed. However, a prohibition on all re-hypothecation will severely constrain South-Africa's financial markets and prevent effective capital formation. The emerging nature of our economy demands innovation, flexibility and efficiency – within a prudential framework.</p> <p>Finally, the requirements of the Notice should be phased in on a basis similar to that suggested in Key principle 8 of the BCBS-IOSCO Framework in order to minimise market disruption.</p>	
BASA	Framework Alignment	We do not believe that the margin provisions as they currently stand are aligned with the margin principles for non-cleared transactions that is currently being considered offshore. We propose that the FMA regulations be aligned	We note your comments on the margin requirements framework. Amendments have been made to

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>as much as possible with other offshore frameworks and the principles published (where relevant) by IOSCO to ensure that harmonisation with the rules of offshore regulatory frameworks can be achieved.</p> <p>EU and US regulators are in the process of putting in place the margin requirements that apply to non-cleared OTC derivatives, and are broadly subscribing to the principles introduced in the BCBS / IOSCO principles published in March 2015. In particular, offshore regulators are subscribing to the BCBS / IOSCO principles with regards to the scope of entities (“covered entities”) that should be caught in the framework for bilateral exchange of variation margin and initial margin (respectively), and also with regards to thresholds and timelines of impact.</p> <p>All financial institutions in South Africa who are engaging in trading activities with counterparts in the EU and US will be caught by the frameworks for margining of non-cleared OTC derivatives that are being put in place there. To avoid regulatory arbitrage, it is imperative that South Africa does not exaggerate the margin thresholds or impact timelines to such extent that it would discourage the local and /or international community from transacting non-cleared OTC derivatives with local market participants (in particular, the local banks).</p>	<p>the contents of the Notice.</p> <p>The intention of the margin requirements is to align as close as possible to the BCBS-IOSCO framework, but at the same time having regard to the domestic context.</p> <p>The new thresholds proposed will leave most entities out of the ambit of the requirements for margin as they are more closely aligned to the thresholds in the BCBS-IOSCO framework.</p> <p>Thresholds are not determined by counterparty type, but apply across board on the defined “covered entities” – please see the revised Notice.</p> <p>The margin requirements will be phased-in, similar to the approach in the BCBS-IOSCO recommendations although the implementation date adopted in SA will differ</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>The current proposed margining regulations are written in a very different format to the BCBS/IOSCO policy framework. This difference adds an administrative burden to local and international entities as they will have to deal with materially differently worded regulations aiming to achieve the same end.</p> <p>The recommendation would be to align the Regulations and in particular the Board Notice to the BCBS/IOSCO policy framework in respect of –</p> <ol style="list-style-type: none"> 1. Margin thresholds, introduced on a phased in timeline; 2. Definition of entities covered that are subject to the margining provisions, i.e. covered entities and the scope of applicability; 3. Calculation of margin thresholds; 4. Scope of coverage – instruments subject to the requirements; 5. Introduction of a minimum transfer amount, and initial margin threshold; 6. Introduction of an intra-group exemption; 7. Types of eligible collateral; 8. Clarification on whether state owned entities are in / out of scope. <p>This is based on the following:</p>	<p>It is not the intention of the margin requirements to be more stringent for the domestic counterparts. However, the BCBS-IOSCO framework has been adapted where necessary for the domestic context.</p> <p>A definition of covered entities has been included, it includes ODPs and specified counterparties, therefore state owned entities or any person not listed as a covered entity is not scoped-in the margin framework. In addition, the Registrar of Securities Services may determine other persons who must comply with the margin requirements.</p> <p><i>Please see the revised Notice.</i></p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>stemming from LCR (possibly NSFR too), partially because the international regulations don't recognize the benefits caused by the partially closed nature of the economy. This implies that South Africa is in an even more constrained position than many other regions, suggesting that we need to be as careful as possible about adding more pressure to this space through the margining regulations.</p> <ul style="list-style-type: none"> • Required margin (both VM and IM) in a closed economy like South Africa, especially with its relatively small corporate debt market, would have to be sourced, in the majority, from the banks. This would defeat the point of margining requirements as there would be little net reduction in systemic risk to the SA banking system. • South Africa has relatively few liquid assets eligible for margin purposes (as evidenced by the LCR issue above). This is exacerbated by regulations requiring segregation and preventing re-hypothecation as this rule's out the use of cash for IM purposes and further reduce liquidity of the assets used. • Most South African corporates trade derivatives for cash flow certainty. The only corporates that can deal with uncertainty are those with large, fully staffed treasuries and easy access to worldwide corporate bond and commercial paper markets. Thresholds that pick up corporates below this level of critical mass will cause major problems for those corporates. The proposed 	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>regulations seem to force VM for every entity trading with a bank, along with IM for nearly all entities.</p> <ul style="list-style-type: none"> • The re-papering required at the international thresholds will be a monumental undertaking. At the currently proposed South African thresholds, this would be a near impossibility. • Bespoke derivatives (those not clearable) are often entered into in order to gain hedge effectiveness for the client. This could be ruined by VM requirements, adding unnecessary volatility to corporate income statements <p>The non-alignment with the BCBS/IOSCO framework creates an un-level playing field for South African market participants competing with international participants, who are subject to higher thresholds, and this will ultimately have a negative impact on the wider South African economy.</p>	
Barclays	Framework Alignment	<p>The Second Draft Policy Document, in respect of margin requirements provides -</p> <p>"The proposed collateralisation is consistent with international standards as presented in the final 2013 BCBS — IOSCO paper; this will ensure the control of international arbitrage by creating a level playing field for all providers in the OTC market."</p> <p>and</p>	<p>The comments are noted. Some amendments have been incorporated, taking into account the BCBS-IOSCO recommendations.</p> <p><i>Please refer to the revised Notice.</i></p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>“The phase-in time lines are aligned to the proposed BCBS—IOSCO timelines, to ensure that South Africa does not prejudice those OTC derivatives providers with exposures to counterparties in other jurisdictions that must comply with the relevant margin requirements.”</p> <p>Whilst we fully support the alignment with BCBS-IOSCO principles, factually these statements are incorrect, as the provisions in the proposed Board Notice are neither aligned nor consistent with BCBS-IOSCO principles, since the Board Notice-</p> <ul style="list-style-type: none"> • is not clear regarding the obligation on both providers and counterparties to exchange initial margin: “provide on a bilateral basis” does not mean that both parties are required to exchange margin (universal two-way margin). This potential interpretation issue is exacerbated by the language in paragraph 9, where only providers are referred to in exclusion thresholds; • does not align with the BCBS-IOSCO initial margin thresholds and the de-minimis minimum transfer amount; • does not allow re—hypothecation. re-pledging and re-use of collateral. without due regard to the liquidity 	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>impact in the South African market;</p> <ul style="list-style-type: none"> • does not provide for the eligibility of collateral (e.g. in respect of liquidity and wrong—way risk); • does not provide for the treatment transactions with affiliates; • does not provide for consistency in the treatment of cross-border transactions; and • does not provide phase-in timelines aligned with the BCBS-IOSCO timelines, provided for in the BCBS-IOSCO March 2015 framework (BCBS-IOSCO framework). <p>We strongly recommend that the South African approach to margin for non-centrally cleared OTC derivatives is fully aligned to the BCBS-IOSCO framework.</p>	
