FSCA
Financial Sector
Conduct Authority

South African Reserve Bank
Prudential Authority

JOINT ROADMAP FOR DEVELOPMENT OF A REGULATORY FRAMEWORK FOR CENTRAL CLEARING IN SOUTH AFRICA

February 2022

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LIST OF ABBREVIATIONS

BASA	Banking Association of South Africa
BSBS	Basel Committee on Banking Supervision
CCP	Central Counterparty
CSD	Central Securities Depository
FMA	Financial Markets Act, 2012 (Act No. 19 of 2012)
FMA Regulations	Financial Markets Act Regulations
FSB	Financial Stability Board
FSAP	Financial Sector Assessment Programme
FSCA	Financial Sector Conduct Authority
FSRA	Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)
G20	Group of 20 Finance Ministers and Central Bank Governors
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
NT	National Treasury
ODP	OTC derivative providers
OTC	Over the Counter
PA	Prudential Authority
SARB	South African Reserve Bank
TR	Trade Repository

1 INTRODUCTION AND BACKGROUND

1.1 In response to the global financial crisis that commenced in 2007, the G20 initiated a reform programme in 2009 to reduce the systemic risk associated with OTC derivative instruments[1]. As a G20 member, South Africa is committed to reform its OTC derivative market to reduce vulnerabilities and increase transparency. Reforms were implemented through the FMA and FMA Regulations[2].

1.2 The FMA defines a CCP as "a clearing house that interposes itself between counterparties to transactions in securities, becoming a buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts".[3] The G20's reform programme in relation to OTC derivative instruments included steps such as:

- clearing of OTC derivative instruments through a CCP;
- non-centrally cleared derivative contracts should be subject to higher capital requirements;
- all OTC derivative contracts should be reported to a TR; and
- all standardised OTC derivative instruments should be traded on exchange or electronic platforms, where appropriate.

1.3 As a member of the G20 and to comply with its commitment to the global OTC derivatives reform, South Africa began the process of developing the appropriate legislative framework. The proposed regulatory approach by the FSCA and the PA (collectively referred to as the Authorities) to the development of this framework is explained in the Roadmap below.

1.4 In order to facilitate the G20 central clearing obligation, matters that deal with CCPs and central clearing were introduced into law through the FSRA as consequential amendments to the FMA. In addition, the FMA Regulations were made under sections 5(1), 8(1)(a), 28(1)(a), 48(1)(a), 48(1A), 49A, 53(2A), 55(1)(a), 56A and 107 of the FMA to enhance the governance, operational and risk management requirements for market infrastructures, and to set requirements for CCPs. The FMA Regulations also enable the FSCA, with the concurrence of the PA, to set eligibility criteria for certain OTC derivatives contracts to be subject to mandatory clearing.

1.5 This Roadmap aims to highlight the steps that the Authorities endeavour to take, in order to ultimately be in a position to mandate central clearing.

2 A PHASED APPROACH TO THE DEVELOPMENT OF THE REGULATORY FRAMEWORK FOR CENTRAL CLEARING

2.1 South Africa has participated in domestic as well as international forums established to drive the global reforms to the OTC derivatives market. Since 2012, the South African regulatory landscape has been the subject of scrutiny and several measures have been implemented to reform the South African OTC derivatives market. In 2018, NT through

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1 "OTC derivative" means an unlisted derivative instrument that is executed, whether confirmed or not confirmed, excluding -
(a) foreign exchange spot contracts; and
(b) physically-settled commodity derivatives;
and "OTC derivative transaction" has a corresponding meaning;

2 http://www.treasury.gov.za/otc/Regulating%20over-the-counter%20(OTC)%20derivates%20markets%20in%20South%20Africa.pdf

3 The current FMA is under review and the financial markets legislation may change in future resultant in change to this Roadmap. It is of importance to note that this Roadmap is subject to change as the framework develops and evolves and is therefore a living document.

amendments to the FMA and associated FMA Regulations[4], established a framework that would enable the FSCA, with the concurrence of the PA to impose mandatory clearing obligations in respect of OTC derivative providers, CCPs and its clearing members[5].

2.2 Prior to the consequential amendments, the FMA provided mainly four categories of market infrastructures, namely exchanges, clearing houses, CSDs and TRs, but through the introduction of these amendments a definition of "central counterparty" that is an independent clearing house[6] was introduced into the FMA. Additionally, this enabled the establishment of a framework through which a CCP can be licensed[7], given the systemic functions that it performs.

2.3 The regulatory framework for licensing a CCP is intended to facilitate the establishment of a CCP aimed at promoting central clearing of certain OTC derivative transactions, to prepare for the time when the FSCA, with the concurrence of the PA, starts to mandate central clearing[8].

