Subject: FinWatch - A Weekly Newsletter for the week ended March 11, 18, and 24, 2016 | EXTERNAL EDITION

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Regulatory Updates for the week ended 11, 18, and 24 March 2016

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

Banking

Guidance note 3/2016 issued in terms of the Banks Act 94 of 1990

The South African Reserve Bank (SARB) issued a guidance note in terms of the Banks Act 94 of 1990. It is followed by a document released by the Basel Committee on Banking Supervision (BCBS) in December 2015, related to credit risk and accounting for expected credit losses. The purpose is to bring to the attention of the banks the latest supervisory guidance on sound credit risk practices associated with the implementation and ongoing application of expected credit loss accounting frameworks. SARB

Brokerage and Securities Markets

Proposal for a directive on implementing interoperable and cooperative relationships between market infrastructures

The Registrar of Securities Services at the Financial Services Board (FSB) invited the public to comment on the proposed directive on implementing interoperable and cooperative arrangements between market infrastructures. The decision was followed by the changing landscape South African financial markets from being served by single market infrastructure towards being served by multiple market infrastructures, as a result of new market entrants in the securities services industry. The change requires FSB to maintain the stability and integrity of the financial markets in terms of the Financial Markets Act, 2012, and meet the objectives of regulation and supervision of securities services in South Africa. The closing date for the comments period ends on 11 April 2016. FSB Green Gazette

Insurance

Administrative penalty imposed for conducting unregistered insurance Business

The Enforcement Committee of the Financial Services Board (FSB) imposed an

administrative penalty of R2 000 000 on Abangcwabi Myendeki Funeral Parlour CC, for contravening the Long-term Insurance Act, No. 52 of 1998. The Respondent carried on funeral insurance business without being registered as a long-term insurer. The company collected monthly premiums in exchange for taking responsibility for the funeral costs in the event of the death of a client or the client's family member. In many instances the company did not actually attend to the funerals as it rejected the claims of its clients. FSB

Pension industry taken to task by regulator, waiting for the Retail distribution review set for launch in July

The article talks about a review of the pension funds industry, which has observed that many pension funds claim they conform to the Treating Customers Fairly (TCF) principle despite giving customers a raw deal. The Financial Services Board (FSB) introduced TCF as a regulatory approach designed to ensure that fair outcomes for financial services consumers are delivered by regulated financial firms. In 2014/5, the 29,4% increase in complaints lodged with the Office of the Pension Funds Adjudicator (OPFA) from the previous year was viewed as a poor reflection of the service that complainants received. The customers are waiting the implementation of the Retail Distribution Review which would seek to ensure insurance distribution models are aligned to achieving TCF outcomes. The first phase of the retail distribution review (RDR) programme in the insurance industry is due to be launched in July. RDR is aimed at changing the way intermediaries such as insurance brokers give advice to clients, and how they charge for their services. Money Marketing CN & CO

Others

Davies asks for comment on draft empowerment code for financial sector

Trade and Industry Minister Rob Davies published a draft and amended broad-based black empowerment code for the financial services sector, for public comment. The draft code has two elements: empowerment financing and access to financial services, which are intended to address the peculiarities of transformation in the sector. The aim is to ensure support for black-owned entities (including black industrialists) and to ensure that people in marginalized areas have access to transaction, sales and service points. BDlive

Non-compliance comes at great cost to SA businesses

This article talks about the recent major legislative updates that could potentially place non-compliant businesses at risk mainly pertaining to the Employment Equity Act, the Basic Conditions of Employment Amendment Act, the Broad-Based Black Economic Empowerment Act, the Protection of Personal Information Act, the Financial Intelligence Centre Act (FICA), the Competition Act, the Public Finance Management Act, King III Principle 6.2 and the impending King IV Code on Corporate Governance, together with various laws applicable to health and safety and environmental compliance. Recent measures against non-compliance include MTN's $5.2bn (about R72bn) fine from the Nigerian Communications Commission. The South African Reserve Bank (SARB) imposed a R125mn total fine against the country's four largest banks, as well as smaller fines against Frankfurt-based Deutsche Bank and Capitec for inadequate FICA controls. A major airline was fined R900,000 for failing to comply with the Employment Equity Act (EEA). The Competition Commission has levied fines against cartels and price collusion in sectors ranging from construction to aviation. More recently ICASA levied penalties against eight South African companies for non-compliance with license regulations. Biz Community