Scope of application			
Peregrine	Exclusion of Clients	<p>1. The requirement that ALL entities (banks, as well as other financial and non-financial entities) must post and receive initial margin is in direct contrast to the international guidelines. The proposed requirement will have a devastating impact on the delivery of essential financial products, will drive users of these products to other jurisdictions and will negatively</p>	<p>The margin requirements do not apply to all entities, only the ODPs defined in the FMA regulations and the counterparties specified in the revised Notice.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>impact employment and the tax revenue generated by South Africa's sophisticated financial services sector. We propose that clients (as defined in the Regulations) are exempted from the initial margin requirement and that other thresholds be set to bring the initial margin requirement in line with international guidelines.</p> <p>2. <i>"counterparty" and "client" means "counterparty" and</i> <i>"client", respectively, as defined in the Regulations. Includes a client as defined in the Regulations;</i></p> <p>By including clients in the concept of counterparty for purposes of the Notice, private clients and corporates with no means to hold initial margin are drawn into the requirement to exchange initial margin. Clients should be excluded.</p> <p>This is in line with the requirements of Key principal 2 of the BCBS-IOSCO Framework (page 10, paragraph 2.6) which states:</p> <p><i>"Only non-centrally cleared derivatives transactions between two covered entities are governed by the requirements in this paper."</i></p> <p>(Covered entities are define in 2.4 of the BCBS-IOSCO Framework as "financial firms and systemically important non-financial entities".)</p>	<p><i>Please see the revised Notice.</i></p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>3. <u>Suggestion: “clients” should be excluded from “counterparties” under the Notice</u></p> <p>The Notice’s definition of “Counterparty” in paragraph 1 specifically includes “clients” (as defined in the Regulations). This has the effect of including private individuals, non-financial entities and other non-systematically important entities in the category of persons required to post and receive initial margin.</p> <p>We view the inclusion of “clients” in this requirement as inconsistent with the achievement of Objective 1 of the Policy Statement: <i>“Contributing to the maintenance of a stable financial market environment and reducing systemic risk”</i>. It is also in conflict with Principle 1 of the same policy: <i>“Adoption of appropriate international standards”</i></p> <p>Clients post little if any systemic risk. Burdening these users of financial products with the operational legal and capital requirement to process bilateral margin serves no purpose in fulfilling the stated objectives or following the stated principles of the Policy Statement.</p> <p>Further, the margining requirement will have a meaningful impact on</p> <ul style="list-style-type: none"> - Market liquidity, as many OTC derivative financial products sold to retail clients will disappear. All financial products with any derivative component will 	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>be affected.</p> <ul style="list-style-type: none"> - Cost of capital, as clients will be required to revert back to non-derivative products to achieve similar outcomes but at a higher cost. - Market efficiency, as a narrowing of the product range available to clients will create product monopolies executed at a higher cost. - Operational requirements for non-financial entities, as receiving margin and keeping it separated from proprietary assets cannot be done by clients. - Innovation in financial markets, as OTC derivatives are currently at the forefront of innovation and flexibility. <p>Additionally many reputable and experienced OTC service providers in both the banking and non-banking sectors will be forced to discontinue their activity and products. Some activity may migrate to centrally cleared venues if they become available, the bulk will discontinue completely or migrate to other jurisdictions.</p>	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
BASA	Covered Entity definition	<p>The recommendation would be to align the Regulations and in particular the Board Notice to the BCBS/IOSCO policy framework in respect of –</p> <p>Definition of entities covered that are subject to the margining provisions, i.e. covered entities and the scope of applicability.</p> <p>“counterparty” includes a client as defined in the Regulations</p> <p>We do not understand this definition and why it is not consistent with the definition in the Regulations. It is submitted that for consistency and the avoidance of confusion that the definitions are the same as in the Regulations. In addition, we are of the view that the margining requirement should not apply to clients.</p> <p>We propose that in aligning the Board Notice and the Regulations to the BCBS/IOSCO policy framework, that a definition of Covered Entities is inserted and propose the following:</p> <ul style="list-style-type: none"> • “covered entity” includes a provider and a systemically important counterparty • “systemically important counterparty” includes a counterparty as defined in the Regulations which has an OTC derivative exposure which exceeds a pre- 	<p>The amendments exclude clients from the margin framework.</p> <p>Noted. Covered entity includes ODPs as defined in the FMA regulations and counterparties as specified under the revised Notice.</p> <p>We disagree with the suggestion to capture only the systemically important counterparties. The revised requirements are intended to capture those institutions that engage in OTC derivative transactions above certain thresholds as prescribed in the revised Notice. Given the current provisions in the regulatory framework, it would require processes to make determinations/designation for systemically important financial and non-financial entities by the Authorities. Using this approach, will further exclude participants in OTC derivative transactions from</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>determined classification threshold</p> <ul style="list-style-type: none"> In line with the recommended definition changes, the word covered entity should replace provider and counterparty throughout the Board Notice 	<p>the margin requirements.</p> <p><i>Please see the revised Notice.</i></p>
IG Markets	Exclusion of Clients	<p>We note that the draft margin regulations appear to treat retail clients, natural people and non-systemic juristic people (people who are not financial market participants), as “counterparties”. There is no express exclusion for these people from the potential obligation to provide bilateral initial margin. We would request that the National Treasury gives detailed consideration to expressly exempting this group of clients from any mandatory initial margin requirements.</p>	<p>See the revised Notice – reference to clients has been removed from the margin requirements. The margin requirements only extend to authorised ODPs as defined in the FMA Regulations and specified counterparties in the revised Notice.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>This request is based on the following considerations:</p> <ul style="list-style-type: none"> • Retail clients, natural people and non-systemic juristic people trade in small sizes and the overall exposure to the market is not of systemic importance. • To require these clients to provide initial margin on a bilateral basis would result in the majority of these clients being unable to trade due to not having the facility to accept and segregate collateral. • Excluding these clients from the margin requirement regulations by no means excludes clients or their providers from requirements of other published draft regulations. <p>To exempt retail clients, natural people and non-systemic juristic people from these obligations is consistent with the developments in other G20 countries and in particular the EU with the reference to non-financial counterparties below the threshold (NFC) and the express exclusion of natural people from the obligations set out in EMIR in the EU.</p>	
Barclays	Exclusion of Clients	<p>We recommend that the requirements in respect of margin for non-centrally cleared OTC derivatives are only applicable to ODPs and systemically important counterparties (i.e. covered entities). Clients and non-systemically important counterparties do not have the necessary infrastructure to</p>	<p>The comments are noted, and reference to clients has been removed, please see the revised Notice. Regarding systemically important institutions, please refer</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		exchange and segregate two-way margin and extending the scope of the Board Notice to include clients and non-systemically important counterparties will have the opposite effect of decreasing risk in the OTC derivatives market.	to the explanation above.
Macquarie Securities (Round 2)	Exclusion of Clients	This notice prescribes <u>bi-lateral</u> margining and by implication this means that “clients” and “counterparties” will, reciprocally, be obliged to accept, manage and post margin. This will consequently present significant operational challenges for clients/counterparties as well as providers. We propose that providers are left with an election as to whether they wish to call for initial margin from clients/counterparties rather than compel them.	The comments are noted. Please see the revised Notice. The margin requirements exclude clients. Counterparties covered by the margin requirements are specified in the Notice. However, covered entities are still required to exchange margin due to the risk that these transactions above a certain threshold may pose to the market.
Purple group	Exclusion of Clients	<p>The FMA Margin Requirements Regulations, in respect of margin requirements should only apply where derivative transactions are entered into between two systemically important entities.</p> <p><i>As such:</i></p> <ul style="list-style-type: none"> • Clients (non-financial firms that are not systemically important) should be excluded from the definition of covered entities; 	<p>The comments with respect to clients are noted – please see the revised Notice. The margin requirements are, however, not limited to systemically important entities.</p> <p>Agreed. Margins apply if transactions are between covered entities that are ODPs, defined in the FMA regulations or counterparties as specified in the revised Notice</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<ul style="list-style-type: none"> The regulations should be clear that, only, OTC derivative transactions between two covered entities are covered by the FMA Margin Requirements Regulations in respect of Margin requirements. I.e. where one party to the transaction is a “covered entity” and the other party is not, then the FMA Margin Requirements Regulations in respect of Margin Requirements will not apply between those parties. 	.
ACTSA/SABMiller	Exclusion of Clients	<p><i>“counterparty” includes a and “client” have the same meanings as defined in the Regulations; and</i></p> <p>Counterparties and clients should be treated differently for margining purposes.</p> <ul style="list-style-type: none"> Clients, including corporates, will generally not have the necessary infrastructure to mark their transactions to margin or to receive margin. 	Please refer to the response above.
Definitions			
BASA	Netting Set	<ul style="list-style-type: none"> We propose the following words used in section 6 of the Notice are added as definitions to avoid inconsistency and confusion: “netting set” 	“Netting set” has been defined. Please see the revised Notice.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine	Netting Set	<p><u>Insert: “netting set” means all derivatives covered by an enforceable bilateral netting agreement;</u></p> <p>The term “netting set” is used throughout the Notice without a definition.</p>	“Netting set” has been defined. Please see the revised Notice.
BASA	Group Consolidated	“group consolidated” – clarity is required as to whether this refers only to a group with a holding company in the Republic or whether it means a group irrespective of the jurisdiction of the holding company, its subsidiaries, affiliates and branches.	Please see the revised Notice. “Group” has the same meaning as in the Companies Act.
Macquarie Securities (Round 2)	Non-centrally OTC derivative transactions	<p>We propose that the “non-centrally cleared OTC derivative transactions” should also be specified by the registrar (as with “cleared” transactions) <u>in detail</u> – ISDA transaction types may serve as a means of categorisation.</p> <p>We further propose that the definition “non-centrally cleared OTC derivative transactions” be limited to “...an OTC derivative <u>[specified by the registrar]</u> that is executed, whether confirmed or not confirmed, <u>pursuant to a “master agreement” as defined in section 35B(2) of the Insolvency Act, 1936 which has not otherwise been designated as an OTC derivative that is required to be cleared through a central counterparty by the registrar</u>”.</p>	Disagree. It is not necessary to specify the non-centrally cleared derivative transactions for the purpose of margin requirements. Exclusions are provided for the following: Physically settled foreign exchange forwards and swaps are excluded from initial margin requirements. Securities lending and repurchase agreement with similar attributes as derivatives are not captured by the definition of OTC derivatives. <i>Please see the revised Notice.</i>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Risk Management Framework			
BASA/IG Markets	Intragroup Transactions Paragraph 3(2)(f)	<p>In line with the BCBS / IOSCO principles, we propose that intra-group transactions be excluded from the requirement to post IM and VM under the margin rules for non-cleared OTC derivatives transactions.</p> <p>We recommend that intragroup transactions are exempt from the requirement to exchange collateral if certain requirements on risk management procedures are met and approved by the relevant competent authorities in each jurisdiction. This is in line with international standards and the proposed regulations in EMIR.</p>	The comment is noted. Please see the revisions to the Notice in respect of the treatment of intra- group transactions.
Peregrine	Paragraph 3(5)	<p><u>Option 1:</u> Delete clause</p> <p><u>Option 2:</u> Substitute with “A provider must be appropriately capitalised.”</p> <p><u>Option 3:</u> Amend to read “A provider must hold <u>appropriate capital against all of the relevant risks not covered by appropriate exchange of collateral.</u>”</p> <p>The wording “...must hold capital...” may be open for</p>	Substantial amendments were made to the section on risk management requirements to align with the BCBS-IOSCO framework. See the revised Notice under the heading “general requirements”.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>interpretation and may mean that the full risk should be covered by capital irrespective of the probability of such risk taking place.</p> <p>The wording “...against all of the risks...” is too wide-ranging and may be interpreted to include operational, business, liquidity and other risks not intended to be included.</p>	
Macquarie Securities (Round 2)	Section 3(5) Risk Management	A capital adequacy regime is prescribed by “Criteria for Authorisation as an OTC derivatives provider” – please delete or otherwise link Section 3(5) to the regime prescribed by the aforementioned. As it currently stands it is vague	Amendments have been made to the section on the risk management requirements in the revised Notice.
