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Regulatory Updates for the week ended 5 May 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.

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Regulatory Developments

Banking

SARB issued a directive on matters relating to qualifying capital instruments issued by subsidiaries of banks

The directive published by the South African Reserve Bank (SARB) provides information to banks, controlling companies and auditors of controlling companies about considerations and requirements related to approval of qualifying additional tier 1 & 2 capital instruments issued from subsidiaries to include in the consolidated qualifying capital and reserve funds. *South African Reserve Bank***.**

SARB issued a guidance note on audit implications of the expected credit loss model for the auditors of banks

South African Reserve Bank (SARB) published a guidance note for all the banks, foreign institutions, controlling companies and eligible institutions of the Staff Audit Practise Alert published by the Independent Regulatory Board of Auditors on the audit implications of the credit loss models for the auditors of banks. *South African Reserve Bank*

Please contact John Martin or Johan Scheepers to discuss either of the above further.

Brokerage & Securities Markets

The FSB confirms that it is investigating unusual trading in foreign exchange futures contracts after receiving a report from the JSE

The Financial Services Board's (FSB) Department for Market Abuse confirms an ongoing investigation into possible insider trading in certain foreign exchange futures contracts before the recall of former Finance Minister Pravin Gordhan from office. The probe is underway to ascertain if the Financial Markets Act (FMA) has been violated. *Financial Services Board*

Others

SARB published the Financial Stability Review, 2017
The South African Reserve Bank (SARB) on May 3 published the Financial Stability Review for 2017. In this update the SARB developments in both domestic and international financial infrastructure as well as the regulatory environment. The following points were covered:

- **Update on the Financial Sector Regulation Bill 2015**: The amended FSR Bill was approved by the National Assembly on 6 December 2016 and moved to the National Council of Provinces (NCOP), the second house of Parliament, for approval. The NCOP conducted hearings on the FSR Bill in late March 2017. Once both houses of Parliament approve the FSR Bill, the President will be required to assent to it and the implementation date will also have to be finalized. The update indicated that regulatory agencies expect the implementation of the FSR Bill be phased in from 2017 or 2018. Please contact Finn Elliot for more information.
- **Final credit life regulations issued**: The Financial Stability Review alluded to the fact that the DTI published the final credit life insurance regulations.32 These regulations limit the cost of credit life insurance for various credit facilities, specify the minimum benefits that must be offered to consumers, and clarify the limitations or exclusions that apply to insurance cover. The new credit life insurance rules are likely to enhance consumer protection in the credit markets in South Africa. Please contact Finn Elliot for more information.
- **Correspondent banking relationships:** The review also mentioned that one of the reasons cited for a decline in correspondent banking relationships is the inherent complexity in managing such relationships. The document also underscored that in emerging markets and developing economies the regulatory requirements for entering into such banking relationships are not clearly articulated. For more information, please contact Johan Scheepers.
- **Action undertaken by the Competition Commission**: The report mentioned the fines levied by the Competition Commission for alleged pricing fixing and market manipulation of foreign currency pairs involving the South African Rand. This was mentioned to reinforce the fact that the regulators are striving to preserve the integrity of capital markets and ensure that they come down heavily on banks and firms engaging in such violations.
- **OTC Derivative Reforms**: In the review the SARB mentioned that following the global financial crisis, the Group of Twenty (G-20) agreed on a broad range of regulatory reforms to address the weaknesses revealed in the financial system. One of the areas identified was the opacity of over-the-counter (OTC) derivatives markets, transactions and products as well as the systemic risks that these pose to financial stability.
- Assessment of financial stability risks: The SARB also provided an assessment of risks that are expected to threaten the domestic financial system.

Finally the document concludes by providing an overview of Marco prudential regulation touching upon countercyclical capital preservation buffers, outlines a case for activation of counter cyclical capital preservation buffer and makes recommendations for a new macroprudential framework in South Africa. According to the SARB, the new macroprudential framework will include the following steps:

- Continuous monitoring of the financial system to identify systemic risks
- Assessment of a viable monetary and /or microprudential policy which should precede the need for macroprudential intervention
- Selection and implementation of appropriate macroprudential tools that target the sources of systemic risks such as liquidity, maturity mismatches, leverage or interconnectedness. *South African Reserve Bank*

