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Regulatory Updates for the week ended 02 June 2017

FinWatch – A Weekly Newsletter

Find the latest edition of **FinWatch** which provides a gist of all regulatory developments impacting the financial services industry in South Africa.

Regulatory Developments

Insurance

SARB and National Treasury propose a deposit insurance scheme for South Africa

The South African Reserve Bank (SARB) published a discussion paper on designing a deposit insurance scheme for South Africa. The main objective of introducing a deposit insurance scheme for South Africa is to protect the less financially sophisticated depositors in the event of a bank failure. It would thereby contribute to consumer protection and enhance the stability of the South African financial system. By protecting the covered deposits in all banks, the deposit insurance scheme can also contribute to the development of a less concentrated banking sector and support the financial inclusion and transformation of the sector. *SARB* Please contact John Martin for more information.

Banking

SARB fined banks R46.5m in 2016 for control weaknesses

According to the Bank Supervision Department (BSD) annual report, The South African Reserve Bank (SARB) fined banks a total of 46.5 million ZAR in 2016 due to weaknesses in their control measures. In addition to the penalty, banks were directed to take remedial action to address their shortcomings. The banks were found to not have facilitated money-laundering or terrorism financing according to the report. Through the BSD, the Reserve Bank will supervise banks to ensure that they comply with the Financial Intelligence Centre Act (FICA). *Fin24* Please contact John Martin to discuss further.

Others

DTI responds to the submissions made on the Transformation of the Financial Services Sector
The DTI has made key observations with respect to the Transformation of the Financial Services sector. Some of the key observations outlined by the DTI are as follows:

- The pace of transformation in the sector is slow.
- Various topics and issues that affect transformation were broadly covered including the role that the state should play; black ownership levels; formation of state & cooperative banks; consumer education and rights; competition & competitiveness; skills development, change of value chains; and data availability.
- The view of the DTI is that the outcomes of the hearings must inform the improvement of the Financial Services Charter as well as relevant policies within government.
- The financial services sector is unique in that is the key facilitator of transformation of the rest of the South African economy.
- Ownership of the sector should not be viewed narrowly but should be viewed as extending beyond the sector to include funding for SMMEs and black businesses in other sectors.
- When entities such as JSE report they need to be a distinction between direct black ownership and ownership through institutional investment .
- Ownership must also be linked and measured based on ownership of assets in the country. For example, it was reported that banks hold R4.87 trillion of assets in the country. There need to be a measure over time on how much of those assets are in black hands directly (Effective Black Ownership and Control).
- the DTI proposes that 80% of skills development in the sector must be focused on supporting black students through bursaries especially in actuarial science, accounting, and CAs.
- Financial Institutions must be incentivized to provide financial access to SMMEs. This includes flexible risk assessment systems, favorable interest rates charges and debt management systems, and greater involvement of the financial institutions in assisting black enterprises in their operations. *Sabinet* Please contact Nhlamu Dlomu for more information.

Joint National Treasury and SARS briefing: (BEPS) Multilateral Instrument.
The Multilateral Instrument is designed to speedily implement the tax-treaty-related BEPS measures. The following actions of existing articles have been implemented:

- Hybrid mismatch arrangements: addresses income earned through transparent entities that are not treated as a taxpayer;
- Treaty abuse: deals with increased concern that dual resident entities are involved in tax avoidance
- Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements: a person sells products in a country in its own name but on behalf of a foreign enterprise that is the owner of the products
- Improving Dispute Resolution: addresses the minimum standard for the dispute resolution process. Sabinet. Please contact Finn Elliot for more information.

NCR referred an apparel site to the NCT for breach of the National Credit Act
The National Credit Regulator (NCR) referred a group to the National Consumer Tribunal (Tribunal) following an investigation by the NCR which revealed that the apparel site has charged consumers a club fee on credit agreements. The NCR will continue to conduct industry-wide investigations on the cost of credit to root out illegal charges and fees that consumers are charge. *NCR* Please contact Nicky Kingwill for more information.
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Market Developments

Africa

Mutual evaluation of Mauritius by ESAAMLG (Mauritius)
The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is currently carrying out its assessment of Mauritius using the Financial Action Task Force (FATF)

