



FSCA

Financial Sector
Conduct Authority



SOUTH AFRICAN RESERVE BANK
Prudential Authority

Joint Standard 2 of 2020: Margin requirements for non-centrally cleared over-the-counter derivative transactions

Consultation Report

September 2022

1. Purpose

- 1.1 Section 104 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) requires that with each regulatory instrument, the maker must publish a consultation report which must include:
- (a) a general account of the issues raised in the submissions made during the consultation; and
 - (b) a response to the issues raised in the submissions.
- 1.2 The purpose of this document is to set out, as required in terms of section 104 of the FSR Act, a report on the consultation process undertaken in respect of the proposed amendments to **Joint Standard 2 of 2020: Margin requirements for non-centrally cleared over-the-counter derivative transactions**.

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

- 2.1 On 13 June 2022, the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) (hereinafter “the Authorities”) published for public consultation, a draft amendment notice for Joint Standard 2 of 2020 relating to the margin requirements for non-centrally cleared over the counter (OTC) derivatives transactions (Joint Standard) as well as related documentation. Section 98(2) of the FSR Act requires that the comment period must be at least six weeks, and comments were, therefore, due on or before 25 July 2022. The following documents were published as part of the consultation process:
- (a) Draft Notice of amendments to Joint Standard 2 of 2020;
 - (b) Statement of need for, intended operation and expected impact of the Amendments to the Joint Standard (Statement of Need);
 - (c) Comment template; and
 - (d) A marked-up version of Joint Standard showing proposed amendments in track (as supporting document).
- 2.2 The Authorities received over 20 comments from 3 respondents. Following the public consultation process, where appropriate, certain comments resulted in changes being made to the Joint Standard by the Authorities. The changes were not deemed to be material in nature.
- 2.3 A general account of issues raised during the consultation process and the response of the Authorities are tabulated in Part A below.
- 2.4 All comments received as part of the public consultation process were considered and are set out in the table in Part B below, together with the Authorities’ response to the comments received.

PART A: A general account of issues raised during the consultation process:

No	Area	Summary of comment	Response from the Authorities
1.	Definitions	The public enquired about the definition of “counterparty” and whether the insertion of the words “<u>as may be determined</u>” implies that there is a new/extended criterion of what constitutes a counterparty.	This is not intended to imply a new/extended criterion of what constitutes a counterparty. The words “as may be determined” replaces the word “declared”, and the amendment constitutes a refinement to align the terminology used to that of the FSR Act. The power to extend the definition of a counterparty has not changed. Please see paragraphs 3.23 and 3.24 of the Statement of Need.
2.	Applications and exclusions	The public enquired: whether the definition of a ‘<i>financial institution</i>’ includes pension funds, friendly societies, collective investment schemes, managers or nominees of collective investment schemes, insurers, and banks and;	- The definition of a “financial institution” must be read in accordance with the definition of a financial institution in terms of the FSR Act, under which this Joint Standard is made. Please see the preamble in the definitions section that reads: “<i>In this Joint Standard, “the Act” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, and unless the context indicates otherwise</i>” - In addition to this, the sentence in which the term financial institution is used must be read in its entirety, i.e. “a financial institution that is a counterparty”. The terms should therefore be read together. Reference to “financial institution” should not be considered in as per the Financial Markets Act, 2012, for purposes of the Joint Standard. Pension funds and friendly societies are not required to report nor comply with the need for margin requirements as required by the Joint Standard, at this stage.

