

SOUTH AFRICA RESPONSE - ADDRESSING LEGAL BARRIERS TO REPORTING OF, AND ACCESS TO, OTC DERIVATIVES TRADE TRANSACTIONS DATA

Trade Reporting Framework Timelines

South African Authorities are committed to the G-20 regulatory reform initiatives, are in the process of implementing OTC derivatives frameworks and requirements aligned to international recommendations and requirements, and fully support harmonisation of local and international frameworks.

There has been progress made in implementing OTC derivatives reforms and in 2013, a legislative framework was promulgated through the Financial Markets Act¹ which was enacted to provide for the licensing of Trade Repositories. The draft Ministerial Regulations and Board Notices issued by the Minister of Finance and Financial Services Board respectively, further provide for the trade reporting obligations for OTC derivative transactions and extend these requirements to market participants.

In 2016 the 3rd draft of the Financial Market Act regulations were released for public consultation, the regulations contain provisions that extend the reporting obligations to market participants and require that OTC derivative transactions are reported to a licensed trade repository or licensed external trade repository.

Furthermore, the Board notices released in April 2017² for comment include requirements to report OTC derivatives transactions that are consistent with international frameworks and recommendations and in particular, references the data standardisation requirements for reporting. We expect that these reporting requirements will be effective at least before the end of 2017.

Progress of the domestic reform initiative is also dependent on the overall legislative framework proposed under the Twin Peaks regime to be established through the Financial Sector Regulation Bill³, which also contains consequential amendments to the Financial Markets Act. The proposed provisions in the Financial Markets Act amendments will allow domestic Authorities to permit participants to utilise the services of foreign trade repositories to meet their reporting obligations subject to the equivalence assessments by South African Authorities. In addition, the provisions contained in the Bill allow for further co-operation and supervisory arrangements between South African Authorities and foreign regulators.

¹ 19 of 2012.

² Trade Reporting Obligations Board Notice, available at <https://www.fsb.co.za/Departments/capitalMarkets/Pages/Documents-for-Consultation.aspx#>

³ B34D – 2015.

The Financial Sector Regulation Bill has, as of 22 June 2017, been passed by Parliament and is awaiting Presidential assent. It is therefore expected that the above framework will be in place before the end of 2017.