FSCA
Financial Sector
Conduct Authority

South African Reserve Bank
Prudential Authority

Statement of the need for, expected impact, and intended operation of a regulatory instrument*

Joint Standard 1 of 2025 – Criteria for the exemption of an external central counterparty or external trade repository from the provisions of

the Financial Markets Act

Updated August 2025

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1 Introduction

1.1 This Statement addresses the need for, and the intended operation and expected impact of the Joint Standard that proposes criteria that will be applicable to an external central counterparty (CCP) or external trade repository (TR) when applying to be exempted from a provision of a section of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA). The Financial Sector Conduct Authority (FSCA) and Prudential Authority (PA) (collectively referred to as the Authorities) intend to, in terms of Section 107 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), make the Joint Standard to which this Statement relates.

1.2 Section 6(3)(m)(iii)(bb) of the FMA provides that the Authority may exempt, for a specified period which may be renewed, any person or category of persons from the provisions of a section of the FMA if the FSCA is satisfied that in relation to an external market infrastructure (which includes an external CCP or external TR), and with the concurrence of the South African Reserve Bank and the PA, the applicant complies with any criteria prescribed in joint standards for the exemption of such persons.

1.3 Section 107 of the FSR Act empowers the Authorities to issue joint standards on any matter in respect of which either of them has the power to make a standard.

1.4 In terms of section 98 of the FSR Act, a financial sector regulator must not make a regulatory instrument[1] unless it has published the following documents:

(a) a draft of the regulatory instrument;
(b) a statement explaining the need for and the intended operation of the regulatory instrument;
(c) a statement of the expected impact of the regulatory instrument; and
(d) a notice inviting submissions in relation to the regulatory instrument, stating where, how, and by when submissions are to be made.

1.5 In fulfilment of the above-mentioned requirements, the Authorities have prepared this *Statement of the need for, intended operation, and expected impact of the Joint Standard: Criteria for the exemption of an external central counterparty or external trade repository* (the Statement). This Statement is intended to communicate to relevant stakeholders the policy context and intended application of the Joint Standard, and to assist regulated institutions in complying with the Joint Standard.

[1] For the purpose of this statement, this refers to a Joint Standard.

2 Statement of need for the Joint Standard

2.1 The FMA provides for the functions and duties of a central counterparty[2] and a trade repository[3]. In terms of the FMA, the functions or duties of a central counterparty or trade repository, respectively, may be performed by a person licensed in South Africa or by a person from an equivalent foreign jurisdiction that has been granted an exemption from a provision of the FMA, including the requirement to be licensed[4]. In order to effectively manage the entry of market infrastructures from equivalent jurisdictions into the South African market, 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.

2.2 The preamble to the FMA provides that part of the aim of promulgating the FMA is to align the Act with international standards. The advent of the global financial crisis of 2007-08 led financial sector regulators globally to reassess the effectiveness of regulatory and supervisory practices, and to identify those that needed to be revised, in order to mitigate against another financial crisis. Consequently, a number of reforms were adopted at an international level.

2.3 In 2009, the Group-of-Twenty (G20) initiated a reform programme to mitigate the systemic risk associated with over-the-counter derivative instruments. As a G20 member, South Africa committed to these reforms designed to reduce vulnerabilities and increase transparency. These reforms were implemented through the consequential amendments to the FMA and FMA Regulations. A critical component of the reforms is to create a framework for central clearing by a central counterparty and reporting of all over-the-counter derivative transactions to a trade repository.

2.4 In February 2022, the Authorities issued the *Joint roadmap for development of a regulatory framework for central clearing in South Africa (Joint Roadmap).*[5] The Joint roadmap specifies that the regulatory framework for central clearing in South Africa will be undertaken in a phased approach:

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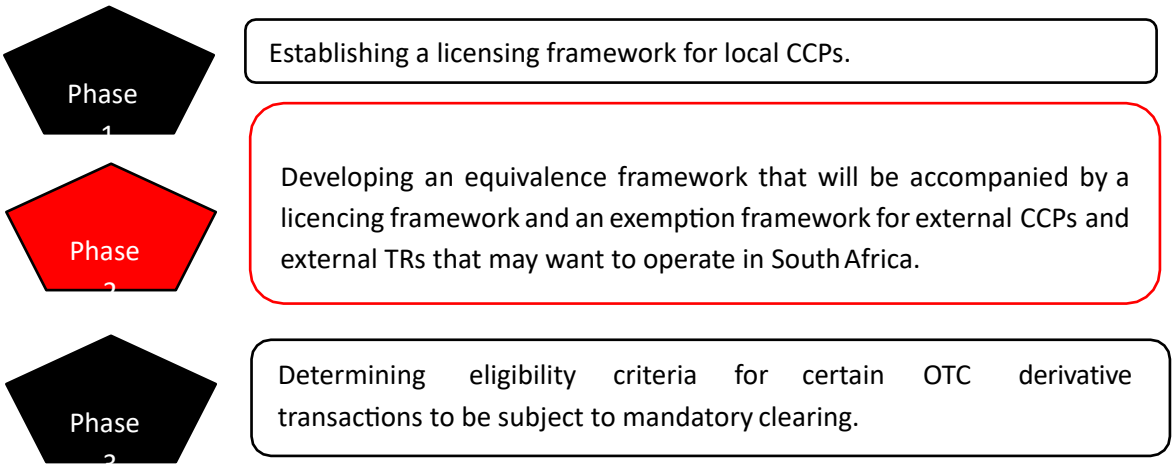
2 In terms of the FMA, "central counterparty" means a clearing house that-
(a) interposes itself between counterparties to transactions in securities, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts; and
(b) becomes a counterparty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

3 "trade repository" means a person who maintains a centralised electronic database of records of transaction data;

4 Section 49A of the FMA provides that "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).", whereas section 56A of the FMA provides that: "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)."

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



2.5 The Joint Roadmap clarifies the steps that the Authorities will undertake to mandate central clearing in South Africa. Part of this work plan is 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 cross-border nature of financial markets necessitates a balanced approach to the regulation and supervision of those that participate in the domestic market. The FMA allows for the recognition that a foreign regulatory, supervisory, and enforcement regime is equivalent to the corresponding South African framework, which may make it possible for the Authorities to rely on the foreign entity's compliance with the equivalent foreign framework. Such an equivalence recognition can simplify the supervisory implications of overseeing such a foreign entity, whilst avoiding unnecessary duplication in compliance efforts for the foreign entity wishing to operate within the Republic.

2.6 As explained in the Joint Roadmap, the licensing or exemption of an external CCP or external TR must be preceded by an entity based in an equivalent jurisdiction in terms of an equivalence assessment as contemplated in 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.

2.7 The mechanism to exempt, as contemplated in section 6(3)(m) of the FMA, therefore complements the Equivalence Framework (as referred to in paragraph 2.9 below) as it

provides a way to allow, for example, external CCPs or external TRs to not apply domestic requirements (or some domestic requirements), provided that the regulatory framework in the foreign jurisdiction appropriately mitigates the risks that the domestic requirements intended to mitigate. This exemption mechanism, therefore, avoids the duplication of regulatory burdens and efforts and supports market entry.

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 under the FMA to external CCPs or external TRs.

2.9 The Joint Standard to which this Statement relates is therefore intended to operationalise a component of Phase 2 of the Joint Roadmap – the exemption framework for external CCPs or external TRs and is aimed at supporting the implementation of the Equivalence Framework by setting out the criteria that must be met by applicants from an equivalent jurisdiction that want to be exempted from a provision of a section of the FMA. It is envisaged that the Joint Standard will support consistency in the granting of these exemptions and will create a level playing field.

3 Statement of expected impact of the Joint Standard

3.1 As part of the public consultation process, the draft Joint Standard and an initial draft of this Statement were issued for comment. The submissions received were used to assess the expected impact or pertinent anticipated consequences of the Joint Standard. The submissions were mainly descriptive of the potential impacts of the Joint Standard – and no submissions were received from entities that would potentially apply for exemption under the Joint Standard. As such, the expected impacts of the Joint Standard were based on the evaluation of the qualitative information provided in the submissions.

3.2 A number of key issues emerged from the responses. Two commentators provided extensive comments on the principle of allowing foreign CCPs and TRs to operate in South Africa. Of concern was the fairness of granting exemptions to such entities from being licensed in terms of the FMA, whilst local entities are required to be licensed. The Authorities' responses hereto were premised on the fact that, as a prerequisite to qualify for exemption in terms of the criteria in the Joint Standard, a foreign entity would need to be from a jurisdiction that has been determined as equivalent in terms of an equivalence assessment as contemplated in the FMA. 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. The licensing requirements on such foreign entities would be substantially similar to than on local entities. Further to this, the policy principle underpinning the Joint Standard is found in primary legislation. The Authorities

thus developed the Joint Standard to execute on the legislative mandate to progress the full implementation of the FMA.