No	Area	Summary of comment	Response from the Authorities
		whether foreign counterparties in the same group are required to monitor the gross notional amount on an everyday basis.	Where the provider is licensed in South Africa, and has foreign counterparties in its group, it must monitor the R100 billion threshold.
3.	Initial margin	The public enquired: - whether the revised implementation date set to February 2023 should not be included in the revised Standard; - where the branch of an international bank is simply using back-to-back internal clearing, whether there is a regulatory requirement for IM or VM to be held onshore. - on the wording “when transacting with a counterparty belonging to a group” whether this provision is only applicable if the counterparty also belongs to a group that also meets the conditions set in this paragraph. - whether within the 5 years, where there are insignificant financial stress situations, the data should be discarded and/or a separate period that could potentially fall outside of the 5-year period be considered. Proposal by the public: - the dates in Section 4.2(1) and 4.2(2) should be moved to 28 February 2023 (instead of 31 August 2021 and 31 August 2022).	- Following the release of Joint Notice 1 of 2022, only dates that are prospectively impacted will be amended in the revisions to the Joint Standard on Margin Requirements. - The Authorities are considering this as part of the exemption framework, which is still under development. The current position however is that the requirements in the Joint Standard will apply in the example provided, unless the entity has been granted an exemption. - Yes, the threshold applies at a group level. According to the Authorities, this would apply trivially as a group can also house a single licensed entity (bank, security firm) that holds an authorised OTC derivative provider (ODP) licence or counterparty. - The Authorities have considered this matter and will provide guidance on the expectation in this regard through separate communication to industry, as it is not comprehensively dealt with in the Joint Standard. - The change does not impact phases 1 and 2 of the initial margin requirements noted in 4.2(1) and 4.2(2) and therefore the suggested change is not necessary.

No	Area	Summary of comment	Response from the Authorities
			The Authorities are not extending the full schedule of initial margin requirements.
4.	Eligible collateral	The public enquired: • whether the right of use of certain eligible collateral may be subject to certain conditions prescribed by the Authorities based on risk management and internal controls of a counterparty; • whether there are regulatory restrictions on the right of use of collateral; • whether the imposition of a restriction on the right of use of collateral may give rise to re-characterisation risk of the outright transfer nature of the VM CSA and; • how the expansion of collateral will be given effect to in terms of the framework. Other comments included that: • The globally accepted principle that VM may be used in any way and Initial Margin (IM) may not be used in any way should be maintained. • Any amendments to regulations, eligible collateral and now the inclusion of reporting requirements will require a re-papering exercise (CSA) to be undertaken.	The right of use of certain eligible collateral may be subject to certain regulatory conditions, as may be determined by the Authorities. The amendments will enable the Authorities to impose appropriate risk mitigation requirements on providers wanting to make use of non-cash collateral. Please see paragraphs 3.10 to 3.11 of the Statement of Need explaining the need for the requirement. The intention is to enhance risk management protocols, which may be considered supplementary in nature to existing risk management protocols undertaken by providers and in-scope counterparties. The Authorities will, in due course, consult on the proposed set of permissible collateral, in line with international standards, and local market and institutional conditions.¹ The comment around the potential operational impact and the possible need for changes to CSA agreements are noted. The change is, however, considered necessary in order to enable the use of non-cash collateral which will be to the benefit of the industry whilst managing the potential risks that may arise.
5.	Reporting requirements	The public enquired on: • whether reporting must be done on the value of the underlying derivatives positions and the amount of	• The Authorities propose that the reporting should be done at a netting set level for each counterparty above

¹ This segment is responded to in an integrated manner and not necessarily on a point for point basis.

No	Area	Summary of comment	Response from the Authorities
		IM and VM posted in respect of those derivatives positions; • whether the intention is to ensure that trades with counterparties and foreign counterparties are reported; • how will the restriction on the right of use of IM collateral be reflected in these reports; • Whether the inclusion of this reporting requirement, would replicate the ODP requirements.	the minimum transfer amounts as prescribed in the Joint Standard. • Yes, the intention is that all relevant trades are captured in the reporting. • The reporting will be adapted and advanced over time to capture any additional elements and requirements as applicable, including the change in the permissible collateral. • No there is no replication of the ODP requirements as envisaged in FSCA Conduct Standard 3 of 2018. FSCA Conduct Standard 3 of 2018 was issued in line with Regulation 3 of the FMA Regulations which requires that <i>“An authorised OTC derivative provider must report OTC derivative transactions to a licensed trade repository or a licensed external trade repository in the form and manner prescribed by the Authority under section 58 of the Act”</i>. The reporting requirement in Conduct Standard 3 of 2018 is placed on a provider and/or a central counterparty to report to a trade repository (TR). The reporting requirements in Joint Standard 2 of 2020 is placed on the provider and the counterparty that is a financial institution and the reporting will be to the Authorities and not to a trade repository at this stage. Conduct Standard 3 of 2018 has not become effective because South Africa does not have a licensed TR. The Conduct Standard can only be enforced by the FSCA as it is a Conduct Standard issued in terms of the FMA, whereas Joint Standard 2 of 2020 is enforceable by both the FSCA and the PA and the reporting intention is different from that of Conduct Standard 3 of 2018.