2.4 A phased approach is being undertaken to the development of the regulatory framework in respect of central clearing.

2.5 The development mentioned above, consists of three phases:

1. Establishing a licensing framework for local CCPs;

2. Developing an equivalence framework that will be accompanied by a licencing framework and an exemption framework for external CCPs and external TRs, and to establish external CSD links[9] that may want to operate in South Africa; and

3. Determining eligibility criteria for certain OTC derivative transactions to be subject to mandatory clearing.

2.6 The focus areas during these phases are illustrated below:

4 http://www.treasury.gov.za/twinpeaks/FMA%20Consequntial%20Amendments%20Response%20Note%20(27%2010%202015).pdf

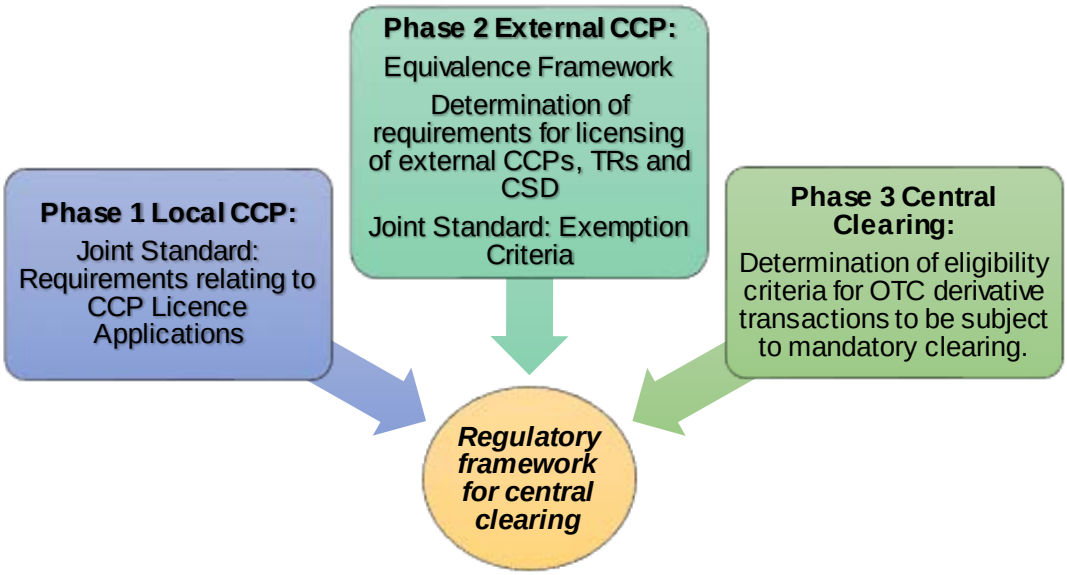
5 http://www.treasury.gov.za/otc/Regulating%20over-the-counter%20(OTC)%20derivates%20markets%20in%20South%20Africa.pdf

6 Section 47(1A) of the FMA.

7 Section 47 of the FMA sets out a high-level licensing framework for CCPs, section 47(3) of the FMA enables the Authorities to prescribe the licensing process.

8 Regulation 4 of the FMA Regulations, 2018.

9 The establishment of a link between a local central securities depository (CSD) and an external central securities depository (external CSD) that allows an external CSD to perform settlement services in terms of the local CSD's depository rules.



2.7 Phases 1 and 2 were initiated simultaneously to allow for the licensing of a local or external CCP in South Africa.[10] Phase 1 has since been finalised.[11]

2.8 It is important to note is that the Phase 2 and Phase 3 developments will be approached concurrently, and these developments will therefore run in parallel with one another.

2.9 On a high level, the phases consist of the following:

Phase 1: LOCAL CCP

- Finalisation of the Joint Standard on Requirements relating to the Licensing of a CCP; and
- Establishment of a licensing process to facilitate the licensing of a CCP.

Phase 2: EXTERNAL CCP

- Development of the Equivalence Framework in terms of which a foreign jurisdiction can be deemed to be equivalent to that of South Africa, enabling a foreign applicant to apply for an external CCP licence, TR licence or to establish a CSD link.
- Determination of Requirements for licensing of external CCPs and TRs, and establishing CSD links.
- Developing a Joint Standard, setting criteria for the exemption from a provision in the FMA, or from the licensing requirements in the FMA for a CCP licence, TR licence or CSD link.

Phase 3: CENTRAL CLEARING

- Formulating eligibility criteria for central clearing in concurrence with the PA.
- The Authority, with the concurrence of the PA, will in accordance with Regulation 4 of the FMA Regulations need to formulate eligibility criteria to mandate central clearing.
- This will be done through continious engagement with Industry and further research.

[10] As well as for external TR's and the establishment of an external CSD link.
[11] The Authorities, on 31 March 2021, published Joint Standard 1 of 2021 - Requirements relating to Central Counterparty Licence Applications which came into effect on the date of publication.

3 PHASE 1: LICENSING REQUIREMENTS FOR PERFORMING THE FUNCTIONS OF A CCP IN SA

3.1 In order to give effect to this phase, it was necessary to develop a licensing framework for CCPs that supports the application of section 47 of the FMA. Section 47 of the FMA sets out a high-level licensing framework for CCPs and section 47(3) of the FMA requires that an application for a CCP licence must be made in the manner, and contain the information, as prescribed by the Authorities. Accordingly, the Authorities embarked on a process to, under section 107 of the FSRA and sections 47(3)(a) and 47(3)(c)(ii) of the FMA, developed a joint standard setting out requirements relating to CCP licence applications in order to prescribe the manner and information required for a CCP licence application (Joint Standard).[12]

3.2 The Authorities published the draft joint standard on 5 December 2019 for public comment in accordance with the FSRA and undertook the public consultation process as required in terms of section 98 of the FSRA. After considering all comments received, non-material changes and improvements were made to the joint standard.

3.3 Section 103(1) of the FSRA provides that before a standard may be made, it must be submitted, together with the documents referred to in section 98(1)(a), for a period of 30 days while Parliament is in session. The draft joint standard and supporting documents were tabled in Parliament on 12 November 2020 and the required 30-day period before Parliament has since lapsed.

3.4 The Authorities published the final joint standard on 31 March 2021, with an immediate effective date[13]. Although CCP licence applications referred to in the joint standard must be submitted to both the FSCA and PA, in different formats,[14] it is envisaged that applicants should to a large extent be able to use and submit the same information for their respective submissions. In addition, the Authorities will ensure the respective processes for considering CCP licence applications are aligned and appropriately coordinated.

3.5 It must be noted that section 110 of the FMA sets out the transitional arrangements for a clearing house performing the functions of a CCP to transition into being licensed as a CCP. In terms of section 110(6) of the FMA, a clearing house performing the functions of a CCP must -

- until 31 December 2021, be licensed as either an associated clearing house or an independent clearing house, and be approved by the Authorities and the SARB to perform the functions of a CCP; and
- as of 1 January 2022, be licensed as both an independent clearing house and a CCP.

3.6 A clearing house that performs the functions of a CCP is therefore also subject to the process outlined above, bearing in mind that certain transitional arrangements exist.

4 PHASE 2: ENABLING PARTICIPATION IN THE MARKET BY ENTITIES FROM FOREIGN JURISDICTIONS

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12 The Authorities, on 31 March 2021, published Joint Standard 1 of 2021 - Requirements relating to Central Counterparty Licence Applications which came into effect on the date of publication.

13 https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Notices.aspx

14 For example, on 22 April 2021, the FSCA determined the form and manner in which a CCP licence application referred to in the Joint Standard must be submitted to the FSCA.

4.1 In terms of the FMA, an external TR or external CCP may apply to be licensed as such or apply for an exemption from the provisions of a section of the FMA, including the requirement to be licensed. Such application for a licence must be made in the manner, and contain information, determined by the FSCA.[15] As a prerequisite for an external TR or external CCP to be licensed, or for an external market infrastructure to apply for an exemption from the provisions of a section of the FMA, or for an external CSD to be a participant in a domestic CSD, such external market infrastructure must be based in an equivalent jurisdiction.[16]

4.2 In addition, section 6(3)(m)(iii) of the FMA provides that the Authorities may with the concurrence of the SARB, under specific circumstances, exempt external market infrastructures from the provisions of a section of the FMA, provided the applicant complies with any criteria prescribed in joint standards for the exemption of such persons.

4.3 In the above context, the main facets that the Authorities needed to develop are the following:

- providing clarity on how jurisdictional equivalence will be recognised;
- enabling external CCP and external TR licence applications by determining the form and manner in which such applications must be made; and
- setting the criteria for exemption for external market infrastructures from the provisions of a section of the FMA as contemplated in section 6(3)(m)(iii) of the FMA.

4.4 These facets are discussed in more detail below.

4.4.1 Recognition of equivalent jurisdictions and applications by external CCPs, TRs and establishment of CSD links:

(a) The cross-border nature of the securities markets requires an appropriate regulatory framework that promotes the efficiency and competitiveness of the South African financial markets (as per the objects of the FMA), without undermining financial stability. In light of this, a framework is being developed to provide for the recognition of regulatory frameworks from an equivalent jurisdiction[17], applicable to external CCPs, external TRs and the establishment of external CSD links[18] (external participants) and to allow external participants to provide services and perform functions and duties prescribed in the FMA.

(b) The FMA empowers the establishment of an equivalence framework by enabling the FSCA, with the concurrence of the SARB and the PA, to determine that the regulatory framework of a specified foreign country is equivalent to the regulatory framework established in terms of a financial sector law in the Republic, if the legislative framework in the foreign country meets the objectives of a financial sector law in the Republic. The foreign jurisdiction's regulatory framework needs to meet the G20 requirements of central clearing and reporting, in South Africa.

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15 Refer to section 49A(3)(a) and 56A(3)(a) of the FMA.

16 See for example sections 49A(2) and 56A(2) of the FMA.

17 Section 6A of the FMA provides for the determination by the FSCA, with the concurrence of the PA and SARB, that the regulatory framework of a specified foreign country is equivalent (an "equivalent jurisdiction") to the regulatory framework established in terms of a financial sector law, if the legislative and regulatory framework established in that foreign country meets the objectives of the financial sector law.

18 The establishment of a link between a local central securities depository (CSD) and an external central securities depository (external CSD) that allows an external CSD to perform settlement services in terms of the local CSD's depository rules.

(c) On 4 December 2019, the FSCA, with the concurrence of the PA and the SARB published for public comment a draft equivalence framework for external CCPs and TRs, and for the purposes of establishing external CSD links. In terms of the assessment of equivalence it is proposed that the FSCA, with the concurrence of the PA and the SARB, will, amongst others, take into account the requirements in the FMA for external applicants relative to those requirements imposed in the foreign jurisdiction and determine whether they are appropriately corresponding and sufficiently similar to ensure that the objects of the FMA are met. On application for recognition as an equivalent jurisdiction, the FSCA, with the concurrence of the PA and the SARB, can take a risk-based approach to determine the extent that reliance is placed on the foreign jurisdiction's regulatory framework. Additional conditions on a recognised external applicant may also be imposed. For example, the FSCA may require that the external applicant provide confirmation/evidence of licensing in a particular jurisdiction, supervisory reports by the supervisory authority from the foreign jurisdiction and any other information which demonstrates compliance with the laws in the foreign country where it is authorised.