3.3 Another commentator emphasised a proposal to require, as a minimum, that an external CCP or TR maintain a local presence in South Africa. The proposal was raised to potentially offset possible negative impacts on the financial markets – where the Joint Standard was seen to have the potential to introduce substantial systemic vulnerabilities into the financial system, amongst others. This perceived impact of the Joint Standard would invariably be considered by the Authorities – as all exemption applications would be dealt with on a case-by-case basis. Additionally, to protect the integrity of the financial markets, the Authorities would ensure that all exemptions granted have the appropriate safeguards to pre-empt such risks from materialising. Detailed responses are set out in the consultation report explaining this.

3.4 Clarification was also sought on the scope of the functions of an external CCP – as one commentator raised the concern that the external CCP would be imposed on both the listed and unlisted markets and the potential impact this would have on existing procedures followed by the South African market. The Authorities highlight that the Joint Standard forms part of Phase 2 of the Joint Roadmap for the development of a regulatory framework for central clearing in South Africa (2022) As is explained in more detail in section 2 above. 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.

Expected benefits of the Joint Standard

3.5 The Authorities are of the view that the Joint Standard is necessary to support the implementation of the Equivalence Framework (as referred to in paragraph 2.9 above) and will create greater certainty for external applicants regarding the requirements to be met for the Authorities to consider exemption applications in terms of section 6(3)(m) of the FMA. In addition, the Joint Standard supports the levelling of playing fields where all applicants will have comfort that a key aim of the Authorities is to maintain consistency in considering exemption applications.

3.6 The Joint Standard will ensure that the Authorities meet the requirements in the FMA to enable the Authorities to consider exemption applications from external applicants in accordance with the powers afforded in section 6(3)(m)(iii) of the FMA.

3.7 In addition, the Joint Standard is intended to enhance the safety and soundness of market infrastructures - including external CCPs or external TRs. This is expected to ensure that,

the rigour of supervision will not be compromised notwithstanding allowing entry into the market on the basis of an exemption from a provision of a section of the FMA. The Joint Standard will assist in implementing the central clearing mandate in South Africa, thereby assisting in mitigating systemic risk and enhancing public trust and confidence in the financial markets.

Cost and resource implications

3.8 It is expected that the criteria in the Joint Standard will not introduce significant compliance costs on external CCPs and TRs aiming to apply for an exemption from a provision of a section of the FMA. On the contrary, it may benefit applicants as it will enable exemptions from the requirements of the FMA, including the licensing requirements, which will reduce the compliance burden and related costs, and potential licensing fees for qualifying applicants.

3.9 It is anticipated that there will be an administrative impact on applicants who will need to ensure that all relevant records (and any supplementary information requested) are provided to the Authorities. It is, however, expected that the benefit of the Exemption Framework will far outweigh the administrative implications for such entities.

4 Intended operation of the Joint Standard

4.1 The Joint Standard is intended to apply to external central counterparties and external trade repositories who are from an equivalent foreign jurisdiction who wish to be exempted from a provision of a section of the FMA. The additional criteria that are set in the Joint Standard apply in addition to the requirements in section 6(3)(m)(i) and (ii) and (iii)(aa) and (cc) of the FMA.

4.2 It is proposed that applicants will be able to apply for an exemption in terms of section 6(3)(m)(iii) of the FMA read with the Joint Standard from the date of publication of the Joint Standard.

4.3 Any exemption applications submitted pursuant to the Joint Standard will be assessed on a case-by-case basis, informed by the unique circumstances in each jurisdiction and analysed against the SA regulatory landscape. The merits of each application will be considered in detail by the Authorities and per the respective processes followed within Authorities. Therefore, all exemption applications will be subject to the relevant governance processes and procedures of the Authorities.

4.4 Following the implementation of the Joint Standard, the Authorities will assess and evaluate the effectiveness of the Joint Standard on a continual basis as part of the Authorities' regulatory and supervisory responsibility to ensure that

any unintended consequences of the Joint Standard on the industry are adequately addressed.