

JOINT COMMUNICATION 3 OF 2023

Notice of invitation to comment – draft Joint Standard [-] of 2023: Criteria for the exemption of an external central counterparty or external trade repository from the provisions of the Financial Markets Act.

The Financial Sector Conduct Authority (FSCA) and the Prudential Authority (PA) (collectively referred to as the Authorities) today published the following documentation for formal public consultation:

- (a) Annexure A: draft Joint Standard [-] of 2023: Criteria for the exemption of an external central counterparty (CCP) or external trade repository (TR) from a provision of the Financial Markets Act (draft Joint Standard) proposed to be made in terms of section 6(3)(m)(iii)(bb) of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA);
- (b) Annexure B: a supporting draft Statement of need, expected impact and intended operation of the draft Joint Standard (Statement of need); and
- (c) Annexure C: a comment template.

The Authorities have developed the draft Joint Standard in order to set out criteria that must be met by an external CCP¹ or an external TR² from a foreign jurisdiction whose regulatory framework has been determined as equivalent to the regulatory framework³ set out in the FMA in instances where such an external CCP or TR wants to be exempted from a provision of the FMA. Such applications will allow exemptions from complying with the requirements to be licensed in terms of the FMA.

The draft Joint Standard is intended to operationalise Phase 2 of the *Joint Roadmap for the development of a regulatory framework for central clearing in South Africa*⁴ (Joint Roadmap). Phase 2 of the development of the regulatory framework for central clearing comprises developing an equivalence framework that will be accompanied by a (1) licensing framework and (2) an exemption framework for external CCPs and external TRs that may want to operate in South Africa. Commentators are thus urged to consider this draft Joint Standard together with the draft Equivalence framework for financial markets published by the FSCA on 26 September 2023⁵.

Comments on the draft Joint Standard and draft Statement of need must be made using the comment template and submitted via email to FSCA.RFDStandards@fsca.co.za for the attention

¹ As defined in the Financial Markets Act, 2012.

² As defined in the Financial Markets Act, 2012.

³ Section 6A of the FMA provides that: “[o]n application by an interested party, the Authority, with the concurrence of the South African Reserve Bank and the Prudential Authority, may determine that the regulatory framework of a specified foreign country is equivalent (an “equivalent jurisdiction”) to the regulatory framework established in terms of financial sector law, if the legislative and regulatory framework established in that foreign country meets the objectives of the financial sector law”. The draft Equivalence Framework published by the FSCA on 26 September 2023 sets out the process by which an interested party may submit such application.

⁴ Accessible at

<https://www.fsca.co.za/Regulatory%20Frameworks/Temp/Joint%20Roadmap%20for%20the%20development%20of%20a%20regulatory%20framework%20for%20Central%20Clearing%20in%20SA.pdf>

⁵ Accessible on the FSCA website at

[https://www.fsca.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%202024%20of%202023%20\(FM%20%20CRA\).pdf](https://www.fsca.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%202024%20of%202023%20(FM%20%20CRA).pdf)

of Ms Talita Mshweshwe and PA-Standards@resbank.co.za for the attention of Ms Videshree Rooplall.

Comments are due on or before 11 December 2023. Any inquiries on this Joint Standard may also be sent to the abovementioned e-mail addresses.



Unathi Kamlana
Commissioner
FINANCIAL SECTOR CONDUCT AUTHORITY

DATE: 30/10/2023

Fundi Tshazibana
Chief Executive Officer
PRUDENTIAL AUTHORITY

DATE: