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1(1)	**Definitions**	
	"financial customer" means a person to, or for, whom a financial product, a financial instrument, a financial service or a service provided by a market infrastructure is offered or provided, in whatever capacity, and includes— (a) a successor in title of the person; and (b) the beneficiary of the product, instrument or service;	Clarity is required regarding which functions of a market infrastructure are regarded as "services", as this will determine who the financial customers of a market infrastructure are and in respect of which functions conduct standards can be issued. This issue was raised with National Treasury but not discussed, on 10 August 2016.
	"market infrastructure" means each of the following, as they are defined in section 1(1) of the Financial Markets Act: (a) A central counterparty; (b) a central securities depository; (c) a clearing house; (d) an exchange; (e) a trade repository;	This proposed definition of "market infrastructure" in the FSRB is only suitable if the intention of the drafter was to include unlicensed market infrastructures within the ambit of the FSRB, as the definition of "market infrastructure" in the FMA refers to "licensed" (e.g. "a licensed exchange", "a licensed clearing house etc.). However, if this was not the drafter's intention then it is preferable to amend the definition in the FSRB as follows: **"market infrastructure"** has the same meaning ascribed to it in terms of section 1 of the Financial Markets Act;
	"systemic event" means an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services;	The definition of "systemic event" does not properly incorporate functions of market infrastructures, as although market infrastructures are financial institutions they do not provide financial products or services. We recommend that the definition of "systemic event" should be amended as follows: **"systemic event"** means an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services or, in the case of market infrastructures, continue to perform market infrastructure functions;.
3(3)(b)(i)	**Financial services**	Although in terms of section 3(2) of the FSRB, services provided and functions

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	3. (1) In this Act— "financial service" means— … (2) A service provided by a market infrastructure, and a function under a financial sector law performed by a market infrastructure, are not financial services unless designated by Regulations in terms of subsection (3). (3) The Regulations may designate as a financial service any service that is not regulated in terms of a specific financial sector law if— (a) in doing so, this will further the object of this Act set out in section 7; and (b) the service relates to— (i) a financial product, a foreign financial product, a financial instrument or a market infra-structure; or …	performed by market infrastructures are not "financial services", section 3(3)(b)(i) of the revised FSRB makes provision for a service provided by a market infrastructure to be designated as a financial service in Regulations. This issue was discussed with National Treasury on 10 August 2016. The JSE requested clarity in respect of the type of services that are contemplated, given that all of the functions of market infrastructures are already regulated under the FMA. Based on the discussion with National Treasury, the JSE understands that the services contemplated, as potentially being designated as financial services and therefore subject to regulation, relate to ancillary services provided by a market infrastructure which are not part of the market infrastructure's defined functions and duties in the FMA but which flow from or are associated with their defined functions and duties as a market infrastructure.
4(1)	**Financial stability** 4. (1) For the purposes of this Act, "financial stability" means that— (a) financial institutions generally provide financial products and financial services without interruption; (b) financial institutions are capable of continuing to provide financial products and financial services without interruption despite changes in economic circumstances; and (c) there is general confidence in the ability of financial institutions to continue to provide financial products and financial services without interruption despite changes in economic circumstances.	The meaning of "financial stability" as defined in section 4(1) in the FSRB does not properly incorporate the functions of market infrastructures, and while market infrastructures are financial institutions, they do not provide financial products or services. This issue was discussed with National Treasury on 10 August 2016 and the JSE understands that National Treasury will review the wording of this provision to incorporate the functions of market infrastructures.
25(3)(d)	**Financial Sector Contingency Forum** 25. (1) … (3) The Financial Sector Contingency Forum is composed of at least eight members, including—	A market infrastructure designated as a systemically important financial institution (SIFI) is an important role player and decision maker during a systemic event and should be represented on the Financial Sector Contingency Forum. However, the composition of the Financial Sector Contingency Forum, as provided for in section 25(3) of the FSRB, does not provide for the inclusion

