FSCA

Financial Sector
Conduct Authority

SOUTH AFRICAN RESERVE BANK
Prudential Authority

Joint Standard 1 of 2025: Criteria for the exemption of a central counterparty or trade repository from the provisions of the FMA

Consultation Report

August 2025

1. Purpose

1.1 Section 104 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) requires that with each regulatory instrument, the maker must publish a consultation report which must include:

(a) a general account of the issues raised in the submissions made during the consultation; and

(b) a response to the issues raised in the submissions.

1.2 The purpose of this document is to set out, as required in terms of section 104 of the FSR Act, a report on the consultation process undertaken in respect of the Joint Standard 1 of 2025 – Criteria for the exemption of an external central counterparty (CCP) or trade repository (TR) from the provisions of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA) (hereinafter referred to as the Joint Standard).

2. Summary of the consultation process and general account of issues raised

2.1 On 1 November 2023, the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) (hereinafter referred to as the Authorities) published for public consultation, a draft notice for the Joint Standard. Section 98(2) of the FSR Act requires that the comment period must be at least six weeks, and comments were, therefore, due on or before 11 December 2023. The following documents were published as part of the consultation process:

(a) Draft Notice containing the draft Joint Standard

(b) Statement of need for, intended operation and expected impact of the draft Joint Standard (Statement of Need); and

(c) Comment template.

2.2 The Authorities received over 30 comments from 3 respondents. All comments received as part of the public consultation process were considered and are set out in Section B, C and D below, together with the Authorities' response to the comments received. Following the public consultation process, no changes were made to the substantive provisions in the draft Joint Standard as the public comments received predominantly related to the policy principle of allowing for CCPs and TRs from foreign jurisdictions to operate in the South African market. It is important to note that allowing for the equivalence recognition of foreign jurisdictions to that of South Africa and for exemption from provisions from the FMA is enabled in the FMA, and not through this Joint Standard. Detailed responses in this regard are set out below.

3. General account of the issues raised in the submissions made during the consultation

3.1 The main issues raised during the public consultation were as follows:

No	Main issue	Response of the Authorities
1.	There was only one comment related to the content of the Joint Standard, while the majority	As is explained in detail in paragraph 2 of the Statement of Need, South Africa as member of the G20, committed to upholding high standards of financial sector regulation and implementing the G20 and Financial Stability Board

	of the comments relate to opinions and views of commentators which are much broader than the proposed criteria for exemption of external CCPs and TR, or the need for and expected impact of the Joint Standard *per se*. Two of the three commentators commented extensively on the principle of allowing foreign CCPs and TRs to operate in South Africa and raised concerns around the fairness of possible exemptions for such entities from being licensed in terms of the FMA.	recommendations into its legal structures. The aim of the reforms is to mitigate the systemic risk associated with over-the-counter (OTC) derivative instruments and align the South African legal framework to international standards and best practices. These reforms were implemented through the consequential amendments to the FMA and FMA Regulations which were consulted on extensively by the National Treasury. These amendments to the FMA and FMA Regulations enables the FSCA, with the concurrence of the South African Reserve Bank (SARB) and the PA, to exempt an external CCP or external TR from the provisions of the FMA. Any such exemption is conditional to, amongst other things, the entity being based in an equivalent jurisdiction, in terms of an equivalence assessment as contemplated in the FMA. The Joint Standard merely gives effect to Section 6(3)(m)(iii)(bb) of the FMA. The Authorities reiterate that no change can be made to the primary legislation through the content of a Joint Standard. Instead, the Authorities are executing their mandate and legislative requirement by giving effect to the FMA and the policy position taken by National Treasury, after extensive consultation with the market in 2015.
2.	Specific concerns were raised regarding the implication of the enabling provisions in the FMA and the powers of the Authorities to exempt external CCPs and TRs from any provision in the FMA which may include an exemption from being licensed under the FMA.	Section 6(3)(m) of the FMA provides that the FSCA may (with the concurrence of the SARB and the PA) exempt an external market infrastructure from the provisions of the FMA if satisfied that the entity - (a) is based in an equivalent jurisdiction in terms of section 6A of the FMA and is authorised by the supervisory authority of such jurisdiction; (b) complies with any criteria prescribed in joint standards for the exemption of such persons; and (c) 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. Per Section 6(3)(m)(iii)(bb) the Authorities must set out criteria for the exemptions of external market infrastructures in Joint Standards to enable such

		exemptions. The making of the Joint Standard to set out these criteria is therefore enabled through the FMA as primary legislation, and the powers therein is afforded by Parliament. The policy stance in the FMA as primary law falls within the purview of the National Treasury, and the Authorities cannot through consultation on secondary legislation respond to comments in this regard. Any concerns with the application of primary law or consequences thereof must be directed at National Treasury as the policymaker.
3.	One commentator suggested throughout that a local presence in South Africa should be a prerequisite to an exemption.	Recognising a foreign jurisdiction as equivalent and still requiring the entities from the foreign jurisdiction to comply with all the requirements in the local legislation denudes the regulatory efficiencies and benefits of such equivalence recognition. The need for a foreign entity to have a local presence will be considered on a case-by-case basis and can be a specific condition placed on that external applicant when granting a particular exemption. The Authorities will as part of the considerations around an application for exemption reflect upon whether there are sufficient safeguards in place to minimise the related risk when exempting an external CCP or TR from having a local presence. Requiring a local presence as a prerequisite to any exemption is overly restrictive and cannot necessarily guarantee any stronger risk mitigation for cross border activities.
4.	Clarification was sought on the scope of functions of an external central counterparty	The Authorities reiterate that the Joint Standard forms part of Phase 2 of the of the *Joint Roadmap for the development of a regulatory framework for central clearing in South Africa (2022)*. The Authorities have developed the Joint Standard to facilitate mandatory central clearing of the specific OTC derivative transactions that are to be determined by the Authorities as eligible for mandatory central clearing. The Joint Standard is one part of the three regulatory developments (as explained under Phase 2 of the Roadmap) that will ensure that a legal framework is in place to permit an applicant – whether domestic or international to provide clearing services in OTC markets in South Africa – noting that none in currently available in the OTC market. Importantly, the approach to be taken by the Authorities in granting exemptions to external CCPs and external TRs

		will invariably take into account the need to maintain the integrity of the markets – through assessing each application against the relevant laws.

3. Table of Contents

Section A: List of Commentators

List of commentators		
No.	**Name of organisation**	**Acronym**
1.	Banking Association South Africa	BASA
2.	JSE Limited	JSE
3.	South African Institute of Stockbrokers	SAIS

Section B: Public comments received on the draft Joint Standard and responses from the Authorities

No.	Commentator	Paragraph of the Joint Standard	Comment	Authorities' response
1.	SAIS	Definition – SARB	Please include the SARB in the definitions and the regulatory body definition, you have only provided for FSCA and the PA.	Not agreed. It is not clear why the commentator requested that the terms "SARB" and "regulatory body" must be inserted in the Joint Standard, as the terms are not used in the text / body of the Joint Standard. Definitions in a regulatory instrument is aimed at aiding with the interpretation of the content of the instrument. If the term is not used there is no need to define it.

Section C: Public comments received on the draft Statement of Need and responses from the Authorities

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
1.	SAIS	2.1 – "" …*The FMA empowers the Authorities to prescribe criteria that will be applicable to those persons who are regulated and supervised in an equivalent foreign jurisdiction…"*	The FSCA plays a crucial role in regulatory oversight, providing the necessary framework for effective supervision of individuals and entities within its jurisdiction. The FSCA's authority extends beyond national boundaries, enabling it to establish criteria that apply to regulated entities in equivalent foreign jurisdictions. This global perspective is essential for maintaining consistency and integrity in the financial markets. In this context, the SAIS underscores the importance of transparency and clarity in the criteria set forth be the regulators, especially regarding the granting of exemptions. Market participants benefit from a clear understanding of the standards and requirements that may lead to exemptions, as this knowledge contributes to a more predictable and stable regulatory environment. Without sight of the prescribed criteria the industry at large is concerned as we have no understanding of the potential impact to the SA market. Although the intention of growth is well placed, there is a need to understand the potential risk from a practical perspective. The SAIS advocates for a collaborative approach between regulatory authorities and market participants to ensure that the	Noted. The regulatory reach of the Authorities in the context of this Joint Standard will be determined by the presence of an entity licensed or authorised in a foreign jurisdiction that has been determined by the FSCA to be from a jurisdiction deemed equivalent to the regulatory framework established in the FMA. Noted. The criteria to be applied by the Authorities in granting an exemption will be based on the applicant's compliance with the criteria set out in the Joint Standard as well as all relevant factors that are specific to the entity. As a standard practice, the Authorities publish all exemptions on their respective websites – wherein all conditions informing the approval of an exemption will be publicly available. Where the Authorities do not approve the application, the applicant will be appropriately and timeously informed of the decision and the reasons underpinning the decision. The consultation process is intended to be rigorous – fully complying with regulatory prescripts as set out in the FSR Act. The Statement of Need, expected impact and intended operation also serves the purpose

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			prescribed criteria align with the practicalities of the industry and are fit for their intended purpose. This collaborative dialogue can help identify potential pitfalls and unintended consequences, fostering a regulatory framework that is not only robust but also adaptive to the evolving dynamics of the financial markets	of soliciting inputs from market players on the content of draft regulatory instruments. The Authorities strive to engage in an open process that has provided an opportunity for stakeholder participation and debate in the crafting of the regulatory instruments. Similarly, National Treasury as part of the process of developing the FMA Regulations and the consequential amendments to the FMA that introduced the principles of equivalence and exemptions in section 6 undertook a rigorous engagement process with all interested stakeholders as part of the policy development in this regard.
2.	SAIS	*2.8 - "Given that exemption applications (in terms of section 6(3)(m)) will be received from persons from different foreign jurisdictions, there is a need to maintain a strict level of consistency in the granting of these exemptions*	The transparency of the regulatory process is fundamental to ensuring stakeholders can effectively evaluate the level of consistency in the approval of exemptions. However, this task becomes challenging when stakeholders are not provided with explicit details regarding the criteria governing these exemptions. Without a clear understanding of the criteria, stakeholders find themselves in a position where commenting on the process rather than the content becomes a nuanced and complex endeavour. To address this challenge, it is imperative that regulatory authorities actively engage stakeholders by sharing insights into the underlying criteria guiding exemption approvals. Stakeholders, including industry	Noted. The Authorities have endeavoured to provide explicit requirements in the Joint Standard. Any other considerations taken into account by the Authorities in deciding whether to grant or not grant an exemption will be directly linked to the entity – that is, all applications will be assessed on their own merits. The Authorities are cognizant of the need to ensure that the exemptions do not interfere with standards of regulation and supervision – which necessitates that the entities be assessed on a case-by-case basis. The Authorities confirm that the Joint Standard transparently discloses the underlying criteria to be applied in granting or not granting exemptions to applicants. In this

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
		under the FMA to external CCPs or external TRs ..."	participants and professional bodies and associations should be given the opportunity to provide informed feedback on the criteria itself, as well as on the procedural and practical aspects of how these criteria are applied. By soliciting comments on both the content and application of exemption criteria, regulatory bodies can harness the collective expertise of stakeholders to enhance the robustness and appropriateness of the regulatory framework. This collaborative approach not only promotes transparency but also ensures that the regulatory process aligns with industry realities and evolves in response to changing market dynamics. Moreover, stakeholders should be encouraged to comment not only on the outcomes of the exemption process but also on the clarity and accessibility of information provided by the regulatory authorities. Accessible and well-communicated criteria contribute to a more inclusive and informed stakeholder community, fostering a sense of trust in the regulatory process. In the absence of specific criteria, the SAIS finds it challenging to assess the level of consistency in exemption approvals. Therefore, it is recommended that the regulatory authorities proactively communicate with stakeholders, offering guidance on the	regard, please see paragraph 4 of the Joint Standard. Noted. Please see response in preceding paragraph. Agreed. The Authorities welcome insights from interested parties and these may be channelled to the Authorities via the publicly shared contact details. It is not the intention that no further insights may be provided after the comments period on this draft Joint Standard has closed. While the Authorities will confirm the position taken in the public consultation process, all new facts or observations impacting the smooth implementation of the Joint Standard should be submitted to the Authorities. The comment regarding the absence of specific criteria is not understood, as the

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			overarching principles that guide the approval process. This ensures that stakeholders can contribute meaningfully to discussions surrounding the procedural aspects of the exemption process while respecting the sensitivity of certain criteria that may be market-sensitive or proprietary. Ultimately, the success of the regulatory framework hinges on a collaborative partnership between regulatory authorities and stakeholders. By facilitating a transparent and inclusive dialogue on both the content and application of exemption criteria, regulators can instil confidence in the regulatory process and foster a regulatory environment that is adaptive, fair, and supportive of the broader objectives of financial market stability and growth. The SAIS encourages the FSCA to engage in ongoing consultations with market participants, leveraging their expertise to refine and improve the criteria for exemptions. This iterative process enhances the effectiveness of regulatory measures and reduces the likelihood of unintended negative impacts on the financial industry. Moreover, a transparent and consultative approach fosters trust and cooperation between regulators and market participants, creating a regulatory environment that promotes innovation and growth while effectively managing risks.	criteria is set out in paragraph 4 of the draft Joint Standard that was published for consultation. Agreed. It is of importance to the Authorities to act in the interest of all stakeholders by creating an environment that supports full consultation on regulatory instruments. Noted.

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			The FSCA's authority to prescribe criteria for both domestic and equivalent foreign jurisdictions is a powerful tool in fostering a globally coherent regulatory framework. The SAIS emphasises the need for clear criteria, especially in the context of exemptions that is shared with all stakeholders and advocates for collaboration between regulators and market participants to ensure that regulatory requirements remain practical, purposeful, and conducive to the stability and growth of the SA financial markets.	As commented above, please note that that the criteria are set out in paragraph 4 of the draft Joint Standard that was published for consultation. The criteria for exemption of domestic entities are contained in section 6(3)(m)(i) and (ii). External market infrastructures would need to meet the requirements of section 6(3)(m)(i) and (ii) and 6(3)(m)(iii)(aa)-(cc) which includes the criteria prescribed in the Joint Standard. If one considers this, it is apparent that the external applicant has more requirements to meet than domestic entities in order to qualify for any kind of exemption.
3	SAIS	2.9 *"…It is envisaged that the Joint Standard will support consistency in the granting of these exemptions and will create a level playing field."*	The statement of need appears to place a strong emphasis on addressing the requirements and concerns of foreign Central Counterparties (CCPs) and Trade Repositories (TRs), potentially overshadowing the imperative to explicitly articulate the specific needs and impacts within the SA context and for local entities. The SAIS underscores the importance of ensuring that the regulatory framework remains finely attuned to the unique dynamics of the SA financial landscape. It becomes apparent that there is a potential imbalance, leaning toward foreign entities, which could inadvertently create a regulatory environment that lacks a nuanced understanding of the intricacies and challenges faced by SA entities. The SAIS	The Authorities have not drafted the Joint Standard specifically to address concerns of foreign entities. The Authorities have developed the Joint Standard in line with the prescripts of the FMA. The FMA contemplates that external central counterparties and external trade repositories may perform functions and duties in the Republic. As part of the various regulatory duties of the Authorities, the following regulatory instruments have been identified as necessary for the full implementation of the FMA: Determination on the licensing of a local central counterparty (issued 31 March 2021), Conduct Standard on the Functions and Duties of a Trade Repository (issued 18 August 2018) – which are intended to embed the requirements

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			firmly believes in the necessity of establishing a level playing field that not only acknowledges but also actively addresses the distinctive requirements of the local financial sector. The concern expressed in Section B comments is not merely speculative; rather, it reflects a genuine apprehension that the proposed regulatory measures may not translate into a practical and equitable framework for SA entities. The SAIS contends that for a level playing field to be truly effective, it must be rooted in a comprehensive understanding of the local market's nuances, regulatory landscape, and the specific challenges faced by domestic entities. To remedy this potential oversight, the SAIS advocates for a recalibration of the statement of need to more explicitly highlight the SA context and the impact on local entities. This may involve incorporating detailed analyses of the unique challenges and opportunities within the SA financial sector, ensuring that regulatory measures are not only effective but also tailored to the specific needs of the local market. In the analysis of FMA Regulation concerning OTC Derivatives, it is crucial to acknowledge that derivatives inherently have an underlying equity, introducing a dimension that extends beyond the immediate purview of derivative trading. The repercussions could reverberate across the equities market, introducing a	applicable to local CCPs and TRs. Additionally, the Determination – requirements for the licensing of an external central counterparty or external trade repository and this Joint Standard are aimed at fulfilling the requirements in the FMA on enabling foreign entities to enter the South African markets. We therefore disagree with the averment that the Joint Standard creates a potential imbalance, leaning toward foreign entities as claimed by the commentator. Also see response to comment number 2 of same commentator above regarding foreign entities having to meet more requirements than domestic entities to qualify for a possible exemption. Noted. The approach to be taken by the Authorities in granting exemptions to external CCPs and external TRs will invariably take into account the need to maintain the integrity of the markets – through assessing the applications against the relevant laws. It is the objects of the FMA as well as the mandate of the FSCA to

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			cascade of potential far-reaching consequences. It is imperative to recognise that any occurrence of such magnitude may not only yield a massively different impact but could also engender a multitude of unforeseen circumstances, magnifying the complexity and gravity of the risks involved and therefore must remain cognisant of this at all times.	ensure that the markets are fair, efficient and transparent, this includes ensuring that any decision taken by the Authorities are in line with these objectives and mandates. Equivalence recognition is a necessary prerequisite for allowing an external market infrastructure to apply to be licenced or apply for an exemption from a requirement in the FMA. The Authorities must assess the foreign regulatory framework, including assessing the foreign jurisdiction's licensing requirements, rules, regulation and supervision, and must take into account relevant international standards, and the degree of systemic risk posed by the activities to South African markets. The Authorities can impose conditions to an exemption that could, for example, limit the entity to provide clearing functions to a specific market segment or security type. In addition, there are structural safeguards in place, such as granting an exemption for a finite period, and where appropriate requiring a local presence – exemption will be considered on a case-by-case basis taking into account the unique risks under the given circumstances.
			The SAIS reiterates that the SA market's unique clearing and settlement processes are not align with international processes from a practical perspective. The impact of existing exchange controls particularly pertinent in the context of	The comments here relate to the principle of allowing for an exemption for foreign entities from the requirements in the FMA. This is not enabled through the Joint Standard *per se* but in terms of section 6(3)(m) the FMA.