No	Area	Summary of comment	Response from the Authorities
		Whether the wording in 6A (2) may be amended to (must).	No new changes are contemplated by the Authorities herein. The wording is intended to be enabling in its construct and not mandatory. The Authorities can exercise discretion on this provision 6A (2).
General comments			
1.	Revised standards	This is effectively making a February 2023 go-live unachievable. What are the implications if these CSAs are not concluded?	At this stage the view is from industry engagements that the effective date of February 2023 is still achievable. However, the Authorities will assess the timelines on an ongoing basis and respond with guidelines to the industry, where necessary and appropriate.
2.	Statement of Need	There appears to be confusion around the application of thresholds to variation margin based on how it is positioned in the Statement of Need and the implication this will have with regards to regulatory reporting requirements, as there are no thresholds applicable to the exchange of variation margin. There is a recommendation that sufficient time be allowed for impacted entities to implement any required changes.	- There are thresholds applicable to the exchange of variation margin. The Authorities are referring to the minimum transfer amount noted in paragraph 3(3) of the Joint Standard. Notably as well, the threshold as stipulated in paragraph 5(3) applies given that a period of six months have passed since the effective date of the Joint Standard. - The Statement of Need will be amended, and sufficient time will be allowed for specific entities to incorporate and adhere to the necessary reporting requirements, as will be determined.
3.	FAQ	The public enquired on the publication of the Frequently Asked Questions (FAQ) document, as it would assist ODP's in their overall reading of the amendments.	Yes, the Authorities are currently developing the responses to assist the industry in interpreting the proposed amendments in a FAQ document.
4.	Intragroup exemptions	Previously, the industry requested that intragroup OTC activity should be excluded from the ODP regulatory ambit. At the time, the Authority formally undertook to consider intragroup exemptions during	The Authorities are considering this as part of the equivalence framework, which is still under development. Where if an ODP is deemed from an equivalent jurisdiction, it would still need to apply to be exempted from certain requirements or obligations.

No	Area	Summary of comment	Response from the Authorities
		the drafting of the ODP regulations. The response received: <i>“Concerns have been noted. An appropriate regime will be put in place that takes into consideration intragroup transactions whereby an OPD only has to comply with requirements appropriate to it. The intention these transactions should be captured for reporting purposes, however exemptions may apply with respect to certain requirements if the Authorities consider it appropriate.”</i> <i>Do ODP’s need to submit a separate request, or will the regulators still notify ODP’s if they are exempt?</i>	The Authorities will not automatically exempt – an application will need to be made to the Authorities. • The Authorities will respond to requests for exemption by way of the release of application guidance on the websites of the Authorities, whilst other requests will be responded to on a bilateral basis.

