



Financial Sector  
Conduct Authority



South African Reserve Bank  
**Prudential Authority**

## FINANCIAL SECTOR REGULATION ACT, 2017

### FINANCIAL MARKETS ACT, 2012

#### **NOTICE REGARDING PUBLICATION OF 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) (Authorities), hereby invite, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (Financial Sector Regulation Act), submissions on the 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, that is proposed to be made in terms of section 107 of the Financial Sector Regulation Act read with section 6(3)(m) of the Financial Markets Act, 2012 (Act No. 19 of 2012) as set out in the Schedule.

The draft Joint Standard, together with a statement supporting the draft Joint Standard, is available on the respective websites of the Authorities.

Submissions in respect of the draft Joint Standard must be submitted in writing, using the submission template available on the websites of the Authorities, on or before 11 December 2023 to the FSCA at [FSCA.RFDStandards@fsc.co.za](mailto:FSCA.RFDStandards@fsc.co.za) and PA at [PA-Standards@resbank.co.za](mailto:PA-Standards@resbank.co.za).

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', is placed above the name and title of the Commissioner.

**Unathi Kamlana**  
Commissioner  
FINANCIAL SECTOR CONDUCT AUTHORITY

**Fundi Tshazibana**  
Chief Executive Officer  
PRUDENTIAL AUTHORITY

**Date of publication:** 31 October 2023

## SCHEDULE

### JOINT STANDARD [-] OF 2023

#### CRITERIA FOR EXEMPTION OF AN EXTERNAL CENTRAL COUNTERPARTY OR EXTERNAL TRADE REPOSITORY FROM THE PROVISIONS OF THE FINANCIAL MARKETS ACT

##### Table of contents

|   |   |
|---|---|
| 1. Legislative authority .....  | 2 |
| 2. Definitions .....  | 2 |
| 3. Application .....  | 3 |
| 4. Criteria for exemption as contemplated in section 6(3)(m)(iii)(bb) ..... | 3 |
| 5. Short title and commencement .....                                       | 3 |

#### 1. Legislative authority

This Joint Standard is made under section 107 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) and section 6(3)(m)(iii)(bb) of the Financial Markets Act, 2012 (Act No. 19 of 2012).

#### 2. Definitions and interpretation

In this Joint Standard, “**the Act**” means the Financial Markets Act, 2012 (Act No. 19 of 2012) and any word or expression to which a meaning has been assigned in the Act or the Financial Markets Act Regulations bears the meaning so assigned to it unless the context indicates otherwise, and

“**applicant**” means an external central counterparty or external trade repository that submits an application to the Authorities for the granting of an exemption in terms of section 6(3)(m) of the Act;

“**Authorities**” means the Financial Sector Conduct Authority and the Prudential Authority;

“**equivalent jurisdiction**” means a jurisdiction that has been determined as equivalent in accordance with section 6A(1) of the Act;

“**Financial Sector Conduct Authority**” means the authority established in terms of section 56 of the Financial Sector Regulation Act; and

“**Prudential Authority**” means the authority established in terms of section 32 of the Financial Sector Regulation Act.

### **3. Application**

This Joint Standard applies to an external central counterparty or external trade repository that submits an application to the Authorities for an exemption in terms of section 6(3)(m) of the Act.

#### **4. Criteria for exemption as contemplated in section 6(3)(m)(iii)(bb)**

- (1) The Authorities hereby prescribe, as contemplated in section 6(3)(m)(iii)(bb) of the Act, the following criteria for purposes of the exemption of an external central counterparty or external trade repository from the provisions of a section of the Act:
  - (a) An application for exemption in terms of section 6(3)(m) of the Act must be made in the form and manner, and contain the information, determined by the Authorities and published on their respective websites;
  - (b) an applicant must, at the request of the Authorities, provide the Authorities with any supplementary information as may be required for the Authorities to consider the application or renew an exemption previously granted;
  - (c) an applicant must provide written confirmation of its license/authorisation as a central counterparty or trade repository as the case may be, in the equivalent jurisdiction;
  - (d) an applicant must provide copies of reports and findings issued by the supervisory authority in the equivalent jurisdiction as required by the Authorities;
  - (e) an applicant must be in good standing with the supervisory authority of the relevant equivalent jurisdiction;
  - (f) an applicant must show observance of the Bank for International Settlements and the International Organization of Securities Commissions' Principles for Financial Market Infrastructures 2012 and any subsequent updates, and provide findings of the latest assessment by its supervisory authority; and
  - (g) an applicant must report such information to the Authorities as may be determined by the Authorities on their respective websites, including the form and manner of such reporting.
- (2) The Authorities will only grant an exemption if they are satisfied that there are sufficient safeguards in place in the relevant equivalent jurisdiction's regulatory framework that justifies an exemption from the provisions of a section of the Act that forms the basis of the exemption application; and
- (3) The Authorities may amend or withdraw an exemption that has been granted to an external central counterparty or external trade repository at any given time when it appears to the Authorities, on the basis of available information, that the external central counterparty or external trade repository is failing, or has failed to satisfy the criteria applicable for the granting of an exemption as stipulated in section 6(3)(m) of the Act or this Joint Standard.
- (4) The criteria in subparagraphs (1) to (3) apply in addition to the criteria contemplated in section 6(3)(m)(i), section 6(3)(m)(ii), and section 6(3)(m)(iii)(aa) and (cc) of the Act.

## 5. Short title and commencement

This Joint Standard is called Criteria for the exemption of an external Central counterparty or external trade repository from the provisions of the Financial Markets Act, (2023), and comes into effect on the date of publication.

| Version number | Commencement date |
|----------------|-------------------|
| 1              | [-] [-] 202[-]    |

DRAFT