Initial Margin			
BASA	4.	<p>The requirement should be amended so that it places an obligation on covered entities to place and receive margin as required based on the valuation of the derivatives entered into between two covered entities. This is consistent with the current bilateral arrangements under the ISDA master agreement and Credit Support Annex.</p> <p>We propose the following amendments –</p> <p>4. Initial Margin</p> <p>(1) Covered entities must, subject to the relevant</p>	Amendments have been made in the revised Notice to clarify the requirement to exchange initial margin. Only covered entities are required to exchange margin.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>thresholds and exemptions in this Notice, exchange, on a bilateral basis, initial margin on all non-centrally cleared OTC derivative transactions in terms of the requirements set out in this Notice.</p> <p>(2) Covered entities must exchange initial margin by no later than the business day following the execution of a non-centrally cleared OTC derivative transaction.</p>	
Purple group	4(1)	<p>Initial margin collected, outside of the requirements of these regulations, should specifically be excluded from the provisions of these regulations; hence an OTC derivatives provider that is facing clients (that are not systemically important) will be able to re-hypothecate client margin to a prime broker (for hedging purposes) and the prime broker in turn should be able to re-hypothecate the client margin again, to the extent necessary (whereas if the regulations apply, then initial margin will only be allowed to be re-hypothecated once).</p> <p>The FMA Margin Requirements Regulations should be changed to allow the re-hypothecation, re-pledging or re-use of collateral held as initial margin (in respect of the requirements of this regulation), under a specific set of conditions.</p>	<p>The comment is noted. Please see the amendments to the revised Notice. The requirements in respect of re-hypothecation are limited to OTC derivative transactions between the covered entity/ODP that are captured in the margin framework. The initial margin collector will be allowed to re-hypothecate the counterparty's collateral, subject to certain conditions as set out in the revised Notice, to ensure that the counterparty's rights are protected. Re-hypothecation by the third party might introduce additional counterparty risks.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine/ACTSA	4(1)	<p><i>“A provider must, subject to the relevant thresholds and exemptions in this Notice, provide <u>or receive on a bilateral basis</u>....”</i> An OTC derivative provider must also receive initial margin, i.e. the margining is bilateral.</p> <p><i>A provider must, subject to the relevant thresholds and exemptions in this Notice, provide, on a bilateral basis, initial margin on all non-centrally cleared OTC derivative transactions <u>concluded with counterparties</u> in terms of the requirements set out in this Notice.</i></p> <p>Corporates hedging is often used to achieve a measure of cash certainty. If a corporate is required to provide and receive margin, cash certainty is diminished by the need to exchange cash on a frequent and unpredictable basis.</p> <p>The exclusion of corporates from the margining requirement is reflected in the BCBS IOSCO Framework in paragraph 2(c) on page 10, which states that only transactions between financial firms and systemically important non-financial entities are covered by the margin requirements in the BCBS IOSCO Framework.</p> <p>Under Dodd-Frank the margin requirements do not apply to non-financial corporates hedging or mitigating commercial risk (see HL Summary page 24).</p>	<p>Amendments have been incorporated in the revised Notice. The notice specifies the ODPs and specific counterparties that must meet the margin requirements.</p> <p>It is unclear which entities are captured by the ‘corporate’ description. Only financial institutions defined as counterparties are required to exchange margin.</p>
Peregrine	4(2)	<p><i>“A provider must provide <u>or receive</u> initial margin...”.</i></p> <p>Initial margin should be bilateral.</p>	<p>Noted. Amendments have been made to the provision to reflect the suggested wording.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
BASA	4(5)	<p>The total amount of initial margin to be collected by a provider from a counterparty must be recalculated and collected at least when-</p> <ul style="list-style-type: none"> (a) a new agreement is executed with that counterparty; (b) an existing agreement with that counterparty expires; (c) an existing agreement triggers a payment, other than posting or collecting variation margins, or a delivery; (d) an existing agreement is reclassified in terms of asset category by way of reduced time to maturity; <p>It is uncertain what is meant by the word “agreement” used in this sub section. Is it supposed to refer to the derivative contract and if so is the word contract not a more universally acceptable term of use. It is submitted that the use of the word agreement can be confused with the agreements proposed under the Code of the Conduct.</p>	Please see the revised Notice.
Methodology for calculating Margin			

COMMENTATOR	SECTION	COMMENTS	RESPONSES
BASA	5	<p>The main reason this methodology is included is because the replacement methodology will not yet have come into practise by the first stage of the BCBS/IOSCO paper. However, the standardised method proposed is widely recognised as having very material limitations, especially in the case of netted and margined sets of trades.</p> <p>As such, under the assumption that no South African entities should need to place or receive IM before the application of the new standardised model, it is proposed that the new standardised model (outlined in “new standardised approach for measuring counterparty credit risk”, 31 March 2014) be used, with Appendix A adjusted accordingly.</p>	<p>Comment noted. Please refer to paragraph 4.4 - a provider may either use the standardised method, or with approval of the registrar, the quantitative portfolio margin model approach.</p>
BASA	5(1)(a)	<p>This provision requires that the OTC derivative transaction is subject to a single and legally enforceable bilateral netting agreement that requires “daily netting”.</p> <p>What is meant by daily netting? The ISDA Master Agreement (which is the standard agreement covering OTC derivative transactions) does not specify a netting frequency, but has the effect that, upon the occurrence of a default, all transactions entered into under the agreement will be terminated, a close-out value determined and the values so calculated will be netted.</p>	<p>Agreed. The Notice has been amended and the reference to daily netting has been removed.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine	5(1)(b)	<p>“....(based on its underlying asset class) <u>as specified in Annexure A.</u>”</p> <p>To clarify which “add-on” factor is referred to.</p>	<p>Wording corrected. The “add-on” factor referred to in the previous notice related to the calculation of initial margin using a standardised method. The notional amount of the derivative contracts in the netting set shall be multiplied by the “add on factor” or percentage (%) specific to that underlying asset based on table 1 provided in the notice.</p>
Section 6 Model Use			
BASA	6. Model use	<p>Our regulatory requirements should be harmonised. The BCBS proposal is for a 99% confidence interval, as is the proposed Standardised Internal Model Method (SIMM) from ISDA. In addition, we should be careful of specifying the 25% of data from a stressed period if this is materially different (above or below) international norms as, once again, this difference could lead to regulatory arbitrage. Similarly, the requirement for 6 monthly re-calibration could be counterproductive, creating pro-cyclical effects in a stress environment.</p> <p>It is therefore recommended that an element of regulatory discretion be added to the frequency of re-calibration to</p>	<p>Agree to the first point on the accurate confidence interval. Confidence interval specified in the Notice adjusted to 99% and not 99.5% consistent with the BCBS-IOSCO proposal (see paragraph 4.6(b)).</p> <p>Noted. Requirements revised for data representation, no reference to 25%.</p> <p>Agreed. Reference to 6 months</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		allow for the amelioration of potential pro-cyclicality.	calibration removed.