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	(a) a Deputy Governor designated by the Governor, which Deputy Governor is the Chairperson; (b) representatives of each of the financial sector regulators; (c) representatives of other organs of state, as the Chairperson may determine; and (d) representatives of financial sector industry bodies and any other relevant bodies, as the Chairperson may determine.	of a market infrastructure, as it is not one of the "industry bodies" nor would it fall within the category of "any other relevant bodies". This issue was discussed with National Treasury on 10 August 2016 and it is the JSE's understanding that would to revise the wording of section 25(2)(d) to replace "any other relevant bodies" with "any other relevant persons".
31	**Winding up and similar steps in respect of systemically important financial institutions** 31. (1) None of the following steps may be taken in relation to a systemically important financial institution or a systemically important financial institution within a financial conglomerate without the concurrence of the Reserve Bank: (a) Suspending, varying, amending or cancelling a licence issued to that financial institution; (b) adopting a special resolution to wind up the financial institution voluntarily; (c) applying to a court for an order that the financial institution be wound up; (d) appointing an administrator, trustee or curator for the financial institution; (e) placing the financial institution under business rescue or adopting of a business rescue plan for the financial institution; (f) entering into an agreement for amalgamation or merger of the financial institution with a company; and (g) entering into a compromise arrangement with creditors of the financial institution. (2) A step referred to in subsection (1) that is taken without the Reserve Bank's concurrence is void.	The JSE recognises the SARB's interest in financial stability and the reduction of systemic risk, which would include an interest in any action taken in relation to a systemically important financial institution or a systemically important financial institution within a financial conglomerate ("SIFI") regarding suspending, varying, amending or cancelling a licence issued to that financial institution. However, the JSE remains concerned that the application of the provision in the FSRB which gives effect to the Reserve Bank's interest in licence matters may be contrary to the achievement of other important objects of the FMA which a market infrastructure such as the JSE is obliged to promote at all times. Section 31 of the FSRB states that the SARB must concur before any party can give effect to a decision to, inter alia, suspend, vary amend or cancel a licence issued to a financial institution that is a SIFI. This implies, for example, that if an exchange or a clearing house has authorized a SIFI to perform certain securities services and the SIFI no longer meets the authorisation criteria, the exchange or clearing house may not take any action in relation to the SIFI's authorisation status unless the SARB concurs with such action. The JSE raised its concern regarding this provision in our comments on a draft version of the FSRB and suggested that the provision should instead require consultation with the SARB but the provision in the current version of the FSRB still requires concurrence. The JSE is the licensing authority for its authorised users which includes its

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		trading members and clearing members, some of whom will be regarded as SIFIs. A situation could arise in which an authorised user which is a SIFI no longer meets the JSE's authorisation criteria due to financial difficulties or serious conduct breaches. The rules of the JSE, in support of the objects of the FMA, require the JSE to act in such instances to protect investors and the integrity of the market. Such action may require the JSE to suspend, vary, amend or cancel the authorization of the relevant authorised user and the JSE would find itself in an untenable situation if it is obliged to take such action to protect investors and the integrity of the market but it is unable to do so because the SARB does not concur with the JSE's decision. The JSE believes that this issue requires further consideration in order to achieve the important financial stability objectives of the SARB and the FSRB whilst also achieving the other important objectives of the FMA in relation to investor protection and market integrity. National Treasury and the SARB have advised that if the JSE wishes to pursue discussions on this issue we should raise our concerns with the Governor. We have not yet had an opportunity to initiate any discussions on the issue with the Governor but we intend to do so shortly. The outcome of those discussions will determine whether our concerns regarding the application of section 31 of the FSRB can be allayed or whether we require the Committee to consider the appropriateness of the current provision.
108(1)	**Additional matters for making standards** 108. (1) The standards referred to in sections 105, 106 or 107 may be made on any of the following additional matters: (a) Fit and proper person requirements, including in relation to— (i) personal character qualities of honesty and integrity; (ii) competence, including experience, qualifications and knowledge; and (iii) financial standing;	The current provisions in the FSRB relating to standards still affords the Authorities the power to issue standards on the same matters that are regulated by the self-regulatory organisations (SROs) and this could lead to duplicate or differing requirements on the same matters, arbitrage opportunities, duplication of oversight and separate enforcement processes. The JSE is of the view that the Authorities' standards should only be made for matters not covered by SRO rules. This issue was discussed with National Treasury on 10 August 2016 and based on the discussion, the JSE understands that the intention was not to duplicate