International Standards. The mutual evaluation is a peer review process and is undertaken by trained experts from ESAAMLG member countries. Through this process, the ESAAMLG monitors the implementation of the 40 FATF Recommendations on Anti Money Laundering /Combating Financing of Terrorism (AML/CFT) by member countries and assesses the overall effectiveness of the AML/CFT systems of those countries. *ESAAMLG*

International

FCA published final rules on implementation of information prompts in the annuity market (UK)
The Financial Conduct Authority published a policy statement which sets out the final rules pertaining to the consultation paper on implementation of information prompts in the annuity market. According to the final rules firms are required to inform consumers by providing an information prompt on how much they could gain from shopping around and switching provider before they buy an annuity. Firms are required to implement the following:

- Inclusion of a clear and prominent warning about enhanced annuities;
- Provide the information prompt in relation to the specific guaranteed quote that a consumer has indicated they would like to proceed with (For firms engaging with consumers over phone). *FCA*

ASIC to extend start dates on Stronger Super reforms (Australia)
ASIC (Australian Securities and Investments Commission) updated the start dates for key superannuation reforms relating to the choice of products and the portfolio holdings reporting requirements under the Corporations Act. ASIC will extend the start dates to enable the relevant legislation and regulations to be passed by issuing a legislative instrument. ASIC has anticipated that this relief will be extended to align with the choice product dashboard timeframes. *ASIC*

ASIC published a consultation paper on new example Statement of Advice (SoA) for life insurance (Australia)
ASIC (Australian Securities and Investments Commission) released a consultation paper on a new example Statement of Advice (SOA) for life insurance. The new example SOA has been developed in keeping with ASIC's increasing use of behavioral research in order to understand regulatory problems. The design of the example SOA has been informed by behavioral research into how people find and understand the information in SOAs. It illustrates how an adviser can produce a compliant SOA that is concise, structured and easy to follow. *ASIC*

Opening statement by the Chairman, APRA before the Senate Economics Legislation Committee (Australia)
In his statement the Chairman spoke about the recent initiatives and announcements affecting APRA and the institutions supervised by APRA. The Chairman spoke about how APRA along with the other members of the Council of Financial Regulators monitors their role in the current environment to promote a higher-than-normal degree of prudence in both credit decisions and balance sheet strength. In his opinion, APRA’s primary objective is to identify potential weaknesses in its regulated institutions before they become major problems, rather than rely heavily on after-the-event enforcement. The Chairman also discussed about the following actions proposed in the new budget:

- Civil penalty regime; and
- New power in the Banking Act, *APRA*

ESMA issued an opinion regarding implementation of MIFID II (Europe)
The European Securities and Markets Authority (ESMA) issued an opinion which clarifies the concept of traded on a trading venue (TOTV), which is relevant for a number of provisions regarding the implementation of the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). The concept of TOTV is relevant for pre-trade and post-trade transparency requirements on market operators and investment firms operating a trading venue as well as for investment firms
Press Release | Document

ESMA published a consultation paper on Money Market Funds rules (Europe)
The European Securities and Markets Authority (ESMA) has published a Consultation Paper (CP) on the Money Market Funds Regulation (MMFR). The CP contains proposals

on draft technical advice (TA), draft implementing technical standards (ITS), and guidelines under the MMFR. The key proposals relate to asset liquidity and credit quality, the establishment of a reporting template and stress test scenarios.
Press Release | Paper

EBA published final technical standards on valuation in resolution (Europe)
The European Banking Authority (EBA) published its final draft Regulatory Technical Standards (RTS) on valuation in resolution. These draft RTS are a crucial piece of regulation for the resolution framework as they aim to provide the independent valuer with common criteria for the valuation, which will inform the decisions made by resolution authorities, thus promoting a consistent approach to such valuations across the EU.
Press Release | Document

Draft technical advice, implementing technical standards and guidelines under the MMF regulation(Europe)
The provisions of the Money Market Funds (MMF) regulation empowers the European Commission to set rules specifying the liquidity and credit quality requirements applicable to assets received as part of a reverse repurchase agreement. Specifically, the MMF regulation empowers the Commission to adopt a delegated Act to specify:

- The criteria for the validation of the credit quality assessment methodologies
- Definition of "material change" that could have an impact on the existing assessment of the instrument and that would trigger a new credit quality assessment for a money market instrument;
- The criteria that needs to be used to quantify credit risk and the relative risk of default of an issuer and of the instrument in which the MMF invests;
- The criteria to establish qualitative indicators on the issuer of the instrument

In this context, ESMA invites responses to the specific questions listed in Consultation Paper on Draft technical advice, implementing technical standards and guidelines under the MMF regulation.
[Press Statement], [Technical Guidance]

EBA welcomed enhanced FX Global Code (Europe)
The European Banking Authority (EBA) ecouraged the enhancement of the FX Global Code (the Code) and the publication of its May 2017 update. The objective of the Code is to promote a robust, fair, liquid, open, and transparent market underpinned by high ethical standards, which shall benefit all wholesale FX market participants. The Code's guidelines for responsible participation in the FX market are in line with the EBA's work aimed at fostering financial institutions' effective governance and enhanced consumer protection in all areas of financial products and services.
Press Release

FSB released report on governance frameworks to address misconduct risks and outlined further work (International)
The Financial Stability Board published a report on May 23, 2017 entitled Stocktake of Efforts to Strengthen the Governance Frameworks to Mitigate Misconduct Risks, which describes learnings from a survey of international bodies, national authorities, industry associations, and major firms on the corporate governance frameworks they use to address misconduct risks. The report also outlines findings from a literature review and selected case study analyses on the root causes of misconduct in the financial services industry.
The report responds in part to the first of three elements that comprise the FSB's workplan to mitigate misconduct risks. The three elements include: (1) examining whether reforms to incentives, such as governance and compensation structures, are having sufficient effect on reducing misconduct; (2) improving global standards of conduct in the fixed income, commodities and currency markets; and (3) reforming major financial benchmarks. *FSB*

Basel Committee Secretary General provides update on regulatory equivalence and the global regulatory system (International)
In an address before the International Financial Services Forum on May 25, 2017, Mr. William Coen, Secretary General of the Basel Committee on Banking Supervision (Basel Committee), provided his perspective on the importance of global minimum standards predominantly for large banks with cross-border operations and provided an overview of

the Basel Committee's finalization of the Basel III post-crisis reforms. He stated that the Basel Committee has publicly consulted on its proposals and completed the following work:

- Standardized Approach: This approach for credit risk has been enhanced to increase its granularity
- Internal Ratings-Based (IRB): Safeguards have been added for banks for estimating regulatory capital internally
- Operational risk: The Advanced Measurement Approach, which was the option for a bank to use its internal models, has been eliminated and replaced with a simpler standardized method
- G-SIB leverage ratio surcharge: Non-risk-based leverage ratio surcharge for global systemically important banks has been adopted to align the leverage ratio with the risk-based ratios
- Output floor: The Basel Committee has reviewed and consulted on output floor designs and chosen an aggregate output floor. *BIS*

CFTC amended whistleblower rules to strengthen anti-retaliation protections and award review process (US)

On May 22, 2017, the Commodity Futures Trading Commission (CFTC) approved amendments to its whistleblower rules that are intended to strengthen anti-retaliation protections for whistleblowers and improve the CFTC Whistleblower Award Program. The amendments prohibit employers from impeding whistleblowers from communicating with the CFTC staff about a possible violation and allow the CFTC to pursue action against an employer for retaliation against a whistleblower. The new amendments also: establish a claims review process to consider and issue a Preliminary Determination as to whether an award claim should be granted or denied; make changes to key areas, such as whistleblower eligibility requirements; and clarify that a whistleblower may receive an award in a Covered Action, a Related Action, or both. *CFTC*

BIS released global code of conduct for foreign exchange (International)

On May 25, 2017, the Bank for International Settlements (BIS) announced that the Foreign Exchange Working Group (FXWG), comprised of 21 central banks working together under the auspices of the BIS Markets Committee, and a Market Participants Group consisting of currency market participants in 16 jurisdictions jointly released a code of conduct for the global wholesale foreign exchange (FX) market. The code consists of a common set of guidelines for good practices, or "responsible participation," in the FX market. These guidelines are built around six leading principles: ethics, governance, execution, information sharing, risk management, and confirmation and settlement processes.

