CONSULTATION REPORT: JOINT STANDARD 2 OF 2020 (JOINT STANDARD ON MARGIN REQUIREMENTS FOR NON-CENTRALLY CLEARED OVER-THE-COUNTER (OTC) DERIVATIVE TRANSACTIONS)

FINANCIAL SECTOR REGULATION ACT, 2017

1. In this consultation report, the following definitions apply:
   "Authorities" means the Financial Sector Conduct Authority and the Prudential Authority;
   "Financial Sector Conduct Authority" means the Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act;
   "Financial Markets Act" means the Financial Markets Act, 2012 (Act No. 19 of 2012);
   "Financial Markets Act Regulations" means the Financial Markets Act Regulations promulgated under the Financial Markets Act on 9 February 2018;
   "Financial Sector Regulation Act" or **"FSRA"** means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); and
   "Prudential Authority" means the Prudential Authority established by section 32 of the Financial Sector Regulation Act.

2. The Authorities, hereby under section 104(1) of the Financial Sector Regulation Act, publish this report on consultation undertaken during the making of **Joint Standard 2 of 2020 (Joint Standard)** as set out in comment matrix in the Schedule.

3. The global financial crisis in 2007/2008 exposed structural weaknesses in the over-the-counter (OTC) derivatives market and highlighted how the interconnectedness across financial institutions engaging in trading OTC derivatives led to contagion and heightened systemic risk.

4. In response to the global financial crisis that commenced in 2007, the Group of Twenty Leaders (G20) initiated a reform programme in 2009 to reduce the systemic risk associated with OTC derivative instruments. The G20's reform programme in relation to OTC derivative instruments comprised the following four elements:

   4.1. All standardised OTC derivative instruments should be traded on exchanges or electronic platforms, where appropriate;
   4.2. All standardised OTC derivative instruments should be cleared through central counterparties (CCPs);
   4.3. OTC derivative contracts should be reported to trade repositories; and
   4.4. Non-centrally cleared derivative contracts should be subject to higher capital requirements.

5. In 2011, the G20 agreed to add margin requirements for non-centrally cleared OTC derivative instruments to the reform programme. To this end, on 18 March 2015, the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) issued the revised framework on margin requirements for non-centrally cleared OTC derivatives for implementation by 1 September 2016. In line with the international regulatory reform programme, South Africa is in the process of formulating the appropriate legislative and regulatory frameworks that are based on, among other things, the recommendations from the Financial Stability Board and other relevant international standard setting bodies, such as the BCBS, the Committee on Payments and Markets Infrastructures (CPMI) and IOSCO.

6. In 2015 the former Financial Services Board (FSB) released the Board Notice on Margin Requirements for public consultation.

7. During 2016, the BSD, issued a draft directive on margin requirements pursuant to section 6(6) of the Banks Act, 1990 (Act 94 of 1990) (Banks Act), in order to give effect to SA's commitment to the G20 reform agenda in respect of OTC derivatives. However, the limitation with this approach was that directives issued in terms of the Banks Act are only applicable to banks, and not to other non-bank financial institutions as required in terms of the BCBS-IOSCO Framework. The BSD therefore took a decision that the margin requirements should be implemented as part of the broader OTC derivative reform agenda, which was being driven by the former FSB in terms of the FMA.

8. In August 2017, the FSB in consultation with the SARB and National Treasury released a revised Board Notice on Margin Requirements (2017 Board Notice) for public consultation. The

Authorities met with industry on numerous occasions to discuss the 2017 Board Notice. Subsequent to the release of the 2017 Board Notice, the FSRA was promulgated and the two Authorities were formally established. Having regard to the objectives of the two Authorities as set out in the FSRA, and the joint supervisory responsibilities that the two Authorities have in respect of financial institutions, the Authorities considered it appropriate for the margin requirements to be issued as a joint standard under the FSRA.

9. The Joint Standard was published for public consultation on 17 August 2018 and on 8 April 2019. The Authorities consulted and engaged the industry on the Joint Standard. Comments received from the public consultation process were incorporated into the draft Joint Standard. A separate report on the consultation process as well as the general account of the issues raised during all the public consultation processes has been prepared by the Authorities, pursuant to section 103 of the FSRA.

10. The issues raised by commentators were of a technical nature and significant engagement has taken place with industry to address their comments. A combined comment matrix as per the Schedule includes the comments raised during the numerous consultation periods and sets out the comments on each particular paragraph of the Joint Standard and the Authorities' response to the issues.

SCHEDULE

COMMENT MATRIX: JOINT STANDARD 2 OF 2020 (JOINT STANDARD FOR NON CENTRALLY CLEARED OTC DERIVATIVE TRANSACTIONS)

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 July 2019:

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
	1. Definitions			
1.	BASA	Definition of "Authority"	We recommend that acronyms also be used.	The comment is noted. The Authority will be defined as the Financial Sector Conduct Authority.
2.	Allen and Overy	Definition of "counterparty"	We note that sub-paragraph (h) of the definition of "counterparty" as defined in the Financial Markets Act Regulations, 2012 has not been included in the definition of "counterparty" in the draft Joint Standard. Sub-paragraph (h) provides that a counterparty may include: "(h) any other person who elects, in writing, to be categorised as a counterparty and who is not:	Agreed. The definition of "counterparty" in the FMA Regs relates to the ODP Code of Conduct. Only the counterparties as defined in the Joint Standard will be captured by the margin requirements. Therefore there is no election to be included for the purposes of the margin requirements. Instead the Authorities

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			(i) a natural person; (ii) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 1956); (iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956); (iv) a medical scheme or the board of trustees of such scheme as defined in section 1(1) of the Medical Schemes Act,1998 (Act No.131 of 1998);" Please confirm if it is the intention that persons who elect to be categorised as a counterparty under the Financial Markets Act Regulations, 2012 will not be considered as a counterparty for purposes of the draft Joint Standard and will therefore not be subject to the margin requirements?	may designate additional entities as a counterparty for purposes of the margin.
3.	BASA	Definition of "counterparty"	We note that the FAIS Act will be repealed in terms of COFI bill. We therefore recommend that (c) be reworded as follows: (c) Financial service provider authorised under a financial sector law, to provide financial services in derivative instruments." We recommend this be reworded so that the standard does not need to be reworded when the FAIS Act gets repealed. The application to a broad range of financial counterparties without any consideration of the systemic importance of those counterparts is a significant deviation from a number of offshore rules. This means that, even where a counterparty would otherwise have been excluded from the impact of	The repeal of the FAIS Act through the CoFI Bill will not happen immediately as the CoFI Bill must still be consulted on and taken through the legislative process. The necessary transitional arrangements will also be provided for in the CoFI Bill. With reference to the proposal for a threshold for counterparties, the comment is not accepted. The margin requirements contain the R500m threshold for initial margin which will in effect exclude a number of non-systemically important counterparties.

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			offshore margin rules (by virtue of the fact that it did not qualify as systemically important under those rules), that entity will be required to exchange margin when trading with local banks under the local rules. This is a significant departure from the manner in which most offshore jurisdictions have implemented their margin rules. Most jurisdictions incorporate a threshold of systemic importance at counterparty/group level (not simply at transaction level as is contemplated in the initial margin requirements). Employing a similar threshold locally would alleviate the operational burden on non-systemic parties (whether financial or non-financial 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. As currently drafted, a local asset manager entering into a single OTC derivatives transaction per year would still be required to operationalise and exchange variation margin under the rules (even though this asset manager will likely never be required to exchange initial margin due to the thresholds in place, it will be bound to exchange variation margin on all OTC transactions as there are no thresholds in respect of the application of variation margin). We 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 CAD 12 billion dollars, Hong Kong employs a HKD 15 billion	In addition, any relevant transfer of margin is subject to a R5m threshold. The BSCBS/IOSCO framework does not include a threshold for capturing financial firms and systemically important non-financial firms

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			dollar threshold, and Australia employs a AUD 3 billion threshold). Employing a similar threshold locally would alleviate the operational burden on non-systemic parties (both financial and non-financial), which would not be required to exchange margin. We therefore recommend that a threshold of systemic importance is included for both financial and non-financial counterparties, and that if they do not meet this threshold, then neither variation nor initial margin would apply. Failure to align with offshore rules may encourage arbitrage away from South Africa, which could exacerbate systemic risk, directly in conflict with the purpose of margining.	
4.	BASA	Definition of counterparty paragraph (c)	"single enforceable bilateral agreement" should refer to a "single enforceable bilateral netting agreement"	Agreed. Please see the revisions to the Joint Standard
5.	BASA	Definition of counterparty paragraph (f)	This should clarify that the counterparty is the portfolio. Each portfolio would be a separate "counterparty". See paragraph 4.1(3)(d) in this regard	Agree in principle. Please see the revisions to the Joint Standard.
6.	Investec	Definition of "covered entity"	Definition of "counterparty" point (e) – an insurer licensed or deemed to be licensed to conduct non-life insurance business in terms of the Insurance Act: Could the Regulator please clarify, in the case of insurance companies with separate pools of assets, known as "funds" which trade OTC derivatives at fund level and where each fund has its own LEI number, if the provisions of the regulation (particularly posting of variation margin and applicable thresholds) will apply at fund level or at company (insurer) level? From a trading and operational perspective it	The margin requirements apply at the level of the consolidated group and not at the fund level.

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			is not possible to aggregate margin calls at company level because individual trades are executed at fund level. Aggregating positions would be prejudicial to policyholders investing assets in different strategies. In addition, please consider similar inclusion of said insurance pools in the definition of "investment fund".	
7.	Allen and Overy	Definition of "netting set"	The definition of "netting set" still refers to "covered entities". This definition should be amended to refer to "provider and counterparties (or foreign counterparties to the extent that paragraph 2.3 is not applicable)".	Agreed. Please see the revisions to the Joint Standard.
8.	BASA	Definition of "netting set"	Please replace reference to 'covered entities" with counterparties. Covered entity is no longer used/defined as a term in the document.	Agreed. Please see the revisions to the Joint Standard
9.	BASA	Definition of "sovereign"	We note that a definition of 'Sovereign' has now been included. This definition excludes "any national public entity or national government business enterprise as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999)". This means that, for the purposes of the exchange of margin, state owned entities are not specifically exempted (ie when transacting with ODPs, they must exchange margin). Based on this definition, quasi-sovereign entities, such as Eskom and Transnet, would be required to exchange margin when trading OTC with banks. This deviates from international practice where a number of jurisdictions exempt quasi-sovereign entities. This will also effectively preclude these quasi-sovereign entities from entering derivative transactions and hedging their risk (they are not set up operationally to do so, and it would be costly to	The comment is noted. In terms of the current prudential regulatory framework for banks, the sovereign does not include state owned entities. In addition, the definition of counterparty read with paragraph 2.1(1) would not include state owned entities.

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			build the necessary systems). As currently drafted, this definition could force such entities to hedge their risks with offshore banks. Based on these considerations, we believe that requiring quasi-sovereign entities (including state-owned entities) to exchange margin would increase systemic risk. Whilst we appreciate that the definition of "counterparty" would in all likelihood operate to exclude these entities, our concern is with regards to the intention of drafting to explicitly include quasi-sovereigns (which read together with the "catch-all" in the definition of counterparty may be problematic in future). We would like to reiterate our recommendation above to have clearly defined lists of impacted counterparties, taking into account international practices and including an exemption for state-owned /quasi sovereign entities.	
10.	GFMA	Definition of "sovereign"	We recommend that, in order to avoid deviating from international standards, state-owned entities should be treated as quasi-sovereign entities and exempted from margin requirements.	Please see earlier response. The state-owned entities are not currently captured in the Joint Standard based on the definition of "counterparty".
	2. Application and exclusions			
	2.1 General application			
11.	Allen and Overy	2.1 (1)	To the extent that a provider enters into a non-centrally cleared OTC derivative transactions with an agent (for example, an investment manager) acting on behalf of an underlying client, would the agent or the underlying client be considered the counterparty for purposes of the draft Joint Standard?	The intention is to capture the principal and not where the investment manager acts as an agent.

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12.	BASA	2.1 (1)	The Joint Standard is binding on ODPs when they enter into non-centrally cleared derivative transactions with Counterparties. This excludes "Foreign Counterparties". Section 2.3 (1) would only be required if the Joint Standard is binding on ODPs when they trade with Counterparties and Foreign Counterparties.	The comment is noted. Please see the revisions to the Joint Standard. The Joint Standard includes specific requirements for cross-border OTC derivative transactions with a foreign counterparty.
13.	BASA	2.1 (2)(c)	Please provide a definition of the term "multilateral development bank". For example, would entities such as the African Development Bank and other development banks, such as the BRICS bank, be included?	A multilateral development banks means a multilateral development bank that has been recognised as such in terms of the Banks Act framework.
14.	Allen and Overy	2.1(3)	Consider amending this paragraph to take the applicability of paragraph 2.2 and/or 2.3 into account: "Subject to paragraph 2.2 and/or 2.3, the margin requirements set out in this Joint Standard apply to all non-centrally cleared OTC derivative transactions, including intra-group and cross-border transactions after the thresholds set out in paragraphs 4.2 and 5(3) are met."	The comment is noted. Please see the revisions to the Joint Standard.
15.	GFMA	2.1 (4)	We welcome, agree with and strongly support the Authorities' exemption of physically-settled FX forwards and swaps from both initial margin ("IM") and variation margin ("VM") requirements. This will ensure consistent treatment of these types of products from a margin perspective globally.	The comment is noted.
16.	BASA	2.1 (5)	Cross-Currency Swaps: the FX risk of the final and interim principal exchange flows should be excluded from the calculation, but the interest rate risk of the final and interim exchanges of principal should still be included if the interest	There is no IM to be exchanged on the payment of the principal amounts on a cross-currency swap. However, all other payment flows i.e. other than the principal amount that occur during the

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			rate risk of the interest flows are included. By excluding interest rate risk only of principal exchanges of cross currency swaps, it introduces artificial interest rate risk from interest flows. This would create IM balances that do not represent the true interest rate risk of the margin set.	life of the swap must be taken into consideration in the calculation of the IM.
	2.2 Treatment of intra-group transactions			
17.	Allen and Overy	2.2 (1)	As foreign counterparties are now separately defined, should the reference to "counterparty" in paragraph 2.2(1) include a "foreign counterparty" or is the intention for a foreign counterparty in the same group to fall under paragraph 2.3?	The comment is noted. Please see the revisions to the Joint Standard.
18.	ISDA	2.2 (2)	We note that section 2.2 of the draft rules mandates the exchange of margin with respect to intra-group transactions where the gross notional amount of non-cleared derivatives outstanding between the provider and the counterparty exceeds R50 billion on a particular day. We would re-iterate our request that intra-group transactions be exempt from margin on the basis that these types of trades are typically used to transfer risk within a group and would therefore be expected to be subject to centralised risk management procedures and controls. To the extent that the requirement for intra-group margin remains, we would be grateful if the Authorities could make clear that no margin would be required to be exchanged between branches of a single entity. While we appreciate that the South African branch of an entity might be considered on a standalone basis for certain purposes (for example licensing) we do not think that this approach is appropriate in the context of margin, the purpose of which is	The comment is noted. The Authorities have increased the intragroup threshold to R100 billion. Non-centrally cleared OTC derivative transactions between branches in the same group will not be exempt from the Joint Standard.

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			to mitigate counterparty credit risk and to combat the risk created by the interconnectedness of systemically important entities. From a legal perspective, a branch is not a distinct entity and is instead part of the same legal entity as the contracting entity: it is therefore a legal nonsense for the off-shore branch of a bank to exchange margin with the South African branch – one cannot contract with or sue oneself and on an insolvency of the bank the margin posted by one branch to another would simply form part of the assets of the bank as a whole. One would simply have introduced operational risk and complexity and increased funding costs while affording no increased protection to the bank in any of its places of operation. We would therefore respectfully request that the Authorities make clear to the market that there is no intention of requiring banks to undertake margining of this type.	
19.	Macquarie	2.2 (2)	We note that the Authorities have recognized the substituted compliance concept, namely that if an ODP faces a foreign counterparty, it may elect to comply with the foreign counterparty's margin regime (instead of the South African margin rules) to the extent that those rules directly apply to the foreign counterparty and are BCBS/IOSCO compliant.	Noted.
20.	BASA	2.2 (2)(a)	We assume this means that the group to which the provider and counterparty belong is in scope in terms of paragraph 4.2 (aggregate notionals exceed the relevant amounts) and then a second test is applied being that the notionals between the provider and counterparty exceed R50 billion? • Is that correct?	First comment: Yes, please see 2.1 (3). "relevant day " is the day on which the derivative transaction is entered into.

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			• What is the "relevant day" in this paragraph? We note the reluctance to provide an exemption from intragroup margin exchange. We recommend that this position be revised as it is a significant deviation from offshore practice. Alternatively, the Authorities should consider increasing the threshold amount to R100 billion so as not to preclude effective intra-group hedging strategies (such as the aggregation of risk) and to mitigate against the disparity with international banking groups. In this regard, we note that the BCBS-IOSCO margin rules explicitly recognise that the exchange of IM amongst affiliates creates additional liquidity demands and is not necessarily suitable. We would recommend that for the purposes of this threshold calculation, ODPs may exclude physically settled foreign exchange forwards and swaps transaction (the majority of intragroup transactions amongst banking entities across border falls within this category, and there is already a recognition, by virtue of their exclusion from the margin requirements, that these transactions pose a low risk). We would also like to raise a number of practical issues and queries in relation to the operation of this threshold: - We assume that it is the intention that the application of margin only apply to transactions exceeding the R50 billion threshold (ie all transactions are not included once the threshold is breached). If this is indeed the case, how are these transactions to be identified / flagged operationally? Please clarify how/if this applies to transactions below the	The requirement to exchange margin in respect of non-centrally cleared OTC derivative transactions on an intra-group basis is only triggered if the provider is an entity that triggers the thresholds in paragraphs 4.2 and 5 are triggered. The requirement to exchange margin will only be triggered if the R100billion threshold is exceeded on the relevant day. For purposes of R100 billion threshold calculation, all intra-group transactions must be taken into account, including physically settled foreign exchange contracts. This will align with the approach to the calculation of the IM threshold in the Joint Standard. The minimum transfer amount will apply to all margin transfers (VM and IM) and intragroup transactions.

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			threshold. - Section 2.2 provides that inter-affiliate transactions must be below the applicable threshold "at the close of business on each relevant day". So theoretically counterparties may be exchanging margin on one day and not the next (if transactions are closed out/terminated). Alternatively, is it the intention that once margin has been applied to a trade then this continues until close out / termination? Both scenarios will be difficult to manage operationally. - Does the minimum transfer amount of R5 million apply to intra-group transactions? We assume that this is the case. - Further clarity on the application of the intragroup threshold amount is required. Please clarify whether the R500 million initial margin threshold applies once the intra-group threshold is breached. Also, since many SA banks have group companies in African non-netting jurisdictions, how does the intragroup threshold interact with the 2.5% non-netting jurisdictional threshold? Do only transactions exceeding the threshold count towards the 2.5%, or all transactions?	
21.	GFMA	2.2 (2)(a)	We reiterate our previous comments and continue to support an exemption for intragroup margin exchange. Should a threshold be deemed required, we recommend it be higher than that currently provided for. We also recommend that physically-settled FX swaps and forwards transactions be excluded from any intragroup margin exchange threshold	Please see earlier comment and the revisions to the Joint Standard

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			calculation.	
22.	BASA	2.2 (2)(b)	The requirement that "both parties" to transaction must be have appropriate centralised risk evaluation, measurement and control procedures is extremely onerous for intra-group entities in the African regions. The words "both parties" should be changed to "the OTC Derivative Provider (ODP)" hence making the requirement binding on ODPs only. Who will be required to make the assessment that the parties are subject to appropriate centralised risk evaluation, measurement and control procedures, or that the risk management procedures of the parties are adequately sound? Is it sufficient that the South African covered entity make this assessment or do the Authorities envisage a formal process where they approve the intragroup transactions? Further clarity is required on how this section is meant to be implemented in practice.	The intention is that both parties in the group are subject to a centralised risk evaluation measurement and control procedures, hence the exclusion of those transactions from margin requirements. The determination will be made by the contracting parties. The regulators can assess compliance during their supervisory visits.
23.	BASA	2.2 (2)(c)	The requirement that "both parties" to transaction must be have risk management procedures that are adequately sound, robust and consistent is extremely onerous for intra-group entities in the African regions. The words "both parties" should be changed to "the ODP" hence making the requirement binding on ODPs only or the requirement should allow for the procedures to be outsourced to the ODP to provide.	See earlier comment.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
24.	BASA	2.2 (2)(d)	The reference to the parties complying with "any further conditions" as specified by the Authorities is unduly vague and we require further detail or guidance in this regard for legal and operational certainty. This is especially true as the Authorities will not have any jurisdiction over the offshore counterparties, with the results that the conditions they may impose will be limited.	The comment is noted. The Authorities will impose conditions as deemed appropriate given the objectives of the Joint Standard and the mandate of the Authorities.
	2.3 Cross-border transactions			
25.	Allen and Overy	2.3 (1)	We note that, where a provider enters into a non-centrally cleared OTC derivative transaction with a foreign counterparty, the provider will be deemed to have complied with the Joint Standard as long as the provider has satisfied itself that, amongst others, it is required to comply with, or is subject to, the margin requirements in the foreign jurisdiction (subparagraph 2.3(1)(c) of the draft Joint Standard). Would a provider which enters into a non-centrally cleared OTC derivative transaction with a foreign intragroup entity be considered "required to comply with, or subject to" the margin requirements in a foreign jurisdiction where such foreign jurisdiction exempts intragroup transactions from the requirement to exchange margin? For example, Article 11(8) and (9) of Regulation (EU) No 648/2012 (read together with Article 32 of the Commission Delegated Regulation (EU) 2016/2251 which supplements Regulation (EU) No 648/2012) establishes an intragroup exemption, either totally or partially, from the requirement to exchange collateral in respect of OTC derivative transactions. Accordingly, if a provider enters into a non-centrally cleared OTC derivative transaction with an affiliate located in the EU (and such EU affiliate is exempt from exchanging margin with intragroup entities in terms of Regulation (EU) No 648/2012) would the	The local ODP must be subject to the foreign regulatory framework and does not necessarily have to comply with the foreign requirements.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			provider fulfil the requirements for deemed compliance in terms of paragraph 2.3(1) of the draft Joint Standard?	
26.	BASA	2.3 (1)	What is intended by making paragraph 2.3 subject to paragraph 2.2? • Does it mean that if the group entity counterparty is in a different jurisdiction, clause 2.3 would never apply and 2.2 is the only clause regulating group relationships? And if so, • Does this mean that the distinction between netting and non-netting jurisdictions is not relevant and the question of whether the foreign counterparty is subject to margin requirements in that jurisdiction is also not relevant? The situation where one is dealing with a foreign counterparty in a jurisdiction where netting and collateral is enforceable, but no margin requirements have been implemented has not been specifically covered. We assume that the Joint Standard would then apply, but the phasing in provisions of paragraph 4.2 only apply to "counterparties", and not "foreign counterparties". This should be addressed here or in 4.2 to allow the phasing for such foreign counterparties as well.	The application clause of the Joint Standard has been amended to include a foreign counterparty. The initial intention for making paragraph 2.3. subject to 2.2 was to clarify that a transaction with an entity in the same group that is located in a foreign jurisdiction would be subject to the treatment of intra group transactions as set out in para 2.2.
27.	GFMA	2.3 (1)	We request clarification regarding the intention of making paragraph 2.3 subject to paragraph 2.2 and whether or not this means that paragraph 2.2 is the only clause regulating group relationships; if so, would this mean that the distinction between netting and non-netting jurisdictions is not relevant for transactions within group relationships?	See earlier comment.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
28.	ISDA	2.3 (1)	We note that the Authorities have provided that cross-border transactions are able to benefit from a deemed compliance concept, namely that if a provider faces a foreign counterparty, it may elect to comply with the foreign counterparty's margin regime (rather than the margin rules of South Africa) to the extent that those rules directly apply to the foreign counterparty and are BCBS/IOSCO compliant. We welcome this relief which will serve to limit the number of similar but overlapping rules to which parties are subject. However, we would ask that this provision be tweaked so that the provider is also permitted to comply with a foreign margin regime where such regime applies directly to it and is BCBS/IOSCO compliant, rather than complying with the South African rules. This will be helpful in preventing a situation from arising where an entity is subject to the South African rules because it is trading through its branch, but is also subject to a second regime that applies to its head office (such as the US or European rules). In these circumstances, we think that it would reduce operational risk and increase international harmonisation if the provider were permitted to comply with a single regime only. To take an example, a US bank subject to the prudential regulators' margin rules and trading with a Nigerian bank using its South African branch, should be able to comply with the US rules only and not the South African rules in addition. We further note that the provisions on cross-border transactions in this section are "subject to paragraph 2.2",	The comment is noted. Please see the revisions to the Joint Standard. The intention is that the provider would be subject to one regulatory framework.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			which suggests that a provider cannot rely on deemed compliance with a foreign jurisdiction's requirements for an intragroup trade, even in the event the affiliate is directly subject to BCBS/ISOCO compliant margin rules. Rather than comply with two different sets of regulations for the intra-group transactions, we request that a provider be allowed to apply deemed compliance by complying solely with the margin requirements applicable to the affiliate.	
29.	BASA	2.3 (1)(a)	We note that the Authorities have provided that cross-border transactions are able to benefit from a deemed compliance concept, namely that if a provider faces a foreign counterparty, it may elect to comply with the foreign counterparty's margin regime (rather than the margin rules of South Africa) to the extent that those rules directly apply to the foreign counterparty and are BCBS-IOSCO compliant. We welcome this relief which will serve to limit the number of similar but overlapping rules to which parties are subject. However, we would ask that this provision be tweaked so that the provider is also permitted to comply with a foreign margin regime where such regime applies directly to it and is BCBS-IOSCO compliant, rather than complying with the South African rules. This will be helpful in preventing a situation from arising where an entity is subject to the South African rules because it is trading through its branch, but is also subject to a second regime that applies to its head office (such as the US or European rules). In these circumstances, we think that it would reduce operational risk and increase international harmonisation if the provider were permitted to comply with a single regime only. To take an example, a US bank subject to the prudential regulators' margin rules and	The foreign counterparty must be subject to the margin requirements in the foreign jurisdiction and the provider is required to comply with, or be subject to, the margin requirements in the foreign jurisdiction. The intention is that the provider would be subject to one regulatory framework.

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			trading with a Nigerian bank using its South African branch, should be able to comply with the US rules only and not the South African rules in addition.	
30.	BASA	2.3 (1)(b)	Clarity is required with regards to the standard that must be used by a provider to determine that a foreign country has implemented margin requirements “based” on the BCBS-IOSCO framework as it will not be practical for each counterparty to make its own assessment in this regard. For example, a number of jurisdictions have implemented such rules, but some may have deviations from the BCBS-IOSCO rules. Will such jurisdictions be precluded under this requirement, and if so, what degree of deviation should be considered? Other questions that arise include whether counterparties should place reliance on the implementation reviews published by the Financial Stability Board, and if so, what level of compliance is required? • How will ODPs be expected to review non-FSB member states in due course (for example, other African jurisdictions)? • As previously suggested, many of these challenges may be addressed by the Authorities providing a list of BCBS-IOSCO compliant jurisdictions or to deem all WGMR jurisdictions that have implemented OTC derivatives margin requirements as comparable. This will ensure consistency of approach amongst ODPs.	In the absence of a list, the OPDs will need to make the assessment based on their risk appetite.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
31.	BASA	2.3 (2)	What type of additional evidence or information may be required, as we would need to determine impact on the ability to provide that information or evidence?	This will be determined on a case-by-case basis.
32.	GFMA	2.3 (2)	We request clarification on what "additional documentary evidence, or further information" may be required.	Please see earlier comment.
33.	BASA	2.3 (3) (a)	Will you accept ISDA opinions? However, ISDA only provides positive netting opinions, to be discussed with ISDA Inc. How often is such an opinion required? Would it be sufficient for the provider and/or counterparty to obtain a once off legal opinion before the conclusion of the first trade which would stand for the duration of all trades between the counterparty and the provider? If not, how often should these opinions be reviewed? ISDA provides "informal country updates". Would these be acceptable as opinions (positive or negative)? As an alternative, we suggest that the requirement for opinions be a "negative requirement". So, if ISDA has not provided a positive opinion, it is assumed that it would be negative.	The legal opinion obtained must comply with the requirements as specified in the Joint Standard. The opinions would need to be updated as frequently as necessary to provide an accurate assessment of the legal position in the particular country.
34.	GFMA	2.3 (3)(a)(i)	We support the exclusion from margin for transactions with non-netting jurisdictions of up to 2.5% of the total derivatives contract portfolio.	Noted.
35.	Absa	2.3 (3)(a)(ii)	How often is such an opinion required? Would it be sufficient for the provider and/or counterparty to obtain a once off legal	Please see earlier comment.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			opinion before the conclusion of the first trade which would stand for the duration of all trades between the counterparty and the provider? If not, how often should these opinions be reviewed?	
36.	BASA	2.3 (3) (a) (ii)	We recommend the inclusion of the following words (as per (3) (c)) "but may include jurisdictional opinions obtained on an industry-wide basis by recognised industry associations from external independent legal counsel", for consistency.	Please see paragraph 2.3(3)(c).
37.	Absa	2.3 (3)(a)(ii)	What are the considerations that will be taken into account by the Authority in providing, or withholding, such approval? How long will the Authority's approval be valid for?	To be determined on a case-by-case basis and the period of validity will be stated in the approval.
38.	BASA	2.3 (3)(b) and (c)	Section 2.3(3)(b) and (c) refer to jurisdictional opinions being obtained from external legal counsel for non-netting jurisdictions. We refer to page 16 of the Consultation Report published together with the Draft FSRA Joint Standard 1 of 2019 and note that the regulators confirmed it would allow for opinions to be obtained from external legal counsel (which will include jurisdictional opinions obtained on an industry-wide basis by recognised industry associations) in respect of foreign jurisdictions. We request that a similar clause used for non-netting jurisdictions also be included for foreign jurisdictions. This would ensure that it is not necessary to undertake separate granular analyses for each counterparty in relation to the foreign jurisdictions margin requirements and trading would be allowed to continue with all foreign counterparties	According to the Authorities subparagraph (c) addresses the concern.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			who are bound by those regimes.	
39.	BASA	2.3 (3) (b)	What are the considerations that will be taken into account by the Authority in providing, or withholding, such approval? How long will the Authority's approval be valid for?	See earlier comment.
	3. General requirements			
40.	BASA	3	It is not clear whether the minimum transfer amount referenced here refers to both variation and initial margin. This should be made explicit. Clarity is also required on whether the minimum transfer amount applies for each of VM and IM separately, or whether cumulatively (ie if we are transacting with counterparty Z, is the minimum for VM R5 million and the minimum for IM also R 5million, or is it R 5million for both?)	The de minimum amount applies to **all** margin transfers. Please see the revisions to Joint Standard.
41.	Absa	3 (1)(b)(ii) and (iii)	Please provide us with the factors that would influence how regularly the legal opinions are updated? Would the size of the trades between the provider and the counterparty be one of those factors?	Please see earlier comment. It is not so much the size of the trades but the legal position in the country at the time.
42.	BASA	3 (1) (b) (ii) and (iii)	Please provide us with the factors that would influence how regularly the legal opinions are updated? Would the size of the trades between the provider and the counterparty be one of those factors?	Please see earlier comment. It is not so much the size of the trades but the legal position in the country at the time.
43.	BASA	3 (1) (b) (vi)	We suggest that you insert the words "that could arise from future changes in the mark-to-market value of the contract" after the words "potential future exposure". Ending the sentence with just "potential future exposure" is too vague	Comment is not accepted. It is clarified in 4.1(1).

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			and may easily be confused for the commensurate credit-risk-related metric rather than a market-risk-related metric.	
44.	Absa	3 (1)(b)(vi)	Please clarify what is meant by “the business day following the execution of a non-centrally cleared OTC derivative transaction”. We read “execution” to be the “trade” date and if our understanding is correct, we suggest that this be changed to allow for initial margin to be provided and collected by no later than the settlement date of the transaction or the following business day after settlement. This will allow the counterparty to continue to earn interest on the initial margin until the trade is actually settled.	The comment is not accepted. Settlement date comes after trade date i.e. transaction date.
45.	BASA	3 (1) (b) (vi)	Please clarify what is meant by “the business day following the execution of a non-centrally cleared OTC derivative transaction”. We read “execution” to be the “trade” date and if our understanding is correct, we suggest that this be changed to allow for initial margin to be provided and collected by no later than the settlement date of the transaction or the following business day after settlement. This will allow the counterparty to continue to earn interest on the initial margin until the trade is actually settled.	Please see earlier comment.
46.	Absa	3 (1)(b)(viii)	We proposed that the margin frequency be open to negotiation and agreement between the provider and the counterparty as requiring daily margining may prove to be an administrative burden. In practice, the providers’ internal policies and credit processes, which would review maximum credit lines and the counterparty’s financial statements, are robust enough not to permit the margin frequency to be too long. We therefore suggest that at most, the margin frequency is capped at 10 business but it is left to the trading	The comment is not accepted.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			parties to determine a frequency no longer than the cap.	
47.	BASA	3 (1) (b)(viii)	We proposed that the margin frequency be open to negotiation and agreement between the provider and the counterparty as requiring daily margining may prove to be an administrative burden. In practice, the providers' internal policies and credit processes, which would review maximum credit lines and the counterparty's financial statements, are robust enough not to permit the margin frequency to be too long. We therefore suggest that at most, the margin frequency is capped at 10 business days, but it is left to the trading parties to determine a frequency no longer than the cap. The reason for the two subparagraphs is not entirely clear. Does "(aa)" envisage VM being collected per transaction in a non-netting jurisdiction and "(bb)" envisage VM based on a portfolio of transactions in a netting jurisdiction?	The comment is not accepted. The two sub-paragraphs explain the intention for variation margin.
	4. Initial margin			
	4.1 General			
48.	BASA	4.1	There is currently a conflict between section 4.1(3)(b), which provides that "the requirement to calculate and exchange initial margin on a bilateral basis must in all cases be subject to an initial margin threshold amount, not to exceed R500 million" and 4.2(8), which indicates that a provider may, at its discretion, decide whether to collect IM below the threshold amount. It is not clear if this threshold is mandatory or discretionary. • This distinction is important from a system's build perspective as well as in terms of the relationship between	4.1(3)(b) does not contradict 4.2(8). There is a minimum threshold amount at which initial margin must be exchanged. Where the initial margin is less than the minimum threshold, the provider has a discretion on whether or not to collect initial margin. A conversion of the foreign currency amounts into Rand denominated amounts has been extensively discussed with the industry.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			counterparts. We note that in most offshore jurisdictions, the collection of IM below the threshold amount is at the discretion of the regulated counterparty (likely to cater for the collection of margin from counterparts who may be perceived as more risky than others). Section 4(1)(3)(b) references the applicable IM threshold amount of R500 million. We note that, based on the current exchange rates, this amount is significantly lower than the currently applicable EU 50 million threshold applicable under EMIR. As South African ODPs will be impacted under the EMIR rules prior to local rules, and as there is already recognition that SA banks will be considered compliant with local rules if they are fully compliant with offshore rules, we recommend that this threshold be increased to align with the offshore threshold. Further, we recommend that the regulation explicitly provides that, in general, South African ODPs are authorised to rely on thresholds referenced in existing margin rules. Without this recognition, we will effectively be requiring our offshore counterparts to exchange margin according to the lower threshold amounts which will likely subject a greater number of transactions to the requirement to exchange margin and increase costs, which will be unacceptable to these counterparts. Operationally, alignment is desirable to avoid the need to build different rules to cater for different thresholds applicable across all trading jurisdictions. The BCBS-IOSCO recommended IM threshold amount is EU 50 million. Employing a lower threshold locally may operate as a barrier to entry for offshore counterparts, who would not want their	Accordingly, the Rand denominated amount in the Joint Standard will not be amended. The 1:1 restriction on financial transactions requires that our local SA banks do not provide non-residents with local financial assistance without the N/R also contributing or bringing foreign currency into SA. In other words if the initial margin required in SA is R100, for the duration of the trade, the SA bank can loan/finance R50 and the non-resident must bring/convert R50 into SA. This would be separate from any variation margin calls, which must also comply with the 1:1 ratio in terms of the exchange control framework in case of any local SA financing on

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			transactions to become subject to the lower initial margin requirements. We recommend that a R800 million threshold be employed. Exchange control rule 3 1(e) and (f) requires that when financing is provided to a foreign counterpart then the foreign counterpart has to provide R1 of financing for every R1 of credit extended. Would seem then that if the 1:1 rule is adhered to the foreign counterpart is already providing 50% initial margin, would we really expect them to provide another (roughly 20% – 25%) on average as IM. Possibly the standard could say the minimum of the APPROVED MODEL or STANDARD METHODOLOGY OR any other amounts passed under ANY OTHER rule whether regulatory or market practice or something to that extent.	behalf of non-residents.
49.	GFMA	4.1 (3)	We recommend that the IM exchange threshold be increased from R 500 million to R 800 million, to more closely resemble the €50 million figure in the international framework	See earlier comment.
50.	Liberty	4.1 (3)(b)	We seek confirmation that the R500 million threshold will apply to each separate bilateral arrangement between a provider and a counterparty.	The R500m threshold is complied with on a consolidated group basis and the threshold does not apply to each netting set on a bilateral basis with counterparties in the same consolidated group. Please also see the previous responses to the October 2018 comments.
51.	BASA	4.1 (3)(c)	Is there an expectation that we will put in place a formal application for the SIMM model, or will the regulator review and confirm for everyone?	As previously advised the approval of one model in a jurisdiction does not mean that the model would automatically be approved by the

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			We recommend that the regulator pre-approve the SIMM methodology generally. The paragraph refers to “the provider and its holding companies” which is a different concept to “group” referred to in 4.2 (1). Is this intentional? The paragraph refers to “consolidated counterparty group” which is different to “counterparty” referred to in clause 4.2 (1). Is this intentional?	Authorities. In all cases, models must all be approved by the relevant Authority The threshold amount is applied at the level of the consolidated group.
52.	Liberty	4.1 (3)(c)	We seek confirmation that the threshold is calculated for a ‘consolidated counterparty group’, taking into account intra-group transactions (ie. ‘between the provider and its holding companies’) as well as bilateral transactions between a provider and other counterparties. It is unclear whether the requirement is for Initial Margin not to exceed R500 million in total for a group or whether this threshold is calculated on a consolidated group basis and applied to each bilateral arrangement with each provider in a group.	The R500m is not intended to apply to each bilateral arrangement with each provider in a group.
	4.2 Phasing-in of initial margin requirements			
53.	BASA	4.2 (1)	It should be made clear that below threshold parties do not have to exchange any initial margin or operationalise this (re-document or enter into custodial arrangements).	The comment is noted. The Authorities are of the view that the Joint Standard is clear. Please refer to 4.2 (7).
54.	GFMA	4.2 (1)	We request clarification by the Authorities that below IM exchange threshold parties do not have to re-document or enter into custodial arrangements.	See earlier comment.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
55.	ISDA	4.2 (8)	ISDA requests clarity as to whether, in accordance with the joint statement issued on March 5, 2019 by BCBS and IOSCO, the Act allows for a provider and its counterparty to delay the completion of collateral documentation and custodial arrangements which are only necessary to the exchange of IM in the event the initial margin amount does not exceed the threshold amount of R500 million.	Agreed, this is the position.
56.	Absa	4.2 (8)(b)	Please confirm whether the provider's obligation to collect the difference between the relevant required initial margin amount and the threshold amount is subject to the minimum transfer amount of R5 million.	The de minimus of transfer amount is applicable to all margin transfers. Please see revisions to the Joint Standard.
57.	BASA	4.2 (8)(b)	Please confirm whether the provider's obligation to collect the difference between the relevant required initial margin amount and the threshold amount is subject to the minimum transfer amount of R5 million	Please see earlier comment.
	4.3 Collateral			
58.	BASA	4.3 (1)	Please clarify whether it is the intention that initial margin is held at a third-party custodian. The current drafting, and particularly the provision authorising re-hypothecation, indicates that this is not the case. We note that the authorisation of re-hypothecation, repledge and reuse of collateral in the rules appears to be drafted in broader terms than the equivalent rules in the BCBS-IOSCO margin recommendations, which allows collateral collected from "customers" to be rehypothecated, with customers being narrowly defined to include only buy-side firms and non-financial entities, but not other market makers. On a reading of the draft margin rules, margin collected from ODPs may be rehypothecated, in conflict with the BCBS-	The initial margin must be held in such a way that it complies with the requirements in the Joint Standard. The collateral collected must be segregated from the initial margin collector's proprietary assets. The initial margin collector must also give the customer the option to segregate the collateral posted from the assets of the initial margin collector's other customers and counterparties. The initial margin may be rehypothecated to a third party custodian, subject to

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			IOSCO rules. This may undermine the benefits of margin requirements by calling into question the legal/beneficial title over the margin in the event of counterparty default. We note further that in a number of jurisdictions, (including the EU), there is an outright prohibition on rehypothecation. The standard speaks to IM being allowed to be rehypothecated once, but ONLY for purposes of hedging the initial margin collector's derivatives position arising from derivatives transactions. However, the standard then goes on to say give all sorts of conditions: In the case of an equity derivative transaction, it would seem the initial margin (if cash) could be used to purchase the delta hedge, however all the following conditions then seem to make this almost impossible. Would one define the purchase of the equity hedge with Cash IM as rehypothecation? It is obviously not possible to buy an equity hedge and then inform the market it can't do anything with the cash received or comply with the rest of the rehypothecation conditions.	the conditions set out in the Joint Standard. Please see revisions to the Joint Standard to align with the BCBS-IOSCO framework. If the conditions cannot be met, it means the collateral cannot be rehypothecated
59.	Absa	4.3 (1)(a)	We suggest that the initial margin collector advises either the Authority or the initial margin provider of the identity of the third party so as to assist the initial margin provider in achieving the protection.	The comment is noted. This will not be specifically provided for in the Joint Standard but it could be assessed as part of the supervisory process.
60.	BASA	4.3 (1)(a)	We suggest that the initial margin collector advises either the Authority or the initial margin provider of the identity of the third party so as to assist the initial margin provider in	Please see earlier comment.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			achieving the protection.	
61.	Absa	4.3 (1)(d)(ii)	We suggest that the third party also be subject to regulation of its liquidity risk.	The regulation of the third party for liquidity risk will not be regulated in terms of the Joint Standard.
62.	BASA	4.3 (1)(d)(ii)	We suggest that the third party also be subject to regulation of its liquidity risk	The regulation of the third party for liquidity risk will not be regulated in terms of the Joint Standard.
63.	Absa	4.3 (1)(g)	We suggest the initial margin collector and the third party obtain a legal opinion confirming that the contractual arrangements between them are drafted in a manner than ensures that the initial margin will not form part of either the third party or the initial margin collector's insolvent estate.	Nothing prevents the institution from seeking a legal opinion where the parties deem it necessary.
64.	BASA	4.3 (1)(g)	We suggest the initial margin collector and the third party obtain a legal opinion confirming that the contractual arrangements between them are drafted in a manner than ensures that the initial margin will not form part of either the third party or the initial margin collector's insolvent estate	Please see earlier comment.
65.	Liberty	4.3 (2)(b)	Clarity is sought on what may be an acceptable method of segregating cash collateral, which is a fungible asset and usually transferred outright.	To be determined by market practices. An acceptable method of segregating cash collateral includes a segregated collateral custody account or third party cash custodian account.
66.	BASA	4.3 (2)(c)	Why have option to segregate? International requirements are to segregate.	The option to segregate relates specifically to individual segregation.
67.	BASA	4.3 (3)	Should the collateral not be held in Trust by a third party?	Please see earlier comment. The collateral needs to be segregated from