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			cross-border netting and settlements must be fully considered. This misalignment can potentially affect foreign exchange trading and could lead to the loss of critical tax revenues. Additionally, trading and settlement patterns may shift accordingly offshore. Moreover, the presence of international holding companies among the top members of the JSE further complicates the landscape. These entities, required to maintain a legal and physical presence in SA due to regulatory membership rules, exert a substantial influence on market dynamics and liquidity. Their operations under the same regulatory and capital frameworks as domestic entities ensure regulatory consistency. However, their potential to execute and offset clearing and settlement activities with their offshore entities, possibly relocating their local entity to their respective jurisdictions while been give the ability to maintain an active presence in SA, raises significant concerns. Such a shift could impact not just the financial markets but also broader economic aspects like employment, skill development, and tax revenue, which ultimately raises concerns from SA financial stability perspective. In the sphere of financial market equivalence, the potential for conflicts arising from divergent legal structures requires a carefully considered approach to dispute resolution and default management. The ability to effectively handle	As such we will not respond to the principle of allowing foreign entities to be exempted from requirements under the FMA. The Joint Standard is meant to give effect to the prescripts of the FMA. This Joint Standard must not be construed to relax any requirements in any other law. The FMA requires the Authorities to develop this Joint Standard prior to external CCPs and TRs entering the South African markets. Authorities are not agreeable to the suggestion to treat all external market infrastructures the same as local market infrastructures in terms of market access and ongoing domestic regulatory oversight. Such a prescriptive approach lends itself to practical challenges in terms of South African Authorities' ability to exercise enforcement on entities domiciled and supervised in foreign jurisdictions, due to, among other limitations, restrictions imposed by foreign laws, which may have the unintended consequence of undermining the regulatory objectives of equivalence recognition. The framework enables the Authorities to consider applications for exemption on a case-by-case basis, which approach will enhance the goal of ensuring level playing fields, minimise duplication and uncertainty and reduce opportunities for regulatory arbitrage. It is established practice for the Authorities to have supervisory co-operation

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			such situations is crucial for maintaining financial stability, as these conflicts can have far-reaching implications. This necessitates not only a deep understanding of the various legal systems involved but also the development of mechanisms that can accommodate and reconcile these differences. A comprehensive approach is needed to address these challenges, considering the intricacies of cross-border activities and the preservation of local economic interests. SA policymakers and regulators must develop strategies that balance international participation with local market stability, ensuring a sustainable and competitive financial ecosystem. This approach should include careful consideration of SAs unique market rules to effectively manage and mitigate risks associated with increased cross-border trading and netting activities.	arrangements with foreign entities where necessary. Furthermore, the FMA in section 6C requires that these supervisory co-operation agreements are entered into. The FSCA, with the concurrence of the PA and SARB will carefully assess the content of the regulatory frameworks of all applicant jurisdictions so as to prevent regulatory risk and arbitrage. The Equivalence Framework further makes provision for the monitoring of the regulatory landscape of equivalent jurisdictions to be assessed on an ongoing basis to ensure that the equivalence status remains current. Comments noted, however these mechanisms and enabling cross-border activities are already enabled in primary legislation through the FMA, and commentary on the Joint Standard setting out criteria for exemption of external CCPs and TRs might not be the most appropriate vehicle to debate policy decisions made by National Treasury. It is also worth mentioning that JSE Clear which is a domestic CCP, when it was first granted equivalence by ESMA (European Securities and Markets Authority) and the BOE was not required by either these foreign Regulatory Bodies to (i) apply to be licenced in addition to being declared equivalent, nor (ii) to have a physical presence in the UK or

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
				in the EU. The Regulatory Authorities did however make the equivalence determination of JSE Clear conditional to the continued compliance with the equivalence framework in these jurisdictions and entered into an MOU (Memorandum of Understanding) with the FSCA outlining specific requirements for supervision, information sharing and the like. It is therefore aligned to international best practice to consider these applications on a case-by-case basis.
4.	SAIS	3.2 – *"… is the intention that the Joint Standard will be made once the consultation processes prescribed in the FSR Act have been concluded. It is proposed that applicants will be able to apply for an exemption in terms of section 6(3)(m)(iii) of*	In the current SA (SA) landscape, notable challenges persist concerning the alignment of qualification standards and the review processes for applications. The critical question arises as to how the regulatory framework will ensure that these standards and processes align seamlessly with the unique nuances of the SA financial landscape. An additional concern emerges regarding the potential implementation of the standard before the enactment of the Conduct of Financial Institutions (CoFI) and the completion of the Financial Markets review. The SAIS contends that without a comprehensive alignment in place from a SA perspective, there is a risk of creating a profoundly unlevel playing field. Addressing these concerns requires a multifaceted approach that considers the intricacies of the	These comments seem to be much broader than the need or expected impact of the Joint Standard *per se*. For purposes of the consultation report we will not respond in detail to these comments raised as it goes beyond the content of the Joint Standard or the Statement of Need. The approval processes of the Authorities are adequately transparent – as all applicants are provided reasons for the decision taken by the Authorities. Furthermore, given that the COFI Bill development and FMA review are still underway, the Authorities rely on the powers in the existing currently operative legislation. Importantly, as a member of the G20 countries, South Africa has committed to implementing a number of reforms to the

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
		the FMA read with the Joint Standard from the date of publication of the Joint Standard."	local financial sector. First and foremost, the regulatory authorities must engage in an extensive consultation process with stakeholders, including industry participants, professional bodies, and associations. This collaborative effort should aim to identify and address specific challenges related to qualification standards and application review processes in the SA context. Moreover, the regulatory framework should incorporate mechanisms for ongoing assessment and adaptation. This involves establishing a structured feedback loop that allows stakeholders to provide input and insights into the alignment of qualification standards and application review processes. Regular reviews and updates can then be conducted to ensure continuous alignment with the evolving dynamics of the SA financial landscape. To mitigate the risk of implementing standards before the completion of crucial legislative initiatives like CoFI and the Financial Markets review, regulatory authorities should consider implementing transitional measures. These measures could include phased implementations, allowing for a gradual alignment with emerging regulatory frameworks. This staged approach acknowledges the necessity of adapting to evolving regulatory landscapes while avoiding	cleared and uncleared derivatives markets. This Joint Standard is a critical component of these reforms. Please note that the process for consultation on draft regulatory instruments follow the prescripts of Chapter 7 of the FSR Act, and interested parties and regulated persons are therefore able to channel any concerns with the implementation of legislation. Engagements may also be initiated by regulated entities who identify challenges after the regulatory instrument has been issued. Suggestion noted. As responsible regulators committed to fair administrative action the Authorities typically allow for transitional measures as appropriate in implementing regulatory instruments. It should also be noted that the instrument under consultation forms part of the phased approach to implementing a regulatory framework for central clearing in South Africa. In this regard refer to paragraphs 2.4 to 2.6 of the Statement of Need.

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			sudden disruptions that could create an unlevel playing field.	
			The SAIS underscores the importance of transparency in communicating the progress and intentions of regulatory alignment efforts. Regulatory authorities should provide clear and accessible information to stakeholders, outlining the steps taken to address alignment challenges and the timelines for implementation. This transparency fosters a sense of trust and understanding among stakeholders, reinforcing their confidence in the regulatory process.	Noted. The Authorities confirm that industry was previously advised of the Authorities' intention to issue this Joint Standard in the Joint Roadmap – mandating central clearing South Africa (published February 2022[1]). In this regard refer to paragraphs 2.4 to 2.6 of the Statement of Need.
			Furthermore, the SAIS recommends that regulatory authorities collaborate with industry experts and leverage their insights in the development and refinement of qualification standards. Engaging with seasoned professionals ensures that the standards are not only aligned with the SA context but also practical and effective in achieving their intended objectives.	Please see response above regarding consultation on regulatory instruments. Noted.
			In summary, addressing the alignment issues in the SA financial landscape requires a proactive and collaborative approach. By engaging stakeholders, implementing transitional	

[1] Available at :
https://www.fsca.co.za/Regulatory%20Frameworks/Regulatory%20Frameworks%20Documents/Joint%20Roadmap%20for%20the%20development%20of%20a%20regulatory%20framework%20for%20Central%20Clearing%20in%20SA.pdf

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			measures, ensuring ongoing assessments and maintaining transparent communication, regulatory authorities can navigate the path toward a level playing field. The SAIS advocates for a regulatory environment that is not only compliant with international standards but also tailored to the unique dynamics of the SA financial sector, ultimately promoting stability, fairness and growth.	
5.	SAIS	3.3 *Any exemption applications submitted pursuant to the Joint Standard will be considered as per the respective processes followed within Authorities. Therefore, all exemption applications will be subject to the relevant governance processes and procedures of the Authorities*	Ensuring transparency in the regulatory process is crucial for stakeholders to assess the consistency in the approval of exemptions. However, challenges arise when stakeholders lack explicit details about the criteria governing these exemptions. Without a clear understanding of the criteria, stakeholders find themselves in a position where providing comments on the process, rather than the content, becomes a nuanced and complex undertaking. To address this challenge, regulatory authorities must actively engage stakeholders by sharing insights into the underlying criteria guiding exemption approvals. By seeking comments on both the content and application of exemption criteria, regulatory bodies can leverage the collective expertise of stakeholders to enhance the robustness and appropriateness of the regulatory framework. This collaborative approach not only promotes transparency but also ensures that the regulatory process aligns with industry realities	Please see response to comments under number 2 above.

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			and evolves in response to changing market dynamics. Stakeholders should be encouraged to comment not only on the outcomes of the exemption process but also on the clarity and accessibility of information provided by regulatory authorities. Well-communicated criteria contribute to a more inclusive and informed stakeholder community, fostering trust in the regulatory process. In the absence of specific criteria, the SAIS faces challenges in assessing the level of consistency in exemption approvals. Therefore, it is recommended that regulatory authorities proactively communicate with stakeholders, providing guidance on the overarching principles guiding the approval process. This ensures that stakeholders can contribute meaningfully to discussions surrounding the procedural aspects of the exemption process while respecting the sensitivity of certain criteria that may be market-sensitive or proprietary. The success of the regulatory framework ultimately depends on a collaborative partnership between regulatory authorities and stakeholders. By facilitating a transparent and inclusive dialogue on both the content and application of exemption criteria, regulators can instil confidence in the regulatory process and foster an environment that is adaptive, fair and	

No.	Section	Section / Paragraph of the Statement	Comment	Authorities' response
			supportive of the broader objectives of financial market stability and growth. The SAIS encourages the Financial Sector Conduct Authority (FSCA) to engage in ongoing consultations with market participants, leveraging their expertise to refine and improve the criteria for exemptions. This iterative process enhances the effectiveness of regulatory measures and reduces the likelihood of unintended negative impacts on the financial industry. Moreover, a transparent and consultative approach fosters trust and cooperation between regulators and market participants, creating a regulatory environment that promotes innovation and growth while effectively managing risks. The FSCA's authority to prescribe criteria for both domestic and equivalent foreign jurisdictions is a powerful tool in fostering a globally coherent regulatory framework. The SAIS emphasises the need for clear criteria, especially in the context of exemptions, to be shared with all stakeholders. The organisation advocates for collaboration between regulators and market participants to ensure that regulatory requirements remain practical, purposeful, and conducive to the stability and growth of the financial markets.	Please see response to comment number 2 of same commentator above regarding foreign entities having to meet more requirements than domestic entities to qualify for a possible exemption.

Section D: General comments and responses from the Authorities

No.	Commentator	Comments	Authorities' response
1.	BASA	For clarification only: Does an external service provider still require a licence to offer services in South Africa, even if they apply under the exemption from the provisions of the Financial Markets Act?	The FMA provides for two ways in which an external CCP may perform functions or provide services: either on the basis of a license in terms of section 49A or on the basis of an exemption in terms of section 6(3)(m) of the FMA. The election on whether to apply for a licence or an exemption from being licensed lies with the external CCP. Similarly, the FMA provides for two ways in which an external TR may perform duties or provide services: either on the basis of a license in terms of section 56A or on the basis of an exemption in terms of section 6(3)(m) of the FMA. The election on whether to apply for a licence or an exemption lies with the external TR. Any application for exemption will be considered on merit and a case-by-case basis by the Authorities, in line with legislative prescripts. Simply put – if the external entity does not choose to apply to be exempt from being licensed an entity would be required to be licensed as prescribed in section 49A and 56A of the FMA.
2.	JSE	The JSE notes that the exemption criteria in the draft Joint Standard are in addition to the other exemption criteria in section 6(3)(m) of the Financial Markets Act ('FMA'). With this in mind and knowing that the application of all the criteria in section 6(3)(m) will require significantly more information to be obtained from the applicant in support of an application for exemption than what is contemplated in the draft Joint Standard, it is not possible, with the limited information recorded in the draft Joint Standard, to comment meaningfully on the criteria for exemption in paragraph 4 of the draft Joint Standard.	The Authorities confirm that the Joint Standard discloses all underlying criteria for purposes of the requirement in section 6(3)(m)(iii)(bb) to be applied/considered in granting or not granting exemptions to applicants from an equivalent jurisdiction. Additional information to be requested from applicants will be driven by the special nature of each entity – which will only be determined at application stage on a case-by-case basis. The Joint Standard also empowers the Authorities to request any additional information that it requires necessary in respect of the exemption application. Evidence of compliance with the regulatory framework established in the FMA will be deduced from the fact that the entity is from an equivalent jurisdiction.

No.	Commentator	Comments	Authorities' response
		The draft Joint Standard states that the Authorities may "…exempt an external central counterparty or external trade repository from the provisions of a section of the Act" but it does not provide any further detail about which sections are contemplated nor whether there would be different requirements for an exemption depending on the specific section of the FMA which would not be enforced. With this in mind, the contents of the Joint Standard seem to suggest that the Authorities could conceivably also consider an exemption from licensing which is very different from an exemption from a specific section of the FMA. It is also difficult to envisage a situation where an external CCP or Trade Repository could ever suggest that it, or its clients, would suffer financial hardship or prejudice and that it should therefore be exempted from complying with important provisions of our financial markets' legislation, always keeping in mind that the South African entities will not be exempted from meeting these requirements. It is therefore important that we record our preliminary but serious concerns in relation to the possibility of the exemption provisions being applied to any or all of the peremptory requirements applicable to CCPs and trade repositories, both local and external, including the provisions dealing with the licensing of CCPs and trade repositories in the FMA. We first raised these concerns during consultation on the Financial Sector Regulation Bill, and particularly in relation to	An applicant may apply to be exempted from <u>any</u> of the provisions of the FMA. This would include the requirement to be licensed. To safeguard the integrity of the regulatory framework established in the FMA, equivalence recognition will be granted in line with the FMA – that is, it will be granted to jurisdictions that are determined to have in place a regulatory framework equivalent to the framework set out in the FMA. This means that any entity that is considered for exemption would first have to have undergone the equivalence assessment by the Authorities and be declared from a jurisdiction that is formally recognised as equivalent to that of South Africa as per the FMA, and the entity would need to be licensed and regulated under the legislation in such jurisdiction. It would therefore not be dissimilar to entities that are licenced under local legislation. The exemption can only be applied for by the external applicant in terms of section 6(3)(m) of the FMA. The applicant could choose to apply from being exempt from all of the licencing requirements in the FMA or any of the licencing requirements in the FMA or any other section in the FMA. The concerns have been noted. In developing the Joint Standard, the Authorities have abided by the empowering provisions of the FMA. The

No.	Commentator	Comments	Authorities' response
		the amendments to the FMA dealing with external CCPs. We do not believe that the criteria for exemption in the draft Standard should be applied to the licensing of external CCPs and trade repositories. We have made some general comments in this regard below. Notwithstanding our concerns regarding the exemption from the licensing provisions for external CCPs and trade repositories, we have also made some general comments on what we perceive to be a lack of clarity in the FMA on when an external CCP or trade repository is required to be licensed, or to apply for exemption from licensing. These general comments are, again, not comments on the specific criteria in paragraph 4 of the draft Joint Standard, but instead highlight the uncertainty that appears to exist as to when the criteria in the draft Standard (as well as the rest of the exemption criteria in section 6(3)(m) of the FMA and the criteria in sections 49A and 56A) are to be applied to external CCPs and trade repositories.	FMA is not prescriptive on which sections may be included in the application for an exemption. In addition, the FMA does not empower the Authorities to carve out the sections that the Authorities may determine to fall within the Joint Standard. Please note that the Joint Standard is enabled through the FMA as primary legislation, and the powers therein is afforded by Parliament. The policy stance in the FMA as primary law falls within the purview of the National Treasury, and the Authorities cannot through consultation on secondary legislation respond to comments in this regard. Any concerns with the application of primary law or consequences thereof must be directed at National Treasury as the policymaker. The Authorities do not agree that there is uncertainty in law *per se* regarding as to when the criteria must be applied. Instead from the comments it seems that the commentator disagrees fundamentally with the fact that external CCPs and TRs can be exempted from licensing in terms of the FMA. In terms of interpreting the enabling provisions in S6(3)(m) of the FMA, the powers of the Authorities are in our view clear. It is important to state that the FMA reflects the policy decision by the National Treasury to allow for external entities from a foreign jurisdiction recognised as equivalent to be exempt from any requirement in the FMA which may very well include an exemption from all of the licencing requirements for a TR or CCP. Equivalence recognition is a necessary prerequisite for an external market infrastructure to apply for an exemption. South African Authorities must assess the foreign regulatory framework, including assessing the

No.	Commentator	Comments	Authorities' response
			foreign country's licensing requirements, rules, regulations and supervision, and must take into account relevant international standards, the degree of systemic risk posed by the activities to South African markets. The outcome of the applicable regulatory framework should be equivalent to that established by the relevant South African laws in respect of the regulatory objectives they achieve. National Treasury as the policy maker for South Africa through the consequential amendments to the FMA in 2015, enabled a licensing ***framework (including by exemption)*** that applies to certain external market infrastructure. It was never the intention to treat all external market infrastructure the same as local market infrastructures in terms of market access and ongoing domestic regulatory oversight. Such a prescriptive approach lends itself to practical challenges in terms of South African Authorities' ability to exercise enforcement on entities domiciled and supervised in foreign jurisdictions, due to, among other limitations, restrictions imposed by foreign laws, which may have the unintended consequence of undermining the regulatory objectives set out. Through the insertion of sections 6A, 6B, 6C and 6(3)(m)(iii) a flexible approach was introduced that would allow Authorities to consider applications on a case-by-case basis, and the proposed approach will enhance the goal of ensuring level playing fields, minimise duplication and uncertainty, and reduce opportunities for regulatory arbitrage. Furthermore, section 6C requires the Authorities to enter into supervisory co-operation and information sharing arrangements with the foreign Regulators.
3.	JSE	The JSE is supportive of the power afforded to the Authorities to grant exemptions from	Objections noted, however please see response to comment 2 of same commentator directly above

No.	Commentator	Comments	Authorities' response
		the provisions of specific sections of the FMA if all the requirements for such an exemption have been met. However, the JSE has previously expressed its objections to the exemption of an external market infrastructure from important provisions of the FMA, including the licensing provisions, and remains opposed to such an exemption. The draft Standard sets additional criteria for the exemption of an external CCP or external trade repository from any section of the FMA, and this would therefore, conceivably, include the licensing sections.	regarding the empowering provisions in the FMA and concerns in relation thereto. The FMA is not prescriptive on which sections may be included in the application for an exemption. In addition, the FMA does not empower the Authorities to carve out the sections that the Authorities may determine to fall within the Joint Standard. All applications for an exemption in terms of the Joint Standard must be submitted by applicants who are licensed or authorised in a foreign jurisdiction that has been granted equivalence recognition in respect of the specific type of market infrastructures (e.g. CCP or TR) in accordance with Section 6A of the FMA and as set out in the FSCA's Equivalence Framework for Financial Markets. This means that the Authorities and the SARB would have assessed the foreign regulatory framework, including assessing the foreign jurisdiction's licensing requirements, rules, regulation and supervision, and must take into account relevant international standards, the degree of systemic risk posed by the external applicant to South African markets against the framework established in the FMA.
		It is our view that the power to exempt external market infrastructures from being licensed is contrary to the purpose of the FMA and its licensing provisions, and destructive of the objects and purpose of both the FMA and the Financial Sector Regulation Act ('FSRA'). The objects of the FMA, as set out in Section 2, are clear; namely, to ensure that the South African markets are fair, efficient and transparent, to promote the protection of	Views noted, however please see response to comment 2 directly above regarding the empowering provisions in the FMA and concerns in relation thereto. The Authorities have not been granted a discretion to select the sections of the FMA to be eligible for exemption applications. As such, the Authorities are required to assess each application on its own merits.