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	(b) governance, including in relation to— (i) the composition, membership and operation of governing bodies and of substructures of governing bodies; and (ii) the roles and responsibilities of governing bodies and their substructures; (c) the appointment, duties, responsibilities, remuneration, reward, incentive schemes and, subject to applicable labour legislation, the suspension and dismissal of, members of governing bodies and of their substructures; (d) the appointment, duties, responsibilities, remuneration, reward, incentive schemes and, subject to applicable labour legislation, the suspension and dismissal of, key persons; (e) the operation of, and operational requirements for, financial institutions; (f) financial management, including— (i) accounting, actuarial and auditing requirements; (ii) asset, debt, transaction, acquisition and disposal management; and (iii) financial statements, updates on financial position, and public reporting and disclosures; (g) risk management and internal control requirements; (h) the control functions of financial institutions, including the outsourcing of control functions; (i) record-keeping and data management by financial institutions and representatives; (j) reporting by financial institutions and representatives to a financial sector regulator; (k) outsourcing by financial institutions; (l) insurance arrangements, including reinsurance, of financial institutions;	requirements in the standards prescribed by the authorities and the rules of the SRO, and that National Treasury would revise the wording in the FSRB to give effect to this.

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	(m) the amalgamation, merger, acquisition, disposal and dissolution of financial institutions; (n) recovery, resolution and business continuity of financial institutions; and (o) requirements for identifying and managing conflicts of interest. …	
113	**Power to grant licences** 113. (1) The responsible authority may, on application, grant a licence. …	The Prudential Committee is not granted specific licensing powers in section 42 of the FSRB whereas the Executive Committee of the Financial Sector Conduct Authority (FSCA) is in section 60. Is this because the Prudential Committee will not be responsible for granting licences? The reason for difference in powers between the two authorities is not clear. This issue was raised with National Treasury but not discussed, on 10 August 2016
159(8)	159(8) An approval in terms of subsection (2), (3) or (4) may not be given unless the responsible authority is satisfied that — (a) the responsible authority is satisfied that the person becoming a significant owner, or the arrangement, will not prejudicially affect or is likely to affect the prudent management and the financial soundness of the financial institution; and (b) the responsible authority is satisfied that the person meets and is reasonably likely to continue to meet applicable fit and proper person requirements.	Remove the words "the responsible authority is satisfied that" from subsections (a) and (b) as it is a duplication: 159(8) An approval in terms of subsection (2), (3) or (4) may not be given unless the responsible authority is satisfied that — (a) ~~the responsible authority is satisfied that~~ the person becoming a significant owner, or the arrangement, will not prejudicially affect or is likely to affect the prudent management and the financial soundness of the financial institution; and (b) ~~the responsible authority is satisfied that~~ the person meets and is reasonably likely to continue to meet applicable fit and proper person requirements.
211	**Restrictions on financial institutions in relation to ombud schemes** 211(1) … (3) An ombud scheme may not describe or hold itself out as being recognised as an industry ombud scheme in terms of this Part unless it is so licensed. (4) An ombud scheme may not permit another person to identify it as	Industry ombud schemes are recognised, not licensed, in terms of section 195. We recommend that sections 211(3) and (4) are amended as follows: (3) An ombud scheme may not describe or hold itself out as being recognised as an industry ombud scheme in terms of this Part unless it is so ~~licensed~~ <u>recognised</u>. (4) An ombud scheme may not permit another person to identify it as

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	recognised as an industry ombud scheme in terms of this Part unless it is so licensed.	recognised as an industry ombud scheme in terms of this Part unless it is so ~~licensed~~ recognised.
274	**Exemptions** 274. (1) The responsible authority 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) is contrary to a specific financial sector law or may otherwise prejudice the achievement of the objects of a financial sector law. (2) The responsible authority must publish each exemption.	Is it contemplated in section 274 of the FSRB that a financial service provider could be exempted from having to obtain a licence or would that be in contravention of the sectoral law and therefore not permitted? If a licence exemption is contemplated there should be stricter criteria than merely whether it will not be contrary to the public interest. This issue was raised with National Treasury but not discussed, on 10 August 2016.

Schedule 4 – Consequential amendments to Insolvency Act

Section		Comment
35(A)	**35(A) Transactions on exchange**	The heading of Section 35(A) of the Insolvency Act - ”Transactions on exchange”, is misleading, as the protection afforded in terms of this provision extends to transactions in unlisted securities (e.g. OTC derivatives) that may be cleared by a clearing house, a central counterparty or a licenced external central counterparty. We recommend that the heading of Section 35(A) be amended to “Market infrastructure transactions”

