DRAFT EQUIVALENCE FRAMEWORK FOR EXTERNAL TRADE REPOSITORIES, EXTERNAL CENTRAL COUNTERPARTIES AND EXTERNAL CENTRAL SECURITIES DEPOSITORIES

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FSCA

Financial Sector
Conduct Authority

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1. BACKGROUND AND PURPOSE

1.1 The Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA) empowers the Financial Sector Conduct Authority (Authority) to, on application by an interested party, determine with the concurrence of the South African Reserve Bank (SARB) and the Prudential Authority (PA), that the regulatory framework of a specified foreign country is equivalent to the regulatory framework established in terms of the FMA, if the legislative and regulatory framework established in the foreign jurisdiction meets the objectives of the FMA.

1.2 In addition, the FMA provides for –

(i) the licensing of an external trade repository (external TR) in section 56A and external central counterparty (external CCP) in section 49A;

(ii) the exemption of an external market infrastructure from the provisions of a section of the FMA, including the requirement to be licensed as an external TR or external CCP; and

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

1.3 The determination of the equivalence of the foreign jurisdiction's regulatory framework is a prerequisite for: (i) the licensing of an external TR (in terms of section 56A(2) of the FMA) or external CCP (in terms of section 49A(2) of the FMA); (ii) the granting of an exemption to an external market infrastructure from the provisions of a section of the FMA in terms of section 6(3)(m)(iii) of the FMA; or the establishment of a link between a CSD and an external CSD (in terms of Regulation 6 of the FMA Regulations, published under Government Notice R98 in Government Gazette 41433 of 9 February 2018 (FMA Regulations)).

1.4 The purpose of the draft Equivalence Framework is to set out the Authority's approach to determining that the regulatory framework of a foreign jurisdiction is equivalent to the regulatory framework established in terms of the FMA.

2. PURPOSE OF EQUIVALENCE RECOGNITION

2.1 The cross-border nature of financial markets necessitates an appropriate regulatory framework that promotes the efficiency and competitiveness of the South African financial markets without undermining financial stability.

2.2 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 as in South Africa.

2.3 Whenever the Authority, acting with the concurrence of the PA and the SARB (South African Authorities), determines by way of an equivalence decision that a foreign regulatory regime is equivalent to the corresponding South African framework, such equivalence decision, in turn, usually makes it possible for the South African Authorities to rely on the foreign market infrastructure's compliance with the equivalent foreign framework. Benefits accrue to both the South African and third-country financial markets.

2.4 An equivalence determination should achieve at least the following:

- reduce or even eliminate overlaps in compliance for the South African financial institutions concerned and in the supervisory work of the South African Authorities;
- allow the application of a less burdensome regulatory regime in relation to South African financial institutions' exposures to an equivalent third country than would otherwise be the case for exposures to non-equivalent third countries; and
- provide South African financial institutions and investors with a wider range of services, instruments and investment choices originating from third countries that can satisfy regulatory requirements in South Africa.

3. EQUIVALENCE IN TERMS OF THE FMA

3.1 Section 6A of the FMA enables the Authority, acting with the concurrence of the PA and the SARB, to determine that the regulatory framework of a specified foreign country is equivalent to the regulatory framework established in terms of the FMA (equivalence recognition) in order to enable the relevant recognised external market infrastructure to perform similar functions to those set out in the FMA.

3.2 In considering an application for equivalence, the Authority, the PA and the SARB, must assess the foreign regulatory framework, including assessing the foreign country'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 of the external market infrastructure to South African markets.

3.3 Furthermore, section 6C of the FMA requires the Authority to enter into a supervisory co-operation arrangement with the relevant supervisory authority from the equivalent jurisdiction for the purposes of performing its functions in terms of the FMA. According to section 6C(2) of the FMA, the supervisory cooperation arrangement must at least specify –

(a) the mechanism for the exchange of information between the Authority, the SARB, the PA, and the relevant supervisory authorities, including access to all information requested by the Authority regarding a licensed external market infrastructure;

(b) the mechanism for prompt notification to the Authority, the SARB and the PA where the supervisory authority deems an external market infrastructure which it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject, or any other matter which may have an effect on the authorisation of the market infrastructure;

(c) the procedures concerning the coordination of supervisory activities including, where appropriate, for collaboration regarding the timing, scope and role of the authorities with respect to any cross-border supervisory on-site inspections;

(d) the processes the authorities should use if an authority subsequently determines that it needs to use requested supervisory information for law enforcement or disciplinary purposes, such as obtaining the consent of the requested authority and handling such

information in accordance with the terms of existing memoranda of understanding for enforcement co-operation;

(e) the procedures for co-operation, including, where applicable, for discussion of relevant examination reports, for assistance in analysing documents or obtaining information from a licensed external market infrastructure and members of the controlling body or senior management; and

(f) the degree to which a supervisory authority may onward-share to a third party any non-public supervisory information received from another authority, and the processes for doing so.

3.4 In addition, section 6C(3) of the FMA provides that the Authority and supervisory authorities that have entered into supervisory co-operation arrangements in terms of subsection (1) must-

(a) establish and maintain appropriate confidential safeguards to protect all non-public supervisory information obtained from another supervisory authority;

(b) consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and investors;

(c) 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;

(d) co-operate in the day-to-day and routine oversight of internationally active licensed external market infrastructures;

(e) provide advance notification and consult, where possible and otherwise as soon as practicable, regarding issues that may materially affect the respective regulatory or supervisory interests of another authority;

(f) design mechanisms for supervisory co-operation to provide information both for routine supervisory purposes and during periods of crisis; and

(g) undertake ongoing and ad hoc staff communications regarding internationally active licensed external market infrastructure as well as more formal periodic meetings, particularly as new or complex regulatory issues arise.

4. LICENSING OF EXTERNAL TRADE REPOSITORY AND EXTERNAL CCP

4.1 An application for a licence as an external TR must be done in accordance with section 56A of the FMA.

4.2 An application for a licence as an external CCP must be done in accordance with section 49A of the FMA.

5. ESTABLISHMENT OF A LINK

5.1 In terms of regulation 6 of the FMA Regulations, a licensed CSD may, for the purpose of establishing a CSD link to perform settlement services in terms of its depository rules, approve an external CSD that has been recognised in terms of section 6A of the FMA as a participant of the CSD as contemplated in section 35(4) of the FMA. In order to apply for recognition, an external CSD should complete Annexure I and the Supervisory Authority should complete Annexure C.

5.2 The FMA Regulations also provide for the requirements with which a CSD must comply when approving an external CSD as a participant. Allowing for such CSD-to-CSD links will result in enhanced efficiencies in custody and settlement services while encouraging further foreign investor participation in SA financial markets.

6. PROCESS TO BE FOLLOWED FOR THE DETERMINATION OF EQUIVALENCE

The process to be followed for the determination of equivalence is as follows:

6.1 Application

An external CCP or TR must submit an application letter as attached hereto (Annexure I).

6.2 Equivalence assessment

6.2.1 In addition to the application letter included as Annexure I, which should be completed by an applicant external trade repository or central counterparty that intends to apply for an equivalence recognition of the applicant's home regulatory framework in terms of section 6A(1) of the FMA, Annexure A and Annexure B should be completed by the Supervisory Authority of the trade repositories or central counterparties, respectively.

6.2.2 Determination of equivalence of the regulatory framework of a specified foreign country includes an assessment by the South African Authorities of whether the legislative and regulatory framework established in that foreign country meets the objectives of the FMA.[1]

6.2.3 The equivalence assessment conducted by the South African Authorities follows an objective-based approach, where the capability of the regime in the third country to meet the objectives of the SA Regulatory Framework, is assessed from a holistic perspective.

6.2.4 The principle of proportionality and a risk-based approach will guide the South African Authorities in the assessment process. At an early stage in each assessment, the South African Authorities will identify risks to the SA financial system which may be arise as a result of an increased exposure to a specific third-country framework. The South African Authorities will then specifically address those risks when verifying third countries' compliance with the equivalence criteria. In that way, the South African Authorities apply the criteria in a way which is proportionate to the risks identified. Those risks to the South African financial system are the primary focus of such assessment, but other aspects may need to be taken into consideration in accordance with the relevant South African legislation.

6.2.5 In terms of the assessment of equivalence, the South African Authorities will take into account the requirements in the FMA for external market infrastructures relative to those requirements imposed in the foreign jurisdiction and determine whether they are sufficient. On application for recognition, the SA Authorities will also take into account the requirements imposed in the foreign jurisdiction and will be empowered to impose additional conditions on the recognised external applicant.

6.2.6 In terms of section 6A(4) of the FMA, an assessment of equivalence of the regulatory framework of the foreign country by the South African Authorities must consider the following requirements –

(1) the nature and intensity of the supervisory authority’s oversight processes, including direct comparison with the regime applied by the South African Authorities as applicable;

[1] Section 6A(4) of the FMA.

(2) the alignment of the foreign country's regulatory framework with the relevant principles developed by international standard setting bodies that are applicable to the market infrastructures;

(3) observed outcomes of the foreign regulatory framework applicable to market infrastructures relative to the domestic framework; and

(4) preventing regulatory arbitrage.

6.2.7 To the extent necessary, the assessments may involve an intensive dialogue with the Supervisory Authorities of the third country whose framework is being assessed. The assessment of the relevant Supervisory Authority's responses to Annexure A; B or C as applicable, together with the SA Authorities overall assessment of the foreign legislative and regulatory framework's to the outcomes set out in paragraph 6.2.6 of this Equivalence Framework, provides the necessary technical grounds on which the Authority may pursue its decision-making on equivalence.

6.3 Concurrence

6.3.1 Before a framework is determined as equivalent, the Authority must obtain concurrence from the SARB and the PA.

6.3.2 A formal determination of equivalence can therefore only be made once the assessment is complete and all the criteria set out in the provisions authorising the granting of equivalence are considered to be fulfilled by the South African Authorities.

6.3.3 Some of the equivalence decisions may be subject to specific conditions being satisfied if this is necessary to meet the criteria for an equivalence decision or to address specific risks arising in the third country.

6.4 Equivalence determination and publication

A determination in terms of section 6A(1) of the FMA must be published on the Authority's website and the register referred to in section 256 of the FSR Act.[2] The equivalence recognition is granted in respect of the legislative and regulatory framework of a jurisdiction, as it relates to central

[2] At the time of finalisation of the Equivalence Framework, the Register as contemplated in section 256 of the FSR Act was not yet in existence. The Authority will publish any future equivalence recognition assessments in the Register once the Register has been established and operationalised. In the absence of the Register, all required publications as contemplated in the FMA relating to an equivalence recognition will be published on the Authority's website.

counterparties; trade repositories or an external central CSD and it is therefore not necessary for multiple equivalence assessments in respect of the same type of applicant from the same jurisdiction.

6.5 Record keeping

The Authority must maintain a list of all foreign countries recognised as equivalent under section 6A(1).

6.6 Supervisory co-operation arrangement

In terms of section 6C(1) of the FMA and as set out in paragraph 3 above the Authority must enter into a supervisory co-operation arrangement with the relevant foreign supervisory authority from a recognised equivalent jurisdiction for the purpose of performing its function in terms of the FMA.

7 EXEMPTIONS

7.1 In terms of section 6(3)(m) of the FMA, in performing its functions in terms of the FMA, 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 Authority is satisfied that-

(i) the granting of the exemption will not-

(aa) conflict with the public interest; or

(bb) frustrate the achievement of the objects of the FMA; and

(ii) the application of the section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and

(iii) in relation to an external market infrastructure, and with the concurrence of the SARB and the PA, the applicant-

(aa) is based in an equivalent jurisdiction in terms of section 6A and is authorised by the supervisory authority of such jurisdiction;

(bb) complies with any criteria prescribed in joint standards for the exemption of such persons; and

(cc) undertakes to cooperate and share information with the Authority, the SARB and the PA to assist with the performance of functions and the exercise of powers in terms of financial sector law.

7.2 In addition, section 281(3)(b) of the FSR Act provides that if a financial sector law provides a power to grant exemptions, the Authority must, when deciding whether to grant an exemption, comply with the requirements of section 281(1) in addition to any requirements specified in the financial sector law. The FMA is a financial sector law in terms of the FSR Act.

7.3 Section 281(1) of the FSR Act provides that the Authority responsible for a financial sector law may, in writing and with the concurrence of the other financial sector regulator, exempt any person or class of persons from a specified provision of the financial sector law, unless it considers that granting the exemption:-

(a) will be contrary to the public interest; or

(b) may prejudice the achievement of the objects of a financial sector law.

7.4 In considering any exemption under the FMA the Authority therefore has to take into account the criteria set out in section 6(3)(m) of the FMA and section 281(1) of the FSR Act.

8. THE FUNCTIONS AND DUTIES THAT MAY BE EXERCISED

8.1 In terms of section 5(1)(c) of the FMA, the Minister of Finance (Minister) may prescribe the functions and duties that may be exercised, by an external central securities depository, external central counterparty or external trade repository, as the case may be.

8.2 It should however be noted that this provision is discretionary. Section 49A(1) of the FMA provides that an external CCP must be licensed to perform functions or provide services, and section 49A(11) provides that the licence must specify those functions or duties, or services that may be provided by the external CCP and the securities in respect of which those functions or duties, or services may be performed. That must be read with section 49A (10) of the FMA which provides

that a licensed external CCP must comply with the relevant requirements of the Act. This will be the requirements applicable to the functions that the licence stipulates.

8.3 Section 6(9) of the FMA provides that joint standards may prescribe additional criteria for the approval, authorisation, licensing or exemption of external market infrastructures in relation to the functions and duties that be exercised by such external market infrastructures in the Republic or for the equivalence recognition of the applicable foreign country. The PA and the FSCA have not as yet prescribed any additional criteria in joint standards for the approval, authorisation, licensing or exemption of external market infrastructures in South Africa or d for the equivalence recognition of the applicable foreign country.

8.4 The provisions for the establishment of a central securities depository link with an external central securities depository have been prescribed in the 2018 FMA Regulations. The external central counterparty or trade repository will perform the functions as stipulated in its license as contemplated in section 56A or 49A.

ANNEXURE I

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012) (FMA)

Application by an external market infrastructure for an equivalence recognition of the applicant's home regulatory framework in terms of section 6A(1) of the FMA

The Authority

1. I ....., the chief executive officer of..... (hereunder referred to as the applicant), being specifically authorised thereto by the controlling body of the applicant, apply on behalf of the applicant that an assessment of the regulatory framework of our jurisdiction, namely ……..be performed to determine whether it is equivalent to the regulatory framework established in terms of the FMA and meets the objectives of the FMA in terms of the following Market Infrastructures (tick appropriate block):.

TR ☐

CCP ☐

CSD ☐

2. On lodging of an application for the recognition of an external market infrastructure a prescribed fee of R450 000 is payable in terms of in terms of Board Notice 137 of Government Gazette 38998 of 17 July 2015.

3. The place at which the business of the applicant will be carried on is .....

Signed at ..... on this ..... day of ..... 20 ...

Chief Executive Officer

Witnesses:

1. ……. 2. …….

ANNEXURE A

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012) (FMA)

EQUIVALENCE ASSESSMENT FOR EXTERNAL TRADE REPOSITORIES

In addition to the application form included as Annexure I which should be completed by an external market infrastructure to apply for an equivalence recognition of the applicant's home regulatory framework in terms of section 6A(1) of the FMA, this document must also be completed by applicants that are Trade Repositories.

Part I - Authorisation process

1. Describe the conditions and briefly outline the procedure for authorisation of Trade Repositories (TRs) in your jurisdiction.

Part II – Legal and Supervisory Arrangements: Framework

2. Provide an outline of the legal and supervisory arrangements with which TRs in your jurisdiction must comply. In particular, describe:

(2.1) any primary and/or secondary legislative requirements:

(i) placing legal obligations on TRs; and/or
(ii) deferring competencies to national supervisors/regulators to authorise and supervise TRs in your jurisdiction;
(iii) designating competent authorities responsible for supervision and enforcement of rules applicable to TRs
(iv) supervisory and enforcement powers granted to competent authorities.

(2.2) any non-legislative legally binding measures relating to supervisory arrangements, including but not limited to:

(i) legally binding guidelines;
(ii) approved rules, procedures and policies of TRs."

3. In the case of approved rules, procedures and policies that are legally binding on the TR, please describe in detail the legal basis on which such rules, procedures and policies are legally binding as well as the basis on which such rules, procedures and policies can be enforced.

4. Describe the process through which such rules are approved and under what circumstances such rules may be amended

5. Describe any non-legally binding measures related to the supervision, authorisation and regulation of TRs in your jurisdiction including, but not limited to, policy statements, rules, policies and procedures of TRs or non-binding guidelines.

Part III – Supervisory powers

6. Provide an outline of the different supervisors and overseers involved in the financial market and more precisely in TR activities and their respective role, measures available to TR supervisors in your jurisdiction in respect of breaches of legally binding requirements by a TR (including, but not limited to, powers to impose fines and orders or to suspend or rescind licenses). Confirm in respect of which types of breaches these measures may be applied.

Part IV – Regime for the Recognition of Foreign TRs

7. Describe any procedures or legal requirements that apply to foreign TRs providing services in your jurisdiction.

Part V – Legal and Supervisory Arrangements: Substance

8. Describe how the legal and supervisory arrangements in your jurisdiction achieve comparable outcomes to the FMA, applicable Board Notices issued thereunder, the FMA Regulations, published under Government Notice R98 in Government Gazette 41433 of 9 February 2018 (FMA Regulations) and applicable Joint Standards, by completing table A.

Table A

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
Additional information, must be contained in an application for a trade repository licence		
In terms of Board Notice 104 of 2013 the following additional information, must be contained in an application for a trade repository licence: 1. Details of the functions and services to be provided by the trade repository. 2. The range and type of securities in respect of which those functions and services will be performed. 3. An auditor's report confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents reported to and maintained by the trade repository against any unauthorised access, alteration, destruction or dissemination. 4. Details pertaining to the method or facility by means of which the business of the trade repository will be carried on.		

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5. A report by an independent party, agreed to by the registrar, confirming that the applicant has appropriate information technology in place to effectively handle the reported transaction data including- (a) a secure electronic messaging system; (b) interface specifications; (c) formally completed documentation, including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the trade reporting related operations commence; (d) adequate disaster recovery hardware and related facilities located off-site. 6. Details of its objective, non-discriminatory and publicly disclosed requirements for access and participation. 7. The arrangements in place for reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository. 8. The arrangements in place to identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks.		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
9. An applicant for a trade repository licence must comply with the regulations applicable to the licensing of trade repositories as prescribed by the Minister		
Requirements applicable to applicant for trade repository licence and licensed trade repository		
Section 55 of the FMA prescribes as follows: (1) An applicant for a trade repository licence and a licensed trade repository must- (a) subject to the requirements prescribed by the Minister, have assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its duties as set out in this Act; (b) have governance arrangements, that are clear and transparent, promote the safety and efficiency of the trade repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;		

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(c) demonstrate that the fit and proper requirements prescribed in the joint standards are met by the applicant, members of its controlling body and senior management; (d) have made arrangements for reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository; (e) have made arrangements for security and back-up procedures to ensure the integrity of its records of transactions; (f) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems; (g) have objective, non-discriminatory and publicly disclosed requirements for access and participation;		

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(h) identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks; and (i) establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations.		
Duties of licensed trade repository		
In terms of section 57 of the FMA: (1) A licensed trade repository must conduct its business in a fair and transparent manner. (2) A licensed trade repository must- (a) employ timely, efficient and accurate record keeping procedures;		

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(b) make information prescribed by the Conduct Authority in joint standards made with the concurrence of the SARB available to the Authority, the PA, the SARB, other relevant supervisory authorities and other persons, subject to the requirements prescribed by the Authority in joint standards made with the concurrence of the SARB under section 58 as to the manner, form, and frequency of disclosure; (c) monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies; (d) publicly disclose the prices and fees associated with services provided, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation; (e) ensure the confidentiality, integrity and protection of the information received;		

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(f) provide the Authority with any information requested to monitor and mitigate systemic risk; and (g) must notify the Authority as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it.		
Reporting obligations		
Section 58 of the FMA prescribes as follows: Subject to regulations prescribed by the Minister, the Authority may prescribe reporting obligations in respect of transactions or positions in unlisted securities which must be reported to a trade repository, including- (a) the types of unlisted securities to which reporting requirements apply; (b) the entities to whom such reporting requirements apply;		

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(c) the manner and frequency of reporting; and (d) any other matter to ensure adequate reporting.		
Legal basis		
Section 3 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository requires as follows: 1. In order to establish a legal basis for its duties, an applicant for a trade repository licence and a licensed trade repository must have written policies, procedures, or contracts that– (a) are clear about the legal status of the transaction data that it stores; (b) define the rights and interests of users and other relevant stakeholders with respect to the transaction data stored in the trade repository's systems; and (c) are enforceable when the trade repository is implementing its plans for recovery or orderly winding-up		

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(2) An applicant for a trade repository licence and a licensed trade repository must identify and mitigate any legal risks or conflicts of interest associated with any ancillary services that it may provide. (3) An applicant for a trade repository licence and a licensed trade repository must – (a) analyse any foreign legal requirements applicable to the rendering of its duties; (b) identify the extent to which those requirements are, or may potentially be, in conflict with the Act and other applicable SA legislation; and (c) develop a policy describing how conflicting or potentially conflicting provisions will be resolved in full compliance with the FMA and other applicable legislation.		
ANNEXURE 1 TO FORM FM 1 of Board Notice 104 of 2013 requires the following administrative information to be provided: (a) The postal, physical and electronic mail addresses of the applicant's registered address or head office at which it will receive all documents for the purpose of this application. (b) the telephone and facsimile numbers of the applicant and the chief executive officer.		

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(c) a list which reflects the full names, addresses and telephone numbers of persons, if any, who alone or with associates will exercise control over the applicant contemplated in section 67(2) of the FMA. {d) a list which reflects the full names of the members of the controlling body of the applicant, and a statement signed by each member to the effect that he or she knows of no reason why he or she should not serve his or her term of office as a member of the controlling body. (e) a list which reflects the names, physical and postal addresses, telephone and facsimile numbers of- (i) the bank; (ii) the auditor; and (iii) the attorney, of the applicant. 2. A copy of the founding documents of the applicant which regulates at least the following:		

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(a) The structure of the applicant; (b) the objects of the applicant; (c) the powers of the applicant; (d) the composition and functions of the controlling body; (e) the procedures for election or appointment of members of the controlling body, their terms of office, and when membership may be terminated; (f) the procedures for the calling of meetings of people who hold ownership interests in the applicant; (g) the voting powers of people who hold ownership Interests in the applicant; (h) the appointment of auditors; and (i) the procedures for the dissolution of the applicant. **Adequacy of financial resources** (a) If the applicant has been in existence for more than a year, a copy of its audited annual financial statements as at its latest financial year-end.		

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(b) a copy of the budgeted income statement, balance sheet and cash flow statement for a three year period from the date of the latest financial statements. (c) a schedule illustrating the funding provisions for anticipated supervisory responsibilities over the budgetary period. (d) a statement signed by the chief executive officer of the applicant specifying the critical assumptions made in the preparation of budgets and the sources from which the applicant will derive its funding. (e) where arrangements have been made for the funding of any temporary shortfall in available cash resources, a statement must be provided by the party or parties concerned setting out the extent and terms of their commitment.		