The Financial Intelligence Centre (FIC) Amendment Act, 2017 published in

Government Gazette
The FIC Amendment Act was formed with an aim to make amendments to the FIC Act 2001 in order to implement the following:
- Additional sharing of information and guidance to accountable institutions with respect to freezing of property and transactions pursuant to resolutions adopted by the Security Council of the United Nations;
- Abolish the Counter Money Laundering Advisory Council;
- Risk based approach to client identification and verification;
- Strengthen customer due diligence measures with respect to beneficial ownership and persons in prominent positions;
- Obligation to keep identity, verification and transaction records;
- Set out the procedure in respect of financial sanction control measures pursuant to the notification of persons and entities identified by the Security Council of the United;
- Risk management and compliance programmes, governance and training relating to anti-money laundering and counter terrorist financing;
- Warrant to conduct certain inspections;
- Financial penalty to be paid into the National Revenue Fund; and
- Further procedural issues in respect of appeals.

Please contact KPMG's Tersia Rossouw to discuss further.

Notice to affected institutions on the use of FIC's encrypted emailing platform
The Financial Intelligence Centre (FIC) issued a Public Compliance Communication (PCC) which will take effect from May 2, 2017. The PCC is applicable to all those institutions that are affected and authorized by FIC to use a secured e-mail platform. The encrypted e-mail platform will be the alternative to the goAML message board which is the primary method for the registered institutions to communicate with FIC. FIC will send e-mails to the institutions via the encrypted platform and the invited institutions are expected to acquire user credentials on this platform. *Financial Intelligence Centre*. For more information please contact Tersia Rossouw.

FSB published thematic peer review on corporate governance
The Financial Stability Board (FSB) published a peer review on corporate governance. The peer review takes stock of how FSB member jurisdictions have implemented the G20/Organization for Economic Co-operation and Development (OECD) Principles of Corporate Governance for publicly listed, regulated financial institutions. In so doing, it identifies effective practices and areas where good progress has been made while noting gaps and areas of possible weakness. *Financial Stability Board*; *OECD*
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Market Developments

Africa

Capital Markets Authority (CMA) published a circular on continuing obligation for issuers of securities (Kenya)
In the circular the CMA specified the reporting obligations related to public announcements as stipulated in the regulations. The reporting obligations are:
- Material information and cautionary announcement
- Announcements of dividends and/or interest payments on issued securities;
- Payment of Dividend;
- Notice of Annual General Meeting;
- Books closure date; and
- Payment of Dividend. *Capital Markets Authority*

BAOA to help track dispersion of risk (Botswana)
Botswana Accountancy Oversight Agency (BAOA) signed an MOU with Non-Bank Financial Regulatory Authorities (NBFIRA) to help advice NBFIRA on issues relating to improved transparency, accurate and timely information on exposures and underlying risks, which may affect, or trigger, investor confidence amongst entities regulated by both the parties**.** Both the regulators have cooperated closely and fruitfully in developing the guidance for auditors of regulated entities, regarding their statutory duty, to report certain matters such as material defects in the financial systems and controls of accounting without bias. *Botswana Accountancy Oversight Agency*

Onsite inspections of Financial Services Intermediaries
Pursuant to Section 43 of the Financial Services Act 2007, The Surveillance - Capital Markets cluster carried out 3 on-site inspections at the premises of the licensees as at 31 March 2017. These inspections related to domestic companies licensed under the Financial Services Act 2007 which are engaged in Registrar and Transfer Agent activities.
The objectives of the inspections were to ascertain whether these entities are operating under the scope of the licences granted to them, and thus determine their levels of compliance to the existing legal framework. These entities were assessed on different parameters such as corporate governance, market conduct, prudential aspects including fairness and transparency, adherence to money laundering legislations and codes; as well as, evaluation of financial soundness and controls (risk management, systems/mechanisms). As part of the operational matters, the licensees were queried on their business culture, systems and control, complexities encountered and future strategies/plans.
The following approaches were also adopted to enhance monitoring:
- Verification of whether the Code of Business Conduct – (9 guiding principles) is being complied with;
- A more in-depth analysis of Books & Accounts;
- Reporting: independent & neutral assessment of State of affairs
- A pre-onsite questionnaire is sent to licensees prior to conduct inspection in terms of number of clients, staffing and turnover; *FSC Mauritius*

Visit from delegates of the Anti-Corruption Commission (Zambia)
The Financial Services Commission (FSC) Mauritius welcomed two judges from the Board of Commissioners of the Anti-Corruption Commission (ACC) Zambia on April 26, 2017 at the FSC House. The ACC is currently working towards strengthening and expanding the activities so as to enhance its capacity to fight corruption and hence was on a five day tour in Mauritius to meet different organisation in this connection. The tour was therefore aimed at sharing of operational experiences, improved networking and collaboration with other local authorities. The delegates were informed of the anti-corruption policy of the FSC Mauritius which reiterates that the FSC Mauritius has committed itself to use all available means and resources at its disposal to combat corruption in all its forms at all times including the application of appropriate prevention and detection control measures.

FSC Mauritius issues the draft Insurance (Deposit) Rules for consultation (Mauritius)
In line with its policy to enhance the transparency of its rule-making process, the FSC Mauritius has published the proposed Insurance (Deposit) Rules on its website for consultation. The purpose of the Rules is to prescribe the amount and custodian of the deposit required to be maintained by insurers under section 24 of the Insurance Act 2005. The FSC proposed that the amount of deposit be maintained at 8 million. The deposit shall be deposited with a bank licensed by the Bank of Mauritius and approved by the FSC and shall be pledged in favor of the FSC. *FSC Mauritius*

International

BIS published working paper on bank CEO compensation
The Bank for International Settlement (BIS) on April 25, 2017 published a working paper on April 25, 2017 entitled "How post-crisis regulation has affected bank CEO compensation." The paper assesses whether compensation practices for bank Chief Executive Officers (CEOs) changed after the Financial Stability Board (FSB) issued post-crisis compensation guidelines. It finds that banks in jurisdictions that implemented the FSB's Principles and Standards of Sound Compensation in national legislation changed their compensation policies to link more to risks than short-term profits. CEOs at riskier banks also received less variable compensation than those at less-risky peers. This was particularly true of investment banks and of banks which previously had weaker risk management, for example those that previously lacked a Chief Risk Officer. *Bank for International Settlements*, *Working Paper*

BCBS issued twelfth progress report on Basel III adoption (International)
On April 25, 2017, the Basel Committee on Banking Supervision (BCBS) published its twelfth progress report on BCBS members' adoption of the Basel III standards, which will become effective by 2019. This report updates previous progress reports published

semiannually since October 2011. The current report outlines the status of adoption, as of the end of March 2017, of the Basel III risk-based capital standards, the leverage ratio, the Liquidity Coverage Ratio (LCR), the Net Stable Funding Ratio (NSFR), the standards for Global and Domestic Systemically Important Banks (G-SIBs and D-SIBs), Pillar 3 disclosure requirements, the large exposure framework, and interest rate risk in the banking book.
The BCBS reported:

- All twenty-seven members have final risk-based capital rules, LCR regulations and capital conservation buffers;
- Twenty-six members have issued final rules for the countercyclical capital buffers;
- Twenty-five members have issued final or draft rules for D-SIB frameworks;
- Twenty members have issued final or draft rules for margin requirements for non-centrally cleared derivatives;
- Twenty members have issued final or draft rules for monitoring tools for intraday liquidity management; and
- All home jurisdictions to G-SIBs have final rules.

On counterparty credit risk (SA-CCR), bank exposures to central counterparties (CCP) and Pillar 3 disclosures, the BCBS reported:

- Twenty-one members have final or draft rules of the revised Pillar 3 framework;
- Nineteen have final or draft rules of the SA-CCR and capital requirements for equity investments in funds; and
- Seventeen have issued final or draft rules of capital requirements for CCP exposures.
- *Bank for International Settlements*

Global insurance organizations discuss global insurance standards and supervisory priorities (International)
The Financial Stability Institute (FSI) of the Bank for International Settlements (BIS), the International Association of Insurance Supervisors (IAIS), and the Association of Insurance Supervisors of Latin America (ASSAL) held a first high-level meeting to discuss global standards and supervisory priorities for the insurance sector in the Americas.
Participants discussed the Common Framework (ComFrame) for the supervision and regulation of internationally active insurance groups and the global Insurance Capital Standard (ICS), both of which are scheduled for adoption in late 2019. Participants also discussed regulatory convergence to strengthen the resilience of internationally active insurance groups, the challenges in modernizing regulatory regimes and adapting to international standards, the supervision of reinsurance and reinsurers, and the impact of FinTech on the insurance sector. *Financial Stability Institute*

IOSCO approves the enhanced standard for cross-border enforcement cooperation (International)
The members of the International Organization of Securities Commissions (IOSCO) have approved the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (EMMoU), which offers securities regulators new enforcement powers for responding to the challenges arising from recent developments in global financial markets. Since its exception it has provided securities regulators around the world with key tools to fight cross-border financial fraud and misconduct that can weaken global markets and undermine investor confidence. Securities markets have undergone sweeping changes in recent years which have spurred IOSCO to develop an enhanced standard on cross-border enforcement information. *IOSCO*

Thematic Review on corporate governance (International)
The Financial Stability Board (FSB) has published a thematic review of FSB members' compliance with the G20/OECD principles of corporate governance for regulated financial institutions (across all sectors):

- Encouraging firms to adopt 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 the board nomination and election process, and the qualifications of board members;
- Clarifying how corporate governance can be applied in a proportional manner – most

FSB members already do this for smaller regulated firms, but not to take account of ownership structure, geographical presence or the stage of development of firms and the financial sector in which they operate.

- Considering whether supervisors need more specific intervention powers to address weaknesses in firms' corporate governance. *Financial Stability Board*

Review of post-financial crisis regulations and the Joint Committee of the ESAs (Europe)

Meanwhile, the Financial Stability Board has kicked off the review of post- financial crisis regulation and the Joint Committee of the European Supervisory Authorities (ESAs) have issued a report on risks and vulnerabilities in the EU financial system. It highlights three main risks and suggests policy actions:

- Low profitability of financial institutions in a low yield environment. Forward-looking supervisory approaches and proactive reduction of banks' non-performing loans are needed.
- Increasing interconnectedness of bank and non-bank entities. The ESAs call for enhanced supervisory monitoring of concentration risks, cross border exposures and regulatory arbitrage.
- Potential contagion from China and other emerging markets. This risk should be included in stress tests and optimistic assumptions of firms should be scrutinized. *Financial Stability Board*

ASIC supported the extension of the groundbreaking whistleblower research project (Australia)

The Australian Securities and Investments Commission (ASIC) announced the second stage of the research project 'Whistle While They Work', which will help to develop a strong information base to assist whistleblowing practices. This report will identify the factors that influence responses to whistleblowing across institutions and provide a more informed approach to introduce whistleblower protection laws. This will progress the understanding of how these programs should be implemented in large organizations to feature a strong organization culture. *Australian Securities and Investments Commission*

Delivery plan announced for the consolidation of the operators of Bacs, Faster Payments Service and Cheque and Credit Clearing (UK)

On the 4th May 2017, the Payment System Operator Delivery Group (PSODG) published a report 'New Payment System Operator' that defines a recommended delivery plan for the consolidation of the operators of three payment systems: Bacs Payment Schemes Ltd (BPSL), Cheque and Credit Clearing Company (C&CCC) and the Faster Payments Scheme Ltd (FPSL). The purpose of the consolidation is to improve efficiency by reducing the complexity and costs of having three separate operators. The entity would also be responsible for the New Payments Architecture (NPA), an industry-led initiative that aims to increase competition, resilience and enhance innovation across the payments and banking industry. *Bank of England*

Minimum requirements for eligible liabilities and own funds (MREL) (UK)

The Bank of England on May 5, 2017, published an indicative data on minimum requirements for eligible liabilities and own funds (MREL). The MREL determines a minimum amount of loss-absorbing resources that the larger UK banks and building societies are required to hold. The firms will be subject to interim requirements for MREL on January 1, 2020, and final requirements will come into force in 2022. *Bank of England*

FCA published a policy statement on applying conduct rules to non-executive directors (UK)

The Financial Conduct Authority (FCA) published a Policy Statement (PS) which includes final rules to extend the conduct rules in the Code of Conduct sourcebook (COCON) to Standard Non-Executive Directors (NEDs) in banks, building societies, credit unions and dual-regulated investment firms and insurance firms. Applying COCON to standard NED will raise the standards of conduct and reduce risk of misconduct. This will also avoid mis selling of firms. In addition to this the FCA will publish policy statements for:

- Extension of the individual accountability regime to solo-regulated firms; and
- Extension of the individual accountability regime to insurance firms. *Financial Conduct Authority*

Financial Conduct Authority (FCA) published a policy statement on remuneration in Capital Requirements Directive (CRD) IV firms (UK)
The policy statement consists of the final handbook and guidance on CRD IV which contains remuneration requirements that aim to ensure that remuneration policies are consistent with and promote sound and effective management, do not provide excessive risk taking, and are aligned with the long-term interests of the firm. Key areas of feedback included:

- Clarification over approach to retention payments;
- The need for 'significant' subsidiaries of companies to establish a remuneration committee;
- Guidance on how firms can meet the obligation to assess performance conditions of Long-Term Incentive Plans (LTIPs); and
- Disclosure implications for limited license and limited activity firms according to the General Guidance on Proportionality. *Financial Conduct Authority*

Ensuring operational continuity in resolution: reporting requirements (UK)
Prudential Regulatory Authority (PRA) published a policy statement providing feedback to the responses on its consultation paper published earlier. The final policy statement had made amendments to the following:

- Regulatory Reporting Part
- Guidelines for completing regulatory reports
- Template on reporting instructions. *Prudential Regulatory Authority*

Maintenance of the 'transitional measure on technical provisions' under Solvency II (UK)
PRA published a policy paper providing feedback and an updated supervisory statement to the responses received to the consultation paper on 'Maintenance of the 'transitional measure on technical provisions' under Solvency II'. Following amendments were made:

- Firms should analyse the material components and drivers of the transitional measure on technical provisions benefit to facilitate better risk management
- Role of firms' audit committees in ensuring that the transitional measure on technical provisions claimed continues to meet the conditions for approval. *Prudential Regulatory Authority*

Financial Conduct Authority published first set of data under new complaints rules (UK)
The Financial Conduct Authority (FCA) has published data on the number of complaints reported by firms under new rules which came into force on June 30, 2016. The data reflect the fact that under the new rules, financial services firms have longer to resolve complaints less formally. Firms now have three days to address a complaint to a consumer's satisfaction, this is up from the previous next business day time limit.
Financial Conduct Authority

New UK Money Markets Code launched (UK)
A new voluntary UK Money Markets Code setting out the standards and best practice expected from participants in the deposit, repo and securities lending markets has been published. *Bank of England , Document*

ESMA published an opinion on mar accepted market practices on liquidity contracts (Europe)
The European Securities and Markets Authority (ESMA) has published an opinion on the points for convergence in relation to Accepted Market Practices (AMP) under the Market Abuse Regulation (MAR) on liquidity contracts. These agreed points are expected to be used as a reference in the assessment of the MAR AMPs on liquidity contracts that National Competent Authorities (NCAs) may submit to ESMA after a domestic consultation and on which ESMA will have to issue an opinion. European Securities and Markets Authority ; Document

EIOPA published an EU-wide thematic review of consumer protection issues in the unit-linked market (Europe)
The European Insurance and Occupational Pensions Authority (EIOPA) published a Thematic Review on consumer protection issues in the unit-linked market due to business interlinkages between providers of asset management services and insurance undertakings. The Thematic Review assesses potential issues for consumers due to

monetary incentives and remuneration payments from asset managers to insurance undertakings in the unit-linked market. The press release can be viewed here and the full report can be viewed.
European Insurance and Occupational Pensions Authority, Report

Oversight subcommittee hearing on FATCA (US)
The Subcommittee on Government Operations of the Committee on Oversight and Government Reform, U.S. House of Representatives, today held a hearing for the purpose of reviewing "unintended consequences" of the Foreign Account Tax Compliance Act (FATCA).
The subcommittee's hearing specifically was convened to examine the effects of FATCA on the U.S. and international economy, as well as potential legislative remedies.
Background
FATCA requires non-U.S. financial institutions to report assets and identities of certain U.S. persons with non-U.S. financial accounts to the IRS.
According to the subcommittee, many foreign banks have stopped serving U.S. citizens, and "record numbers of Americans have renounced their citizenship."
Senator Rand Paul (R-KY) and five expatriates have filed a lawsuit claiming FATCA constitutes an unconstitutional breach of privacy, as well as an illegal treaty. *Oversight Committee*
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Accounting/ Auditing Updates

Webcast: Disclosure Initiative—Principles of Disclosure
On May 4, 2017, Gary Kabureck, a member of the International Accounting Standards Board, and members of staff conducted a webcast to introduce and discuss the discussion paper 'Disclosure Initiative—Principles of Disclosure'. The paper was published in March 2017. The webcast covered following points:
- Background and objective of the Principles of Disclosure
- Disclosure issues identified by the Board
- Possible approaches to remedy these disclosure issues, including the Board's preliminary views
- Questions on which the Board is seeking feedback

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