Schedule 4 Consequential amendments to FMA		
	Section	**Comment**
1(1)	**Definitions and interpretation**	
	"registrar"	The definition "registrar" should be deleted, as "Authority" is defined; retaining the definition would cause confusion as the wholesale amendment replacing the term "registrar" with Authority would result in two definitions for "Authority".
4(1)(f)	**4. Prohibitions and adherence to authorisation by authorised users, participants and clearing members** (1) No person may – (a) … (f) act as a nominee unless that person is approved under section 76 or under standards prescribed under the Financial Sector Regulation Act;	All nominees are approved under section 76 of the FMA so it is unclear why section 4(1)(f) of the FMA provides for an alternative means of approval under standards set by the authorities. This issue was raised with National Treasury but not discussed, on 10 August 2016.
5(1) and (2)	**5. Powers of the Minister** (1) The Minister may prescribe, in accordance with section 107(2), - (a) requirements for the regulation of unlisted securities; (b) a category of regulated persons, other than those specifically regulated under this Act, if the securities services provided, and the functions and duties exercised, whether in relation to listed or unlisted securities, by persons in such category, are not already regulated under this Act, and if, in the opinion of the Minister, it would further the objects of the Act in section 2 to regulate persons in such categories; (c) the securities services that may be provided, and the functions and duties that may be exercised, by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external central counterparty, external clearing member or external trade repository, as the case may be, if such securities services, or functions and duties have not been prescribed by this Act.	In respect of section 5(1)(b) of the FMA, the JSE was concerned that the revised provision could be applied in practice to provide for the creation of new types of market infrastructures that are merely variations of the existing types of market infrastructures, but differently defined, with different functions and duties, and that this could be achieved through subordinate legislation rather than through establishing new policy in the principal legislation. For example, the Minister could in accordance with this section prescribe that a multilateral trading facility (MTF), which does not perform the same functions as an exchange, should be a regulated person. It is the view of the JSE that if such a proposal in respect of an MTF were to be advanced, rather than the prescription of the Minister, the establishment of a new policy and the following of the full legislative process would be necessary. This concern was discussed with National Treasury on 10 August 2016 and based on the discussion, the JSE understands that the revision to the provision was introduced to specifically provide for flexibility in regulating any market infrastructure currently not captured or contemplated under

Schedule 4 Consequential amendments to FMA		
	Section	**Comment**
	(2) An external authorised user, external exchange, external participant, external central securities depository, external clearing house, external central counterparty, external clearing member or external trade repository may only provide those securities services or exercise functions or duties, as the case may be, prescribed by the Minister in terms of subsection (1)(c).	the FMA but whose activities could impact on the objects of the FMA, and would not apply to the functions and duties of existing market infrastructures such as exchanges, central securities depositories, clearing houses and trade repositories. In respect of section 5(1)(c) of the FMA, the JSE notes that the inclusion of the phrase *"if such securities services, or functions and duties have not been prescribed by this Act"* completely changes the intention of the original provision in that it removes the power of the Minister to determine which services or functions provided for in the FMA an external person could be entitled to perform. This determination provided the licencing authority with the parameters within which it could grant licences to an external person as regards the securities services or functions and duties that the external person could perform. The JSE does not believe that it was the intention of the amendment to remove this determination. As a result of the proposed amendment, the Minister would only be entitled to prescribe those services or functions outside of those already prescribed in the Act which are performed by an external person and which would become subject to regulation. Consequently this amendment also renders section 5(2) meaningless as section 5(2) cross references section 5(1)(c) and it implies that an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external central counterparty, external clearing member or external trade repository may **only** provide those securities services or exercise functions or duties that are not already provided for in the FMA but which are prescribed by the Minister.
6(3)(m)	**6. The Authority** (3) In performing its functions in terms of this Act, the Authority—; (a) … (m) may exempt any person or category of persons from the provisions of a	This issue was discussed with National Treasury on 10 August 2016. The JSE remains concerned that the Authority and Prudential Authority, together with the SARB, will have the ability to exempt an external market infrastructure from the licensing provisions of the FMA, despite