No.	Commentator	Comments	Authorities' response
		regulated persons, clients and investors, to reduce systemic risk, and to promote the international and domestic competitiveness of the South African financial markets and of securities services in South Africa. The licensing requirements applicable to all market infrastructures (including external CCPs) that wish to conduct business in South Africa are integral to maintaining a robust regulatory framework in the South African financial markets as set out in the FMA. As a matter of principle, an exemption that is afforded to an external market infrastructure would introduce unfairness into the South African financial market, by permitting such exempted market infrastructure to fulfil the same functions as a domestic licenced market infrastructure, which must comply with all the provisions of the FMA including the licensing provisions, but with the ability to do so without a licence. It is widely recognised that in order to ensure financial stability, the management of risk should be done on a consistent, system-wide basis and by way of a macro-prudential regulatory approach that reduces the risk of regulatory arbitrage as a result of it being of universal application. If an external market infrastructure were to be exempted from the oversight of the South African Authorities, its regulation would	Please see response above. All applications for an exemption from the Joint Standard must be submitted by applicants who are licensed or authorised in a foreign jurisdiction that has been granted equivalence recognition in respect of the specific type of market infrastructures (e.g CCP or TR) under the requirements of the Equivalence Framework. This means that the Authorities and the SARB would have assessed the licensing regime, in addition to the overall regulatory and supervisory regime applied in that foreign jurisdiction against the framework established in the FMA. To safeguard the integrity of the regulatory framework established in the FMA, equivalence recognition will be granted in line with the FMA – that is, it will be granted to jurisdictions that are determined to have in place a regulatory framework equivalent to the framework set out in the FMA. This means that any entity that is considered for exemption would first have to be from a jurisdiction that is formally recognised as equivalent to that of South Africa as per the FMA, and the entity would need to be licensed and regulated under the legislation in such jurisdiction. It would therefore not be dissimilar to entities that are licenced under local legislation. We therefore disagree with the averment that this would be unfair to local entities. Disagree. Recognising a foreign jurisdiction as equivalent but then still requiring the entities from the jurisdiction to comply with all the requirements in local

No.	Commentator	Comments	Authorities' response
		effectively be outsourced to a foreign regulatory body in the jurisdiction in which the market infrastructure is licensed. This denudes the oversight and/or regulatory role that the South African authorities may wish to fulfil in respect of this entity, as none of the provisions of the FMA and sub-ordinated legislation would be applicable to that exempted external market infrastructure, and the Authorities and the Reserve Bank would not have any regulatory, supervisory, and enforcement powers in respect of that exempted external market infrastructure.	legislation denudes the regulatory efficiencies and benefit of equivalence recognition. Equivalence recognition coupled with exemptions from local requirements are commonly utilised regulatory tools and local South African entities have benefited from equivalence recognitions from the UK and EU. It is surprising that proposing a similar framework in South Africa is viewed as unfair or inappropriately risky by entities that have benefited from it. Equivalence recognition of a foreign jurisdiction is a key instrument to effectively manage cross border activity of market players in a sound and secure regulated environment with third-country jurisdictions that adhere to, implement and enforce rigorously the same high standards of regulation and supervision. Although the Authorities will place a level of reliance on the foreign supervisory authorities responsible for authorising or licensing the foreign CCP, equivalence recognition granted by the FSCA will be undertaken with the concurrence of the PA and SARB – allowing for the consideration of prudential and systemic matters to be considered.
		Our concern is heightened in respect of the exemption of an external CCP from licensing, given the systemically important role that a CCP plays in a financial market. Specifically, an exempted CCP would not be bound by the relevant provisions of the FMA, the FSRA, the Insolvency Act (with specific reference to section 35) nor any other South African statute, which may lead to the undermining of the SARB's mandate of maintaining the stability of the financial system in South Africa. In a period of market stress or the	Concerns noted, however it is for this reason that the FMA requires that equivalence recognition in respect of the specific type of market infrastructures (e.g. CCP or TR) in accordance with Section 6A of the FMA be done by the Authorities and the SARB who would have collectively assessed the licensing regime, in addition to the overall regulatory and supervisory regime applied in that foreign jurisdiction against the framework established in the FMA. Managing an external CCP or external TR in a period of market stress or the occurrence of a systemic event would be done in close cooperation with the local regulator in the equivalent

No.	Commentator	Comments	Authorities' response
		occurrence of a systemic event, neither the SARB nor the Authorities would have jurisdiction over the exempted external CCP and would be unable to exercise any control over the exempted external CCP. This would result in (i) a lack of control over clearing and settlement; (ii) the destabilisation of the financial environment; and (iii) the introduction of systemic risk into the South African financial market. We are of the view that the granting of an exemption from important provisions of the FMA - including those dealing with the licensing of market infrastructures - will not meet the criteria for exemptions set out in section 6(3)(m)(i) of the FMA in relation to the public interest and the objects of the Act, and we do not believe that the additional specific criteria for exemption from the provisions of the FMA for external market infrastructure set out in section 6(3)(m)(iii) adequately reflects the most important policy considerations to be taken into account if exemptions from provisions of the FMA are to be considered. The most important policy considerations should be the extent of the impact of the activities of the external market infrastructure on the South African financial system and whether there is no reason for there to be any regulation of the external market infrastructure by the South African regulators.	jurisdiction, which is again why the FMA explicitly sets out the principles of co-operation in this regard, and the minimum requirement of the supervisory co-operation arrangements in section 6C of the FMA. We do not believe that such a general statement can be made without consideration of the merits of an application for exemption and the reasons put forward in support thereof, as only then an application will be considered against the provisions of section 6(3)(m) of the FMA. Arguably the legislator enabled the powers of the Authorities intentionally and was informed by a policy decision to do so, and the powers afforded in this regard would be balanced by the criteria in section 6(3)(m) of the FMA. To reject any application without due consideration purely on the principle of potential risk being introduced in the market without considering the potential benefits thereof would be prejudicial to the applicant and not in line with principles of fair administrative justice. Similarly, JSE Clear which is a domestic CCP, when it was first granted equivalence by ESMA and the BOE was not required by either these foreign Regulatory Bodies to (i) apply to be licenced in addition to being declared equivalent, nor (ii) to have a physical presence in the UK or in the EU. The Regulatory Authorities did however make the equivalence determination of JSE Clear conditional to the continued compliance with the equivalence framework in these jurisdictions and entered into an MOU with the FSCA outlining specific requirements for supervision, information sharing and the like. It is therefore international best practice to consider these applications on a case-by-case basis.

No.	Commentator	Comments	Authorities' response
		Given our view that the exemption provisions in the FMA should not be applied to the market infrastructure licensing sections, we do not believe that the exemption criteria in the draft Joint Standard can be appropriately applied to a request for exemption from licensing by an external CCP or TR.	
4.	JSE	Notwithstanding our concerns regarding the possibility of an external CCP or TR being exempt from the licensing provisions in the FMA, there is a lack of clarity as to when an external CCP should comply with the provisions of the FMA and when it must be licensed or exempted from licensing. The policy rationale or the necessity for the provision of an exemption from the need to licence an external market infrastructure, and for the criteria for assessing whether an external market infrastructure should be either licensed or exempted from licensing, is not provided for in the FMA, and it is not provided for in the Statement of Need and, indeed, the proposed Joint Standard. Therefore, the lack of clarity persists. Section 49A of the FMA provides: *"An external central counterparty must be licensed under this section to perform functions or provide services, unless it is exempt from the requirement to be licensed in terms of section 6(3)(m)."* In interpreting this provision, it is unclear what constitutes the provision of functions or services in South Africa which would require an external CCP	Disagree. The FMA clearly provides for two ways in which an external CCP may perform functions or provide services in South Africa: either on the basis of being licenced and applying to be licenced in terms of section 49A or on the basis of an exemption in terms of section 6(3)(m) of the FMA. The election on whether to apply for a licence or an exemption lies solely with the external CCP. The additional compliance requirement for a CCP wishing to rely on an exemption is that it must be licensed or authorised in a foreign jurisdiction that has been determined to enforce a regulatory regime equivalent to that established in the FMA. Please refer to paragraph 2.1 and paragraph 2.5 of the Statement of Need, that cross reference the policy imperative to create mechanisms for foreign entrants to participate in the South African market, thereby promoting the efficiency and competitiveness of the South African financial markets. The FMA defines an external counterparty to mean a foreign person who is authorised by a supervisory authority to perform *a function or functions similar to one or more of the functions of a central counterparty as set out in this Act* and who is subject to the laws of a country other than the Republic, which laws- (a) establish a regulatory framework equivalent to that established by this Act; and (b) are supervised by a supervisory authority;

No.	Commentator	Comments	Authorities' response
		to be licensed or exempted from licensing in South Africa. In other jurisdictions the nexus is clear. For example, in the EU EMIR, Article 25 (1) provides, *"A CCP established in a third country may only provide clearing services to clearing members or trading venues established in the Union where that CCP is recognised by ESMA",* and the Regulation provides for a transitionary period for third-country CCPs to be recognised by ESMA. Article 25(1) therefore makes it clear that the trigger for ESMA recognition is the provision of CCP clearing services to an EU-established clearing member or trading venue. It is assumed that the South African policy makers intended a similar approach, in which the trigger for licensing would be the intended provision of clearing services by an external CCP to South African clearing members or exchanges. However, neither the FMA nor any other regulatory instrument clarifies the	In our view the provision of functions or services similar to those performed by a domestic CCP such as JSE Clear (and in line with what is required in sections 48 and 50 of the FMA) will be the nexus when requiring an external CCP to be licenced in SA for providing these functions and services in SA. For example, the Authorities would require an external CCP providing clearing services to local domiciled banks or local/domestic exchanges to be licenced or to apply to be exempt from a provision of the FMA (which could include an exemption from the requirement to be licenced). The Authorities would consider whether SA domiciled banks clear through the external CCP or what the exposure of SA domiciled banks are in order to protect local domiciled banks when the CCP fails. Considerations would include to whom the external CCP will be providing the central clearing services/functions and which securities the CCP will be clearing. If the external CCP provides the function to SA banks and exchanges and the securities are listed or issued in SA, then these are the triggers that would require the external CCP to be licenced. These are also the functions/services similar to that of a domestic CCP such as JSE Clear. These are in line with the definition of an external CCP, licencing requirements in section 48 for domestic CCPs read with the functions to be provided by a CCP in section 50 of the FMA. Correct, the approach is contained in the FMA when considering the definition of an external CCP and the fact that an external CCP will be providing clearing services to South African clearing members or exchanges and clearing securities issued in SA.

No.	Commentator	Comments	Authorities' response
		approach. Section 4 of the FMA provides (author's emphasis): "(*1)* *No person may –* *…* *(e) act as a clearing member unless authorised by a licensed exchange, a licensed independent clearing house, a licensed central counterparty, a licensed external central counterparty or an external central counterparty that is exempt from the requirement to be licensed in terms of section 49A, as the case may be;* *….* *(5)* *(a) A clearing member may only provide the clearing services or settlement services for which it is authorised by a licensed exchange, licensed independent clearing house, or a licensed central counterparty, as the case may be, in terms of the exchange rules or clearing house rules, as the case may be.* *(b) A clearing member may only provide clearing services or settlement services for which it is authorised by a licensed external central counterparty or an external central counterparty that is exempt from the requirement to be licensed in terms of section 49A, with the joint prior written approval of the Authority, the Prudential Authority and the South African Reserve Bank".* These provisions make it clear that a clearing member of an external CCP can only act as such (in the Republic) if they have been admitted as a clearing member by a licensed	Agree, a locally domiciled entity (for instance an SA domiciled bank) that wants to act as a clearing member of an external CCP in SA, it can only provide clearing services if admitted as a clearing member by a licenced external CCP or an external CCP that has been exempted from licensing by the Authorities.

No.	Commentator	Comments	Authorities' response
		or exempt external CCP. But what criteria determines when a clearing member and/or an external CCP is providing clearing services in the Republic? Is it determined by whether the clearing member of an external CCP is an SA-registered entity (as is the case in the EU), or whether the clients of the clearing member are SA entities, or whether the trades or contracts cleared by the external CCP are concluded in the Republic? This lack of clarity makes it difficult to determine with certainty when the exemption criteria in the proposed Standard (and the rest of the criteria in section 6(3)(m) and section 49A) are to be applied.	Please see comment above on the services and functions to be provided by a CCP that would require the external CCP to apply to be licenced. Disagree that there is lack of clarity with respect to the criteria with regards to when an external CCP will need to be licenced in SA. As mentioned above we do agree that if the external CCP's clearing members are SA domiciled entities that the CCP will be providing the clearing service to, and if the securities are issued in SA would all include and constitute the need/trigger for an external CCP to be licenced to provide such functions/services. Please see comment above, there is no lack of clarity when the exemption criteria or the criteria in the FMA would be applicable.
5.	JSE	Our comments in comment 2 above apply similarly to an external trade repository. Section 56A(1) of the FMA provides: *"An external trade repository must be licensed under this section to perform duties or provide services, unless it is exempt from the requirement to be licensed in terms of section 6(3)(m)."* We have assumed that it is intended that the nexus for licensing purposes is the establishment of duties towards a South African Authority or the Reserve Bank, or the provision of services to a South African entity. But what are the criteria for determining whether an external trade repository is	The response to the comments in comment 2 above apply similarly to an external TR. The FMA provides for two ways in which an external TR may perform duties or provide services: either on the basis of a license in terms of section 56A or on the basis of an exemption in terms of section 6(3)(m) of the FMA. The election on whether to apply for a licence or an exemption lies with the external TR. The additional compliance requirement for a TR wishing to rely on an exemption is that it must be licensed or authorised in a foreign jurisdiction that has been determined to enforce a regulatory regime equivalent to that established in the FMA.

No.	Commentator	Comments	Authorities' response
		performing functions in the Republic and needs to be licensed or exempt from licensing in SA? Is it whether one or more of the reporting entities are SA-registered entities, or whether the transactions to be reported to the external trade repository are concluded in the Republic? This lack of clarity makes it difficult to determine with certainty when the exemption criteria in the proposed Standard (and the rest of the criteria in section 6(3)(m) and section 56A) are to be applied.	Please see detailed response to comment 4 above that applies similarly to the duties/functions of an external TR that performs these functions in relation to SA based/domiciled entity. We therefore do not agree that there is any lack of clarity when the exemption criteria or the criteria in the FMA would be applicable to an external TR. The Joint Standard does not set criteria for whether based on the transactions involved the reporting must be made to a licensed TR or a TR operating on the basis of an exemption. The election lies with the external TR on whether to apply for a license or to apply for an exemption.
6.	SAIS	**Expected Benefits and Cost and Resource Implications** The focus in the statement of need seems disproportionately geared towards addressing concerns of CCP's and TR's, potentially neglecting the essential need to explicitly articulate the specific impacts within the SA context and for local entities. The Benefits and Cost Resource Implications, as currently presented, appear tailored for foreign CCPs or TRs and lack information on their SA implications. This imbalance might unintentionally lead to a regulatory environment lacking a nuanced understanding of the intricacies and challenges faced by SA entities. Emphasising the importance of aligning the regulatory framework with the unique dynamics of the SA financial landscape, the	The Statement deals with external CCP and external TRs for the specific reason that the Standard creates regulatory requirements for these types of entities and not all entities generally. The Statement is not intended to provide suggested regulatory interventions brought about by competition from external CCPs and external TRs. The commentator comments on the absence of explaining the expected benefits and cost and resource implications for local entities but does not provide any context as to what these implications may be. The mere introduction of competition cannot be argued to impose costs or negative implications for local entities. In bi-lateral engagements with commentators after receipt of submissions on the draft Joint Standard, the Authorities confirmed that this regulatory development was aimed at furthering the work on developing a regulatory framework for central clearing in South Africa.