(d) The licensing frameworks for external CCPs and TRs are intrinsically linked to the equivalence framework established within the FMA.[19] For this reason, and in order to enable external CCP and external TR licence applications, the FSCA, in concurrence with the PA, published a draft Determination setting out requirements relating to external CCP or external TR licence applications for public comment. The draft Determination was published together with the Equivalence Framework on 4 December 2019.[20]

(e) Comments from the public consultation process relating to the equivalence framework and the licensing framework for external CCPs and external TRs included the following:

- questions on the process to be followed in determining the equivalence of an applicant jurisdiction;
- concerns around the potential duplication of compliance by an external applicant wanting to apply for a TR or CCP licence or a CSD link;
- the determination requirements for external applicants; and
- the possibility of being exempted from some of the requirements in the FMA.

(f) The draft frameworks have since been revised taking into consideration the comments received. The concerns raised around the potential duplication of compliance by an external applicant wanting to apply for a TR or CCP licence or a CSD link resulted in the Authorities revisiting whether or not the frameworks can operate without an exemption framework (as discussed in 4.4.2 below) supporting the aforementioned. The Authorities concluded that in the absence of an appropriate exemption criteria framework, the concerns surrounding duplication of requirements and the like cannot be addressed, as there would be no mechanism that could be used to exclude specific local requirements in a situation where a foreign equivalent jurisdiction contains similar (or even more robust) requirements. For this reason, the next critical step in the process is to develop and publish for public comment a joint standard setting out the draft exemption criteria framework (discussed in more detail below). Revised versions of the draft equivalence framework and draft determination will be

19 See sections 6A, 6B, 6C, 49A(2) and 56A(2) of the FMA.

20 https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Capital-Markets.aspx

published for another round of public consultation, together with the draft joint standard setting out the exemption criteria.

4.4.2 The exemption criteria framework

(a) The FMA allows for an external market infrastructure to be exempt from a provision of the FMA, if the Authorities are satisfied, among other things, that the external market infrastructure complies with any criteria as prescribed in joint standards for the exemption of such entities.[21] As explained above, the licensing or exemption of an external CCP must be preceded by an entity being from an equivalent jurisdiction in terms of an equivalence assessment as contemplated in the FMA. Section 6A(4) of the FMA prescribes that such an equivalence assessment of the regulatory framework of a foreign country must be undertaken by the FSCA, with the concurrence of the SARB and the PA, and must take specific factors into account as set out in (a) – (d) of said section. The FMA further allows an external CCP to apply for an exemption from the FMA provided such person complies with any criteria as prescribed in joint standards regarding such exemptions. Accordingly, for an external CCP to be licensed or exempt from the provisions of the FMA, such an entity must be from a recognised equivalent jurisdiction based on an equivalence determination as contemplated in the FMA.

(b) The FMA therefore enables the use of an exemption, where justified, to exempt an external applicant from local requirements, where there are appropriate similar requirements in the relevant equivalent jurisdiction. To ensure a consistent approach to providing such exemptions, the Authorities may prescribe, through a joint standard, the criteria that must be met when deciding whether or not to exempt such external applicants.

(c) As such, the Authorities are currently working on developing an exemption criteria framework that will be promulgated by way of a joint standard. The joint standard setting out the criteria for exemption from a provision in the FMA to be licensed as an external CCP or external TR will be published for public comment, alongside the revised versions of the framework for the recognition of an equivalent jurisdiction, and the determination of the licencing requirements applicable to an external applicant applying for a CCP licence. The exemption framework will set out the criteria that would be applicable if an external applicant applies for a CCP licence or TR licence and qualifies for an exemption from the requirements of the FMA.

5 PHASE 3: MANDATING CENTRAL CLEARING OF CERTAIN OTC DERIVATIVE TRANSACTIONS

5.1 Regulation 4(1) of the FMA Regulations empowers the FSCA, with the concurrence of the PA, to determine eligibility criteria for OTC derivative transactions to be subject to mandatory central clearing, and to develop additional mandatory clearing requirements

[21] Section 6(3)(m) of the FMA provides that the FSCA may (with concurrence of the SARB and the PA) exempt an external market infrastructure from the provisions of the FMA if satisfied that the entity -

- it is based in an equivalent jurisdiction in terms of section 6A and is authorised by the supervisory authority of such jurisdiction;
- complies with any criteria prescribed in joint standards for the exemption of such persons; and
- undertakes to cooperate and share information with the Authorities and the SARB to assist with the performance of functions and the exercise of powers afforded in law.

applicable to other categories of OTC derivative transactions, as may be necessary.[22] In addition, Regulation 4(2) of the FMA Regulations provides that an authorised OTC derivative provider must ensure that an OTC derivative transaction determined by the FSCA in terms of the FMA Regulations as eligible for clearing, is cleared through a licensed central counterparty or a licensed external central counterparty in the manner prescribed by the FSCA.[23],[24]

5.2 While progress has been made in South Africa in terms of finalising, *inter alia*, the margin requirements for non-centrally cleared OTC derivatives[25], an equivalence framework for the recognition of external CCPs and external TRs[26], and a framework for trade reporting, all elements of the G20 objectives remain to be fully implemented.