Fine of R 1 million imposed on a credit provider for contravention of National Credit Act

The National Consumer Tribunal (NCT) announced a judgment imposing a R 1 million fine on a credit provider Akudle Kutshiyele, finding the lender guilty of prohibited conduct. This followed an investigation by the National Credit Regulator (NCR) into the activities of Akhudle which revealed contraventions of the National Credit Act (NCA). The lender was found to have failed to conduct affordability assessments when granting credit, kept consumers bank cards and identity documents in order to enforce credit agreements, and extended credit even though its registration had lapsed due to non-payment of annual fees. NCR Moneyweb

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Market Developments

International

Payday lender Nimble to refund $1.5 million following ASIC probe

Following the ASIC investigation, payday lender Nimble Australia Pty Ltd. will refund over 7,000 customers more than $1.5 million. The ASIC had concerns that Nimble was failing to meet its responsible lending obligations. It was found that Nimble had not properly assessed the financial circumstances of the consumers before providing them with loans, and failed to make proper inquiries of consumers' requirements and objectives. ASIC also informed that all credit licensees need to consider the individual situation of each borrower. ASIC

ASIC issues a guidance on marketplace lending

ASIC released a guidance to help providers of marketplace (peer-to-peer) lending products, including information about legal obligations. The guidance describes the current regulatory regime and also includes good practice strategies that marketplace lenders may consider adopting. It supports ASIC's innovation hub in helping innovative businesses understand their regulatory obligations in order to develop in Australia. ASIC

Consultation paper and draft Regulatory Guide issued by ASIC on regulating digital financial product advice

The Australian Securities & Investments Commission (ASIC) issued a consultation paper and a draft Regulatory Guide. The documents highlight the issues that the digital advice providers need to consider when operating in Australia, and ASIC's proposed approach to the regulation of digital financial advice. The digital advice providers include AFS licensees and their authorized representatives. Some financial technology start-up businesses may also consider to become an AFS licensee or an authorized representative. The purpose of issuing the documents is to support the development of a healthy and robust digital advice market in Australia. The comments are invited to be submitted by 16 May 2016. ASIC

ANZ pays $212,500 penalty for breaching responsible lending laws when offering overdrafts

Australia and New Zealand Banking Group (ANZ) paid penalties totaling $212,500 for breaching responsible lending laws in making offers of overdraft facilities to its customers. ANZ offers an overdraft facility known as 'ANZ Assured' to existing customers in conjunction with particular transaction accounts. ASIC found that:

- for offers of a $500 limit, customers were not given an option to elect a different overdraft amount; and
- for offers of a $1,000 limit, customers were not given an alternative limit option if they responded to the offer via mail or in person at a branch

These failures by ANZ were in breach of its obligation to make reasonable inquiries about the credit limit a customer requires. The requirement to make reasonable inquiries regarding a consumer's required maximum credit limit was introduced into the National Consumer Credit Protection Act 2009 by Parliament in 2011 to reform the practice by lenders of making unsolicited offers of credit to customers. ASIC

Financial Advice Market Review launched by the FCA

The Financial Conduct Authority (FCA) and HM Treasury launched the Financial Advice Market Review (FAMR). The purpose was to provide customers with better access to affordable financial advice and guidance that meets their needs. The FAMR recommendations will help to address current concerns about the affordability and accessibility of financial advice and guidance, particularly regarding the 'advice gap'. FAMR builds on improvements made to the financial advice industry brought about by the Retail Distribution Review (RDR), which raised the standards of professionalism across the financial advice market. FCA