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
				the initial margin collector's proprietary assets and it must be held in such a manner to comply with the requirements of this Standard. In the ordinary course, if collateral is segregated it becomes trust property.
	4.4 Alternative measurement methodologies			
68.	BASA	4.4 (1)	It's not immediately obvious that ISDA SIMM is an approved model. The European rules explicitly mentioned ISDA SIMM as a suitable model. We suggest that this should be included to avoid having to apply for a recognised model like this to be approved.	Please see earlier comment.
69.	ISDA	4.4 (1)	Subparagraph (b) of this section and section 4.6(a) each require the prior written approval for the use of a quantitative portfolio margin model. The ISDA Standard Initial Margin Model (SIMM) is in broad use by the industry and has been reviewed or approved by regulators globally for the calculation of regulatory IM requirements. ISDA stands ready to assist the Authorities in their consideration of the SIMM for use under the Act. We are concerned, however, that there may be insufficient time for the Authorities to gain knowledge of the SIMM and conduct individual provider reviews in advance of the proposed September 1, 2019 initial margin requirements. The inability to use a quantitative IM model, like SIMM, because approval has not yet been obtained, would force a provider to use the standardised method, which will be substantially more expensive for parties with a diversified portfolio. This would be especially disruptive in the case that the provider is already using SIMM to calculate IM in another jurisdiction. In such case, we recommend that the review or approval of the foreign	The comment is noted, please see earlier responses. Nothing prevents the industry from approaching the regulatory authorities on the models prior to the effective date of the Joint Standard.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			jurisdiction be deemed compliant. In the event of a provider which has not used SIMM in another jurisdiction, we suggest that ISDA's documentation which demonstrates the conceptual soundness of the model and robust governance be sufficient to grant pre-approval, at least provisionally, to a provider looking to use SIMM at the inception of its IM exchange.	
	4.5 Standardised Method			
70.	BASA	4.5	The standardised current exposure method is in the process of being replaced by the new risk-sensitive Standardised Approach to Counterparty Credit Risk (SACCR). The SACCR method should be implemented long before any exchange of IM is required locally, and as such we recommend that the reference to the standardised method is replaced with the SACCR method. (SACCR addresses known deficiencies in the CEM approach and reference to the CEM approach is outdated and sub-optimal). • SACCR comes into effect on 1 October 2019.	The Joint Standard allows for any amendments to the formula as may be specified by the PA.
71.	Absa	Table 1	**Credit**: For credit transactions there can be both credit and interest rate (duration) risk in the derivative transaction. For example, you can trade a 5 year credit instrument on a floating rate basis. Please clarify whether, in these types of transaction there will be IM levied to cover both asset classes which would have the effect of the total IM being 10% (in respect of the credit component) + 1% (in respect of the interest component). Further, why are the credit margins higher than those in respect of interest? In relative terms, credit has a low probability of a big loss whereas Interest rates have a high probability of a small losses. From our reading of the Joint	The comment is noted. It would be the IM based on the credit or the higher of the credit and interest rate risk.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			Standard, it seems like the size of loss is used to determine the IM percentage and not the probability, what is the rationale behind this approach? Has the probability of loss been taken into account when quantifying the IM requirement? **Equity**: The IM requirement should be no higher than 11% so as to align with the equivalent margining requirements for SAFEX traded derivatives.	
72.	BASA	4.5 (a) Table 1	The initial margin requirement for Equities should be no higher than 11% so as to align with the equivalent margining requirements for SAFEX traded derivatives.	The comment is not accepted. The IM for equities is aligned to the BCBS-IOSCO framework.
	4.6 Quantitative portfolio margin model			
73.	ISDA	4.6 (a)	See ISDA's comments on the pre-approval requirement in 4.4(1), above.	Please see earlier response.
74.	ISDA	4.6 (b)	In respect of subsection (v), ISDA believes the obligation to obtain approval for use of an IM model for each jurisdiction and each relevant institution is unduly onerous. A provider which implements an IM model like ISDA SIMM will use the mechanics of the model itself in the same manner regardless of the nature of its counterparty and its jurisdiction. ISDA SIMM is a single global model, designed to meet the standards for a quantitative IM model established in the BCBS-IOSCO margin framework as further promulgated by various jurisdictions. Variations on its use are generally limited to the portfolio for which IM is calculated using ISDA SIMM, based on jurisdictional differences in the products subject to regulatory IM and any bilateral agreement regarding the asset class(es) which will be calculated using ISDA SIMM versus the standardised method. As the initial margin requirements will phase in gradually until 2023, a provider will need to amend its application each year and	The comment is noted. Please see earlier response.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			face the risk that approval will not be received in all cases for which the parties have agreed in their Collateral Support Annex or Collateral Transfer Agreement to use ISDA SIMM. ISDA further advises that the ISDA SIMM satisfies the requirements of 4.6(b)(i), (iv), (vi), and (vii). With respect to 4.6(b)(vi), ISDA requests that the Authorities eliminate the word "internal" from the phrase "robust internal governance model". An industry standard quantitative IM model relies on a robust industry governance that either cannot or need not be replicated at an individual provider level. Rather, use of the ISDA SIMM, or any other quantitative IM model should be predicated on the existence of a robust governance model whether such governance be conducted at an industry level or internal by a provider the event they obtain approval to use a proprietary model.	The Authorities do not agree to the deletion of the reference to "internal".
	5. Variation margin			
75.	Absa	5	We request that small to medium sized counterparties (for example insurance companies) who do not represent a systemic threat to the market be exempt from variation margin rules, as they would be under the initial margin rules. We propose this exemption can apply to counterparties whose gross aggregate notional of outstanding derivatives does not exceed a certain threshold. This exemption to variation margin would reduce the operational and financial burden on small to medium size entities who transact in this market, without having a systemic impact on the market. We believe an appropriate gross aggregate outstanding gross notional threshold would be ZAR 30 billion.	The comment is not accepted. For VM, there is an initial threshold of R30 trillion and thereafter, entities captured by the Joint Standard would need to exchange VM.
76.	BASA	5 (3)	This section provides that any cash and non-cash collateral	The comment is noted. However, the

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			collected as variation margin may be re-hypothecated, pledged or reused. We note that this conflicts with the nature of variation margin, where there is an outright transfer of ownership to cater for changes in the daily mark to market rates. As a principle, rehypothecation in its true sense is only applicable to initial margin, where the initial margin provider simply pledges collateral and there is no outright transfer of ownership.	rehypothecation of variation margin is consistent with the BCBS-IOSCO framework as the internationally agreed standard.
77.	Investec	5 (3)	Please could the Regulator clarify what it expects the settlement timing of variation margin to be? US Rules require that VM is settled on the day of notification (subject to a notification cut-off time) whereas EMIR requires a T+1 settlement. Clause (3) requires that "a provider…..must on a daily and bilateral basis calculate and exchange the relevant amount of variation margin…". If variation margin must settle on T+0 does the Regulator anticipate a cut-off time for notification per T+0 rules abroad?	The Joint Standard does not specify the cut-off time for notification but the notification must be made to allow for a T+0 settlement of the VM.
78.	BASA	5.3 (a)	This refers to a "provider group" but to a "counterparty". Should it not be "counterparty group"?	Agreed, to be amended to counterparty group
79.	GFMA	5 (3)(a) and (b)	We welcome and agree with the amended application dates for VM.	Noted.
80.	Absa	5 (3)(b)	Please confirm whether the obligation to exchange variation margin is subject to the minimum transfer amount of R5 million.	The R5 million de minimus is applicable to all margin transfers. Please see the revisions to the Joint Standard.
81.	BASA	5 (3)(b)	Please confirm whether the obligation to exchange variation margin is subject to the minimum transfer amount of R5	The comment is noted but not accepted. Please see earlier

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			million We request that small to medium sized counterparties (for example insurance companies) who do not represent a systemic threat to the market be exempt from variation margin rules, as they would be under the initial margin rules. We propose this exemption can apply to counterparties whose gross aggregate notional of outstanding derivatives does not exceed a certain threshold. This exemption to variation margin would reduce the operational and financial burden on small to medium size entities who transact in this market, without having a systemic impact on the market. We believe an appropriate gross aggregate outstanding gross notional threshold would be ZAR 30 billion.	response.
	6. Eligible collateral			
82.	BASA	6 (1)(c) and (d)	Please provide further clarity in respect of the eligible collateral so that ODPs and counterparts can ensure that they have sufficient and acceptable collateral inventory to meet their margin needs. For legal and operational certainty this should provide specific and detailed requirements, and not a general statement referring to collateral to be defined at an unidentified future date. We recommend replicating the guidance contained in rules like EMIR, which sets out in granular detail the specific requirements that must be met for collateral to be considered eligible. (a) cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits; (b) gold in the form of allocated pure gold bullion of	The comment is noted. The Authorities will make the necessary determinations on eligible collateral.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			recognised good delivery; (c) debt securities issued by Member States' central governments or central banks; (d) debt securities issued by Member States' regional governments or local authorities whose exposures are treated as exposures to the central government of that Member State in accordance with Article 115(2) of Regulation (EU) No 575/2013; (e) debt securities issued by Member States' public sector entities whose exposures are treated as exposures to the central government, regional government or local authority of that Member State in accordance with Article 116(4) of Regulation (EU) No 575/2013; (f) debt securities issued by Member States' regional governments or local authorities other than those referred to in point (d); (g) debt securities issued by Member States' public sector entities other than those referred to in point (e); (h) debt securities issued by multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013; (i) debt securities issued by the international organisations listed in Article 118 of Regulation (EU) No 575/2013; (j) debt securities issued by third countries' governments or central banks; (k) debt securities issued by third countries' regional	

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			governments or local authorities that meet the requirements of points (d) and (e); (l) debt securities issued by third countries' regional governments or local authorities other than those referred to in points (d) and (e); (m) debt securities issued by credit institutions or investment firms including bonds referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council (1); (n) corporate bonds; (o) the most senior tranche of a securitisation, as defined in Article 4(61) of Regulation (EU) No 575/2013, that is not a re-securitisation as defined in Article 4(63) of that Regulation; (p) convertible bonds provided that they can be converted only into equities which are included in an index specified pursuant to point (a) of Article 197 (8) of Regulation (EU) No 575/2013; (q) equities included in an index specified pursuant to point (a) of Article 197(8) of Regulation (EU) No 575/2013; (r) shares or units in undertakings for collective investments in transferable securities (UCITS), provided that the conditions set out in Article 5 are met.	
83.	GFMA	6 (1)(c)	We would like to highlight that the requirement for the portfolio of eligible collateral for purposes of initial and variation margin to be "reasonably diversified" is overly broad and would appreciate guidance from the Authorities on what constitutes "reasonably diversified" eligible collateral.	The comment is noted. The institution must make the determination on what is reasonably diversified. The Authorities can issue further guidance as deemed necessary by the

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			Furthermore, we would also appreciate clarification that this requirement does not apply to cash collateral, given that single currency cash-only CSAs are commonly used within the industry.	Authorities.
84.	Liberty	6 (2)	Please make provision to add Units held in Collective Investment Schemes to be added as eligible collateral, in line with international standard.	The comment is noted. This can be determined by the Authorities under 6 (2)(f).
85.	Absa	6 (5)(d) Table 2	In respect of high quality bonds (both government and corporate), it appears that provision is only made for maturity but not for interest rate sensitivity nor credit rating. What is the rationale behind this?	The high quality bonds will be as specified in writing by the Authorities which could include further details on credit ratings etc.
86.	BASA	6 (5)(d)	Please provide guidelines on the determination of what may constitute "excessive credit, market or foreign exchange risk".	The Authorities could provide further guidance where it is deemed necessary to do so by the Authorities. The determination on what constitutes "excessive credit, market or foreign exchange risk" is based on the risk appetite of the relevant institution.
	7. Commencement and short title			
87.	BASA		We note that the commencement date of the requirements is cited as 1 September 2019. • There is an assumption that all ODP approvals will have been granted before this date? • The Code of Conduct for ODPs also imposes an obligation among others on ODPs to report transactions to	The comment is noted. Please see the revisions to the phasing in requirements for the IM and VM requirements and the implementation date for the Joint Standard.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			the TR. This structure has also not been constituted.	To the extent that a TR has not yet been established, ODPs will not be in a position to report transaction data to a TR, save where the Authorities provide further direction to the market regarding interim reporting arrangements.
	General comments			
88.	BASA	Client definition	We note that the requirements do not make a reference to a "client". • Is it correct to infer that the requirements apply exclusively to instances where the OTC Derivative transactions are concluded between counterparties who act on a principal to principal basis? The Regulator intent in the current form of the requirements is not explicitly clear considering that the ODP and/or counterparties may be acting on behalf of an underlying client (who may be principal in the related transactions). • Alternatively, is it intended that the client would be indirectly subject to the applicable margin requirements of the ODP/ counterparty and/or the applicable risk management process of the clearing house to which the ODP and/or the counterparty may be subject?	Yes, the intention is to capture transactions between counterparties acting as principal.
89.			It is our understanding that the intention is for the ODP rules to apply to local banks and OTC providers. Can the regulator confirm if this is the case, or if there is a requirement for	If the activity that is being regulated is performed in SA and the entity meets the definition of an ODP it would need to be authorised as an ODP.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			foreign entities to register as ODPs as well?	
90.			Due to the many pending questions, can we seek an extension to 2020 to allow time to answer all questions and to implement it appropriately?	The comment is noted but not accepted. Please also note that the Margin Requirements have been subject to an extensive consultation period.
91.			Terms such as "cliff-edge" or "haircuts" or "wrong way risk" are not defined. • We recommend that these terms are defined or explained as they are not legal terms to ensure consistent understanding of these terms from an industry perspective.	These are defined by the context within which they are used in the Joint Standard.
92.			We note that section 2.2 of the draft rules mandates the exchange of margin with respect to intra-group transactions where the gross notional amount of non-cleared derivatives outstanding between the provider and the counterparty exceeds R50 billion on a particular day. We would re-iterate our request that intra-group transactions be exempt from margin on the basis that these types of trades are typically used to transfer risk within a group and would therefore be expected to be subject to centralised risk management procedures and controls. To the extent that the requirement for intra-group margin remains, we would be grateful if the Authorities could make clear that no margin would be required to be exchanged between branches of a single entity. While we appreciate that the South African branch of an entity might be	The comment is noted. Please see the revisions to the Joint Standard. In respect of transactions between branches in the same group, these transactions will not be exempted from the Joint Standard.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			considered on a standalone basis for certain purposes (for example licensing) we do not think that this approach is appropriate in the context of margin, the purpose of which is to mitigate counterparty credit risk and to combat the risk created by the interconnectedness of systemically important entities. From a legal perspective, a branch is not a distinct entity and is instead part of the same legal entity as the contracting entity: it is therefore a legal nonsense for the off-shore branch of a bank to exchange margin with the South African branch – one cannot contract with or sue oneself and on an insolvency of the bank the margin posted by one branch to another would simply form part of the assets of the bank as a whole. One would simply have introduced operational risk and complexity and increased funding costs while affording no increased protection to the bank in any of its places of operation. We would therefore respectfully request that the Authorities make clear to the market that there is no intention of requiring banks to undertake margining of this type.	
93.	GFMA	FX securities conversion transactions	We welcome the Authorities acknowledging our previous recommendation 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 settled on a longer than T+2 basis. Nevertheless, we would appreciate further clarity on how the	The comment is noted. The Authorities can issue further guidance in the future.

No	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			Authorities plan to incorporate this in the final Joint Standard.	

The following comments as per the matrix below have been captured as at October 2018:

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
	1. Definitions			
1	BASA	Definition of "covered entity"	We note that the definition of "covered entity" includes foreign entities thereby making the Joint Standard as a whole binding on foreign entities in terms of section 2.1(1). This makes the Joint Standard extraterritorial in effect where a foreign covered entity, for example, would be required to submit information to the Financial Sector Conduct Authority under the cross-border transactions section (2.3). The European Union margin rules published under European Margin Infrastructure Regulation (EMIR) are binding on "financial counterparties" and on non-financial counterparties who exceed the clearing threshold. The definition of "financial counterparty" in the EMIR (EU) Regulations (Regulation (EU) No 648/2012) includes EU entities and does not include foreign entities. Instead, article 11(12) of the EMIR Regulations states that the margin requirements "shall apply to OTC derivative contracts entered into between third country entities that would be subject to those obligations if they were established in the Union, provided that those contracts have a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation." The EMIR	The comment is noted. The intention is not to extend the requirements of the Joint Standard to foreign participants. The intention is to create a mechanism for cross border transactions, and to include a reference to foreign counterparties. Please see the revisions to the Joint Standard.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			Regulations are therefore not binding on foreign entities but rather on EU financial counterparties and the OTC derivative contracts they enter into. We suggest that foreign covered entities be removed from the definition of "covered entity" and be defined separately as "foreign covered entities" to avoid them being bound by the entire Joint Standard. We recommend that the Joint Standard apply to OTC derivative contracts entered into between covered entities and foreign covered entities that would be subject to the Joint Standard if they were established in South Africa.	
2	Investec Asset Management	Definition of "covered entity"	We note the Authority's comment on applicability to "manager of a collective investment scheme" as opposed to the underlying funds, however derivatives are traded at fund level, not at Manco level. Additionally, not all of the funds in the collective investment scheme will trade in derivatives therefore the logic around reference to the manager is not fully understood.	The comment is noted. The collective investment scheme is defined as a "counterparty". Please see the revised Joint Standard.
	2. Application and exclusions			
	<u>2.1 General application</u>			
3	BASA	2.1(1)	The application to "*covered entities*" and not simply to ODPs when trading with "covered entities" is a significant policy shift. This means that, even where a covered entity would otherwise have been excluded from the impact of offshore margin rules (by virtue of the fact that it did not qualify as systemically important under those rules), that entity will now be required to exchange margin with all offshore covered entities under the local rules. This is a significant departure from the manner in which most offshore jurisdictions have implemented their margin rules. Most jurisdictions incorporate a threshold of systemic importance at counterparty/group level (not simply at transaction level as is contemplated in the initial margin requirements).	The comment is noted. The margin obligations will be placed on the ODP and the ODP will be required to exchange or post and collect margin when trading with defined counterparties.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			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 risks, whilst not being unnecessarily onerous. As currently drafted, a local non-bank financial institution entering into a single OTC derivatives transaction per year would still be required to operationalise and exchange variation margin under the rules (even though this non-bank financial institution will likely never be required to exchange initial margin due to the thresholds in place, it will be bound to exchange variation margin on all OTC transactions as there are no thresholds in respect of the application of variation margin). Whilst the document released along with the margin rules does clarify that corporates and pension funds are excluded, we are concerned that there may be uncertainties with the passage of time. Please consider specifically listing these exemptions for the sake of clarity. The Department of Enterprises requires, for example, renewable energy financing projects to enter into hedging where the project security package will be shared among the finance parties. This is not measured on a daily mark to market exposure calculation. Covered entities also share in mortgage bond securities with regards to commercial property transactions which require some form of hedging. It is unlikely that the debt market lenders would allow the borrowers to post collateral under a CSA and rank pari passu (on an equal footing) with the security package under the loan. We therefore request that loan-linked ISDAs be excluded from	

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			the margin requirements.	
4	Investec Asset Management	2.1(2)	Applicability to covered entities generally: in the US there has always been an exemption from margin available where trades are entered into for purely hedging purposes and, more recently, the promulgation of the Economic Growth, Regulatory Relief and Consumer Protection Act which claws back some of the more draconian provisions of Dodd-Frank in an attempt to limit scope to entities that pose systemic risk. Similarly there has been a relaxation under EMIR with Refit and the introduction of the concept of Small Financial Counterparty based on the same premise as in the US. Global regulators have recognized the compliance burden on smaller participants in the market. It would be beneficial to some buy-side funds if a similar concept can be introduced where the funds' trading activities do not contribute to systemic risk.	In terms of the Joint Standard, the obligation to exchange margin will be placed on the ODP, transacting with a defined counterparty.
5	BASA	2.1(2)(a)	No definition of "Sovereigns" is included, either in this Standard, the Financial Markets Act or the FMA Regulations. Please include an appropriate definition which provides that quasi-sovereigns and state-owned entities are excluded as well. This aligns with the stance taken in most offshore jurisdictions.	The sovereign does not include public entities. Please see the revised Joint Standard
6	BASA	2.1(2)(a)	It is unclear whether term "sovereign" refers to public sector entities. It is our understanding is that it has the same meaning as stipulated in the Basel Committee on Banking Supervision; Board of International Organization of Securities Commissions – Margin requirements for non-centrally cleared derivatives (BCBS-IOSCO). Please advise and or confirm that our understanding is correct.	The sovereign does not include public entities. Please see the revised Joint Standard
7	Global Financial Markets Association	2.1(2)(a)	We agree with the Banking Association of South Africa ("BASA")'s comment in its response to the draft Joint Standard	The sovereign does not include public entities. Please see the revised Joint

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			that an appropriate and globally consistent definition should be included for "Sovereigns".	Standard
8	Investec Asset Management	2.1(3)	**Physically-settled FFX**: the Authority's comment is not understood. Respondents' request is to exclude physically settled FFX and swaps from VM to avoid conflict with EU and US regulation. Spot was never contemplated under foreign regimes. The draft regulations however still include these trades for VM.	The draft Joint Standard refers to physically settled forwards and swaps. Please also see the definition of "OTC derivative transaction" in the FMA Regulations of February 2018.
9	BASA	2.1(3)	We welcome the comments around the exemption of physically-settled FX forwards and swaps from initial margin ("IM") requirements. As indicated in the March 2015 Basel Committee on Banking Supervision and International Organization of Securities Commissions "*Margin requirements for non-centrally cleared derivatives"* (the "International Margin Framework"), these products merit exclusion due to their unique characteristics. We support the comments / recommendations as put forward by the Global Financial Markets Association ("GFMA") in its response to yourselves and once again would highlight our concerns that physically settled FX forwards and swaps are subject to VM under the final draft Joint Standard. • This is not required under the BCBS-IOSCO standards and is inconsistent with the approach in most major jurisdictions, where these products are fully exempt. Where they are not fully exempt, they will be subject to a risk-based treatment that does not apply the VM requirement to all transactions equally. • Inconsistency in the application of the margin rules across jurisdictions results in competitive distortions and opportunities for regulatory arbitrage.	The BCBS-IOSCO framework specifically excludes physically settled FX forwards and swaps from IM. The Authorities acknowledge the approach taken by various other jurisdiction on the treatment of VM for physically settled FX forwards and swaps. The Authorities further acknowledge that in terms of the BCBS-IOSCO framework variation margin requirements can be implemented by way of supervisory guidance or national regulation. The revised Joint Standard has been amended to exclude physically FX forwards and swaps from VM in line with the approach taken in other jurisdictions

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10	Global Financial Markets Association	2.1(3)	We welcome and agree with the FSCA's and PA's (collectively "the Authorities") exemption of physically-settled FX forwards and swaps from initial margin ("IM") requirements. As indicated in the March 2015 Basel Committee on Banking Supervision and International Organization of Securities Commissions "Margin requirements for non-centrally cleared derivatives" (the "International Margin Framework"), these products merit exclusion due to their unique characteristics. However, for the reasons set forth below, we continue to urge the Authorities to similarly exempt physically-settled FX forwards and swaps from the variation margin ("VM") provisions as well. **International Harmonization** 1. Within the current global regulatory landscape, physically-settled FX products are almost everywhere <u>excluded</u> from VM:	Please see earlier comment.