5.3 According to a post-implementation evaluation report[27] of the effects of the G20 financial regulatory reforms published[28] by IOSCO and the FSB, the incentive to centrally clear include, among other things, higher margin requirements for uncleared trades, the BCBS capital standards for derivatives counterparty credit risk, and the BCBS capital standards for exposures to CCPs. It is clear from the evaluation report that imposing clearing mandates and margin requirements for uncleared derivatives are key reforms in driving regulatory incentives to centrally clear. The costs and margin requirements for non-centrally cleared OTC derivative transactions will increase to the extent that it drives the incentive to centrally clear.

5.4 A technical note that was compiled by the IMF[29] on the reforms in the OTC derivatives market in South Africa, and an independent research analysis[30] exploring OTC derivatives and central clearing for South African market participants commissioned by BASA both indicated that the South African OTC market consists predominantly of interest rate derivatives. Further research and industry engagement are necessary to determine which product class would be viable for central clearing in a South African market context. The South African OTC market, including the portion identified in a study commissioned by NT as viable for central clearing, is dominated by interest rate derivatives.

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22 Regulation 4 of the FMA Regulations, stipulates the following in respect of central clearing of OTC derivative transactions:
"(1) The Authority may, with the concurrence of the Prudential Authority-
(a) determine eligibility criteria for OTC derivative transactions to be subject to mandatory clearing; and
(b) conduct assessments into other categories of OTC derivative transactions upon which additional mandatory clearing requirements could be based.
(2) An authorised OTC derivative provider must ensure that an OTC derivative transaction determined by the Authority in terms of sub-regulation (1) as eligible for clearing, is cleared through a licensed central counterparty or a licensed external central counterparty in the manner prescribed by the Authority.
(3) In making a determination in terms of sub-regulation (1), the Authority must have regard to-
(a) the suitability of the OTC derivative transaction for clearing, and other relevant considerations, such as the level of contractual and operational standardisation, volume and liquidity of the relevant OTC derivative transactions;
(b) the effect on the efficiency, integrity and stability of the South African financial system;
(c) the interconnectedness between counterparties to the relevant classes of OTC derivative transactions and the impact on the levels of counterparty credit risk;
(d) the resources and suitability of the central counterparty available to clear the relevant OTC derivative transactions;
(e) the impact on the competitiveness of the South African market of imposing a clearing requirement in relation to the relevant OTC derivative transactions; and
(f) any other matters that the Authority considers relevant."

23 The FSCA will start with the technical work in developing the eligibility criteria for central clearing in parallel with finalising the equivalence framework and the joint exemption framework as stipulated in phase 2.

24 With the concurrence of the PA.

25 Joint Standard 2 of 2020 which can be found on the website of the FSCA and the PA respectively.

26 https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Capital-Markets

27 A post-implementation evaluation of the effects of the G20 financial regulatory reforms.

28 Incentives to centrally clear OTC derivatives - A post-implementation evaluation of the effects of the G20 financial regulatory reforms (7 August 2018).

29 Published in March 2015.

30 Published in August 2020.

5.5 There is a further opportunity (based on international precedent) within the policy design of the clearing mandate to incorporate exemptions from central clearing for certain types of entities (e.g. pension funds) or to set a notional threshold value below which certain smaller derivative providers can be exempted from the central clearing mandate.

5.6 However, more research and industry engagement will have to be undertaken to develop suitable eligibility criteria as outlined in the FMA Regulations. In exploring whether to make a determination in accordance with Regulation 4(1), the FSCA will, with the concurrence of the PA, carefully consider and consult on at least the following aspects of the potential eligibility criteria for OTC derivative transactions to be subject to mandatory clearing: –

- the suitability of the relevant OTC derivative transactions for clearing, and in particular, the types of OTC derivative transactions that will or should be subject to centralised clearing;
- the potential or expected effect that the determination may have on the efficiency, integrity and stability of the South African financial system;
- interconnectedness between counterparties;
- impact on the levels of counterparty credit risk;
- resources and suitability of a CCP available to clear (local or external); and
- impact on the competitiveness of the South African market.

5.7 The technical work in respect of the development of the eligibility criteria will commence and run parallel with the finalisation of the work described in phase 2.[31] Once the technical work is concluded and an initial draft of the eligibility criteria has been developed, the Authorities will follow the normal notice, public consultation and comment process before the final eligibility criteria is made. Therefore, the first step, after the technical work has been concluded, will be to publish the draft eligibility criteria for public comment. Continued engagement and consultation[32] with industry will be undertaken to ensure the development of a balanced and clear criteria for mandatory clearing.

5.8 It is important to note that the determination of the eligibility criteria and the mandating of central clearing will be finalised shortly after the finalisation of the equivalence framework and the joint exemption framework for external infrastructures to provide services in South Africa.[33]

6 NEXT STEPS AND TIMELINES

6.1 Licensing framework for a CCP

6.1.1 Phase 1 as described in paragraph 3 above has been finalised with the final joint standard setting out requirements relating to CCP licence applications being published on 31 March 2021. In addition, on 22 April 2021, the FSCA determined the form and manner in which a CCP licence application referred to in the joint standard must be

