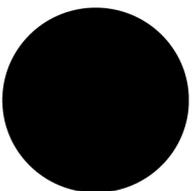




**STATEMENT SUPPORTING THE DRAFT
CONDUCT STANDARD – REQUIREMENTS FOR
MARKET INFRASTRUCTURES**



UPDATED*: MARCH 2026

*This third version incorporates changes that were made to the original version of the statement that was published in June 2020 and the subsequent iteration that was published in April 2024.

1. PURPOSE OF THE STATEMENT

- 1.1 This Statement relates to the publication by the Financial Sector Conduct (FSCA) of the draft Conduct Standard - Requirements for markets infrastructures (draft Conduct Standard). The FSCA intends to make the draft Conduct Standard under sections 53(2A) and 74 read with Chapter VIII of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA), 106(1) and 108 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act).
- 1.2 Chapter V of the FMA prescribes the requirements with which clearing house rules must comply. Section 53(2A) of the FMA provides that regulations or standards may prescribe additional requirements that must be contained in the clearing house rules.
- 1.3 In addition, section 74 of the FMA states that conduct standards may prescribe requirements in relation to any regulated person where the required standard of conduct is not prescribed in another law or conduct standard, and a conduct standard is necessary or expedient for the achievement of the objects of the FMA.
- 1.4 Further, section 106(1) of the (FSR Act), read with section 106(2)(a), empowers the FSCA to make conduct standards for or in respect of financial institutions to ensure the efficiency and integrity of financial markets. Section 108 provides powers to make standards on additional matters as outlined in the section.
- 1.5 The FMA defines a market infrastructure as a licensed central counterparty; licensed central securities depository; licensed clearing house; licensed exchange; or licensed trade repository. All market infrastructures are 'financial institutions' for purposes of the FSR Act¹ and 'regulated persons' for purposes of the FMA.²
- 1.6 A conduct standard made under the FSR Act and/or FMA constitutes a 'regulatory instrument' for purposes of the FSR Act. In terms of section 98(1)(a) of the FSR Act, a financial sector regulator must not make a regulatory instrument³ unless it has published the following documents:
 - a draft of the regulatory instrument;
 - a statement explaining the need for and the intended operation of the regulatory instrument;
 - a statement of the expected impact of the regulatory instrument; and
 - a notice inviting submissions in relation to the regulatory instrument, stating where, how and by when submissions are to be made.
- 1.7 In fulfilment of the above-mentioned requirements, the purpose of this Statement is to explain the need for, the expected impact of, and the intended operation of the draft Conduct Standard as required by section 98(1)(a)(ii) and (iii) of the FSR Act.

2 BACKGROUND

- 2.1 On 20 May 2020, the FSCA published a draft Conduct Standard for Exchanges and a draft Directive for Exchanges for public consultation. The main objective of the aforementioned draft Conduct Standard was to introduce requirements for the conduct of exchanges in response to increased competition in the South African financial markets sector due to the

¹ See paragraph (c) of the definition of "financial institution" in section 1 of the FSR Act.

² See paragraphs (a) – (e) of the definition of "regulated person" in section 1 of the FMA.

³ For the purpose of this statement, this refers to a Conduct Standard.

introduction of a multiple exchange environment through the provisions of the FMA and the licensing of more than one of the same type of market infrastructure.

- 2.2 The proposed requirements in the draft Conduct Standard for Exchanges were further aimed at addressing the consequences of fragmentation of the market, which needed to be managed so as not to disrupt the orderly functioning of the financial markets. It was therefore important that the FSCA address issues of a policy nature, and the particular circumstances in which exchanges should interoperate and cooperate, that have been explicitly addressed in the Conduct Standard to ensure a sound, fair, efficient and transparent equity market.
- 2.3 The FSCA received numerous comments from a number of commentators on both the draft Conduct Standard and the draft Directive. Informed by, amongst other things, the comments received, the FSCA reconsidered the structure of the draft Conduct Standard and Directive and identified a need to expand the scope of the draft Conduct Standard to apply to all licenced market infrastructures and not only exchanges. A need was also identified to augment the previously proposed requirements to address, amongst other, issues that speak directly to access to the markets, fairness of the market infrastructure's rules and establishment of links between market infrastructures, where appropriate. This approach also informed a decision to rather incorporate the necessary requirements that was previously contained in the draft Directive into the draft Conduct Standard itself.
- 2.4 In April 2024, the FSCA subsequently issued a revised Conduct Standard with an expanded scope to include requirements for all market infrastructures and not only exchanges. This was motivated by the need to augment the previously proposed requirements to address, amongst other, issues that speak directly to access to the markets, fairness of the market infrastructure's rules and establishment of links between market infrastructures, where appropriate.
- 2.5 The FSCA received voluminous comments from a number of commentators on the draft Conduct Standard relating to the second round of consultation in 2024 which has warranted additional revisions to be made to the draft Conduct Standard. Based on the outcomes of the consultation relating to the publication of the revised Conduct Standard in 2024, this Statement discusses the need, expected impact and intended operation of the Conduct Standard issued for another round of public consultation.

3 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

- 3.1 The fair and efficient functioning of the market is of significant benefit to the public. The efficiency of the secondary market in providing liquidity and accurate price discovery facilitates efficient raising of capital for commercial enterprises, benefiting both the wider corporate sector and the economy. The failure of a market infrastructure to perform its regulated functions properly will have a similarly wide impact.
- 3.2 South Africa has not been immune to the introduction of competition in the financial markets and now finds itself amidst a transition toward stronger competition with the licensing of several new market infrastructures. There is also a distinct prospect of more applicants approaching the FSCA for market infrastructure licences, or possible applications to amend existing licence conditions to provide services to a broader range of market participants.
- 3.3 This brings about the necessity to update the current financial markets legislative framework in South Africa to adequately address the consequences of competition between the different market infrastructures, and especially the complexities and challenges arising from an environment with the same authorised users and the listing and the trading of the same

securities across multiple South African exchanges. In particular, the existing legislation does not contain any provisions relating to interoperability between market infrastructures and the need for market infrastructures, where applicable, to cooperate with one another.

- 3.4 The increased competition has led to fragmentation of the market, which needs to be managed so as not to disrupt the orderly functioning of the financial markets in South Africa. There may be negative implications or at least lesser gains if competition between market infrastructures is introduced without a comprehensive framework and rules that support market integrity. It is therefore important circumstances in which market infrastructures should share information and form interoperable links should be explicitly addressed in legislation to ensure consistent requirements which will support a sound, fair, efficient and transparent financial market.
- 3.5 Many efficiencies can be gained through links between different kinds of market infrastructures which can range from relatively simple agreements among the market infrastructures, to more complex interoperability arrangements involving technical interfaces between the separate operating platforms. Establishing links between market infrastructures can lead to a more efficient, resilient, and integrated financial market, benefiting market participants, investors, and the broader economy. It fosters competition, innovation, and access to a wider range of investment opportunities and ultimately contributing to the stability and growth of the financial markets.
- 3.6 More specifically, increased cooperation and interoperability hold multiple benefits to the market, for example:
 - (a) Cooperation facilitates interoperability between different market infrastructures. This means that common securities, issuers, and participants can be traded and settled seamlessly across multiple platforms. This reduces friction in the trading process and enhances market efficiency;
 - (b) When market infrastructures cooperate, it helps manage fragmentation in the market. Instead of having separate pools of liquidity on different platforms, participants can access a larger, consolidated pool of liquidity. This leads to more efficient price discovery and improved trading conditions;
 - (c) Cooperation provides market participants with diversified access points to trade common securities. This means they have more options for executing trades, reducing the risk of being dependent on a single platform that could experience technical issues or disruptions;
 - (d) Cooperation can foster healthy competition among market infrastructures. When platforms collaborate, they can focus on providing value-added services and improving the quality of their offerings, rather than engaging in cutthroat competition that could lead to a race to the bottom in terms of service quality or pricing; and
 - (e) Cooperation can lead to cost efficiencies for market participants. They may be able to consolidate their trading and settlement activities which could potentially reduce the costs associated with managing multiple relationships with different market infrastructures.
- 3.7 There are currently no requirements that mandate exchanges with common listed securities and common authorised users to timeously exchange information in respect of failed trades, trading halts, removal of securities from the list of securities of one exchange or significant events. The sharing of information is paramount to enable agile and timely response by industry players to manage any risk that may arise from these events and prevent any potential resultant fall out.

- 3.8 In addition, the introduction of multiple new entrants into the market in recent years has introduced various risks in the South African financial markets. This is due to many of the same market participants (issuers, authorised users and central securities depository participants) operating across the same environments. These risks include the potential for material duplication of regulatory effort (and therefore duplication of costs), inconsistent standards being applied to common market participants, material gaps in regulatory oversight, increased systemic risk, and the erosion of market integrity.
- 3.9 Securities regulators bear the responsibility for striking an appropriate balance between a market structure that promotes competition among markets, and one that minimises the potentially adverse effects of fragmentation on market integrity and efficiency, price formation, and best execution for investors.
- 3.10 As a result, there is a risk that there may be market infrastructures that apply their rules in such a way that they exclude other market participants operating in the same markets, the principle of best execution is not adhered to by common authorised users of exchanges and that critical information is not shared where these market infrastructures provide services to common market participants. This in turn may lead to increased risk and a decrease in transparency in the market. Practically, this could signal that a market infrastructure is ill-equipped to implement timely measures to safeguard its interests, and the interests of impacted stakeholders and market participants, in an instance where a threat to the market infrastructure's systems or continued functioning is realised.
- 3.11 Further, the FSCA is also concerned with risk management, settlement processes and settlement assurance models, and authorised user default. Different settlement cycles, technology and settlement assurance models introduce operational and settlement risks, especially the probability of failed trades, which may impact the stability and soundness of the South African financial markets. Consideration must be given to a coordinated approach to ensure that these risks are mitigated.
- 3.12 Another concern for the FSCA is the adherence to the principle of best execution by common authorised users and common central securities depositories participants. Best execution is not currently a legal requirement in terms of the South African framework. The principle of best execution requires authorised users to obtain the best possible result for a client when trading in securities on different exchanges on behalf of that client. It is aimed at ensuring that client trades are executed promptly and on the most favourable terms reasonably available under the circumstances, and that authorised users do not choose trading routes based on, for example, the most lucrative compensation they may receive, or any factor other than the best interests of the client. It therefore ensures that investors receive fair treatment and are not disadvantaged due to inefficiencies or conflicts of interest within the market.
- 3.13 Enhancing the local framework to require best executions will promote fair and efficient markets by encouraging competition among market participants. When multiple market infrastructures operate within the same markets, competition can help drive down trading costs and improve execution quality for investors. This supports fairness to investors, efficiency, and transparency of the financial markets for the benefit of financial customers.
- 3.14 The need to mitigate conflicts of interest is a fundamental requirement to ensure fair and efficient financial markets. According to the International Monetary Fund (IMF) conflicts of interest may be defined as arising when a financial service provider, or an agent within such

a service provider, has multiple interests that create incentives to act in such a way as to misuse or conceal information needed for the effective functioning of financial markets⁴.

- 3.15 Conflict of interest in the context of financial markets may arise in a number of ways. For example, as explained above regarding best execution, conflict of interest may arise where authorised users should be acting in the best interest of their clients when executing a trade to ensure the best result for their transactions. Conflict may arise between the interest of the authorised user versus the interest of the client.
- 3.16 Section 62 of the FMA places an obligation on the market infrastructure to, where applicable, take necessary steps to avoid, eliminate and disclose and manage possible conflict of interest between its regulatory functions and its commercial services. Market infrastructures in South Africa are Self-Regulatory-Organisations (SRO) responsible to ensure that its members comply with its rules, and at the same time acting as market participants. While conflicts of interests can arise between the SRO as market participant and the SRO as part-regulator, Board Notice 1 of 2015⁵ made under section 62 of the FMA sets out requirements with which the arrangements of market infrastructures must comply to manage possible conflicts of interest between its regulatory functions and its commercial services.
- 3.17 The FSCA considers it necessary to build onto these requirements to address instances where a market infrastructure provides services to market participants and other market infrastructures in order to ensure that any actual or potential conflicts of interest are avoided. This may address conflict of interest related risks where, for example, the market infrastructure or its subsidiaries have acquired direct or indirect shareholding in other market participants which may drive potential bias in action, judgement and decision making. This may in turn have implications for the efficiency and fairness in the market that can undermine market integrity.
- 3.18 Keeping in mind that there are already existing requirements in Board Notice 1 of 2015 the draft Conduct Standard has been structured to incorporate the existing requirements from the Board Notice, and expands thereon to have consolidated requirements related to conflict of interest for market infrastructures.
- 3.19 Likewise mandatory disclosure of fees and charges for services is aimed at increasing transparency and avoiding exploitation of clients. The opaque fee structures for services remains a risk to fair outcomes for financial customers, and accordingly the Conduct Standard sets out certain mandatory disclosures to ensure transparency and instil confidence in the financial market for investors.
- 3.20 Transparent fee structures encourage competition based on service quality, efficiency, and cost-effectiveness, ultimately benefiting investors and promoting market innovation. Disclosure of fees and charges will also enhance competition and innovation as the fee disclosure promotes healthy market competition by allowing market participants to compare costs across different market infrastructures and subsidiaries.

Relevant international and local developments

⁴ Current Developments in Monetary and Financial Law, Vol. 4, International Monetary Fund available at: DOI: <https://doi.org/10.5089/9781589065079.072>

⁵ Board Notice 1 of 2015 made under section 62 of the FMA came into effect on 31 December 2015

- 3.21 The FSCA has considered international best practice and standards and does not intend to be overly prescriptive in respect of the requirements. The introduction of requirements for market infrastructures aligns with global standards and established best practices.
- 3.22 In 2012, the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) published the Principles for Financial Market Infrastructures⁶ (PFMIs) setting out requirements and key responsibilities to harmonise global standards for all kinds of market infrastructures. Recognising that market infrastructures have a critical role to play in ensuring that the markets remain transparent, fair and efficient, the PFMIs set out certain responsibilities for the authorities to provide for the effective regulation, supervision and oversight of the different kind of market infrastructures.
- 3.23 Importantly, the PFMIs support the G20 and FSB strategies with respect to cooperation access and resolution. There is a need for effective cooperation and coordination among market infrastructures and market regulators due to the rising importance of global market infrastructures that serve multiple jurisdictions and markets as well as the increasing interconnectedness of market infrastructures. The PFMIs also address access to market infrastructures and requires that market infrastructures should establish access policies that provide fair and open access, while ensuring their own safety and efficiency.
- 3.24 South Africa as a member of IOSCO subscribes to international best practice. All licensed market infrastructures are accordingly subjected to a bi-annual assessment of compliance with the PFMIs which require that all market infrastructures must have operating rules, plans and policies in place that align with the principles, because the disorderly failure of a market infrastructure could lead to severe systemic disruptions. IOSCO has in the past, issued multiple papers on competition between market infrastructures, market fragmentation and regulation of securities markets and the draft Conduct Standard draws from all of the principles in the recommendations by IOSCO and the PFMIs.
- 3.25 In the European Union the Markets in Financial Instruments Directive 2014, commonly known as MiFID 2, provides a legal framework for securities markets, investment intermediaries, in addition to trading venues. MiFID 2's best execution regime requires entities participating in financial markets to take all reasonable steps to obtain the best possible result for their clients, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Further to the risks raised in paragraphs 3.12 and 3.13 above, the intention with the requirements related to best execution in the draft Conduct Standard is intended to take into account international best practice in this regard whilst accounting for the unique nuances of the South African market
- 3.26 The FSCA further gained insights from the approach taken by the Australian Securities and Investments Commission (ASIC) in issuing its Market Integrity Rules in 2017⁷ that focuses specifically on the conduct expected from market operators. ASICs Market Integrity Rules include, amongst others, the following:
- Requirements to ensure fair and transparent market operations by market operators;
 - Provisions to prevent market manipulation and unfair trading practices.
 - Rules that ensure the fair access of market participants to market infrastructure services.
 - Ensuring that all eligible market participants have equal access to trading facilities and services.

⁶ <https://www.bis.org/publ/cpss101a.pdf>.

⁷ <https://www.legislation.gov.au/F2017L01474/latest>.

- Provisions to prevent anti-competitive behaviour and ensure a level playing field for all market participants.
 - Ensuring transparency in pricing, trade execution, and other market-related information.
- 3.27 Globally it is indicated that efficiencies can be gained through links between central security depositories (CSDs). As such, in June 2007, the European industry associations for exchanges and clearing and settlement associations (Federation of the European Securities Exchange (“FESE”), the European Association of CCP Clearing Houses (“EACH”) and the European Central Securities Depositories Association (“ECSDA”) issued a Guideline on access and interoperability between exchanges and clearing and settlement systems⁸. The guideline provides useful information on the forms that peer-to-peer links can take.
- 3.28 Locally, in May 2018 Genesis did a research report commissioned by the FSCA to assess the impact of multiple exchanges in South Africa. The report highlighted the fact that changes in the financial sector policy combined with the general lowering of natural barriers to entry, has – at least in principle – opened the South African market to competitive entry. South Africa now finds itself, like many other international jurisdictions, amidst a transition toward competition in cash equity markets, with the licensing of multiple new exchanges.
- 3.29 Genesis’s report to the FSCA further recognised that the introduction of competition – or even the threat of competition in some instances – has the potential to improve welfare and market outcomes by eliminating monopoly profits and driving down the cost of trading. Competition could also to drive innovation and enhance the quality of service and choices available to listed firms, brokers and investors.
- 3.30 However, on the other hand, the introduction of competition may introduce additional costs into the system which would ultimately need to be borne by market participants. This could include additional costs for brokers to access multiple exchanges and information streams, as well as potentially additional “margin” requirement costs. More fundamental, is the potential for competition to impact on the soundness and integrity of the market system and its management of risk and the report had therefore made recommendations for the FSCA on how to potentially deal with the consequences of competition in the South African markets landscape.

Conclusion

- 3.31 The evolving financial markets environment, especially the licensing of several new market infrastructures, has led to increased competition and the introduction of market fragmentation and various risks, complexities and challenges, as discussed above.
- 3.32 The FSCA must in terms of its objective as set out in section 57 of the FSR Act enhance and support the efficiency and integrity of financial markets, and in line with its functions in section 58 of the FSR Act, promote *inter alia* sustainable competition in the provision of financial products and financial services. If the current inefficiencies that competition has brought about in the South African financial markets is not adequately addressed, the risks of an unfair market, favouring only certain types of market infrastructures increases, and inefficiencies within the market will remain which means that market integrity cannot be maintained. As such, the need remains to address these issues through a legislative intervention in the form of the Conduct Standard.

⁸ Access and Interoperability Guideline’ (28 June 2007) available at: https://www.athexgroup.gr/documents/10180/1104041/19_access_interoperability_guideline.pdf/2e9297b8-fcad-43d8-a4d2-fda39b442768

- 3.33 In formulating the Conduct Standard, the FSCA constructed proposals that are aimed at addressing the aforementioned risks identified in the South African financial markets context. Further, insights gleaned from internal and local developments were also utilised to inform the draft Conduct Standard, although these insights were adapted to suit the local context.

4. OUTCOMES OF SECOND ROUND OF PUBLIC CONSULTATION

- 4.1 The FSCA received a substantial number of comments from 11 respondents from the second round of public consultation. The sentiments from commentators on the Statement of impact highlight the complexity associated with imposing requirements for interoperability.
- 4.2 Some comments welcomed the overarching aims of the Conduct Standard on developing requirements to ensure that market infrastructures co-operate and collaborate, and some comments cautioned on the potentially disruptive impacts that overly stringent requirements for interoperability may introduce into the market.
- 4.3 In response to the principled nature in which the requirements are drafted, commentators proposed that the Authority create more prescriptive requirements which are explicit on the particular instances and circumstances in which market infrastructure are required to interoperate. The view was based on the understanding that the Conduct Standard was aimed at addressing the issue of multiple licenses issued to operate an exchange. However, as indicated in this Statement and as it appears in the Conduct Standard, the aims are to impose the requirements irrespective of the type of licence held. Furthermore, the FSCA creates new requirements across market infrastructures that do not necessarily relate to challenges around common authorised users and common listed securities.
- 4.4 Relatedly, commentators also queried whether the Conduct Standard would be generally applicable or whether, in fact, its provisions would only impact a subset of actors in the financial markets – i.e authorised users of multiple exchanges. The concern was that the Conduct Standard would create new obligations to address risks that are not experienced by the entire market. In this regard, the FSCA has developed the requirements to apply across the board but only to the extent relevant. This approach is supported by the principled nature of the provisions – giving market infrastructures the opportunity to implement the requirements in light of the activities they undertake, the risks they face impacted by the nature, scale and complexity of their operations.
- 4.5 Another key sentiment that emerged is that the Conduct Standard attempts to require competing market infrastructures to consolidate their activities for the benefit of the market. The FSCA highlights that although market infrastructures will be required to co-operate and collaborate in order to meet the requirements of the Conduct Standard, this does not do away with the independence of each individual market infrastructure. The FSCA recognises that each market infrastructure is licensed in its own right – however, each market infrastructure is expected to work with other market infrastructures to the extent required in the Conduct Standard. It must be borne in mind that the requirements are intended to improve the efficiency and integrity of the markets.
- 4.6 Some comments have also been raised around the need to balance alignment of local requirements to international best practice and the realities of the local financial markets, with which the FSCA agrees. The FSCA also confirms that the Conduct Standard has been developed within the confines of the law-making powers set out in the FSR Act and FMA.

- 4.7 A full account of the consultation process, with all comments received and responses to each of these comments is set out in the consultation report published alongside this statement and the revised draft Conduct standard.

5. SUMMARY OF THE REVISED DRAFT CONDUCT STANDARD

5.1 The draft Conduct Standard is intended to set out requirements to be complied with by market infrastructures as the FSCA aims to level the playing field for all market infrastructures by supporting competition in the market among the licenced entities. The draft Conduct Standard contains both general requirements that apply to all market infrastructures, and specific requirements that apply depending on the type of market infrastructure.

5.2 A summary of the proposed requirements contained in the draft Conduct Standard is set out below.

5.3 *General principles for market infrastructures*

5.3.1 Market infrastructures are required to establish appropriate policies that provide fair and open access to market participants and other market infrastructures but must ensure that they have appropriate risk mitigating requirements in place to ensure their continued safety and operations.

5.3.2 Market infrastructures are required to ensure open and fair access to other market participants. The FSCA is alive to the need for certain restrictions which are necessary for risk management purposes. Market infrastructures need to strike a balance between open access and maintaining market stability.

5.3.3 The third iteration of the Conduct standard published alongside this Statement include principles related to dispute resolution in instances that agreements cannot be reached between market infrastructures. This insertion was on the recommendation of stakeholders.

5.4 *Market infrastructures' rules and directives*

Market infrastructures may not interpret or apply their rules or directives in such a manner that it is restrictive or creates a barrier to entry for other market participants. Market infrastructures must also review their rules periodically to ensure that their rules remain fair and transparent and do not create barriers to entry for other market participants.

5.5 *Conflicts of interest*

5.5.1 As explained in paragraph 3.18 above, the draft Conduct Standard has been structured to include the existing requirements of Board Notice 1 of 2015 with minor drafting improvements. The decision was taken to incorporate these existing requirements into the Conduct Standard to avoid fragmentation (i.e., by ensuring that as far possible matters relevant to the same topic that are applicable to the same institutions are not set out in different regulatory instruments). The Conduct Standard expands on the existing requirements to address instances where a market infrastructure provides services to market participants and other market infrastructures in order to ensure that any actual or potential conflicts of interest are avoided.

5.5.2 The substance of the Notice has been retained, in particular with regards to the composition of the conflicts of interest committee and the requirements for annual reporting. In sum market infrastructures are required to establish an independent oversight committee, to develop policies to avoid/manage/mitigate conflicts, and ensure appropriate separation of regulatory

and commercial functions, submit an annual assessment/report to the FSCA. It is clarified in the third iteration of the Conduct Standard that an existing board committee can fulfil the duties of the independent oversight committee. Board Notice 1 of 2015 will be repealed through the final Conduct Standard when it comes into effect.

5.6 *Fees and charges for services*

5.6.1 Where a market infrastructure is part of a group or where the market infrastructure cross-subsidises services within the group, the FSCA requires that such market infrastructure discloses all fees charged for services to its clients, and the disclosure must state the specific monetary amount for each service rendered.

5.6.2 The FSCA has clarified in the third iteration of the Conduct Standard that cross-subsidisation is not prohibited; and have incorporated the principle that fees must be reasonable and commensurate with the actual cost of performing the function or rendering services. Market infrastructures must, however, disclose all fees and provide the basis where fees are not pre-determinable to clients. Importantly, there is no requirement to publish proprietary pricing models. The focus of the provisions is on transparency to support fair outcomes and appropriate oversight.

5.7 *Significant events*

5.7.1 The FSCA recognises that there is a need for market infrastructures to inform each other of any significant event, that affects its core services, compliance monitoring and reporting systems as this may very well affect the fair, orderly and transparent operation of the market infrastructure. This notification must also happen to the FSCA, as soon as reasonably possible, (as is currently the case under the significant events Notice of 2017) but no later than 24 hours after the event occurred.

5.7.2 Information sharing helps identify and mitigate systemic risks. By exchanging appropriate data on market participants, transactions, and risk exposures, market infrastructures can collectively monitor and manage risks that could have broader implications for the financial system.

5.7.3 Information sharing is crucial for addressing technological challenges and cybersecurity threats. Market infrastructures can exchange best practices, insights, and threat intelligence to enhance their collective cybersecurity measures and protect the integrity of the financial system. The revised draft of the Conduct Standard incorporates the matters dealt with in FSB Notice to licensed market infrastructures to report significant events to the Registrar in terms of section 6(3)(d) of the Act, dated 20 June 2017. The notice will be repealed when the Conduct Standard comes into effect.

5.8 *Requirements for central securities depositories*

5.8.1 The FSCA requires that a central securities depository implement robust risk management practices to identify, measure, monitor, and manage its risks in relation to its functions as a central securities depository from other activities that it may perform.

5.8.2 The requirements in the draft Conduct Standard speaks to measures that must be in place to safeguard investor assets held within the central securities depository. This includes robust custody practices, mechanisms for addressing investor concerns, such as clear and timely information to investors.

5.9 *Requirements for central counterparties*

- 5.9.1 Central counterparties must enable their clearing members to take full control and responsibility for the management of the clearing member's client's default and further establish clear and well-defined procedures for managing defaults by clearing members.
- 5.9.2 In respect of the account structures of central counterparties, the draft Conduct Standard requires that the central counterparties must employ an account structure that enables it readily to identify positions of a clearing member's client and to segregate related collateral and to maintain client positions and collateral in individual customer accounts or in omnibus customer accounts.
- 5.9.3 The rules of central counterparties must include and provide for the additional requirements as set out in section 9 of the draft Conduct Standard. The requirements are informed by a benchmarking exercise undertaken by the FSCA whereby the current requirements in the FMA for the rules of central counterparties were compared to the requirements in a number of other relevant jurisdictions. These additional requirements aim to address the gaps identified through this comparative exercise.

5.10 *Requirements for Exchanges*

- 5.10.1 Most of the requirements proposed in the 2020 draft Conduct Standard for Exchanges were progressed into the draft Conduct Standard for market infrastructures, with the additional insertion of requirements that speak to high frequency trading, transfer of listings between exchanges, cross trading between exchanges, as well as the requirement for mechanisms to enable the issuance of a single trade confirmation by authorised users in respect of transactions executed across multiple exchanges; and to enable best execution.

5.11 *Co-operation and interoperation between market infrastructures*

- 5.11.1 To address the risks as explained above, the draft Conduct Standard requires exchanges to enter into appropriate arrangements that enables cooperation and interoperation between parties in the performance of their functions under the FMA, in an attempt to harmonise or align operations with regards to order execution, clearing and settlement.
- 5.11.2 The provision for establishing cooperation or interoperation agreements, as applicable require that such arrangements must enable fair and open access, supported by reasonable risk-related access requirements and necessary confidentiality provisions. In this regard the market infrastructure must have system requirements, capability and a risk management framework that is appropriate and up to date.
- 5.11.3 The draft Conduct Standard also includes requirements that all co-operation or interoperation agreements, as applicable must make provision, as a minimum, for a number of aspects as outlined in section 13 of the draft Conduct Standard.
- 5.11.4 Without prescribing which links specific market infrastructures must enter into the draft Conduct Standard requires that where relevant (and this would need to be established between the market infrastructures that have common issuers, members, participants or list common securities) the market infrastructures should interoperate with one another by considering either standardised access, customised access or transaction feed access. When considering which one of these forms of interoperability to enter into with another market infrastructure, risks of each market infrastructure must at all times be addressed and considered as a crucial going concern.

5.12 *General requirements for the establishment of links between market infrastructures:*

- 5.12.1 When market infrastructures consider establishing links with each other, creating connections or interoperating, the draft Conduct Standard requires that they implement various requirements to ensure the smooth functioning, security, and integrity of the linked systems.
 - 5.12.2 The requirements in the draft Conduct Standard focuses on the market infrastructures developing and implementing robust risk management frameworks to address primarily counterparty risk, credit risk, and operational risk associated with the establishment of the link. This also includes establishing clear guidelines for margining and collateral requirements.
 - 5.12.3 Market infrastructures need to individually ensure that with regards to its systems careful consideration is given to evaluating the resilience, scalability, and security of systems to handle the increased volume and complexity resulting from the linkage and implement robust security measures to protect against cyber threats and unauthorised access.
 - 5.12.4 Where a market infrastructure establishes a link with another market infrastructure, the FSCA expects that the market infrastructures develop comprehensive business continuity and disaster recovery plans that account for potential disruptions in either linked market infrastructure and establish protocols for handling system failures, outages, or other operational challenges. The FSCA, has not however, prescribed which links must be followed and will leave this to the market infrastructures to assess and decide on, based on the need and circumstances requiring interoperable arrangements or links.
 - 5.12.5 The approach to the nature of the links to be implemented in the South African market is not prescriptive – the Conduct Standard allows for discretion in terms of which market infrastructures can decide on the appropriate types of links to be used, depending on their risk profiles and functions or duties performed.
- 5.13 Of utmost importance as reiterated throughout the draft Conduct Standard when considering interoperability and linked market infrastructures is the issue of default management. The draft Conduct Standard requires that the market infrastructures focus on establishing a well-defined procedure for handling defaults, including default management processes, auction mechanisms, and the allocation of losses. These procedures should be agreed upon and documented prior to the establishment of the link.

6. STATEMENT OF IMPACT OF THE CONDUCT STANDARD

Expected benefits

- 6.1 The draft Conduct Standard is intended to apply to all market infrastructures, as defined in the FMA. Competition in the South African financial markets promotes efficiency by driving innovation and encouraging market participants such as authorised users, to find better ways to execute trades for clients, manage risks, and lower the costs of securities services. This can lead to the development of new financial products, improved trading algorithms, and more efficient price discovery mechanisms which are beneficial for the market as a whole.
- 6.2 Ensuring market fragmentation and competition amongst licenced market infrastructures is managed well will also empower that the FSCA to ensure that the markets remain fair, efficient, and transparent. Competition helps maintain market integrity by supporting a regulatory environment that aims to ensure fair and transparent trading practices. Market infrastructures implement rules, and the FSCA conducts regular review and implementation

of new standards to create a level playing field and prevent abusive or fraudulent behaviour amongst the market infrastructures, amongst other matters.

- 6.3 The draft Conduct Standard aims to establish appropriately consistent and uniform requirements across the market. This ensures that all market infrastructures operate under similar guidelines, reducing confusion and promoting a level playing field. This will further lead to confidence in the market as investors and financial institutions can participate in the different markets with a clear understanding of the regulatory expectations.
- 6.4 One of the benefits of the draft Conduct Standard is addressing risks associated with market fragmentation and competition. The proposed requirements that aim to govern the behavior of market infrastructures in a multi-market infrastructure environment can mitigate the risk of disruptions, cascading failures, or other negative consequences that may result from fragmented trading environments and an unlevel playing field.
- 6.5 In a market where multiple market infrastructures are regulatory bodies themselves and oversee different segments of a fragmented market, the draft Conduct Standard can assist these regulatory bodies to facilitate coordination and collaboration by aiming to avoid regulatory arbitrage and ensure that regulatory and compliance efforts are complementary rather than conflicting.
- 6.6 The active and continued oversight by the FSCA over the draft Conduct Standard will enhance the consistency of the assessment of regulatory compliance across the different market infrastructures engaged in similar securities services and providing competing services to the market. Furthermore, as information about the cooperative and interoperable agreements between market infrastructures will be collected and assessed by the FSCA, a better assessment of the risks, effectiveness and efficiency of the financial markets will be enabled.
- 6.7 Ultimately, the draft Conduct Standard is intended to set out requirements for the conduct of market infrastructures in relation to each other and in relation to market participants, as defined in the draft Conduct Standard, to ensure the orderly functioning, fairness, efficiency, and transparency of the financial markets, instilling confidence in the market for investors, and fostering trust in the financial system.

Cost and resource implications

- 6.8 The FSCA acknowledges that there may be instances in which the implementation of the draft Conduct Standard will have a cost implication on market infrastructures as implementation of the new requirements may place an initial administrative burden on market infrastructures and have cost implications due to changes necessary in processes, systems, and from a human resources perspective. The exact extent of this cost implication is, however, not entirely clear at this stage. During the second round of consultation commentators explained that different exchanges have distinct rules, technologies, and operational procedures, which might present challenges for authorized users operating on different infrastructures. Adapting to different exchange environments can be challenging, especially when dealing with the same authorized users and securities across multiple South African exchanges. The outcomes-based approach in the Conduct standard is aimed at enabling mechanisms that reduce unnecessary operational complexity and cost for market participants trading common listed securities across multiple exchanges, while preserving transparency, auditability and compliance with exchange rules and the FMA.
- 6.9 Some commentators understood the requirements in the 2nd iteration of the Conduct standard to require a full replacement of the operating system of the market infrastructures or the

authorised user. It must be noted that the Conduct Standard does not require the replacement of core operating systems, nor does it mandate the implementation of a new, exchange-neutral system by authorised users. The Conduct Standard is outcomes-based and does not prescribe specific systems, technologies or architectures. Decisions regarding system design and integration remain a commercial and operational matter for market infrastructures and authorised users, provided that the regulatory outcomes are met.

- 6.10 The FSCA notes the anticipated resource implications and the expected related costs that may be borne by impacted market infrastructures and authorised users. The expected cost and resource implication of the Conduct Standard must be weighed against the risks that are being addressed and the long-term benefit that will likely include a reduction in the costs by creating more efficient systems and reducing duplicative costs over time. The FSCA is amenable to suggestions from the industry on how the risk as explained in this Statement can still be addressed whilst managing the impact in a rational and effective manner.
- 6.11 Again, as with the previous rounds of consultation interested parties, especially market infrastructures, are requested to specifically provide input (both qualitative and quantitative if possible) on the envisaged cost implications through the consultation process.
- 6.12 Notwithstanding, it must be noted that cost implications as a result of a legislative intervention is more often than not unavoidable. The mere fact that there will be cost implications does not mean a legislative intervention should not be progressed. What is important is that the proposed intervention is formulated in such a manner that it addresses the identified risks in a rational and effective manner, whilst taking into account the need to minimise the cost implications as far as is practical.
- 6.13 In this instance, the FSCA remains of the view that (subject to further input being received from commentators) the envisaged cost implications are justified and over time will be balanced out as the prudent and responsible management of competition and the consequences of market fragmentation is necessary to ensure the fair and transparent operation of the market. Continued operations of all market infrastructures are key in ensuring market integrity can be ensured.
- 6.14 The possible negative consequences of a multiple market infrastructure environment do not imply that competition should not occur. With the correct measures and regulatory interventions in place, these risks can be largely mitigated and managed. Although these interventions, such as the requirements proposed in the Conduct Standard, may add a layer of complexity and cost, in most instances only relatively modest interventions are required. It should, however, be noted that the extent of these risks, and the required regulatory responses depend, to some extent, on the nature and business model of a particular market infrastructure.
- 6.15 What will further mitigate the potential impact is that market infrastructures in many instances may already have some processes, systems and procedures in place to adhere to some of the requirements of the Conduct Standard, as these requirements are aligned to the existing FMA.
- 6.16 Lastly, as part of considering the comments and input received from commentators, the FSCA is proposing an 18-month transitional period to minimise the immediate impact, cost and resource implications and to allow market infrastructures sufficient time to prepare for implementation.

7. STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

- 7.1 The Conduct Standard is consistent with the object of the FSR Act, the objectives of the FSCA to support the efficiency and integrity of financial markets in the interests of financial customers, and the FSCA's broader responsibility to support balanced and sustainable economic growth.
- 7.2 The requirements contained in the draft Conduct Standard will help ensure that all market infrastructures, particularly competing market infrastructures, adhere to consistent and transparent requirements that would aid to promote market integrity by reducing the likelihood of market manipulation, and unfair trading practices.
- 7.3 It is the responsibility of each market infrastructure to ensure that it complies with the requirements as stipulated in the draft Conduct Standard when the Standard is made final, and to effect the necessary changes to its processes or systems to allow for cooperation with other market infrastructures.
- 7.4 It is the intention that the Conduct Standard will be made once the consultation processes prescribed in the FSR Act have been concluded. It is proposed that the market infrastructures be required to comply with the Conduct Standard within 18 months from the effective date, which will be the date of final publication. Following the implementation of the draft Conduct Standard, the FSCA will assess and evaluate the effectiveness of the draft Conduct Standard on a continuous basis as part of the FSCA's regulatory and supervisory responsibility to ensure that any unintended consequences of the draft Conduct Standard on the industry are adequately addressed.