PART B: List of Commentators and full set of comments and responses

List of commentators		
No.	Name of organisation	Acronym
1.	Banking Association South Africa	BASA
2.	FirstRand Limited	FirstRand
3.	Sanlam Limited	Sanlam

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
Amendments to Paragraph 1				
1.	BASA	(h) “as may be determined”	Does this replacement imply there is a new/extended criteria for determining who is a counterparty and if so, what will the criteria be?	•This is not intended to imply a new/extended criterion of what constitutes a counterparty. The words “as may be determined” simply replaces the word “declared”, and the amendment constitutes a refinement to align the terminology used to that of the FSR Act. The power to extend the definition of a counterparty has not changed. Please see paragraph paragraphs 3.23 and 3.24 of the Statement of Need.
Amendments to Paragraph 2				
2.	BASA	General Application 2.1 (b)	A ‘ <i>financial institution</i> ’ is defined in the Financial Markets Act to include pension funds, friendly societies, collective investment schemes, managers or nominees of collective	The definition of financial institution must be read in accordance with the definition of a financial institution in terms of the FSR Act, in terms of which this Joint Standard is made. Please see the preamble in the definitions

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			investment schemes, insurers, and banks, but has not been defined in Standard 2/2020 This is yet another definition (which differs from the term 'counterparty' in terms of the ODP Code of Conduct and different from 'counterparty' in terms of the Joint Standard 2 of 2020) will cause confusion. ➤ we recommend that a definition of "financial institution" must be included. ➤ Further clarity is required on whether it is the intention to capture non-SA financial institutions in this definition.	section that reads: <i>"In this Joint Standard, "the Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, and unless the context indicates otherwise"</i> In addition to this, the sentence in which the term financial institution is used must be read in its entirety i.e. a financial institution that is a counterparty. The terms should therefore be read together to understand the meaning. Reference to "financial institution" should not be considered in as per the Financial Markets Act, 2012, for purposes of the Joint Standard. The term counterparty is not defined in the ODP Code of Conduct and in the interpretation section of the Code it is expressed that definitions as per the Regulations should be read as they are defined in the Regulations. Counterparty is defined in the Regulations and the same definition is also used in Joint Standard 2 of 2020. Pension funds and friendly societies are not required to report nor comply with the need for margin requirements as required by the Joint Standard, at this stage.

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
3.	BASA		In addition, the amendment states that the reporting obligation will rest on a 'financial institution that is a counterparty' suggesting it will only apply if the 'financial institution' is also a 'counterparty'. The 'financial institution' definition and counterparty definition only overlap in respect of a CIS, insurer and bank and there is no overlap with pension fund and friendly society. Clarification is required on whether it is the intention to capture non-SA financial institutions in this definition i.e., does this mean therefore that pension funds and friendly societies are not required to report, based on the fact they are not also counterparties?	Pension funds and friendly societies are not required to report nor comply with the need for margin requirements at this stage. The Authorities will consider in future whether it is necessary to bring these entities into scope.
4.	BASA	Par 2.2 (2)(a) Treatment of intra-group transactions	Are foreign counterparties in the same group required to monitor the gross notional on an everyday basis in to determine whether the aggregate outstanding gross notional amount in the group is below ZAR100billion?	Yes. Where the provider is licenced in South Africa, if it has foreign counterparties in its group, it must monitor the R100 billion threshold. For example, there may be a branch of a foreign bank operating in South Africa. This branch obtained an ODP licence. It may transact with foreign counterparties in its group for which it must monitor the threshold of R100 billion. Where the threshold is breached, the relevant regulatory margin amount must be exchanged

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
5.	Sanlam	Paragraph 6(2A)	When would the Authorities make use of the specified collateral? Please clarify the meaning or re-word for clarity. What are the risk mitigation requirements that the regulator intends imposing in respect of non-cash collateral?	The paragraph seems to have been misunderstood – it does not read that the Authorities will make use of the specified collateral. Paragraph 2A explains that when the Authorities determining eligible collateral (by notice on the websites) the Authorities may make the use of the specified collateral (by the industry) subject to certain conditions. The risk mitigation requirements will be determined by notice on the Authorities' websites, following a public consultation process. Please note that, as with the proposed collateral types, the proposed risk mitigation measures will be consulted on separately.
Amendments to Paragraph 4				
6.	BASA	Par. 4.2(1) "From the effective date of this Joint Standard to 31 August 2021..."	With the revised implementation date set to February 2023; should the revised amended dates not be included into the revised Standard? We would propose that the dates in Section 4.2(1) and 4.2(2) should be moved to revised 28 February 2023 (instead of 31 August 2021 and 31 August 2022) to confirm that the change in deadlines for phased implementation applies to all market participants, including the banks in Phase 1, otherwise it appears to only apply to those	Following the release of Joint Notice 1 of 2022, only dates that are prospectively impacted will be amended in the revisions to the Joint Standard on Margin Requirements. The change does not impact phase 1 of the initial margin requirements noted in 4.2(1) and 4.2(2). The Authorities are not extending the full schedule of initial margin requirements.