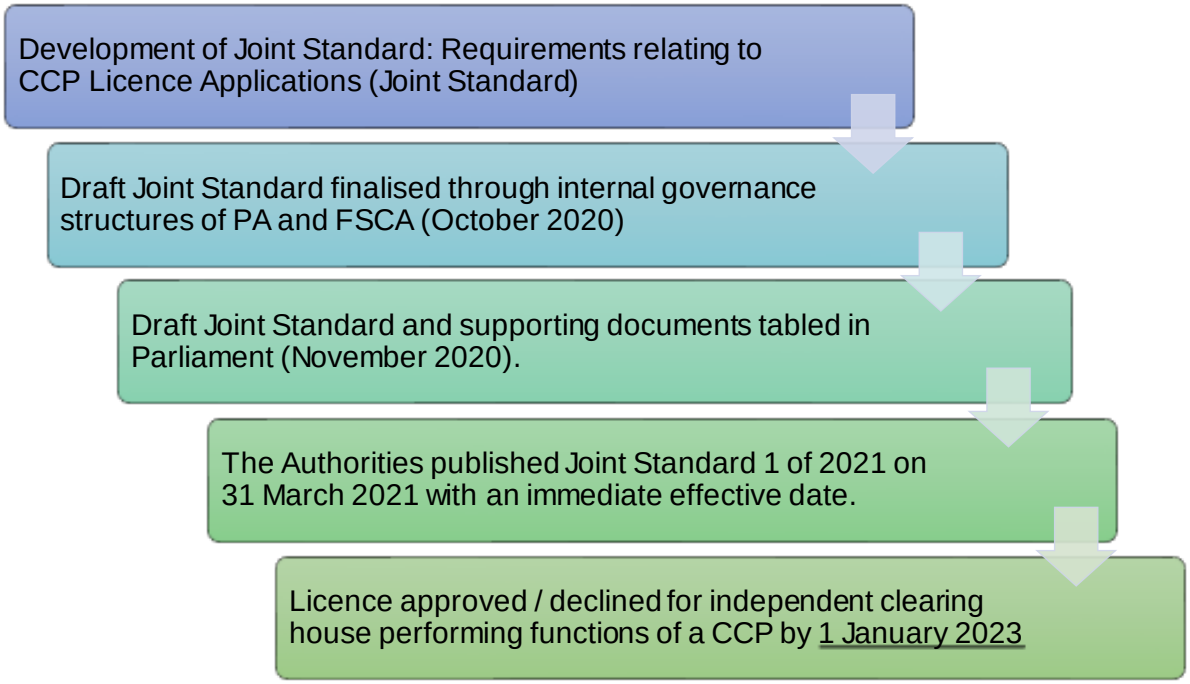
[31] Enabling participation in the market by external entities from foreign jurisdictions.

[32] Consultation may be both formal and informal. In terms of formal consultation on development of the relevant instruments any processes that are set out in the FMA or FSRA, as applicable, will be followed. Informal consultation may also be undertaken with the industry players to ensure development of an appropriate regulatory framework for mandatory clearing.

[33] Regulation 4(2) stipulates that an authorised OTC derivative provider must ensure that an OTC derivative transaction determined by the Authority in terms of sub-regulation (1) as eligible for clearing, is cleared through a licensed central counterparty or a licensed external central counterparty in the manner prescribed by the Authority.

submitted to the FSCA. CCP licence applications referred to in the joint standard must therefore be submitted to both the FSCA and PA in different formats, but as explained in paragraph 3.4 above, applicants should to a large extent be able to use and submit the same information for the respective submissions. The Authorities will also align and appropriately coordinate the consideration of a CCP licence application through their respective processes. To conclude on Phase 1, the Authorities will now focus on ensuring that any licence application received for a clearing house to perform the functions of a CCP, received in terms of the joint standard, is finalised as soon as possible. However, as it was not viable to process the application before 1 January 2022 as determined in section 110(6) of the FMA and, as such, the Authority extended this timeline in terms of section 279 of the FSRA to 1 January 2023[34] to provide for sufficient time to process the licence application.[35]

6.1.2 Timeline for Phase 1 developments:



6.2 Equivalence framework: determination requirements and exemption for foreign entities

6.2.1 As discussed above, the Authorities are currently developing a joint standard setting out exemption criteria for an external applicant from an equivalent jurisdiction applying for a CCP or TR license in South Africa. The joint exemption framework will enable an external applicant to apply for an exemption from the licensing requirements in the FMA or from a provision in the FMA. The exemption assessment will be done on a case-by-case basis taking into account the equivalence of the applicant jurisdiction, and the nature and complexity of the services the applicant is proposing to provide in South Africa.