BASA	6(2)(1) – Confidence Intervals	<p>6.2 (1) For the calculation of the initial margins, the assumed variations in the value of the agreements in the netting set must be consistent with a one-tailed 99.5 per cent confidence interval over a margin period of risk of at least 10 days.</p> <p>In the policy framework establishing the minimum standards for margin requirements for non-centrally cleared derivatives, agreed by BCBS and IOSCO, a confidence interval of 99% is proposed.</p> <p>Is there a specific reason why a confidence level of 99.5% is proposed in this notice?</p>	Agreed. Reference to confidence interval corrected. See the response above and the revised Notice.
Peregrine	6.3(8)	<p><i>“...from the recalibration of the model, over an <u>appropriate</u> period. longer than one day</i></p> <p>Some incremental changes may be very small and one day should be sufficient. Other incremental changes may require several days.</p>	Agreed and amended.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine	6.4(2)	<p>Add “gold” to “commodities”</p> <p>Move “currency” to its own class</p> <p>There is no objective reason to mix gold, interest rates and currency. Even though there may be a longer term correlation between interest rates and the currency, over the short term there may be meaningful decorrelation.</p>	<p>This section has been amended. <i>See the revised Notice.</i></p>
		Variation Margin	
Peregrine	7(1)	<p>“A provider must provide, on a bilateral basis, <u>exchange</u>”</p> <p>Variation margin is paid and received.</p>	<p>Noted. Amendments have been incorporated in the revised Notice.</p>
Peregrine	7(3)	<p>“Variation margin may be collected <u>exchanged</u> on a net basis.”</p> <p>Variation margin is paid and received.</p>	<p>Noted. Amendments have been incorporated in the revised Notice.</p>
Collateral Management			
BASA	8. Collateral Management	<p>8.1 Eligible collateral guidelines should be included.</p> <p>The recommendation is that these equate, at least, to those in the BCBS/IOSCO principles, including Cash, Corporate Government and Covered bonds, equities and Gold.</p> <p>In addition, given the relative lack of liquid assets in the South African market it is recommended that consideration</p>	<p>List of eligible collateral; has been updated. <i>Refer to paragraph 8(2) of the Notice.</i> Despite the recommendations by the BCBS- IOSCO, jurisdictions or regulators must make a determination on the list of eligible collateral taking into</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>be given to the discretion proposed in Requirement 4 of the BCBS/IOSCO principles allowing for a wider range of collateral.</p> <p>8.1(2). Recommendation is to allow for a single stage of re-hypothecation as per the BCBC/IOSCO principles.</p> <p>8.1.3. This requirement should only apply to IM exchanges. In line with the BCBS / IOSCO principles, variation margin need not be segregated</p> <p>8.2. Segregation of initial margin. Any costs associated with the segregation of initial margin should be borne by the posting party.</p> <p>The requirement for a provider to enter into an agreement with a counterparty regarding the segregation of initial margin and the arrangements regarding the safekeeping of collateral is not provided for in this Board Notice.</p> <p>It is recommended that the particular paragraph, in the Code of Conduct, that deals with the requirement to enter into an agreement is referenced in this paragraph</p> <p>8.2(5). Are these opinions to be obtained on an agreement, by agreement, basis. In which case, the cost of obtaining such a legal opinion should be borne by the posting party.</p>	<p>account their domestic framework.</p> <p>Agreed. One time re- hypothecation is permitted.</p> <p>Segregation provisions amended to apply to initial margin. Segregation of initial margin will be by agreement that is legally enforceable by the counterparties involved. Please see amendments to the revised Notice.</p> <p>Disagree. The provider will bear the cost of obtaining agreements for the transactions/contracts it is party to in various jurisdictions. Consent is required in writing but no frequency is included for the agreement.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>Obtaining these legal opinions on a transaction by transaction basis would be very costly. We are not opposed to obtaining legal opinions to verify the enforceability of collateral arrangements. However, as laws tend not to change overnight, we propose that the requirement be bi-annually (at most), and per jurisdiction (rather than per transaction).</p> <p>8.3.1 (1) (a) The standard methodology is to be excluded, proposal is to refer to the methodology as set out in BCBS/IOSCO.</p> <p>8.3.1 (1) We are uncertain why only “government securities” are referenced in (b), (d) and (e). The recommendation would be for these regulations to apply to all eligible collateral.</p>	<p>The standardised methodology has been updated in the latest Notice, reflecting the recommendations by the BCBS- IOSCO.</p> <p>Reference to government securities corrected – and the requirements apply to all eligible collateral.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine	8.1 and 8.1(2)	<p>Insert new 8.1(1) (and renumber remainder of 8.1 accordingly):</p> <p><u>“ (1) When an entity receives collateral from another entity to fulfil its initial margin obligations the arrangement must comply with the provisions of this clause 8. ”</u></p> <p>A clear distinction should be drawn between the “initial margin” and “collateral”. Initial margin is the regulatory <u>amount</u> kept as a buffer against default on the variation margin.</p> <p>Collateral comprises assets exchanged to manage the initial margin.</p> <p><u>“(23) Collateral collected for initial margin may not be re-hypothecated, re-pledged or otherwise re-used unless the following criteria are met</u></p> <ul style="list-style-type: none"> - <u>the counterparty agrees in writing to the re-hypothecation; and</u> <p><u>the collateral may only be re-hypothecated by the OTC</u></p>	Amendments made to the revised Notice.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p><u>derivative provider and only for its hedging of the OTC derivative transaction in respect of which it received the initial margin.”</u></p> <p>Often collateral received from a counterparty (especially in the case of a retail provider of contracts for differences) is used to obtain exposure with another OTC derivatives provider or is used to effect the hedge in underlying markets.</p> <p>The regulation for CIS hedge funds (BN 52) allows for the re-hypothecation of collateral provided by a CIS on the condition that the CIS is aware of the arrangement.</p> <p>This is in line with the requirements of Key principal 5 of the BCBS-IOSCO Framework, page 20, paragraph 5(v)</p> <p><i>“5(v) Cash and non-cash collateral collected as initial margin from a customer may be re-hypothecated, re-pledged or re-used (henceforth re-hypothecated) to a third party only for purposes of hedging the initial margin collector’s derivatives position arising out of transactions with customers for which initial margin was collected and it must be subject to conditions that protect the customer’s rights in the collateral, to the extent permitted by applicable national law.”</i></p>	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
Peregrine	8.2	<p>8.2(1) <i>Collateral collected as initial margin must be segregated from proprietary assets on the books and records of a third party holder or custodian, or via other legally effective arrangements made by the collecting <u>entity</u> counterparty.</i></p> <p>This should not only refer to collateral collected for initial margin purposes.</p> <p>To bring wording in line with remainder of 8.2. Also, “counterparty” has a defined meaning which excludes a derivative provider.</p> <p>8.2(2) <i>“The collecting <u>entity</u> counterparty must at all times provide the posting <u>entity</u> counterparty with the option to segregate its collateral from the assets of other posting <u>entities</u> counterparties (“individual segregation”).</i></p> <p>To bring wording in line with remainder of 8.2.</p> <p>Also, “counterparty” has a defined meaning which excludes a derivative provider.</p> <p>8.2(3) <i>“(3) <u>Initial margin</u> <u>Collateral</u> that is collected in cash must be segregated individually, unless the collecting counterparty can prove to its counterparty and to the</i></p>	<p>Amendments made to the provisions in the revised Notice.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p><i>registrar that legally effective arrangements are in place to segregate it from proprietary assets.”</i></p> <p>Paragraph 8 deals with collateral and not only initial margin.</p> <p>Also see comment for 8.1.</p> <p>8.2(4) “(a) initial margins are <u>collateral is</u> immediately available to the collecting entity where the posting <u>entity</u> counterparty defaults,”</p> <p>Paragraph 8 deals with collateral and not only initial margin.</p> <p>Also see comment for 8.1.</p> <p>To bring wording in line with remainder of 8.2.</p> <p>Also, “counterparty” has a defined meaning which excludes derivative provider.</p>	
Peregrine	8.3.1(1)(a)	Even though there is reference to the standard methodology, there is no table as is made available in Appendix B of the BCBS-IOSCO Framework.	Agreed with the comment – the annexure has been updated.
Macquarie Securities (Round	Section 8	(1) A clear distinction should be made between collateral that is (a) transferred on an outright basis and (b) pledged (and, in some cases, delivered into the “possession” of the	1) There is no prescribed method of posting collateral in the revised Notice. Therefore, counterparties

COMMENTATOR	SECTION	COMMENTS	RESPONSES
2)		<p>secured party pursuant to the pledge arrangements or “flagged” pursuant to section 39 of the Financial Markets Act). Providers and counterparties should be able to agree methods of “posting” and it should not be prescribed – if however initial margin is to be posted by way of a pledge of cash it would, in our view, have to be effected by way of a pledge of a bank account as opposed to delivery of cash into a segregated “custodian”/“trust property” arrangement (as currently contemplated). We propose that parties be given the election in respect of the methods of posting and where cash initial margin is not elected between the parties to be posted by way of a “trust property” arrangement then the segregation provisions (among others) will not apply.</p> <p>(2) It is not clear what “initial margin” may be comprised of – we suggest importing similar provisions to “Collateral Requirements” (Section 42 of the Financial Market Acts Regulations) given that this could be “posted” in the form of non-cash collateral.</p> <p>(3) This is vague and meaningless. We propose that references to “collateral” are changed to “initial margin”.</p>	<p>can determine the methods for posting collateral as it is not prescribed in the Notice, except segregation of collateral is required if it is not re- hypothecated. If re- hypothecated, the requirement to segregate also extends to the third party.</p> <p>2) List of eligible collateral has been included – initial margin may comprise of cash and/or specified non-cash collateral. ODPs/counterparties are encouraged to have diversified collateral.</p> <p>3) Disagreed. Collateral can be categorised as initial margin or variation margin - word is used interchangeable, see the revised Notice.</p>
Macquarie Securities (Round 2)	8.2 Segregation of initial margin	Holding “initial margin” on behalf of a counterparty would exclude it from the netting protection benefits of section 35B of the Insolvency Act, on the basis that it is not an “assets in which <u>ownership</u> has been transferred as collateral	The Margin Notice does not prescribe the method of posting collateral and there is no restriction on the type of

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		security". Upon insolvency of counterparties "initial margin" amounts shall fall outside of the statutory netting arrangements(which is entirely in contrast to current market margin posting arrangements). We re-iterate our view that providers should be able to agree with counterparties on method of posting.	collateral/composition of collateral exchanged by the covered entities. The preference is that ODPs and counterparties exchange diversified collateral.
