FSCA
Financial Sector Conduct Authority

SOUTH AFRICAN RESERVE BANK
Prudential Authority

FINANCIAL SECTOR REGULATION ACT, 2017

NOTICE OF PUBLICATION – GUIDANCE NOTICE ON REQUIREMENTS PERTAINING TO RECOVERY TOOLS AVAILABLE IN SUPPORT OF COMPLIANCE WITH JOINT STANDARD 1 OF 2026 - MINIMUM REQUIREMENTS FOR THE RECOVERY PLANS OF MARKET INFRASTRUCTURES

The Financial Sector Conduct Authority and Prudential Authority (Authorities) hereby publish Joint Guidance Notice 1 of 2026 on requirements pertaining to recovery tools in support of compliance with Joint Standard 1 of 2026 - Minimum Requirements for the Recovery Plans of Market Infrastructures, to be published under section 141 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), as set out in the Schedule.

This Notice, together with the Schedule are available on the websites of the Authorities.

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FINANCIAL SECTOR CONDUCT AUTHORITY

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PRUDENTIAL AUTHORITY

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Schedule

JOINT GUIDANCE NOTICE 1 OF 2026

FINANCIAL SECTOR REGULATION ACT, 2017

GUIDANCE NOTICE ON RECOVERY TOOLS AVAILABLE TO MARKET INFRASTRUCTURES IN SUPPORT OF COMPLIANCE WITH JOINT STANDARD 1 OF 2026 - MINIMUM REQUIREMENTS FOR THE RECOVERY PLANS OF MARKET INFRASTRUCTURES

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1. Application

This guidance notice applies to all licensed market infrastructures and is published by the Financial Sector Conduct Authority and the Prudential Authority ("Authorities") in terms of section 141 of the Financial Sector Regulation Act, 2017 (No. 9 of 2017).

In this Guidance Notice, any word or expression to which a meaning has been assigned in the Joint Standard 1 of 2026 has the meaning so assigned to it, unless the context indicates otherwise.

2. Purpose

2.1 The purpose of this Guidance Notice, is to provide guidance on the application of Joint Standard 1 of 2026 - Minimum requirements for the recovery plans of market infrastructures (Joint Standard), insofar as it relates to the requirements pertaining to recovery tools.

2.2 In terms of the Financial Markets Act, market infrastructures must implement arrangements to efficiently and effectively manage the material risks associated with the operation of the market infrastructure.

2.3 According to the Principles for Financial Market Infrastructures (PFMI) issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (IOSCO) in April 2012, all market infrastructures should have comprehensive and effective recovery plans because the disorderly failure of such a market infrastructure could lead to severe systemic disruptions.

Recovery planning is inherently integrated into risk management and deals with those aspects of risk management and contingency planning, which address the extreme circumstances that could threaten the market infrastructure's viability and financial strength.

2.4 A market infrastructure is required under the PFMI to have recovery tools that allow it to allocate any uncovered losses and liquidity shortfalls caused by participant default. Moreover, a market infrastructure must be in a position to allocate losses or to implement an orderly wind-down process following losses that are not related to participant default. Additionally, an appropriate set of recovery tools should meet the market infrastructure's recovery objectives. Market infrastructures can be exposed to legal, credit, liquidity, general business, custody, investment, operational risks and other related risks. However, not all market infrastructures are exposed to these risks equally or in the same manner.

2.5 The Joint Standard contains various requirements pertaining to recovery tools. For example:

- Paragraph 4.3 provides that the recovery tools contained in a recovery plan must provide the market infrastructure with a reasonable prospect of recovery within a reasonable timeframe.
- Paragraph 4.4 requires a market infrastructure to ensure that the range of recovery tools in its recovery plan is commensurate with its risk profile.
- Paragraph 5.4 of the Joint Standard requires that a market infrastructure's recovery plan must contain the criteria to be used to determine which recovery tool/s must be implemented in a moderate to severe stress scenario;
- Paragraph 7.1(h) of the Joint Standard requires that a market infrastructure's recovery plan must include tools to address structural weaknesses and market infrastructure links;
- Paragraph 11.1 of the Joint Standard requires that a market infrastructure must implement an appropriate set of recovery tools to meet its recovery objectives;
- Paragraph 11.2 of the Joint Standard sets out principles that must be considered by market infrastructures when selecting the most appropriate tool for each relevant recovery scenario, including the sequence in which they must be used; and
- Paragraph 12 of the of the Joint Standard sets out requirements pertaining to selection and implementation of recovery tools.