No.	Commentator	Comments	Authorities' response
		SAIS asserts the necessity of establishing a level playing field that actively addresses the distinctive requirements of the local financial sector. Examining the prerequisites for becoming a trader in the United States, the United Kingdom and SA serves as an illustrative example, revealing marked distinctions due to diverse legislative and regulatory frameworks governing each country. The SAIS contends that for a truly effective level playing field, it must be rooted in a comprehensive understanding of the local market's nuances, regulatory landscape, and the specific challenges faced by domestic entities. To rectify this potential oversight, the SAIS advocates for recalibrating the statement of need to highlight the SA context and its impact on local entities, incorporating detailed analyses of unique challenges and opportunities within the SA financial sector. Moving forward, regulatory authorities should foster a collaborative dialogue with SA stakeholders, incorporating their insights to craft a regulatory framework that is both fair and responsive to the diverse needs of the local market. A comprehensive approach is necessary, considering the intricacies of cross-border activities and the preservation of local economic interests. Policymakers and regulators must develop strategies that	As a member of the Group of Twenty (G20) countries, in 2008, South Africa committed to implementing the reforms identified as necessary to improve the regulation and supervision of the OTC derivatives markets – in response to the global financial crisis that commenced circa 2007. The G20 reform programme comprised the following four key elements: (a) all standardised OTC derivatives should be traded on exchanges or electronic platforms, where appropriate; (b) all standardised OTC derivatives should be cleared through central counterparties (CCPs); (c) OTC derivatives contracts should be reported to trade repositories; and (d) non-centrally cleared derivatives contracts should be subject to higher capital requirements. As was explained in detail in the Joint Roadmap[2] as part of the 2nd phase of the Roadmap, a framework is being developed to provide for the recognition of regulatory frameworks from an equivalent jurisdiction, applicable to external CCPs, external TRs and the establishment of external CSD links (external participants) and to allow external participants to provide services and perform functions and duties prescribed in the FMA. For full details in this regard, see page 8, paragraph 4.4.1 (f) of the Joint Roadmap. Noted. Please see response to comment number 2 in Section C above.

[2] See footnote 1 on page 17

No.	Commentator	Comments	Authorities' response
		balance international participation with local market stability, addressing SAs unique market rules impacting processes like unwinding defaults, short selling, securities lending, corporate actions, and tax reporting to effectively manage and mitigate risks associated with increased cross-border trading and netting activities. This collaborative effort is vital to fostering an environment adhering to international standards while being tailored to the unique challenges and opportunities presented by the SA market. As discussions progress, maintaining a continuous and transparent dialogue between regulators and stakeholders is imperative to ensure that all perspectives are considered in shaping a regulatory framework that promotes stability, fairness, and adaptability. The SAIS remains vigilant in advocating for a regulatory landscape that not only acknowledges the distinctiveness of the SA financial sector but actively works towards creating a level playing field benefiting all SA participants.	Noted. Please see response to comment number 2 in Section C above regarding the comprehensive approach by the Authorities for consultation on regulatory instruments.
7.		**Paper** The SAIS unequivocally aligns with the overarching objectives that the FSCA seeks to achieve through the equivalence paper, as per the proposal sent for comment during November 2023. While acknowledging the positive implications it holds for South Africa (SA), it is crucial to underscore the nuanced	Noted. All exemptions that are considered against the draft Joint Standard will be measured against the relevant laws, including the draft Joint Standard and the FMA. The approach to be followed in issuing an equivalence determination in terms of the Equivalence Framework specifically provides that thorough consultation will be undertaken with appropriate persons,

No.	Commentator	Comments	Authorities' response
		and distinctive characteristics inherent in the SA financial landscape. While recognising the broader aspirations of achieving equivalence, it is imperative to approach such endeavours with a deep understanding of the bespoke intricacies that define and distinguish the SA financial ecosystem, that could potentially affect the intended beneficial outcomes, create unlevel playing fields and introduce possible risks. As noted in the SAIS' comment on the Draft Equivalence Framework for Financial Markets and Draft Determination of Requirements Relating to External Central Counterparty or External Trade Repository Licence Applications paper ("*Draft Equivalence Paper*", comment submitted on 30 November 2023), certain concerns were raised.	including experts. A level of comfort can be drawn from the fact that the equivalence determination will be granted with the concurrence of the PA and SARB – thereby ensuring a broad representation of bodies involved in the financial markets. Please see further responses to commentator's comments on the Equivalence framework. For sake of brevity the response will not be repeated here.
		The SAIS holds the view that, the *Draft Equivalence Paper*, should be comprehensively considered alongside this paper i.e. Criteria for the Exemption of an External Central Counterparty (CCPs) or External Trade Repository (TRs) from the Provisions of the Financial Markets Act, *("Exemption Criteria Paper"*) with the comments on both documents being amalgamated. The current separation unintentionally leads stakeholders to assess the impact of these two papers in isolation, rather than recognising the holistic impact they collectively pose to the market, a matter considered to be of utmost significance which can introduces substantial risk. The SAIS'	Agreed that the documents should be considered collectively as the strong correlation between the frameworks required that all three be considered as a package. However please note that the package has been separated for several fundamental and practical reasons. Firstly, they are not the same type of legal documents (i.e. regulatory instrument as defined in the FSR Act, versus a framework and licensing forms determined by notice on the FSCA website) Secondly, the Joint Standard is issued jointly by the FSCA and PA (as is required in the FMA), while the Equivalence Framework and the Determination falls within the mandate of the FSCA.

No.	Commentator	Comments	Authorities' response
		comments articulated in the *Draft Equivalence* paper may be rendered ineffective if an exemption is granted, introducing potentially significant risks to the market. The imperative of jointly considering these components is paramount to ensuring a well-informed and cohesive regulatory approach that safeguards market stability and integrity. As the SAIS, we are compelled to express our profound concerns regarding the prospect of granting Exemptions to Central CCPs and TRs with equivalent status, as outlined in the current and proposed regulatory discourse. This Exemption, as defined, allows a foreign entity, authorised by a supervisory authority and subject to the laws of another jurisdiction, to provide services similar to those defined in our Act, under the condition that their regulatory framework and supervisory oversight are equivalent to those established by our Act. While we recognise the intent to align with global standards and foster international cooperation, this approach raises significant concerns for SA's financial sector, particularly in light of the unique challenges and critical issues currently facing our market. We believe that this move could have far-	Accordingly, different consultation and governance processes apply to the effective making of these documents. These differences are informed by the empowering provisions in primary legislation as well as the regulators needs to have the ability to respond effectively and timeously to observations in the market. The Equivalence Framework furthermore applies broadly to other types of entities (beyond external market infrastructures) not covered by the Joint Standard and the Determination is capable of being amended by the FSCA in a relatively shorter time than a regulatory instrument – providing an appropriate mechanism to deal with emerging issues identified in the licensing of external CCPs and external TRs. The FMA explicitly enables the granting of such exemptions and sets out a mechanism for foreign entities to operate in South Africa. The role of the Authorities is to implement the FMA in line with responsibilities in the FMA and with due consideration to the commitments made as a member of the G20. Furthermore, the role of the Authorities is to ensure that such foreign entities do not operate in a manner that is inconsistent with the regulatory landscape enforced in South Africa. Therefore, despite being granted an exemption, entities will still be required to comply with all conditions attached to the exemption. Furthermore, equivalence recognition coupled with exemptions are commonly utilised regulatory tools in various jurisdictions, and local South African entries have

No.	Commentator	Comments	Authorities' response
		reaching implications, not just for the regulatory landscape, but also for the overall integrity, stability, and growth of our financial ecosystem. The SA Financial Markets are currently at a crossroads and a pivotal point, as they face current challenges: 1. **Declining Market Liquidity and Company De-listing's**: SA's financial market is currently experiencing a significant downturn in liquidity, marked by a worrying trend of company de-listings and a lack of new listings. This reduction in market participation not only affects the depth and resilience of the financial market but also diminishes its attractiveness to both local and international investors. 2. **Shift of Primary Listings Offshore**: The trend of SA companies moving their primary listings to offshore markets, while retaining secondary listings in SA, is a concern. This shift indicates a preference for foreign markets, which could be attributed to better perceived regulatory environments, a broader investor base or more favourable economic conditions abroad. It results in a significant portion of trading activity occurring outside SA, thereby diminishing the local market's vibrancy and relevance.	benefited from equivalence recognitions from the UK and EU. The observations have been noted. The comments here set out broader challenges facing the markets according to the commentator and does not directly relate to the proposed criteria in the content of the Joint Standard or the Statement of Need. For purposes of the consultation report the Authorities will not respond in detail to every comment raised here that goes beyond the content of, need for and expected impact of the Joint Standard, as there are more appropriate avenues available to engage on the commentators' views on broader challenges in the market not directly impacting the draft regulatory instrument out for consultation. It is important to keep in mind that this Joint Standard is being developed as part of the framework to ultimately determine eligibility criteria for OTC derivative transactions to be subject to mandatory central clearing, and to develop additional mandatory clearing requirements applicable to other categories of OTC derivative transactions, as may be necessary. Comments related to the listed markets will therefore not be responded to in detail.

No.	Commentator	Comments	Authorities' response
		3. Capital Flight and Tax Base Erosion: The movement of capital, investments and skills offshore is a critical issue. This outflow not only leads to a reduced tax base but also to a drain of intellectual and financial resources, which are essential for the growth and development of the SA economy. **4. Geopolitical and Governance Challenges**: Issues such as poor governance, corruption and the FATF (Financial Action Task Force) grey listing contribute to a negative perception of SA as an investment destination. These challenges deter foreign investment and undermine confidence in the financial system. **5. State-Owned Enterprises (SOEs) and Economic Impact**: The state of SA's SOEs, many of which are struggling with inefficiency, financial distress and poor infrastructure, further exacerbates the country's economic challenges. These entities often play a significant role in the national economy and their poor performance has broad implications for economic growth and stability. **6. Risk of Offshore Financial Activity**: Granting exemptions to CCPs and TRs could further encourage financial market activities to move offshore. This would	See comment on previous page. Granting equivalence to an external CCP or TR can potentially drive market activity offshore for several reasons which we would not know at this stage. This will

No.	Commentator	Comments	Authorities' response
		allow trading to occur outside of SA's regulatory purview, without contributing directly to the SA economy or being held accountable under local regulations. Such a move could exacerbate the existing challenges of capital flight and reduced market liquidity, and further diminish the country's standing as a financial hub. Considering the abovementioned concerns, the SAIS does recognise the proposal's alignment with the principles of international harmonisation as advocated by the International Organisation of Securities Commissions (IOSCO). The SAIS fully supports the introduction of competition in the financial markets and acknowledge the potential benefits that international participants and counterparties can offer to the SA financial landscape. However, the SAIS remains of the firm belief that such integration should be conducted on a level playing field. This means that any "equivalent entity" granted exemptions should be duly registered and regulated within the SA jurisdiction. Consequently, the importance of adopting a tailored approach, one that thoroughly acknowledges and integrates the distinct regulatory, legislative and operational characteristics unique to the SA financial markets, is underscored. This approach will not only foster international collaboration but also ensure the preservation and	only be more apparent when these entities are allowed in SA. The extent to which market activity moves offshore depends on several factors, including the specific conditions and incentives offered by the external CCP, the preferences of market participants, and any remaining regulatory or operational frictions. Overall, while granting equivalence to an external CCP or TR may have the potential to drive market activity offshore, the actual impact will depend on a combination of regulatory, economic, and market dynamics. Comment Noted. As commented throughout in response to similar comments raised, the granting of exemptions is enabled through the FMA and not the Joint Standard. The FMA is drafted broadly to allow entities to operate in South Africa on the basis of an exemption. The Joint Standard is intended to implement the Authorities' responsibilities and support the broader commitment to mandating central clearing for certain OTC derivative transactions. The Authorities will monitor ongoing compliance with the Joint Standard and any conditions imposed on entities that have been granted an exemption. All facts that have been obtained from this monitoring will be considered when assessing the adequacy of compliance by exempted entities.

No.	Commentator	Comments	Authorities' response
		enhancement of the SA domestic financial ecosystem's integrity and stability The SAIS must express and highlight some of the significant concerns regarding the potential implications for SA's financial markets should Equivalent Entities be granted Exemption as proposed: 1. **Regulatory Divergence and SA's Unique Context**: While IOSCO provides a global securities regulation framework focusing on investor protection, market integrity and systemic risk reduction, its application varies across jurisdictions. SA's distinct legal, tax, capital, labour laws, exchange control and regulatory frameworks necessitate a specifically customised approach to securities regulation within the country. A universal application of IOSCO standards, without considering these local specifics, may prove inadequate and lead to unintended consequences. 2. **The Essential Role of Clearing Houses and Trade Repositories**: In SA, the Financial Markets Act (FMA) meticulously outlines the functions of licensed clearing houses and trade repositories, which are pivotal in maintaining market stability. They are tasked with ensuring fair and transparent business practices, managing systemic risks, enforcing compliance with local	The Authorities will consider the application for an exemption on a case-by-case basis. Authorisation or licensing by a foreign regulator will not of its own necessitate the granting of the exemption – the Authorities will consider the application taking due regard for the Joint Standard and the FMA. Noted. The Authority guards against creating regulatory frameworks that create opportunities for arbitrage. The purpose of the Equivalence Framework is to carefully assess the regulatory framework of a foreign jurisdiction against the provisions of the FMA so as to ensure that there are no gaps in the regulation and supervision of foreign entities operating within South Africa. The Memoranda of Understanding with foreign supervisors

No.	Commentator	Comments	Authorities' response
		regulations and safeguarding clearing members' funds and collateral. Transferring these vital responsibilities to foreign entities under varying regulatory regimes risks undermining their effectiveness.	will be robustly negotiated with a view of maintaining the integrity of the supervisory and regulatory frameworks established in South Africa.
		3. **Maintaining Sovereignty in Financial Regulation**: Granting exemptions to external CCPs and TR's might result in ceding control over critical aspects of the financial markets to foreign regulatory authorities. These entities, governed by different financial ecosystems, may not align with SA's unique challenges, including labour laws, transformation goals, tax regime and infrastructure issues, potentially destabilising SA markets.	Disagreed that granting exemptions will result in the ceding of control to foreign regulators. In this regard, please see details of the supervisory co-operation arrangement as set out in paragraphs 3.3 and 7.20 of the Equivalence Framework for Financial Markets as well as sections 6A, 6B and 6C of the FMA. Equivalence recognition coupled with exemptions from local requirements are commonly utilised regulatory tools internationally and does not equate to ceding control over regulation.
		4. **Ensuring Equal Treatment of Local and Foreign Entities**: Applying dissimilar regulatory standards to local and foreign entities creates an uneven playing field. Foreign entities, not bound by the same constraints and responsibilities as SA companies, could lead to competitive imbalances and systemic risks.	The Authorities confirm that there will be no unequal treatment of entities as a result of the Joint Standard. A jurisdiction will only be recognised as equivalent in South Africa if it has a regulatory framework similar to that of the FMA, and the entity is therefore subject to the same robust regulatory oversight in their home jurisdiction as local entities. It will therefore actually create a fair and level playing field and avoid duplication. In this regard, please see the details set out in the equivalence framework.
		5. **Risk Management and Local Enforcement**: The SA regulatory framework is tailored to manage systemic risks specific to our	

No.	Commentator	Comments	Authorities' response
		market. Delegating regulatory oversight to external entities could impair the ability to effectively monitor and enforce compliance, introducing new risks into the financial ecosystem. 6. **Foreign Financial "Failure" Risks:** The issue of potential risks posed by large foreign counterparts to the SA market is a matter of significant concern. The perspective held by foreign markets or regulators, in granting SA participants foreign equivalence, often stems from that SA Market participants are exceptionally well regulated and from the belief that SA market players, due to their relatively smaller size, are unlikely to introduce significant risk or cause a substantial impact on their markets. In this view, should a SA participant fail, the effect on foreign markets or participants is perceived as minimal or manageable. However, the concerns raised may not adequately consider the reciprocal impact on the SA market. Foreign entities often possess a scale and magnitude that far exceed the size of SA market players. *In the event of a failure or crisis involving one of these large foreign entities, the resulting impact could be catastrophic for the SA market*. Given the significant size and reach of these entities, any disruption in their operations could potentially	Please note that the Authorities will not be delegating regulatory oversight to any other entity. The Authorities will have a number of mechanisms to enforce the regulatory regime applicable in South Africa. By way of example, the Authorities may revoke the exemptions at any time where, based on the available information, a foreign CCP or foreign TR no longer meets the requirements in the Joint Standard, or the conditions imposed. Please see paragraph 8.5 to 8.7 of the Equivalence Framework. At this stage, it is to be noted that the South African market has a licensed CCP. The introduction of another CCP in the local market for the part of the market that is currently not centrally cleared, whether domestic or foreign will assist in ensuring that South Africa meets its commitments as a member of the G20. The G20 reform package aimed at the derivatives market contemplates that signatory states should make use of a CCP with trades reported to a TR or apply higher capital requirements for those trades that are not cleared through a CCP. These commitments are intended to provide for enhanced management of risks brought about by over-the-counter trades and an interconnected market. South Africa currently does not have a CCP that can clear OTC derivatives as our domestic CCP only clears listed derivatives. South Africa therefore still lacks in that area of our G20 commitment as well as the fact that we do not have a licenced TR yet. The Authorities are of the view that the control mechanisms to be applied through the same regulation and supervision of domestic CCPs and TRs is cognizant of spillover risks that may occur as a result of events in international markets. There are sufficient safeguards in place to minimise the risk when allowing an external CCP or TR to operate in SA.