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<tr><th>No.</th><th>Reviewer</th><th>Reference/ Section/ Paragraph</th><th>Comment/ Issue</th><th>Response</th></tr>
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<tr><td colspan="7">Physically-settled FX forwards and swaps included / excluded for VM under local f
rules</td></tr>
<tr><td>U.S.</td><td>Excluded</td><td>Singapore</td><td>Excluded</td><td>Europe</td><td colspan="2">Limited to between "I</td></tr>
<tr><td>Japan</td><td>Excluded</td><td>Australia</td><td>Excluded</td><td>Hong Kong (HKMA)</td><td>Excluded</td><td>Hong Ko (SFC) (*propose rules)</td></tr>
<tr><td>Canada</td><td>Excluded</td><td>Switzerland</td><td>Excluded</td><td>Korea</td><td>Excluded</td><td>Brazil</td></tr>
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Even in the two jurisdictions where VM is applicable to physically-settled FX forwards and swaps, the scope of application is limited:

EU:

Will permit the limitation of VM for physically-settled FX to where both counterparties are EU Capital Requirements Regulation ("CRR") "Institutions" ("credit institutions" and "investment firms").
This is to avoid international regulatory divergence between the EU and other jurisdictions in respect of the mandatory exchange of VM on physically-settled FX products by applying VM to only to transactions between the most systemic counterparties (eg. "dealer-to-dealer").

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No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			○ The CRR's "investment firms" definition is meant to capture entities engaged in securities or derivatives activities that could present risks to the financial system or risks to clients to which the application of a more comprehensive prudential regime based on the Basel framework is considered to be justified. • **Hong Kong (SFC) (*proposed rules only)**: ○ The proposed SFC rules apply VM obligations for physically-settled FX forwards and swaps where transactions are entered into by a licensed person with an: (i) Authorized Institution, (ii) Licensed Corporation, or (iii) entity that carries on a business outside Hong Kong and is engaged predominantly in any one or more of: banking, securities or derivatives business and asset management (where both parties exceed a HKD 15 billion threshold of OTC derivatives activity). ○ Given that the SFC indicates in its proposal that it is seeking to appropriately balance systemic risk reduction benefits with operational costs of implementing margin requirements, particularly for smaller, less sophisticated counterparties who may have limited uncleared OTC derivative exposures, and despite the scope being limited as described above, we have responded to the SFC's proposal raising concerns that imposing mandatory and prescriptive VM obligations on such users of FX hedging products may lead to adverse consequences on the FX market. See our recent letter to the SFC here: http://www.gfma.org/correspondence/item.aspx?id=1010. 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	

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			incentivizing regulatory arbitrage, we therefore urge the Authorities to exclude physically-settled FX forwards and swaps from the scope of VM. **The importance of FX products as currency risk hedging instruments; costs and burdens of VM for FX not commensurate with risks sought to be mitigated** 2. Physically-settled FX forwards and swaps are relied upon by entities around the world to hedge currency risk exposures, so coordinated regulation in respect of these very straightforward, short-dated and fundamental FX products is vital. We acknowledge, as mentioned by the Authorities in their "*Response to comments submitted for the public consultation process for the draft margin requirements for OTC derivative transactions*" (Ref 15/8), that the International Margin Framework provides that " . . . variation margining of such [physically-settled FX forwards and swaps] is a common and established practice . . . accordingly the BCBS and IOSCO agree that standards 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. . .". Whilst the exchange of VM for physically-settled FX forwards and swaps is common for transactions in such FX products between banks (interdealer), for banks' transactions with other end-users of FX whether or not VM is required will be subject to a risk-based assessment. Furthermore, in addition to the challenges which arise where regulatory approaches are not consistent between regulatory bodies, implementing necessary capabilities for mandatory exchange of VM for physically-settled FX forwards and swaps requires significant cost, infrastructure build, creation of a	

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			counterparty classification/categorization system, as well as the commitment of cash or other liquid assets as collateral. We are concerned that the Authorities' imposition of mandatory VM obligations on physically-settled FX forwards and swaps transactions will impose undue costs and operational burdens on end-users of FX in South Africa relying on these products to hedge their currency risks. It is crucial to ensure that regulatory obligations take into account and reflect the nature and extent of the risks posed that are to be mitigated and minimize burdens on end-users. If the obligations are not commensurate with the risks posed, entities within scope of the authorities' margin rules may, due to the prescriptive VM requirements, be challenged in managing their currency risk through the use of physically-settled FX forwards and swaps, and their counterparties whom do not themselves bear these obligations under their own regulatory framework may be deterred from trading with them, which could have adverse liquidity impacts. **Conclusion** 3. As mentioned by the Authorities in their "*Response to comments submitted for the public consultation process for the draft margin requirements for OTC derivative transactions*" (Ref 15/8), the International Margin Framework provides that " . . . 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." In order to achieve better global consistency across jurisdictions, both to maintain the competitiveness of entities	

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			subject to the Authorities' margin requirements and to avoid potential jurisdictional conflicts, we urge the Authorities to follow the approach taken by other global regulators and exempt physically-settled FX swaps and forwards from the mandatory and prescriptive VM requirements. In our view, the preferable and more globally consistent approach to VM for physically-settled FX forwards and swaps would be to establish VM requirements for these products via reference to the 2013 BCBS FX Supervisory Guidance (as per the US, Hong Kong, Singapore and Canada, for example). Rather than impose stringent VM requirements on physically-settled FX forward and swaps, this would allow for a more risk-based approach to VM for these FX products, to ensure VM is limited in respect of physically-settled FX transactions to where it is deemed necessary and appropriate in light of the risks posed. In our view, this would achieve closer and better alignment with other jurisdictions, whilst still enabling an approach that ensures the relevant risks are adequately addressed.	
	2.2 Treatment of intra-group transactions			
11	BASA		We agree 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 jurisdictions legal and regulatory framework and that transactions above a certain threshold will be subject to margin requirements. We therefore request confirmation that internal transactions between banks and their branches, including foreign branches, will not be subject to margin requirements, given, of course, the fact that a legal entity obviously cannot contract with itself	All intra-group transactions will be subject to the threshold as set out in the Joint Standard, including transactions between branches in the same group or between an ODP and its branch.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
12	BASA	2.2(2)(a)	The R30 billion threshold for intra-group transactions is too low and we would suggest that this be increased to R100 billion, to allow for development of intra-group trading strategies and more effective hedging. This section is particularly broad. Please indicate what kind of conditions may be considered here, for example, an applicable threshold etc.	Please see the revised threshold of R50 billion. The conditions cannot be specified in the draft Joint Standard – it would be case dependent.
13	Global Financial Markets Association	2.2(2)(a)	We recommend elimination of the monetary threshold condition in respect of the exclusion for intra-group transactions. Intra-group non-centrally cleared OTC derivative transactions may facilitate more effective risk management, while aggregating trades across group companies, and managing the risks on a portfolio basis can create scale efficiencies and netting benefits. Imposing margin on these transactions would discourage affiliates from effectively and efficiently managing their risk exposures arising from non-centrally cleared OTC derivatives transactions. Furthermore, we note that the exchange of margin for intra-group transactions is not a universal requirement in other jurisdictions.	The comment is noted. The Authorities do not support a complete exemption of intra-group transactions from the margin requirements.
14	BASA		Who is required to make the assessment that the parties are subject to appropriate *centralised risk evaluation,* measurement and control procedures, or that the risk management procedures of the parties are adequately sound? Is it sufficient that the South African covered entity make this assessment or do the Authorities envisage a formal process where they approve the intragroup transactions? Further clarity is required on how this section is meant to be implemented in practice. We also note that the term "centralised risk evaluation" is not defined.	The provider will make the assessment. However, the Authorities in performing their supervision will also assess the appropriateness of the risk management procedures.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
15	BASA		Please clarify when the "risk management procedures . . . are adequately sound, robust and consistent with the level of complexity of the respective derivative transactions".	This will be determined by the provider in line with its risk management framework.
	BASA		The reference to the parties complying with "*any further conditions*" as specified by the Authorities is particularly broad and further detail is required. Local Authorities will not have any jurisdiction over the offshore covered entities, with the results that the conditions they may impose will be limited.	The comment is noted. Any additional conditions imposed by the Authority will be case dependent. In addition, any conditions imposed by the Authority will be binding on the entities that are subject to the Joint Standard.
16	Liberty Group	2.2.(2)(a)	Outstanding gross notional amounts are rarely used for risk management purposes in netting jurisdictions and where International Swaps and Derivatives Association (ISDA) master agreements are in place. It is requested that net exposure amounts calculated on a mark-to market basis be used to determine the threshold.	Not accepted. The reference to aggregate outstanding gross notional amount is consistent with the references in the BCBS-IOSCO framework.
17	HSBC PLC Johannesburg Branch	2.2	**Intra-Group Exemption** *Reiteration of Request for Process for Intra-Group Transactions to be subject to Blanket Exemption Upon Approval of Authorities and not subject to Daily Cap* We thank you for considering the market's comments and for increasing the daily cap on intra-group transactions from ZAR 1 billion of aggregate outstanding gross notional to ZAR 30 billion. This is indeed a welcome amendment. However, we would like to request again that the Margin Requirements permit market participants to apply to the PA and FSCA for blanket exemption if trades exceed the ZAR 30 billion	Please see the earlier comments on intragroup transactions. The margin will be required to be exchange on the portion of the exposure greater than the threshold. The comment re the unfettered discretion of the Authority is not accepted on. The Authority must exercise its powers in a rational manner, its exercise of powers must be consistent with the principle of legality and it must act in furtherance

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			cap so that the Margin Requirements align with EMIR. *Clarity on what happens if exposure is exceeded - is margin to be exchanged on whole exposure or onlv the portion above ZAR 30 billion* We request clarity on whether margin will be required to be exchange only on the portion of exposure greater than ZAR 30 billion or on the whole exposure once the cap it met. If it is that margin is to be exchanged on the whole exposure as soon as the ZAR 30 billion threshold is met, we believe that this will function unfairly against larger OTC derivatives providers who will have to price their OTC derivatives transactions higher to cater for the cost of applying margin when other market participants will have the benefit of trading up to the threshold. *Clarity on whether trades between a branch and its "parent" are required to be margined at all* We understand that trades between an affiliates and its parent are classed as intragroup trades (i.e between a subsidiary and its parent). However, we still believe that it has not been clarified that trades between a branch or external company and its "parent" are included. We do not believe that the definition of "group", as provided for in the Companies Act, is sufficient clarity on this point. It is strongly reiterated that trades between a branch and its parent should not be subject to margin at all since the branch is part of the same legal entity as the "parent". Trades between a branch and its "parent" under are EMIR are automatically exempt from margining.	of its objectives and mandate.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			Objection to Authorities Power to disregard intra-group exemption We also wish to raise an objection to Requirement 2.2(3) which provides in effect that the Authorities may disregard the intra-group exemption in Requirement 2.2(2) *"when deemed appropriate by the Authorities"* . We believe that this could operate prejudicially against market participants that trade with group members and will lead to a level of uncertainty in the market. Market participants need to function with a level of certainty as to whether there is an intra-group cap or not. We strongly do not believe that the Authorities should have unfettered discretion to disregard the daily cap if the Authorities deem it "appropriate". The criteria for disallowing the intra-group cap should at least be clearly specified in the Margin Requirements so that all market participants can trade with prior knowledge and certainty of whether a trade/s will or will not be subject to margin as margin must be priced into any transaction. This would mean in effect that a market participant could have incurred intra-group exposure intra-based on the assumption of the intra-group cap applying which could then be disregarded after the exposure is incurred.	
	2.3 Cross-border transactions			
18	BASA	General	We do not believe that it is necessary or practical to require the information listed for cross-border transactions as covered entities may not have quantified, or be in a position to quantify, the “*expected extent*” of transactions to be entered into. Further, most local banks already exchange variation margin pursuant to offshore rules, this will mean that practically, this will	The comments are noted. Please see the revisions to the Joint Standard.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			be an extremely onerous provision to apply (banks could have hundreds of offshore counterparts with whom they already transact and exchange margin pursuant to offshore rules) – halting trading until the information can be submitted and the Authorities' approval obtained will have a significant impact on trading and may result in banks breaching the legal agreements that they have already entered into. Further, the specifics required may actually result in inconsistent outcomes between banks. For example, a decision may be made that, based on the information provided, a local bank may continue to trade with an offshore bank. However, based on different information submitted by another local bank, the Authorities might conclude that that local bank cannot continue trading with the international bank. This will be the case even though the international bank is bound by offshore margin rules that are considered equivalent to our own rules. Surely this is an untenable situation. If it is not the intention to make use of the information in this manner, then this is further indication that the provision of this information is not actually necessary for the Authorities to reach their conclusion and we submit should not be required. The EU and US, for example, are already regulated under their respective margin rules and do not contain this cross-border requirement.	
19	BASA		We note your response in the "Comments and Response" document where you indicated that in Australia, the Australian Prudential Regulation Authority (APRA) may also approve substituted compliance in relation to margin requirements of a foreign jurisdiction. However, we note that an APRA covered entity has to complete an internal assessment that positively	The comments are noted. Please see the revisions to the Joint Standard.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			demonstrates how the foreign covered entity is subject to margin requirements in its jurisdiction and that such requirements are substantially similar to the BCBS-IOSCO framework. Such assessment need only be made available to APRA on request. There is no requirement that the covered entity obtain confirmation in writing from APRA that it is deemed to comply with the margin requirements prior to trading with the foreign covered entity. We note your response in the "Comments and Response" document where you indicated 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. However, the Canadian rules do not require that a covered entity obtain confirmation in writing from OFSI that it is deemed to comply with the margin requirements prior to trading with a foreign covered entity. This is an added requirement to the Joint Standard which will impede the business when it has to wait for confirmation from the Authority in writing that it is deemed to comply with the Joint Standard.	
20	BASA		Recommend that Joint Standard lists jurisdictions that have the required margin rules and are deemed compliant with the Joint Standard e.g. entities incorporated in EU which are EMIR compliant, US entities which are Dodd Frank compliant, will ease the onerous process of applying for each EU entity with whom the banks trade.	The comment is noted. Please see the revised Joint Standard.
21	Global Financial Markets Association	2.3(2)	We agree with BASA's comments as to the challenges the pre-trade requirements set forth in this Paragraph will raise.	The comment is noted. Please see the revised Joint Standard.
22	Liberty Group	2.3 (2)(b)	Clarity is sought on: • The rationale for requiring transactional information, and	The comment is noted. Please see the revised Joint Standard.

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			• Whether an additional application is required to be made each time a new type of transaction is required to be concluded with such foreign counterparty.	
23	BASA	2.3(2)(c) documentary evidence confirming that	It will be helpful to understand what types of material will meet the standard for 'documentary evidence', and whether that material can be developed and standardised at an industry level, rather than undertaken by each individual covered entity? Conversely, if each local covered entity is required to undertake a separate piece of analysis and attest to it individually, it may lead to protracted delays during their analysis and requisite internal sign-off periods. Some local firms may not be able to risk-accept attestation about the equivalence of a foreign regime with which they are unfamiliar, which would be mitigated by an industry-standard set of analyses. Relatedly, we would appreciate clarification that this required documentation can be identical across all counterparties within a single foreign jurisdiction, insofar as it is appropriate (i.e., where the counterparties are all subject to the same regulatory treatment in the foreign jurisdiction), and that it is not necessary to undertake separate granular analyses for each counterparty in order to secure the Authority's approval.	The comment is noted. Please see the revised Joint Standard.
24	Liberty Group	2.3 (2)(c) (i) to (iii)	Clarity is sought on the type/s of documentary evidence which the Authority would consider acceptable Will written confirmation from the relevant foreign covered entity be sufficient?	The comment is noted. Please see the revised Joint Standard.
25	BASA	(2)	There is a conflict between section 2.3(2) of this clause and section 2.3(3). Sub-section (2) references the specific parties to the transaction, whilst (3) contemplates "a specific type of foreign covered entity" (i.e. 2.3(3) indicates that reference to a	The comment is noted. Please see the revised Joint Standard.

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			broad category of offshore counterparty is sufficient i.e. “bank”, “asset manager”, whilst 2.3(2) appears to indicate that approval is required for each offshore bank individually). Please clarify. The wording in section 2.3(3) is preferred as it will mitigate the non-sensical outcomes that may result from a literal interpretation of section 2.3(2). Proposal As South Africa lags behind a number of our trading jurisdictions in the implementation of margin rules, we would like to request that the Authorities consider whether the covered entities, acting though the various associations such as BASA, may submit overarching requests for equivalence approval of specific regimes. For example, instead of approval in respect of specific transactions or counterparts (which would be extremely onerous and impractical in a trading environment), an overarching approval could be submitted for pre-existing margin regimes, such as EMIR, Dodd Frank etc. In such application, details could be included on the types of entities covered under these regimes. If the regime is considered equivalent, then trading should be allowed to continue with all foreign covered entities who are bound by those regimes and where a CSA has already been concluded. This will prevent the situation where offshore trading is halted and South African covered entities breach the CSAs that they have already concluded.	
26	Liberty Group	2.3(2)	Confirmation is requested that this provision will not apply retrospectively to trades already concluded prior to the commencement of this standard.	The Joint Standard applies prospectively. Please the paragraphs in the Joint Standard dealing with the phasing in of IM and VM
27	BASA	2.3(2)(d)	Please insert a space between the words “the” and “Authority”.	Noted.
	BASA	2.3(3)	Please clarify what is meant by “*specific type*” of foreign covered	The comment is noted. Please see the

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			entity? Please confirm that you are referring to the types of entities listed under the “covered entity” definition. For example, a covered entity would be required to submit information in respect of all banks in the UK.	revised Joint Standard.
28	BASA	2.3(4) Following receipt of the information as contemplated in subparagraph (2), the Authority must confirm in writing…	We emphasise the need for timely confirmation in writing from the relevant Authority in order to ensure that there is no uncertainty as to the applicable laws relating to an OTC derivatives transaction, which would ideally be supported by a clear statement relating to the transitional treatment of cross-border transactions. Such a statement would guard against the disruptive impact of potential delays, noted above. As we have previously argued, we appreciate that the local Authority must satisfy itself as to the similarity of foreign rules that may apply to local covered entities where they trade with foreign banks, and ask that while that process is being completed a presumption of similarity/equivalence is adopted, that will allow trading according to live foreign rules to continue to take place.	The comment is noted. Please see the revised Joint Standard.
29	BASA	2.3(5)	As previously mentioned, we do not agree with the approach that a threshold be used to determine whether trading be allowed to continue in non-netting jurisdictions. However, if this is the case, there should be an opportunity to consult on the appropriate threshold. A threshold that is too low will practically operate to exclude (or at least delay, pending approval by the Authorities) trading with a number of African jurisdictions where there is no netting enforceability. Proposal We would like to re-iterate that we believe that the approach	The comment is noted – please see the revised Joint Standard.