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			meeting the lower thresholds in the later phases.	
7.	BASA	Par. 4.2(1) "...when transacting with a counterparty belonging to a group..."	Is this provision only applicable if the counterparty also belongs to a group that also meets the conditions set in this paragraph, i.e., average gross notional amounts exceeding R30trio? What about when the counterparty does not belong to a Group?	• Yes, the threshold applies at a group level. • According to the Authorities, this would apply trivially as a group can also house a single licensed entity (bank, security firm) that holds an authorised OTC derivative provider (ODP) licence or counterparty.
8.	BASA	Par. 4.2(2) "...when transacting with a counterparty belonging to a group..."	Same comment as above.	Same comment as above.
9.	BASA	Par. 4.6(b)(iv) "the data must contain a period of significant financial stress"	If within the 5 years, there are no insignificant financial stress situations, should the data be discarded and/or a separate period that could potentially fall outside of the 5-year period be considered?	The Authorities have considered this matter and will provide guidance on the expectation in this regard through separate communication to industry, as it is not comprehensively dealt with in the Joint Standard.
Amendments to Paragraph 6				
10.	BASA	Eligible collateral 6(2A)	The additional clause suggests that the right of use of certain eligible collateral may be subject to certain conditions prescribed by the Authorities based on risk management and internal controls of a counterparty.	Yes, the right of use of certain eligible collateral may be subject to certain regulatory conditions, as may be determined by the Authorities.

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			➤ Does this suggest that there may be regulatory restrictions on the right of use of collateral, even though full legal title is transferred, or full use rights are specified in terms of the standard ISDA published VM CSAs? If the right of use of collateral is intended to be restricted, then this will require a substantial re-write of VM CSAs and possible negative operational impacts and other unintended consequences. In addition, the imposing of a restriction on the right of use of collateral which has been transferred outright in title, may give rise to re-characterisation risk of the outright transfer nature of the VM CSA. The globally accepted principle that VM may be used in any way and IM may not be used in any way should be maintained. As communicated in the industry meetings of September 2021 and May 2022, any amendments to regulations, eligible collateral and now the inclusion of reporting requirements will require a re-papering exercise (CSA) to be undertaken. ODPs were provided with an extension until 16 February 2023 to complete the signing of CSAs with counterparties, as the previous one-year timeline was not adequate time to do so.	In addition, the proposed amendments will enable the Authorities to impose appropriate risk mitigation requirements on providers wanting to make use of non-cash collateral. Please see paragraphs 3.10 to 3.17 of the Statement of Need explaining the need for the requirement. The intention of the Authorities in the proposed insertion is to enhance risk management protocols, which may be considered supplementary in nature to existing risk management protocols undertaken by providers and in scope counterparties.