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Adequacy of management and human resources (a) An explanation of the management structure of the applicant including the names of the individuals responsible for the major functional areas and the number of personnel employed in each functional area. (b) a curriculum vitae in respect of each member of the management of the applicant who is responsible for a major functional area, which indicates his or her relevant experience and training. (c) a projection of management and staff requirements for the period covered by the budgets referred to in paragraph 3(b) . The **business plan** of the applicant, which has been approved by the controlling body and which deals at least with the following matters: (a) The planned development of the information technology systems and infrastructure of the applicant and arrangements for their supply, management, maintenance, upgrading and security;		

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(b) the planned approach to qualifying, quantifying and managing risk within the applicant; (c) plans to ensure the integrity of the market and its authorised users, participants, external central securities depositories or other persons or clearing members of an independent clearing house; (d) the surveillance procedures, which have been established to ensure the compliance by authorised users, participants, external central securities depositories or other persons or clearing members of an independent clearing house with the proposed rules and directives of the market infrastructure and the requirements of the Act and the resources of the applicant available to perform this function; (e) procedures to be followed to effectively discipline authorised users, participants, external central securities depositories or clearing members of an independent clearing house of the applicant who fail to comply with the rules of the market infrastructure; (f) security procedures to ensure the integrity of the systems for recording transactions and the maintenance of records, the capacity of these systems in relation to the budgeted number of transactions and the back-up resources available in the event of a systems failure;		

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(g) reports and publications to be made available to the investing public, with the inclusion of price sensitive information, and the manner in which such information will be disseminated; (i) the corporate governance principles that will be implemented; (j) details of the persons who have or will provide corporate finance advice or similar services to the applicant, if applicable; (k) whether any unregulated business will be carried on by the applicant. **Details of compensation funds of market infrastructures-** (a) Details of insurance or other warranty, such as a compensation or guarantee fund, to provide compensation to clients of authorised users, participants, external central securities depositories or clearing members of an independent clearing house of the market infrastructures. (b) In respect of compensation funds, a copy of the pro forma policy document, the manner of funding, and the rules of the fund (where applicable).		

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A **report from the auditor of the applicant** to the effect that adequate systems and procedures are in operation relating to risk reduction, particularly by means of processing, physical, logical security, back-up and contingency controls. Details of the functions and services to be provided by the trade repository. The range and type of securities in respect of which those functions and services will be performed. An auditor's report confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents reported to and maintained by the trade repository against any unauthorised access, alteration, destruction or dissemination. Details pertaining to the method or facility by means of which the business of the trade repository will be carried on.		

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A report by an independent party, agreed to by the Authority, confirming that the applicant has appropriate information technology in place to effectively handle the reported transaction data including- (a) a secure electronic messaging system; (b) interface specifications; (c) formally completed documentation, including a business continuity plan, a disaster recovery plan, as well as the necessary service level agreements with third parties before the trade reporting related operations commence; (d) adequate disaster recovery hardware and related facilities located off-site. Details of its objective, non-discriminatory and publicly disclosed requirements for access and participation The arrangements in place for reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository.		

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The arrangements in place to identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks. An applicant for a trade repository licence must comply with the regulations applicable to the licensing of trade repositories as prescribed by the Minister.		
Governance		
In terms of section 55 (1) (b) of the FMA an applicant for a trade repository licence and a licensed trade repository must - (b) have governance arrangements, that are clear and transparent, promote the safety and efficiency of the trade repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.		
Section 65 of the FMA deals with the duty of members of controlling body as follows:		

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(1) The provisions of the Companies Act relating to the duties of a director apply, with the necessary changes, to each member of the controlling body of a market infrastructure, whether it is a company or not. (2) The members of the controlling body of a market infrastructure owe a fiduciary duty and a duty of care and skill to the market infrastructure, in the exercise of the functions as a market infrastructure.		
Section 66 of the FMA deals with the Appointment of members of controlling body as follows: (1) No person may be appointed as a member of the controlling body of a market infrastructure if that person-		

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(a) may not be appointed or act as a director in terms of https://discover.sabinet.co.za/webx/access/netlaw/71_2008_companies_act.htm#section69section69 of the Companies Act, 2008 (Act No. 71 of 2008); (b) has been penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a market infrastructure, which contravention involved dishonesty; or (c) does not meet the fit and proper requirements prescribed in the relevant joint standards. (2) A person who accepts an appointment in contravention of subsection (1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.		

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(3) A market infrastructure must, within 14 days of the appointment of a new member to its controlling body, inform the Authority of the appointment and furnish the Authority with such information on the matter as the Authority may reasonably require. (4) The provisions of subsection (3) may not be construed so as to render the appointment of a member of the controlling body of a market infrastructure subject to the approval of the Authority. (5) If it appears to the Authority that a member is disqualified in terms of subsection (1), the Authority may, subject to subsection (6), instruct the market infrastructure to remove that member from its controlling body. (6) The Authority must, before giving an instruction in terms of subsection (5)- (a) in writing inform the market infrastructure and the particular member of the Authority's intention to give such an instruction;		

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(b) give the market infrastructure and the particular member written reasons for the intended instruction; and (c) call upon the market infrastructure and the particular member to show cause within a period of 14 days why the instruction should not be given. (7) If the Authority instructs the market infrastructure to remove a member from its controlling body, the market infrastructure must so remove the member within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the market infrastructure.		
Section 4 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository requires as follows: (1) An applicant for a trade repository licence and a licensed trade repository must have robust and publicly disclosed governance arrangements, which must include – (a) the role, responsibilities, term and composition of the controlling body and any committees;		

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(b) processes to identify, assess, and manage potential conflicts of interest of members of the controlling body, managers, employees or any related party of the controlling body; (c) clear and direct lines of responsibility and accountability, particularly between management and the controlling body; (d) sufficient authority, independence, resources and access to the controlling body for key functions such as risk management, internal control, and audit; (e) an effective internal audit function, with sufficient resources and independence from management to provide, among other activities, a rigorous and independent assessment of the effectiveness of the trade repository's risk-management and control processes; (f) the role, responsibilities and structure of senior management; (g) the shareholding structure; (h) the internal governance policy; (i) the design of risk management, compliance and internal controls that includes the trade repository's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies;		

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(j) the procedures for the appointment, performance evaluation and removal of members of the controlling body and senior management; (k) oversight of outsourcing arrangements; (l) processes for ensuring performance accountability to stakeholders; and (m) a stakeholder inclusive approach to governance.		
2) An applicant for a trade repository licence and a licensed trade repository must ensure that the governance arrangements are disclosed to the Conduct Authority, shareholders and where appropriate, its users and the public.		
(3) An applicant for a trade repository licence and a licensed trade repository must have a controlling body which must be sufficiently independent.		
(4) The compensation of the independent and other non-executive members of the controlling body may not be linked to the business performance of the trade repository.		
(5) An applicant for a trade repository licence and a licensed trade repository may not share human resources with other group entities unless under the terms of an outsourcing arrangement.		

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(6) An applicant for a trade repository licence and a licensed trade repository must have at least a risk, compliance and information technology function under the direction of a chief risk officer, a chief compliance officer and a chief information technology officer respectively, to ensure that the trade repository operates with the necessary level of human resources to meet all of its obligations.		
(7) (a) The risk and information technology functions must report to the controlling body either directly or through the chair of the risk committee. (b) The internal audit function must report directly to the controlling body.		
(8) An applicant for a trade repository licence and a licensed trade repository must establish adequate policies and procedures sufficient to ensure its compliance, including compliance by its senior managers and employees, with all the provisions of this Joint Standard. Board Notice 104 of 2013 further requires the following administrative information to be provided: 1(d) a list which reflects the full names of the members of the controlling body of the applicant, and a statement signed by each member to the effect that he or she knows of no reason why he or she should not serve his or her term of office as a member of the controlling body.		

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ANNEXURE 2 TO FORM FM 1 of Board Notice 104 of 2013 prescribes as follows: Information required in respect of members of controlling body of exchange, central securities depository, trade repository or clearing house An application for a licence must be accompanied by the following information in respect of members of the controlling body of the applicant: *(a)* a curriculum vitae in respect of each member of the controlling body indicating the nature and extent of the member's qualifications and experience in the business operated by the applicant and the names of three referees; *(b)* the information required in terms of the Determination of Fit and Proper Requirements for Market Infrastructures;		

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(c) an indication if proceedings referred to in paragraphs (3)(a) to (f) and paragraph 5 of Determination of Fit and Proper Requirements for Market Infrastructures are pending. *(d)* full details of any fact which may have an impact on the evaluation by the Authority of the good character and integrity of a member of the controlling body.		
Risk Management		
Section 5 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository requires as follows: (1) An applicant for a trade repository licence and a licensed trade repository must establish, implement, maintain and enforce an effective risk management framework, approved by its controlling body to – (a) manage its risks, including business and operational risk, with appropriate systems, policies, procedures and controls; (b) provide for formal change-management and project-management processes to mitigate operational risk arising from modifications to operations, policies, procedures, and controls;		

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(c) record, report, analyse, and resolve all operational incidents; and (d) provide for comprehensive physical and information security policies that address all potential vulnerabilities and threats.		
(2) The risk management framework must enable an applicant for a trade repository licence and a licensed trade repository to – (a) identify, monitor and manage the potential sources of risk, taking into account past loss events and financial projections; (b) assess and understand its risk profile and the potential effect that this risk could have on its cash flows, liquidity, and capital positions, so that it is able to assess its ability either to- (i) avoid, reduce or transfer specific business risks; or (ii) accept and manage those risks; (c) measure and monitor identified risks on an on-going basis and to develop appropriate information processing systems; and		

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(d) minimise and mitigate the probability of business-related losses and their impact on its operations across a range of adverse business and market conditions, including the scenario that its viability as a going concern is questioned.		
(3) An applicant for a trade repository licence and a licensed a trade repository must have adequate management controls, such as setting operational standards, measuring and reviewing performance, and correcting deficiencies.		
(4) A trade repository must – *(a)* develop and maintain- (i) adequate internal controls over its systems; and (ii) adequate information technology general controls, including controls relating to information systems operations, information security and integrity, change management, incident management, network support and system software support.		
(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually –		

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(i) make reasonable current and future capacity estimates; and (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and		
(c) promptly notify the Authority of any material system's failure, malfunction, delay or other disruptive incident, or any breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.		
(5) A trade repository must test its business continuity policy and its disaster recovery plan as contemplated in section 55(1)(i) of the Act at least annually.		
(6) A trade repository must establish, implement, maintain and enforce plans designed to – (a) identify scenarios that may potentially prevent the trade repository from being able to provide reporting services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-up; (b) provide for the recovery or orderly winding-up of the trade repository's critical operations or services based on the results of the assessment referred to in sub-paragraph 5(6)(a); and		

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(c) provide, in the event of recovery or orderly winding-up, for the manner in which all the existing data must be transferred to another trade repository or to the relevant authorities which will allow reporting entities the choice to report to any other trade repository going forward.		
(7) For each of its systems for collecting and maintaining reports of data, a trade repository must annually appoint a qualified independent third party, as agreed to by the Authority, to conduct an independent review and prepare a report in accordance with established audit standards.		
(8) A trade repository must provide a copy of the report resulting from the review conducted under sub-paragraph 5(7) to – (a) its controlling body and audit committee upon the report's completion; and (b) the Authority not later than five working days after providing the report to its controlling body or audit committee.		
Compliance function		
Section 6 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository requires as follows:		

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(1) An applicant for a trade repository licence and a licensed trade repository must establish and maintain a permanent and effective compliance function which operates independently from the other functions of the trade repository with the necessary authority, resources, expertise and access to all relevant information.		
(2) When establishing its compliance function, an applicant for a trade repository licence and a licensed trade repository must take into account the nature, scale and complexity of its business, and the nature and range of the functions undertaken in the course of that business.		
(3) The compliance function must – (a) monitor and, on a regular basis, assess the adequacy and effectiveness of the measures put in place and the actions taken to address any deficiencies in the trade repository's compliance with its obligations; (b) administer the compliance policies and procedures established by senior management and the controlling body;		

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(c) advise and assist the persons responsible for carrying out the trade repository's functions to comply with its obligations under the Act, this Joint Standard and other regulatory requirements, where applicable; (d) report on a quarterly basis, to the controlling body on compliance by the trade repository and its employees with the Act and this Joint Standard; (e) report annually to the Authority on compliance by the trade repository and its employees with the Act and this Joint Standard; (f) establish procedures for the effective remediation of instances of non-compliance; and (g) ensure that any person involved in the compliance function is not involved in the performance of the services or activities which that person monitors and that any conflicts of interest of such a person are properly identified and eliminated.		
Related parties, subsidiaries and associates		
Section 7 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository prescribes as follows:		

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(1) The Authority must be satisfied that any relationship between a trade repository and a related party of that trade repository will not prevent the effective exercise of the supervisory functions of the Authority.		
(2) A trade repository may not acquire or establish subsidiaries or associates, without prior written approval of the Authority and the Prudential Authority.		
Additional business		
Section 8 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository requires as follows: Subject to section 61 of the Act, where a trade repository offers ancillary services such as trade confirmation, trade matching, credit event servicing, portfolio reconciliation or portfolio compression services, the trade repository must maintain those ancillary services operationally separate from the trade repository's duty of centrally collecting and maintaining records of derivative transactions.		
Outsourcing		

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Section 9 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository prescribes as follows: (1) A trade repository must – *(a)* establish, implement, maintain and enforce written policies and procedures for the selection of its service providers, including a service provider that is an associate or affiliate of the trade repository, to which key services and systems may be outsourced and for the evaluation and approval of the outsourcing arrangements; *(b)* identify and provide a written report to its controlling body regarding any conflicts of interest between the trade repository and the service provider to which key services and systems are outsourced, and establish, implement, maintain and enforce written policies and procedures, as approved by its controlling body, to mitigate and manage those conflicts of interest; *(c)* enter into a written service agreement with the service provider that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures;		

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(d) ensure that the trade repository has direct access to the relevant information of the outsourced functions; *(e)* ensure that nothing contained in the service agreement with the provider, nor any obligations in terms thereof, will result in non-compliance by the trade repository with the provisions of this Joint Standard, the Act and any other legislation; *(f)* ensure that the Authority has the same access and within the same periods to all data, books, records, information and systems maintained by the service provider on behalf of the trade repository that it would have in the absence of the outsourcing arrangements; *(g)* ensure that all persons conducting audits or independent reviews of the trade repository under this Joint Standard have appropriate access to all relevant data, books, records, information and systems maintained by the service provider on behalf of the trade repository that such persons would have in the absence of the outsourcing arrangements; *(h)* take appropriate measures to –		

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(i) determine that a service provider to which key services or systems are outsourced establishes an equivalent business continuity plan including a disaster recovery plan to that, which the trade repository must fulfil under this Joint Standard; (ii) determine that a service provider to which key services or systems are outsourced maintains and periodically tests its business continuity plan, including a disaster recovery plan; and (iii) ensure that the service provider protects the trade repository users' confidential information; *(i)* establish, implement, maintain and enforce written policies and procedures to regularly review the performance of the service provider under the outsourcing arrangements; *(j)* ensure that the relationship and obligations of the trade repository towards its users are not altered; *(k)* ensure that the conditions for authorisation of the trade repository do not effectively change; *(l)* ensure that outsourcing does not result in depriving the trade repository from the necessary systems and controls to manage the risks it faces;		

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(m) ensure that the trade repository retains the necessary expertise and resources to supervise the outsourced functions effectively and manage the risks associated with the outsourcing on an on-going basis; *(n)* ensure that the service provider protects any confidential information relating to the trade repository and its users and clients or, where that service provider is established in a country other than the Republic, ensures that the data protection standards of that country, or those set out in the agreement between the service provider and the trade repository, are comparable to the data protection standards in effect in the Republic; and *(o)* confirm in writing to the Authority the extent of outsourcing and that the conditions set out in *(a)* to *(n)* will be adhered to. (2) A trade repository must submit a copy of the written service agreement which clearly reflects the rights and obligations of the trade repository and the service provider to the Authority. (3) A trade repository must make all the necessary information available to the Authority, upon request, to enable the Authority to assess the compliance of the performance of the outsourced activities with this Joint Standard.		

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Access		
Section 10 of the FMA Joint Standard 1 of 2018: Requirements and additional duties of a trade repository requires as follows: (1) A trade repository must – *(a)* subject to the reporting obligations prescribed by the Authority have objective, non-discriminatory, publicly disclosed user requirements as contemplated in section 55(1)*(g)* of the Act, that: (i) are risk-based; (ii) have the least-restrictive impact on access that circumstances permit; (iii) are adequate to ensure that its users meet operational, financial and legal requirements to allow them to fulfil their obligations to the trade repository and other users of the trade repository on a timely basis; (iv) where applicable, are designed to support interconnectivity with other market infrastructures and service providers;		

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(v) are justified in terms of the safety and efficiency of the trade repository and the markets it serves; (vi) are tailored to and commensurate with the trade repository's specific risks; and (vii) only restrict access to the extent that the objective of such restriction is to control the risk to the data maintained by a trade repository; *(b)* monitor compliance with its user requirements on an on-going basis; *(c)* allow the users to have access to their transaction data and to make necessary corrections to the information reported by the user in a timely manner; *(d)* grant service providers non-discriminatory access to information maintained by the trade repository, on condition that the relevant users have provided their consent; *(e)* fully disclose the process for proposing and implementing changes to its user requirements and for informing users, the Authority and the Prudential Authority of these changes; *(f)* have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a user that breaches, or no longer meets, the user requirements;		

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(g) disclose any other information reasonably required by users to assess the risks and costs of participating in the trade repository; *(h)* provide all documentation, training, and any other information necessary to facilitate a user's understanding of the trade repository's rules and procedures and the risks it faces from participation as a user of the trade repository; *(i)* ensure that a new user receives training before using the system, and an existing user receives, as needed, additional periodic training, at least annually; *(j)* provide clear descriptions of priced services for comparability purpose; and *(k)* provide the Conduct Authority, its users and the public with at least 30 days' notice prior to the implementation of any changes to its services and fees. (2) A trade repository must have policies that – *(a)* clearly describe the design and operations of its systems for accepting, using, retaining and providing access to transaction data;		

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(b) clearly disclose the degree of discretion that a trade repository can exercise over key decisions that directly affect the operation of its system, including in crises and emergencies; and *(c)* clearly set out the trade repository's commitments in relation to minimum service levels and operational reliability.		
Providing access to data by the Conduct Authority and supervisory authorities		
(1) A trade repository must – *(a)* provide continuous, direct and immediate electronic access to all transaction data in accordance with internationally acceptable communication procedures and standards for messaging to the Authority or any other relevant supervisory authorities if requested and at no charge; *(b)* comply with any reasonable requirement specified in the request to provide the transaction data – (i) on an ad hoc basis or each time a particular event occurs; or		

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(ii) by a specified time; *(c)* notify the Authority of criminal proceedings, disciplinary action or material changes to regulatory requirements imposed on the trade repository by a supervisory authority; *(d)* as soon as practicable, notify the Authority of the occurrence of any of the following circumstances: (i) a disruption, delay in, suspension or termination of any of the trade repository's systems, including as a result of a system failure; or (ii) a breach of security or confidentiality of the transaction data retained in the trade repository. **(2)** In relation to a designated authority that has entered into a supervisory cooperation arrangement with the Authority as contemplated in section 251 of the Financial Sector Regulation Act,[1] a trade repository must provide access to the transaction data, relevant to that designated authority's mandate and responsibilities.		

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Safeguarding and recording		
(1) Subject to section 73 of the FMA, a trade repository must – *(a)* establish, implement, maintain and enforce written policies and procedures reasonably designed to protect the privacy, integrity and confidentiality of the transaction data; *(b)* promptly record the transaction data received and maintain it for at least five years following the termination of the relevant derivatives contracts; *(c)* employ timely and efficient record keeping procedures to document changes to recorded transaction data; *(d)* set a service-level target to record to its central registry, transaction data it receives from users at least within one business day; *(e)* have adequate procedures and timelines for making transaction data available for any downstream processing, such as clearing and reporting; *(f)* implement quality controls to ensure the accuracy, validity, and integrity of the transaction data it stores and disseminates;		

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(g) take all reasonable steps to prevent any misuse of the transaction data maintained in its systems; *(h)* ensure that any transaction data, that has not otherwise been disclosed, is not released for commercial or business purposes, unless the users have expressly granted their written consent to use the transaction data to the trade repository.		
Disclosure of transaction data by trade repositories		
(1) Subject to section 73, a trade repository must – *(a)* have objectives, policies and procedures that support the effective and appropriate disclosure of transaction data to the Authority, Prudential Authority, other supervisory authorities, and where applicable, the public and its users; *(b)* have robust information systems that provide accurate current and historical transaction data; *(c)* disclose information on its system design, as well as technology and communication procedures, that affect the costs of operating the trade repository;		

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(d) have procedures to facilitate enhanced monitoring, supervision, regulation or enforcement proceedings by the Authority by making relevant information held by the trade repository available to the Authority in a timely and effective manner; *(e)* collect, store, and provide transaction data to the public and its users, in a timely manner and in a format that can facilitate prompt analysis; *(f)* make the transaction data and other relevant information it discloses readily available through generally accessible media, such as the Internet, in a language commonly used in financial markets in addition to an official language, which transaction data must be accompanied by explanatory documentation that enables users to understand and interpret the transaction data correctly; *(g)* complete and disclose publicly, responses to the Committee on Payment and Market Infrastructures and the Technical Committee of the International Organisation of Securities Commissions: Disclosure Framework for Financial Market Infrastructures; *(h)* update its responses to the Committee on Payment and Market Infrastructures and the Technical Committee of the International Organisation of Securities Commissions: Disclosure		

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Framework for Financial Market Infrastructures following material changes to the system or its environment; *(i)* at a minimum, review its responses to the Committee on Payment and Market Infrastructures and the Technical Committee of the International Organisation of Securities Commissions: Disclosure Framework for Financial Market Infrastructures every two years to ensure continued accuracy and usefulness; and *(j)* provide comprehensive and appropriately detailed disclosures to improve the overall transparency of the trade repository, its governance, operations, and risk-management framework. (2) A trade repository may only disclose the information under sub-paragraph (1)(c) if such disclosure would not compromise the integrity or security of the trade repository or require the disclosure of commercially sensitive information.		
Publication of aggregate transaction data		

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(1) A trade repository must publish the aggregate transaction data, where the OTC derivative provider, counterparty and client details are not disclosed, on a website which is easily accessible by the public. (2) A trade repository must publish the aggregate transaction data (open positions, transaction volumes and values per asset class) for the following asset classes: *(a)* Commodities; *(b)* credit; *(c)* foreign exchange; *(d)* equity; *(e)* interest rate. (3) A trade repository must publish the transaction data free of cost and must update the transaction data at least weekly.		

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Communication procedures and standards		
(1) A trade repository must – *(a)* use internationally accepted communication procedures and standards; or *(b)* where it does not itself use internationally accepted communication standards, accommodate systems that translate or convert transaction data from international standards into the domestic equivalent and *vice versa*. (4) A trade repository must – *(a)* support technologies that are widely accepted in the financial markets, including applicable market standards for reporting and recording trade information; *(b)* put in place consistent application interfaces and communication links that enable technical interconnectivity with other market infrastructures and service providers; *(c)* use industry standards for transaction data representation, including those related to the unique identification of counterparties (such as legal entity identifiers), the unique identification		

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of products and the unique identification of transactions to facilitate the use and aggregation of transaction data stored in the repository, especially by authorities; *(d)* make its final technology requirements regarding interfacing with or accessing the trade repository publicly available (at least on its web site) – (i) if operations have not begun, for at least three months immediately before operations begin, and (ii) if operations have begun, for at least three months before implementing a material change to its technology requirements. *(e)* after complying with sub-paragraph (2)*(d)*, make testing facilities for interfacing with or accessing the trade repository available to potential users – (i) if operations have not begun, for at least two months immediately before operations begin; and (ii) if operations have begun, for at least two months before implementing a material change to its technology requirements.		

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(5) A trade repository may not begin operations until it has complied with the requirements set out in sub-paragraph (2)*(d)*(i). (6) Sub-paragraphs (2)*(d)*(ii) and (2)*(e)*(ii) are not applicable if the change must be made urgently to address a failure, malfunction or material delay of its systems or equipment and the trade repository – *(a)* immediately notifies the Authority of its intention to make the change; and *(b)* publishes the changed technology requirements as soon as practicable.		
Cancellation or suspension of licence		
In terms of Section 60 of the Financial Markets Act the Authority may, with the concurrence of the Prudential Authority and the SARB, cancel or suspend a licence if- (a) the market infrastructure has failed to-	***Under which condition, can authorisation be withdrawn?***	

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(i) comply with this Act or its rules; (ii) comply with a directive, request, condition or requirement of the Authority in terms of a financial sector law; or (iii) give effect to a decision of the Tribunal; (b) after an investigation, the Authority is satisfied on reasonable grounds that the manner in which it is operated is- (i) not in the best interests of clearing members of independent clearing houses or of central counterparties, authorised users or participants, or users or members of the market infrastructure, as the case may be, and their clients; or (ii) defeating the objects of this Act referred to in section 2;		

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(c) the market infrastructure has ceased to operate or has failed to commence operating within a reasonable period after being licensed; or (d) the Authority is satisfied on reasonable grounds that the licence was obtained through misrepresentation. (2) The Authority must, before cancelling or suspending a licence- (a) inform the market infrastructure of the Authority's intention to cancel or suspend; (b) give the market infrastructure the reasons for the intended cancellation or suspension; and (c) call upon the market infrastructure to show cause within a period specified by the Authority why its licence should not be cancelled or suspended.		

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(3) The Authority must, subject to subsection (4), cancel the licence of a market infrastructure upon submission to the Authority of a request by the market infrastructure for cancellation. (4) If the Authority cancels or suspends a licence, the Authority must take such steps and may impose such conditions as are necessary to achieve the objects of this Act referred to in section 2 which steps may include- (a) the transfer of the business of the market infrastructure to another similar market infrastructure; or (b) the winding-up of the market infrastructure in terms of section 100.		
Annual assessment		

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In terms of section 59 of the FMA the Authority, in consultation with the Prudential Authority, must annually assess whether a licensed market infrastructure- (a) complies with this Act, the Financial Sector Regulation Act and the rules of the market infrastructure; (b) where applicable, complies with directives, and with requests, conditions or requirements of the Authority in terms of a financial sector law; or (c) where applicable, gives effect to decisions of the Tribunal.		
Carrying on of additional business		
In terms of section 61 of the FMA: (1) A market infrastructure may not conduct any additional business if to do so would create or increase systemic risk.		

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(2) A market infrastructure must consult the Authority prior to conducting any business, function or service not provided for under section 10, 30 or 50, that may- (a) adversely impact on the market infrastructure's ability to meet or perform its regulated obligations or functions; or (b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be. (3) The Authority may, if it considers that a business, function or service referred to in subsection (2) may- (a) impact on the regulated obligations or functions of a market infrastructure; or		

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(b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be, after consultation with the Prudential Authority and the SARB, make a determination specifying requirements in relation to the market infrastructure carrying on of such business, function or service. (3A) The Authority may not make a determination in terms of subsection (3) in respect of a particular market infrastructure unless- (a) a draft of the determination has been given to the market infrastructure; (b) the market infrastructure has had a reasonable period of at least 14 days to make submissions to the Authority about the matter; and		

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(c) the Authority had regard to all submissions made to it in deciding whether or not to make the determination. (3B) If the Authority considers on reasonable grounds that it is necessary to make the determination urgently, it may do so without having complied, or complied fully, with subsection (3A). (4) The Authority must, within 14 days after making a determination in terms of subsection (3), give the market infrastructure a statement of its reasons for making a determination in terms of subsection (3), and a statement of the material facts on which the determination was made.		
Conflicts of interest		
In terms of section 62 of the FMA a market infrastructure must, where applicable, take necessary steps to avoid, eliminate, disclose and otherwise manage possible conflicts of interest between its regulatory functions and its commercial services, which steps must include-		

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(a) the implementation of appropriate arrangements, which arrangements must comply with the requirements prescribed by the Authority, be documented and be publicly available; and (b) an annual assessment, in accordance with conduct standards or joint standards, of the arrangements referred to in paragraph (a), the results of which must be published.		
Limitation on control of and shareholding or other interest in market infrastructures		
Section 67 of the FMA prescribes as follows: (1) For the purposes of this section, **"associate"**, in relation to- (a) a natural person, means- (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;		

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(ii) a child of that person, including a stepchild, an adopted child and a child born out of wedlock; (iii) a parent or stepparent of that person; (iv) a person in respect of which that person is recognised in law or appointed by a court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first-mentioned person; (v) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii) to (iv); (vi) a person who is in a commercial partnership with that person;		

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(vii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the market infrastructure in question; (b) a juristic person- (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof as defined in section 1 of the Companies Act; (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act; (iii) which is not a company or close corporation, means another juristic person which would have been its subsidiary or holding company-		

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(aa) had it been a company; or (bb) where that other juristic person is not a company either, had both it and that other juristic person been a company; (iv) means any person in accordance with whose directions or instructions its board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts; (c) in relation to any person- (i) means any juristic person whose board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts in accordance with its directions or instructions;		

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(ii) means a trust controlled or administered by it. (2) For the purposes of this section, a person controls a market infrastructure- (a) that is a company, if that person, alone or with associates- (i) holds shares in the market infrastructure of which the total nominal value represents more than 15% of the nominal value of all the issued shares thereof; (ii) is directly or indirectly able to exercise or control the exercise of more than 15% of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise, or (iii) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15% of the votes at a meeting of the board;		

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(b) that is a close corporation, if that person, alone or with associates, owns more than 15% of the members' interest, or controls directly, or has the right to control, more than 15% of members' votes in the close corporation; or (c) that is a trust, if that person, alone or with associates, has the ability to control more than 15% of the votes of the trustees or to appoint more than 15% of the trustees, or to appoint or change more than 15% of the beneficiaries of the trust. (3) A person may not, without the prior approval of the Authority, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control within the meaning of subsection (2) over the market infrastructure. (4) A person may not, without the prior approval of the Authority, acquire shares or any other interest in a market infrastructure in excess of that approved under subsection (3).		

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(5) (a) A person may not, without the prior approval of the Minister, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in the per cent referred to in subsection (2) exceeding 49%. (b) Any request for approval referred to in paragraph (a) must be submitted through the Authority to the Minister. (6) An approval referred to in subsection (3), (4) or (5)- (a) may be given subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the Authority;		

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(b) may not be given if it will defeat the objects of this Act referred to in section 2; and (c) may be refused if the person concerned, alone or with his or her associates, has not owned shares in the market infrastructure- (i) of the aggregate nominal value; and (ii) for a minimum period, not exceeding 12 months, that the Authority or the Minister, as the case may be, may determine. (7) If the Authority or the Minister, as the case may be, is satisfied on reasonable grounds that the retention of a particular shareholding or other interests by a particular person will be prejudicial to the market infrastructure, the Authority or the Minister, as the case may be, may apply to the court in whose area of jurisdiction the main office of the market infrastructure is situated, for an order-		

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(a) compelling that person to reduce, within a period determined by the court, the shareholding or other interests in the market infrastructure to a shareholding with a total nominal value not exceeding- (i) in a case where subsection (3) applies, 15 per cent; or (ii) 49 per cent, of the total nominal value of all the issued shares of the market infrastructure; and (b) limiting, with immediate effect, the voting or other rights that may be exercised by such person by virtue of his or her shareholding or other interest in the market infrastructure, to 15 or 49% of the voting or other rights attached to the shares or other interests, as the case may be. (8) An application referred to in subsection (3), (4) or (5) must be made in the manner and form prescribed by the Authority		

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Auditor		
Section 89 of the FMA provides as follows: (1) Despite the provisions of any law, a regulated person must appoint and at all times have an auditor who engages in public practice and who has no direct or indirect financial interest in the business in respect of which the auditor is so appointed. (2) No firm of auditors, or a member of such firm, in which a regulated person or director, officer or employee of a regulated person has any financial interest, may be appointed as an auditor of a regulated person. (3) The Authority must approve the appointment of the auditor of every market infrastructure and may withdraw the approval if it is necessary.		
Accounting records and Audit		

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In terms of Section 90 of the FMA a regulated person must— maintain on a continual basis the accounting records prescribed by the Authority and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be prescribed by the Authority; *(a)* cause such accounting records and annual financial statements to be audited by an auditor appointed under section 89, within a period prescribed by the Authority or such later date as the Authority may allow on application by a regulated person; and *(b)* preserve such records, which may be in electronic form, in a safe place for a period of not less than five years as from the date of the last entry therein.		
Amalgamation, merger, transfer or disposal		
Section 64 of the FMA prescribes as follows:		

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(1) (a) The Authority must approve- (i) any amalgamation or merger referred to in Chapter 5 of the Companies Act that involves a market infrastructure as one of the principal parties to the amalgamation or merger; and (ii) any transfer or disposal of more than 25% of the assets, liabilities or assets and liabilities of a market infrastructure to another person. (b) A market infrastructure must- (i) prior to the making of any compulsory disclosures under any rules or national legislation in respect of any transaction referred to in paragraph (a), inform the Authority of the proposed transaction;		

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(ii) clearly state in any compulsory disclosures under any rules or national legislation, or any announcement or press release in respect of a transaction referred to in paragraph (a), that the transaction is subject to the approval of the Authority; and (iii) on conclusion of the transaction, seek the approval of the Authority in accordance with this subsection and the conditions prescribed by the Authority. (2) The 25% referred to in subsection (1)(a)(ii) must be calculated by aggregating the amount of the transferred assets, liabilities or assets and liabilities together with any previous transfer of assets, liabilities or assets and liabilities within the same financial year of the market infrastructure concerned. (3) (a) Subsection (1) does not apply if only assets are transferred and the amount of the transferred assets, together with any previous transfer of assets within the same financial year,		

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aggregates to an amount that is more than 10% but less than 25% of the total on-balance-sheet assets of the transferring market infrastructure. (b) A market infrastructure must notify the Authority of a transfer referred to in paragraph (a). (4) The Authority may give approval referred to in subsection (1), if the Authority is satisfied that the transaction in question will not be detrimental to the objects of this Act. (5) Upon the coming into effect of a transaction effecting an amalgamation, merger or the transfer of such part of the assets, liabilities or assets and liabilities as approved in terms of subsection (1)- (a) all the assets and liabilities of the amalgamating entities (or in the case of a transfer of assets and liabilities, of the entity by which the transfer is effected), including any insurance, guarantee, compensation fund or other warranty owned or maintained by any of them to cover any liabilities of clearing members of independent clearing houses or central counterparties, authorised users or		

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participants, as the case may be, to clients, vest in and become binding upon the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities or such other entity acceptable to the Authority as the parties to the amalgamation may designate; (b) the amalgamated entity, or in the case of a transfer of assets and liabilities, the entity taking over such assets and liabilities, has the same rights and is subject to the same obligations as were, immediately before the amalgamation or transfer, applicable to or binding upon the amalgamating entities or, as the case may be, the entity by which the transfer has been effected; (c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamated entities or, as the case may be, the entity by which the transfer has been effected, and in force immediately before the amalgamation or transfer, remain in force and are construed for all purposes as if they had been entered into, made, executed		

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or drawn up by, with or in favour of the amalgamated entity or, as the case may be, the entity taking over the assets and liabilities in question; (d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by any of the amalgamating entities or, as the case may be, the entity transferring such assets and liabilities, which was in force immediately prior to the amalgamation or transfer, remains in force and is construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities; and (e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating entities or owing by any person to any of such entities, is enforceable against or owing to the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities.		

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(6) Upon the coming into effect of a transaction effecting an amalgamation or merger, the licences of the individual market infrastructure that were parties to the amalgamation or merger are deemed to be cancelled, and the Authority must license the market infrastructure created by the amalgamation or merger.		
Delegation of functions		
Section 68 of the FMA prescribes as follows: (1) A market infrastructure may delegate or assign any function entrusted to it by this Act or its rules to a person or group of persons, or a committee approved by the controlling body of the market infrastructure, or a division or department of the market infrastructure, subject to the conditions that the market infrastructure may determine.		

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(2) Before delegating or assigning functions as contemplated in subsection (1) to an external party, the market infrastructure must obtain the approval of the Authority. (3) The Authority may delegate or assign any function entrusted to the Authority by or under this Act, subject to the conditions that the Authority may determine. (4) A market infrastructure or the Authority, as the case may be, is not divested or relieved of a function delegated or assigned under subsections (1) and (2), and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.		
Report to Conduct Authority		
Section 69 of the FMA prescribes as follows: Within four months after the financial year-end of a market infrastructure, that market infrastructure must submit to the Authority an annual report containing the details determined in joint standards		

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and audited annual financial statements that fairly present the financial affairs and status of the market infrastructure.		
Attendance of meetings by, and furnishing of documents to, Conduct Authority		
Section 70 of the FMA prescribes as follows: (1) The Authority or a person nominated by the Authority may attend any meeting of the controlling body of a market infrastructure or a committee of the controlling body, and may take part, but may not vote, in all the proceedings at such meeting. (2) A market infrastructure must furnish the Authority with all notices, minutes and documents which are furnished to members of the controlling body of the market infrastructure or a committee of the controlling body, as if the Authority were a member of that body or committee.		
Manner in which rules of certain market infrastructure may be made, amended or suspended, and penalties for contraventions of such rules.		

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Section 71 of the FMA prescribes as follows: (1) The Authority must as soon as possible after issuing a licence to a market infrastructure that is required to issue rules, cause the rules made by that entity to be published in the *Gazette* at the expense of the entity concerned. (1A) Rules that are made by a market infrastructure may not contradict any regulation, conduct standard, prudential standard, or joint standard issued in term of this Act or the Financial Sector Regulation Act. (2) (a) A market infrastructure may, subject to this section, amend or suspend its rules in accordance with the consultation process set out in the rules, which process must provide for-		

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(i) the persons who are to be consulted; and (ii) the manner in which consultation will happen, including the time period or periods allowed for consultation. (b) The Authority may, after consultation with the Prudential Authority and the SA Reserve Bank, subject to this section, amend the rules or issue an interim rule. (3) (a) A proposed amendment, other than a suspension, of the rules must be submitted to the Authority for approval and must be accompanied by an explanation of the reasons for the proposed amendment and any concerns or objections raised during the consultation process. (b) The Authority must as soon as possible after the receipt of a proposed amendment publish-		

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(i) the amendment on the Authority's website; and (ii) a notice in the *Gazette* that the proposed amendment is available on the Authority's website, calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with the Authority within a period of 14 days from the date of publication of the notice. (c) If there are no such objections, or if the Authority has considered the objections and, if necessary, has consulted with the market infrastructure and the persons who raised such objections and has decided to approve or amend the proposed amendment, the Authority must publish- (i) the amendment and the date on which it comes into operation on the Authority's website; and (ii) a notice in the *Gazette*, which notice must state-		

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(aa) that the amendment to the rules has been approved; (bb) that the rules as amended are available on the Authority's website and the website of the market infrastructure; and (4) (a) The Authority, after consultation with the Prudential Authority and the SA Reserve Bank, by notice in the *Gazette* and on the Authority's website, may amend the rules of that market infrastructure- (i) if there is an urgent imperative under exceptional circumstances; (ii) if it is necessary to achieve the objects of this Act referred to in section 2; and		

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(iii) after consultation with the market infrastructure concerned. (b) Where the Authority has amended the rules of a market infrastructure under paragraph (a), the Authority must- (i) inform the Minister of the amendment, giving reasons for the amendment and explaining the imperative referred to in paragraph (a)(i); and (ii) give reasons for the amendment, and explain the imperative referred to in paragraph (a)(i), in the *Gazette* and on the Authority's website. (5)		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(a) Subject to prior approval of the Authority, a market infrastructure may suspend any of the rules of that organisation for a period not exceeding 30 days at a time after reasonable notice of the proposed suspension has been advertised on the Authority's website. (b) The Authority may after consultation with the Prudential Authority and the SA Reserve Bank, for the period of such suspension, issue an interim rule by notice in the Gazette to regulate the matter in question. (c) Any contravention of or failure to comply with an interim rule, has the same legal effect as a contravention of or failure to comply with a rule. (6)		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(a) The rules may prescribe that a market infrastructure, or a person to whom the market infrastructure has delegated its disciplinary functions, may where appropriate impose any one or more of the following penalties for any contravention thereof or failure to comply therewith: (i) A reprimand; (ii) a censure; (iii) a fine not exceeding R7.5 million, to be adjusted by the Authority annually to reflect the Consumer Price Index, as published by Statistics South Africa; (iv) suspension or cancellation of the right to be a clearing member of an independent clearing house or central counterparty, an authorised user or a participant;		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(v) disqualification, in the case of a natural person, from holding the office of a director or officer of a clearing member of an independent clearing house or central counterparty, an authorised user or a participant, as the case may be, for any period of time; (vi) a restriction on the manner in which a clearing member of an independent clearing house or central counterparty, an authorised user or a participant may conduct business or may utilise an officer, employee or agent; (vii) suspension or cancellation of the authorisation of an officer or employee of a clearing member of an independent clearing house or central counterparty, an authorised user or a participant to perform a function in terms of the rules; (viii) any other penalty that is appropriate in the circumstances. (b) The rules may prescribe that-		

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(i) full particulars regarding the imposition of a penalty must be published on the website of the market infrastructure or through the news service of the market infrastructure or through a market notice, if any; (ii) any person who has contravened or failed to comply with the rules, may be ordered to pay the costs incurred in an investigation or hearing conducted in terms of the rules; (iii) a market infrastructure may take into account at a disciplinary hearing any information obtained by the Authority in the course of an inspection conducted in terms of the Financial Sector Regulation Act; (iv) a market infrastructure, or a person to whom a market infrastructure has delegated its disciplinary functions, may, upon good cause shown, and subject to the conditions it may impose, vary or modify any penalty which it may previously have imposed upon any person, but that in varying or modifying such penalty, the penalty may not be increased.(7) If a person fails to pay a		

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fine referred to in subsection (6)(a), the market infrastructure may file with the clerk or Authority of any competent court a statement certified by it as correct, stating the amount of the fine imposed, and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the market infrastructure for a liquid debt in the amount specified in the statement. (8) This section does not prejudice the common law rights of a person aggrieved by a contravention of or failure to comply with a rule to claim any amount except to the extent that any portion of such amount has been recovered under subsection (6). (9) The rules must prescribe the purpose for which a fine referred to in subsection (6) must be appropriated.		
Disclosure of information		
Section 73 of the FMA prescribes as follows:		

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(1) No market infrastructure or chief executive officer, other officer, employee, representative or member of a market infrastructure may, subject to subsection (2), disclose to any person any confidential information obtained in the performance of functions under this Act, unless- (a) the person to whom the confidential information relates has given consent; (b) disclosure is required or permitted in terms of a law or a court order; (c) disclosure is necessary to carry out his, her or its functions or in the course of performing duties under any law; or (d) disclosure is required for the purposes of legal proceedings. (2) Despite subsection (1), a market infrastructure may disclose information relating to or arising from its functions to any market infrastructure or supervisory Authority, whether domestic or foreign, if such disclosure will further one or more of the objects of this Act referred to in		

ANNEXURE B

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012) (FMA)

EQUIVALENCE ASSESSMENT FOR EXTERNAL CENTRAL COUNTERPARTIES

In addition to the application form included as Annexure I which should be completed by an external market infrastructure to apply for an equivalence recognition of the applicant's home regulatory framework in terms of section 6A(1) of the FMA, this document must also be completed by applicants that are central counterparties.

Part I - Authorisation process

1. Describe the conditions and briefly outline the procedure for authorisation of a central counterparty (CCP).

Part II – Legal and Supervisory Arrangements: Framework

2. Provide an outline of the legal and supervisory arrangements with which CCPs in your jurisdiction must comply. In particular, describe:

(2.1) any primary and/or secondary legislative instruments:

(i) placing legal obligations on CCPs; and/or

(ii) deferring competencies to national supervisors/regulators to authorise and supervise CCPs in your jurisdiction;

(iii) designating competent authorities responsible for supervision and enforcement of rules applicable to CCPs;

(iv) supervisory and enforcement powers granted to competent authorities.

(2.2) any non-legislative legally binding measures relating to supervisory arrangements, including but not limited to:

(i) legally binding guidelines;

(ii) approved rules, procedures and policies of CCPs.

3. In the case of approved rules, procedures and policies that are legally binding on the CCP, describe in detail the legal basis on which such rules, procedures and policies are legally binding as well as the basis on which such rules, procedures and policies can be enforced.
4. Describe the process through which such rules are approved and under what circumstances such rules may be amended.
5. Describe any non-legally binding measures related to the supervision, authorisation and regulation of CCPs in your jurisdiction including, but not limited to, policy statements, rules, policies and procedures of CCPs or non-binding guidelines.

Part III – Supervisory powers

6. Provide an outline of the different supervisors and overseers involved in the financial market and more precisely in CCP activities and their respective role, measures available to CCP supervisors in your jurisdiction in respect of breaches of legally binding requirements by a CCP (including, but not limited to, powers to impose fines and orders or to suspend or rescind licenses). Please confirm in respect of which types of breaches these measures may be applied.

Part IV – Regime for the Recognition of External CCPs

7. Describe any procedures or legal requirements that apply to external CCPs providing services in your jurisdiction.

Part V – Legal and Supervisory Arrangements: Substance

8. Describe how the legal and supervisory arrangements in your jurisdiction achieve comparable outcomes to the FMA, applicable Board Notices issued thereunder, the FMA Regulations, published under Government Notice R98 in Government Gazette 41433 of 9 February 2018 and applicable Joint Standards, by completing table A.

Table A

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
Functions of licensed clearing house and licensed central counterparty, and power of the Authority to assume responsibility for functions		
Section 50 of the FMA prescribes as follows: (1) A licensed clearing house and a licensed central counterparty must conduct its business in a fair and transparent manner with due regard to the rights of clearing members and their clients. (2) A licensed clearing house and a licensed central counterparty (a) must provide an infrastructure for the clearing of securities through the clearing house; (b) must, as soon as it becomes aware thereof, inform the Authority of any matter that it reasonably believes may give rise to, or increase, systemic risk;		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(c) must manage the clearing of transactions in securities which it accepts for clearing and, if licensed to do so, the settlement of transactions in those securities; (d) must, on request, disclose to the Authority information on the exposures that a clearing member underwrites with the clearing house; (e) must have appropriate arrangements in place to- (i) ensure that it has efficient and timely access to funds and assets held as collateral for the due performance of the obligations of clearing members; and (ii) protect the funds and collateral of clearing members in the event of a default of a clearing member; (f) may do all other things that are necessary for, incidental or conducive to the proper operation of a clearing house not inconsistent with the FMA.		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(3) A licensed independent clearing house and a licensed central counterparty, in addition to the functions referred to in subsection (2)- (a) must issue clearing house rules; (b) must enforce the clearing house rules; (c) must supervise compliance by its clearing members with the clearing house rules and clearing house directives; (d) must supervise compliance with this Act by its clearing members, report any non-compliance to the Authority and assist the Authority in enforcing this Act; (e) may issue clearing house directives; (f) may amend or suspend the clearing house rules in terms of section 71;		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(g) may make different rules for clearing and settlement of different securities and different clearing members; (h) must consult relevant regulated persons when making or amending clearing house rules pertaining to clearing and settlement; (i) must disclose to clearing members the fees and charges required by it for its services; which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation; (j) must notify the Authority as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received notification regarding insolvency proceedings against clearing members; and (k) must notify the Authority as soon as it becomes aware that a clearing member will cease to be a clearing member.		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(3A) A central counterparty, in addition to the functions referred to in subsections (1), (2) and (3), must- (a) interpose itself between counterparties to transactions in securities through the process of novation, legally binding agreement or open offer system; (b) manage and process the transactions from the date the central counterparty interposes itself between counterparties to transactions, becoming the buyer to every seller and seller to every buyer, to the date of fulfilment of the legal obligations in respect of such transactions; and (c) facilitate its post-trade management functions. (4) (a) The registrar may assume responsibility for one or more of the regulatory and supervisory functions referred to in subsections (2) and (3) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2.		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(b) The Authority must, before assuming responsibility as contemplated in paragraph (a)- (i) inform the clearing house or central counterparty of the Authority's intention to assume responsibility; (ii) give the clearing house or central counterparty the reasons for the intended assumption; and (iii) call upon the clearing house or central counterparty to show cause within a period specified by the Authority why responsibility should not be assumed by the Authority.		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
Maintenance of insurance, guarantee, compensation fund or other warranty		
Section 51 of the FMA prescribes as follows: (1) An independent clearing house or a central counterparty required under section 49(2)(b) to have insurance, a guarantee, a compensation fund, or other warranty in place, may impose a fee on any person involved in a transaction in listed or unlisted securities cleared or settled or both through the clearing house for the purpose of maintaining that insurance, guarantee, compensation fund or other warranty. (2) Any funds received or held by an independent clearing house or a central counterparty for the purpose of maintaining the insurance, guarantee, compensation fund or other warranty contemplated in section 49(2)(b), are for all intents and purposes considered to be “trust property” as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds.		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
Section 52 of the FMA prescribes as follows: A mutual independent clearing house or central counterparty may require its clearing members to contribute towards the funds of the clearing house for the purpose of carrying on the business of the clearing house.		
Requirements with which clearing house rules must comply-		
Section 53 of the FMA prescribes as follows: Requirements with which clearing house rules must comply- (1) The clearing house rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act. (2) The clearing house rules must provide-		

Description of the legal and supervisory arrangements under the Financial Markets Act 19 of 2012	**Description of the corresponding domestic legal and supervisory arrangements** *Please use this column to provide a qualitative description of your legal and supervisory arrangements*	**Legal Citations** *Please use this column for legal citations only*
(a) for the manner in which and the terms and conditions subject to which transactions in listed and unlisted securities must be cleared or settled or cleared and settled through the clearing house; (b) for equitable criteria for authorisation and exclusion of clearing members and, in particular, that no person may be admitted as a clearing member or allowed to continue such person's business as a clearing member unless the person- (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the clearing house rules;		

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(c) must provide for an orderly process by which a clearing member ceases to be a clearing member; (d) for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that a clearing member may provide and the type of securities for which a clearing member may provide clearing services or settlement services or both, and if there are different categories of - (i) clearing members, for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that each category of clearing member may provide; (ii) securities, for the authorisation and criteria for authorisation of the categories in respect of which a clearing member may provide one or more clearing services or settlement services or both clearing services and settlement services;		

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(e) (i) for the capital adequacy, guarantee and risk management requirements with which a clearing member must comply; (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of clearing members or different activities of a clearing member's business; (f) if there are different categories of clearing members, for the restriction of the activities of such categories subject to different conditions; (g) for the monitoring of settlement obligations of clearing members and their clients; (h) for the circumstances in which the clearing house may refuse to settle or clear a transaction in securities;		

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(i) for the manner in which the clearing house monitors compliance by its clearing members with this Act, the clearing house rules and the clearing house directives; (j) for the manner in which a clearing member is required to conduct its business generally; (k) for the- (i) recording of transactions cleared or settled by the clearing house; and (ii) monitoring of compliance by clearing members with this Act, and the clearing house rules and clearing house directives; (l) for the manner in which complaints against a clearing member or officer or employee of a clearing member must be investigated;		

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(m) for the equitable and expeditious resolution of disputes between clearing members and between clearing members and their clients in respect of the clearing or settlement of transactions in listed and unlisted securities; (n) for a process whereby complaints by clearing members against the clearing house in respect of the exercise of functions by the clearing house may be made, considered and responded to; (o) for the steps to be taken by the clearing house, or a person to whom the clearing house has delegated its investigative and disciplinary functions, to investigate and discipline a clearing member or officer or employee of a clearing member who contravenes or fails to comply with the clearing house rules, the interim clearing house rules or the clearing house directives and for a report on the disciplinary proceedings to be furnished to the Authority within 30 days after the completion of such proceedings;		

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(p) for the manner in which a clearing member, officer or employee of a clearing member who is believed to- (i) be able to furnish any information on the subject of any investigation referred to in this subsection; or (ii) have in such person's possession or under such person's control any document which has bearing upon that subject, may be required to appear before a person conducting an investigation, to be interrogated or to produce such document; (q) where appropriate, in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 51, for- (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;		

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(ii) the amount of the fee imposed by the clearing house for this purpose; (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty; (iv) restrictions on the amount of any claim; (v) the control and administration of the insurance, guarantee, compensation fund or other warranty; (vi) the ownership of the insurance, guarantee, compensation fund or other warranty; (r) that clearing members must disclose to clients the fees for their services, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;		

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(s) for the purposes for which, and the process by which, a clearing house may issue clearing house directives; (t) for supervisory measures that enable the clearing house to comply with section 50(3)(b), (c) and (d); (u) for the administration of securities and funds held for own account or on behalf of a client by a clearing member, including the settlement of unsettled transactions, under insolvency proceedings in respect of that clearing member; and (v) for the authority of, and the manner in, and circumstances under which- (i) a clearing house may limit the revocation of any settlement instruction given by a clearing member or client;		

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(ii) a clearing member or its client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the clearing house rules, but prior to settlement; (iii) a clearing house or a clearing member may terminate transactions on the commencement of insolvency proceedings; (w) for the recording by a clearing member of transactions or positions cleared by that clearing member through the clearing house; (x) circumstances and manner in which a clearing member may advertise or canvass for business; (y) refusal by a clearing house to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;		

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(z) for the segregation and portability of funds and securities held as collateral; (aa) that clearing members must notify the clearing house as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and (bb) in the case of a central counterparty, for the default procedures to be followed, including close-out procedures, in the event of a default of a clearing member; (2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the clearing house rules. (3) Despite subsection (2), the rules of a clearing house only need to provide for matters relating to settlement if the clearing house is licensed to settle transactions in securities.		

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(4) (a) Subject to section 5(1)(c) and (2) and the requirements prescribed in joint standards, clearing house rules may provide for the approval of external clearing members to be clearing members of the clearing house. (b) If the clearing house rules provide for the approval of external clearing members to be clearing members of the clearing house, the rules must, in accordance with paragraph(a), provide for the identification of those clearing services or settlement services, or both, that will be authorised and regulated by the clearing house in terms of the clearing house rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external clearing member is authorised and supervised. (5) A clearing house may, with the approval of the Authority, make clearing house rules on matters additional to those listed in subsection (2).		

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(6) (a) Any rules made in terms of subsection (2)(a), (2)(u) or 2(v) must have due regard for, and not be in conflict with, any applicable depository rules. (b) Any rules made in terms of subsection (2)(v) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act. (7) A clearing house rule made under this section is binding on- (i) the clearing house, (ii) the clearing members of the clearing house, (iii) the officers and employees of the clearing house and its clearing members, and (iv) clients of the clearing members.		

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GENERAL PROVISIONS APPLICABLE TO MARKET INFRASTRUCTURES		
Annual assessment		
Are annual assessments conducted by the regulator in your jurisdiction as prescribed in section 59 of the FMA?		
Cancellation or suspension of licence		
Does the regulator have the power to cancel or suspend a licence as prescribed in section 60 of the FMA?		
Carrying on of additional business		
Is the conduct of any additional business regulated in your jurisdiction as prescribed in section 61 of the FMA?		
Conflicts of interest		
Are conflicts of interest regulated in your jurisdiction as prescribed in terms of section 62 of the FMA?		
Demutualisation of exchange, central securities depository, independent clearing house or central counterparty		
Is the demutualisation of an independent clearing house or central counterparty regulated as prescribed in section 63 of the FMA?		

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Amalgamation, merger, transfer or disposal		
Is the amalgamation, merger of the central counterparty or the transfer or of assets and liabilities as prescribed in section 64 of the FMA?		
Duty of members of controlling body		
Are duties imposed on the members of a controlling body as prescribed in section 66 of the FMA?		
Appointment of members of controlling body		
Are the appointment of members of a controlling body regulated as prescribed in section 66 of the FMA?		
Limitation on control of and shareholding or other interest in market infrastructures		
Is there limitation on control of and shareholding or other interest in a central counterparty as prescribed in section 67 of the FMA?		
Delegation of functions		
Is the delegation of authority regulated in your jurisdiction as prescribed in section 68 of the FMA?		
Report to Authority		

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Is there an obligation on the central counterparty to report information to the regulator as prescribed in section 69 of the FMA?		
Attendance of meetings by, and furnishing of documents to, Authority		
Is the regulator entitled to attend any meeting of the controlling body of a central counterparty or a committee of the controlling body as prescribed in section 70 of the FMA and is there an obligation on the central counterparty to furnish the regulator with all notices, minutes and documents which are furnished to members of the controlling body of the market infrastructure or a committee of the controlling body?		
Manner in which rules of certain market infrastructure may be made, amended or suspended, and penalties for contraventions of such rules		
Is the manner in which rules of certain market infrastructure may be made, amended or suspended, and penalties for contraventions of such rules regulated as prescribed in Section 71 of the FMA?		
Legal basis		

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Regulation 9 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) To establish the legal basis of its functions, a central counterparty must have rules, policies, procedures and contracts that- *(a)* are clear, understandable and consistent with relevant laws, including these Regulations; *(b)* are accurate, up to date and readily available to the Authority, other supervisory authorities, clearing members and where appropriate their clients; *(c)* provide certainty, with respect to the central counterparty's- (i) interests in, and rights to use and dispose of, collateral; (ii) Authority to transfer ownership rights or property interests; and (iii) rights to make and receive payments,		

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despite the insolvency of its clearing members, clearing members' clients, or custodian; and *(d)* are binding on third parties and legally enforceable when the central counterparty is implementing its plans for recovery or orderly winding-up. (2) In developing its rules, policies, procedures and contractual arrangements, a central counterparty must consider relevant regulatory principles, industry standards and market protocols and clearly indicate where such practices have been incorporated. (3) If a central counterparty has a netting arrangement in place, it must be enforceable in terms of valid legal agreements. (4) A central counterparty must, where applicable- *(a)* analyse any foreign legal requirements applicable to the rendering of its functions; *(b)* identify the extent to which those requirements are in conflict with the Act and other applicable SA legislation;		

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(c) develop a policy describing how conflicting provisions will be resolved in full compliance with the Act and other applicable legislation; and *(d)* in cases of uncertainty, obtain a legal opinion confirming the enforceability of its policies, procedures and contracts		
Access and participation		
Regulation 10 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must allow for fair and open, and non-discriminatory access to its functions, including by direct and, where relevant, indirect clearing members and other market infrastructures, based on reasonable risk-related membership and participation requirements, which must- *(a)* be consistent with the requirements with which the clearing house rules must comply as contemplated under section 53(2)*(b)* of the Act; *(b)* be justified in terms of the safety and efficiency of the central counterparty and the markets it serves;		

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(c) be tailored to and commensurate with the central counterparty's specific risks; *(d)* be publicly disclosed; *(e)* be commercially reasonable and designed to support interconnectivity with other market infrastructures and service providers; and *(f)* allow it to gather basic information about indirect clearing clients in order to identify, monitor and manage any material risks to the central counterparty arising from such participation arrangements. (2) A central counterparty- *(a)* may impose additional requirements to ensure that its clearing members have the capacity to act for indirect clearing clients; *(b)* must publically disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions, as well as its policies on any available discounts; *(c)* must identify dependencies between clearing members and indirect clearing clients that might affect the central counterparty; *(d)* must identify indirect clearing clients-		

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(i) responsible for a significant proportion of transactions processed by the central counterparty; and (ii) whose transaction volumes or values are large relative to the capacity of the clearing member through which they access the central counterparty, in order to manage the risks arising from these transactions; *(e)* must establish concentration limits on exposures to indirect clearing clients, where appropriate; *(f)* must review risks arising from tiered participation arrangements on a monthly basis and must take mitigating action when appropriate; and *(g)* must, where a clearing member's default would leave the central counterparty with a potential credit exposure related to an indirect clearing client's positions, ensure it understands and manages the exposure it would face.		
Governance		
Regulation 11 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows:		

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(1) A central counterparty must have robust governance arrangements that are clear and transparent, promote the safety and efficiency of the central counterparty, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders. (2) A central counterparty must ensure that the governance arrangements provide for- *(a)* the role, responsibilities, term and composition of the controlling body and any committees of the controlling body or other committees of relevance to the central counterparty; *(b)* processes to identify, assess, manage and mitigate potential conflicts of interest of members of the controlling body, managers, employees or any related party of the controlling body; *(c)* clear and direct lines of responsibility and accountability, particularly between management and the controlling body; *(d)* sufficient Authority, independence, resources and access to the controlling body for key functions such as risk management, internal control, and audit;		

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(e) an effective internal audit function, with sufficient resources and independence from management to provide, among other activities, a rigorous and independent assessment of the effectiveness of the central counterparty's risk-management and control processes; *(f)* the role, responsibilities and structure of senior management; *(g)* the shareholding structure; *(h)* the internal governance policy; *(i)* the design of risk management, compliance and internal controls that includes the central counterparty's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies; *(j)* the procedures for the appointment, performance evaluation and removal of members of the controlling body and senior management; *(k)* oversight of outsourcing arrangements; *(l)* processes for ensuring performance accountability to stakeholders; and		

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(m) the adoption and use of models, such as for credit, collateral, margining, and liquidity risk-management system. (3) A central counterparty must disclose that the governance arrangements to the Authority, shareholders and where appropriate, its clearing members, their clients and the public. (4) A central counterparty must have a controlling body which must be sufficiently independent. (5) The compensation of the independent and other non-executive members of the controlling body may not be linked to the business performance of the central counterparty. (6) A central counterparty may not share human resources with other group entities unless it is in terms of an outsourcing arrangement. (7) A central counterparty must have a risk, compliance and information technology function under the direction of a chief risk officer, a chief compliance officer and a chief information technology officer respectively, to ensure that the central		

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counterparty operates with the necessary level of human resources to meet all of its obligations. (8) A central counterparty must establish and maintain a permanent and effective risk management function under the direction of a chief risk officer. (9) The chief risk officer referred to in sub-regulation (8) must - *(a)* implement the risk management framework; and *(b)* make appropriate recommendations to the risk committee or controlling body regarding the central counterparty's risk management functions. (10) The compliance function must operate independently from the other functions of the central counterparty with the necessary authority, resources, expertise and access to all relevant information. (11) The risk and information technology functions must report to the controlling body either directly or through the chair of the risk committee. (12) A central counterparty must have an internal audit function, which must report directly to the controlling body.		

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Controlling body		
Board Notice 104 of 2013 further requires the following administrative information to be provided: 1(d) a list which reflects the full names of the members of the controlling body of the applicant, and a statement signed by each member to the effect that he or she knows of no reason why he or she should not serve his or her term of office as a member of the controlling body. **ANNEXURE 2 TO FORM FM 1 of Board Notice 104 of 2013 prescribes as follows:** Information required in respect of members of controlling body of exchange, central securities depository, trade repository or clearing house An application for a licence must be accompanied by the following information in respect of members of the controlling body of the applicant:		

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(a) a curriculum vitae in respect of each member of the controlling body indicating the nature and extent of the member's qualifications and experience in the business operated by the applicant and the names of three referees; *(b)* the information required In terms of the Determination of Fit and Proper Requirements for Market Infrastructures; *(c)* an indication if proceedings referred to in paragraphs (3)(a) to (f) and paragraph 5 of Determination of Fit and Proper Requirements for Market Infrastructures are pending. full details of any fact which may have an impact on the evaluation by the Authority of the good character and integrity of a member of the controlling body.		
Risk committee		
Regulation 12 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows:		

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(1) A central counterparty must establish a risk committee, which must - *(a)* include at least representatives of its clearing members, and independent members of the controlling body; *(b)* ensure its advice is independent of any direct influence by the management of the central counterparty; *(c)* ensure that none of the groups of representatives have majority representation in the risk committee; and *(d)* advise the controlling body on any arrangements that may impact the risk management of the central counterparty, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. (2) A central counterparty must- *(a)* clearly determine the mandate and the governance arrangements of the risk committee relating to its operational procedures, admission criteria and the election mechanism for risk committee members to ensure its independence; and *(b)* ensure that the risk committee-		

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(i) is chaired by an independent member of the controlling body; (ii) reports directly to the controlling body; and (iii) holds quarterly meetings. (3) A central counterparty must, where possible, consult the risk committee on developments impacting the risk management of the central counterparty in a crisis. (4) Where the chairperson of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member may not be allowed to vote on that matter. (5) The risk committee may invite employees of the central counterparty and external independent experts to attend risk committee meetings in a non-voting capacity.		
Risk management framework		
Regulation 13 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows:		
13.1 General		

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(1) A central counterparty must ensure that an adequate, effective and on-going process of risk management is established and maintained, which- *(a)* is consistent with the nature, complexity and risk inherent in the central counterparty's on-balance sheet and off-balance sheet activities; *(b)* responds to changes in the central counterparty's environment and conditions; and *(c)* must include the maintenance of effective capital management by a central counterparty. (2) In order to achieve the objective relating to the maintenance of effective risk management and capital management envisaged in sub-regulation (1), central counterparty must have in place a comprehensive and documented risk management framework approved by the controlling body to identify, measure, monitor, control, and appropriately communicate or report on all risks associated with its activities. (3) The risk management framework must as a minimum, -		

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(a) identify the range of risks that arise within the central counterparty and the risks it directly bears from or poses to its clearing members, its clearing members' clients and other entities; *(b)* be aligned with, and, where appropriate, provide specific guidance for the successful implementation of and the continued adherence to, the business strategy, goals and objectives, and the risk appetite or tolerance for risk, of the central counterparty; *(c)* provide for the employment of robust information and risk-control systems to provide the central counterparty with the capacity to obtain timely information necessary to apply risk- management policies and procedures; *(d)* provide incentives to clearing members and, where relevant, their clients to manage and contain the risks they pose to the central counterparty; *(e)* provide for appropriate plans for its recovery or orderly winding-up and contain, among other elements, a substantive summary of the key recovery or orderly wind-		

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up strategies, the identification of the central counterparty's critical operations and functions, and a description of the measures needed to implement the key strategies; *(f)* provide for comprehensive internal control mechanisms to help the controlling body and senior management monitor and assess the adequacy and effectiveness of the central counterparty's risk-management framework and includes sound administrative and accounting procedures, a robust compliance function and an independent internal audit and validation or review function; *(g)* be adequate for the size and nature of the activities of the central counterparty, including the central counterparty's activities relating to risk mitigation, trading and exposure to counterparty credit risk, and periodically adjusted in the light of the changing risk profile or financial strength of the central counterparty, financial innovation or external market developments; *(h)* specify relevant limits and allocated capital relating to the central counterparty's various risk exposures; *(i)* be sufficiently robust to–		

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(i) identify and manage material interrelationships between the central counterparty's relevant risk exposures; (ii) ensure the central counterparty's continued compliance with the relevant documented set of internal policies, controls and procedures; (iii) ensure that the central counterparty captures the economic substance and not merely the legal form of the central counterparty's various exposures to risk; (iv) ensure that the central counterparty conducts sufficiently robust and independent due diligence in respect of the central counterparty's respective investment in or exposure to instruments, products or markets, and that the central counterparty, for example, does not merely or solely rely on an external credit rating when investing in a particular product or instrument; (v) ensure that the central counterparty regularly conducts appropriate stress-testing or scenario analysis; (vi) ensure that the central counterparty maintains sufficient liquidity and capital adequacy buffers to remain solvent during prolonged periods of financial market stress and illiquidity;		

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(vii) clearly delineate accountability and all relevant lines of authority across the central counterparty's various business units, lines or activities, and ensure that a clear separation exists between all relevant business units, lines or activities, and any relevant risk or control function; (viii) ensure that, prior to its initiation, all relevant risk management, control and business units or lines appropriately review and assess proposed new activities, investment in new instruments or the introduction of new products for clearing, to ensure that the central counterparty will be able to continuously manage and control the relevant activity, investment or product; (ix) ensure that the central counterparty is able to appropriately aggregate or consolidate all relevant risks or exposure to risk; (x) ensure on-going, accurate, appropriate and timely communication or reporting of the central counterparty's relevant risk exposures and any material deviation from approved policies, processes or procedures to the senior management and the controlling body;		

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(xi) ensure that the central counterparty's controlling body and senior management receive timely and appropriate information regarding the condition of the central counterparty's respective asset portfolios, including matters related to the relevant classification of credit exposure, the level of impairment or provisioning, and major problem assets; (xii) enable the proactive management of all relevant risks; (xiii) ensure that any breach of an internal limit is duly escalated and addressed; (xiv) timeously detect potential criminal activities and prevent undue exposure to criminal activities; and (xv) ensure proper oversight of any relevant outsourced function.		
Business risk		
Regulation 13.2 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: The risk management framework must in the case of the central counterparty's exposure to business risk, enable the central counterparty to-		

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(a) identify and assess the sources of business risk and their potential impact on operations and functions of the central counterparty, taking into account past loss events and financial projections; *(b)* assess and thoroughly understand its business risk and the potential effect that this risk could have on its cash flows, liquidity, and capital positions; *(c)* clearly understand its general business risk profile so that it is able to assess its ability either to- (i) avoid, reduce, or transfer specific business risks; or (ii) accept and manage those risks; *(d)* measure and monitor business risks on an on-going basis and develop appropriate information technology systems as part of its risk management framework; *(e)* minimise and mitigate the probability of business-related losses and their impact on its operations across a range of adverse business and market conditions, including the scenario that its viability as a going concern is questioned; and *(f)* address unforeseen and potentially uncovered liquidity shortfalls to avoid unwinding, revoking or delaying the same-day settlement of payment obligations and		

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provide for a process to replenish any liquidity resources it may employ during a stress event.		
Counterparty credit risk		
Regulation 13.3 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: The risk management framework must, in the case of the central counterparty's exposure to counterparty credit risk,- *(a)* take into account the market risk, liquidity risk, legal risk and operational risk normally associated with counterparty credit risk; and *(b)* ensure that the central counterparty- (i) takes into account the creditworthiness of all relevant counterparties; (ii) takes into account any relevant settlement and pre-settlement risk; (iii) continuously monitors the utilisation of credit lines; (iv) measures its current exposure gross and net of collateral in all relevant cases; and		

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(v) manages all relevant risk exposures at a counterparty and central counterparty-wide level.		
Risk mitigation		
Regulation 13.4 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) The risk management framework must, in the case of risk mitigation, include matters related to collateral and margin agreements with counterparties and be sufficiently robust to ensure that the central counterparty continuously- *(a)* devotes sufficient resources to the orderly operation of margin agreements with OTC derivative and securities financing counterparties, as measured by, among other things, the timeliness and accuracy of the central counterparty's outgoing calls; and *(b)* controls, monitors and reports- (i) all relevant risk exposures related to margin agreements, such as the volatility and liquidity of the securities exchanged as collateral; (ii) any potential concentration risk to particular counterparties or types of collateral;		