The code applies to all FX market participants, including sell-side and buy-side entities, non-bank liquidity providers, operators of E-trading platforms, and other entities providing brokerage, execution, and settlement services. However, it is voluntary and intended to supplement local laws, rules, and regulation The FXWG has separately released a Report on Adherence setting out a framework to promote awareness and incentivize adherence. The Code will be maintained by a new Global Foreign Exchange Committee, a global association of FX committees. *BIS*

FSB and CGFS published report on FinTech credit (International)

On May 22, 2017, the Financial Stability Board (FSB) and the Bank for International Settlements' Committee on the Global Financial System (CGFS) jointly published a report entitled FinTech Credit: Market structure, business models and financial stability implications. The main highlights are:

- FinTech credit activity varies significantly across and within countries due to different business models, including differences in types of credit and investors.
- FinTech credit markets have expanded rapidly but remain small relative to traditional credit markets.
- While digital processes could lower transaction costs for FinTech credit platforms and help to increase access to credit and investments for underserved segments of the population, these credit platforms could also face swings in investor confidence and higher financial risks.
- A bigger share of FinTech-enabled credit in the financial system could pose both financial stability benefits and risks in the future.
- The emergence of FinTech credit markets poses challenges for policymakers in monitoring and regulating such activity. *FSB*

FSB thematic review of Corporate Governance (International)
The Thematic Review on Corporate Governance highlights some divergences across FSB members, and makes a number of recommendations. The recommendations include:
- Encouraging regulated financial institutions ("firms") to adopt and to disclose codes of ethics or conduct.
- Introducing more specific requirements or guidelines on Board effectiveness reviews, succession planning and Board training.
- Encouraging firms to enhance the disclosure of their Board nomination and election processes, and the qualifications of their Board members.
- Focusing more on the duties, responsibilities and composition of Boards within group structures; the framework for related party transactions; and on the role and responsibilities of independent directors on the Board and Board committees.
- Improving firms' disclosures on governance structures, voting arrangements, shareholder agreements and significant cross-shareholdings and cross-guarantees, and remuneration. *KPMG*

Responding to cyber-attacks while embracing new technologies
The events of this month, which effected key institutions in over 150 countries, have elevated cyber security as a priority issue. Regulators already had cyber security on their list of priorities for firms, but it is now regarded by all as a key systemic risk for the financial services industry. Firms need to take action and to be able to demonstrate to regulators that their systems and processes are fully up-to-date, at the same time as embracing new technologies. The ECB's committee on payments and market infrastructures said DLT could pose new risks to the financial system, including potential uncertainty about operational and security issues. Its report also cited potential legal and operational obstacles. DLT might also be used to enhance pre-trade information and the matching of buyers and sellers. Key risks identified by ESMA are cyber, fraud, money laundering, operational, herding behavior (increased market volatility) and unfair competition. *KPMG*

Strengthening financial supervision in Europe
In KPMG's response to the consultation on the operation of the ESAs, KPMG suggests that the key question is whether now is the right time to make any significant changes, or whether it would be better to wait to see how the future of Europe develops and how the needs of supervision change as the broader supervisory context crystallises. The separate ESAs need to oversee supervision of different business models, risk profiles, product features, capital requirement and solvency models, with the different sectors posing very different risks to financial stability. Without significant investment and costly changes to the existing approach, it is hard to see how merging the ESAs would enhance the supervision in each segment. *KPMG*

IOSCO Annual Conference: Building Securities Market Resilience in the Post-Crisis World
The 42nd Annual Conference of the International Organization of Securities Commissions (IOSCO), hosted by the Financial Services Commission of Jamaica, was held from 14 to 18 May 2017. The public sessions of this year's Annual Conference focused on the challenges of strengthening market resilience, addressing financial misconduct and financing the real economy through capital markets. Participants also discussed about the role of international standards in securities markets and how regulators can support market development. Y6uOver three days, the IOSCO Board, the Growth and Emerging Markets (GEM) Committee, the four Regional Committees and the Affiliate Members Consultative Committee (AMCC) advanced their initiatives aimed at protecting investors, ensuring fair, efficient and transparent markets, and mitigating systemic risk. *IOSCO*
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The Inside Edge
Evolving Investment Management Regulation
We are pleased to announce the release of our seventh annual report on regulation in the global investment management industry: Evolving Investment Management Regulation: Succeeding in an uncertain landscape

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