Exclusions			
Peregrine/ACTSA SABMiller	9 (1 – 3)	<p>Replace 9(1), 9(2) and 9(3) with sections set out below.</p> <p>Page 12 of the Policy Document under the heading "Capital Requirements and margins on non-centrally cleared OTC derivatives" refers to non-bank financial institutions.</p> <p>We have several comments with regards to the exclusions</p> <p>There needs to be a clear distinction between clients and counterparties as OTC providers should not provide collateral to clients. Clients do not generally have the capacity to hold collateral and generally are not systemically important to economies.</p> <p>There should also be scope for several other exclusions to limit cases where entities are unintentionally brought into the net and there is an unintentional requirement for the exchange of initial margin</p>	<p>Amendments have been made to provisions to clearly distinguish clients from counterparties. Please refer to paragraph 2.2 for the treatment of intra-group transactions.</p> <p>New thresholds included.</p> <p><i>See the revised Notice.</i></p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>Thresholds need to be calculated on initial margin requirements and not gross OTC books. Different asset classes have different types of risks and these risks should be covered in the calculation of the margin. It would be also be more appropriate to set thresholds on a bilateral basis depending on the type of counterparty</p> <p><u>Replace 9(1) with:</u></p> <p><u>“ (1) An OTC derivatives provider is excluded from providing initial margin in terms of this Notice on OTC derivative transactions between OTC derivative providers and clients.”</u></p> <p>This is in line with the requirements of Key principal 2, page 10, paragraph 2.6 of the BCBS-IOSCO Framework, which states:</p> <p><i>“Only non-centrally cleared derivatives transactions between two covered entities are governed by the requirements in this paper.”</i></p> <p>Covered entities are define in 2.4 as: “financial firms and systemically important non-financial entities)”</p> <p><u>Replace 9(2) with:</u></p>	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p><u>initial margin on OTC derivative transactions executed with counterparties that form part of the same group, where a group means the group of entities with which it is consolidated for purposes of the international accounting standard to which the group adheres.”</u></p> <p>This is in line with the specifications of “Margin requirements for non-centrally cleared derivatives: Element 6: Treatment of transactions with affiliates” in the BCBS-IOSCO Framework.</p> <p>In South Africa banks, insurers and financial entities as well as listed companies often have their JSE authorised users set up as separate legal entities for technical reasons and might use the authorised user to hedge</p> <p><u>Replace 9(3) with:</u></p> <p><u>“ (3) An OTC derivatives provider is excluded from providing initial margin to a counterparty where the value of the initial margin is less than R600 million (+- EUR50 m equivalent) . ”</u></p> <p>This is in line with the requirements of Key principal 2, page 10, paragraph 2.2 of the BCBS-IOSCO Framework.</p> <p>Under the BCBS-IOSCO Framework, all covered entities</p>	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>must exchange initial margin with a threshold not to exceed EURO 50m on a bilateral basis. The threshold is provided at the level of the consolidated group to which the threshold is being extended and is based on all non-centrally cleared derivatives between consolidated groups.</p> <p><i>A provider, that is not a bank or an insurer, is excluded from the requirement to provide initial margin in terms of this Notice if the value of its OTC derivative book, calculated on a group consolidated basis <u>with entities that are not group entities</u>, is less than <u>R50 million</u> the amount notified by the Registrar.</i></p> <p>Corporates that are not banks or insurers but that do get caught in the definition of “provider” in the Regulations should be subject to a higher threshold for margining in line with equivalent overseas regulation and should not be subject to margining within their group.</p> <ul style="list-style-type: none"> • Thresholds should be separately notified by the Registrar from time to time so that they can easily be harmonized with overseas thresholds and can reflect changes in exchange rates. • The exchange of initial or variation margin among affiliated parties is not customary and would create additional liquidity demands on corporates (see BCBS IOSCO Framework page 22). 	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<ul style="list-style-type: none"> Under EMIR non-financial corporates become subject to central clearing and margining at thresholds far exceeding R50 million, for example EUR3 billion in respects of each interest rate derivatives and commodity derivatives, taken separately (see HL Summary page 4). 	
ACTSA	9(4)	<p><i>A provider is excluded from the margin requirements set out in this Notice when the counterparty to the non-centrally cleared OTC derivative transaction is-</i></p> <p><i>(a) a central bank or other national monetary authority of any country, state or territory;</i></p> <p><i>(b) a sovereign state;</i></p> <p><i>(c) a multilateral development bank; or</i></p> <p><i>(d) the Bank for International Settlements.; or</i></p> <p><i>(e) a non-financial entity hedging or mitigating commercial risk.</i></p> <p>If counterparties and clients will both be covered by the Notice, non-financial corporates hedging commercial risk should not be subject to margining.</p> <ul style="list-style-type: none"> Non-financial corporates do not have the necessary infrastructure to receive margin. One key purpose of such hedging by corporates is to provide corporates with cash certainty. If a corporate is required to provide initial and variation margin on a hedge, that cash certainty is diminished by the need to exchange cash on a frequent and 	<p>Noted. The margin requirements extend to covered entities specified in the revised Notice.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>unpredictable basis.</p> <ul style="list-style-type: none"> This is reflected in the BCBS IOSCO Framework in paragraph 2(c) on page 8, which states that only transactions between financial firms and systemically important non-financial entities are covered by the margin requirements in the BCBS IOSCO Framework. <p>Under Dodd-Frank the margin requirements do not apply to non-financial entities hedging or mitigating commercial risk (see HL Summary page 24).</p>	
Macquarie Securities (Round 2)	Thresholds	<p>We propose that the thresholds be determined with reference to credit position of provider as the “value of OTC derivatives book” is not, in our view, necessarily a factor in determining likelihood of default.</p>	<p>Thresholds have been determined taking into account appropriate levels for local participants and based on recommended thresholds provided under the BCBS-IOSCO paper and not the value of the OTC derivatives book.</p>
Peregrine	Affiliates	<p><u>Suggestion: transactions with affiliates should be excluded from the margining requirement</u></p> <p>The Notice does not exempt transactions with “affiliates”. Key principle 6 of the BCBS-IOSCO Framework states posting of margin is “not customary” between affiliated parties. We recommend that group companies receive</p>	<p>See the revised notice - intra- group transactions between covered entities/ODPs are excluded from the margin requirements, subject to the conditions specified in paragraph 2.2; however, it does not preclude covered entities and affiliates from managing risks from those exposures.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		dispensation from these margin requirements.	
Margin Requirement - Phase in and Transitional arrangements			
IG Markets	Section 10 – Phase in periods	As with all significant legislation, it is important that care is taken to ensure that an appropriate timescale is agreed to allow all affected participants to implement any necessary steps to adhere and conform to the new legislation. Pro-active consultation from National Treasury and other stakeholders until now has been appreciated and we welcome this continued approach as we enter stages of implementation. By way of example, of those systemic entities that are subject to EMIR in the EU, the least systemic entities that are caught (as retail clients and natural people and the majority of other non-financial market participants are exempt) are subject to the initial margin obligations from 1 September 2020.	The requirements follow a phased-in timeline approach. a
Peregrine	Phase-in periods	Insert 10 (and renumber section 10 as section 11): “ <u>10. Phase-in of Requirements</u> ” <u>Suggestion: include phase-in provisions</u> Principle 5 of the Policy Statement is “Minimising Market Disruption”. Similarly, Key principle 8 of the BCBS-IOSCO	Margin requirements will be phased-in. Please refer to revised Notice.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>Framework acknowledges the need to balance the need for systemic risk reduction against the liquidity, operational and transition costs that will be associated with implementing the requirements. The BCBS-IOSCO Framework therefore includes a number of phase-in provisions. We suggest that the sudden implementation of the requirements of the Notice will cause market disruption, and therefore phase-in provisions similar to those contained in the BCBS-IOSCO Framework should be included in the Notice.</p> <p>Insert 10 (and renumber section 10 as section 11):</p> <p><u>“10. Phase-in of Requirements”</u></p> <p>To minimise market disruption, the requirements of the Notice should be phased-in as suggested in Element 8 of the BCBS-IOSCO Framework. The phase-in provisions should be based on Requirement 8 of the BCBS-IOSCO Framework beginning on page 24.</p>	
Purple group		<p>The FMA Margin Requirements Regulations, in respect of margin requirements should introduce a phase-in time-table that takes cognisance of the systemic risk posed by certain OTC derivative book sizes, balanced by the impact that the initial margin requirements will have on the applicable entities. This timetable should similarly to the BCBS-IOSCO Framework stretch out over a reasonable period of around five years.</p>	<p>We have considered the comments and have made amendments to the provisions in the revised Notice. New thresholds are proposed in the revised Notice. The margin requirements will be phased-in. <i>Refer to the revised Notice.</i></p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>Consideration should also be given to excluding certain covered entities from the initial margin requirements of these regulations based on the nominal size of their OTC derivative book. The exclusions detailed in the current FMA Margin Requirements Regulations appear appropriate for an Initial Margin threshold (not nominal), in respect of OTC derivatives traded between two parties, however, cannot be systemically important from a total OTC Providers entire derivative book. With this threshold being EUR 8 billion in the BCBS-IOSCO Framework, it would appear that the current exclusion threshold in the FMA Margin Requirements Regulations is significantly understated.</p> <p>It is critical to get the various thresholds reasonable and correct, as on the one hand you want to address systemic risk, yet on the other, you cannot afford to unnecessarily impact the current status quo or competitively prejudice local OTC Providers, compared to their international counterparts;</p>	
Macquarie Securities (Round 2)	Timelines	See “General Comments” – it is essential that the “parameters” are fixed before allowing a transitional period (at least 18 months, in our view) before compliance is required.	A phased-in timeline is provided for in the revised Notice.