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	section of this Act 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 this Act; and (ii) the application of said section will cause the applicant or clients of the applicant financial or other hardship or prejudice; or (iii) in relation to an external market infrastructure, and with the concurrence of the South African Reserve Bank and the Prudential Authority, 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 co-operate and share information with the Authority, the South African Reserve Bank and the Prudential Authority to assist with the performance of functions and the exercise of powers in terms of financial sector law;	such power itself being contrary to the purpose of the FMA and its licensing provisions, and detrimental to the objects of both the FMA and the FSRB. Our legal view on this issue is attached to this submission as Annexure B. The FMA provides, in section 6(3)(m), for the exemption of any person or category of persons from the provisions of a section of the FMA, which could include the requirement to be licensed, and proposed section 49A(1) read with amended section 6(3)(m) expressly provides for the exemption of an external central counterparty from the requirement to be licensed. However, the policy rationale or the necessity for the provision of an exemption from the need to licence a market infrastructure and for the criteria for assessing whether a market infrastructure should be either licensed or exempted from licensing has not been incorporated in the FMA. Whilst the JSE remains strongly of the view that exemptions from licensing for market infrastructures operating in South Africa should not be permitted as a matter of policy, for the reasons set out in Annexure B, if the Committee deems it necessary to provide for such exemptions in the FMA as a matter of policy, we believe that exemptions should only be enabled within a sound policy framework which is established from the outset and to which reference is made in the FMA. We submit that the granting of an exemption from licensing for market infrastructures will not meet the criteria for exemptions set out in section 6(3)(m)(i) of the FMA in relation to the public interest and the objects of the Act and we do not believe that the additional specific criteria for exemption from licensing for external market infrastructure set out in new proposed section 6(3)(m)(iii) adequately reflects the most important policy considerations to be taken into account if exemptions from licensing are to be considered. The most important policy considerations

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		should be the extent of the impact of the activities of the external market infrastructure on the South African financial system and whether there is no reason for there to be any regulation of the external market infrastructure by the South African regulators.
6(8)	**6. The Authority** … (8) In relation to the persons in the category prescribed in terms of section 5(1)(b), standards may - (a) prescribe criteria for the authorisation of such persons; (b) prescribe conditions and requirements for the provision of securities services by such persons, including prescribing conduct standards and imposing reporting requirements; (c) prescribe standards in accordance with which securities services by such persons must be carried on; and (d) prohibit such persons from providing securities services or undertaking any activities which may frustrate the objects of this Act or the Financial Sector Regulation Act.	This provision has not been aligned with the amendment to section 5(1)(b) to enable the Authority to make standards relating to functions and duties exercised by a regulated person.
49(A)(1) and (10)	**Licensing of external central counterparty** 49A. (1) An external central counterparty must be licensed under this section to exercise functions or duties, or provide services as prescribed in terms of section 5(1)(c) and (2), unless it is exempt from the requirement to be licensed. … (10) The licence granted in terms of subsection (8) must specify those functions or duties, or services that may be provided by the external central counterparty and the securities in respect of which those functions or duties, or services may	Following on from our comments in respect of sections 5(1)(c) and 5(2), it is implicit in section 49A, as a result of the proposed amendment to section 5(1)(c), that a licenced external central counterparty may only exercise functions and duties and provides services not already provided for in the FMA but which have been prescribed by the Minister. We submit that this was not the intention of the drafter of the consequential amendments to the FMA.

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	be performed.	In terms of the provisions of the FMA, MIs fulfil licensed duties and functions (Section 10 – exchanges, section 30 - CSDs and section 50 - clearing houses) and these MIs authorise their users, clearing members and participants to provide securities services, as defined, in terms of the rules of the MI. It is an integral part of the MI's licensed duties and functions, as set out in the FMA, to supervise and regulate the securities services provided by these authorised participants. In terms of the regulatory framework presently in place under the FMA, it is not permissible for MIs themselves to provide securities services, primarily as a result of the insoluble conflict of interests that could result if they were to do so. The proposed amended sections 5(1)(c) and 5(2) are intended to refer to market infrastructures when they refer to "functions and duties" and to securities services providers when they refer to "securities services" by the use of the phrase "as the case may be". However, given that section 49A(1) states, inter alia, that an external central counterparty must be licensed to provide "services" as prescribed in section 5(1)(c) and (2), it is implied that an external central counterparty may provide "securities services" and the JSE believes that were an external MI permitted to provide securities services as is proposed and would be prescribed by the Minister in terms of these sections, such would be inconsistent with the provisions applicable to local MIs and would result in unfairness to licenced domestic MIs by virtue of the creation of an anti-competitive environment and as such be prejudicial to the interests of the public. Neither the FSRB nor the FMA contain any licensing requirements in respect of external MIs other than external CCPs and trade repositories. This may be just an oversight, as it is unlikely to be the intention that these external MIs may operate in the South African market without being licensed to do so. The JSE is respectfully of the view that the operation of external MIs is an important matter of public policy that