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			followed in certain offshore jurisdictions is more suitable than a threshold. We recommend following the EU and US example, where trading with counterparties in non-netting jurisdictions is permitted on certain conditions. For example, under EMIR, allowance is made for a few scenarios: entities are allowed to collect but not post margin (1 way collateral agreement) or collect gross margin and post net. EMIR also incorporates a volume exemption if a legal review indicates that that collateral collection (even gross) is not possible – **in this case you can continue trading provided that the ratio of new derivatives in non-netting jurisdictions is not greater than 2.5% of the total uncleared derivatives portfolio**. As is evident, the offshore rules do not preclude trading with non-netting jurisdictions, and also do not incorporate a threshold that may make sense for some institutions based on their business activities, but not for others. A volume exemption would be appropriate as it takes into account the specific trading patterns of each underlying institution. Please consider these approaches as alternatives (or fallbacks) to the threshold. Once again, we would like to emphasise that we disagree with any approach that requires transaction by transaction approval as contemplated in (5) (c). This is impractical in a fast-moving environment.	
30	Global Financial Markets Association	2.3(5)	We agree with BASA's comments that any threshold for transacting with non-netting jurisdictions should be the subject of consultation.	The comment is noted. Please see the revised Joint Standard.
31	BASA	2.3(5)(a)	This section refers to an aggregate outstanding gross notional amount of transactions threshold which will be "determined by the Authorities, from time to time". Please confirm when this threshold will be determined in order	The comment is noted. Please see the revised Joint Standard.

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			for covered entities to assess the impact on their business and prepare accordingly.	
32	BASA	2.3(1)	Please confirm that a covered entity is not required to submit the information under section 2.3(1) in respect of foreign jurisdictions which do not permit or recognise the enforceability of a netting agreement upon insolvency	Please see the revised Joint Standard.
	3. General requirements			
33	Investec Asset Management	3(1)	We appreciate the clarification that approval is not required per transaction but the process is still very onerous and will result in duplication of work and costs across the market. Would the Authority instead consider making equivalence decisions with certain offshore regimes such as EMIR or Dodd-Frank as has been the practice offshore already? **Additionally,** Variation Margin - non-netting jurisdictions (clause 2(3)): when will the thresholds be published? Is uncollateralized trading permitted prior to publication?	The comment is noted. Please see the revised Joint Standard.
34	BASA	3(1)(b)	We disagree with the requirement that board approved policies be required in respect of OTC derivative transactions inter-bank. It should be sufficient to have in place policies approved by relevant senior management of the business unit concerned (i.e. global markets), who have been delegated authority by the board. Can a *covered entity* appoint a third party service provider to assist with managing compliance of this section, such as in instances where the covered entity does not have capability or resources to manage these responsibilities internally?	The comment is noted. However, the board is ultimately responsible for the institution. To the extent that the board has delegated the responsibility to another business unit, the board remains ultimately responsible for ensuring compliance.
35	Liberty Group	3(1)(b)(i)	• This paragraph appears to have the effect that a local covered entity will be required to ensure that all relevant	The comment is not accepted. The provider must have the necessary

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			transactions between itself and a potential foreign covered entity be subject to and comply with requirements in such foreign covered entity's jurisdiction. This is unduly onerous for local covered entities because foreign counterparties are usually responsible for complying with the legal and regulatory requirements in their own jurisdictions. It is therefore proposed that the wording of this sub-section be amended to the following: *"all relevant transactions concluded between the covered entities ~~are subject to and~~ comply with all the relevant requirements specified in the legal and regulatory frameworks of ~~each relevant~~ the jurisdiction applicable to such covered entity;"*	policies, procedures or processes to ensure that it complies with the relevant regulatory or legal requirements when it enters into a OTC derivative transactions.
36	BASA	3(1)(b) (ii) & (iii)	Please confirm that covered entities are permitted to determine the frequency as part of the "procedures and approved policies" that they are required to put in place. What does *periodically* mean, how often are covered entities required to update/review the legal opinions? Will SA covered entities be able to rely on opinions published by ISDA Inc, or required to obtain its own?	This will be case dependent and subject to the covered entity's internal risk management framework. The entities can rely on opinions published by ISDA or obtain their own independent opinions.
37	Liberty Group	3(1)(b)(v)	Where such procyclical impacts, ie. Calls for additional margin due to economic triggers, are excluded, counterparties usually require "material adverse change" provisions in order to obtain protection should the credit standing of a counterpart change. Although procyclical clauses are not desirable, it is not preferable to replace them with "material adverse change" or similar provisions as these would require the termination of trades by close-out on a more subjective basis and ultimately cause the hedging strategy of a covered entity to collapse.	Paragraph 3(b) is not exhaustive and the ODPs processes and procedures can make provision for material adverse change provisions.

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			It is therefore proposed that “material adverse change” provisions also be discouraged.	
38	BASA	3(1)(b)(v)(bb)	It is unclear by what is meant by “sufficiently conservative”, as such clarity is sough in this regard.	This is case dependent and subject to the risk management framework of each institution.
39	BASA	3(1)(b)(iv)	The last phrase in the paragraph should refer to “exposure” and not to “potential future exposure”.	The comment is not accepted.
40	BASA	3(2)	Please confirm if a covered entity can appoint a third party service provider to assist with managing compliance of this section. This would be in the case where the covered entity does not have capability or resources to manage these responsibilities internally.	The requirement is for the covered entity to have in place rigorous and robust dispute resolution procedures. It is not clear how a procedure can be managed by a third party.
41	BASA	3(3)	Please clarify that the minimum transfer amount referenced here refers to variation margin only	The reference is to all margin and not necessarily limited to VM
42	BASA	3(4)	The intention of this last-minute addition is unclear. It appears that no other jurisdiction incorporates a threshold of actual exposure between 2 entities to determine whether or not the margin rules should apply. It appears that the intention could be to ensure that all systemically important counterparts are captured. If this is the case, we agree with this approach, but believe that a covered entity threshold (as mentioned above) to determine systemic importance should be employed instead. This section indicates that it operates “*despite the reference to thresholds based on aggregate outstanding gross notional amounts in this Joint Standard*”. On a literal reading, this indicates that it is the intention to bring forward the application of initial margin (i.e. discard the applicable thresholds and staggered approach) where the actual exposure between parties	The comment is noted. Please see the revised Joint Standard.

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			exceeds R3 billion. We disagree strongly with that interpretation, which conflicts with the international application of initial margin. Also, on a literal reading, this section conflicts with the intra-group threshold of R30 billion. Further consultation is required on the intention of this section and how the R3 billion threshold was determined.	
43	Old Mutual Investment Group	3(4)	The effective daily override or substitution of and interplay between gross notional thresholds, applied at group level with an exposure level between two covered entities, requires the following clarification: • The universe of contracts or transactions covered in the determination of the gross notional thresholds will be completely aligned with the universe of contracts or transactions to be included for the calculation of 'exposure' between two covered entities (subject to the confirmation per point 5 below), • Confirmation is required on whether the R3 billion 'exposure' threshold would be applied separately in relation to the initial margin (potential future exposure) and variation margin (mark-to-market exposure) or in combination, with reference to total margining requirements per the Joint Standard. The addition of this exposure level for margining purposes on non-centrally cleared OTC derivatives, does in our opinion not necessarily address systemic risk in a different or better way but would rather function in parallel to the group gross notional thresholds specified, unless the Authorities hold the view that the gross notional measure may not capture the risk best in all instances.	The comment is noted. Please see the revised Joint Standard.

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			A systemic risk build-up in relation to key large covered entities in the market could theoretically take place despite the gross notional thresholds at group level and the exposure threshold of R3 billion between two covered entities. For example and hypothetically: If the market contains five counterparties (say A to E), with all counterparties transacting with one counterparty (say B) at levels not reaching either the group gross notional or per entity exposure thresholds in these (say A and C to F), then the systemic risk to the large counterparty (say B), effectively in excess of the stated regulatory appetite per the thresholds set in total (but not visible bilaterally as it is spread across many entities on the other side), would not be addressed by the Joint Standard. Another way to address large systemically important covered entities or groups of covered entities, could be to set a group threshold (capturing all transactions between this group and the rest of the market) where the opposite group threshold no longer needs to meet the equivalent threshold for margining to be required, i.e. a certain critical group level for one covered entity would automatically require margining with another covered entity, regardless of the other covered entity's group transaction levels (applied to the example, any trade with B would require margining on the basis that B's gross notional and total market exposure levels will be substantial but A, C to F may not be).	
44	BASA	3(4)	Our interpretation of this provision is that "counterparty exposure" refers to mark to market and not to potential future exposure or current exposure. Kindly confirm if our understanding is correct. In the event that it is incorrect, we seek clarity in that regard.	**The comment is noted. Please see the revised Joint Standard.**
	4. Initial margin			

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
	4.1 General			
45	BASA	4.1 (3)	The minimum transfer amount for initial margin should be calculated at the covered entity level only and not in respect of the entire consolidated group, which information will not be readily available to covered entities. Most offshore jurisdictions apply minimum transfer amounts at the level of impacted counterparties only. The term "investment fund" is not defined, is this meant to be a reference to private equity fund? The qualifier "*in the event of an insolvency proceeding*" does not appear necessary – please clarify the intention.	The comment is not accepted. Please see the BCBS-IOSCO framework where it refers to the threshold at the level of the consolidated group. Please see the definition of "investment fund"
46	BASA	4.1 (3)(a)	Final sentence should state "non-centrally cleared"	Agreed.
47	Liberty Group	4.1 (3)(a)	• In order to give effect to the intention to protect market participants with large gross derivative exposures, please consider setting an exposure threshold over which initial margin may become applicable. • The posting of initial margin between counterparties increases liquidity and credit risk for the party posting. Unless the initial margin is placed in trust or held by a custodian, the the party posting initial margin has increased credit risk to its counterpart. • The parties derive less benefit where initial margin amounts posted to each other are similar. For example, if each partys' initial margin calculation (in excess of the R500million threshold) amounts to R300million for both parties, even if the amounts differ slightly, the credit, liquidity and increased costs outweigh the concerns from recovery upon close-out, particularly if variation margin tracks the daily mark-to-market exposure between the parties.	The comment is not accepted.

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			• We therefore propose that provision for only the difference in initial margin calculations (by each party) to be paid between the parties. For example, if one party is required to post R300million as in the above example and the other party, R280million, the credit, liquidity and pricing risks would be mitigated by the first-mentioned party paying R20million.	
48	BASA	4.1(3)(c)	What does "relevant transactions" mean? Is the intention to include all derivative transactions or only "non-centrally cleared"? In terms of EMIR and Dodd Frank only uncleared derivatives will be included in the calculation. We propose that this wording should be changed to "all non-centrally cleared OTC transactions"	The comment is noted. Just to clarify that the Joint Standard is applicable to non-centrally cleared OTC derivative transactions.
49	Old Mutual Investment Group	4.1(3)(c)	• Page 5 of the Final Comments and Response Document, in response to BASA's Counterparty question – "….R50 million threshold for all margin". No such threshold seems to be included in the Joint Standard, please clarify. • Page 52 of the Final Comments and Response Document, in response to our comment around paragraph 4.1(3)(c) – a R50 million threshold is applied in the example, which seems to have been extracted from the BCBS-IOSCO framework example in Euro terms. Please confirm whether the R50 million threshold should instead refer to the R500 million initial margin threshold per the Joint Standard as it appears to have been applied directly as a €50 million threshold. • In operationally executing the initial margin requirements per legal entity in the group, after applying the threshold in total at the group level to derive the total margin requirement at	Two thresholds are included in the Joint Standard – the *de minimus* threshold of R5 million and R500 million threshold in respect of IM. The response document is the therefore not correct in referring to R50 million. The following example from the BCBS-IOSCO framework describes how the threshold would be applied by an entity that is facing three distinct legal entities within a larger consolidated group: If a firm engages in separate derivatives transactions, executed under separate legally enforceable netting agreements, with three

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			group level, the total R500 million threshold could be apportioned in relation to the exposure values attributable to each legal entity within the group in transacting with covered entities in another group, calculated separately by each group for each covered entity within the group for the bilateral gross exchange of initial margin. Please confirm the intended threshold allocation methodology between groups. The BCBS-IOSCO framework suggests that this could be subject to agreement and negotiation between the transacting entities in the two groups.	counterparties, A1, A2, A3. A1, A2 and A3, all belong to the same larger consolidated group such as a bank holding company. If the initial margin requirement is €100 million for each of the firm's netting sets with A1, A2 and A3. Then the firm dealing with these three affiliates must collect at least €250 million (250=100+100+100–50) from the consolidated group. Exactly how the firm allocates the €50 million threshold among the three netting sets is subject to agreement between the firm and its counterparties. The firm may not extend a €50 million threshold to each netting set with, A1, A2, A3, so that the total amount of initial margin collected is only €150 million (150=100-50+100-50+100–50).
50	BASA	4.1(3)(d)	Clause 4.1(3)(d) makes reference to an "*investment fund*". This term is not defined in the FMA or the FMA Regulations. • Is the intention to refer to "private equity funds", which is defined and included as a covered entity? • Alternatively, is it the intention is to include all vehicles that are managed by financial service providers, which the remainder of the clause appears to indicate? If so, then further clarity and definitions are required. Please include reference to licensed external central counterparties to ensure alignment with the FMA.	Please see earlier comment on the definition of "investment funds"
	<u>4.2 Phasing-in of initial margin requirements</u>			
51	BASA	General	The margin requirements in the US and EU refer to the months of "March, April and May" for the calculation of the aggregate	The comment is noted. Please see the revised Joint Standard.

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			month-end average gross notional amount of OTC derivatives. We propose that the FMA Margin rules align to these months for consistency across the international and domestic jurisdictions. We are of the view that if the months are not aligned and consistent globally, it would be impractical and inconsistent to perform the calculation for the different calculation periods for entities in SA and the different foreign jurisdictions.	
52	Global Financial Markets Association	4.2(2)	We request that the Authorities exclude physically-settled FX swaps and forwards from the aggregate month-end average gross notional amount calculation for covered entities that would, under the Joint Standards, fall into scope of margin requirements in South Africa beginning on 1 January 2023 (i.e. covered entities with the lowest aggregate month-end average gross notional amounts of non-centrally cleared derivatives). We note in this regard the letter you will recently have received from the Securities Industry and Financial Markets Association (SIFMA), the International Swaps and Derivatives Association (ISDA), the American Bankers Association (ABA), the Institute of International Bankers (IIB) and ourselves similarly urging BCBS-IOSCO and global swaps regulators to remove physically-settled FX swaps and forwards from these calculations for Phase 5 entities (i.e. covered entities with the lowest average aggregate notional amounts ("AANA") of non-centrally cleared derivatives based on the relevant currency threshold). As further detailed and explained in the letter, available here, http://www.gfma.org/correspondence/item.aspx?id=1021 (see pp. 7 and 8), these products are not subject to IM exchange requirements because they are short dated, liquid and present low long-term risk and this same rationale should be valid for excluding such products from the AANA calculation.	The comment is not accepted and it conflates the issue of the calculation of the average aggregate notional amounts for IM on the one hand, and the exclusion of the physically settled FX forwards and swaps from the requirement to exchange IM. The Authorities appreciate that further engagement is taking place with the BCBS-IOSCO on the matter.

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53	Old Mutual Investment Group	4.2(2)	Old Mutual Investment Group seeks further clarification around the calculation of the 'aggregate month-end average gross notional amount' to be applied as follows: • only including non-centrally cleared OTC derivatives, and • only including those transactions or contracts entered into from the effective period of the Joint Standard, as specified, and • be calculated on a consolidated basis (i.e. only external market facing transactions) with intra-group trading being eliminated, and • only include non-centrally cleared OTC derivatives traded by covered entities in the group, therefore excluding those contracts or trades entered into by non-covered entities in the same group.	The calculation is based on non-centrally cleared OTC derivative transactions between the provider and its counterparty as defined. Intragroup transactions below the specified threshold will not be included. The requirements to exchange margin applies to new contracts entered into after the dates specified in the revised Joint Standard.
54	BASA	4.2 (1-7)	It is not clear why the initial margin requirements are phased in over a 1 year period. Most jurisdictions simply provide a date by when initial margin must be implemented. Does the current 1 year period mean that covered entities only have to comply by the later date? Subsection (7) indicates that the requirement to calculate and exchange initial margin "*applies to all new contracts entered into during the relevant periods*". On a literal reading, this means that a counterparty impacted in 2021, is required to exchange initial margin on new deals entered into between January and December 2021. From January 2022, the initial margin requirements no longer apply. This is clearly not the intention of margin rules, which apply from the relevant date to all contracts moving forward. The wording must be amended to reflect the true intention.	The threshold for IM reduces annually, until the minimum R100 billion threshold. The comment is not understood – the Joint Standard is sufficiently clear that the initial margin requirements specified in this Joint Standard do not apply to existing derivatives contracts up to the relevant specified point.

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55	BASA	4.2(7)(b)	Subsection 7(b) is an anti-avoidance provision which makes reference to the opinion of the Authority in determining whether existing contracts were extended to avoid margin requirements. How is this opinion to be provided? Is it the intention that covered entities consult with the Authorities prior to amending existing contracts? This would not be practical. Please clarify.	The comment is noted. Please see the revised Joint Standard.
	4.3 Collateral			
56	BASA		Please clarify whether it is the intention that initial margin is held at a third party custodian. The current drafting indicates that this is not the case. This section allows for the collateral collected as initial margin to be re-hypothecated, re-pledged or re-used. We understand that this approach is contained within BCBS-IOSCO. But BCBS-IOSCO also acknowledges that the risk is exacerbated if the counterparty re-hypothecates, re-pledges or re-uses the margin, which could result in third parties having legal or beneficial title over the margin, or the merging or pooling of the margin with assets belonging to others. South African legislation should align with international legislation for purposes of obtaining equivalence. EMIR (EU) and Dodd Frank (US) does not allow for initial margin to be re-hypothecated, re-pledged or re-used. This section will be a stumbling block to South African legislation being deemed equivalent internationally. How does an initial margin collector/third party segregate CASH collateral from its other assets?	In terms of the Joint Standard, entities that engage in OTC derivative transactions, must exchange initial and variation margin on a bilateral basis or to a third party custodian, where applicable. In addition, the BCBS-IOSCO framework recognises that there are many different ways to protect provided margin, but each carries its own risk. The use of third-party custodians is generally considered to offer the most robust protection, but there have been cases where access to assets held by third-party custodians has been limited or practically difficult. The collateral arrangements used will need to be effective under the relevant laws and supported by periodically updated legal opinions. The re-hypothecation, re-pledge or re-use of the IM is subject to strict

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				conditions including that the customer, as part of its contractual agreement with the initial margin collector and after disclosure by the initial margin collector of (i) its right not to permit re-hypothecation and (ii) the risks associated with the nature of the customer's claim to the re-hypothecated collateral in the event of the insolvency of the initial margin collector or the third party, gives express consent in writing to the re-hypothecation of its collateral.
57	Investec Asset Management	4.3(1)	Under Dodd-Frank and EMIR IM has to be segregated and may not be rehypothecated. The Financial Matters Amendment Bill includes an amendment to the Insolvency Act which will allow IM to be "immediately available" to the secured party on default. Please could the regulator clarify how IM can be immediately available if it may be rehypothecated. Additionally substituted compliance with US and EU regulation will not work in this regard as this is a major deviation from global regulation and will prevent US and EU counterparties from trading with local entities. It is also not clear what is meant by protecting "the posting party's rights in the collateral". If rehypothecation (even once) is allowed it is not possible to monitor where the security has moved to in the market or if the third party is complying with the lock up requirement. It is not sufficient to say that the concept is aligned with IOSCO as other global counterparties where the majority of our trading will take place will not be able to trade with SA counterparties. On a technical note, if the regulator retains the rehypothecation right in respect of IM the reference to cash should be removed. Due to its fungible nature cash can only be	Please see earlier response and the specified conditions in the Joint Standard that must be complied with before the IM can be rehypothecated, re-used or re-pleged. The Joint Standard is aligned to the approach in the BCBS-IOSCO framework which is the internationally agreed standard. The proposed amendments to the Insolvency Act will allow for immediate realisation of specific collateral and for the proceeds of the realisation to be retained in accordance with the process set out in the proposed amendments in the Insolvency Act. The Joint Standard refers to cash *or* non-cash.