No.	Commentator	Comments	Authorities' response
		trigger a domino effect, adversely affecting SA's financial stability. Such an event could be detrimental enough to jeopardise one of SA's top banks or significant market counterparts. This asymmetry of potential impact highlights the critical need for a more balanced approach to risk assessment and management in cross-border financial activities. It is essential for SA regulatory authorities to thoroughly evaluate and understand the potential risks posed by these large foreign entities and develop robust mechanisms to mitigate any adverse impacts on the local financial system. This approach would ensure the protection of SA's financial markets and institutions, maintaining their stability and resilience in the face of potential global financial disturbances. The SAIS supports the principles of the International Organisation of Securities Commissions (IOSCO). The importance of implementing these principles within the specific legal framework of each jurisdiction to effectively achieve their objectives, is emphasised. Accordingly, meticulous consideration regarding any exemptions for external CCPs and TRs is urged. Primary focus should be on safeguarding the sovereignty, integrity and stability of SA's financial markets, with a strong emphasis on local oversight, fair treatment and rigorous risk management.	Only if the regulatory framework of the external CCP's jurisdiction is equivalent to the regulatory and supervisory framework of SA will this be considered. This involves a thorough assessment of the external CCP's rules, risk management practices, and regulatory oversight. The Authorities will establish mechanisms for continuous oversight of the external CCP. This can include regular reporting requirements, periodic audits, and stress tests to ensure that the CCP maintains high standards of risk management and financial stability. Section 6C of the FMA mandates that the Authorities enter into an MOU with the foreign Regulator wherein cooperation and information-sharing requirements are housed. This enables prompt sharing of critical information about the CCP's activities, risk exposures, and any regulatory actions taken by the home Regulator. The Authorities may impose conditions on the external CCP to provide comprehensive and timely data on its operations, including transaction data, risk exposures, and collateral holdings and ensure that the external CCP has robust resolution and recovery plans in place. These plans should be aligned with domestic regulatory requirements and provide clear procedures for managing defaults and other disruptions. The Authorities may also impose specific collateral and margin requirements to ensure that the external CCP maintains adequate financial resources to cover its exposures. These requirements will be consistent with local standards to mitigate counterparty risk.

No.	Commentator	Comments	Authorities' response
		It is imperative that policy decisions, especially those related to exemptions for participants with Equivalent Status, such as CCPs and TRs, are thoroughly evaluated for their potential impacts and unintended consequences on the SA economy.	Please see response above.
		Maintaining robust local financial markets that are in alignment with international standards, yet customised to suit SA's unique circumstances, is crucial for attracting and retaining both local and international investments and fostering a stable and prosperous economic environment. Granting equivalence status to foreign CCPs or TRs should be conditional upon the establishment of their legal presence in SA, thereby subjecting them to local laws and regulatory oversight.	Please see response above. No argument is made why it would be necessary for an entity to have a local presence and why it should be a prerequisite for equivalence. Each application for equivalence will be assessed on a case-by-case basis, informed by the unique circumstances in each jurisdiction and analysed against the SA regulatory landscape. As this Joint Standard relates to criteria for exemption from provision of the FMA, and does not set out the equivalence framework itself, this comment will not be responded to for purposes of this consultation report.
		Furthermore, in line with section 6 (3)(m) of the Financial Markets Act (FMA), we believe that the granting of exemptions must be conducted in a well-considered manner, considering all relevant factors. The FMA stipulates that the Registrar may exempt any person or category of persons from provisions of the Act if it **does not conflict with the public interest or impede the achievement of the Act's** objectives and only if the application of the said section would not cause undue hardship or prejudice to the applicant or their clients. Thus, **any exemption granted must not contravene the public interest or thwart the objectives of the FMA**, ensuring that the best	Agreed in principle. Public interest will be considered in each individual application in deciding whether to grant or not grant an exemption - all applications will be assessed on their own merits and on a case-by-case basis.

No.	Commentator	Comments	Authorities' response
		interests of SA are paramount in these considerations. **<u>FMA - 6 - Registrar and Deputy Registrar of Securities Services</u>** *……* *(3) In performing those functions the registrar-* *…… (m) may exempt any person or category of persons from the provisions of a section of this Act if the registrar is satisfied that—* *(i) the application of said section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and* *(ii) the granting of the exemption will not—* *(aa) conflict with the public interest; or* *(bb) frustrate the achievement of the objects of this Act;*	
8.	SAIS	A key consideration in the discussion of equivalence and exemptions, as facilitated by the FMA, is the recognition of foreign regulatory, supervisory and enforcement regimes as equivalent to SA's framework. This could potentially allow local authorities to rely on a foreign entity's compliance with its native regulatory framework. While such recognition aims to simplify supervisory processes and avoid compliance duplication for foreign entities operating within SA, a maintain a critical stance on the approach is maintained.	The Authorities disagree that equivalence recognition coupled with exemption from provisions of the FMA amounts to abdication of regulatory and supervisory responsibilities. One of SA's Market Infrastructures, JSE Clear has undergone a similar process of equivalence recognition in the EU and the UK. JSE Clear was not required to be licenced in these jurisdictions after being declared equivalent and neither was there a requirement placed on JSE Clear to establish any kind of local presence in these jurisdictions. It poses the question if the commentator also thinks that ESMA and the BOE abdicated its supervisory and regulatory obligations by

No.	Commentator	Comments	Authorities' response
		SA cannot abdicate its responsibilities of a playing supervisory roles and enforcement of its own regulatory regime. With regard to the discussion on the Application and Approval of Exemption Process, the SAIS wishes to articulate several key considerations and concerns: **1. Prematurity of the Framework:** SAIS notes that the current framework for granting exemptions to foreign Central Counterparties (CCPs) and Trade Repositories seems premature. The finalisation of critical elements such as the Conduct of Financial Institutions (CoFI) Bill, the review of the Financial Markets Act (FMA) and the Code of Conduct for Financial Market	allowing JSE Clear to provide clearing functions in those jurisdictions. SA will follow a similar process as the UK and EU, as is enabled in primary legislation and there are adequate safeguards in place that the Authorities will follow to minimise and contain potential risks that an external CCP will introduce into the local markets. The making of the Joint Standard to set out criteria for exemption is enabled through the FMA as primary legislation, and the powers therein is afforded by Parliament. The policy stance in the FMA as primary law falls within the purview of the National Treasury, and the Authorities cannot through consultation on secondary legislation respond to comments in this regard. Any concerns with the application of primary law or consequences thereof must be directed at National Treasury as the policymaker. Equivalence recognition coupled with exemptions are commonly utilised regulatory tools in various jurisdictions, and local South African entries have benefited from equivalence recognitions from the UK and EU. Not agreed. The Authorities are of the view that the framework is not premature – as these are part of a publicly communicated phased approach to mandate central clearing of OTC derivatives, as part of South Africa's commitment to the G20 reforms of the OTC Derivative market. For more detail, please see the Joint Roadmap for the development of a regulatory framework for central clearing in South Africa.[3] The policy stance

[3] The document is available on the Authority's website (www.fsca.co.za) under *Home* > *Regulatory Frameworks* > *Position / Policy Papers* > *Market Integrity* > *2022* or by clicking on the following link: *https://www.fsca.co.za/Regulatory%20Frameworks/Temp/Joint%20Roadmap%20for%20the%20development%20of%20a%20regulatory%20framework%20for%20Central%20Clearing%20in%20SA.pdf.*

No.	Commentator	Comments	Authorities' response
		Infrastructures (FMIs) are still pending. Delving into considerations of foreign equivalence without establishing a solid foundation in the local regulatory framework could be counterproductive. There is a need for strategic sequencing, where establishing and solidifying the domestic regulatory landscape takes precedence, above exploring international equivalency frameworks. **2. Lack of Agreed Application Process:** The regulators alongside industry have not yet reached a consensus on the application process for the Foreign Equivalence Framework for Financial Markets and Draft Determination of Requirements Relating to External CCPs or External TRs Licence Applications. It is therefore premature to consider exemptions when the full application process, procedures and rules are yet to be agreed upon. There should be a comprehensive and transparent matrix outlining the full criteria to assess whether entities meet the SA standards before exemptions are contemplated. **3. Ensuring Transparency and Objectivity:** It is imperative that the exemption process remains transparent and objective, eliminating any potential for ambiguity or subjectivity. The SAIS strongly emphasises the necessity of a process that is fair, open and transparent in evaluating applications for equivalence status as well as exemptions. This process must be	and powers and responsibilities of the Authorities have not been pended as a result of the COFI developments and FMA Review, and the regulatory framework is already established in terms of primary legislation in terms of the FMA. In an effort to streamline the consultation process, the FSCA elected to issue the equivalence framework at about the same time as the Joint Standard. The issuance of the Equivalence Framework in 2023 is the second time that the framework has been published – having originally been published in 2018. However, this revised framework is intended to work in tandem with the Joint Standard. As stated above, there is no legal requirement for the FSCA to issue the Equivalence Framework. However, in order to disclose as much information to the market as possible the FSCA has issued the draft. Consensus between the Authorities and the industry is not a prerequisite for the equivalence process. The Authorities adhere to principles of transparency and fair administrative action in their operations. Furthermore, all exemptions are published on the Authorities' respective websites – detailing all exemptions and conditions related thereto. The process of assessing and granting exemptions falls within the regulatory purview of the Authorities as is the case in traditional licensing processes.

No.	Commentator	Comments	Authorities' response
		thoroughly documented and agreed upon. The formation of a specialised committee is proposed. Such a committee would comprise various regulators, industry associations and practitioners, with the function of meticulously reviewing each application for equivalence and exemptions. This committee would function in a manner akin to the former licensing board, ensuring a balanced and comprehensive approach to every application.	
		4. Regulatory Interoperability, Capacity and Duplication Concerns: The SAIS maintains that reliance on foreign compliance as a basis for granting exemptions should not lead to the abdication of SA's essential role in applying, monitoring and enforcing its own regulations. The SAIS holds firm in the belief that local regulatory bodies are the best suited to interpret and uphold our laws. Neglecting these responsibilities could inadvertently introduce systemic risks, potentially difficult to manage within the domestic context.	The Authorities disagree that equivalence recognition coupled with exemption from provisions of the FMA amounts to abdication of regulatory and supervisory responsibilities. Also see response at the beginning of the comment regarding the equivalence recognition of JSE Clear by the EU and BoE.
		Regarding the rationale of granting equivalence recognition to simplify the oversight of foreign entities, a key consideration may have been the capacity and resource availability of entities such as the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA) and the SA Reserve Bank (SARB), among others. The SAIS agrees that these bodies must be	The matters raised herein are noted and form part of the considerations when negotiating the content of supervisory co-operation agreements referred to in section 6C of the FMA.

No.	Commentator	Comments	Authorities' response
		adequately equipped to handle applications effectively and oversee foreign entities operating in the SA market. It is again noted that - this would be simpler if those foreign entities had registered offices within SA and were regulated in the exact same manner as the other SA registered entities with the same licences.	See response under item 2 on page 4 of this consultation report on this point.
		It is argued that while concerns about duplicating efforts between local and foreign regulators are valid, they should not undermine the necessity for each jurisdiction to independently manage and enforce its regulatory and enforcement regimes, as per its unique needs. Ensuring interoperability among local regulatory bodies, including the PA, FSCA, SARB, and the SA Revenue Service (SARS), is crucial. A well-coordinated and aligned regulatory framework is vital for maintaining a robust and resilient financial system in SA	Noted.
		5. Prioritising SA Financial Markets Needs First: SA regulators should prioritise the stability and integrity of the local financial markets over facilitating ease of operation for foreign entities. It is crucial that the focus remains on the potential impacts these entities may have within the financial system, rather than solely on their benefits. Any decision to ease regulations for foreign entities must be weighed carefully against the possible detrimental consequences that might arise in	It is the intention of the regulators to ensure that trading in and activities related to OTC derivatives do not introduce risk into the South African markets – and where such risks materialise, that there are adequate safeguards in place to manage and mitigate such risks, either through clearing or the application of margin. It aligns with powers and responsibilities afforded in the FMA and South Africa's commitment to the G20 reforms to the OTC derivative market.

No.	Commentator	Comments	Authorities' response
		the SA markets. It is imperative that the advantages of such decisions significantly outweigh the costs and implications for the country. The regulatory approach should ensure that the interests of the SA financial market and its stakeholders are not compromised in favour of external entities.	Please note that as commented throughout, this is enabled through the FMA. Please see response to commentator at the beginning of this comment number 8.
		6. Ensuring Transparent and Cooperative Decision-Making: The SAIS advocates for a strategic enhancement of the application process to promote efficiency and minimise redundancy, thereby streamlining the regulatory evaluation process. The effectiveness of the equivalence evaluation process hinges on its transparency and the collaborative efforts of diverse stakeholders. To ensure objectivity, the decision-making process must be based on a well-defined set of outcomes or benchmarks tailored for achieving equivalence and then exemption status.	The approach adopted in the Equivalence Framework is to be principles based – which principles will underpin the assessment of all equivalence recognition applications. As this comment relates to the equivalence framework, we will not respond in more detail.
		7. Comprehensive and Inclusive Consultation: The establishment of an impartial and experienced committee, charged with the meticulous review of each application for equivalence and exemptions is recommended. This committee would guarantee a balanced and thorough examination of every application. An all-encompassing consultation approach is crucial. This involves engaging with all pertinent regulators, including the	Suggestion noted. However, the process of assessing equivalence and exemptions applications falls within the regulatory purview of the Authorities. The mandates of the Authorities are set out in the FSR Act. The necessary consultation will take place in line with the requirements in the FMA, the FSR Act and Promotion of Administrative Justice Act, 2000.

No.	Commentator	Comments	Authorities' response
		FSCA, PA, SARB and industry stakeholders. Involving all relevant parties ensures a comprehensive evaluation of risks and aligns with international best practice in regulatory oversight. This broad and collaborative stance not only fortifies the rigor of the approval and exemption process but also establishes a holistic and inclusive decision-making framework, aligning with international best practice in regulatory oversight. Such a concerted and cooperative approach ensures that the regulatory landscape remains robust, responsive and well-informed in addressing the dynamic challenges of the SA market. **8. Involvement of the SA Revenue Service (SARS):** The SAIS advocates for the participation of the SARS in these consultations so as to understand the potential impacts on tax revenue and other possible financial implications. While acknowledging the intent to align with global standards, the SAIS asserts that it is essential to first establish a strong and comprehensive local regulatory framework. Any move towards granting exemptions should be undertaken with a thorough and informed approach, ensuring the alignment with SA's unique market context and safeguarding the integrity and stability of the local financial markets	Please note that the Authorities are giving effect to the policy stance taken by National Treasury, as set out in the FMA. National Treasury is also responsible for the fiscus. Arguably the National Treasury is aware of the tax implications. Comment is not clear as to why the commentator is of the opinion that the existing regulatory framework is not sufficiently strong and comprehensive, or the basis that the granting of exemptions will not be well informed.

No.	Commentator	Comments	Authorities' response
9.	SAIS	**Challenges and considerations** **FATF Grey listing:** The ongoing monitoring of the country's status on the FATF grey list is imperative. Remaining on this list has had significant implications for the financial sector, particularly in the realm of international compliance and reputation. **Monitoring International Relations & Impact of possible Sanctions:** Vigilant monitoring of international relations and the regulatory landscape is crucial for SA to proactively adapt its financial strategies in response to global developments. A significant concern is the potential impact of possible punitive measures or any international sanctions. Should SA face such sanctions, the repercussions for local clients could be substantial, particularly if foreign CCPs with equivalent status operating in SA and not registered as a company in SA are compelled to withdraw their services. A precedent for this exists in actions taken by regulatory bodies like the European Securities and Markets Authority (ESMA), which has recently revoked the JSE Clear CCP recognition. The possibility of such developments poses real threats to SA's financial market, highlighting the importance of awareness and impact for these scenarios. The withdrawal of a potential foreign CCP could lead to far-reaching economic consequences. It may result in decreased market liquidity and heightened costs for SA entities, as they may be forced to	Noted. Comment not responded to as it does not directly relate to the content of the draft Joint Standard or the statement of need and impact. The observation is noted. The FSCA must, in accordance with section 6C(1) of the FMA, enter into a supervisory co-operation arrangement with the relevant supervisory authority from the equivalent jurisdiction to perform its functions in terms of the FMA. Section 6C(2) sets out the minimum requirements for such supervisory cooperation arrangements and section 6C(3) set out the principles of co-operation, which includes among others the requirements to consult, co-operate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets. The threats mentioned by the commentator will be actively managed in cooperation with the supervisory authority of the equivalent jurisdiction and in accordance with these prescribed procedures.

No.	Commentator	Comments	Authorities' response
		seek alternative clearing services or manage the complexities of disrupted financial transactions. This situation could create a significant systemic risk, especially if international CCPs need to exit the SA market swiftly due to any such punitive measures or related regulatory changes. Therefore, it is imperative for SA to anticipate these challenges and develop robust contingency plans to mitigate potential economic and operational risks on its financial sector. **Mitigating the Risks**: Effectively mitigating risks in financial operations necessitates a thorough understanding of their potential unintended consequences. Among these risks, the concept of Remote Sponsoring in trading presents a significant concern. It could potentially lead to decreased liquidity in markets and might provide an incentive for international brokers to relocate offshore. Such a shift could arise due to concerns related to international sanctions, punitive measures, skill loss and an erosion of the tax base. This is especially pertinent in the context of cross-border netting and offset arrangements within holding companies operating across various jurisdictions. Given that a considerable proportion of SAs top stocks are dual listed, these arrangements could further impact market liquidity. Navigating the challenges posed by differing tax regimes and exchange control regulations across jurisdictions requires a comprehensive	Please see comment directly above. The FMA requires that all equivalence recognitions be underpinned by a memorandum of understanding, The concerns raised herein will be attended to at negotiation stage. The FSCA confirms that the monitoring of the Equivalence Framework and equivalence recognitions will be embedded in the functions and operations of the regulatory and supervisory departments in the FSCA. The Authorities are aware of risks and the benefits that introduction of remote sponsoring in trading in SA can bring. The benefits could include increased market liquidity, enhanced competition, access to international markets as well as innovation and efficiency. Risks can be mitigated through increased supervision and regulation and regulatory cooperation and collaboration with foreign regulators (through amongst other an MOU) Risks can also be further mitigated by subjecting the external CCP to robust equivalence assessment and conditions of information sharing and reporting of data to enable the SA Authorities to actively monitor activities and proactively take action when required.

