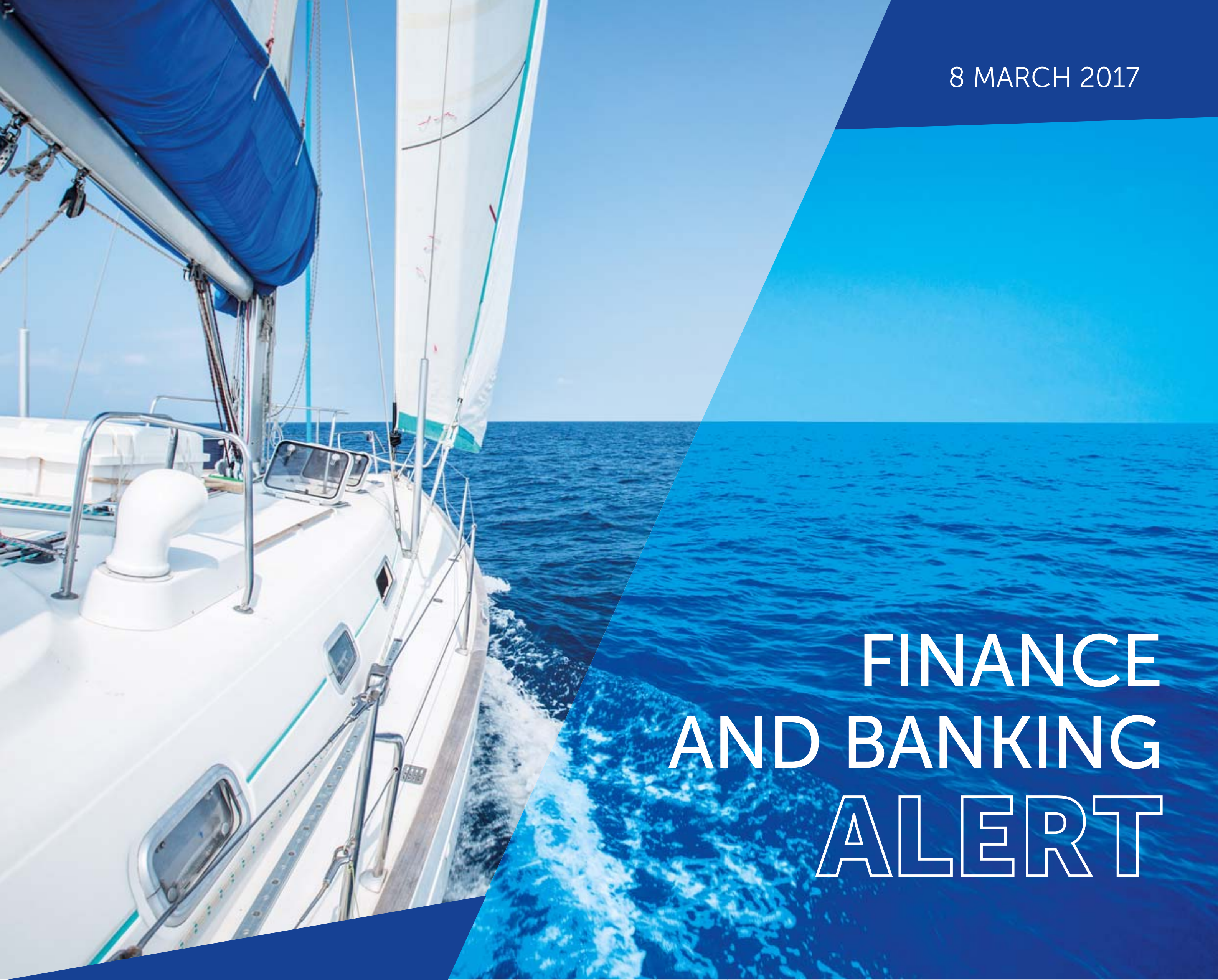

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FINANCE AND BANKING ALERT

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REPRIEVE FOR BANKS – BUT IS MARGIN IMPLEMENTATION IMMINENT?

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REPRIEVE FOR BANKS – BUT IS MARGIN IMPLEMENTATION IMMINENT?

Towards the end of 2016, the South African Reserve Bank (SARB) unexpectedly issued a proposed directive requiring certain banks to begin exchanging initial margin and variation margin in respect of uncleared OTC derivatives as early as 1 January 2017 (Directive).

BASA, the South African banks, the local branches of foreign institutions and the International Swaps and Derivatives Association all made submissions to the SARB in response to the proposed Directive.

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Towards the end of 2016, the South African Reserve Bank (SARB) unexpectedly issued a proposed directive requiring certain banks (with derivatives books of a particular size) to begin exchanging initial margin and variation margin in respect of uncleared OTC derivatives as early as 1 January 2017 (Directive). The Directive set the proverbial cat among the pigeons in that South Africa's margin requirements were expected to be promulgated under the Financial Markets Act, 2012 (FMA) and the various draft board notices which dealt, in part, with margin requirements for non-centrally cleared OTC derivatives (Board Notices).

BASA, the South African banks, the local branches of foreign institutions and the International Swaps and Derivatives Association all made submissions to the SARB in response to the proposed Directive.

The primary message to SARB was that more time was needed to assess the Directive. It was further emphasised that it would benefit the market if the effective date of any proposed margin requirements would allow a lead time of, for example, 12 months after the date of publication of any final Directive (or Board Notice). Such a lead time would provide sufficient time for banks and other market participants to develop and build the required infrastructure, put in place the legal arrangements and implement any other operational processes required to give effect to any margin requirements and fully comply with any final Directive.

The other issues raised included that, at present, South Africa does not have a clearing solution for over-the-counter derivatives. Importantly, the types of standardised contracts which will be subject to the mandatory clearing requirement under the FMA have not yet been designated by the authorities (neither by the FSB nor the SARB).

The difficulty is therefore that it is not possible to determine which OTC derivatives contracts must be cleared through a central counterparty or clearing house and which contracts will be subject to the new margin requirements under the proposed Directive and/or the proposed Board Notices. This impedes the ability of the market to assess the impact that margining would have on uncleared derivatives. It would be helpful if the contracts which will be subject to the mandatory clearing obligation are designated first, before any margin requirements are finally adopted.

REPRIEVE FOR BANKS – BUT IS MARGIN IMPLEMENTATION IMMINENT?

CONTINUED

The regulators are sending a clear message that they are prioritising the implementation of a margining regime in South Africa and that finalisation of the regulatory regime is imminent.

The SARB acknowledged the concerns raised, particularly with regards to implementing the margin requirements from 1 January 2017 and subsequently published a guidance note on 19 December 2016 confirming that the implementation of the margin requirements would be delayed to a date later than 1 January 2017.

Unfortunately, no indication has been given as to the likely new effective date for the margin requirements and at this point, implementation seems to be delayed until further notice.

However, it does seem that the regulators are sending a clear message that they are prioritising the implementation of a margining regime in South Africa and that finalisation of the regulatory regime is imminent.

Banks and other OTC derivatives market participants are urged to start preparing for and implementing systems, policies and procedures (as well as putting in place the required new legal agreements) to ensure compliance with any margin requirements (whether published under the auspices of the FMA or by the SARB) when they are finally published and take effect.

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