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(iii) the reuse of collateral , including the potential liquidity shortfalls resulting from the reuse of collateral received from counterparties; and (iv) all relevant matters related to the surrendering of rights on collateral posted to counterparties. (2) The risk management framework must be sufficiently robust to timeously identify material concentrations in any one of the risk exposures identified as contemplated in Regulation 13.1(2), including concentrations relating to or arising from- *(a)* an individual or single counterparty or person; *(b)* a group of related or connected counterparties or persons; *(c)* credit exposures in respect of counterparties or persons in the same industry, economic sector or geographic region; *(d)* credit exposures to counterparties or persons, the financial performance of which is dependent on the same activity or indirect credit exposures arising from the central counterparty's risk mitigation activities such as exposure to a single collateral type or a single credit protection provider; *(e)* interest-rate risk; *(f)* liquidity risk;		

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(g) funding sources; *(h)* trading exposure or risk, including interest-rate risk and price risk; *(i)* equity positions; *(j)* off-balance-sheet exposures, including guarantees, liquidity lines or other commitments; *(k)* correlation between any of the aforesaid risks, counterparties, instruments, assets, liabilities or commitments.		
Country and transfer risk		
Regulation 13.5 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: The risk management framework must, in the case of country risk and transfer risk, be sufficiently robust to- *(a)* identify and monitor exposures on an individual country basis in addition to an end-borrower or end-counterparty basis;		

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(b) ensure that country exposures are accurately monitored and reported in the central counterparty's information systems, risk management systems and internal control systems; *(c)* continuously ensure adherence to the central counterparty's established country exposure limits, and any other relevant limit that may be specified by the central counterparty or the Authority; *(d)* monitor and evaluate developments in country risk and in transfer risk, and apply appropriate countermeasures; and *(e)* raise appropriate provision for loss against country risk and transfer risk in addition to any relevant required loan-specific provision or impairment.		
Liquidity risk		
Regulation 13.6 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: The risk management framework must, in the case of liquidity risk, be sufficiently robust to ensure that the central counterparty- *(a)* conducts comprehensive cash flow forecasting;		

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(b) specifies, implements and maintains appropriate limits in respect of its respective funding sources, including all relevant products, counterparties and markets; *(c)* conducts robust liquidity scenario stress testing, including stress tests in respect of such specific or sector specific scenarios as may be determined by the central counterparty; *(d)* develops and maintains robust and multifaceted contingency funding plans; and *(e)* maintains sufficient reserves of liquid assets to meet contingent liquidity needs.		
Remuneration		
Regulation 13.7 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: The risk management framework must include sound remuneration processes, practices and procedures, and controlling body approved remuneration policies, which must- *(a)* promote sound and effective risk management; *(b)* not create incentives to relax risk standards; *(c)* be duly documented and reviewed at least on an annual basis;		

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(d) be designed to align the level and structure of remuneration with prudent risk management; *(e)* take into consideration prospective risks as well as existing risks and risk outcomes; *(f)* stipulate that pay out schedules must be sensitive to the time horizon of risks; *(g)* in the case of variable remuneration, take due account of possible mismatches of performance and risk periods; *(h)* provide that the level of remuneration must be adequate in terms of responsibility as well as in comparison to the level of remuneration in the business areas; *(i)* be subject to independent audit, on an annual basis, and submit the results of the audits to the Authority; *(j)* be linked to longer-term capital preservation, and the financial strength of the central counterparty, which, among others, means that- (i) the variable remuneration payments must be appropriately deferred and payment may not be finalised over short periods whilst risks are realised over long periods; and		

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(ii) the mix of cash, equity and other forms of remuneration must be duly aligned with the central counterparty's exposure to risk; *(k)* incorporate and promote appropriate risk-adjusted performance measures, that is, remuneration must acknowledge all relevant risks so that remuneration is balanced between the profit earned and the degree of risk assumed in order to generate the profit; *(l)* not be unduly linked to short-term accounting profit generation; *(m)* ensure that staff engaged in the relevant financial and risk control areas have appropriate authority and are remunerated in a manner that is independent of the business areas they oversee, and commensurate with their function in the central counterparty; *(n)* promote adequate disclosure to stakeholders, that is, the central counterparty must disclose clear, comprehensive and timely information regarding the central counterparty's remuneration practices to- (i) facilitate constructive engagement with all relevant stakeholders;		

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(ii) enable stakeholders to evaluate the quality of support for the central counterparty's strategy, objectives and risk appetite; *(o)* ensure appropriate controlling body and senior management oversight and involvement; *(p)* include adequate internal controls to produce any data or information which might be required on a consolidated basis; *(q)* be subject to regular monitoring and review, and relevant testing, to ensure that they remain relevant and current.		
Controlling body and senior management		
Regulation 13.8 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A member of the controlling body and senior management of a central counterparty must- *(a)* possess sufficiently detailed knowledge of all the functions and major business lines of the central counterparty to ensure that the policies, processes, procedures,		

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controls and risk monitoring systems envisaged in Regulations 13.1 (2) and (3) are appropriate and effective; *(b)* have sufficient expertise to understand the various instruments, markets and activities in which the central counterparty conducts business, including capital market activities such as the related off-balance sheet-activities, and the associated risks; *(c)* ensure that the monitoring and the reporting of individual and aggregate exposure(s) to related persons are subject to an independent credit review process; *(d)* remain informed about the risks and changes thereto as financial markets, risk management practices and the central counterparty's activities evolve; *(e)* ensure that accountability and lines of authority are clearly delineated; *(f)* ensure adequate segregation of duties to promote sound governance and effective risk management in the central counterparty, and avoid conflict of interest; *(g)* ensure that, before embarking on new activities, investing in new instruments or introducing products new to the central counterparty-		

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(i) the potential changes in the central counterparty's exposure to risk arising from the new instruments, products or activities have been duly identified, considered and reviewed; and (ii) the central counterparty's infrastructure, policies, processes, procedures and internal controls necessary to manage the related risks are duly updated and in place; *(h)* consider the possible difficulty related to the valuation of new products, and how the products might perform in a stressed economic environment; *(i)* ensure that the risks to which the central counterparty is exposed are appropriately managed; *(j)* set capital targets commensurate with the central counterparty's risk profile and control environment; *(k)* implement robust and effective risk management and internal control processes; *(l)* develop and maintain an- (i) appropriate strategy that ensures that the central counterparty maintains adequate capital based on the nature, complexity and risk inherent in its on-balance		

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sheet and off-balance sheet activities, including its activities relating to risk mitigation; (ii) internal capital adequacy assessment process that responds to changes in the business cycle within which the central counterparty conducts business; *(m)* with respect to new or complex products or activities, understand the underlying assumptions regarding business models, valuation and risk management practices, and evaluate the central counterparty's potential risk exposure should the assumptions fail; and *(n)* on a periodic basis, conduct relevant stress tests, particularly in respect of the central counterparty's main risk exposures, in order to identify events or changes in market conditions that may have an adverse impact on the central counterparty. (2) A central counterparty must- *(a)* implement a system of reporting to senior management to ensure that operational risk reports are provided to the relevant functions within the central counterparty; and *(b)* have in place procedures for taking appropriate action according to the information within the reports to management.		

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Operational risk		
Regulation 13.9 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) The risk management framework must in the case the central counterparty's exposure to operational risk, enable the central counterparty to- *(a)* identify, manage and monitor the plausible sources of operational risk; *(b)* develop and maintain appropriate internal controls; *(c)* set operational reliability objectives; *(d)* develop a business continuity plan; *(e)* assess the evolving nature of the operational risk it faces on an on-going basis so that it can analyse its potential vulnerabilities and implement appropriate defence mechanisms; *(f)* assess the additional operational risks related to its interoperability arrangements to ensure the scalability and reliability of information technology systems and related resources;		

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(g) include formal change-management and project-management processes to mitigate operational risk arising from modifications to operations, policies, procedures, and controls; and *(h)* include comprehensive and well-documented procedures in place to record, report, analyse, and resolve all operational incidents. (2) A central counterparty must have in place a well-documented assessment and management system for operational risk with clear responsibilities assigned for this system, which must- *(a)* identify its exposures to operational risk and track relevant operational risk data, including material loss data; *(b)* be subject to an annual review carried out by an independent party, including an internal party, with the necessary knowledge to carry out such review, the result of which must be made available to the Authority upon request; *(c)* be closely integrated into the risk management processes of the central counterparty to ensure that its output is an integral part of the process of monitoring and controlling the central counterparty's operational risk profile.		

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Information technology		
Regulation 13.10 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must implement and document information technology systems based on internationally recognised technical standards and industry best practices, that- *(a)* are reliable, secure and capable of processing the information necessary for the central counterparty to perform its activities and operations in a safe and efficient manner; *(b)* enable connectivity with its clearing members and clients as well as with its service providers; *(c)* provide for capacity planning and sufficient redundant capacity to allow the system to process all remaining transactions before the end of the day in circumstances where a major disruption occurs; *(d)* provide for on-going capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;		

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(e) provide scalable capacity adequate to- (i) handle increasing stress volumes; (ii) maintain historical data as required; *(f)* facilitate the proactive management of risk; *(g)* enable the senior management of the central counterparty to duly manage and appropriately mitigate the central counterparty's relevant risk exposures; *(h)* are able to provide regular, accurate and timely information regarding matters such as the central counterparty's aggregate risk profile, as well as the main assumptions used for risk aggregation; *(i)* are adaptable and responsive to changes in the central counterparty's underlying risk assumptions; *(j)* are sufficiently flexible to generate relevant forward-looking scenario analyses that capture the controlling body and senior management's interpretation of evolving market conditions and stressed conditions;		

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(k) are capable of capturing and bringing to the attention of senior management and the controlling body any breach in a specified internal, regulatory or other statutory limit; and *(l)* make provision for any relevant initial and on-going validation. (2) A licensed central counterparty must provide for procedures for the introduction of new technology including clear reversion plans. (3) A licensed central counterparty must maintain an information security framework that - *(a)* appropriately manages its information security risk; *(b)* prevents unauthorised disclosure of information; *(c)* ensures data accuracy and integrity and availability of the central counterparty's functions and services; *(d)* includes at least the following features- (i) access controls to the system; (ii) adequate safe guards against intrusions and data misuse;		

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(iii) specific devices to preserve data authenticity and integrity, including cryptographic techniques; (iv) reliable networks and procedures for accurate and prompt data transmission without major disruptions; and (v) audit trails. (4) The information technology systems and the information security framework must be reviewed at least on an annual basis, and be subject to independent audit assessments, the results of the review must be reported to the controlling body and must be made available to the Authority within five working days after providing the report to the controlling body. (5) A licensed central counterparty must immediately notify the Authority of any material systems failure, malfunction, delay or other disruptive incident, or any breach of data security, integrity or confidentiality, and provide a post-incident report that includes a root-cause analysis as soon as practicable.		

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(6) A licensed central counterparty must publish, at least, on its website, in their final form, all technology requirements regarding interfacing with or accessing the central counterparty- *(a)* at least three months immediately before operations begin; or *(b)* at least three months before implementing a material change to its technology requirements. (7) After it has complied with sub-regulation (6), a licensed central counterparty must make testing facilities for interfacing with or accessing the central counterparty available, *(a)* for at least two months immediately before operations begin; or *(b)* for at least two months before implementing a material change to its technology requirements. (8) A newly licensed central counterparty may not begin operations until it has complied with sub-regulations (6)*(a)* and (7)*(a).*		

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(9) Sub-regulations (6)*(b)* and (7)*(b)* do not apply if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and- *(a)* the central counterparty immediately notifies the Authority of its intention to make the change; and *(b)* the central counterparty confirms the notification in paragraph *(a)* in writing and publishes the changed technology requirements as soon as practicable. (10) A central counterparty must after every significant disruption, undertake a "post-incident" review to identify the causes and any required improvement to the normal operations or business continuity arrangements, and report the outcome of the review to the AUTHORITY without delay.		
Related parties, subsidiaries and associates		
Regulation 14 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows:		

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The Authority must be satisfied that any relationship between a central counterparty and a related party of that central counterparty will not prevent the effective exercise of the supervisory functions of the Authority		
Outsourcing		
Regulation 15 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) Where a licensed central counterparty outsources operational functions, services or activities in accordance with section 68 of the Act, including to an associate or affiliate of the central counterparty, it remains fully responsible for discharging all of its obligations under the Act and these Regulations and must- *(a)* establish, implement, maintain and enforce written policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of those outsourcing arrangements; *(b)* enter into a contract with the service provider that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures;		

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(c) ensure that nothing contained in the service agreement with the provider, nor any obligations in terms thereof, will result in non-compliance by the central counterparty of these or any other Regulations and legislation; *(d)* ensure that the central counterparty has direct access to the relevant information of the outsourced functions; *(e)* ensure that the Authority has the same access to all data, information and systems maintained by the service provider on behalf of the central counterparty that it would have absent the outsourcing arrangements; *(f)* ensure that all persons conducting audits or independent reviews of the central counterparty under these Regulations have appropriate access to all data, information and systems maintained by the service provider on behalf of the central counterparty that such persons would have absent the outsourcing arrangements; *(g)* establish, implement, maintain and enforce written policies and procedures to regularly review the performance of the service provider under the outsourcing arrangements;		

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(h) identify and provide a written report to the controlling body of any conflicts of interest that may arise between the central counterparty and the service provider to which key services and systems are outsourced, *(i)* establish, implement, maintain and enforce written policies and procedures as approved by the controlling body to mitigate and manage those conflicts of interest; *(j)* ensure that the relationship and obligations of the central counterparty towards its clearing members or, where relevant, towards their clients are not altered; *(k)* ensure that the conditions for licensing of the central counterparty do not effectively change; *(l)* ensure that outsourcing does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those mandates; *(m)* ensure that outsourcing does not result in depriving the central counterparty from the necessary systems and controls to manage the risks it faces;		

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(n) ensure that the service provider implements equivalent business continuity requirements to those that the central counterparty must fulfil under these Regulations; *(o)* ensure the central counterparty retains the necessary expertise and resources to evaluate the quality of the services provided and the organisational and capital adequacy of the service provider; *(p)* ensure that the central counterparty retains the necessary expertise and resources to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and supervises those functions and manages those risks on an on-going basis; *(q)* ensure that the service provider protects any confidential information relating to the central counterparty and its clearing members and their clients or, where that service provider is established in a country other than the Republic, ensures that the data protection standards of that country, or those set out in the agreement between the parties concerned, are comparable to the data protection standards in effect in the Republic; and		

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(r) inform the Authority in writing of the extent of outsourcing and that the conditions mentioned in *(a)* to *(q)* will be adhered to. (2) A licensed central counterparty may not outsource significant activities linked to risk management unless such outsourcing is approved by the Authority. (3) A licensed central counterparty must submit a copy of the written outsourcing agreement which clearly reflects the rights and obligations of the central counterparty and the service provider to the Authority. (4) A licensed central counterparty must make all information necessary available to the Authority, upon request, to enable the Authority to assess the compliance of the performance of the outsourced activities with these Regulations.		
Compliance function		
Regulation 16 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must establish and maintain a permanent and effective compliance function under the direction of a chief compliance officer.		

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(2) The compliance function must operate independently from the other functions of the central counterparty with the necessary Authority, resources, expertise and access to all relevant information. (3) When establishing its compliance function, the central counterparty must take into account the nature, scale and complexity of its business, and the nature and range of the functions undertaken in the course of that business. (4) The compliance function must- *(a)* monitor and, on a regular basis, assess the adequacy and effectiveness of the measures put in place and the actions taken to address any deficiencies in the central counterparty's compliance with its obligations; *(b)* administer the compliance policies and procedures established by senior management and the controlling body; *(c)* advise and assist the persons responsible for carrying out the central counterparty's functions to comply with the central counterparty's obligations under the Act, these Regulations and other regulatory requirements, where applicable;		

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(d) report on a quarterly basis to the controlling body, and annually to the Authority on compliance by the central counterparty and its employees with the Act and these Regulations; *(e)* establish procedures for the effective remediation of instances of non-compliance; *(f)* ensure that the relevant persons involved in the compliance function are not involved in the performance of the services or activities they monitor and that any conflicts of interest of such persons are properly identified and eliminated.		
17. Efficiency, disclosure and transparency		
Regulation 17 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must- *(a)* be efficient and effective in meeting the requirements of its clearing members and the markets it serves, with regard to choice of a clearing and settlement arrangement, operating structure, scope of products cleared, settled, or recorded; and use of technology and procedures;		

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(b) have clearly defined goals and objectives that are measurable and achievable, such as in the areas of setting minimum service levels, risk-management expectations, and business priorities; *(c)* have established mechanisms for the regular review of its efficiency and effectiveness; *(d)* use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording; *(e)* have clear and comprehensive rules and procedures and must provide sufficient information to enable clearing members and their clients to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the central counterparty; *(f)* provide all necessary and appropriate documentation and training to facilitate clearing members' and their clients understanding of the central counterparty's rules and procedures and the risks they face from participating in the central counterparty;		

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(g) on a quarterly basis disclose to its clearing members and the Authority the price information used to calculate its end of day exposures to its clearing members; *(h)* make publically available and free of charge- (i) information as well as any material changes thereto regarding its governance arrangements, including- *(aa)* its organisational structure as well as key objectives and strategies; *(bb)* key elements of the remuneration policy; *(cc)* key financial information including its most recent audited financial statements; (ii) information regarding- *(aa)* relevant business continuity information; *(bb)* all relevant information on its design and operations as well as on the rights and obligations of clearing members and clients, necessary to enable them to identify clearly and understand fully the risks and costs associated with using the central counterparty's functions and services; *(cc)* the central counterparty's current clearing functions, including detailed information on what it provides under each function;		

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(dd) information on the central counterparty's risk management systems, techniques and performance, including information on financial resources, investment policy, price data sources and models used in margin calculations; *(ee)* the legislation governing- *(AA)* the contracts concluded by the central counterparty with clearing members and, where practicable, clients; *(BB)* the contracts that the central counterparty accepts for clearing; *(CC)* any interoperability arrangements; *(DD)* the use of collateral and default fund contributions, including the liquidation of positions and collateral and the extent to which collateral is protected against third party claims; (iii) information regarding eligible collateral and applicable haircuts; (iv) the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties; (v) the volumes of the cleared transactions for each class of instruments cleared by the central counterparty on an aggregate basis; and		

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(vi) a list of all current clearing members, including admission, suspension and exit criteria for clearing membership. (2) Subject to the approval of the Authority, where any of the information may put the business secrecy or the safety and soundness of the central counterparty at risk, a licensed central counterparty may disclose that information in a manner that prevents or reduces those risks or not disclose such information as agreed with the Authority. (3) A licensed central counterparty must complete and publicly disclose responses to the Committee on Payments and Market Infrastructures and International Organisation of Securities Commissions *Disclosure framework for financial market infrastructures* every two years. (4) A licensed central counterparty must have a communication plan which documents how the Authority, the controlling body, senior management, and relevant stakeholders will be adequately informed during a crisis. (5) A licensed central counterparty must ensure that scenario analysis, risk analysis, reviews and results of monitoring and tests be reported to the Authority and the controlling body.		

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(6) Information to be disclosed to the public by the central counterparty must be accessible on its website.		
Internal audit function		
Regulation 18 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must establish and maintain an internal audit function, which is separate and independent from its other functions and activities, to- *(a)* establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the central counterparty's systems, internal control mechanisms and governance arrangements; *(b)* issue recommendations based on the result of work carried out in accordance with paragraph (*a)* and verify compliance with those recommendations; and *(c)* report internal audit matters to the controlling body. (2) The internal audit function of a central counterparty must-		

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(a) have the necessary Authority, resources, expertise and access to all relevant documents; *(b)* assess the effectiveness of the central counterparty risk management processes and control mechanisms in a manner that is proportionate to the risks faced by the different business lines; and *(c)* ensure that special audits may be performed on an event-driven basis at short notice. (3) A central counterparty must annually- *(a)* review the audit plan referred to in sub-regulation (1)*(a)* and submit the report to the Authority; and *(b)* engage a qualified independent third person approved by the Authority to conduct an independent review and prepare a report in accordance with established audit standards to ensure that it is in compliance with Regulation 13. 9. (4) A central counterparty must provide the report resulting from the review conducted under sub-regulation (3) to- *(a)* its controlling body or audit committee promptly upon the report's completion; and		

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(b) the Authority not later than five business days after providing the report to its controlling body or audit committee		
Business continuity		
Regulation 19 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must establish, implement, maintain and enforce a business continuity policy and a disaster recovery plan, approved by the controlling body,- *(a)* to identify all critical business functions and related systems, and include the central counterparty's strategy, policy and objectives to ensure the continuity of these functions and systems; *(b)* that takes into account interdependencies within the central counterparty, including exchanges and trading venues cleared by the central counterparty, and securities settlement and payment systems used by the central counterparty; *(c)* that takes into account critical functions or services which have been outsourced to third-party providers;		

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(d) that contains clearly defined and documented arrangements for use in the event of a business continuity or systemic event which are designed to ensure a minimum service level of critical functions; *(e)* that must identify and include recovery point objectives and recovery time objectives for critical functions and determine the most suitable recovery strategy for each of these functions, which arrangements must be designed to ensure that in extreme scenarios critical functions are completed on time and that agreed service levels are met; *(f)* that identifies the maximum acceptable down time of critical functions and systems, and stipulate that- (i) the maximum recovery time for the central counterparty's critical functions to be included in the business continuity policy may not be longer than two hours; and (ii) end of day procedures and payments must be completed on the required time and day in all circumstances; *(g)* to achieve prompt recovery of its operations following any disruptions;		

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(h) to allow for the timely recovery of information, including data, in the event of a disruption; and *(i)* to cover the exercise of authority in the event of any systemic event. (2) A licensed central counterparty must- *(a)* conduct a business impact analysis which identifies the business functions which are critical to ensure the continuity of the functions of the central counterparty; *(b)* use scenario based risk analysis which is designed to identify how various scenarios affect the risks to its critical business functions; *(c)* in assessing risks take into account dependencies on external providers, including utilities services and take action to manage these dependencies through appropriate contractual organisational arrangements; and *(d)* on an annual basis and following an incident or significant organisation changes, review its business impact analysis and scenario analysis. (3) A licensed central counterparty's disaster recovery plan must include arrangements-		

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(a) to ensure continuity of its critical functions based on disaster scenarios, which arrangements must address the availability of adequate human resources, the maximum downtime of critical functions, and failover and recovery to a secondary site; *(b)* to maintain a secondary processing site capable of ensuring continuity of all critical functions of the central counterparty, which secondary site must have a geographical risk profile which is distinct from that of the primary site; *(c)* to consider the need for additional processing sites if the diversity of the risk profiles of the primary and secondary sites do not provide sufficient confidence that the central counterparty's business continuity objectives will be met in all scenarios; and *(d)* for the maintenance and provision of immediate access to the secondary business site to allow staff to ensure continuity of the functions and services if the primary location of business is not available. (4) A licensed central counterparty must-		

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(a) test and monitor its business continuity policy and disaster recovery plan at regular intervals and after significant modifications or changes to the systems or related functions to ensure the business continuity policy achieves the stated objectives including the two hour maximum recovery time objective; *(b)* plan and document the tests which must- (i) involve scenarios of large scale disasters and switch overs between primary and secondary sites; and (ii) include involvement of clearing members, service providers and relevant institutions with which interdependencies have been identified in the business continuity policy. (5) A licensed central counterparty must- *(a)* regularly review and update its business continuity policy to include all critical functions and the most suitable recovery strategy for them; *(b)* regularly review and update its disaster recovery plan to include all critical functions and the most suitable recovery strategy for them;		

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(c) annually subject its business continuity and disaster recovery plan to an independent review and testing; *(d)* when updating its business continuity policy and disaster recovery plan take into consideration the outcome of the tests and recommendations of independent reviews and other reviews of supervisory authorities; and *(e)* review its business continuity policy and disaster recovery plan after every significant disruption, to identify the causes and any required improvements to the central counterparty's operations, business continuity policy and disaster recovery plan. (6) A licensed central counterparty must- *(a)* have a crisis management function to act in case of a systemic event, which must- (i) be monitored and regularly reviewed by its controlling body; and (ii) contain well-structured and clear procedures to manage internal and external crisis communications during a systemic event;		

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(b) have a crisis management procedure which must be clear and documented in writing; *(c)* following a systemic event, undertake a review of its handling of the crisis, which review must, where relevant, incorporate contributions from clearing members and other external stakeholders; and *(d)* have a communication plan which documents the way in which the senior management, the controlling body, relevant external stakeholders and the AUTHORITY will be adequately informed during a crisis.		
20. Custody, settlement and physical deliveries		
Regulation 20 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A licensed central counterparty must hold its own and the assets provided by clearing members at a custodian that has robust accounting practices, safekeeping procedures, and internal controls that fully protect these assets. (2) A licensed central counterparty must-		

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(a) have prompt access to its assets and the assets provided by clearing members, when required, and timely availability and access must be ensured even if these securities are held in another time zone or jurisdiction; *(b)* avoid the concentration of holding of assets and ensure that assets can be liquidated quickly without significant adverse price effects; *(c)* ensure that cash balances are invested or held in safekeeping in a manner that bears no or little principal risk; *(d)* ensure that its interest or ownership rights in the assets can be enforced; *(e)* evaluate and understand its exposures to its custodian, taking into account the full scope of its relationships with each custodian; *(f)* clearly state its obligations with respect to deliveries of cash and securities, including whether it has an obligation to make or receive delivery of cash or securities or whether it indemnifies participants for losses incurred in the delivery process;		

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(g) provide clear and certain final settlement, at a minimum by the end of the value date and where necessary a central counterparty must provide final settlement intra-day or in real time; and *(h)* take reasonable steps to confirm the effectiveness of cross-border recognition and protection of cross-system settlement finality, especially when it is developing plans for recovery or orderly wind-up or providing supervisory authorities information relating to its resolvability. (3) *(a)* A central counterparty must conduct its cash settlements in central bank money where practical. *(b)* Where central bank money is not used, a central counterparty must minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money. (4) A central counterparty must- *(a)* ensure that its settlement banks are regulated and supervised in their jurisdictions and that they comply with requirements of creditworthiness, capitalisation, access to liquidity, and operational reliability;		

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(b) monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks; *(c)* where it conducts money settlements on its own books, it must minimise and strictly control its credit and liquidity risks; *(d)* ensure that its legal agreements with any settlement banks clearly state- (i) when transfers on the books of individual settlement banks are expected to occur; (ii) that transfers are to be final when effected; and (iii) that funds received must be transferable as soon as possible, at a minimum by the end of the day and ideally intraday, in order to enable the central counterparty and its clearing members to manage credit and liquidity risks. (5) Where a central counterparty has an obligation to make or receive deliveries of physical instruments or commodities, it must have appropriate processes and procedures that- *(a)* clearly state its obligations with respect to the delivery of physical instruments or commodities;		

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(b) identify, monitor and manage the risks associated with the storage and delivery of physical instruments or commodities; *(c)* eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible; *(d)* set out the controls to manage the risks of storing and delivering physical assets such as the risk of theft, loss, counterfeiting or deterioration of assets; (e)*ensure that its record of physical assets accurately reflects its holding of assets;* *(f)* clearly state which asset classes it accepts for physical delivery; *(g)* set out the procedures surrounding the physical delivery of each asset class; *(h)* indemnify clearing members for losses incurred in the physical delivery process; *(i)* establish definitions for acceptable physical instruments or commodities in order to plan for and manage physical deliveries; *(j)* provide for appropriate alternative physical delivery locations or assets; *(k)* where applicable, provide for rules for warehouse operations that take into account the commodity's particular characteristics; *(l)* stipulate the timing of physical delivery;		

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(m) provide for appropriate pre-employment checks and training for personnel who handle physical assets; and *(n)* provide for insurance coverage and random storage facility audits, to mitigate its storage and physical delivery risks. (6) A licensed central counterparty must have rules that provide- *(a)* for the legal obligations for delivery; *(b)* clarity on whether the receiving clearing member must seek compensation from the central counterparty or the delivering clearing member in the event of a loss; *(c)* for its obligations with respect to the delivery of physical instruments or commodities; and *(d)* that the central counterparty holding margin may not release the margin of the matched clearing member until it confirms that both have fulfilled their respective obligations. (7) A central counterparty licensed to provide functions in respect of commodities may match clearing members that		

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have physical delivery obligations with those due to receive the commodities, thereby removing itself from direct involvement in the storage and physical delivery process. (8) A licensed central counterparty must ensure that its clearing members have the necessary systems and resources to be able to fulfil their physical delivery obligation.		
Qualifying Capital[1]		
Regulation 21 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must deduct from its qualifying capital- *(a)* the relevant amount, net of any associated deferred tax liability which would be extinguished if the relevant intangible asset becomes impaired or is derecognised in terms of the relevant requirements specified in International Financial Reporting		

[1] For purposes of this Regulation-
"capital" means, in relation to a central counterparty, subscribed capital on the annual accounts and consolidated accounts of the central counterparty in so far as it has been paid up ordinary shares, plus the related share premium accounts, if applicable, which is of a permanent nature and able to fully absorb losses in going concern situations, and, in the event of insolvency or liquidation, it ranks after all other claims;
"qualifying capital" includes capital, retained earnings and reserves, but no amount relating to any profit or earnings of a central counterparty constitutes qualifying capital unless the controlling body of the central counterparty formally appropriated the amount by way of a resolution to constitute retained earnings of the central counterparty.[1]

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Standards issued from time to time, related to goodwill, including any goodwill included in the valuation of significant investments in the qualifying capital of the central counterparty; *(b)* the relevant amount related to intangible assets other than goodwill, net of any associated deferred tax liability which would be extinguished if the relevant intangible asset becomes impaired or is derecognised in terms of the relevant requirements specified in Financial Reporting Standards issued from time to time; *(c)* the relevant amount related to deferred tax assets that rely on future profitability of the central counterparty to be realised, provided that- (i) the central counterparty distinguishes between the component of deferred tax assets that relates to temporary differences and other deferred tax assets; (ii) a deferred tax asset may be netted against an associated deferred tax liability only if the asset and liability relate to taxes levied by the same taxation authority and offsetting is explicitly permitted by that relevant taxation authority, provided that the deferred tax liabilities that may be netted against the relevant amount of deferred tax		

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assets excludes any amount that has been netted against the deduction of goodwill, intangible assets other than goodwill and defined benefit pension assets; and (iii) any relevant amount related to current year tax losses that gives rise to a claim or receivable amount from the government or local tax authority, typically classified as a current tax assets, must be assigned the relevant sovereign risk weight; *(d)* any relevant positive amount related to a cash flow hedge reserve that relates to the hedging of items that are not fair valued on the balance sheet, including any relevant amount related to projected cash flows, provided that any relevant negative amount related to a cash flow hedge reserve must also be derecognised, that is, added back as qualifying capital; *(e)* any unrealised gain resulting from changes in the fair value of liabilities due to changes in the central counterparty's own credit risk, provided that- (i) the central counterparty also derecognises from its qualifying capital any relevant amount related to any unrealized loss due to changes in the central counterparty's own credit risk;		

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(ii) with regard to any relevant derivative liability, the central counterparty derecognises all relevant accounting valuation adjustments arising from the central counterparty's own credit risk; and (iii) the central counterparty in no case applies any netting or offsetting between valuation adjustments arising from the central counterparty own credit risk and those arising from its counterparties' credit risk; *(f)* any relevant amount related to a defined benefit pension fund constituting an asset on the balance sheet, net of any associated deferred tax liability which would be extinguished if the asset should become impaired or derecognised in terms of the relevant requirements specified in International Financial Reporting Standards, provided that- (i) subject to the prior written approval of, and such conditions as may be determined by the Authority, assets in the fund to which the central counterparty has unrestricted and unfettered access may offset the relevant deduction;		

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(ii) offsetting assets as envisaged in subparagraph (i) must be assigned the risk weight that would have applied were the assets owned directly by the central counterparty; and (iii) any amount related to a defined benefit pension fund liability, as included on the balance sheet, must be fully recognised in the calculation of the central counterparty's qualifying capital and may not be increased through the de-recognition of any defined benefit pension fund liability; *(g)* the relevant amount related to any reciprocal cross holding of shares qualifying as capital of any other central counterparty, bank, insurance company or other regulated financial institution that is subject to minimum capital requirements; *(h)* the relevant amount related to any direct or indirect investment in or direct or indirect funding provided for direct or indirect investment in the central counterparty or controlling entity's own qualifying capital; *(i)* any instrument or share that qualifies as capital of the central counterparty and for which the central counterparty has received no value; and *(j)* accumulated losses.		

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(2) *(a)* A central counterparty may not without the prior written approval of the Authority or otherwise than in accordance with conditions approved by the Authority in writing repay any of its common equity or reduce appropriated profits. *(b)* A written application by a central counterparty for the approval of the Authority to repay any of its capital or reduce any appropriated profits must include written confirmation by the controlling body of the central counterparty that- (i) the relevant qualifying capital, after the repayment of the capital or the reduction of appropriated profits of the central counterparty concerned, must be at least 10% higher than the required qualifying capital specified in Regulation 22(2) without relying on any new capital issues to ensure continued compliance by the central counterparty with Regulation 22; (ii) the repayment of capital or the reduction of appropriated profits is consistent with the central counterparty's strategic and operating plans; (iii) the repayment of capital or the reduction of appropriated profits has duly been taken into account in the central counterparty's management processes for liquidity risk;		

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(iv) all shares acquired back by the central counterparty from the repayment of capital must immediately be cancelled.		
General capital requirements		
Regulation 22 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty's capital must at all times be more than or equal to the greater of the following amounts: *(a)* Permanent and available initial capital of at least R50 million and the appropriate buffer; or *(b)* Capital, including retained earnings and reserves, proportionate to the risk stemming from the activities of the central counterparty; and *(c)* Capital that is at all times sufficient to ensure an orderly winding-up or restructuring of the activities over an appropriate time span and an adequate protection of the central counterparty against credit, counterparty, market, operational, legal and business risks.		

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(2) Subject to the provisions in sub-regulation (4), a central counterparty must hold qualifying capital after deductions, which must be at all times more than or equal to the sum of the central counterparty's capital requirements for- *(a)* operational risk calculated in accordance with Regulation 25; *(b)* credit risk, counterparty credit risk and market risk calculated in accordance with Regulation 23; and *(c)* business risk calculated in accordance with Regulation 24. (3) The Authority may impose any of the requirements set out in sub-regulation (4) when of the opinion that, a central counterparty's- *(a)* calculated aggregate risk exposure does not sufficiently reflect- (i) the central counterparty's actual risk profile; (ii) the factors external to the central counterparty, such as the effect of business cycles;		

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(iii) the risk relating to a particular type of exposure such as credit risk, counterparty credit risk, market risk, operational risk, legal and business risk or in respect of an orderly winding-up or restructuring; and (iv) the concentration risk; *(b)* qualifying capital is likely to be overstated due to, for example, reserves that are subject to material volatility as a result of short-term fair value gains or adjustment; *(c)* policies, processes and procedures relating to its risk assessment are inadequate; *(d)* policies, processes and procedures relating to compensation or remuneration are inadequate;2 or *(e)* internal control systems are inadequate. (4) The Authority may require a central counterparty, in accordance with sub-regulation (3), to- *(a)* maintain additional capital, calculated in such a manner and subject to such conditions as may be determined by the Authority; *(b)* deduct from its qualifying capital such amount calculated in such a manner and subject to such conditions as may be determined by the Authority;		

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(c) strengthen the central counterparty's risk management policies, processes or procedures; *(d)* align the central counterparty's compensation or remuneration policies, processes or procedures with the central counterparty's relevant exposure to risk; or *(e)* strengthen the central counterparty's internal control systems. (5) A central counterparty must- *(a)* have procedures in place to identify all sources of risks that may impact its operations; and *(b)* consider the likelihood of potential adverse effects on its revenues or expenses and its level of qualifying capital. (6) *(a)* If the amount of qualifying capital held by a central counterparty is lower than 110% of the amount calculated according to sub-regulation (2) or lower than 110% of R50 million (notification threshold), the central counterparty must immediately notify the Authority and keep the Authority updated on at least a weekly basis, until the amount of qualifying capital held by the central counterparty returns above the notification threshold.		

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(b) The notification must be made in writing and must contain- (i) the reasons for the central counterparty's qualifying capital being below the notification threshold and a description of the short-term perspective of the central counterparty's financial situation; (ii) a comprehensive description of the measures that the central counterparty intends to adopt to ensure its on-going compliance with the capital requirements and must include among other things, the central counterparty's- *(aa)* controlling body-approved risk appetite or tolerance for risk; *(bb)* controlling body-approved business strategy; *(cc)* risk profile and control environment; *(dd)* future capital needs; *(ee)* controlling body approved target level of capital; *(ff)* stress-testing results; and *(gg)* any additional buffer of qualifying capital above the notification threshold as the controlling body and the senior management of the central counterparty may determine.		

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(7) In addition to any other provision contained in these Regulations, when a licensed central counterparty's qualifying capital is significantly reduced or depleted, including as a result of unexpected severe financial distress or economic downturn, the AUTHORITY may, after consultation with the relevant central counterparty, in writing impose constraints on the central counterparty, such as capital distribution constraints, until the central counterparty's qualifying capital is restored above the notification threshold specified in sub-regulation (6)*(a)* plus the target level of capital specified in sub-regulation (6)*(b)*(ii)*(ee)*. (8) A central counterparty must have in place as a minimum a sound capital assessment process, which capital assessment process must include- *(a)* controlling body approved policies and procedures designed to ensure that the central counterparty identifies, measures, and reports all material risk exposures; *(b)* all material risk exposures incurred by the central counterparty. (9) Although a licensed central counterparty may not be able to accurately measure all risk exposures, the central counterparty must develop and implement an		

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appropriate framework and process to estimate the key elements of the central counterparty's material risk exposures which must- *(a)* relate the central counterparty's capital to the level of risk incurred by the central counterparty; *(b)* be based on the central counterparty's strategic focus and business plan and clearly state its objectives in respect of capital adequacy and risk exposure; *(c)* incorporate rigorous, forward-looking stress testing that identifies possible events or changes in market conditions that could adversely impact the central counterparty, the results of which stress testing must be considered when the central counterparty evaluates the adequacy of its target level of capital as specified in sub-regulation (6)*(b)*(ii)*(ee)*; and *(d)* promote the integrity of the central counterparty's overall risk-management process by way of internal controls and appropriate internal and external reviews and audit.		
Specific capital requirements for credit risk, counterparty credit risk and market risk which are not covered by specific financial resources as referred to in Regulations 31, 33, 35 and 36.		

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Regulation 23 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must calculate its capital requirements referred to in Regulation 22(2) as the sum of 8% of its risk-weighted exposure amounts for credit risk and its risk-weighted exposure amounts for counterparty credit risk and its capital requirements for market risk. (2) A central counterparty must use the methods of calculation as specified in - *(a)* Regulation 30 for the calculation of capital requirements for market risk which is not covered by specific financial resources as referred to in Regulations 31, 33, 35 and 36; *(b)* Regulation 26 for the calculation of the risk-weighted exposure amounts for credit risk which is not covered by specific financial resources as referred to in Regulations 31, 33, 35 and 36; *(c)* Regulations 27, 28 and 29 for the calculation of the risk-weighted exposure amounts for counterparty credit risk which is not covered by specific financial resources as referred to in Regulations 31, 33, 35 and 36.		

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Specific capital requirements for business risk and for winding-up or restructuring		
Regulation 24 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A licensed central counterparty must submit to the Authority for approval its estimate of the capital necessary to cover losses resulting from business risk based on reasonably foreseeable adverse scenarios relevant to its business model. (2) The capital requirement for business risk must be- *(a)* equal to the approved estimate; and *(b)* at a minimum, equal to six months of operating expenses, provided that the central counterparty considers whether resources are required beyond that amount, taking into account its general business risk profile. (3) *(a)* For the purposes of complying with this Regulation, operational expenses must be calculated in accordance with International Financial Reporting Standards or in accordance with generally accepted accounting principles of a country		

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determined by the Authority to be equivalent to International Financial Reporting Standards. *(b)* A central counterparty must use the most recent audited information from its annual financial statements. (4) To calculate the capital required to ensure an orderly winding-up or restructuring of its activities, a central counterparty must divide its annual gross operational expenses by 12 in order to determine its monthly gross operational expenses, and multiply the resulting number by its time span for winding-up or restructuring its activities determined in accordance with subregulation (5). (5) In order to determine the time span for winding-up or restructuring its activities referred to in sub-regulation (4), a central counterparty must submit to the Authority for approval, its estimate of the appropriate time span for winding-up or restructuring its activities, which estimated time span must- *(a)* be sufficient to ensure, including in stressed market conditions, an orderly winding-up or restructuring of its activities, reorganising its operations, liquidating its clearing portfolio over an appropriate time period of at least six months under a		

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range of stress scenarios or transferring its clearing activities to another central counterparty; *(b)* take into account the liquidity, size, maturity structure and potential cross-border obstacles of the positions of the central counterparty and the type of products cleared.		
25. Capital calculation requirements for operational risk		
(1) A licensed central counterparty must calculate its capital requirements for operational risk using either the Basic Indicator Approach or Advanced Measurement Approach as approved by the Authority. (2) If a licensed central counterparty adopted the Advanced Measurement Approach for the measurement of its exposure to operational risk, it may not revert to the Basic Indicator Approach without the prior written approval of the Authority.		
25.1 Basic Indicator Approach		
(1) The capital requirement for operational risk under the Basic Indicator Approach must be 15% of a relevant indicator, in accordance with the parameters set out in		

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this Regulation, which relevant indicator must be the average over three years of the sum of the net interest income and net non-interest income. (2) The three-year average must be calculated on the basis of the last three 12-monthly observations at the end of the financial year and in the event that audited figures are not available, business estimates may be used with the prior written approval and subject to such conditions as may be determined by the Authority. (3) If for any given observation, the sum of net interest income and net non-interest income is negative or equal to zero, this figure may not be taken into account in the calculation of the three-year average. (4) The relevant indicator must be calculated as the sum of positive figures divided by the number of positive figures. (5) Based on the accounting categories for the profit and loss account of a central counterparty, the relevant indicator must be expressed as the sum of the elements listed in sub-regulation (6), which elements must be included in the sum with its positive or negative sign.		

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(6) The elements, which must to be adjusted to reflect the qualifications in sub-regulations (7) to (11) below, are- *(a)* interest receivable and similar income; *(b)* interest payable and similar charges; *(c)* income from shares and other variable or fixed-yield securities; *(d)* commissions or fees receivable; *(e)* commissions or fees payable; *(f)* net profit or net loss on financial operations; and *(g)* other operating income. (7) Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under, or equivalent to, these Regulations. (8) The indicator must be calculated before the deduction of any- *(a)* realised profits or losses arising from the sale of securities held in the central counterparty's own book, including any relevant amounts relating to securities classified as "held to maturity" or "available for sale";		

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(b) provisions and operating expenses, which operating expenses must include fees paid for outsourcing services rendered by third parties which are not the holding company or subsidiary of the central counterparty or a subsidiary of a holding company which is also the holding company of the central counterparty; *(c)* extraordinary or irregular item; or *(d)* income derived from insurance. (9) The following elements may not be used in the calculation of the relevant indicator- *(a)* realised profits or losses from the sale of non-trading book items; *(b)* income from extraordinary or irregular items; *(c)* income derived from insurance. (10) In the event that revaluation of trading items form part of the profit and loss statement, revaluation may be included. (11) A newly established licensed central counterparty that does not have the required gross income data to calculate the required gross income amounts may with the prior written approval of, and subject to such conditions as may be		

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determined by the Authority, use gross income projections for all or part of the three-year period.		
Advanced Measurement Approach		
Regulation 25.2 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A licensed central counterparty must apply to the Authority for approval to use the Advanced Measurement Approach. (2) A licensed central counterparty may use the Advanced Measurement Approach based on its own operational risk measurement systems, provided that the Authority expressly approves the use of the models concerned for calculating the own funds requirement. (3) A licensed central counterparty must at all times adhere to such conditions as may be determined by the Authority, which conditions may include a period of initial monitoring by the Authority before the central counterparty is allowed to adopt the Advanced Measurement Approach for the calculation of its capital requirement in respect of operational risk.		

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(4) To be eligible for an Advanced Measurement Approach, a central counterparty must satisfy the Authority that it meets the qualifying criteria below, in addition to the general risk management standards set out in these Regulations. (5) If an Advanced Measurement Approach is intended to be used by the central counterparty, or by the subsidiaries of a parent financial holding company of the central counterparty, the application must- *(a)* include a description of the methodology used for allocating operational risk capital between the different entities of the group; *(b)* indicate whether and how diversification effects are intended to be factored in the risk measurement system. (6) A central counterparty using the Advanced Measurement Approach for the calculation of its capital requirements for operational risk must hold capital which is at all times more than or equal to a minimum amount determined by the Authority by using the basic indicator approach calculation.		
Additional qualitative criteria for the Advanced Measurement Approach		

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Regulation 25.2.1 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: A licensed central counterparty that wishes to adopt the Advanced Measurement Approach for the calculation of its capital requirement in respect of operational risk must demonstrate to the satisfaction of the Authority that,- *(a)* the central counterparty's controlling body and senior management are actively involved in the oversight of its operational risk management framework; *(b)* the central counterparty's operational risk management system is conceptually sound and implemented with integrity; *(c)* the central counterparty has sufficient resources for the use of the approach in its major business lines, and in the central counterparty's control and audit units; *(d)* the central counterparty's internal measurement system is able to reasonably estimate unexpected losses based on the combined use of- (i) internal loss data; (ii) relevant external loss data; (iii) scenario analysis; and		

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(iv) the central counterparty's internal control factors and the business environment in which the central counterparty operates; *(e)* the central counterparty's internal measurement system is capable of supporting the allocation of economic capital for operational risk across business lines in such a manner that incentives are created to improve the risk management capabilities in each relevant business line; *(f)* the central counterparty complies with the qualitative and quantitative standards specified in Regulation 25.2.2 and 25.2.3; *(g)* the central counterparty has in place a credible, transparent, well-documented and verifiable approach for weighting the fundamental elements as specified in paragraph *(d)* in its overall operational risk measurement system, and in all cases the central counterparty's approach for weighting these four fundamental elements must be internally consistent and avoid double counting of qualitative assessments or risk mitigants already recognised in other elements.		
Qualitative standards		

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In terms of Regulation 25.2.2 of Chapter VI of the Financial Markets Act, 2012 Regulations a licensed central counterparty that wishes to adopt the Advanced Measurement Approach for the calculation of the central counterparty's capital requirement relating to operational risk must- *(a)* have in place an independent operational risk management function, responsible for- (i) the development of- *(aa)* policies and procedures relating to operational risk management and control, including policies to address areas of non-compliance, which policies must be approved by the central counterparty's controlling body; *(bb)* strategies to identify, measure, monitor and control or mitigate the central counterparty's exposure to operational risk. (ii) the design and implementation of- *(aa)* a methodology for the measurement of the central counterparty's exposure to operational risk; *(bb)* the central counterparty's operational risk management framework; *(cc)* a risk-reporting system relating to operational risk;		

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(b) have in place an internal operational risk measurement system- (i) which must be closely integrated into the day-to-day risk management processes of the central counterparty; (ii) which must be subject to regular validation and independent review, which validation and independent review must include verification that the internal validation processes are operating in a satisfactory manner and that data flows and processes associated with the risk measurement system are transparent and accessible; (iii) the output of which must form an integral part of the process to monitor and control the central counterparty's exposure to operational risk, including internal capital allocation and risk analysis; *(c)* have in place techniques to- (i) allocate capital to major business units, which allocation is based on operational risk; (ii) create incentives to improve the management of operational risk throughout the central counterparty;		

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(d) on a regular basis report its exposure to operational risk, including material losses suffered in respect of operational risk, to the management of the central counterparty's business units, the senior management of the central counterparty and the central counterparty's controlling body; *(e)* have in place adequate measures to take appropriate action, including in cases of non-compliance with internal policies, controls and procedures; *(f)* document the central counterparty's operational risk management system; *(g)* have in place a process to ensure compliance with the central counterparty's documented set of internal policies, controls and procedures concerning the operational risk management system; *(h)* have in place a robust operational risk management process which must be subject to regular review by the central counterparty's internal and external auditors which review must include the activities of- (i) the relevant business units; and (ii) the independent operational risk management function.		
Quantitative standards		

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In terms of Regulation 25.2.3 of Chapter VI of the Financial Markets Act, 2012 Regulations a licensed central counterparty that wishes to adopt the Advanced Measurement Approach for the calculation of the central counterparty's capital requirement relating to operational risk must have in place- *(a)* a duly documented and robust approach for the measurement of the central counterparty's exposure to operational risk, which approach, among others, must ensure that the central counterparty has in place rigorous procedures for the development of a robust operational risk model; *(b)* a robust operational risk measurement system, which- (i) must be consistent with the scope of operational risk, as defined in regulation 1; (ii) must be consistent with the loss event types specified in Table 25(B); (iii) must duly capture potentially severe 'tail' loss events; (iv) must be subject to independent validation; (v) must be sufficiently granular to capture the major drivers of operational risk, which drivers may affect the shape of the tail of the central counterparty's estimates of loss; (vi) may not double count the effects of correlation or risk mitigation;		

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(vii) must comply with the minimum requirements relating to- *(aa)* internal data specified in Regulation 25.2.4; *(bb)* relevant external data specified in Regulation 25.2.5; *(cc)* scenario analysis specified in Regulation 25.2.6; *(dd)* internal control systems and the factors reflecting the business environment in which the central counterparty conducts business, specified in Regulation 25.2.7;		
25.2.4 Internal data		
In terms of Regulation 25.2.4 of Chapter VI of the Financial Markets Act, 2012 Regulations a licensed central counterparty must duly capture internal loss data- *(a)* in order for the central counterparty, amongst other things, to validate or compare its risk estimates with the central counterparty's actual experience of loss; *(b)* which must clearly be linked to the central counterparty's business activities, technological processes and risk management procedures;		
(2) A licensed central counterparty's internal processes relating to the collection of loss data must-		

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(a) be adequate to map the central counterparty's historical internal loss data into the relevant level 1 categories specified in Table 25(B), which relate to loss event types; *(b)* be duly documented, which documentation, among other things, must- (i) include objective criteria for the allocation of losses to the relevant business lines specified in Table 25(A), and the specified loss event types; (ii) specify the relevant criteria to be applied when assigning loss data arising from an event in a centralised function, such as an information technology department, or an activity that spans more than one business line, as well as from related events over time; *(c)* be sufficiently robust to- (i) ensure that the central counterparty's internal loss data is comprehensive in the sense that the central counterparty's internal process captures all material activities and exposures from all appropriate sub-systems and geographic locations; (ii) capture adequate information in respect of- *(aa)* the gross loss amounts; *(bb)* the date of the loss event;		

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(cc) any recovery of gross loss amounts; *(dd)* descriptive information relating to the drivers or causes of the loss event; *(d)* include an appropriate *de minimis* gross loss threshold amount for the collection of internal loss data; provided that in order to ensure broadly consistent data collection between central counterparties that adopted the advanced measurement approach for the calculation of their respective capital requirements relating to operational risk, the Authority may from time to time specify a minimum gross loss threshold amount; *(e)* treat operational risk losses that are related to credit risk and that have historically been included in the central counterparty's credit risk databases, such as collateral management failures, as credit risk for the purposes of calculating the central counterparty's relevant minimum required amount of capital and reserve funds, that is, such losses may not be subject to the operational risk capital requirement specified; *(f)* flag material operational risk-related credit risk losses separately within the central counterparty's internal operational risk database;		

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(g) treat operational risk losses that are related to market risk as operational risk for the purposes of calculating the central counterparty's relevant minimum required amount of capital and reserve funds, that is, such losses must be subject to the relevant operational risk capital requirement specified. (3) A central counterparty must have in place duly documented procedures in order to assess the on-going relevance of historical data, which must specify the situations in which judgment, scaling or other adjustments to internal loss data may be used, including the extent to which such judgment may be used and the officials who are authorised to make such decisions. (4) When a central counterparty's capital requirement in respect of operational risk is based on internal loss data, the capital requirement must be based on- *(a)* a minimum observation period of five years of data; or *(b)* when the central counterparty first adopts the advanced measurement approach, a minimum observation period of three years of data, subject to such conditions as may be specified in writing by the Authority, irrespective whether the internal loss data is used to calculate or validate the central counterparty's measure of loss.		

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25.2.5 External data		
Regulation 25.2.5 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A central counterparty must have in place policies and procedures, approved by its controlling body, in order to determine- *(a)* the circumstances under which external data such as public data or pooled industry data or both must be used in addition to internal data; *(b)* the methodologies that must be used in order to incorporate the relevant external data, such as scaling or qualitative adjustments, provided that the central counterparty's operational risk measurement system incorporates relevant external data when there is reason to believe that the central counterparty is exposed to infrequent, yet potentially severe, losses. (2) The external data referred to in sub-regulation (1) must include information in respect of- *(a)* the actual loss amounts; *(b)* the scale of business operations where the loss event occurred;		

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(c) the causes of and circumstances surrounding the loss event; and *(d)* any other information that would assist the central counterparty in assessing the relevance of the loss event or data or both. (3) A central counterparty's policies and procedures relating to the use of external data must be subject to regular independent review and appropriate internal audit coverage.		
Scenario analysis		
Regulation 25.2.6 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: A licensed central counterparty must- *(a)* use scenario analysis in conjunction with external data in order to evaluate- (i) the central counterparty's exposure to high-severity events; (ii) the impact of deviations from the correlation assumptions embedded in the central counterparty's operational risk measurement framework;		

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(iii) potential losses which may arise from multiple simultaneous operational risk loss events; *(b)* have adequately skilled staff to- (i) conduct the scenario analysis; (ii) derive reasoned assessments of plausible severe losses; *(c)* over time, in order to ensure the reasonableness of its risk measures and assessments, validate and re-assess the assessments of plausible severe losses generated through scenario analysis through comparison to actual loss experience		
Business environment and internal control factors		
Regulation 25.2.7 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A licensed central counterparty's operational risk assessment methodology must be sufficiently robust to capture key business environment and internal control factors that may have an impact on the central counterparty's operational risk profile, which factors must-		

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(a) be a meaningful driver of risk based on the experience and involving the expert judgment of the affected business areas; and *(b)* as far as possible, be translatable into quantitative measures that lend themselves to verification. (2) A central counterparty's estimates in respect of operational risk must be sufficiently sensitive to changes in the factors referred to in sub-regulation (1). (3) The relative weightings of the various factors referred to sub-regulation (1) must be appropriate, that is, the central counterparty's risk framework must be able to capture potential increases in risk due to greater complexity of activities or increased business volume, or changes in risk due to improvements in risk controls. (4) A licensed central counterparty's operational risk framework and each instance of its application must be- *(a)* duly documented and subject to independent review; *(b)* validated through comparison to actual internal loss experience and relevant external data.		
Capital requirement for the Advanced Measurement Approach		

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Regulation 25.2.8 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: The capital requirement of a licensed central counterparty that adopted the Advanced Measurement Approach for the measurement of the central counterparty's exposure to operational risk must be- *(a)* equal to the sum of the central counterparty's expected loss amounts and unexpected loss amounts, unless the central counterparty can demonstrate to the satisfaction of the Authority that the central counterparty duly measures and accounts for expected losses; *(b)* equal to the aggregate amount of the central counterparty's risk measures for the different operational risk estimates,provided that, subject to the prior written approval of, and such conditions as may be specified in writing by the Authority, the central counterparty may use internally determined correlations in respect of operational risk losses across individual operational risk estimates, provided that- (i) the central counterparty's systems must-		

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(aa) take into account uncertainty in respect of correlation estimates; *(bb)* be subject to sufficiently robust stress testing. (ii) the central counterparty must validate its correlation assumptions by making use of appropriate quantitative and qualitative techniques; *(c)* the amount after the central counterparty has taken into account the effect of eligible risk mitigation, that is, in order to take into account the effect of risk mitigation in respect of operational risk, the central counterparty must comply with the relevant requirements relating to risk mitigation specified in Regulation 25.2.9.		
Eligible risk mitigation for the Advanced Measurement Approach		
Regulation 25.2.9 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: A licensed central counterparty that adopted the Advanced Measurement Approach for the calculation of the central counterparty's capital requirement relating to operational risk may recognise the risk mitigating impact of insurance, provided that- *(a)* the insurance provider-		

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(i) has a minimum credit rating of A, or the equivalent thereof, in respect of its ability to pay claims; and (ii) is independent from the central counterparty, that is, a third party entity or institution; or *(b)* when a central counterparty obtains insurance through captives or affiliates, the central counterparty must transfer its risk exposure to an independent third-party entity or institution, for example, through re-insurance, provided that the entity or institution that provides the re-insurance complies with the eligibility criteria specified in this Regulation; and *(c)* the insurance policy- (i) has an initial term of no less than one year; or (ii) when an insurance policy has a residual term of less than one year, the central counterparty makes provision for appropriate haircuts that reflect the declining residual term of the policy, which haircut must be equal to 100% in respect of policies with a residual term of 90 days or less; (iii) has a minimum notice period for cancellation of 90 days;		

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(iv) does not contain any exclusions or limitations triggered by supervisory actions or, in the case of a failed central counterparty, that preclude the central counterparty, curator or liquidator from recovering for damages suffered or expenses incurred by the central counterparty, except when an event occurs after the initiation of liquidation or other insolvency proceedings in respect of the central counterparty, provided that the insurance policy may exclude any fine, penalty or punitive damages resulting from supervisory actions. *(d)* the central counterparty's calculations relating to risk mitigation- (i) reflect the central counterparty's insurance coverage; (ii) are consistent with the actual likelihood and impact of loss used in the central counterparty's overall determination of its operational risk capital; *(e)* the central counterparty's framework for the recognition of insurance is documented; *(f)* the central counterparty adequately discloses its use of insurance for operational risk mitigation purposes;		

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(g) by way of appropriate discounts or haircuts, the central counterparty's methodology for the recognition of insurance captures- (i) the insurance policy's cancellation terms and residual term; (ii) any uncertainty of payment; (iii) any mismatches in protection; and *(h)* the central counterparty's recognition of operational risk mitigation through insurance is limited to 20% of the central counterparty's total capital requirement in respect of operational risk, calculated in terms of the Advanced Measurement Approach		
Capital calculation requirements for credit risk		
Regulation 26 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: A licensed central counterparty must use the Standardised Approach for the measurement of its exposure to credit risk.		

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26.1 Use of credit ratings (1) A licensed central counterparty must in a consistent manner, in accordance with the relevant requirements in these Regulations, and in terms of its internal risk management process, apply the ratings or assessments issued by a credit rating agency of the central counterparty's choice, to calculate its risk exposure in terms of the provisions contained in these Regulations. (2) A licensed central counterparty may not- *(a)* "cherry pick" ratings or assessments issued by different credit rating agencies; *(b)* arbitrarily change the use of a credit rating agency; or *(c)* apply ratings or assessments for purposes of these Regulations differently from its internal risk management process. ***Multiple assessments*** (3) In the event that a licensed central counterparty has an option between- *(a)* two assessments issued by credit rating agencies, which assessments relate to different risk weighting categories, it must apply the higher of the two risk weights; or		

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(b) three or more assessments issued by credit rating agencies, which assessments relate to different risk weighting categories, it must apply the higher of the lowest two risk weights.		
Unsolicited ratings (4) A licensed central counterparty may not without the prior written consent of the Authority, and other than in accordance with any conditions determined by the Authority, make use of unsolicited ratings issued by a credit rating agency. (5) A licensed central counterparty must assess all relevant credit exposures, regardless of whether the exposures are rated or unrated, to determine whether the risk weights applied to the exposures in terms this Regulation are appropriate, based on the respective exposures' inherent risk, provided that, when it determines that the inherent risk of an exposure, particularly if the exposure is unrated, is significantly higher than that implied by the risk weight to which it is assigned, the central counterparty		

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must consider the higher degree of credit risk in the evaluation of its overall capital adequacy.		
Exposure to counterparties		
Regulation 26.2 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) For the measurement of its exposure to credit risk, a licensed central counterparty must- *(a)* in the case of exposures to sovereigns, central banks, public-sector entities, banks, and corporates , risk weight its exposures, net of any relevant credit impairment, in accordance with the relevant provisions of Table 26(A) in Schedule A; *(b)* in the case of off-balance sheet exposure other than derivative instruments subject to the counterparty risk requirements in Regulations 27 to 29, convert the off-balance sheet exposure to a credit equivalent amount by multiplying the exposure with a 100% credit-conversion factors;		

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(c) in the case of all derivative instruments subject to counterparty risk, measure the exposure amount in accordance with the relevant requirements specified in Regulations 27 to 29; and *(d)* in the case of all other exposures, risk weight the exposure in accordance with the relevant requirements specified in Table 26(B) in Schedule A. (2) A licensed central counterparty may not have any exposure to- *(a)* an individual person or small to medium business; *(b)* lending secured by a residential mortgage; *(c)* lending secured by a commercial mortgage; *(d)* covered bonds; *(e)* securitisation; *(f)* venture capital; or *(g)* private equity.		
Reduction of credit exposure		
Regulation 26.3 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows:		

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(1) A licensed central counterparty may reduce its credit risk exposure to the extent that it achieves an effective and verifiable transfer of risk, if it *(a)* obtains eligible collateral, guarantees or credit derivative instruments. *(b)* enters into a netting agreement with a clearing member that maintains both debit and credit balances with the central counterparty. (2) No transaction in respect of which the central counterparty obtained credit protection may be assigned a risk weight higher than the risk weight that applies to a similar transaction in respect of which no credit protection was obtained. (3) A central counterparty may, if its clearing member maintains both debit and credit balances with the central counterparty and if it enters into a netting agreement in respect of the relevant debit and credit with the counterparty, regard the exposure, in the calculation of the its risk exposure, as a collateralised exposure in accordance with the provisions of sub-regulation (6) provided that the central counterparty-		

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(a) has a well-founded legal basis for concluding that the netting or offsetting agreement is enforceable in each relevant jurisdiction, regardless whether the counterparty is insolvent or in liquidation; *(b)* is at any time be able to determine the assets and liabilities with the specific counterparty to the netting agreement; *(c)* monitors and controls any potential roll-off risk in respect of the debit and credit balances; and *(d)* monitors and controls the relevant exposures on a net basis.		
Exposure secured by a pledge or cession *in securitatem debiti* of eligible collateral		
Regulation 26.4 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A licensed central counterparty may, if its exposure or potential exposure to credit risk is secured by a pledge or cession in *securitatem debiti* of eligible collateral as specified in Regulation 26.6(1), recognise the effect of such collateral using the Comprehensive Approach; provided that it complies with the requirements specified in this Regulation.		

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(2) A reduction in the risk exposure of a central counterparty is allowed to the extent that- *(a)* such collateral was not already taken into account in the calculation of the central counterparty's risk exposure; *(b)* the central counterparty complies with the relevant requirements relating to disclosure, prescribed in Regulation 17; *(c)* the central counterparty is able to establish title to the collateral in order to liquidate it; and *(d)* such collateral can be realised by the central counterparty under normal market conditions, that is, the value at which the collateral can be realised in the market does not materially differ from its book value, provided that a central counterparty must maintain an appropriate margin of collateral in excess of the amount in respect of which a reduction in the risk exposure is allowed in order to provide for fluctuations in the market value of the relevant collateral. (3) When the collateral is held by a custodian, the central counterparty must -		

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(a) ensure that the custodian ensures adequate segregation of the collateral instruments and the custodian's own assets; *(b)* in cases of uncertainty, obtain legal certainty by way of legal opinions confirming the enforceability of the collateral arrangements in all relevant jurisdictions, and that the central counterparty's rights are legally well founded; and *(c)* update legal opinions at appropriate intervals in order to ensure continued enforceability. (4) The collateral arrangements must be duly documented with a clear and robust procedure in place for the timely liquidation of collateral. (5) A central counterparty's procedures must be sufficiently robust to ensure that any legal conditions required for declaring the default of the clearing member and liquidating the collateral are observed. (6) In order for collateral to provide effective protection, the credit quality of the obligor and the value of the collateral may not have a material positive correlation. (7) A maturity mismatch occurs when the residual maturity of the credit protection obtained in the form of eligible collateral or in terms of a netting agreement, is less		

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than the residual maturity of the underlying credit exposure and must be treated in accordance with the relevant provisions specified in Regulation 26.7(18). (8) The rating issued in respect of the collateral instrument may not relate only to the principal amount.		
Eligible collateral for risk mitigation purposes		
Regulation 26.5 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) For risk mitigation purposes, the instruments specified below are regarded as eligible collateral, provided that, irrespective of its credit rating, a securitisation or re-securitisation instrument may in no case constitute an eligible instrument for risk mitigation purposes in terms of these Regulations- *(a)* Cash, including certificates of deposit or comparable instruments pledged or ceded *in securitatem debiti* to the central counterparty; provided that- (i) when cash on deposit, certificates of deposit or comparable instruments are held as collateral at a third-party institution in a non-custodial arrangement, the central		

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counterparty must assign the risk weight related to the third party institution to the exposure amount protected by the collateral; (ii) the cash or instruments are pledged to the central counterparty; (iii) the pledge is unconditional and irrevocable; and (iv) the central counterparty has applied the relevant haircut specified below in respect of currency risk. *(b)* Highly liquid securities as indicated in Regulation 31.1(2) which have been- (i) assigned a rating of BB- or better by a credit rating agency when issued by sovereigns; (ii) assigned a rating of BBB- or better by a credit rating agency when issued by other institutions, including banks; or (iii) issued by counterparties qualifying for a 0% risk weight as specified in Table 26(B) in Schedule A. *(c)* Any other instruments as determined by the Authority in writing. (2) In respect of the Comprehensive Approach for the recognition of risk mitigation, when a central counterparty obtained collateral of which the value is less than the		

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amount of the central counterparty's exposure to credit risk, it must recognise the credit protection on a proportional basis, that is, the protected portion of the exposure must be risk weighted in accordance with the relevant provisions of this Regulation and the remainder of the credit exposure must be regarded as unsecured.		
Calculation of exposure		
Regulation 26.6 of Chapter VI of the Financial Markets Act, 2012 Regulations prescribes as follows: (1) A licensed central counterparty that obtained eligible collateral must- *(a)* calculate an adjusted exposure in accordance with the relevant formulae set out in sub-regulation (2); *(b)* in the calculation of the central counterparty's adjusted exposure- (i) make use of the haircut percentage specified in Table 26(C) in Schedule A in order to adjust both the amount of the exposure and the value of the collateral; or (ii) in the case of transactions subject to further commitment, that is, repurchase or resale agreements-		

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(aa) apply a haircut of 0%, provided that the central counterparty complies with the minimum conditions relating to a haircut of 0% specified in sub-regulation (9)*;* *(bb)* recognise the effects of bilateral master netting agreements, provided that the central counterparty complies with the minimum conditions relating to bilateral master netting agreements specified in sub-regulation (10); and *(c)* calculate its risk weighted exposure by multiplying the adjusted exposure with the risk weight of the relevant counterparty. (2) In the case of a collateralised transaction, other than a derivative instrument subject to the current exposure method, a central counterparty must calculate its adjusted exposure through the application of the formula specified below, which formula is designed to recognise the effect of the collateral and any volatility in the amount relating to the exposure or collateral. The formula is expressed as: E* □ max{0,[E□(1□He) □C□(1□Hc □Hf x)]} where: **E*** = the amount of the exposure after the effect of the collateral is taken into consideration, that is, the		

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adjusted exposure **E** = the current value of the exposure before the effect of the collateral is taken into consideration **He** = the relevant haircut that relates to the exposure **C** = the current value of the collateral obtained by the central counterparty **Hc** = the haircut that relates to the collateral **Hfx** = the haircut that relates to any currency mismatch between the collateral and the exposure- (i) The haircut that relates to currency risk shall be 8%, based on a 10 business day holding period and daily mark-to-market. (ii) Standard haircuts in terms of the comprehensive approach shall be subject to Table 26 (C) in Schedule A. (3) In the case of a derivative instrument subject to the current exposure method, a central counterparty must calculate its adjusted exposure in accordance with the relevant formula and requirements specified in Regulation 29.		

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(4) A central counterparty that wants to recognise the effects of bilateral master netting agreements, must calculate its adjusted exposure through the application of the formula specified below, provided that the central counterparty complies with the minimum requirements relating to bilateral netting agreements specified in sub-regulation (10). The formula is expressed as: E* □ max{0,[(□(E) □ □(C))□ □(Es □Hs) □ □(Ef x □Hf x)]} where: **E*** = the adjusted exposure after the effect of risk mitigation is taken into consideration **E** = the relevant current value of the exposure **C** = the value of the relevant collateral **Es** = the absolute value of the net position in a given instrument **Hs** = the relevant haircut that relates to Es, that is, the net long or short position of each instrument included in the netting agreement shall be multiplied with the appropriate haircut		

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Efx = the absolute value of the net position in a currency that differs from the settlement currency **Hfx** = the haircut in respect of the currency mismatch- (i) the haircut that relates to currency risk must be 8%, based on a 10 business day holding period and daily mark-to-market. (ii) standard haircuts in terms of the comprehensive approach shall be subject to Table 26(C) in Schedule A. (5) A central counterparty that obtained collateral that consists of a basket of instruments, must calculate the haircut in respect of the basket of instruments in accordance with the formula specified below, which formula is designed to weight the collateral in the basket: $H = \sum_i \alpha_i H_i$ where: ***αi*** = the relevant weight of the asset, measured in terms of the relevant currency units, in the basket		

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Hi = the haircut applicable to the relevant asset (6) The framework for collateral haircuts applied in these Regulations in respect of the comprehensive approach as summarised in Tables 26(C) to (F) in Schedule A distinguishes between- *(a)* repo-style transactions, that is, transactions such as repurchase or resale agreements, and securities lending or borrowing transactions; and *(b)* other capital-market-driven transactions, that is, transactions such as derivatives instruments and margin lending. (7) In case of transactions subject to daily re-margining and mark-to-market valuation, when the central counterparty calculates its exposure or EAD amount subject to margin agreements, the central counterparty must apply a floor margin period of risk of five business days for netting sets consisting only of repo-style transactions, and a floor margin period of risk of 10 business days for all other netting sets, provided that-		

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(a) in respect of all netting sets where the number of trades exceeds 5 000 at any point during a quarter, the central counterparty applies a floor margin period of risk of 20 business days for the following quarter; *(b)* in respect of netting sets containing one or more trades involving illiquid collateral, the central counterparty applies a floor margin period of risk of 20 business days; provided that for purposes of this Regulation,- (i) "illiquid collateral" must be determined in the context of stressed market conditions and must be characterised by the absence of continuously active markets where a counterparty would, within two or fewer days, obtain multiple price quotations that would not move the market or represent a price reflecting a market discount in the case of collateral; and (ii) situations where trades shall be deemed illiquid include, but are not limited to, trades that are not marked daily and trades that are subject to specific accounting treatment for valuation purposes, such as repo-style transactions referencing securities of which the fair value is determined by models with inputs that are not observed in the market.		