No.	Commentator	Comments	Authorities' response
		approach. One essential measure might involve establishing a physical presence in SA through a registered legal entity. This strategy would provide the necessary control and oversight to manage the complexities inherent in diverse regulatory environments effectively. However, this is just one facet of a broader risk mitigation strategy. It is also imperative to implement robust internal controls, ensure adherence to both local and international tax laws and engage in strategic financial planning. Such planning should be designed to accommodate the intricacies of operating in multiple jurisdictions, thus safeguarding against the multifaceted risks these operations entail. **Local Market Dynamics:** It is of utmost importance for the FSCA to ensure vigilance with regard to international legislative and regulative changes, to prevent any adverse shifts in regulations that could negatively impact the SA financial market. This includes changes in settlement cycles, processes, procedures, trade reporting and the likes, that are unique to each market. Such changes could lead to imbalances and create opportunities for regulatory arbitrage, which may give international firms an unfair advantage in the SA market. Therefore, ongoing monitoring and active engagement in international regulatory developments are crucial to protect the interests of the SA financial markets whilst taking into consideration industry specific practices.	Please see response under item 2 on page 4 of this consultation report. This comment relates to the ongoing monitoring of equivalence recognition. In this regard, please see paragraph 8 of the equivalence framework. Also see detailed response to comment 16 below on the risk of regulatory arbitrage.

No.	Commentator	Comments	Authorities' response
		BEE Codes & Labour Regulations: The impact of the Black Economic Empowerment (BEE) codes on international entities seeking equivalence status in SA presents a significant concern. These entities, not being legal entities in SA and regulated by their own countries, would not need to adhere to SA laws and regulations, including the BEE code and labour laws. This non-adherence could potentially create an uneven playing field, giving these international entities an unfair advantage over local companies. Another point of concern is the effect on local brokers using international CCPs under an International Equivalence regime. Clearing and settlement are major expenses for brokers, and it is uncertain whether these costs would be exempted from procurement as a foreign service. This ambiguity could negatively impact local brokers procurement reporting which ultimately would have a negative effect on their BEE reporting and levels. Additionally, there is a risk of skill migration, particularly in the areas of clearing, settlement and market expertise, from SA to offshore locations. This could be a consequence of the equivalence status granted to international CCPs.	Noted. This comment relates to the principle of recognising a foreign jurisdiction as equivalent. The legislative mechanisms to enable cross-border activities are enabled in primary legislation through the FMA, and commentary on the draft Joint Standard setting out criteria for exemption of external CCPs and TRs might not be the most appropriate vehicle to debate policy decisions made by National Treasury. The policy stance in the FMA as primary law falls within the purview of the National Treasury, and the Authorities cannot through consultation on secondary legislation respond to comments in this regard. Any concerns with the application of primary law or consequences thereof must be directed at National Treasury as the policymaker.
		Regulatory Oversight: Monitoring and adhering to evolving international regulations is a demanding task that requires substantial resources, continuous vigilance and effective interoperability. For international CCPs to	Noted. Please see response above at the beginning of this comment 9 on the establishment of supervisory co-operation agreements. The FMA contains comprehensive requirements for the Authorities in this regard.

No.	Commentator	Comments	Authorities' response
		achieve equivalence status, they must commit to regular, electronic reporting that meet strict reporting standards set by regulatory authorities. This level of compliance is crucial for the FSCA to effectively enforce, monitor and uphold the regulatory standards agreed upon with other regulators. To facilitate this, the establishment of robust Memoranda of Understanding (MoU) with international regulatory bodies is essential. These MOU are intended to improve system integration and compatibility, thereby enhancing the supervision and management of financial activities across multiple jurisdictions. This integration will not only aid in the timely manner of reporting but also increase the overall effectiveness of the regulatory framework. Such efforts are key to ensuring that international CCPs operate within a structure that is both stringent and harmonious with global regulatory standards, ultimately contributing to a more stable and transparent financial environment. **Derivatives Market CCP:** In the current landscape, it is important to note that, currently, participants in SA's Derivatives market are the primary beneficiaries of settlement within the SA CCP environment. This fact underscores the potential prematurity of granting or passing equivalence status at this stage. A key reason for this caution is the incomplete knowledge and understanding of the Clearing and Settlement model for Equities, alongside the ongoing revisions to	Noted. This comment relates to the equivalence framework. We do not agree that this is premature, and the documents under consultation are merely enabling equivalence recognition and exemptions. Applications will still be considered on a case-by-case basis. It is important to keep in mind that this Joint Standard is being developed as part of the framework to ultimately mandate central clearing for OTC derivative transactions

No.	Commentator	Comments	Authorities' response
		the FMA. These are intricate processes that require thorough implementation and understanding to fully grasp their implications and effects. Furthermore, the absence of an extended Conduct of Financial Institutions (COFI) framework and the lack of a comprehensive blueprint for the financial market, complicate the understanding of the potential impacts and consequences of granting such equivalence status. This situation suggests a need for more in-depth analysis and readiness before moving forward with significant regulatory changes or statuses that could profoundly affect the financial market's landscape in SA. This careful approach is crucial to ensure that any shifts in the regulatory environment are beneficial and well-aligned with the broader goals and stability of the country's financial system. SA's pursuit of CCP licensing equivalence presents notable advantages, such as enhanced market access and conformity with international norms. Yet, this proposal also raises significant questions and potential challenges. Key among these is SA's geopolitical position, which could expose it to international punitive sanctions. Additionally, the task of harmonising global regulatory practices with SAs unique market dynamics is complex, involving factors like compatibility with remote membership, exchange control, the BEE code, tax laws and similar considerations as mentioned above.	to be subject to mandatory central clearing. Comments related to the clearing and settlement model for equities will therefore not be responded to in detail.

No.	Commentator	Comments	Authorities' response
		To navigate these challenges effectively, SA must employ a nuanced and balanced approach. This strategy should capitalise on the benefits of CCP licensing equivalence while cautiously addressing the associated risks. Such an approach is essential for the sustained resilience and growth of the country's financial sector. SA faces the task of weighing these potential benefits against the inherent risks. This careful and prudent assessment is vital. It is not just about maintaining a stable and equitable financial market environment; it is also about protecting the long-term interests and sustainable development of the nation's financial sector. Therefore, while the opportunities offered by CCP and other licensing equivalence are substantially considerable, the strategy for harnessing these opportunities must be thoughtful, well-informed and attuned to both the global context and local needs.	
10.	SAIS	**Impact of Exiting Foreign Entities that have been given Equivalence** In evaluating equivalence between developing, emerging markets and first-world developed markets, it is imperative to delve into the nuanced aspects of market size, stability and the potential impact on the SA ecosystem. This consideration extends beyond mere regulatory alignment, as the distinct socio-political landscape further complicates the equation. SA presently navigates a delicate political terrain, demanding a thorough examination of the implications stemming from our geopolitical	The observation is noted. By design the FMA allows the participation of foreign entities in the South African markets. The Joint Standard is aimed at ensuring that those participants conform to the practices applied in South Africa, so as to ensure alignment to the FMA. As a consequence, this allows South Africa to benefit from enhanced management of risk in the derivatives market as well as ensuring the standard application of requirements to all participants. As this Joint Standard relates to criteria for exemption from provision of the FMA, and does not set out the

No.	Commentator	Comments	Authorities' response
		stances. The contrast in market dynamics between developed first world and developing emerging economies necessitates a careful analysis of potential disparities in monitoring, resilience, adaptability and enforcement. Moreover, the evaluation must extend beyond quantitative measures to incorporate qualitative factors, such as governance structures, economic policies, interoperability and the robustness of regulatory frameworks. The SAIS strongly advocate once again for the necessity of the FSCA, PA, and SARB to collectively review and recognise the relevant regulatory and supervisory regime in other jurisdictions as equivalent to that of SA, so as to ensure that all necessary legislation is considered across the different regulators' domains. It is suggested including a committee of key clearing and market practioners to be part of the approval process, as well as the licensing process for these entities given their experience and specific market knowledge. Given SA's unique position, the assessment of equivalence should not be confined solely to regulatory benchmarks. It should encompass a holistic appraisal of the potential ramifications on the local ecosystem, factoring in the fragility of political scenarios and the associated uncertainties. By adopting a comprehensive perspective that considers both quantitative and qualitative dimensions, regulatory decisions can be better informed	equivalence framework itself, this comment will not be responded to in detail for purposes of this consultation report. The suggestion is noted, and the Authorities will conduct a robust equivalence assessment before declaring an external MI to be equivalent to enter the market. The Authorities will consult market practitioners if required.

No.	Commentator	Comments	Authorities' response
		and aligned with the specific challenges and opportunities inherent in the SA context.	
11.	SAIS	**Recognition that a foreign regulatory, supervisory and enforcement regime in the case of exemptions** As the SAIS, the importance of rigorously assessing foreign regulatory frameworks, including licensing requirements, regulations, rules, supervision and enforcement methods is recognised. SA regulatory bodies must ensure that these assessments are in line with international standards and adequately consider the systemic risks that external market infrastructures might pose to the local markets. Acknowledging foreign regulatory regimes as equivalent to SA's, along with implementing an appropriate exemption framework, could streamline the FSCA's supervision of foreign entities and reduce unnecessary compliance burdens for those wishing to operate within SA. The SAIS is aware of the challenges when depending on the supervisory, monitoring and enforcement mechanisms of other countries. This dependency necessitates a proactive stance from foreign entities, in communicating legal and regulatory issues to SA authorities, highlighting the importance of timely information sharing for prompt issue resolution. Enhancing interoperability and electronic reporting will also aid in this context.	Noted. Noted. Please see response to comment number 4 above. Noted. The FSCA must, in accordance with section 6C(1) of the FMA, enter into a supervisory co-operation arrangement with the relevant supervisory authority from the equivalent jurisdiction to perform its functions in terms of the FMA. Section 6C(2) sets out the minimum requirements for such supervisory cooperation arrangements and section 6C(3) set out the principles of co-operation, which includes among others the requirements to consult, co-operate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets.

No.	Commentator	Comments	Authorities' response
		SA regulators must have an in-depth understanding of foreign legislation to fully comprehend the impact of possible legislative changes to the SA financial markets. Directly replicating and adopting these changes is not feasible due to unique aspects of our market, including size, liquidity, system complexities and compliance requirements. A customised approach, mindful of the specific nuances of the SA financial landscape, is essential. The market share size of these foreign entities relative to the SA market share is a critical factor to consider. If they (foreign entities) hold a significant market share and face a major client default, it could heavily impact the foreign CCP and potentially jeopardise one of SAs major financial institutions. It is crucial to recognise that, although we may not be considered 'too big to fail' in their view, these foreign entities are often seen as 'too big to fail' within the SA context. This disparity underscores the need for robust understanding and strategic planning to address risks arising from these market size differences. To fully grasp the criteria and outcomes for obtaining equivalence status in financial regulations, particularly in the context of SA, various crucial factors need to be considered. Before implementing significant regulatory changes or granting statuses that could impact the financial market, an in-depth analysis and preparedness is imperative. This strategy	The Equivalence Framework provides for the FSCA to independently assess the information provided by applicants as part of an equivalence recognition assessment. This involves an in-depth review of applicable legislation and a substantive comparison of the content of the laws in a foreign jurisdiction and the regulatory regime established in the FMA. In addition, the FSCA is at liberty to contact foreign supervisors as part of its fact checking exercises. Noted. Please see response above.

No.	Commentator	Comments	Authorities' response
		guarantees a thorough evaluation of the current regulatory environment and the potential impact of any changes. Compliance is also crucial for the FSCA, in effectively enforcing, monitoring and upholding both domestic and international regulatory standards, thus safeguarding the integrity of the financial market. In the spirit of transparency and integrity, it is crucial for the FSCA to publicly release a list of jurisdictions deemed equivalent to SAs regulatory standards and capable of enduring similar levels of scrutiny. Furthermore, the FSCA should disclose not only a list of entities seeking equivalence status but also the specific foreign jurisdictions involved and the countries with which Regulatory MoU have been formalised. This level of transparency is vital for maintaining the integrity of the regulatory framework and supporting informed decision-making within this area. Moreover, it is imperative for the FSCA to provide clarity on the foundational criteria for exemptions. These criteria must be explicit, well-defined and stringently applied, to assure trust and a comprehensive understanding within the equivalence framework, thereby confirming that approved jurisdictions meet the high standards of SA's regulatory environment.	The FSCA confirms that all equivalence recognitions and exemptions granted will be published on the website. This comment relates to the equivalence framework and will not be responded to in detail or purposes of this consultation report. See paragraph 7.18 and 7.19 of the Equivalence Framework. See response to commentator under Section C above, comment 1.
12.	SAIS	**Determination Of Equivalence under the FMA**	

No.	Commentator	Comments	Authorities' response
		The SAIS recognise the determination of equivalence under the provisions of the Financial Markets Act (FMA). However, it is important to emphasise that the FMA is under review and is currently undergoing substantial revisions that could fundamentally alter the regulatory framework, as well as trading and settlement processes. These impending changes have the potential to directly influence the criteria and status of equivalence, or conversely, be significantly affected by these proposed role changes. Therefore, it is crucial to ensure that all fundamental modifications within the framework are in harmony with the proposed changes in equivalence status. This alignment is essential to maintain consistency and compliance of financial operations and regulatory adherence.	Noted. This comment relates to the equivalence framework and will not be responded to for purposes of this consultation report.
13.	SAIS	**CoFI, Conduct Standards for FMI's and Grey listing** The absence of finalised Conduct Standards for local Financial Market Infrastructures (FMIs) raises pertinent questions regarding the potential impact on achieving equivalence. Ensuring uniform adherence to conduct standards by both local and foreign entities is crucial for fostering a level regulatory playing field. The overarching concern centres on the timing of the current proposal in light of several ongoing regulatory developments. CoFI (Conduct of Financial Institutions) remains pending, the FMI standards are yet to be released and the FMA review is still in	The FSCA confirms that there are no dependencies between the Equivalence Framework and the draft Conduct Standard – Requirements for market infrastructures. Please see response to the same comment by commentator under comment 8 above, regarding claims related to the prematurity of the framework.

No.	Commentator	Comments	Authorities' response
		progress. Moreover, the fact that SA finds itself on the FATF grey list further complicates the regulatory landscape. This convergence of yet-to-be-finalised regulatory frameworks, both domestically and internationally, prompts a critical examination of whether the timing is optimal for the proposal of such an equivalence framework. The effectiveness of the proposed measures hinges on synchronised and well-coordinated regulatory initiatives. Therefore, careful consideration must be given to the dynamic regulatory environment, ensuring that the proposed framework aligns seamlessly with the evolving regulatory landscape and contributes to the overarching objectives of stability, transparency, and international cooperation. It is critically important to establish and communicate a comprehensive SA Regulatory Blueprint. This blueprint should be designed to facilitate a seamless transformation across all relevant legislation, providing a clear understanding of the impact, consequences and any potential risks within the financial markets. The primary objective is to ensure that the integrity of SA's market remains intact. A well-defined and transparent regulatory framework is key to avoiding any outcomes that might jeopardise the market's competitiveness, relevance, or expose it to undue risk. The focus should be on maintaining a robust, competitive and secure	Noted. Please see the respective strategies of the FSCA and PA, and the FSCA's 3-year Regulation Plan as published on the FSCA website. The FSCA Regulation Plan, which is annually revised, sets out details of all regulatory development under the FSCA's remit. Available at www.fsca.co.za under *Regulatory Framework > Regulation Plan.*

No.	Commentator	Comments	Authorities' response
		market environment, aligning with international standards while catering to SAs unique market dynamics.	
14.	SAIS	**JSE loss of CCP Equivalence Status** The SAIS has noted that the revocation of the JSE Clear CCP's equivalence status primarily stemmed from FATF's grey listing due to Anti-Money Laundering (AML) concerns and not because of deficiencies in the JSE or SA regulatory and supervisory framework. As per Section 6B of the FMA, the FSCA, with the agreement of the PA and the SARB, holds the power to withdraw recognition of a foreign jurisdiction's equivalent status if it fails to meet the criteria specified in Section 6A. This situation underscores critical concerns with respect to the timely manner and effectiveness of regulatory interventions in the SA financial markets and the effect of withdrawing this recognition. The risk is that delays in implementing immediate and decisive corrective measures could inadvertently lead to systemic risks. This is particularly problematic given the difficulty in reversing or mitigating the effects once permissions have been granted and processes are in motion. Therefore, the necessity for prompt and pre-emptive regulatory action is emphasised to avert the entrenchment of detrimental outcomes and to safeguard the stability and integrity of the markets. Furthermore, there is an essential need for a comprehensive and thorough understanding of the impact and unintended	The observation has been noted. Please see the response to comment number 11 above on the statutory requirements in the FMA related to supervisory co-operation arrangement with the relevant supervisory authority from the equivalent jurisdiction to ensure the FSCA can perform its functions in terms of the FMA. Please see response to comment 1 above regarding the fact that the consultation on draft regulatory instruments follow the prescripts of Chapter 7 of the FSR Act, and that interested parties and regulated persons can channel any concerns with the implementation of

No.	Commentator	Comments	Authorities' response
		consequences of these regulatory changes. This deep understanding is crucial before finalising the proposed equivalence framework. Ensuring that the framework is all-encompassing and considers all potential outcomes and risks is vital, hence consultation with key market experts and practitioners is vital for the success of such a framework. Such an approach will help in crafting a robust and effective equivalence framework that addresses the complexities of the SA financial market while protecting its integrity and resilience. A significant issue arises with the potential exit of foreign CCPs operating in SA during periods such as grey listing or geopolitical tensions. For instance, if a European CCP was active in SA during such a period, regulatory changes from their side might compel them to withdraw, introducing further systemic risk into the market. This scenario suggests the need for a broader assessment of implications, not just limited to FATF grey listing but also considering the potential impact of geopolitical sanctions and the like. Moreover, the presence of foreign infrastructure providers in SA, under equivalence status, presents a dual-edged scenario. While they can contribute positively to the market, they also carry the risk of introducing substantial systemic vulnerabilities. Therefore, it is crucial to balance the benefits with the potential risks to	legislation through the rigorous process as set out in the FSR Act. The process for withdrawal will need to be agreed to before a foreign CCP can simply withdraw from the market. This is the purpose of the equivalence recognition which ensures close co-operation between the Authorities and the foreign regulator of an equivalent jurisdiction. No immediate withdrawal will be allowed. Also please see the Equivalence Framework for financial market that provides context to the potential withdrawal of equivalence. There are robust regulatory safeguards in place that will need to be met before an external entity can operate in SA. The granting of an exemption is not guaranteed. A rigorous and comprehensive equivalence assessment of the home jurisdiction's regulatory and supervisory framework is a first step. Secondly, section 6C of the FMA requires that the SA Authorities enter into an MOU with the foreign jurisdiction's regulator to ensure access to necessary information and data. The external CCP will be required to have robust recovery and resolution plans that are compatible with local requirements. Exceptions may be granted subject to the external CCP or TR meeting conditions relating to requirements supporting market integrity, financial stability, necessary risk management, and market conduct.