2.6 The guidance provided herein is given within the above context.

3. Types of Recovery Tools

3.1 There are various factors that a market infrastructure must take into account when determining which recovery tools are appropriate in the context of its business, these factors are detailed in, amongst others, paragraph 11.2 of the Joint Standard. Consequently, there are different types of recovery tools with different purposes that might be applied by a market infrastructure individually, in combination or in sequence.

3.2 To ensure appropriateness of its recovery tools as contemplated in, amongst other things, paragraph 11.1 of the Joint Standard, a market infrastructure should consider at least the following types of recovery tools for use in the recovery plans of a market infrastructure:

(a) recovery tools to allocate uncovered losses caused by participant default;
(b) recovery tools to address an uncovered liquidity shortfall;
(c) recovery tools to replenish financial resources;
(d) recovery tools to allocate losses not caused by participant default;
(e) recovery tools to address structural weaknesses; and
(f) where applicable, recovery tools applicable to a central counterparty[1] (CCP).

3.3 Guidance on what each of these types of recovery tools may entail are described below.

4. Recovery tools to allocate uncovered losses caused by participant default

[1] "CCP" means a clearing house that (a) interposes itself between counterparties to transactions in securities, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts; and (b) becomes a counterparty to trades with market participants through novation, an open offer system or through a legally binding agreement.

4.1 There may be circumstances in a default or recovery scenario where a market infrastructure's prefunded financial resources will not be sufficient to address all losses. The market infrastructure needs to address such remaining losses through rules requiring direct participants to commit to providing additional resources, typically in the form of cash, in order to meet a shortfall. This process is often referred to as an "assessment power," and typically applies to cases of participant default.

4.2 In the event that the losses suffered by a market infrastructure exceed its pre-funded resources, and liabilities, and therefore, exceeds the assets available to the market infrastructure to meet its liabilities, the market infrastructure may –
(a) collect additional resources (e.g. cash calls); or
(b) reduce its liabilities (e.g. haircut claims against it).

4.3 The recovery tools based on a reduction in liabilities can be used in advance of, or in conjunction with, or following, any other recovery tool for loss allocation.

5. Recovery tools to address uncovered liquidity shortfalls

5.1 A market infrastructure must meet any prescribed minimum liquidity requirements[2] using qualifying liquid resources in all relevant currencies in which the market infrastructure clears and settles such that it can effect same-day settlement, and where appropriate, intra-day and multi-day settlement of payment obligations in extreme but plausible market conditions.

5.2 A market infrastructure should have arrangements in place with third-party institutions, including affiliated entities, to address uncovered liquidity shortfalls, to the extent permitted by *ex-ante* arrangements such as the market infrastructures rules, or specific provisions in contractual arrangements with indirect participants or third parties.

5.3 Such tools may vary in their degree of reliability and be similar to additional forms of liquidity. Forms of liquidity that would qualify as supplementary liquidity may be useful in some scenarios, such as those where a market infrastructure or market conditions are not highly stressed. However, these less reliable forms of liquidity may not represent sufficient tools to address uncovered shortfalls in extreme but plausible market conditions. Hence, a recovery plan that contains such tools should also contain tools that will be effective in highly stressed conditions.

5.4 A market infrastructure may also obtain liquidity in terms of its rules and procedures from non-defaulting participants. This can be achieved by requiring collateralised loans, repo or swap transactions from non-defaulting participants, as well as writing down potentially unrealised gains by non-defaulting participants, and the possibility of calling for additional contributions from participants.

6. Recovery tools to replenish financial resources

6.1 A market infrastructure will need to replenish its financial resources once uncovered losses caused by participant default have been allocated in order to be able to continue providing critical services.

6.2 A market infrastructure should have rules and procedures in place to replenish any financial resources it may use in a stress event, so that it can continue to operate in a safe and sound manner.

6.3 In order to replenish its resources, a market infrastructure may either collect resources from its participants (e.g. by means of cash calls), and/or raise additional equity capital.