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			transferred on an outright basis. It would therefore not be possible to comply with provisions requiring once only transfer or any agreement between receiver of cash collateral and third party to whom it is transferred to prevent the further use of the collateral, as contemplated in 4.3(1).	
58	Liberty Group	4.3(1)	• It is submitted that limiting rehypothecation to one time will be impractical to implement and does not reduce the counterparty or liquidity risk. It may also increase the costs of holding collateral by pledge. • Collateral posted in the industry is currently done by way of pledge or outright-transfer. While it is possible to contractually limit further re-hypothecation of non-cash collateral which is posted by pledge, this arrangement is difficult to contemplate for cash collateral posted by outright-transfer. • Due to the fungible nature of cash, it is usually posted by way of outright-transfer and therefore not possible to pledge cash or limit its re-hypothecation. • Collecting cash collateral by way of receiving a pledge of a claim to an amount held in a segregated bank account introduces bank Credit risk to transactions with a counterparty, and is therefore a less effective effective way of receiving margin. It is therefor proposed that provision be made for initial margin to be posted by way off: - Cash, by outright-transfer; and/or - Non-cash, by pledge or outright-transfer	The comment is noted. The IM must be held in such a way that it immediately available to the collecting party in the event of counterparty default *and* the collected margin must be subject to arrangements that protect the posting party in the event that the collecting party enters insolvency.
59	Liberty Group	4.3(1)(d)(ii)	• Guidance is required on the nature of the regulation required	The reference to regulation of liquidity

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			to be relevant to the initial margin collector. - We are unsure of what it may mean to be "subject to regulation of liquidity risk" - Is it required for laws of general application in regard to liquidity risk to be relevant or for specific regulation in relation to the initial margin collector to be published? Would internal liquidity risk policies be sufficient for local and foreign covered entities? Clarity is sought on this point.	risk means that the entity is subject to prudential liquidity risk regulation (for example the liquidity coverage ration or net stable funding ratio)
60	Liberty Group	4.3(1)(d)(iii)	This requirement describes the posting of collateral by outright transfer because it appears that the asset posted must be transferred to the initial margin collector. This is evident from the requirement for the asset to be treated as "the initial margin covered entity's asset". The posting of initial margin by pledge will not be possible to implement as this provision is currently drafted. It is proposed that provision be made for initial margin to be posted by way off: - Cash, by outright-transfer; and/or Non-cash, by pledge or outright-transfer	Please see earlier response.
61	BASA	4.3 (1)(f)	The third sentence/line should read "that the collateral has been segregated".	Noted and amended.
62	Liberty Group	4.3 (i)(i)	Clarity is required on whether the initial margin collector is required to provide this demonstration prior to or at any time after the posting of initial margin. Will a written application be required for the Authority's approval?	It is a requirement that would need to be established upfront and then maintained. The Authority will assess the requirements through its supervision of the Joint Standard.
63	BASA	4.3(2)	The wording employed in section 4.3(2) is inconsistent with the	The Joint Standard is clear in its

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			wording employed throughout the rest of the Standard. Please amend the "person that posted the relevant amount" to "initial margin provider" and "person that collected the amount" to "initial margin collector".	current formulation.
64	Liberty Group	4.3(2)	It may sometimes be necessary in foreign jurisdictions for process to be applied before margin is available to a secured creditor. We therefore request the following words be inserted after the words *"counterparty's default"* in the 2nd line: *4.3(2) (a) Initial margin must be held in such a manner that it is immediately available to the person that collected the initial margin in the event of the counterparty's default* *<u>subject to procedural and process requirements in terms of laws or regulations of general application</u>*; *and must be subject to arrangements under applicable law that fully protect the person that posted the relevant amount, to the extent possible, in the event that an insolvency proceeding is commenced against the person that collected the amount.* In order to meet the immediately requirement, no pledge construct can work	The comment is not accepted. If it is subject to a procedure or process, it cannot be said to be immediately available. The Insolvency Act is also in the process of being amended through the Financial Matters Amendment Bill to align with the Joint Standard.
	<u>4.4 Alternative measurement methodologies</u>			
65	BASA	4.4	Please provide guidance on whether we should change the approach and use the model-based initial margin calculation instead in the event that (in the example given) the seldom traded derivative asset class becomes more common. We have a general question as relates to the requirement to have initial margin models approved by the regulators. Some SA banks will be impacted by the offshore requirements to exchange initial margin sooner than we are impacted by the local requirements to do so.	The models would need to be approved by the relevant regulatory authority in terms of the applicable margin requirements in the relevant jurisdiction.

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			At what stage should the margin models be approved? If banks have already been applying their margin methodologies for a number of years by the time the local rules go live, will there really be scope to change this?	
	<u>4.6 Quantitative portfolio margin model</u>			
66	BASA	4.6	We request clarity on whether the ISDA Standard Initial Margin Model (**SIMM)** will be approved as a quantitative based model for initial margin calculation. The ISDA SIMM has been approved by regulators in the EU and US for calculating initial margin.	The model will be assessed by the Authorities. It is not possible to state upfront which models will be approved.
	5. Variation margin			
67	HSBC PLC Johannesburg Branch	5	*<u>Exemption for Physically Settled FX Forwards and Swaps</u>* While we appreciate that the BCBC/IOSCO framework did not specifically provide for an exemption for exchanging VM with regard to physically settled FX forwards, various large international jurisdictions have legislated for such an exemption after careful analysis of the FX market and likely implications of the exchange VM on these products. The US has always exempted physically settled FX forwards and the European Union elected in December 2017 to only require the exchange of VM on such products if they are traded with credit institutions (i.e. banks). We would like PA and FSCA to re-consider its stance again on this point so as to align SA with two of the largest trading blocks.	The comment is noted. Please see earlier response.
68	BASA	5(3)	There is practically no difference between the variation margin application dates for the largest market counterparties (exceeding R30 trillion) and all other covered entities. The intent of the phase in of the variation margin requirements,	The comment is noted. Please see the revised Joint Standard.

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			as observed in the previous draft regulations, is to require that post the finalisation and implementation of the local margin regulations for covered entities exceeding the R30 trillion threshold, to implement variation margining on a certain date (1 July 2019 in the latest draft). Post this, a six month window was allowed (per previous drafts of the margin regulation) before the variation margin requirements became effective for all remaining covered entities. The current draft regulations appear to incorrectly list the start date for remaining covered entities under 5 (3) (b) of 1 July 2019, which is the same date as that under 5 (3) (a) for the larger covered entities – i.e. no six month window. We therefore request that the date in section 5 (3) (b) be amended to read 1 January 2020 to allow for the orderly implementation of this requirement as per previous draft regulations. We disagree with the different application dates for the exchange of variation margin (1 July 2019) and the contracts which it applies to (from 1 January 2019). 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. 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 2019. With only 4 months until the end of the year, and the comment period only ending in October, this will not be sufficient time to negotiate the required CSAs prior to January 2019. We recommend that the requirements to exchange margin commence on 1 July 2019 on contracts entered into on or after that date. Failing this, covered entities will be required to unwind deals entered into post January 2019 where the CSA has not been negotiated in time	

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			for the July 2019 deadline (from experience, the negotiation of CSAs takes a significant amount of time and also depends on the availability of legal resources at both covered entities). Both effective dates are from 1 July 2019 onwards, why the distinction between (a) and (b)? The threshold amount should apply to non-centrally clear OTC derivatives only (this will also align with the global practice of EMIR/Dodd Frank). Align months for calculation of AANA with EMIR/Dodd Frank to March, April, May. Delete words “month-end” and replace with “calculated as of the last business day of the previous February, March and April”. Please clarify.	
69	Global Financial Markets Association	5(3)(a)-(b)	It is unclear to us how the application of Paragraphs 5(3)(a) and 5(3)(b) relate to each other. It appears that the application dates for the largest market counterparties (exceeding R30 trillion) and for all other covered entities are the same so we are not sure why it would be necessary to have both Paragraphs. We agree with BASA’s comment in its response that the date from which transactions are caught for VM (January 1, 2019) should not be different to the date of application of VM exchange (July 1, 2019). We support BASA’s recommendation that the requirement to exchange VM commence on July 1, 2019 on contracts entered into on or after that date.	The comment is noted. Please see the Revised Joint Standard.
70	Investec Asset Management	5(3)(a)(b)	The distinction between 5(3)(a) and (b) is not clear – please could the Authority clarify what the distinction if between 5(3)(a) and (b) as the dates for implementation are the same – is the Authority’s intention to introduce a threshold of R30 trillion for exchange of VM? If so this is only applicable in a “group”	The comment is noted. Please see the Revised Joint Standard.

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			context – can the Authority please explain how fund structures which are not constituted as companies would be dealt with in terms of this? Previous comments were made about a look back period for implementation of VM with the Authority responding that the timelines had been revised and that it was not the intention that the regulation operated retrospectively. The timelines still however contemplate this by the VM exchange requirement coming into effect on 1 July but in respect of existing transactions (entered into from 1 Jan) at 5(3)(b). Without finalized regulation, implementation projects on the buy-side have only progressed to a certain point. Therefore notwithstanding that the first draft regulations were issued in 2015 projects and implementation could not complete. A large portion of the market is likely not going to be ready to comply if the look back period starts in 4 months' time with systems builds for calculation of exposure from 1 Jan for the very large margin call due on 1 July. Additionally the large amounts of cash that are going to need to be moved in respect of the six month margin call could likely be destabilizing. Variation Margin: it is clear that the exchange of IM is a gross exchange. It is not however clear whether VM must be exchanged on a gross or net basis. The term "exchange" implies that the amounts are gross i.e. a two way cash flow. A net flow should be described as "post" collateral. The terms seem to be used interchangeably. It would be helpful if the regulation can refer to variation margin or initial margin, as applicable throughout the regulation.	The IM is posted on a gross basis. For VM, the full amount necessary to fully collateralise the mark-to-market exposure of the non-centrally cleared derivative must be exchanged.
71	BASA	5(3)(b)	We refer to your response in the "Comments and response document" to the comment that the requirements to exchange margin commence on 1 July 2019 in respect of contracts entered into on and after that date. The regulators response	The comment is noted. Please see the Revised Joint Standard.

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			was “please see the revised timelines for implementation”. We note, however, the requirement to exchange variation margin still applies under section 5(3) (b) to new contracts entered into after 1 January 2019 and has therefore not been revised. Kindly update accordingly.	
	6. Eligible collateral			
72	BASA		We have a general comment in respect of the eligible collateral specified in the rules. We note that the list of collateral is very restrictive compared to international rules, and in addition does not allow covered entities to adequately prepare their collateral inventory as a result of insufficient guidance. For example, broad statements are included that “such other assets or instruments” specified in writing by the Authorities is included. Further, as a result of including offshore covered entities within the ambit of the rules, is it the intention that those entities are to be bound by these rules on collateral eligibility, even if their own rules are not as restrictive? There will be mismatches such as these where our eligible collateral types do not match the eligible collateral rules in offshore regulations. Please clarify.	The Authorities can specify other eligible types of collateral in the future.
73	BASA	6(1)(c)	This section requires that a covered entity’s covered portfolio of eligible collateral for purposes of initial and variation margin be reasonably diversified. We are of the view that this requirement should align to relevant international legislation to ensure equivalence, such as EMIR, which legislation restricts the applicability to initial margin. As such, we propose that this requirement should only be applicable to initial margin.	The comment is not accepted. The diversification should not only relate to IM.

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			This should only relate to securities, not cash collateral	
74	Liberty Group	6(1)(c)	Diversification is necessary where collateral in the form of corporate bonds and equities is taken. However, not all counterparts hold a sufficient combination of government and central bank securities, corporate bonds, equities, foreign exchange and ZAR cash. In order for an inclusive market, we therefore recommend that provision be made for the fall back position to be 100% cash or 100% government and central bank debt securities for collateral with each counterparty.	The comment is not accepted.
75	BASA		We are of the view that diversification of eligible collateral may not be possible for covered entities who typically implement only a small number of non-centrally cleared OTC derivative transactions and thus would not expect to receive or post large amounts of collateral/margin.	The collateral must be reasonably diversified based on the type of entity.
76	BASA	6(1)(e)(i)	Para requires consent to collateral substitution. That's not a requirement of other regimes and not sure why you would need it if you have relevant equivelance. We recomend that this is deleted.	The comment is not accepted.
77	Global Financial Markets Association	6(1)(e)(i)	Allowing collateral substitution without consent would be more consistent with the approach taken in other jurisdictions. We therefore support the consent requirement being removed.	The comment is not accepted.
78	BASA	6(1) (g)	We note that there is no definition for the term "wrong-way risk". Please define the term "wrong-way risk" to ensure clarity in this regard.	Please see the Joint Standard for details on the meaning of wrong-way risk.

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79	BASA	6(2) (c)-(f)	Please confirm when the eligible collateral listed hereunder will be specified in writing by the Authorities.	The Authorities will specify other eligible types of collateral in the future.
80	BASA	6(5)(d) "Cash in same currency"	Variation Margin is not placed on a transaction by transaction basis (only Initial Margin is placed on transaction basis), but the total mark-to-market exposure of all the transactions, which may include different types of currencies. We suggest that the Base Currency and Eligible Currencies have a 0% haircut.	The comment is not accepted. 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.
	7. Commencement and short title			
81	BASA		We note that the Joint Standard includes a transitional arrangement of 12 months after commencement date of the Joint Standard, to exchange variation margin in respect of physically settled FX forwards and swaps. It is unclear as to whether this transitional arrangement applies only to all new physically FX forwards and swaps entered into within 12 months from the commencement date of the Joint Standard or, does it include all live physically settled FX forwards and swaps irrespective of the fact that the trading may have commenced prior to the 12 month period expiring. We reiterate our comments in section 2.1 (3) and support the recommendations and arguments contained in the GFMA submission.	Please see the revised Joint Standard.

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82	Global Financial Markets Association	7(2)	We note that the Joint Standard allows for a transitional period for FX forwards and swaps to be subject to VM, however in this regard please see our comments in response to Paragraph 2.1(3) above, which we reiterate as being the most suitable approach to VM for these FX products. In any event, we also note it is unclear whether the transitional arrangement applies VM only to all new physically-settled FX forwards and swaps entered into as of 12 months from the commencement date of the Joint Standard or all live physically settled FX forwards and swaps transactions existing as of that 12-month date.	Please see the revised Joint Standard.
	General comments			
83	BASA	Financial Matters Amendment Bill: **Insolvency Act**	We would also note our response document sent to National Treasury (#246287) dated 14 September 2018 following our meeting on 12 September 2018, highlighting the issues that remain with the proposed wording changes to the Insolvency Act, through the FMAB. • Conflicts of laws • Specific submissions on the Amendment Bill	The comments have been noted.
84	BASA		The Joint Standard correctly references the Financial Sector Regulation Act on page 1 of the Joint Standard. However the Joint Standard has omitted the applicable provisions in the Financial Markets Act. We suggest that the Joint Standard also references sections 6(7)(c) and 6(7)(d) of the Financial Markets Act 19 of 2012 which states that the "Authority may, with the concurrence of the Prudential Authority ... in conduct standards or joint standards for, or in respect of, securities services ... prescribe standards in accordance with which securities services in respect of unlisted securities must be carried out" and	Not accepted - the Joint Standard is not made in terms of FMA

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			"prescribe conditions and requirements in terms of which securities service in respect of specified types of unlisted securities may be provided, including the manner in which clearing and settlement of such securities must take place".	
85	BASA	General	The margin rules are closely aligned with the BCBS-IOSCO principles, save for a limited number of deviations as set out in the accompanying "*Statement of the need for, expected impact and intended operation of a regulatory instrument*". Whilst alignment with the BCBS-IOSCO rules is desirable, it is also necessary to consider how other jurisdictions have implemented their margin rules, and the deviations that they have permitted. We are of the view that strict adherence to the letter of the BCBS-IOSCO rules without considering practical implementation in our trading jurisdictions, will result in misalignment and regulatory arbitrage away from South Africa. We have set out in our responses those areas where we believe that further alignment is required. As a jurisdiction, South Africa should take advantage of our delayed implementation of margin rules and leverage the offshore practices that have arisen to our advantage. We would also like to emphasise that, due to the fundamental changes in scope and introduction of new substantive proposals in the draft margin rules, we believe that further industry comment will be required once the draft rules have been updated to reflect the change arising from this comment period. Due to the significant impact that the rules will have once finalised, we would like to avoid the situation where comment is solicited from industry in tandem with the drafts being submitted before Parliament (as occurred with the ODP Conduct Standard, Trade Reporting Rules and Requirements and Duties of a Trade Repository).	Please see the revised Statement of Expected Impact.

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86	BASA		We would like to make the following comments in respect of the Statement of the need for, expected impact and intended operation of the margin rules which was published together with the joint rules: • As mentioned in our introductory remarks, whilst we appreciate the need to closely align with the published BCBS-IOSCO framework, we would like to emphasise that alignment, where possible, is also required with the margin rules implemented in offshore jurisdictions, which have in some cases allowed deviation from the BCBS-IOSCO rules. A rigid adherence to the international rules without considering practical implementation in offshore jurisdictions will create an unlevel playing field and encourage regulatory arbitrage away from South Africa. We have indicated some areas in which alignment with offshore rules should be considered above (e.g. the introduction of a threshold that will ensure that only systemically important covered entities are captured). • The cost-benefit analysis conducted will be skewed by the last minute change in scope and application to "covered entities" and not simply covered entities transacting with ODPs • Many of the statements made in respect of impact on non-banks are misleading (see for example paragraphs 32, 33, 34, 35). These paragraphs indicate that no exchange of margin will be required by non-bank covered entities unless they reach the applicable initial margin thresholds. This ignores that these entities will be required to operationalize and exchange variation margin by 2019, where there is no applicable threshold. This document also creates the impression that there is a phasing-in of variation margin requirements, which is not the case (it appears that in a number of instances there has not been a proper distinction	Please see the revised Statement of Expected Impact.

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			between variation and initial margin – for example, see the broad, misleading statement in paragraph 51 that "*until 2021, none of the respondents to the survey or any of the SA banks…will meet the thresholds that require exchange of margins*." This is patently incorrect; variation margin must be exchanged by July 2019 according to the rules. • We would like to emphasise that, at least in respect of initial margin, the majority of collateral exchanged is likely to be non-cash (as a result, paragraph 35 is misleading) • This document does not contemplate the new requirement to exchange margin where actual exposure exceeds R3 billion, nor how/if it will impact the intragroup thresholds or applicable initial margin thresholds. Further analysis is required once the intention of this addition has been clarified • The intended application to deals entered into post 1 January 2019 does not allow an appropriate transition period as variation margin applies on a "big bang" basis (contrary to paragraph 41) We respectfully submit that further engagement is required, due to the fundamental changes in scope and what appears to be an erroneous understanding of the expected impact of the rules.	
87	Global Financial Markets Association	Foreign Exchange "security conversion transactions"	We refer to the Authorities' "*Response to comments submitted for the public consultation process for the draft margin requirements for OTC derivative transactions*" (Ref 15/8), in particular our comment included on pages 20/21 thereof, copied here: "***Exclusion of FX transactions linked to securities settlements from the margin requirements*** *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*	The comment is noted. Please see the revised Joint Standard.

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			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 settlement cycles can take up to seven days (T+7). *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.*" We note and are grateful for the Authorities' response to our comment: "*The comment is noted. The Authorities will consider this going forward.*" For the reasons detailed in our letter to Ms. Sihlali referred to above, we continue to urge that 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.	
88	Investec Asset Management	Responses to previous comments	The Authority's response to respondents' comments often simply refers to the fact that the draft is in line with BCBS IOSCO. It is submitted that the regulatory framework was drafted 5 years ago and after having practical difficulties in compliance, the regulators in the biggest markets of the US and EU have identified that a relaxation of certain provisions in their own regulation that was based on IOSCO is required. The premise behind this is that the primary reason for G20 regulation post 2009 was to reduce systemic risk in OTC markets. This has the	The comment is noted, however the BCBS-IOSCO framework is the internationally agreed standard on margin requirements for non-centrally cleared OTC derivative transactions.

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			effect of brining into scope certain entities (based on the original framework) for which the rules are not practical and are overly burdensome while these entities do not pose systemic risk.	
89	Old Mutual Investment Group	The Joint Standard provisions and implementation vis-à-vis the Insolvency Act	**The Joint Standard provisions and implementation vis-à-vis the Insolvency Act** a) The Insolvency Act provides for the holder of a pledge and cession in security over "marketable securities", in the event of the insolvency of the security provider, to realise the marketable securities. b) The Insolvency Act further dictates (section 83 (10)) that once the marketable securities have been realised, the proceeds are payable to the liquidator dealing with the insolvency as opposed to the secured party. The latter is then left to wait for claims to be paid out by the liquidator. c) In addition to section 83 (10) and in respect of OTC derivative transactions which are not cleared centrally, parties to such transactions are also obliged to post additional margin – initial margin. d) Under the Financial Sector Regulation Act, 2017 foreign securities listed on foreign exchanges which have been pledged as collateral by a South African security provider, may in the event of insolvency be realised immediately by the secured party through or to a foreign stock broker. Under the Insolvency Act however, as referred to in 2 above proceeds which have been realised in the event of insolvency are still to be paid over to the liquidator. e) Paragraph 4.3(1)(g) of the Draft Joint Standard requires that the posting party must have legally enforceable protection against the loss of the collateral, which would direct the use of a pledge of the collateral, while paragraph 4.3(2)(a) refers to the use of an outright transfer, saying	Please see the proposed amendments to the Insolvency Act as set out in the Financial Matters Amendment Bill.

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			that "initial margin must be held in such a manner that it is immediately available to the person that collected the initial margin in the event of the counterparty's default" . Pledged collateral cannot be classified as being "immediately available" to the secured party in the event of the posting party's insolvency due to the secured party being required to pay over all realisation proceeds to the liquidator in terms of section 83(10) of the Insolvency Act. We accordingly highlight that in a South African market context, adequate provision is to be made to enable counterparties to comply with current South African legislation. In a foreign market context, it is important that a foreign counterparty is able to realise the initial margin should there be a default (which would include insolvency) on the part of a South African counterparty. If they are not in such a position, foreign entities may well reconsider transacting with South African counters which will severely impact the product range available to the South African market. Whilst we understand that pledged foreign and locally listed securities owned by a South African security provider may now be realised in terms of section 83(2) as read with section 83(8) of the Insolvency Act, with section 83(8) allowing for listed securities to be sold by the creditor immediately through (or to) an authorised user of a local exchange or through (or to) an authorised user of an external exchange, the Act still does not allow for the aforementioned realised proceeds to be retained by the creditor (whether locally or abroad) to be applied to that portion of the unpaid debt secured by that property (i.e. the listed securities).	
90	Old Mutual Investment Group	Sequencing of OTC derivative regulatory and	**International alignment, sequencing of OTC derivative regulatory and systemic risk reform measures**	The comment is noted. The Authorities are aiming to determine the eligibility

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		systemic risk reform measures	Internationally, in compliance with the G20 mandate, BCBS and IOSCO focused on margin requirements for non-centrally cleared derivatives as an overlay to the agreed construct of central clearing being in place for all standardised OTC derivatives and to address the residual, generally higher, systemic risk on non-standardised OTC derivatives not suitable for standard clearing. A key objective of this focus area, culminating in the final policy framework published by BCBS-IOSCO in March 2015 which serves as a key international practice reference point for the Joint Standard, was to promote central clearing. It follows that the standard for margin requirements on non-centrally cleared OTC derivatives was never intended or positioned to operate on a standalone basis, in alignment with the international approach and G20 requirements. BCBS-IOSCO impact studies and available information confirmed that the non-standardised, non-centrally cleared portion of OTC derivatives was substantial. The impact assessment of the Draft Margin Requirements for Non-Centrally cleared OTC derivatives published by the Joint Authorities ('impact study') appear to have been conducted at a total level for South Africa, i.e. all OTC derivatives, as opposed to distinguishing the activity on non-standardised and non-cleared OTC derivatives in South Africa. For example, the test applied to banks in table 3 of the impact study to illustrate the year in which the group threshold application would require margining for non-centrally cleared OTC derivatives, appear to have been conducted at the total OTC derivative level in the absence of specifying the set of standardised OTC derivatives to follow a central clearing regime. The size of the non-cleared, non-standardised OTC derivative	criteria for central clearing in 2019.