No.	Commentator	Comments	Authorities' response
		ensure the ongoing stability and integrity of the SA financial system. A potential solution to address these challenges could be to insist that entities maintain a legal presence in SA, while also exploring a hybrid regulatory approach. This solution would ensure regulatory compliance and local market engagement, combined with adaptable strategies that accommodate the specific needs of both local and international market dynamics. Such a hybrid solution could offer a balanced framework, fostering market stability and integrity while catering to the complexities of global financial interactions and the nuances of the SA Market.	See response to same suggestion by commentator in comment number 7 above and under item 2 on page 4 of this Consultation report.
15.	SAIS	**Settlement Risk** It is important to acknowledge that the top 10 members of the JSE contribute significantly to its trading volume, accounting for at least 80% of the average daily turnover. This concentration underscores their pivotal role in influencing the market's liquidity and trading activities. Such a dominant presence of a few members is a key factor in understanding the overall dynamics of the JSE and becomes particularly relevant when considering the potential effects of any regulatory changes. Additionally, it is significant to highlight that among the top 10 members of the JSE, five are international holding companies that maintain a legal and physical presence in SA. This requirement is a direct result of regulatory membership stipulations mandating that	Noted. The Authorities cannot make regulatory changes or decisions for the benefit of a single entity, it must be beneficial for the SA markets and all the infrastructures it regulates in terms of the legal framework. Please see response to same suggestion comment number 7 above and under item 2 on page 4 of this consultation report.

No.	Commentator	Comments	Authorities' response
		members establish a tangible legal entity within the country. These international firms, operate under the same regulatory framework and capital requirements as domestic entities. This arrangement ensures regulatory consistency and adherence to the financial standards set within SA, reflecting the interconnected nature of global finance and the importance of regulatory compliance for international entities operating in local markets. This fact underlines the substantial influence that international players exert on the SA market. Their involvement carries significant implications, not only for market dynamics and liquidity but also for regulatory considerations and the broader economic landscape in SA. Understanding the interplay between these international entities and the domestic market is crucial for informed policy-making and regulatory strategies. The proposed framework has the potential to unlock opportunities for cross-border settlement. This prospect introduces a dynamic where these international entities could potentially execute settlement activities cross border, thereby contemplating the relocation of their local entities to their respective jurisdictions while maintaining an active presence in SA without having a legal presence here. The far-reaching impact of such a shift extends beyond the realms of the financial markets, permeating into aspects such as skills and employment, tax revenue and overall market dynamics and liquidity.	Noted.

No.	Commentator	Comments	Authorities' response
		The envisaged scenario raises important considerations for regulators, policymakers, and stakeholders. Striking a balance between encouraging international participation and safeguarding the stability and vibrancy of the local market becomes crucial. Consequently, the proposed framework should be crafted with a forward-looking perspective, cognisant of its potential ramifications on the broader economic landscape. A comprehensive approach that considers the intricacies of cross-border activities, the preservation of local economic interests and the promotion of a globally competitive financial ecosystem is imperative for achieving a harmonious and sustainable equilibrium.	Comment noted. As per our response to Comment 8 above, the Authorities are giving effect to the policy stance taken by National Treasury, as set out in the FMA. National Treasury is also responsible for the fiscus. Arguably the. National Treasury is aware of the tax implications.
		It is also critically important to recognise that a significant proportion of securities traded by value in SA are dual listed, with a substantial volume of their trading occurring offshore. Consequently, it could be relatively straightforward for these trades to shift more towards offshore markets, particularly if there are options for potential offsetting across markets. The primary incentive for these securities to continue trading within SA markets hinges on the presence of tangible benefits. This dynamic highlight the necessity for the SA market to offer distinct advantages or incentives to retain and attract trading activities in SA, ensuring its competitiveness in the global financial landscape.	Noted. While the presence of an external entity like a CCP can drive some trading activity offshore, a complete shift is unlikely. The impact will depend on the comparative advantages/services offered by the external CCP, the responses of domestic market participants and MIs and the Authorities, and the preferences of the SA market participants. Effective regulatory coordination and competitive domestic offerings can mitigate the risks and ensure a balanced market environment.

No.	Commentator	Comments	Authorities' response
		It is essential to emphasise that the increasing prevalence of netting and cross-border trading activities could introduce substantial settlement risks to the SA markets. SA's unique settlement and clearing processes within the equity markets do not align seamlessly with those of international markets, presenting potential challenges. Additionally, existing exchange controls become particularly relevant in scenarios involving cross-border netting and settlements, especially when considering the same entity with a local presence and a foreign holding company, as well as the transfer of shares between different juristic registers.	Although it might be that allowing an external CCP to enter the SA markets, could possibly increase settlement risk due to various factors, this should not be seen as reason not to allow an external CCP from providing services to the SA market. The Authorities will need to ensure that the factors contributing to the possible increase in settlement risk is addressed by enhanced supervision and monitoring of the external CCP and its compliance with domestic legislative requirements. Conducting regular reviews on the operations of the CCP to ensure risks are adequately addressed and ensure that the external CCP have adequate contingency plans and resolution frameworks in place. Agreement on settlement cycles could also assist. The CCP will also be required to comply with the FMA Regulations that have specific requirements for netting and settlement obligations by a CCP.
		This situation could also impact foreign exchange trading. The ability to offset trading positions within the market might reduce the necessity for forex transactions, thereby potentially affecting forex trading volumes. Another critical aspect is the potential loss of tax revenues, such as Securities Transfer Tax (STT) and Value Added Tax (VAT), which could result from these shifts in trading and settlement patterns. Furthermore, SA markets operate under specific, nuanced rules that may not affect foreign entities in the same way, especially those that permit offsetting and netting. The processes involved in unwinding a default,	It is recognised that forex trading could to some extent be affected, its is doubtful that the impact would be so significant that it would motivate for the Authorities to disallow an external CCP or TR to provide services to the SA markets, given the potential benefits that this could hold. Also see response on the previous page to the comment flagging the possibility that trading activity could potentially move offshore. The Authorities' view applies equally to this point. Please see response at the beginning of this comment on the expected tax implications.

No.	Commentator	Comments	Authorities' response
		short selling cover, securities lending, corporate actions, the reporting and processing of dividend taxes and tax reporting are all intricately tied to settlements and could be significantly impacted under these circumstances. Therefore, it is imperative to carefully consider these unique aspects of the SA market to effectively manage and mitigate the potential risks associated with increased cross-border trading and netting activities.	See response above to comment on increased settlement risk.
16.	SAIS	**Risk of Regulatory Arbitrage** Enterprises may strategically leverage disparities in regulatory frameworks between jurisdictions, engaging in what is commonly termed "regulatory arbitrage" which may be due to nuances and differences within market trading and settlement environments. This practice involves selecting CCPs based on the least stringent regulations in an attempt to optimise operational efficiency or reduce compliance burdens or with possibly the best netting and offsetting framework that may be held in foreign nominees. While this may benefit individual firms, it has the potential to subvert the overarching regulatory objectives and introduce an uneven playing field within the global financial landscape. Regulatory arbitrage, could compromise the integrity of regulatory frameworks and erode the effectiveness of measures put in place to safeguard financial stability. The risk lies in fostering an environment where entities might prioritise regulatory leniency over adherence to robust risk management standards, thereby	The structure of the regulatory framework to be set out by the Joint Standard is aimed at ensuring that where an external CCP or external TR operates in South Africa on the basis of an exemption, that entity must come from a jurisdiction determined to be equivalent to the regulatory framework set out in the FMA. The FMA in section 6A(4)(d) places an explicit obligation on the Authorities and the SARB to when assessing the equivalence of the regulatory framework of a foreign country take into account the need to prevent regulatory arbitrage. As a result, the ex-ante assessment of a jurisdiction's regulatory framework requires the FSCA and PA to undertake the exercise of checking for opportunities for regulatory arbitrage. Once that exercise is done, the FSCA with the concurrence of the PA and the SARB will then be in a position to decide whether the foreign jurisdiction has gaps in its laws that would create disparity with the South African law. In addition, the FSCA confirms that the monitoring of the Equivalence Framework and equivalence recognitions will be embedded in the functions and operations of the regulatory and supervisory departments in the FSCA.

No.	Commentator	Comments	Authorities' response
		undermining the collective goals of international regulatory initiatives. To counteract these challenges, it becomes imperative for regulatory bodies to collaborate on a global scale, harmonising standards and minimising regulatory divergences. Striking a balance that encourages innovation and efficiency without compromising systemic stability is key to thwarting the detrimental effects of regulatory arbitrage. This collaborative effort can fortify the regulatory landscape, ensuring a level playing field and upholding the broader objectives of financial oversight in an interconnected global economy.	In this regard, please see paragraph 8 of the Equivalence Framework. Noted. Please see response above.
17.	SAIS	**Regulatory Divergence** Regulatory standards and requirements may differ across jurisdictions. Authorising foreign CCPs could lead to regulatory challenges and discrepancies, requiring coordination and alignment of regulations to ensure a consistent and effective regulatory framework. It is crucial for regulatory authorities to carefully assess and address these potential negatives when considering the authorisation of foreign CCPs and other entities. Establishing effective regulatory frameworks, fostering international cooperation and conducting thorough risk assessments are essential components of managing the challenges associated with cross-border clearing arrangements.	Please see response to comment number 11 above.

No.	Commentator	Comments	Authorities' response
		The rising trend of cross-border offsetting and netting, along with the potential adoption of omnibus accounts by clients of international CCPs with equivalent status, could lead to increased use of foreign nominee accounts. These accounts, commonly utilised by shareholders for international transactions, often feature a distinct lack of disclosure requirements compared to those mandated by local regulations. This variation in disclosure standards might result in regulatory arbitrage scenarios, wherein entities exploit regulatory differences to gain competitive advantages. Such situations highlight the critical need for the alignment and harmonisation of regulatory practices, ensuring fairness and consistency across financial markets in the face of escalating cross-border activities. This issue of regulatory divergence extends across various legislations and areas, potentially leading to unintended consequences. These consequences can include the creation of an exclusive market characterised by unlevel playing fields, where barriers to entry are heightened due to the complexity, size and costs associated with necessary changes. Furthermore, the sheer scale of these fundamental changes within the financial market landscape pose significant challenges, necessitating a thoughtful approach to regulatory adaptation. Addressing these disparities is crucial to maintain a competitive, accessible and equitable financial market environment.	
18.	SAIS	**Legal complexity**	

No.	Commentator	Comments	Authorities' response
		The concept of equivalence encounters heightened complexity due to disparities in legal systems and contractual frameworks across jurisdictions. This intricacy becomes particularly pronounced when disputes arise or in the event of insolvency. The multifaceted nature of navigating legal challenges on an international scale introduces considerable challenges, often requiring intricate solutions and an understanding of diverse legal landscapes. In the context of equivalence, the potential for conflicts stemming from varying legal structures necessitates a nuanced approach to dispute resolution and default. The intricacies of reconciling legal discrepancies across borders contribute to a challenging and time-consuming costly process, impacting the overall efficiency of the regulatory framework and potentially the market integrity. To address these challenges, a comprehensive strategy for managing cross-border legal issues becomes paramount. This may involve the establishment of internationally recognised legal frameworks or mechanisms that facilitate smoother dispute resolution processes. Additionally, fostering greater alignment in contractual frameworks across jurisdictions can contribute to minimising legal complexities, ultimately promoting a more cohesive and harmonised global financial landscape. Striking a balance that acknowledges and addresses the diverse legal systems while working towards standardised mechanisms for dispute	Noted. Any equivalence assessment in terms of Section 6A of the FMA will be done in close cooperation between the Authorities and the SARB who would have collectively assessed the licensing and overall legal, regulatory and supervisory regime applied in that foreign jurisdiction against the framework established in the FMA. Similarly to managing an external CCP or external TR in a period of market stress or the occurrence of a systemic event, managing a dispute in the event of insolvency would be done in close cooperation with local regulator in the equivalent jurisdiction, which is again why the FMA explicitly sets out the principles of co-operation in this regard, and the minimum requirement of the supervisory co-operation arrangements in section 6C of the FMA. This is also why the involvement of the SARB as the resolution authority in South Africa is imperative. The threats mentioned by the commentator will be actively managed by the Authorities and the SARB in cooperation with the supervisory authority of the equivalent jurisdiction and in accordance with these prescribed supervisory cooperation agreements entered into prior to a jurisdiction being determined to be equivalence. The approach to the equivalence decision making process and cooperation is set out in the Equivalence Framework.

No.	Commentator	Comments	Authorities' response
		resolution is key to navigating the challenges associated with equivalence. The legal framework governing financial markets requires comprehensive alignment across the spectrum to establish a clear and coherent structure. This alignment is crucial for effectively managing the complexities that affect financial markets. A unified legal framework would facilitate better regulatory consistency, ensure market stability and promote fair practices. It is essential to address any disparities or inconsistencies in the current legal provisions first, to create an environment that supports the smooth functioning of financial markets while safeguarding the interests of all stakeholders before this framework is implemented.	
19.	SAIS	Operational risks Cross-border operations in the SA market bring a myriad of operational complexities, marked by variations in time zones, communication protocols and technological standards. These differences, if not managed effectively, can increase the likelihood of operational errors or system failures. The specific rules and regulations unique to SA add another layer of complexity, as they often diverge significantly from those governing International CCPs with equivalent status. This divergence particularly affects integration, interoperability, settlement cycles and IT infrastructure, each requiring meticulous alignment to ensure seamless operation across jurisdictions. Moreover, the need to	It is the view of the Authorities that requirements to manage operational risks are set out in the laws governing, for purposes of the current context, CCP or TRs. As such, the ex ante equivalence assessment will bring to the fore the type of regulatory requirements with which an external CCP or external TR must comply. On this basis, the FSCA, with the concurrence of the PA and the SARB, will grant an equivalence recognition if the foreign jurisdiction applies a regulatory framework equivalent to the FMA. Secondly, when determining the appropriate conditions to impose on the applicant for an *exemption*, the Authorities will, as a matter of principle, ensure that the issuing of the exemption does not defeat the objects of the FMA.

No.	Commentator	Comments	Authorities' response
		adapt to and maintain diverse IT systems poses significant barriers to entry and could lead to an uneven playing field. The costs associated with adapting to and maintaining different IT systems and infrastructures could pose significant barriers to entry, potentially leading to uneven playing fields. The risk of fragmenting clearing and settlement across many different entities with lack of standardisation and centralisation would create potential systemic risk. In this context, the disparate operational frameworks and systems used by member firms and asset managers in SA present distinct automation, integration challenges and operational impacts. Tailored approaches are often necessary to harmonise these varied operations. The use of different netting processes and offshore offsets introduces additional system-wide challenges, further complicated by the lack of a defined clearing and settlement model in the SA market. This lack of a standardised model necessitates a comprehensive review and potentially a redefinition of new settlement processes to achieve operational coherence that is aligned to the revised FMA. Furthermore, the unique nature of SA's settlement process, particularly the role of Central Securities Depository Participants (CSDPs), diverges from international	Please see response above. Comments around the lack of a defined clearing and settlement model in SA is unclear. South Africa has a well-defined and robust clearing and settlement model supported by established infrastructures like Strate, JSE Clear, and SAMOS, and regulated under frameworks such as the FSR Act and the FMA. These systems and regulations ensure that South Africa's financial markets operate efficiently and securely, aligning with international standards. While continuous improvements and adaptations are necessary to meet evolving market demands and risks, the foundation for clearing and settlement in South Africa is well structured and well regulated.

No.	Commentator	Comments	Authorities' response
		practices, adding to the complexity. The absence of integrated post-trade systems, interoperability issues between FMIs and the requirement for developing and implementing Codes of Conduct among these entities further exacerbate operational challenges. These factors, combined with the ongoing review of the FMA, underline the potential for increased operational risks. To effectively manage these risks and complexities, there is a critical need for carefully structured regulatory frameworks and operational strategies that address these unique challenges. Such efforts should focus on aligning operational standards, enhancing system integration and ensuring regulatory coherence. This comprehensive approach is vital to ensure fair and efficient market participation for all entities involved, maintaining the integrity and stability of SA financial markets.	Noted. Please see response above. See response to comment on the prematurity of the framework in comment number 8 above. The Authorities rely on the powers in the existing currently operative legislation. Importantly, as a member of the G20 countries, South Africa has committed to implementing a number of reforms to the cleared and uncleared markets. The Joint Roadmap for Central Clearing and this Joint Standard is a critical component of these reforms.
20.	SAIS	**Financial Stability Concerns** Relying on foreign CCPs with equivalent status introduces significant risks of interconnectedness and concentration to the SA financial markets. If a substantial portion of local market transactions are cleared through these foreign CCPs, any operational disruption or failure on their part could have systemic repercussions on the local financial system. This concern is magnified by the limited regulatory jurisdiction SA regulators hold over these entities and the relative size disparity,	Concerns noted. In line with purposive interpretation of legislation it is for this reason that the FMA requires that equivalence recognition in respect of the specific type of market infrastructures (e.g CCP or TR) in accordance with Section 6A of the FMA be done collectively by the Authorities and the SARB. Similarly, to managing other potential risks that arise from the cross-border activities, this would be done in close cooperation with local regulator in the equivalent jurisdiction, which is why the FMA explicitly sets out the principles of co-operation in this regard, and the minimum requirement of the

No.	Commentator	Comments	Authorities' response
		which may not afford sufficient influence to mitigate risks effectively.	supervisory co-operation arrangements in section 6C of the FMA. The threats mentioned by the commentator will be actively managed between the Authorities and the SARB in cooperation with the supervisory authority of the equivalent jurisdiction and in accordance with the prescripts in the FMA. Although the Authorities will place a level of reliance on the foreign supervisory authorities responsible for authorising or licensing the foreign CCP, equivalence recognition granted by the FSCA will be undertaken with the concurrence of the PA and SARB – allowing for the consideration of relevant prudential and systemic implications.
		The SA market's unique clearing and settlement processes, which do not align with international processes and existing exchange controls, are particularly pertinent in the context of cross-border netting and settlements across difference instruments. This misalignment can potentially affect foreign exchange trading and lead to the loss of critical tax revenues, such as Securities Transfer Tax (STT), Value Added Tax (VAT) and Income Tax as trading and settlement patterns may shift accordingly offshore as the scope widens and the need to trade across instruments becomes prevalent. Moreover, the presence of international holding companies among the top members of the JSE further complicates the landscape. These entities, required to maintain a legal and physical presence in SA due to regulatory membership rules, exert a substantial influence on market dynamics and liquidity.	Please also see responses to comment number 15 above regarding the movement of trading activity and forex trading offshore. All incidences of misalignment will be interrogated when applications have been received. The Authorities will, at this stage, not pre-empt nor bar applicants from submitting applications given that the law is not restrictive in this respect. Please see response to comment 15 on the expected tax implications. See response to commentator in comment 9 and 15 above.