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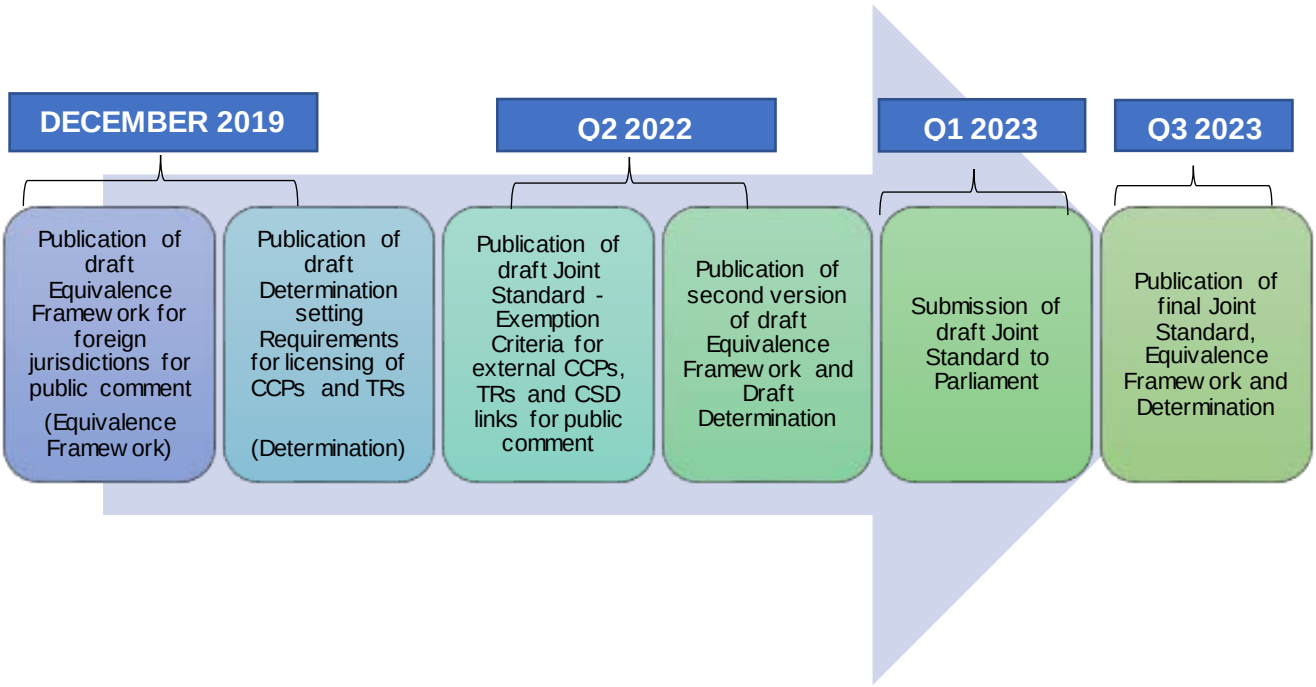
34 FSCA FM Notice 4 of 2021 - Notice of extension of period referred to in Section 110(6) of the Financial Markets Act was published on 10 December 2021, available at : https://www.fsca.co.za/Notices/FSCA%20FM%20Notice%204%20of%202021.pdf

35 Section 110(6) of the FMA:
"Despite any other provision of this Act, a clearing house performing the functions of a central counterparty must (a) comply with any requirements imposed by regulations or standards, and must—
(b) as of 1 January 2022, be licensed as both an independent clearing house and a central counterparty."

6.2.2 The next step is to finalise the exemption framework and to publish the draft exemption framework together with the upcoming versions of the draft equivalence framework and determination requirements for public comment. Following the public consultation process, it is envisaged that the draft joint standards will be submitted to Parliament as required in terms of section 103 of the FSRA. As soon as the 30-day Parliamentary period referred to in section 103(1) of the FSRA has elapsed, the Authorities will publish the final joint standards, Equivalence Framework and Determination for external CCP and TR licence applications.

Below are the envisaged timelines for Phase 2 developments:



6.3 Determination of Eligibility Criteria for central clearing

6.3.1 The FSCA, with the concurrence of the PA, will start with the process as outlined in Regulation 4 of the FMA Regulations to determine the eligibility criteria to mandate central clearing of certain OTC derivative transactions. The process of determining the eligibility criteria has not started yet. While as mentioned above in paragraphs 5.4 and 5.6 some research and engagement with stakeholders has taken place, further extensive research and engagement with industry and relevant stakeholders is needed. This research and the necessary engagements will commence concurrently to the developments of the equivalence framework in phase 2. The FSCA will need to thoroughly assess the factors listed in Regulation 4(3) of the FMA Regulations to determine an applicable and effective criteria for mandating central clearing of certain OTC derivative transactions in South Africa. The next step is for the FSCA and PA to engage industry players and other stakeholders on the factors to consider when determining the eligibility criteria for the central clearing of certain OTC derivative transactions.

6.3.2 Only on the completion of phase 2 will the FSCA, with the concurrence of the PA, be in a position to mandate central clearing. An authorised OTC derivative provider will be required to ensure that all OTC derivative transactions determined by the Authority as eligible for clearing, is cleared through a licensed central counterparty or a licensed external central counterparty.