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		should be dealt with specifically in the FMA, as the superordinate statute. The implementation of the public policy encapsulated in the FMA, such as the detailed regulation of the duties and functions performed by these external MIs, should be dealt with in the Regulations adopted by the Minister.
50(3A)(b)	**50. Functions of licensed clearing house and power of registrar to assume responsibility for functions** … (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 between the execution and fulfilment of legal obligations between counterparties and clients; and (c) facilitate its post-trade management functions.	Section 50(3A)(b) does not accurately describe the functions of a CCP, as a CCP does not manage and process transactions – ▪ from the time of execution. A CCP manages and processes transactions from the time that the transaction is accepted by the CCP for clearing; and ▪ between counterparties and clients. A CCP manages and processes transactions between counterparties. This issue was discussed with National Treasury on 10 August 2016 and based on the discussion, the JSE understands that the reference to clients will be removed from the provision and provision 50(3A)(b) would be revised.
55	**55. Requirements applicable to applicant for trade repository licence and licensed trade repository** (2) The Authority may take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.	It is unclear why the following powers of the Authority have been deleted only in respect of a trade repository: ▪ require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and ▪ prescribe any of the requirements referred to in subsection (1) in greater detail.
56(A)	**Licensing of external trade repository** 56A. (1) An external trade repository must be licensed under this section to perform duties or provide services as prescribed by the Minister in terms of section 5(1)(c) and (2). … (8) The licence granted in terms of subsection (6) must specify the services that may be provided by the trade repository and the securities in respect of which	Following on from our comments in respect of sections 5(1)(c) and 5(2), it is implicit in section 56A, as a result of the proposed amendment to section 5(1)(c), that a licenced external trade repository may only exercise functions and duties and provides services not already provided for in the FMA but which have been prescribed by the Minister. We submit that this was not the intention of the drafter of the consequential amendments to the FMA

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	those services may be provided.	
84	**Additional powers of Authority** 84. The Authority may – (a) after consultation with the relevant regulated markets in the Republic, (i) make conduct standards, or (ii) give regulator's directives for the implementation of such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter; and (b) make conduct standards for the disclosure of inside information.	We believe that sub-paragraph (b) should be deleted as the requirements in respect of the disclosure of price sensitive information should be provided for in the listing requirements of an exchange. The provision of these requirements by the Authority in a standard could lead to duplicate or differing requirements, duplication of oversight and separate enforcement processes. In addition, "inside information" by definition is information that has not been disclosed therefore it is a contradiction in terms to refer to the disclosure of inside information. Disclosure requirements relate to price sensitive information rather than inside information.
90(b)	**90. Accounting records and audit** A regulated person must – (a) maintain on a continual basis the accounting records determined in joint standards and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be determined in joint standards; (b) cause such accounting records and annual financial statements to be audited by an auditor appointed under section 89, within a period determined in joint standards or such later date as the Authority may allow on application by a regulated person; …	We suggest replacing "joint standards" with "conduct standards, or where appropriate, joint standards" in this section, as the Prudential Authority will not have an interest in the accounting records of <u>all</u> regulated persons: A regulated person must – (a) maintain on a continual basis the accounting records determined in <u>conduct or, where appropriate,</u> joint standards and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be determined in joint standards; (b) cause such accounting records and annual financial statements to be audited by an auditor appointed under section 89, within a period determined in <u>conduct or, where appropriate, joint standards</u> or such later date as the Authority may allow on application by a regulated person;
110(4)	**110. Savings and transitional arrangements**	Section 110(4) requires an amendment to refer the correct chapter or section in the FSRB.

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	(1) … (4) Sections 84 and 85 apply to any investigation of alleged non-compliance with or offences under the Securities Services Act, 2004, instituted after its repeal by this Act. …	
110(6)	(6) Despite any other provision of this Act, a clearing house performing the functions of a central counterparty must comply with any requirements imposed by regulations or standards, and must – (a) until 31 December 2021, be licensed as either an associated clearing house or an independent clearing house, and be approved by the Authority, the South African Reserve Bank and the Prudential Authority; (b) as of 1 January 2022, be licensed as both an independent clearing house and a central counterparty.	The JSE was concerned that that the provision does not explicitly exempt JSE Clear from being required to comply with sections 4(2) and 47 (1) of the FMA during the transitional period and further the provision is not clear as to whether any additional approval is required in respect of the licensing of either an associated clearing house or an independent clearing house, or for the performance of the functions of a central counterparty. This concern was discussed with National Treasury on 10 August 2016 and the JSE understands, based on the assurance from National Treasury, that JSE Clear may continue to operate as a central counterparty without having to be licensed as a central counterparty and the approval referred to in section 110(6)(a) would be simply an administrative requirement.