7. Recovery tools to allocate losses not caused by participant default

[2] As prescribed in Regulation 8, 13 and 31 of the Financial Markets Act Regulations, published under Government Notice R98 in Government Gazette 41433 of 9 February 2018.

7.1 A market infrastructure must be able to recover from an extraordinary, once-off loss or recurring losses from general business, custody and investment risks and must –

(a) have sufficient capital and a viable plan, for example, by recapitalisation after extraordinary losses; capital conversion measures such as suspension of dividends; and non-payment of variable remuneration; or voluntary restructuring of liabilities through debt-to-equity conversions; and

(b) have explicit insurance (e.g. from a third party) or indemnity agreements (e.g. from a parent organisation) in place to cover such losses.

7.2 Cash calls are recommended for recovery plans if they are capped and limited to a maximum number of rounds established in advance. The cap on a participant exposure should be linked to each participant's risk-weighted level of exposure in the market infrastructure.

8. Recovery tools to address structural weaknesses

8.1 Paragraph 7.1(h) of the Joint Standard describes the elements that must, at minimum, be addressed by a market infrastructure in its recovery plan. One of these elements is to include tools that address structural weaknesses. In this regard, a recovery plan should include a process detailing how to promptly identify, evaluate and address the sources of underlying structural weaknesses on a continuous basis (e.g. unprofitable business lines, investment losses), and the tools available to address them within a concrete time frame.

8.2 Where the financial problem that triggers recovery is ongoing business losses, the market infrastructure must consider restructuring its business to correct the underlying problem. Mechanisms to address structural weaknesses include the following:

(a) revising risk management frameworks;
(b) raising additional financial resources;
(c) replacing inadequate management;
(d) revising business strategy (including cost or fee structures);
(e) restructuring services provided;
(f) selling business units;
(g) merging with another market infrastructures;
(h) reducing risks (for example, changes in investment or custody policy); and
(i) taking measures to reduce complexity and interconnectedness.

8.3 In order to be prepared to address structural weaknesses that could lead to a financial shortfall that requires the implementation of the recovery plan, a market infrastructure should on a continuous basis carry out a strategic and operational assessment to identify potential structural weaknesses.

8.4 The strategic and operational assessment, as contemplated in subparagraph 8.3 of this Guidance Notice should include identifying and preparing for potential material impediments to timely execute tools to address structural weaknesses and describe the process for determining the value and marketability of material business lines that the market infrastructure may wish to sell.

8.5 If a market infrastructure wants to sell a part of its business, it must be able to identify and address legal, regulatory, information technology-related, or other obstacles that would make it difficult to execute the sale in a timely manner (i.e. within the period for which it has liquid net assets funded by equity). For example, a market infrastructure may need to obtain approvals from the Authorities or make sure that it can continue to use an information technology system that is shared with a business line that may be sold. Where the business line involves a critical service, it is essential that the recovery plan ensures the continuity of provision of that service.

9. Recovery tools applicable to a CCP

9.1 In addition to the recovery tools outlined in this Guidance Notice, a CCP should consider at least the following types of recovery tools:

(a) **Voluntary contract allocation**

In order to recover from an unmatched book as a result of a participant default, a CCP can use its powers to allocate unmatched contracts provided that –

(i) contract allocation should only be applied on a voluntary basis to address unmatched positions;

(ii) the rules, responsibilities and procedures for a voluntary contract allocation are defined in advance; and

(iii) the CCP creates appropriate incentives for participants to take on unmatched positions, in order to ensure that there is adequate participation in the auction process.

(b) **Voluntary contract tear-up**

A CCP could terminate some or all open positions in order to return to a matched book and stem further losses. A price would be established upon termination. Eliminating positions can help re-establish a matched book. Contract tear-up is a potentially effective tool for a CCP's recovery, provided that -

(i) a CCP performs contract tear-up on a voluntary basis;

(ii) there is a strong legal basis for the relevant processes and procedures when voluntary contract tear-up is included in a recovery plan; and

(iii) termination of an open contract is a measure of last resort.

10. Enquiries

For further information regarding this Guidance Notice and the contents hereof please contact the FSCA by emailing FSCA.RFDStandards@fsca.co.za or the PA by emailing PA-Standards@resbank.co.za.