Occasional Paper No. 13: Economics for Effective Regulation

The Financial Conduct Authority (FCA) published an occasional paper. This paper offers assistance to regulators and other policymakers in using modern economics in an effective way to inform decisions. The paper proposes a structured framework (Economics for Effective Regulation) for implementing a markets-focused and holistic regulatory economic analysis, which draws on recent innovations in behavioral, competition and other research. This framework is designed to support all stages of regulatory decision-making from problem diagnosis to impact assessment. FCA

Senior bankers to face jail for 'reckless decisions'

The Government warned that senior managers in UK banks could face jail if their actions cause the bank to fail. As per the new law which came into force on March 7, 2016, the leaders of UK banks, building societies or investment firms could face a maximum jail term of seven years or an unlimited fine if they make decisions which lead to the failure of a bank, or fail to stop others making such decisions. The new regulation is designed to build a stronger and safer financial system. Independent

Kenyan lawmakers seek to cap commercial lending rates

Kenyan legislators are pushing a law through parliament aimed at capping commercial banks' lending rates at 4 percentage points above the central bank's benchmark rate. The central bank, whose benchmark rate is now 11.50 percent, has urged banks to lower rates but has not set a cap. The reason to cap the rates is that the Kenyan businesses often complain that high commercial lending rates, often around 18 percent or more, stifle corporate investment. The Kenyan parliament first attempted to control commercial lending rates two decades ago but past attempts have failed. If the President refuses to sign the proposal, lawmakers could seek a two-thirds majority, which lawmakers believe would force him to ink the legislation. Sharenet

Handbook for Regulatory Consistency Assessment Programme (RCAP) jurisdictional assessments published by the Basel Committee

The Basel Committee on Banking Supervision published the Handbook for Jurisdictional Assessments, which describes the guidance, principles and processes for assessing compliance with Basel standards under the Regulatory Consistency Assessment Programme (RCAP). The Committee believes that full and consistent implementation of its standards will strengthen the resilience of the banking system, improve market confidence in regulatory ratios and promote a level playing field. The RCAP assesses the consistency and completeness of a jurisdiction's capital and liquidity rules against the Basel standards. The Committee will continue to update the Handbook to reflect further refinements to the RCAP. Bank of International Settlements

The International Organization of Securities Commissions publishes the "IOSCO Securities Markets Risk Outlook 2016"

The International Organization of Securities Commissions published the "IOSCO Securities Markets Risk Outlook 2016". The document examines key trends in global financial markets, and also aims to identify and assess potential risks to the financial system stemming from activities in securities markets. IOSCO

Basel Committee publishes proposed revisions to the operational risk framework

On March 4, 2016, the Basel Committee on Banking Supervision (Basel Committee) issued a consultative document proposing revisions to its operational risk capital framework. The proposed Standardized Measurement Approach (SMA) for operational risk builds on the Basel Committee's earlier consultation paper issued in October 2014. It would replace the three existing standardized approaches for calculating operational risk capital as well as the Advanced Measurement Approach (AMA), and the revised methodology would combine a financial statement-based measure of operational risk - the "Business Indicator" - with an individual firm's past operational losses. The proposed revisions are open for comment until June 3, 2016. Press Release Consultative Document

Basel Committee publishes Basel III Monitoring Report

The Basel Committee on Banking Supervision (Basel Committee) published the results of its latest Basel III monitoring exercise on March 2, 2016. The monitoring exercise was conducted on 230 banks, comprising 101 large internationally active banks (Group 1 banks) that have Tier 1 capital of more than €3 billion and 129 banks representative of all other banks (Group 2 banks). This exercise formed a part of the Basel Committee's process to regularly assess the implications of the Basel III capital standards on banks, and their level of adherence to the main requirements. Key findings from this exercise show that, on a fully-phased basis for data as of June 30, 2015:

- All large internationally active banks meet the Basel III risk based capital minimum Common Equity Tier 1 (CET1) and target capital requirements. Between December 31, 2014 and June 30, 2015, Group 1 banks continued to reduce their capital shortfalls relative to the higher Tier 1 and total capital target levels.
- Of the 160 banks reviewed in the Liquidity Coverage Ratio (LCR) sample, 84

percent reported an LCR that met or exceeded 100 percent, while all banks reported an LCR at or above the 60 percent minimum requirement that was in place for 2015. The LCR measures the level of highly liquid assets held by a bank to meet its short term liquidity obligations in the coming 30 days,

- The weighted average Net Stable Funding Ratio (NSFR) for the Group 1 bank sample was 111.9 percent, while for Group 2 banks the average NSFR was 114 percent. As of June 2015, 79 percent of the Group 1 banks and 83 percent of the Group 2 banks in the NSFR sample reported a ratio that met or exceeded 100 percent, while 92 percent of the Group 1 banks and 94 percent of the Group 2 banks reported an NSFR at or above 90 percent. The NSFR is a measure of long-term structural liquidity. Press Statement Report

CFPB issues monthly complaint report

The Consumer Financial Protection Bureau (CFPB or Bureau) released its latest monthly complaint report on March 1, 2016, outlining the consumer complaints received during the month of January 2016. The three most-complained-about financial products in January were debt collection, mortgages, and credit reporting, representing approximately two-thirds of the total complaints received. Overall, the CFPB reported an 8 percent increase in complaint volume between December 2015 and January 2016. The report also highlighted complaints related to prepaid products, indicating that consumers most frequently complained about:

- An inability to access funds loaded on the card;
- Card issuers refusing to re-issue an expired card with the balance remaining before expiration;
- Account access problems during the process of disputing particular charges; and
- The wide variety of charges, including monthly, inactivity, transaction, balance inquiry, PIN change, and overdraft fees. Press Statement January 2016 Monthly Report

Regulators propose stricter banking rules to cover cyber, fraud risks

Global regulators have proposed stricter rules on how banks calculate the amount of capital they need. The proposals are the latest from the Basel Committee of regulators. Basel, in a second public consultation, proposed not to use the models. Instead, the vast majority of lenders would use a "business indicator" based on their financial statements. This that would limit the ability of big banks to use their own models to cut the amount of capital they need. The big banks would be allowed to have a "loss indicator" that reflects actual losses going back a decade. This could then be used to justify a lower capital figure than the one shown up by the business indicator. The committee has yet to decide when the new rules might come into force. Reuters

The Basel Committee consults on revisions to the Pillar 3 disclosure framework

The Basel Committee on Banking Supervision issued for consultation Pillar 3 disclosure requirements - consolidated and enhanced framework. Pillar 3 of the Basel framework seeks to promote market discipline through regulatory disclosure requirements. The proposed enhancements issued include:

- the addition of a dashboard of key metrics
- a draft disclosure requirement of hypothetical risk-weighted assets calculated based on the Basel framework's standardized approaches
- enhanced granularity for disclosure of prudent valuation adjustments

The proposal also incorporates additions to the Pillar 3 framework to reflect ongoing reforms to the regulatory framework. The Committee invited for the comments by 10 June 2016, which will be published on the website of the Bank for International Settlements. Press Release

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Upcoming Events and Conferences

AEOI Tool

KPMG AEOI Reporting is designed to accelerate and simplify clients' path to compliance to meet their AEOI tax reporting obligations. Our global experts are joining the local AEOI team to demo our tool at a number of clients from the 4th to 6th April 2016. Should you wish to see the tool, contact us.

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The Inside Edge

Whilst we continue to wait for any announcements on the Information Regulator, click here for a video covering some recent thinking from KPMG on the Protection of Personal Information (POPI)

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