Macquarie Securities (Round 2)	Margin Requirements Timelines	Compliance with this notice will require a significant amount of time, human resources and costs – in particular, collateral segregation, reporting, contractual arrangements, internal risk management system development/remodelling.	Noted. Transitional arrangements will be considered. Reasonable time will be provided to market participants to implement the margin requirements and earlier preparation is encouraged

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		It is paramount that the market be given sufficient time to take the appropriate steps so as not to add to systemic risks inherent in the OTC derivative markets. At present there are NO transitional arrangements in the wording of the regulations that allow for this.	.
Margin requirements - Re-hypothecation, Re-pledge or Re-Use			
Barclays		<p>To prevent the loss of liquidity in the bond and equities markets, it is an imperative that providers are permitted to re-hypothecate or re-use collateral subject to the conditions as provided in the BCBS-IOSCO framework. It is also strongly recommended that, before implementation of this Board Notice, that the FSB and SARB jointly conduct a QIS to determine the impact of the provisions of this Board Notice, including the prohibition of re-hypothecation, on liquidity in the South African markets. In particular, the QIS should focus on the impact on South African banks in respect of the implementation of the LCR and NSFR requirements should these liquid assets be used for initial margin requirements.</p> <p>(Re-pledge- The legal and regulatory environment in South Africa does not support the concept of pledging, consequently collateral is either transferred outright or ceded)</p>	<p>Changes have been made to the requirements noting the concerns over the challenging environment and liquidity demand stresses, however, the framework still considers the risks that will be introduced from extended exposure, i.e. credit risk to the counterparties involved. Therefore, only one time re- hypothecation is permitted as specified in the revised Notice.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>Re-hypothecation is the process whereby a financial market participant reuses, for its own use, the collateral ceded by counterparty. This ability is an important feature of fungible securities when used as collateral. A clearing bank's ability to fund the activities of its client base is largely predicated on its ability to raise such funding via the use of the assets provided by a counterparty. If a bank cannot re-use collateral, it would need to price transactions at unsecured levels (not from a credit perspective, but from an inability to raise secured funding). We recommend that the QIS, advocated above, includes an analytical assessment to determine the second order effects on market liquidity, which could render some business activities unviable (due to the increased funding cost) and could lead to market participants exiting business lines or activities.</p> <p>It is acknowledged that limiting the re-use of collateral mitigates credit risk, however this limitation introduces liquidity risk as there is an increasing demand for banks to hold high quality liquid assets under the Basel III requirements (specifically, LCR).</p> <p>The recently released hedge fund regulations make specific reference to the use and management of re-hypothecation agreements. The collateral management solution currently being implemented by Strate provides the facility for tracking of collateral transferred under cession and provides a</p>	

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>central registry for the tracking thereof. This provides a mechanism to track the on-use of collateral and thereby manage limit the re-use.</p> <p>A more prudent approach to the margining requirements for non-centrally cleared derivatives, aligned to the conditions provided for in the BCBS—IOSCO framework, would be to recognize the importance of re-hypothecation of assets and to apply some form of limit to —</p> <p>(i) the maximum level of re-hypothecation allowed (relative to the level of indebtedness); and</p> <p>(ii) the re-use of collateral (which the Strate collateral solution facilitates).</p>	
Peregrine		<p><u>Suggestion: re-hypothecation should be regulated but not prohibited</u></p> <p>Key principle 5 of the BCBS-IOSCO Framework (paragraph 5 (v)) allows re-hypothecation to a third party of cash and non-cash collateral collected as initial margin from a customer. This is however subject to conditions that protect the customer's rights in the collateral.</p> <p>The draft regulation propose that counterparties that collect initial margin are prohibited from re-hypothecating, re-</p>	<p>Amendments have been incorporated in the revised Notice in respect of re-hypothecation. Please see the revised Notice.</p>

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		<p>pledging or otherwise re-using the collateral which could potentially dilute the effectiveness of its role in reducing overall systemic risk, since the counterparty runs the risk of its margin being trapped by that third-party, in the event of the re-hypothecator's default.</p> <p>This is a slightly more restrictive approach than provided for in the BCBS-IOSCO Framework, where re-hypothecation would be allowed, subject to a comprehensive set of conditions.</p> <p>We are of the opinion that controlled rehypothecation should be allowed and have proposed wording in this regard in the attached Annexure.</p> <p>We also note that rehypothecation has been allowed in terms of the recently published Hedge Fund.</p>	
Peregrine	Annexures	<p>Annexure A, 2. <i>"...products referred in paragraph <u>12</u>..."</i> Incorrect reference.</p> <p>Annexure A, 3(c) - Change numbering to 4 and renumber remaining paragraphs accordingly.</p> <p>Paragraph 3(c) is applicable to all initial margin calculations, not only to transactions that fall within more than one category.</p> <p>Annexure B - Add new Annexure B</p> <p>Annexure B should be based on Appendix B of the BCBS-</p>	Annexures have been updated to refer to the revised Notice.

COMMENTATOR	SECTION	COMMENTS	RESPONSES
		IOSCO Framework.	
JSE	Annexure A - paragraph 2	Incorrect reference to 'paragraph 2' should instead be 'paragraph 1'.	Noted. Please see the revised Notice.