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(c) in all cases where the central counterparty considers that trades or securities held as collateral are concentrated in a particular counterparty or clearing member, and if that counterparty or clearing member suddenly exited the market, the central counterparty would be able to replace its trades;. *(d)* if the central counterparty experienced more than two margin call disputes on a particular netting set during the preceding two quarters, and the disputes lasted longer than the applicable margin period of risk, before consideration of this provision, the central counterparty in respect of the following two quarters applies a margin period of risk at least double the floor specified in these Regulations for that netting set. *(e)* in the case of re-margining with a periodicity of N-days, the central counterparty applies a margin period of risk of at least the specified floor plus the N days minus one day, that is: Margin Period of Risk = F + N - 1. where:		

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F = the floor number of days specified before **N** = the said periodicity of N-days for re-margining; (8) in the case of the frequency of re-margining or revaluation is longer than the minimum period specified in Table 26(D) in Schedule A, the relevant percentage in respect of the relevant specified minimum haircut must be scaled up depending on the actual number of business days between re-margining or revaluation, using the square root of time formula specified below: where: $$H = H_M \sqrt{\frac{N_R + (T_M - 1)}{T_M}}$$ where: **H** = the relevant haircut		

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HM = the relevant haircut in respect of the minimum holding period **TM** = the relevant minimum holding period for the type of transaction **NR** = the actual number of business days between re-margining for capital market transactions or revaluation in respect of secured transactions *(a)* When a central counterparty calculates the volatility on a TN day holding period which is different from the specified minimum holding period TM, the central counterparty must calculate the relevant haircut HM using the square root of time formula specified below: $H_M = H_N \sqrt{\frac{T_M}{T_N}}$ where: **HM** = the adjusted haircut **TN** = holding period used by the central counterparty for deriving HN **HN** = haircut based on the holding period TN. **TM** = specified minimum holding period		

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(b) Similarly, when the frequency of re-margining or revaluation is longer than the minimum period specified in Table 26(C) in Schedule A, the relevant percentage in respect of the minimum haircut must be scaled up depending on the actual number of business days between re-margining or revaluation, using the relevant square root of time formula. For example, based on the relevant specified square root of time formula, a central counterparty that uses the standard haircuts specified in Table 26(C) in Schedule A, must use the relevant 10 business day haircut percentages specified in the Table as a basis in scaling the haircut percentages up or down depending on the type of transaction and the frequency of re-margining or revaluation, as specified below (see Tables 26(E) and (F) in Schedule A):		

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$H = H_{10}\sqrt{\frac{N_R + (T_M - 1)}{10}}$ Where: **H** = adjusted haircut **H10** = the 10 business day standard haircut in respect of the instrument, specified in Table 26(C) in Schedule A **NR** = the actual number of business days between re-margining for capital market transactions or revaluation for secured transactions **TM** = the minimum holding period for the type of transaction.		
(9) In the case of any repo-style transaction, a central counterparty may apply a haircut of 0%, provided that-		

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(a) both the exposure and the collateral consist of cash or a sovereign security or public-sector security qualifying for a 0% risk weight in terms of the standardised approach; *(b)* both the exposure and the collateral are denominated in the same currency; *(c)* the transaction is overnight or both the exposure and the collateral are marked to market, at a minimum, on a daily basis and subject to daily re-margining; *(d)* following the failure of the counterparty to re-margin, the time that is required from the last mark-to-market adjustment, before the failure to re-margin occurred, and the liquidation of the collateral, is no more than four business days; *(e)* the transaction is settled across a settlement system authorised for the type of transaction; *(f)* the documentation in respect of the agreement is standard market documentation for the transactions; *(g)* the transaction is governed by documentation that specifies that when the counterparty fails to satisfy an obligation to deliver cash or securities or to deliver margin, or otherwise defaults, the transaction shall be immediately terminable;		

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(h) upon any default event, regardless whether the counterparty is insolvent or liquidated, the central counterparty has the unfettered, legally enforceable right to immediately seize and liquidate the collateral for the central counterparty's benefit; *(i)* the agreement is concluded with- (i) a sovereign; (ii) a central bank; (iii) a public-sector entity; (iv) a bank; (v) other regulated financial institutions, including an insurance company, eligible for a risk weight of 20% in terms of the standardised approach; (vi) a regulated collective investment scheme or money market fund determined by the Authority, provided that the collective investment scheme or money market fund must be subject to capital or leverage requirements; (vii) a regulated pension fund determined by the Authority; (viii) a clearing house determined by the Authority; and		

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(ix) another person as may be determined by the Authority, subject to such conditions as may be determined by the Authority. (10) A central counterparty that concludes a repo-style agreement or transaction with a counterparty, which agreement or transaction is included in a bilateral master netting agreement, may recognise the effects of the bilateral master netting agreement, provided that the netting agreement must- *(a)* be legally enforceable in each relevant jurisdiction upon the occurrence of an event of default, regardless whether the counterparty is insolvent or in liquidation and in cases of legal uncertainty, the central counterparty must obtain a legal opinion to the effect that its right to apply netting of gross claims is legally well founded and would be enforceable in the liquidation, default or insolvency of the counterparty or the central counterparty; *(b)* provide the non-defaulting party upon an event of default, including in the event of insolvency or liquidation of the counterparty, the right to terminate and close-out, in a timely manner, all transactions included in the agreement; *(c)* make provision for-		

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(i) the netting of gains and losses relating to all transactions included in the agreement, including the value of any collateral, which transactions were terminated and closed out, resulting in a single net amount which shall be owed by the one party to the other; and (ii) the prompt liquidation or close-out netting of collateral upon an event of default. (11) *(a)* When a central counterparty obtains protection against loss relating to an exposure or potential exposure to credit risk in the form of an eligible guarantee, the risk weight applicable to the guaranteed transaction or guaranteed exposure may be reduced to the risk weight applicable to the guarantor in accordance with these Regulations. *(b)* The unprotected portion of the exposure must retain the risk weight relating to the relevant counterparty. *(c)* The lower risk weight of the guarantor must apply on the outstanding amount of the exposure protected by the guarantee, provided that the requirements in sub-regulation (11) are met. *(d)*		
Minimum general requirements		

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(i) A reduction in the risk weight of a central counterparty's exposure to the risk weight applicable to the relevant guarantor is allowed only to the extent that such guarantee - *(aa)* was not already taken into account in the calculation of the central counterparty's risk exposure. As such, no reduction in the risk exposure of the central counterparty will be allowed in respect of an exposure for which an issue specific rating was issued, which rating already reflects the effect of the guarantee; *(bb)* may be realised by the central counterparty under normal market conditions;		
Minimum specific requirements (ii) The guarantee must be an explicitly documented obligation assumed by the guarantor. (iii) The guarantee must be legally enforceable in all relevant jurisdictions and the central counterparty's rights in terms of the guarantee must be legally well founded; provided that legal opinions must be updated at appropriate intervals in order to ensure continued enforceability of the central counterparty's rights in terms of the guarantee;		

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(iv) The guarantee must constitute a direct claim on the guarantor, provided that- *(aa)* when a qualifying default or non-payment by the obligor occurs, the central counterparty pursues the guarantor for amounts outstanding under the loan, rather than having to continue to pursue the obligor; *(bb)* when the guarantee provides only for the payment of principal amounts, any interest amount and other unprotected payments are regarded as unsecured amounts; *(cc)* payment by the guarantor in terms of the guarantee may grant the guarantor the right to pursue the obligor for amounts outstanding under the loan. (v) The guarantee must be linked to specific exposures, so that the extent of the cover is duly defined and incontrovertible. (vi) Other than the central counterparty's non-payment of money due in respect of the guarantee, there may be no clause in the contract that would allow the guarantor unilaterally to cancel the guarantee or increase the effective cost of the protection as a result of deterioration in the credit quality of the protected exposure.		

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(vii) There may be no clause in the guarantee outside the direct control of the central counterparty that could prevent the guarantor from being obliged to pay out, in a timely manner, in the event of the original obligor failing to make the payment(s) due. (viii) While guarantees reduce credit risk, they simultaneously increase other risks to which a central counterparty is exposed, such as legal and operational risks, therefore a central counterparty must employ robust procedures and processes, relating to guarantees, to control the risks, which must, as a minimum, include the fundamental elements specified below: *(aa)* An articulated strategy for guarantees must form an intrinsic part of a central counterparty's general credit strategy and overall liquidity strategy; *(bb)* A central counterparty must- *(AA)* continue to assess a guaranteed exposure on the basis of the borrower's creditworthiness; *(BB)* obtain and analyse sufficient financial information to determine the obligor's risk profile and its risk-management and operational capabilities;		

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(CC) ensure that its policies and procedures are supported by management systems capable of tracking the location and status of guarantees *(DD)* regularly review its policies and procedures in order to ensure that the policies and procedures remain appropriate and effective; *(EE)* have in place a duly defined policy with respect to the amount of concentration risk that it is prepared to accept; *(FF)* take guaranteed positions into account when assessing the potential concentrations in its credit portfolio; *(GG)* in order to mitigate its concentration risk, monitor general trends affecting relevant guarantors; *(HH)* when it obtains guarantees that differ in maturity from the underlying credit exposure, monitor and control its roll-off risks, that is, the fact that the central counterparty will be exposed to the full amount of the credit exposure when the guarantee expires. The central counterparty may be unable to obtain further guarantees or to maintain its capital adequacy when the guarantee expires.		

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(12) *(a)* For risk mitigation purposes, credit protection obtained from guarantors that are assigned a risk weight lower than the protected exposure will be recognised as eligible guarantees, including guarantees obtained from- (i) sovereigns; (ii) central banks; or (iii) guarantees as approved by the Authority.		
Materiality thresholds For purposes of these Regulations, a materiality threshold below which no payment will be made in the event of a loss to the central counterparty or that reduces the amount of payment by the guarantor must be risk weighted at 1250%; or an imputed percentage that will effectively result in an amount equivalent to a deduction against capital . ***Proportional cover*** *(c)* When a central counterparty obtains a guarantee for less than the amount of the central counterparty's exposure to credit risk, it must recognise the credit protection on a proportional basis, that is, the protected portion of the exposure shall be risk		

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weighted in accordance with the relevant provisions of this regulation and the remainder of the credit exposure must be regarded as unsecured. ***(d) Currency mismatches*** (i) *(aa)* When a central counterparty obtains credit protection that is denominated in a currency that differs from the currency in which the exposure is denominated, the amount of the exposure deemed to be protected must be reduced by the application of the formula specified below, which formula is designed to recognise the effect of the currency mismatch. The formula is expressed as: $G_A = G \times (1 - H_{FX})$ where: **G** = the relevant nominal amount of the credit protection obtained **HFX** = the haircut relating to the currency mismatch between the credit protection and the underlying obligation.		

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(bb) The haircut shall be based on a 10 business day holding period and daily mark-to-market. (ii) When a central counterparty applies the standard haircuts, a haircut equal to 8% shall apply. (iii) A central counterparty must use the relevant square root of time formula specified in sub-regulation (8)*(b)* to scale up a haircut percentage when the holding period or frequency of mark-to-market adjustment is longer than the minimum period specified in Table 26(C) in Schedule A.		
(13) For the protected portion of a credit exposure, a central counterparty that is a protection buyer must substitute the risk weight relating to the eligible protection provider for the risk weight of the reference asset, reference entity or underlying asset. *(a)* The lower risk weight relating to the eligible protection provider shall apply to the outstanding amount of the transaction or exposure protected by the credit-derivative instrument, provided that all the relevant conditions specified in sub-regulation (17) are met.		

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(b) The unprotected portion of the exposure shall retain the risk weight relating to the relevant underlying exposure. *(c)* When a central counterparty hedges the credit risk relating to an exposure, the central counterparty may only recognise the credit protection to the extent that the central counterparty transferred the relevant credit risk to an eligible third party protection provider. *(d)* A central counterparty may not buy protection in the absence of an underlying exposure. (i) A materiality threshold contained in a credit-derivative instrument that requires a given amount of loss to occur to the protection buyer before the protection seller is obliged to make payment to the protection buyer or reduces the amount of payment to the protection buyer must be risk weighted at 1250%. (ii) The capital requirement in respect of such bought protection is limited to the capital requirement relating to the underlying asset or reference asset when no protection is recognised.		

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(14) For risk-mitigation, credit protection obtained from protection providers that are assigned a risk weight lower than the protected exposure must be recognised as eligible protection providers, including protection obtained from- *(a)* sovereigns; *(b)* central banks; *(c)* public-sector entities; *(d)* banks; and *(e)* other externally rated entities that are assigned a risk weight lower than the protected exposure.		
(15) A central counterparty must report all relevant foreign-currency positions created by credit-derivative instruments when the central counterparty calculates its aggregate effective net open foreign-currency position to the Authority.		
(16) When a central counterparty obtains credit protection for less than the amount of the central counterparty's exposure to credit risk, it must recognise the credit protection on a proportional basis, that is, the protected portion of the exposure must		

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be risk weighted in accordance with these Regulations and the remainder of the credit exposure must be regarded as unsecured.		
that was not already taken into consideration in the calculation of the central counterparty's required amount of capital; and the instrument can be realised by the central counterparty under normal market conditions, that is, the value at which the protection can be realised may not differ materially from its book value; and the central counterparty recognises the riskmitigation effect of protection obtained in the form of a credit-derivative instrument in the calculation of its credit exposure; must comply with the following requirements in respect of protection from such credit-derivative instrument: (i) The credit protection must constitute a direct claim on the protection seller. (ii) The credit protection must be linked to specific credit exposures, so that the extent of the cover is duly defined and incontrovertible. (iii) Other than a protection buyer's non-payment of money due in respect of the credit protection contract, there may be no clause in the contract that would allow the protection seller unilaterally to cancel the credit protection or increase the effective		

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cost of the protection as a result of deterioration in the credit quality of the protected exposure. (iv) There may be no clause in the contract other than clauses relating to procedural requirements that could prevent the protection seller from being obliged to make payment in a timely manner should a credit event occur in respect of an underlying asset, reference entity or reference asset. (v) The credit protection must be legally enforceable in all relevant jurisdictions, and in cases of uncertainty, a central counterparty must obtain legal opinion confirming the enforceability of the credit protection in all relevant jurisdictions and that the central counterparty's rights are legally well founded, which legal opinions must be updated at appropriate intervals in order to ensure continuing enforceability. (vi) The protection seller may not have any formal recourse to the protection buyer in respect of losses incurred by the protection seller. (vii) In the case of a funded single-name credit-derivative instrument, the protection buyer may not be obliged to repay any funds received from the protection seller in terms of the credit-derivative instrument, except at the maturity date of the contract,		

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provided that no credit event has occurred during the period of bought protection or as a result of a defined credit event, and then in accordance with the terms of payment defined in the contract. (viii) In order to obtain full recognition of the protection obtained, the base currency of a credit-derivative instrument must be the same currency as the currency in which the credit exposure that is protected is denominated. *(aa)* When a credit-derivative instrument is denominated in a currency that differs from the currency in which the credit exposure is denominated, that is, when there is a currency mismatch, the bought protection may be less than expected owing to fluctuations in the exchange rates. *(bb)* When a central counterparty obtains credit protection that is denominated in a currency that differs from the currency in which the exposure is denominated, the amount of the exposure deemed to be protected shall be reduced by the application of the formula specified below, which formula is designed to recognise the effect of the currency mismatch. The formula is expressed as:		

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$G_A = G \times (1 - H_{FX})$ where: **GA** = is the relevant adjusted value of the protection **G** = is the relevant nominal amount of the credit protection obtained **HFX** = is the haircut relating to the currency mismatch between the credit protection and the underlying obligation. *(AA)* The haircut shall be based on a ten business day holding period and daily mark-to- market. *(BB)* When a central counterparty applies the standard haircuts, a haircut equal to 8% shall apply. *(CC)* A central counterparty must use the relevant square root of time formula specified in subregulation (8)*(b)* above to scale up a haircut percentage when the holding period or frequency of mark-to-market adjustment is longer than the minimum period specified subregulation (8)*(b)*		

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(ix) While credit derivative instruments reduce credit risk, they simultaneously increase other risks to which a central counterparty is exposed, such as legal and operational risks, therefore, a central counterparty must employ robust procedures and processes to control the risks, which as a minimum, must include the following fundamental elements: *(aa)* A duly articulated strategy for credit-derivative instruments must form an intrinsic part of a central counterparty's general credit strategy and overall liquidity strategy. *(bb)* A central counterparty must- *(AA)* continue to assess an exposure that is hedged by a credit-derivative instrument on the basis of the borrower's creditworthiness; *(BB)* obtain and analyse sufficient financial information to determine the obligor's risk profile and its risk management and operational capabilities; *(CC)* ensure that its policies and procedures are supported by management systems capable of tracking the location and status of its credit-derivative instruments; *(DD)* have in place a duly defined policy with respect to the amount of concentration risk that it is prepared to accept;		

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(EE) take into account purchased credit protection when assessing the potential concentrations in its credit portfolio; *(FF)* monitor general trends affecting its credit-protection sellers, in order to mitigate its concentration risk; *(GG)* when it obtains credit protection that differs in maturity from the underlying credit exposure, monitor and control its roll-off risks, that is, the fact that the central counterparty will be exposed to the full amount of the credit exposure when the credit protection expires.		
(x) The risk management systems of the central counterparty must be adequate to- *(aa)* capture the credit risk relating to a underlying asset acquired through a credit-derivative instrument and any counterparty risk arising from an unfunded OTC credit-derivative instrument within the normal credit approval and credit monitoring processes; *(bb)* assess the probability of default correlation between the underlying asset and the protection provider;		

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(cc) provide valuation procedures, including assessment and monitoring of the liquidity of the credit-derivative instrument and the reference asset or underlying asset; *(dd)* assess the impact on liquidity risk when the central counterparty has transferred a significant amount of credit risk through the use of funded credit-derivative instruments with a shorter maturity than the underlying credit exposure; *(ee)* assess the impact on capital adequacy when the central counterparty has transferred a significant amount of credit risk through the use of unfunded credit-derivative instruments and when a replacement contract may not be available when the credit protection expires; *(ff)* assess the change in the risk profile of the remaining credit exposures in terms of both the quality and the spread of the portfolio, when the central counterparty makes extensive use of credit-derivative instruments to transfer risk; *(gg)* assess the basis risk between the reference asset exposure and the underlying asset exposure when these exposures are not the same;		

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(hh) monitor the legal and reputational risk associated with credit derivative instruments; *(ii)* monitor the credit risk on an on-going basis.		
(xi) The credit events relating to non-sovereign debt, specified by the contracting parties must include- *(aa)* liquidation or insolvency. *(bb)* any application for protection from creditors. *(cc)* payment default, that is, failure to pay the principal amount or related interest amounts due. *(dd)* any restructuring of the underlying obligation that results in a credit loss event such as a credit impairment or other similar debit being raised, including- *(AA)* a reduction in the rate or amount of interest payable or the amount of scheduled interest accruals; *(BB)* a reduction in the amount of principal, fees or premium payable at maturity or at the scheduled redemption dates;		

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(CC) a change in the ranking in the priority of payment of any obligation, causing the subordination of such obligation; *(DD)* a postponement or other deferral of a date or dates for either the payment or accrual of interest or the payment of the principal amount or premium.		
(xii) The credit events relating to sovereign debt, specified by the contracting parties must include- *(aa)* any moratorium on the repayment of the principal amount or related interest amounts due; *(bb)* repudiation; *(cc)* payment default, that is, failure to pay the principal or related interest amounts due; *(dd)* any restructuring of the underlying obligation that results in a credit loss event such as a credit impairment or other similar debit being raised, including- *(AA)* a reduction in the rate or amount of interest payable or the amount of scheduled interest accruals;		

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(BB) a reduction in the amount of principal, fees or premium payable at maturity or at the scheduled redemption dates; *(CC)* a change in the ranking in the priority of payment of any obligation, causing the subordination of such obligation; *(DD)* a postponement or other deferral of a date or dates for either the payment or accrual of interest or the payment of the principal amount or premium.		
(xiii) When the credit-derivative instrument does not include the restructuring of the underlying obligation as a credit event, it shall be deemed that the central counterparty obtained protection equal to a maximum of 60% of the amount covered in terms of the credit-derivative instrument. (xiv) Contracts allowing for cash settlement will be recognised for risk-mitigation purposes, provided that a robust valuation process is in place in order to estimate loss reliably. (xv) There must be a duly specified period for obtaining post credit-event valuations of the reference asset or underlying obligation, not more than 30 days.		

ANNEXURE C

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012) (FMA)

EQUIVALENCE ASSESSMENT FOR EXTERNAL CENTRAL SECURITIES DEPOSITORIES

In addition to the application form included as Annexure I, which should be completed by an external market infrastructure to apply for an equivalence recognition of the applicant's home regulatory framework in terms of section 6A(1) of the FMA, this document must be completed by applicants that are central securities depositories (CSDs) from equivalent jurisdictions that wish to be approved as a participant in a domestic central securities depository in order to establish a link to provide settlement services in terms of the CSD rules.

In terms of Regulation 6 of the FMA Regulations, published under Government Notice R98 in Government Gazette 41433 of 9 February 2018 (FMA Regulations), as a prerequisite for an external CSD to be a participant in a domestic CSD, such external market infrastructure must be based in an equivalent jurisdiction.

Part I - Authorisation process

1. Describe the conditions and briefly outline the procedure for authorisation of CSDs.

Part II – Legal and Supervisory Arrangements: Framework

2. Provide an outline of the legal and supervisory arrangements with which CSDs in your jurisdiction must comply. In particular, describe:

2.1 Any primary and/or secondary legislative instruments:

(i) placing legal obligations on CSDs; and/or;
(ii) deferring competencies to national supervisors/regulators to authorise and supervise CSDs in your jurisdiction;

(iii) designating competent authorities responsible for supervision and enforcement of rules applicable to CSDs;

(iv) supervisory and enforcement powers granted to competent authorities.

2.2 Any non-legislative legally binding measures, relating to supervisory arrangements including, but not limited to;

(i) legally binding guidelines;

(ii) approved rules, procedures and policies of CSDs.

3. In the case of approved rules, procedures and policies that are legally binding on the CSD, describe in detail the legal basis on which such rules, procedures and policies are legally binding as well as the basis on which such rules, procedures and policies can be enforced.

4. In addition, also describe the process through which such rules are approved and under what circumstances such rules may be amended.

5. Provide information on any non-legally binding measures related to the supervision, authorisation and regulation of CSDs in your jurisdiction including, but not limited to, policy statements, rules, policies and procedures of CSDs or non-binding guidelines.

Part III – Supervisory powers

6. Provide an outline of the different supervisors and overseers involved in the financial market and more precisely in CSDs activities and their respective role, measures available to CSD supervisors in your jurisdiction in respect of breaches of legally binding requirements by a CSD (including, but not limited to, powers to impose fines and orders or to suspend or rescind licenses).

7. Confirm in respect of which types of breaches these measures may be applied.

Part IV – Regime for the Recognition of Foreign CSDs

8. Describe any procedures or legal requirements that apply to foreign CSDss providing services in your jurisdiction.

Part V – Legal and Supervisory Arrangements: Substance

9. Describe how the legal and supervisory arrangements in your jurisdiction achieve comparable outcomes to the FMA, applicable Board Notices issued thereunder as well as the FMA Regulations.