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
	BASA		Do the Authorities still intending of having a framework to expand on as to what will be accepted as collateral, if so; should the current amendments not refer to the framework, or this will only be mentioned once the framework is in place? ➤ The current collateral options provided are not consistent with international standards.	Agreed. The Authorities will in due course consult on the proposed set of permissible collateral.
11.	BASA	Par 2A(a) "must publish the determination by notice on the website of the Authorities"	"Website" should be amended to "Websites" as both authorities have their own website and to be consistent with reference made in Par 6A	Agreed, and will be amended.
12.	Sanlam		Explain rationale for counterparties that are financial institutions needing to report on trades. What information will be provided by the financial institution that is not already provided by the provider of the derivative? Will this not result in double reporting in respect of the same trade/s.	The Authorities require reporting by counterparties, particularly where these counterparties trade with derivative providers that are not licensed in South Africa. As such, this requirement will not necessarily result in double counting.
6A Reporting Requirements				
13.	BASA	6A(1)	It is unclear why it is necessary to state that a " <i>A provider that enters into a non-centrally cleared OTC derivative transaction with a counterparty or a foreign counterparty</i> " must report?	The Authorities propose that the reporting will be done at a netting set level for each counterparty above the minimum transfer amounts stipulated in the Joint Standard on Margin Requirements.

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			➤ Must reporting be done on the value of the underlying derivatives positions as well as the amount of IM and VM posted in respect of those derivatives positions? ➤ We would recommend that it is simply stated that ODPs must report, and if the intention is to ensure that trades with counterparties and foreign counterparties are reported (i.e., all trades are subject to the margin rules). See note above with regards to the definition of "financial institution".	The definition of financial institution must be read in accordance with the definition of a financial institution in terms of the FSR Act, under which this Joint Standard is made. Reference to "financial institution" should not be considered in as per the FMA, for purposes of the Joint Standard. Please see detailed response to comment no 2 above in this regard.
14.	BASA		How will the restriction on the right of use of IM collateral (and potentially the limitation on the right of use in respect of certain types of eligible collateral types for VM) be reflected in these reports?	The reporting will be adapted and advanced over time to capture any additional elements and requirements as applicable, including the change in permissible collateral.
15.	BASA	6A(2)	We propose that the Authorities amend the wording to reflect as follows: <i>"For purposes of subparagraph (1), the Authorities must–</i> <i>(a) publish the determination by notice on the websites of the Authorities; and</i> <i>(b) determine the form, manner and content and period of reporting by notice on the websites of the Authorities."</i> This allows for a clear requirement on the FSCA to include the details of what ODP's are	• Disagree with proposed change. The wording is intended to be enabling in its construct and not mandatory. The Authorities can exercise discretion on this provision 6A (2).

Public comments received and responses from the Authorities				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			required to adhere to, rather than leaving it open.	
GENERAL COMMENTS				
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
16.	BASA	Revised Standards	Industry has raised its concerns around timing and re-papering with effectively only 5 months available. In addition, concerns were also raised on the number of ODP licences issued to date especially in the CFD / buy side markets This is effectively making a February 2023 go-live unachievable ➤ What are the implications if these CSAs are not concluded?	At this stage the view is from industry engagements that the effective date of February 2023 is still achievable. However, the Authorities will assess the timelines on an ongoing basis and respond with guidelines to the industry, where necessary and appropriate.
17.	BASA	Reporting Requirements	We are concerned about the inclusion of this reporting requirement into the Standards, as it appears to replicate the ODP requirements (but changes the scope).	No, there is no replication of the ODP requirements as envisaged in FSCA Conduct Standard 3 of 2018. Conduct Standard 3 of 2018 was issued in line with Regulation 3 of the FMA Regulations which

GENERAL COMMENTS				
No	Comment ator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			Collateralisation is among the fields required to be reported as part of the ODP reporting obligations, and this appears to duplicate this requirement. We note that as a requirement of ODP authorisation, reporting capability had to be built, and it is important to ensure consistency between these requirements to leverage the work already undertaken by ODPs. Also, as communicated to industry in May 2022, the Authorities have now developed and are in the advanced stages of deploying regulatory reporting requirements to ODPs and counterparties in a period, manner, and format to be prescribed by the Authorities. The format of the regulatory reporting will be published for industry comments and inputs before finalization	requires that <i>"An authorised OTC derivative provider must report OTC derivative transactions to a licensed trade repository or a licensed external trade repository in the form and manner prescribed by the Authority under section 58 of the Act"</i>. The reporting requirement in Conduct Standard 3 of 2018 is placed on a provider and/or a central counterparty to report to a trade repository. The reporting requirements in Joint Standard 2 of 2020 is placed on the provider and the counterparty that is a financial institution and the reporting will be to the Authorities and not to a TR at this stage. Conduct Standard 3 of 2018 has not become effective because SA does not have a licensed TR. This Conduct Standard can only be enforced by the FSCA as it is a Conduct Standard issued in terms of the FMA, whereas, Joint Standard 2 of 2020 is enforceable by both the FSCA and the PA and the reporting intention there is different to that of Conduct Standard 3 of 2018.