No.	Commentator	Comments	Authorities' response
		Their operations under the same regulatory and capital frameworks as domestic entities ensure regulatory consistency. However, their potential to execute and offset clearing and settlement activities with their offshore entities, possibly relocating their local entity to their respective jurisdictions while being given the ability to maintain an active presence in SA, raises significant concerns. Such a shift could impact not just the financial markets but also broader economic aspects like employment, skill development and tax revenue, which ultimately raises concerns with regard to financial stability. The dual-listed nature of a significant portion of securities traded by value in SA, with substantial trading volumes occurring offshore, further underscores the potential ease of shifting trades towards offshore markets. This situation highlights the need for SA to provide distinct advantages or incentives to retain and attract trading activities, thereby maintaining its competitiveness in the global financial landscape. In the sphere of financial market equivalence, the potential for conflicts arising from divergent legal structures requires a carefully considered approach to dispute resolution and default management. The ability to effectively handle such situations is crucial for maintaining financial stability, as these conflicts can have far-reaching implications. This necessitates not only a deep understanding of the various	The concerns raised herein have been taken into account. The assessment of all relevant factors including the divergence of legal structures and the impact of the ability of the Authorities to supervise the compliance with the Joint Standard of necessity forms part of the considerations of the Authorities.

No.	Commentator	Comments	Authorities' response
		legal systems involved but also the development of mechanisms that can accommodate and reconcile these differences. A comprehensive approach is needed to address these challenges, considering the intricacies of cross-border activities and the preservation of local economic interests. SA policymakers and regulators must develop strategies that balance international participation with local market stability, ensuring a sustainable and competitive financial ecosystem. This approach should include careful consideration of SA's unique market rules, particularly those impacting processes like unwinding defaults, short selling, securities lending, corporate actions and tax reporting, to effectively manage and mitigate risks associated with increased cross-border trading and netting activities.	Agreed. Please see response above.
21.	SAIS	**Access Restrictions** Access restrictions posed by some jurisdictions can significantly impact the integration of SA entities into their financial markets. Specifically, when it comes to authorising foreign CCPs, there may be limitations or additional requirements imposed, which can hinder the smooth integration of cross-border clearing services. This can create an uneven playing field in the global financial markets. The introduction of CCP equivalent status opens the possibility for remote or sponsored	The concerns raised herein have been taken into account. The assessment of all relevant factors including the integration issues and the impact of the ability of the Authorities to supervise the compliance with the Joint Standard of necessity forms part of the considerations of the Authorities. This will also be comprehensively considered when assessing an application for recognition as equivalence in accordance with section 6A of the FMA. The concern is noted and is considered in light of the fact that the FMA is not restrictive in its construct – there is

No.	Commentator	Comments	Authorities' response
		membership, potentially allowing foreign trading participants direct access to the SA market. However, this arrangement might not be reciprocated, with SA members possibly not being afforded similar opportunities in foreign markets. Such asymmetry in market access can lead to disparities in trading opportunities and market participation. This situation emphasises the need for balanced and fair regulatory frameworks that facilitate equitable market access for all participants. Ensuring that such frameworks provide equal opportunities for both domestic and foreign entities is crucial for maintaining a level playing field and fostering healthy competition in the global financial markets. It is essential for regulators to consider these aspects when structuring and implementing policies related to cross-border financial activities and market access.	no requirement for reciprocity. In addition, the FMA is intended to assist South Africa to ensure the integrity of the financial markets, as well as to embed the international commitments made as a member of the G20 to reform the OTC derivatives markets. As a result, the aim of this Joint Standard is to entrench the provisions of the FMA.
22.	SAIS	**Data and privacy security** Cross-border transactions inherently involve the transfer of sensitive financial and personal data, which brings into focus the challenge of adhering to varying data protection and privacy laws. This complexity is heightened when considering the divergence of legal requirements across different jurisdictions, such as the General Data Protection Regulation (GDPR) in the European Union and the Protection of Personal Information Act (POPIA) in SA. Such disparities can lead to significant concerns regarding data security and compliance with varies local SA regulations. SA legislation and regulation	The concerns raised herein have been taken into account. The assessment of all relevant factors including the transfer of sensitive financial and personal data and the impact of the ability of the Authorities to supervise the compliance with the Joint Standard will form part of the considerations of the Authorities. Principles of data security and privacy is relevant across jurisdictions and is underscored as part of the relevant principles developed by international standard setting bodies. As such this is part of what the Authorities and the SARB must take into account in terms of section 6A of the FMA when considering the equivalence of a foreign jurisdiction. Simply put, compliance with the

No.	Commentator	Comments	Authorities' response
		regarding data privacy and security are not uniformly aligned across various legislations, presenting additional complications. In the event of a data breach involving a foreign entity, the SA regulator may lack jurisdictional authority over a foreign entity leaving SA members potentially without recourse. This highlights a gap in the regulatory oversight and enforcement capabilities of SA authorities over foreign entities in matters of data privacy and security.	prevailing laws in a jurisdiction will be duly considered in any such application.
		To address these challenges, there may be a need for Data Sharing and Privacy MOU with different foreign regulatory bodies. These MOU would facilitate cooperation and ensure some level of oversight and enforcement alignment regarding data protection standards. However, the SAIS does not believe this to be effective. The SAIS recognises that these issues may become increasingly significant as the alignment between foreign and local legislation in data privacy and security is still evolving. Additionally, SAs ongoing exploration of Open Finance standards and similar initiatives for information sharing could further impact data privacy and security considerations.	The proposal has been noted. This would form part of the supervisory cooperation agreements that is required with relevant supervisory authority from the equivalent jurisdiction in accordance with Section 6C of the FMA. In this regard, please see details of the supervisory co-operation arrangement as set out in paragraphs 3.3 and 7.20 of the Equivalence Framework for Financial Markets.
		It is important to note that in the current environment, data privacy and security as well as cybersecurity are becoming increasingly critical issues, especially with the rise in cybercrime and the challenges associated with effective prevention and enforcement. The	The external CCP or TR will be required to comply with the Joint Standard on Cybersecurity and Cyber resilience and will be required to make certain disclosures and report to the Authorities in line with the Joint Standard.

No.	Commentator	Comments	Authorities' response
		growing sophistication of cyber threats and the difficulties in curbing these incidents underscore the need for robust data protection strategies and stronger enforcement mechanisms. Therefore, it is crucial to develop comprehensive strategies and frameworks that can accommodate these differences in data protection laws and ensure robust security and compliance measures can be supervised and enforced across jurisdictions, seamlessly. This approach is vital for maintaining the integrity of cross-border financial transactions and protecting sensitive information in an increasingly interconnected global financial landscape.	
23.	SAIS	**National security concerns** Authorising foreign CCPs can raise significant national security concerns, particularly when these entities are owned or influenced by foreign governments. This apprehension stems from the potential risks associated with entrusting critical financial infrastructure to entities outside of national jurisdiction. Such a scenario could lead to a loss of control and authority over important financial market operations, which is a matter of considerable concern. One of the primary issues is the potential erosion of national sovereignty in financial markets. This concern is exacerbated when the foreign CCP is not just a participant but a dominant player, owing to the size and value of its transactions and its international membership. In such cases, the operations and decisions of a foreign CCP and	Noted. The authorisation of foreign CCPs is enabled in the FMA and not through this Joint Standard. The FMA is primary legislation, and the powers therein is afforded by Parliament. The policy stance in the FMA as primary law falls within the purview of the National Treasury, and the Authorities cannot through consultation on secondary legislation respond to comments in this regard. Any concerns with the application of primary law or consequences thereof must be directed at National Treasury as the policymaker. The external CCP will have to comply with the requirements in the FMA, which also include the FMA Regulations. The FMA Regulations include the applicable requirements for a CCP which the Authorities believe will assist in minimising risks of an external CCP together with the enhanced supervision of the CCP, continued monitoring of its operations in SA, requiring specific reporting by the CCP and the MOU that the SA Authorities will enter into with the Regulator in the home

No.	Commentator	Comments	Authorities' response
		its regulatory body could inadvertently influence or even dictate local legislation and regulations within the SA market, simply due to their scale and reach. The possibility of foreign entities exerting such influence poses a challenge to maintaining sovereign control over national financial market operations and regulatory frameworks. It highlights the need for careful consideration and strategic planning in the authorisation of foreign CCPs. Ensuring that national interests and security are not compromised in the process of integrating into the global financial infrastructure is of paramount importance. This necessitates a balanced approach that allows for international cooperation and market participation, while simultaneously safeguarding national sovereignty and control over critical financial infrastructure. There is a palpable concern among SA participants regarding the potential implications of applying exemptions that could enable a large foreign CCP to acquire significant influence over major financial institutions in SA. This concern is rooted in the disparity in market share size between local and foreign entities and the systemic risks associated with it. SA regulators must possess a deep understanding of foreign legislation to fully grasp the potential impact of legislative changes on the local financial markets. Simply replicating and adopting foreign legislative changes is not a viable	jurisdiction. All of this combined will provide the Authorities with the required safeguards to minimise the risks that an external CCP may introduce in the SA markets and it is also vital to balance these risks with the benefits of allowing an external CCP or TR to provide services in SA. See response on the previous page. Acquiring so-called significant influence is not enabled by the regulatory framework. The decision on whether to utilise an external CCP will remain with the financial institution. Comment noted. It is not clear which foreign legislative changes are being implied to have merely been adopted

No.	Commentator	Comments	Authorities' response
		option for SA due to the unique characteristics of its financial market, including factors like market size, liquidity, system complexities, and compliance requirements. A customised approach that considers the specific nuances of the SA financial landscape is essential to maintain market stability and integrity. The relative market share size of these foreign entities compared to local institutions is a critical aspect to consider. In scenarios where these foreign CCPs hold a substantial market share and encounter issues like major client defaults, the repercussions could be significant for both the foreign CCP and large SA financial institutions. It is reiterated that this situation is compounded by the perception that, while SA entities might not be viewed as 'too big to fail' from an international perspective, these foreign entities could be considered as such within the SA context.	without considering or understanding the unique characteristics and the implications for the South African market. See response on previous page at the beginning of this comment.
24.	SAIS	**Loss of Control** The challenge lies in the reduced capacity of local authorities to exert direct control over the operations and risk management practices of foreign CCPs. This diminished oversight poses a significant hurdle, introducing complexities that may impede the effective enforcement of local regulatory priorities and standards. As a result, ensuring the alignment of foreign CCPs with the unique regulatory landscape of the local jurisdiction becomes a formidable task, requiring nuanced strategies to navigate the intricacies of cross-border regulatory oversight.	Equivalence recognition on which this Joint Standard will be based allows the Authorities to place a level of reliance on foreign supervisory authorities. However, there will be no loss of control. The Authorities will continue to monitor compliance with the FMA, through the application of supervisory co-operation agreements and the Joint Standard and conditions attached to each exemption. The FSCA confirms that the monitoring of the Equivalence Framework and equivalence recognitions will be embedded in the functions and operations of the regulatory and supervisory departments in the FSCA. Also see details on the ongoing monitoring of equivalence recognition as set out in paragraph 8 of the equivalence framework.

No.	Commentator	Comments	Authorities' response
		For regulators to effectively navigate the impacts of legislative changes in our financial markets, a profound understanding of foreign laws and market dynamics is imperative. Merely mirroring foreign legislative changes is unfeasible, considering the distinct characteristics of the SA market such as its size, liquidity and the intricacies of its systems and compliance demands. Tailoring the approach to align with the unique facets of the SA financial landscape is crucial for ensuring that regulatory adaptations are both relevant and effective. The SAIS strongly advocates for the formation of a collaborative entity. This collective entity should comprise of key financial stakeholders including the FSCA, the PA, the SARB, Exchanges, FMIs and expert practitioners in financial market and clearing operations. The purpose of this coalition is to ensure a comprehensive understanding of the implications of current financial practices and to oversee the processes of application, supervision, and enforcement. Coordinated efforts by key financial stakeholders are vital not only to safeguard and uphold the integrity of the SA financial market but also to maintain its international competitiveness and relevance. This collaboration ensures that SA retains control over its own financial industry, preventing external forces from dictating market dynamics or compromising the nation's financial sovereignty.	The proposal has been noted. The Authorities' statutory powers and mandates are clearly set out in the FSR Act, and the Authorities have frequent and ongoing collaborative engagements with industry players both individually and collectively. One example of such engagement is the Market Conduct Committee of the FSCA, that consists of representatives of industry bodies. In addition to this the Authorities have regular engagements with industry participants. The development of regulatory instruments follows a comprehensive public consultation process within the prescripts of Chapter 7 of the FSR Act. In the view of the Authorities there are various existing forums and rigorous process in place that ensure transparency and extensive collaboration with all relevant stakeholders.

No.	Commentator	Comments	Authorities' response
25.	SAIS	**Multiple FMI's e.g. CCPs** The introduction of multiple Central Counterparties (CCPs) in an emerging developing market like SA, presents a complex set of challenges and opportunities. On one hand, it can lead to increased competition, potentially benefiting market participants through improved pricing and services. However, on the other hand, this competition might be less effective in a "smaller" market due to limited size. Key implications include:	Comments noted. The Authorities are empowered to issue the criteria for the exemption of an external CCP or external TR from the provisions of the FMA, thereby enabling the entrance of foreign CCPs and TRs into South Africa. The Authorities will however not prescribe to market participants which entities to use for clearing and reporting purposes. As such, market participants will have greater choice in determining with which to engage.
		1. **Market Fragmentation:** The presence of multiple CCPs can cause market fragmentation, which may dilute liquidity as trades are dispersed across various platforms. This could increase trading costs and hinder efficient price discovery.	Currently there is no CCP that can clear OTC derivatives in the SA market, nor does it have a licensed TR and work is still underway for SA to achieve all its G20 commitments to the necessary reforms. The benefits of introducing competition and a multi-market infrastructure environment are clear.
		2. **Regulatory and Operational Complexities:** Navigating diverse operational frameworks, risk management protocols, and settlement procedures across multiple CCPs introduces significant operational complexity. This can elevate the risk of operational errors and necessitates enhanced regulatory coordination to maintain a cohesive regulatory environment.	As mentioned above, the Authorities are of the view that there are adequate safeguards in the FMA, FMA Regulations and the framework in place to address operational risks, stress testing and disclosure. The Joint Standard will support the policy position already captured in the legislation.

No.	Commentator	Comments	Authorities' response
		3. **Liquidity Dispersion and Price Discovery Challenges**: Multiple CCPs could lead to liquidity being spread thinly across different platforms, complicating seamless trade execution and accurate price formation.	The converse is also true and there are also opportunities for participants to access global markets and for liquidity to increase which is beneficial for the SA markets.
		4. **Increased Systemic and Counterparty Risk:** While CCPs aim to mitigate systemic risk, having several in a small market might paradoxically increase it, especially due to the interconnectedness between different CCPs and financial institutions. Additionally, managing counterparty relationships across multiple CCPs complicates the assessment and management of counterparty exposure.	The FMA Regulations have various requirements that address counterparty risk and operational risk that a CCP will need to comply with, and the Authorities are of the view that this risk will be addressed by the CCP's compliance with the FMA Regulations and continued reporting and monitoring of the CCP and its operations.
		5. **Capital Efficiency Issues:** The need for market participants to allocate more capital to cover exposures across different CCPs could lead to inefficiencies in capital utilisation.	It will be the responsibility of the market participants to assess whether it would be beneficial to them to utilise the CCP and become a member of the CCP.
		6. **Barrier to Entry**: The complexity of dealing with multiple clearing systems might pose a barrier to entry for new market participants.	Disagree with this statement. The entry of new market infrastructures will bring about options and more competition that will also enhance efficiencies in the market and price diversity.
		7. **Global Integration vs. Local Control:** While multiple CCPs can aid in integrating the local market with global financial systems, there could be	

No.	Commentator	Comments	Authorities' response
		concerns about losing local control and sovereignty, particularly if foreign CCPs dominate. 8. **Impact on Market Participants:** Domestic and international market participants may face challenges in adapting their trading strategies and risk management practices to accommodate multiple CCPs. While the presence of multiple CCPs in a market like SA can offer benefits such as competitive services and enhanced global integration, it also poses substantial challenges in terms of market fragmentation, regulatory complexity and increased systemic risk. Coordinated efforts by financial stakeholders are crucial to navigate these challenges, ensuring the market's integrity, stability, and sovereignty	Noted. Please see responses throughout explaining the Authorities' awareness and understanding of the risks and benefits that a multi-market infrastructure environment brings. The fundamental point to noteis that the mandate for the making of the Joint Standard to set out criteria for exemption is enabled through the FMA as primary legislation, and the powers therein is afforded by Parliament. These reforms were implemented through the consequential amendments to the FMA and FMA Regulations which enables the FSCA, with the concurrence of the PA and the SARB, to exempt an external CCP or external TR from the provisions of the FMA. Any such exemption is conditional to, amongst other things, the entity being based in an equivalent jurisdiction, in terms of an equivalence assessment as contemplated in the FMA. The Joint Standard merely gives effect to Section 6(3)(m) (iii)(bb) of the FMA. To comment on the policy principle which is enabled in the FMA for purposes of this Joint Standard is superfluous, as no change can be made to the primary legislation by the Authorities through the content of a Joint Standard, and the Authorities are executing their mandate by giving

No.	Commentator	Comments	Authorities' response
			effect to the FMA and the policy position taken by National Treasury. Also see responses throughout explaining cooperation and coordination between the regulators and the statutory consultation process on the development of regulatory instruments.