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			market therefore appears to be untested and unknown in South Africa, which complicates the impact assessment of the Joint Standard in practice. The impact study further states that: "Notwithstanding the fact there is no licensed CCP in SA, the margin requirements for non-centrally cleared OTC derivative transactions aim to reduce the systemic risk…" This statement, the level of the expected impact disclosures and the proposed timelines of the Joint Standard has highlighted a question around the extent to which the requirement for central clearing, as the foundational reform measure in this market internationally, has been taken into account by the Authorities: • in setting the standard for margining of non-centrally cleared OTC derivatives, • in assessing the impact of the standard, and • in addressing the regulatory reform required on OTC derivatives per se in recognition of the G20 undertakings, influenced by timing pressure and other market factors in South Africa. The Old Mutual Investment Group comments and assessment of the impact of the Joint Standard, together with any commercial implications, are aligned with the international approach to implement the standard for margining on non-centrally cleared OTC derivatives alongside central clearing on OTC derivatives. Old Mutual Investment Group therefore seeks confirmation from the Authorities that central clearing will coincide with, or precede, the implementation of the Joint Standard.	
91	Old Mutual Investment Group	Compliance and monitoring	**Compliance and monitoring to the Joint Standard in**	The comments are noted.

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		to the Joint Standard	**practice – paragraphs 2.2(2)(a), 3(4) and 4.2,** In dimensioning the size of the total OTC derivative market against the initial margin thresholds per the Joint Standard, it follows that non-centrally cleared OTC derivatives for all transactions post the set implementation date may in all probability never reach these thresholds for many covered entities or groups of covered entities or may, for a limited number, only reach these thresholds at the final phase-in stage (no more aggressively so than shown in table 3 of the impact study). It is therefore likely in our opinion that very few covered entities would be required to post initial margin on non-centrally cleared OTC derivatives in practice whilst all covered entities (and related groups) are required to comply with the Joint Standard in theory. Furthermore, without an independent confirmation of the consolidated group thresholds (as applicable) in assessing margin requirements, the potential for manipulation and inconsistency of application and reporting exist between covered entities. It is not clear how this would be supervised and supported by the Authorities. As confirmed in the impact study conducted, a large proportion of existing OTC derivatives (in total) are currently collateralised bi-laterally in terms of the exchange of variation margin, as an existing effective and well-established market practice in addressing the systemic risk on OTC derivatives in the South African context. The comments above suggest a disconnect between the compliance burden on each covered entity and each group to	

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			which such entity belongs relative to the value of such compliance from a systemic risk perspective. Given the above factors as well as the assumed manageable number of covered entities and groups being subject to the Joint Standard engaged in the non-centrally cleared OTC derivative market, Old Mutual Investment Group would propose the following monitoring process by the Authorities. In broad terms, it may be most efficient and commercially viable to implement an annual attestation process whereby groups and/or covered entities could declare its relevant recent historic transaction levels, for application against the consolidated group notional thresholds, to the Authorities in applying for an exemption from the relevant requirements for, say, the next 12 month period. Such attestation process and compliance or exemption result would be readily known and available between groups and covered entities in the market which would ease the compliance burden, alleviate any concerns around information accuracy and potential for manipulation or misrepresentation whilst achieving the same risk management objectives. This will further support the Joint Authorities' broader market risk assessment and compliance objectives in pro-actively assessing the market size and impact together with related implementation consequences of the Joint Standard. The group or covered entity attestation and related exemption on intra-group contracts could similarly cover additional logical exclusions for all covered entities or groups applying for such an exemption. It would be appropriate for the Authorities to consider these exemptions, in the interest of the cost of regulation vs. related benefit in the following cases: • where the intra-group covered entities have been confirmed to operate on a centralised risk management basis,	

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			• where covered entities in the group are wholly-owned (no difference in credit risk add-ons or potential credit risk migration between two covered entities within the same group in calculating potential future exposures), and • where the exchange of margin would, as a result of the above, be counterproductive for risk management at the group level in terms of reallocating and ring-fencing the same sources of liquidity within one centralised source of liquidity for the group without adding any systemic risk management benefit to the broader market, as the main objective of the Joint Standard.	
92	Old Mutual Investment Group	General	We accordingly highlight that in a South African market context, adequate provision is to be made to enable counterparties to comply with current South African legislation. In a foreign market context, it is important that a foreign counterparty is able to realise the initial margin should there be a default (which would include insolvency) on the part of a South African counterparty. If they are not in such a position, foreign entities may well reconsider transacting with South African counters which will severely impact the product range available to the South African market. Whilst we understand that pledged foreign and locally listed securities owned by a South African security provider may now be realised in terms of section 83(2) as read with section 83(8) of the Insolvency Act, with section 83(8) allowing for listed securities to be sold by the creditor immediately through (or to) an authorised user of a local exchange or through (or to) an authorised user of an external exchange, the Act still does not allow for the aforementioned realised proceeds to be retained by	

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			the creditor (whether locally or abroad) to be applied to that portion of the unpaid debt secured by that property (i.e. the listed securities).	
93	Old Mutual Investment Group	General	Given that Old Mutual Investment Group was not a participant in the impact study conducted, these final Old Mutual Investment Group responses have primarily been positioned from the perspective of assessing and clarifying the implementation consequences and impact of the South African Draft Joint Standard on Margin Requirements for Non-Centrally Cleared OTC Derivative Transactions ('Joint Standard') at an entity, group, industry (with focus on long-term insurance and asset management) and overall market (systemic) level.	The comment is noted. The questionnaire to assess impact was distributed to the relevant industry bodies for further distribution to the institutions.

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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	GENERAL COMMENTS			
1	**Banking Association of South Africa**		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.	The margin requirements will be issued as a joint

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	(BASA)		Please advise who will be the regulatory authority responsible for the enforcement of the Margin requirements?	standard by the FSCA and PA. The two authorities may enter into a MOU to delegate responsibilities in respect of the margin requirements.
2	**Banking Association of South Africa (BASA)**		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" 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?	Noted. The draft Joint Standard has been amended accordingly. 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				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".
3	**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-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. We believe that these scope limitations more closely align with international requirements, and the purpose of the reduction of systemic risk	The comment is noted. Please see the revised Joint Standard.
4	**HSBC**		**<u>Place for Holding Collateral</u>** We request clarification regarding where collateral must be held and whether it	The Joint Standard would need to comply with existing legal requirements, including the Exchange Control regulatory

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			can be held in an offshore account.	framework.
5	**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.
6	**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. Central Clearing (with enough time to transition to central clearing) should be in effect before this Notice.	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. .

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	DEFINITIONS			
7	**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.
8	**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. • We interpret these requirements as having a cross-border implication as envisaged in 2.3.	Please see the revised definition of "covered entity".
9			(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.
10			(d) The categorisation of counterparty does not include Corporate client. • 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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			thresholds are met, what are the implications?	
11			(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.
12	**Banking Association of South Africa (BASA)**	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 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 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.	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.
13	**Banking Association of South Africa**	Group	•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	Covered entities in the same group structure that

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	(BASA)		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?	enter into a non-centrally cleared OTC derivative transaction will be impacted by the Joint Standard. 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.
14	**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 i f 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".
15	**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" 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.	Provider refers to ODPs – as defined in the FMA Regulations. An ODP may not necessarily only be a bank.
16	**INVESTEC**	Counterparty	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	Please see the revised

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			obligations belong to which counterparty type. Based on the current draft we have assumed that pension funds and quasi-sovereigns are <u>not</u> in scope. (d) – must be clarified to refer to a <u>*portfolio*</u> of a collective investment scheme (not the manager of a CIS). (e) – clarify what entities are intended to be captured and clarify further that this is only where these FSPs are acting as principal	definition of "covered entity"
17	**INVESTEC**	Group	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 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.	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.
18	**Macquarie**	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	Agreed. The entity will be captured if it is transacting

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	Securities		underlying principal for which it acts is not captured under the definition of counterparty.	as principal.
19	**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”.
20	**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.
21		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. 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. It is proposed that FSP's are not included in the definition of "counterparties" as their relevant clients are already specified as counterparties. See also paragraph 4.1 (3) (d) of the draft notice that discusses the relationship between a financial services provider and the investment funds. 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.	Please see earlier comment. The intention is to capture these entities if they transact as principal.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
22	**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.
23	**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 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 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. In the definition of "covered entity", please clarify that "provider" is a reference to	Please see earlier response and the revised definition of “covered entity”.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			an authorized OTC derivative provider.	
	APPLICATION AND EXCLUSIONS			
24	**Banking Association of South Africa (BASA)**	Clause 2.1 (3)	• 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. • 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	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 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				guidance covers margin requirements for physically settled FX transactions and swaps." The Joint Standard will allow for a transitional period for FX forwards and swaps to be subject to VM.
25	**Banking Association of South Africa (BASA)**	Clause 2.2	• Section 2.2 includes a reference to "*relevant transactions*" 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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
26	**Banking Association of South Africa (BASA)**	Clause 2.2 (2) (a)	• 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. Both the IOSCO principals and EMIR regulations do not included a threshold level.	The Authorities do not support a complete exemption from the margin requirements for 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 example in Canada intra-group trades are not subject to the margin requirements, whilst in the UK provision is made for

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				certain conditions for the exemption of intra-group transactions and an application for an exemption for intra-group transactions in certain instances. 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.
27	**Banking Association of South Africa (BASA)**	Clause 2.3 (1)	• 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 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. •Furthermore, it is not clear whether these steps have to be taken for each cross-	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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			border trade or to each cross-border counterparty relationship. 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. 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, 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. • 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.	take place, if the domestic covered entity has complied with the requirements as set out in the Joint Standard. 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. Please see the revisions to the draft Joint Standard.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			•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 participants' concerns about their ability to continue trading on a cross-border basis without interruption or duplicative requirements. •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. We recommend that the ISDA netting opinions could also be used in applying for equivalence, unless expressly rejected by the Registrar	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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				still take place provided the covered entity has submitted an application to the Authority to proceed with the transaction/s.
28	**Banking Association of South Africa (BASA)**	Clause 2.3 (3)	• Reference to the words "…*deemed to comply with the margin requirements of the foreign jurisdiction*…" should rather read, "*deemed to comply with the margin requirements of this Notice…"*	Please the revisions to the draft Joint Standard.
29	**Banking Association of South Africa (BASA)**	Clause 2.3 (4) (a)	• 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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
30	**Global Foreign Exchange Division (GFXD)**		**Margin requirements for deliverable FX transactions** 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. 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. 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" 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 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	Please see the previous response on the FMA Ministerial Regulations. The Joint Standard must be read with the FMA Regulations. 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.

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Commission urging them to do the same.

<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>
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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.

Physically-settled FX forwards and swaps are relied 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
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NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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. 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. 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 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	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			is adopted by way of a Federal Reserve System Supervisory Letter. 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." 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.	
31	**Global Foreign Exchange Division (GFXD)**		**<u>Exclusion of FX transactions linked to securities settlements from the margin requirements</u>** 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 settlement cycles can take up to seven days (T+7).	The comment is noted. The Authorities will consider this going forward.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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.	
32	**HSBC**	Section 2	**Exemption/ Grace Period for Options** 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. 1t would therefore be prudent to align the Requirements with the US from the start.	The comment is noted; however the Joint Standard is aligned to the BCBS-IOSCO framework which is the international standard.
33	**HSBC**	Section 2.2	**Full Exemption for Intra-Group Transactions** 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.	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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				jurisdiction's legal and regulatory framework." 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. 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				threshold will be subject to margin requirements.
34			**<u>Alternative. Increase in Dailv Trading Limit for Intra-Group Transactions</u>** 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.	The comment is noted. Please see the revisions to the draft Joint Standard.
35	**HSBC**	Section 2.3	**<u>Removal of Requirement tor Transactions with Cross-Border Entities</u>** 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.	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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				approve substituted compliance in relation to margin requirements of a foreign jurisdiction.
36			**<u>Alternativelv. Request for Clarity if Approval is Required at Transaction Level</u>** If the above requirement is not removed, we request clarity on wl1Cther it is merely the umbrella JSDA 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.	Please see the earlier response.
37	**HSBC**		**<u>Clarification of Exemption from Margin in Respect of Transactions with Sovereign Entities Registered as OTC Derivatives Providers</u>** 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	The margin requirements are not applicable to SOEs.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			Requirements (rather than by comments on the submission) that such entities are not within scope of the Requirements.	
38	**ISDA**	Intra-group exemption	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: • 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. 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	Please see earlier response and the revisions to the Joint Standard.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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 market at a given time.	
39	**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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			Equivalence Determination. 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).	Please see earlier response and the revised Joint Standard.
40			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.	Please see earlier response and the revised Joint Standard.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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.	
41			**<u>Non-netting Provisions.</u>** 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. 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 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	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			derivatives portfolio.	
42	**ISDA**	Exemptions for certain products	**<u>Physically-settled FX Forwards and Swaps.</u>** 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.	Please see earlier response.
43			**<u>FX Security Conversion Transactions.</u>** 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.	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			<u>Pre-paid Options.</u> 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. If pre-paid options are not excluded, we request a grace period before the Margin Regulations must be applied.	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.
44	**ISDA**	Applicability to certain entities	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. In addition, we request clarity as to whether, and in what manner, the Margin Requirements are intended to apply to offshore entities.	Please see the revisions to the draft Joint Standard and the proposed definition of "covered entity"

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	INVESTEC	Paragraph 2.1 (2) Foreign exchange spot contracts.	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 should be made clear in the Notice.	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.
45	**INVESTEC**	Paragraph 2.3	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. 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? 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 here. 2.3(4) releases the provider from posting collateral (and not the counterparty)	Please see earlier response.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			where there is no netting agreement. Is this deliberate?	Please see the revisions to the draft Joint Standard. Please see the revisions to the draft Joint Standard. Please see the revisions to

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				the draft Joint Standard.
46	**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.
47	**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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	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.
48	**Old Mutual invest**	Paragraph .2 (2) (a)	1) A definition is required for “gross notional amount”; 2) The threshold/limit of R1billion is very low for large groups and we believe should be revised based on size.	The “gross notional amount” refers to the aggregate of all outstanding non-centrally cleared derivative transactions across all entities within the group. Please see the proposed revisions to the draft Joint Standard.
49	**Old Mutual invest**	Paragraph 2.3 (1)	*(1) Before a provider enters into an initial 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) except for covered entities in foreign jurisdictions where substituted compliance has been granted.* 1) We propose that this should be applicable at initial transaction level and not every transaction level. 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. 3) With regard to foreign jurisdictions, we would urge the FSB to provide a list of	Please see the revised Joint Standard.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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 specifically US and where EMIR is in place? 4) We require certainty on how existing bilateral agreements and transactions will be treated	
50	**Peregrine securities**	Paragraph 2.3(1) and 3(1)	**Scope of Margin Requirements for OTC Derivatives** The BCBS-IOSCO framework requires that bilateral margin should be exchanged between **all** "covered entities". 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". 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". Both these paragraphs (and other paragraphs) should refer to "covered entity" rather than "provider" (which is defined to exclude counterparties).	The comments are noted. Please see the proposed revisions to the revised Joint Standard.
51	**Standard bank**	Section 2	**Clearing** 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 clearing house.	The comment is noted. The Joint Standard is aligned to the BCBS-IOSCO framework (please see page 7 fn 6 of the international framework)
52		Section 2	**Intra-group transactions** 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. Further, please clarify that the R1 billion threshold for intra-group transactions	Please see earlier responses and the proposed revisions to the draft Joint Standard.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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. 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 .	
53	**Standard bank**	Section 2	**Availability of initial margin** 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.	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.
54	**Standard bank**	Section 2	Cross border transactions 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). 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	Please see earlier response and proposed revisions to the draft Joint Standard.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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, 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.	
55	**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.
56	**Standard bank**		**Variation margin** 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. 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	The comment is noted. Please see the revised timelines.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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. 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 137standardised 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.	
	GENERAL REQUIREMENTS			
57	**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.
58	**HSBC**	(Section3(J)(b)(ii))	**Apparent Prohibition on Transactions with Counterparties in Non-Netting Jurisdictions** This section provides that OTC derivatives providers must ensure that all relevant netting agreements are effective under the laws of the relevant jurisdiction. We	Please see earlier comment.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
			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.	
59	**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 **transferred** 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 timeframe? Will VM be transferred (settled) on the date of demand or the next Local Business Day?	Please see the revised Joint Standard.
60	**INVESTEC**	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.
61	**Old Mutual invest**	Paragraph 3(1)(v)(aa) – Credit	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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
		Comment		terms.
62	**Old Mutual invest**	3(1)(vi)	*vi) initial margin is provided and collected by no later than the ~~business day~~ two business days following the execution of a non-centrally cleared OTC derivative transaction for electronically affirmed transactions and 5 business days transactions for which other methods of confirmation are agreed/signed, and thereafter collected on a routine and consistent basis upon changes in the measured potential future exposure;* 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.	The Joint Standard is aligned to the BCBS-IOSCO framework.
63	**[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			

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
64	**Banking Association of South Africa (BASA)**	Clause 4.1 (3)(c)	• "*aggregate amount*", 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…." "*relevant transactions*". Please elaborate	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.
65	**Banking Association of South Africa (BASA)**	Clause 4.1 (3)(d)	• 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.
66	**Banking Association of South Africa (BASA)**	Clause 4.2	To avoid disruption and confusion it is important that 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.	The comment is noted. Please see the revised timelines for implementation.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	Banking Association of South Africa (BASA)	Clause 4.2 (1) – (5)	• 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.
67	**Banking Association of South Africa**	Clause 4.2 (7) (b)	• 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
	(BASA)			draft Joint Standard.
68	**Banking Association of South Africa (BASA)**	Clause 4.2 (8) (b)	• 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.
69	**Banking Association of South Africa (BASA)**	Clause 4.3 (1)(d)(i)	• These requirements should be incorporated into a master agreement rather than on a transaction by transaction basis. In addition we propose the following changes to the wording: (i) The initial margin provider is as part of its contractual agreement… (ii) The initial margin collector is subject to … (iii) The initial margin collector is subject to …	Disagree. The draft Joint Standard does not specify the form of the legal agreement.
70	**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.
71	**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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
72	**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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				4.4(3) of the draft Joint Standard.
73	**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 date under this margin notice), and as such we recommend that the reference to the standardised method is replaced with the SACCR method.	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, 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSE
				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.
74	**Banking Association of South Africa (BASA)**	Clause 4.6 (b)	• We suggest the following wording: (iii) *The threshold amount of R500 million specified in this Notice is applicable in all cases*.	Not accepted as this is not aligned to the BCBS-IOSCO framework.
75	**Global Foreign Exchange Division (GFXD)**		**Implementation schedule** 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. 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	Please see the revised timelines for implementation.

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			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. 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.	
76	**HSBC**	Section 4	**<u>Approval ISDA SIMM model for IM calculation purposes</u>** We request clarity on whether the ISDA SIMM model will be approved by the Registrar for IM calculation purposes	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

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				use the model.
77	**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.
78			-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 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: ○ negotiating or amending collateral agreements; ○ on-boarding to custodians; ○ implementing, testing and obtaining approval for an initial margin (IM) model; and ○ developing the operational capacity to comply with regulatory margin requirements.	Please see the revised timelines for implementation.

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			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.	Noted. Please see the revised timelines for implementation.
79			**<u>Phasing in of Variation Margin Requirements.</u>** 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. 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 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. We request that the requirement to apply regulatory VM requirements be prospectively applied to transactions entered into on or after each VM compliance date.	Please see the revised timelines for implementation.

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80			**Phasing in of Initial Margin Requirements.** 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. 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. 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 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	

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			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.	
81	**ISDA**	Initial margin	**Custodial requirements.** 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. In addition, we request clarity as to what types of custodians are permissible for the holding of IM in a South African context.	Please see the revised Joint Standard.
82			**Re-hypothecation.** 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.	Not accepted. The draft Joint Standard allows for re-hypothecation of IM in limited instances. This approach is aligned to the BCBS—IOSCO framework.
83	**ISDA**	IM Method	**NGR.**	The calculation for the standardised margin schedule is aligned to the BCBS-IOSCO framework.

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			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 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	The Authorities welcome ISDA to provide further clarity on the approaches adopted in other jurisdictions that have seemingly adopted an approach which is different to the internationally agreed standard and highlight the potential mismatch between such jurisdictions and the approach in SA.
84			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.	The comment is noted. However, please see paragraph 4.4.(3) of the Joint Standard.
85			<u>**Model Approval.**</u> 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	See earlier comment on the SIMM Model

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			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. • 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 compliance date. • 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.	
86	**ISDA**	The ISDA SIMM Model	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.	See earlier comment on the SIMM Model

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			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 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. 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.	
87	**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
88	**JSE**		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	The initial margin collected should be held in such a manner to ensure that the collected margin must be subject to arrangements

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			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 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.	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.

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	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.
89	**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

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				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.
90	**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 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

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				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.
91	**Old Mutual invest**	Paragraph 4.2(1)	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. 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? (The above comments equally relates to 4.2(1), 4.2(2), 4.2(3), 4.2(4), 4.2(5))	We will take the request under consideration. 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.

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	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.
92	**Old Mutual invest**	Paragraph 4.4(1)(a) And 4.5	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 industry standard in calculating the Initial Margin requirement? If not, we would advocate that it should be.	The standardised approach as set out in the margin notice is based on the BCBS-IOSCO framework. To the extent that a covered entity wishes to adopt any quantitative portfolio-based model it would need to obtain the prior approval of the Authority.
93	**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.
94		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

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				context.
95	**Old Mutual Invest**	4.5(b)	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. 2) Is "Net-to-gross ratio" a defined term within the ISDA Initial Margin Annexure? Please provide clarity and define further? 3) Provide rationale for including the 0.4 and 0.6 factors within the formula.	Please see earlier comment on the standardised versus quantitative model as the basis for the methodology for calculating margin requirements. 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.
96	**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.
97	**Old Mutual invest**	4.5(d)	*(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*	The proposed amendments are not accepted and they are not aligned to the

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			of derivative contracts as transacted with another covered entity. 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.	principles in the BCBS-IOSCO framework.
	VARIATION MARGIN			
98	**Banking Association of South Africa (BASA)**	Clause 5 (a)	• 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. 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.	Please see the revised timelines for implementation.
99	**Banking Association of South Africa (BASA)**	Clause 5 (3) (a)	• Please provide clarity as (a) stipulates "*the aggregate month-end gross notional*…" and (b) relates to gross notional amount?	The Authorities do not understand the comment. BASA to please provide clarity to the extent that the

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				comment remains relevant.
100	**HSBC**	Section 5	**Exemption for physically settled FX Forwards and Swaps** We submit that physically settled FX forwards and swaps be exempt from VM as well as IM as is the case in the US.	Please see earlier comment regarding FX forwards and swaps.
101	**INVESTEC**	Paragraph 5.3(b)	Under Dodd-Frank and EMIR the obligation to collateralise was not retrospective. Why is the Regulator seeking to impose a look back period between 1 Jan 2018 and 1 July 2018? This will add unnecessary complexity.	The intention is not to impose retrospective margin requirements on covered entities. Please see the revised timelines for implementation.
102	**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.
103	**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

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				is aligned to the BCBS-IOSCO framework.
	ELIGIBLE COLLATERAL			
104	**Banking Association of South Africa (BASA)**	Clause 6 (1) (c)	• 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.
105	**Banking Association of South Africa (BASA)**	Clause 6 (5)	• 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 currency. • 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. We propose that any FX haircut is removed at least to the extent that it relates to	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.

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			cash.	The BCBS and IOSCO have established a 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. 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

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				conservative. 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.
106	**HSBC**	Section 6(5)(d)	**Form of Gold** We request clarification in what form gold may be held as eligible collateral.	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

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				between the parties. When necessary, further direction will be provided on this matter.
107			**Expanded List of eligible Collateral** We submit that the following should be added to the list of eligible collateral: (a) Designated High-quality debt securities of regional and local authorities, public sector entities and multilateral development banks, or international organisations; (b) Designated bonds convertible into main index equities; (c) Designated units in collective investment schemes registered under the Collective Investment Schemes Control Act.	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 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.
108	**HSBC**	Section 6(5)(c) and (d)	**Haircut for Cash in Foreign Currency** 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?	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

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				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.
109	**ISDA**	Collateral and settlement	**<u>Eligible Collateral.</u>** 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.	See earlier comment
110			We submit that the following should be added to the list of eligible collateral: • 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.	See earlier comment
111			**<u>Holding Collateral.</u>** We request clarification with respect to the form in which gold may be held as	The reference to gold is aligned to the BCBS-

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			eligible collateral. Additionally, we request clarification as to whether there are any restrictions on where collateral must held. For instance, can it be held in an offshore account?	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.
112			**<u>Haircuts.</u>** 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. 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 accentuate, rather than mitigate, the cure period risk. Please see ISDA's Analysis and Counter-proposal2 on the matter to the European Supervisory Authorities for further details.	Please see the earlier comment.
113	**ISDA**		**<u>Minimum Transfer Amount.</u>** 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	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-IOSC framework.

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			aligned with the MTA's applied in other jurisdictions with which South African market participants trade (i.e., EUR 500,000).	
114	**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.
115	**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.
116	**Old Mutual invest**	6.1(c)	*(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 type;* We propose this applies to non-cash collateral.	Not accepted – please see the discussion on Element 4 (Eligible collateral for margin) in the BCBS-IOSCO framework. The list of eligible collateral is set out in the Joint Standard, and it is aligned to the BCBS-IOSCO framework, which includes cash as collateral.
117	**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

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				each covered entity in accordance with its risk management framework.
118	**Old Mutual invest**	6(1)(d)	This term, without clarification, lends itself to ambiguity and subjectivity and requires clarity.	Which term is being referenced?
119	**Old Mutual invest**	6(1)(g)	This paragraph seems to refer to correlation between value of collateral and counterparty. Eg. If we accepts 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.
120	**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.
121	**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.
122	**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	

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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
	Margin requirements for Non-centrally Cleared OTC Derivatives			
	General Comments			

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
1.	**IG Markets**	**Framework Alignment**	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. Considering the draft margin requirements for non-centrally cleared OTC derivative transactions: • 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. We thoroughly support the efforts to ensure consistency in regulation across various jurisdictions so as to reduce the opportunity for regulatory arbitrage.	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
2.	**Peregrine**	**Framework Alignment**	We have found the principles outlined in the National Treasury Policy Statement on OTC derivatives comprehensive, balanced and in line with international best practice. In general, the Regulations translate these principles into a workable framework for registration, market conduct and reporting obligations. 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).** 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	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. A definition for "covered entities" has been included, which includes authorised OTC derivative providers and specified counterparties. Under the revised requirements, re-hypothecation is allowed subject to the specified requirements and conditions - please see paragraph 4.3. The phasing in of the requirements is further provided for in paragraph 4.2. ***Please refer to the revised Notice.***

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			margin requirement and that other thresholds be set to bring the initial margin requirement in line with international guidelines. 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. 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.	
3.	**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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. 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. 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).	the contents of the Notice. 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. 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. Thresholds are not determined by counterparty type, but apply across board on the defined "covered entities" – please ***see the revised Notice.*** 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. The recommendation would be to align the Regulations and in particular the Board Notice to the BCBS/IOSCO policy framework in respect of – 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. This is based on the following:	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. 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. *Please see the revised Notice.*

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. • 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	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			regulations seem to force VM for every entity trading with a bank, along with IM for nearly all entities. • 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 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.	
4.	**Barclays**	**Framework Alignment**	The Second Draft Policy Document, in respect of margin requirements provides - "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." and	The comments are noted. Some amendments have been incorporated, taking into account the BCBS-IOSCO recommendations. *Please refer to the revised Notice.*

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			“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.” 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- • 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	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			impact in the South African market; • 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). We strongly recommend that the South African approach to margin for non-centrally cleared OTC derivatives is fully aligned to the BCBS-IOSCO framework.	
	Scope of application			

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
5.	**Peregrine**	**Exclusion of Clients**	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	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. 2. *“counterparty” and “ client ” means “counterparty ” and “ client ”, r espect ively, as defined in the Regulations. ~~Includes a client as defined in the Regulations~~;* 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. This is in line with the requirements of Key principal 2 of the BCBS-IOSCO Framework (page 10, paragraph 2.6) which states: *“Only non-centrally cleared derivatives transactions between two covered entities are governed by the requirements in this paper.”* (Covered entities are define in 2.4 of the BCBS-IOSCO Framework as “financial firms and systemically important non-financial entities”.)	*Please see the revised Notice*.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			3. <u>Sugg est ion: “ client s” should be excluded f rom “ count er part ies” under t he Not ice</u> 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. We view the inclusion of “clients” in this requirement as inconsistent with the achievement of Objective 1 of the Policy Statement: “*Contributing to the maintenance of a stable financial market environment and reducing systemic risk*”. It is also in conflict with Principle 1 of the same policy: “*Adoption of appropriate international standards*” 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. Further, the margining requirement will have a meaningful impact on - Market liquidity, as many OTC derivative financial products sold to retail clients will disappear. All financial products with any derivative component will	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			be affected. - 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. 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.	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
6.	**BASA**	**Covered Entity definition**	The recommendation would be to align the Regulations and in particular the Board Notice to the BCBS/IOSCO policy framework in respect of – Definition of entities covered that are subject to the margining provisions, i.e. **covered entities** and the scope of applicability. **“counterparty” includes a client as defined in the Regulations** 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. 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: • **“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-	The amendments exclude clients from the margin framework. Noted. Covered entity includes ODPs as defined in the FMA regulations and counterparties as specified under the revised Notice. 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			determined classification threshold • In line with the recommended definition changes, the word covered entity should replace provider and counterparty throughout the Board Notice	the margin requirements. *Please see the revised Notice.*
7.	**IG Markets**	**Exclusion of Clients**	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.	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			This request is based on the following considerations: • 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. 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.	
8.	**Barclays**	**Exclusion of Clients**	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	The comments are noted, and reference to clients has been removed, please see the revised Notice. Regarding systemically important institutions, please refer

NO	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.
9.	**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.
10.	**Purple group**	**Exclusion of Clients**	The FMA Margin Requirements Regulations, in respect of margin requirements should only apply where derivative transactions are entered into between two systemically important entities. *As such:* • Clients (non-financial firms that are not systemically important) should be excluded from the definition of covered entities;	The comments with respect to clients are noted – please see the revised Notice. The margin requirements are, however, not limited to systemically important entities. 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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			• 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.	.
11.	**ACTSA/SABMiller**	**Exclusion of Clients**	"*counterparty" includes a and "client" have the same meanings as ~~defined~~ in the Regulations; and* Counterparties and clients should be treated differently for margining purposes. • 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			
12.	**BASA**	**Netting Set**	• 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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
13.	**Peregrine**	**Netting Set**	Insert: *"netting set" means all derivatives covered by an enforceable bilateral netting agreement;* The term "netting set" is used throughout the Notice without a definition.	"Netting set" has been defined. Please see the revised Notice.
14.	**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.
15.	**Macquarie Securities (Round 2)**	**Non-centrally OTC derivative transactions**	We propose that the "non-centrally cleared OTC derivative transactions" should also be specified by the registrar (as with "cleared" transactions) in detail – ISDA transaction types may serve as a means of categorisation. We further propose that the definition "non-centrally cleared OTC derivative transactions" be limited to "...an OTC derivative **[specified by the registrar]** that is executed, whether confirmed or not confirmed, **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".**	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. *Please see the revised Notice.*

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
	Risk Management Framework			
16.	**BASA/IG Markets**	**Intragroup Transactions Paragraph 3(2)(f)**	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. 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.	The comment is noted. Please see the revisions to the Notice in respect of the treatment of intra- group transactions.
17.	**Peregrine**	**Paragraph 3(5)**	**Option 1:** Delete clause **Option 2:** Substitute with "*A provider must be appropriately capitalised*." **Option 3:** Amend to read "*A provider must hold appropriate capital against all of the relevant risks not covered by appropriate exchange of collateral*." The wording "…*must hold capital*…" may be open for	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".

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			interpretation and may mean that the full risk should be covered by capital irrespective of the probability of such risk taking place. 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.	
18.	Macquarie Securities (Round 2)	**Section 3(5) Risk Managemen t**	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			
19.	BASA	**4.**	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. We propose the following amendments – **4. Initial Margin** (1) **Covered entities** must, subject to the relevant	Amendments have been made in the revised Notice to clarify the requirement to exchange initial margin. Only covered entities are required to exchange margin.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. (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.	
20.	Purple group	**4(1)**	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). 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.	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
21.	**Peregrine/ACTSA**	**4(1)**	"*A provider must, subject to the relevant thresholds and exemptions in this Notice, provide <u>or receive</u> ~~on a bilateral basis~~….*" An OTC derivative provider must also receive initial margin, *i.e.* the margining is bilateral. *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.* 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. 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. Under Dodd-Frank the margin requirements do not apply to non-financial corporates hedging or mitigating commercial risk (see HL Summary page 24).	Amendments have been incorporated in the revised Notice. The notice specifies the ODPs and specific counterparties that must meet the margin requirements. It is unclear which entities are captured by the 'corporate' description. Only financial institutions defined as counterparties are required to exchange margin.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
22.	**Peregrine**	**4(2)**	"*A provider must provide <u>or receive</u> initial margin…*". Initial margin should be bilateral.	Noted. Amendments have been made to the provision to reflect the suggested wording.
23.	**BASA**	**4(5)**	The total amount of initial margin to be collected by a provider from a counterparty must be recalculated and collected at least when- (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; 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.	Please see the revised Notice.
	Methodology for calculating Margin			

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
24.	BASA	5	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. 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.	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.
25.	BASA	5(1)(a)	This provision requires that the OTC derivative transaction is subject to a single and legally enforceable bilateral netting agreement that requires "daily netting". 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.	Agreed. The Notice has been amended and the reference to daily netting has been removed.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
26.	**Peregrine**	**5(1)(b)**	"*….(based on its underlying asset class) as specified in Annexure A*." To clarify which "add-on" factor is referred to.	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.
	Section 6 Model Use			
27.	**BASA**	**6. Model use**	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. It is therefore recommended that an element of regulatory discretion be added to the frequency of re-calibration to	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)). Noted. Requirements revised for data representation, no reference to 25%. Agreed. Reference to 6 months Agreed. Reference to 6 months calibration removed.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
28.	**BASA**	**6(2)(1) – Confidence Intervals**	**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. 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. Is there a specific reason why a confidence level of 99.5% is proposed in this notice?	Agreed. Reference to confidence interval corrected. See the response above and the revised Notice.
29.	Peregrine	**6.3(8)**	*"…from the recalibration of the model, over an appropriate period. ~~longer than one day~~* Some incremental changes may be very small and one day should be sufficient. Other incremental changes may require several days.	Agreed and amended.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
30.	Peregrine	**6.4(2)**	Add "*gold*" to "*commodities*" Move "*currency*" to its own class 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.	This section has been amended. *See the revised Notice.*
			Variation Margin	
31.	Peregrine	**7(1)**	"*A provider most ~~provide, on a bilateral basis,~~ exchange*" Variation margin is paid and received.	Noted. Amendments have been incorporated in the revised Notice.
32.	Peregrine	**7(3)**	*"Variation margin may be ~~collected~~ exchanged on a net basis."* Variation margin is paid and received.	Noted. Amendments have been incorporated in the revised Notice.
	Collateral Management			
33.	BASA	**8. Collateral Managemen t**	**8.1** Eligible collateral guidelines should be included. 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. In addition, given the relative lack of liquid assets in the South African market it is recommended that consideration	List of eligible collateral; has been updated. *Refer to paragraph 8(2) of the Notice*. Despite the recommendations by the BCBS-IOSCO, jurisdictions or regulators must make a determination on the list of eligible collateral taking into

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			be given to the discretion proposed in Requirement 4 of the BCBS/IOSCO principles allowing for a wider range of collateral. **8.1(2).** Recommendation is to allow for a single stage of re-hypothecation as per the BCBC/IOSCO principles. **8.1.3.** This requirement should only apply to IM exchanges. In line with the BCBS / IOSCO principles, variation margin need not be segregated **8.2. Segregation of initial margin.** Any costs associated with the segregation of initial margin should be borne by the posting party. 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. 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 **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.	account their domestic framework. Agreed. One time re- hypothecation is permitted. 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. 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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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). **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. **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.	The standardised methodology has been updated in the latest Notice, reflecting the recommendations by the BCBS- IOSCO. Reference to government securities corrected – and the requirements apply to all eligible collateral.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
34.	Peregrine	**8.1 and 8.1(2)**	Insert new 8.1(1) (and renumber remainder of 8.1 accordingly): *“ (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. ”* A clear distinction should be drawn between the “initial margin” and “collateral”. Initial margin is the regulatory amount kept as a buffer against default on the variation margin. Collateral comprises assets exchanged to manage the initial margin. “*(~~2~~3) Collateral collected ~~for initial margin~~ may not be re-hypothecated, re-pledged or otherwise re-used unless the following criteria are met* - *the counterparty agrees in writing to the re-hypothecation; and* *the collateral may only be re-hypothecated by the OTC*	Amendments made to the revised Notice.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			derivative provider and only for its hedging of the OTC derivative transaction in respect of which it received the initial margin." 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. 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. This is in line with the requirements of Key principal 5 of the BCBS-IOSCO Framework, page 20, paragraph 5(v) *"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."*	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
	Peregrine	**8.2**	*8.2(1) 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 entity ~~counterparty~~.*" This should not only refer to collateral collected for initial margin purposes. To bring wording in line with remainder of 8.2. Also, "counterparty" has a defined meaning which excludes a derivative provider. 8.2(2) *"The collecting entity ~~counterparty~~ must at all times provide the posting entity ~~counterparty~~ with the option to segregate its collateral from the assets of other posting entities ~~counterparties~~ ("individual segregation")*." To bring wording in line with remainder of 8.2. Also, "counterparty" has a defined meaning which excludes a derivative provider. 8.2(3) "*(3) ~~Initial margin~~ Collateral that is collected in cash must be segregated individually, unless the collecting counterparty can prove to its counterparty and to the*	Amendments made to the provisions in the revised Notice.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			registrar that legally effective arrangements are in place to segregate it from proprietary assets." Paragraph 8 deals with collateral and not only initial margin. Also see comment for 8.1. 8.2(4) *"(a) ~~initial marginsare~~ collateral is immediately available to the collecting entity where the posting entity ~~counterparty~~ defaults;*" Paragraph 8 deals with collateral and not only initial margin. Also see comment for 8.1. To bring wording in line with remainder of 8.2. Also, "counterparty" has a defined meaning which excludes derivative provider.	
35.	**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.
36.	**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

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
	2)		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. (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. (3) This is vague and meaningless. We propose that references to "collateral" are changed to "initial margin".	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. 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. 3) Disagreed. Collateral can be categorised as initial margin or variation margin - word is used interchangeable, see the revised Notice.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
37.	**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 ownership 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
			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			

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
38.	**Peregrine/ACTSA SABMiller**	**9 (1 – 3)**	Replace 9(1), 9(2) and 9(3) with sections set out below. 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. We have several comments with regards to the exclusions 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. 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	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. New thresholds included. *See the revised Notice.*

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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 Replace 9(1) with: *" (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."* This is in line with the requirements of Key principal 2, page 10, paragraph 2.6 of the BCBS-IOSCO Framework, which states: *"Only non-centrally cleared derivatives transactions between two covered entities are governed by the requirements in this paper."* Covered entities are define in 2.4 as: "financial firms and systemically important non-financial entities)" Replace 9(2) with: *" (2) An OTC derivatives provider is excluded from providing*	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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." 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. 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 Replace 9(3) with: *" (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) . "* This is in line with the requirements of Key principal 2, page 10, paragraph 2.2 of the BCBS-IOSCO Framework. Under the BCBS-IOSCO Framework, all covered entities (essentially OTC derivatives providers and counterparties)	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. *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</u> <u>entities</u>, is less than <u>R50 million</u> the amount notified by the Registrar.* 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. • 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).	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			• 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).	
39.	ACTSA	9(4)	*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-* *(a) a central bank or other national monetary authority of any country, state or territory;* *(b) a sovereign state;* *(c) a multilateral development bank; or* *(d) the Bank for International Settlements.; or* *(e) a non-financial entity hedging or mitigating commercial risk.* If counterparties and clients will both be covered by the Notice, non-financial corporates hedging commercial risk should not be subject to margining. • 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	Noted. The margin requirements extend to covered entities specified in the revised Notice.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			unpredictable basis. • 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. Under Dodd-Frank the margin requirements do not apply to non-financial entities hedging or mitigating commercial risk (see HL Summary page 24).	
40.	**Macquarie Securities (Round 2)**	**Thresholds**	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.	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
41.	**Peregrine**	**Affiliates**	Suggestion: transactions with affiliates should be excluded from the margining requirement 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 dispensation from these margin requirements.	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.
	Margin Requirement - Phase in and Transitional arrangements			
42.	**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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
43.	**Peregrine**	**Phase-in periods**	Insert 10 (and renumber section 10 as section 11): "***10.*** ***Phase-in of Requirements***" Suggestion: include phase-in provisions 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.
			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. Insert 10 (and renumber section 10 as section 11): "***10.*** ***Phase-in of Requirements***" 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.	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
44.	**Purple group**		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-IOSCA Framework stretch out over a reasonable period of around five years.	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. *Refer to the revised Notice.*
			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. 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;	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
45.	**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.
46.	**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
			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			

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
47.	**Barclays**		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. (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)	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.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. 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). 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	

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			central registry for the tracking thereof. This provides a mechanism to track the on-use of collateral and thereby manage limit the re-use. 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 — (i) the maximum level of re-hypothecation allowed (relative to the level of indebtedness); and (ii) the re-use of collateral (which the Strate collateral solution facilitates).	
48.	**Peregrine**		<u>Suggestion: re-hypothecation should be regulated but not prohibited</u> 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. The draft regulation propose that counterparties that collect initial margin are prohibited from re-hypothecating, re-	Amendments have been incorporated in the revised Notice in respect of re-hypothecation. Please see the revised Notice.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			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. 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. We are of the opinion that controlled rehypothecation should be allowed and have proposed wording in this regard in the attached Annexure. We also note that rehypothecation has been allowed in terms of the recently published Hedge Fund.	
49.	**Peregrine**	**Annexures**	Annexure A, 2. "…*products referred in paragraph* <u>1</u> ~~2~~*...*" Incorrect reference. Annexure A, 3(c) - Change numbering to 4 and renumber remaining paragraphs accordingly. Paragraph 3(c) is applicable to all initial margin calculations, not only to transactions that fall within more than one category. Annexure B - Add new Annexure B Annexure B should be based on Appendix B of the BCBS-	Annexures have been updated to refer to the revised Notice.

NO	COMMENTATOR	SECTION	COMMENTS	RESPONSES
			IOSCO Framework.	
50.	**JSE**	**Annexure A - paragraph 2**	Incorrect reference to ‘paragraph 2’ should instead be ‘paragraph 1’.	Noted. Please see the revised Notice.