GENERAL COMMENTS				
No	Comment ator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
18.	BASA	Statement of Need	There appear to be confusion around the application of thresholds to variation margin, as it states in the accompanying Statement of Need that <i>"While there may be additional administrative costs, it must also be noted that the regulatory reporting requirements will only apply to providers that fall within the relevant thresholds for exchanging margin, as specified in the Joint Standard."</i> The impact will therefore be limited and only apply to providers that exchange margin above the threshold." This statement is misleading as there are no thresholds applicable to the exchange of variation margin. ➤ We recommend a timeline attached to the "Statement of Need" to allow impacted entities sufficient time in advance of reporting changes to implement any required changes.	There are thresholds applicable to the exchange of variation margin. The Authorities are referring to the minimum transfer amount noted in paragraph 3(3) of the Joint Standard. Notably as well, the threshold as stipulated in paragraph 5(3) applies, given that a period of six months have passed since the effective date of the Joint Standard. The Statement of Need will be amended and sufficient time will be allowed for specific entities to incorporate and adhere to the necessary reporting requirements, as will be determined.
19.	BASA	FAQ	As communicated to industry at the May 2022 meeting, the Authorities were in the final stages	Yes, the Authorities are currently developing the responses to assist the

GENERAL COMMENTS				
No	Comment ator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			of the preparation of a FAQ document, which will be approved by the relevant governance processes of the Authorities. • The FAQ document would be published on the websites of the Authorities • All policy clarity matters relating to the August 2021 Standards that were raised by the industry members will be covered in the FAQ document We have refrained from including the outstanding items on the "Technical Specifications List" pending the release of the FAQ, however the responses would assist ODP's in their overall reading of the amendments.	industry in interpreting the proposed amendments in a FAQ document.
20.	BASA	N/A	Where a branch of an international bank is simply using back-to-back internal clearing, clarification is requested from the Authorities that there is no regulatory requirement for IM or VM to be held onshore?	The Authorities are considering this as part of the exemption framework, which is still under development. The current position however is that the requirements in the Joint Standard will apply in the example

			GENERAL COMMENTS	
No	Comment ator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
				provided, unless the entity has been granted an exemption.
21.	BASA	Intragroup exemptions	Previously the industry requested that intragroup OTC activity should be excluded from the ODP regulatory ambit. At the time, the Authority formally undertook to consider intragroup exemptions during the drafting of the ODP regulations. The response received: <i>“Concerns have been noted. An appropriate regime will be put in place that takes into consideration intragroup transactions whereby an OPD only has to comply with requirements appropriate to it. The intention these transactions should be captured for reporting purposes, however exemptions may apply with respect to certain requirements if the Authorities consider it appropriate.”</i>	The Authorities are considering this as part of the equivalence framework, which is still under development. Where if an ODP is deemed from an equivalent jurisdiction, it would still need to apply to be exempted from certain requirements or obligations. The Authorities will not automatically exempt – an application will need to be made to the Authorities. The Authorities will respond to certain requests for exemption by way of the release of application guidance through notices on the websites of the Authorities, whilst other requests will be responded to on a bilateral basis.

			GENERAL COMMENTS	
No	Commentator	Section/ Paragraph of the Joint Standard	Comment	Authorities' response
			Do ODP's need to submit a separate request, or will the regulators still notify ODP's if they are exempt?	