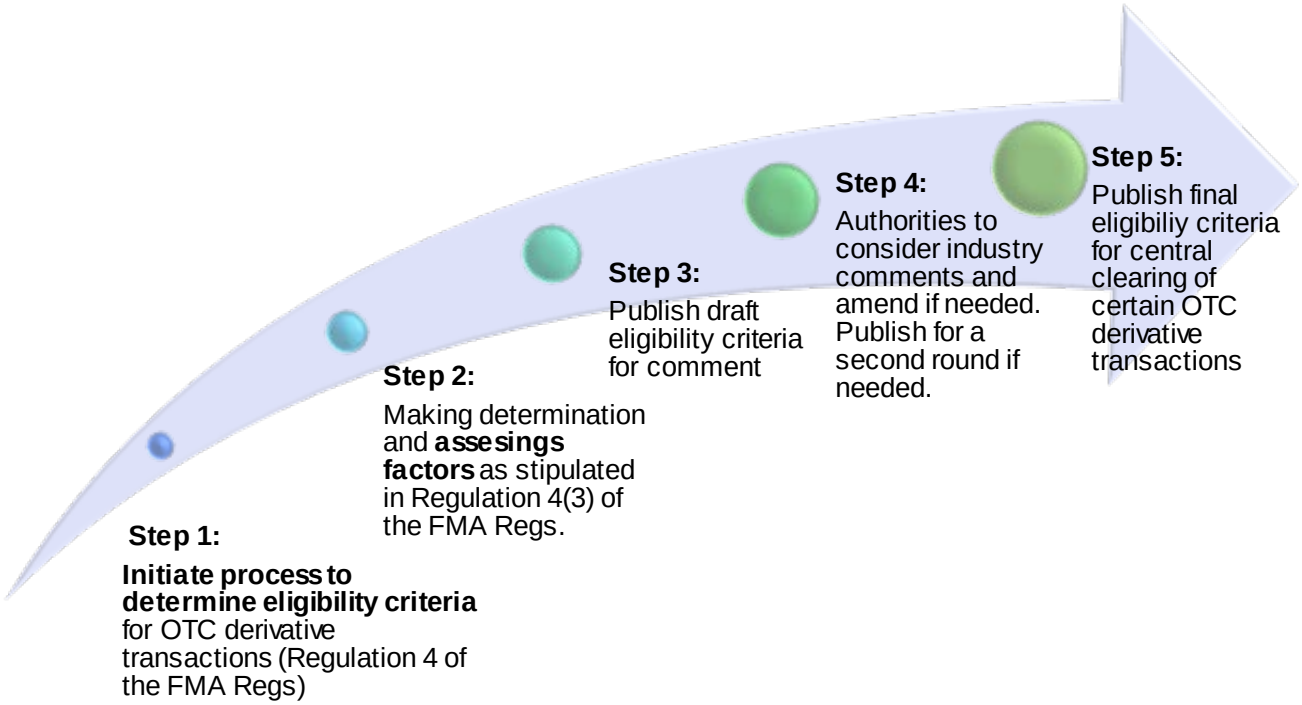
6.3.3 It is important to note that it is not feasible nor practical at this juncture to propose any definitive timelines for Phase 3, except to indicate that:

(i) the technical work in respect of the development of an eligibility criteria will commence in parallel with phase 2; and

(ii) Phase 3 is envisaged to be finalised shortly after the finalisation of Phase 2.

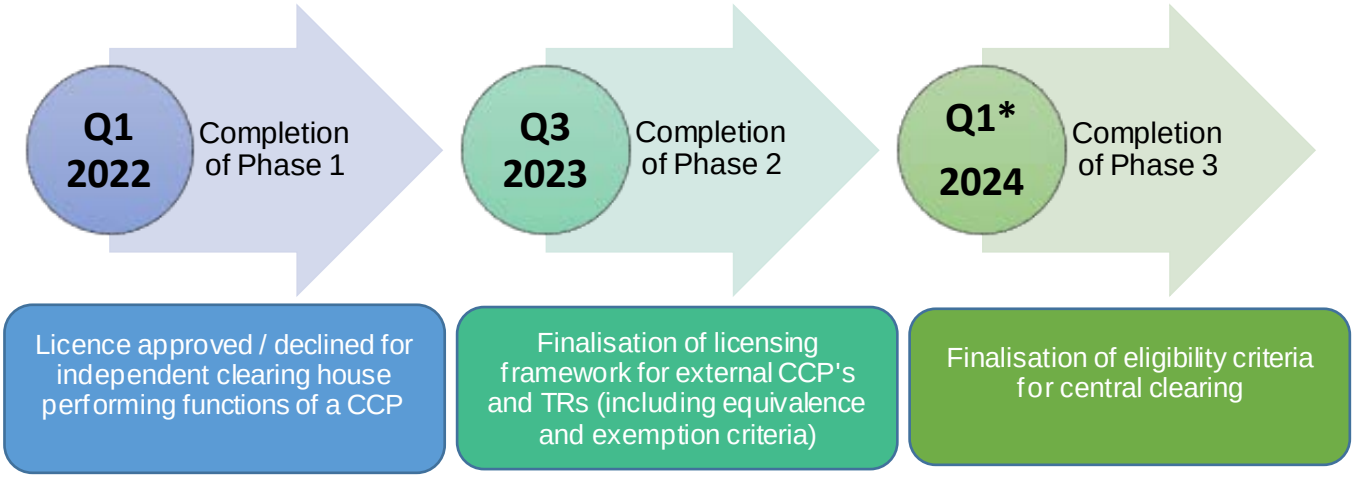
6.3.4 The Authorities will communicate more tangible dates to stakeholders at a later stage, as the development of the framework progresses. It is, however, estimated that the eligibility framework will be finalised towards the end of 2023 or beginning of 2024.

Below is an illustration with proposed steps that are envisaged for Phase 3.



High-level timeline for completion of abovementioned Phases[36]

[36] Initial estimation.



6.4 Monitoring implementation of the Joint Roadmap and ongoing updates

The Authorities will monitor the implementation of the Joint Roadmap on an ongoing basis and publish updates on their websites for the benefit of the market, on the status of implementation as the process unfolds and evolves, including where –

- substantial progress is made (e.g. where a phase has been completed);
- significant changes are made to the process (e.g. if a different approach will be adopted in respect of a specific phase); and/or
- new substantial information becomes available (e.g. where more clarity has been obtained, for example, in relation to the timelines for Phase 3).

6.5 Consultation

The Authorities recognise the critical need to ensure robust consultation takes place in developing this framework and undertakes to ensure that appropriate consultation takes place during the development of each Phase.

Apart from the formal consultation process required in terms of Chapter 7 of the FSRA, the Authorities will also consider informal targeted consultation initiatives, where deemed appropriate.