

9 SEPTEMBER 2019

FINANCE & BANKING ALERT

IN THIS ISSUE

Further steps towards enhanced regulation – trade reporting of OTC derivatives

As a G20 member country, South Africa has begun implementing robust new financial markets regulations aimed at promoting the safe and transparent trade of over-the-counter derivatives transactions (OTC derivatives or OTCs). For the first time in South Africa, sellers of OTC derivatives (also known as OTC derivatives providers (ODPs)) will have to be licensed with the South African Financial Sector Conduct Authority (FSCA).

Further steps towards enhanced regulation – trade reporting of OTC derivatives

The licensed trade repository is under an obligation to provide continuous, direct and immediate access to all transaction data to the FSCA or any other relevant supervisory authorities.

As a G20 member country, South Africa has begun implementing robust new financial markets regulations aimed at promoting the safe and transparent trade of over-the-counter derivatives transactions (OTC derivatives or OTCs). For the first time in South Africa, sellers of OTC derivatives (also known as OTC derivatives providers (ODPs)) will have to be licensed with the South African Financial Sector Conduct Authority (FSCA).

This is a move to increase control and regulation over what was a largely unregulated OTC derivatives market. Once licensed, an ODP will have six months to put in place additional documents, policies and procedures to satisfy the ODP Code of Conduct. The next regulatory hurdle faced by South African traders of OTC derivatives will be to comply with the trade reporting mechanisms contained in the FSCA's FMA Conduct Standard 3 of 2018 (Conduct Standard 3).

What trades will be reported?

Conduct Standard 3 requires that ODPs must report the details of their OTCs whether confirmed or not, in respect of the following product classes:

1. commodity derivatives;
2. credit derivatives;
3. foreign exchange derivatives
4. equity derivatives; and
5. interest rate derivatives.

Impact on trades

Of particular importance to market participants (once trade reporting begins) is the fact that the trade repository must publish the aggregate transaction data on its website for viewing by the public. This data will not disclose the ODP, counterparty or client details. In addition, the licensed trade repository is under an obligation to provide continuous, direct and immediate access to all transaction data to the FSCA or any other relevant supervisory authorities. This means that the trade repository and the South African regulators will have access to investor counterparty details, which may include information such as the investor's name and country of jurisdiction, as well as the OTC transaction details, including the instrument type, underlying asset, and price etc.

Who must report?

Counterparties (and end users of derivatives) will not bear the obligation to report trade data to the trade repository, but rather the South African ODP is obliged to do the reporting. Should the OTC be between two ODPs, the obligation rests on both ODPs to report. In circumstances where the OTC is cleared through a licensed central counterparty or licensed external central counterparty, that central counterparty bears the obligation to report. However, there is no such central counterparty or external central counterparty currently licensed in South Africa.

Further steps towards enhanced regulation – trade reporting of OTC derivatives...*continued*

The information that must be included in a trade report is extensive and requires (among others) details of the parties, the contract, the transaction, the risk mitigation measures (ie margin), the asset type underlying the OTC, the event details and the valuation details.

What information must be included in trade reports?

The information that must be included in a trade report is extensive and requires (among others) details of the parties, the contract, the transaction, the risk mitigation measures (ie margin), the asset type underlying the OTC, the event details and the valuation details. This report must be submitted to the licensed trade repository by the end of the business day following the day of the conclusion, modification or termination of the OTC (ie T+1). ODPs are, in addition to lodging the report, obliged to keep a record of every concluded derivative transaction and any modification thereto for a period of at least 5 years following the termination of the transaction. There is no indication as to how long the licensed trade repository will keep the report lodged with it.

Furthermore, an interesting provision in Conduct Standard 3, is that from the trade reporting start date, ODPs will have five years to "back-load" all transactions entered

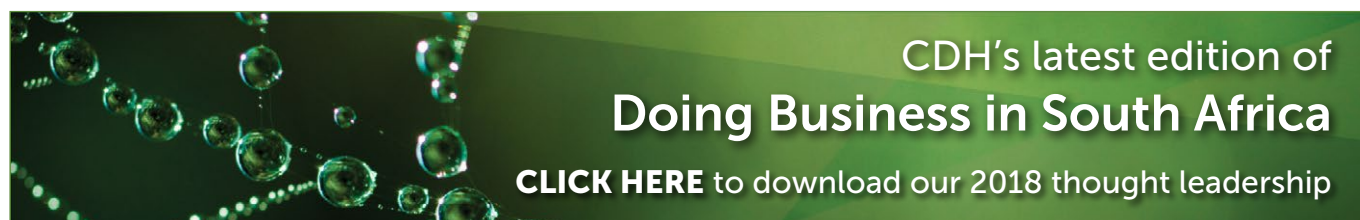
into 18 months before the reporting start date, but which were concluded before the reporting start date. Presumably this is to allow the trade repository to examine historical trades and data.

Effective from when?

The requirement to report OTC trades commences six months from the effective date of Conduct Standard 3. One of the issues delaying the pronouncement of the effective date of Conduct Standard 3 is that there is currently no trade repository in South Africa. Accordingly, there is no body to whom ODPs can lodge trade reports. This means that there is uncertainty in the market as to when exactly ODPs will be required to have their trade reporting procedures in place.

What next?

Despite the fact that there is currently no commencement date for trade reporting, ODPs who applied for registration as an ODP in June this year are starting to receive requests from the FSCA for



Further steps towards enhanced regulation – trade reporting of OTC derivatives...*continued*

ODPs should accordingly focus on submitting these supplementary applications in order to be granted authorisation to trade OTCs.

supplementary information required for authorisation as an ODP. ODPs should accordingly focus on submitting these supplementary applications in order to be granted authorisation to trade OTCs. Thereafter, ODPs should review their policies and procedures in order to ascertain whether they comply with the Code of Conduct and make any consequential changes to their business practices which may be required.

ODPs should start preparing systems to generate the reports automatically and integrate the reporting requirements into their day to day operations so that the impact on the business, once trade reporting goes live, is minimised. The reporting obligation is capable of delegation and so, should ODPs wish to utilise the services of third-party service providers for trade reporting, they could start engaging with those providers now.

In respect of compliance with the trade reporting obligations, until the effective date of Conduct Standard 3 is proclaimed,

Bridget King and James Peart

2018 1ST BY M&A DEAL FLOW FOR THE 10TH YEAR IN A ROW.

2018

1st by M&A Deal Flow.
1st by M&A Deal Value.
2nd by General Corporate Finance Deal Flow.
1st by BEE M&A Deal Value.
2nd by BEE M&A Deal Value.
Lead legal advisers on the Private Equity Deal of the Year.

2017

2nd by M&A Deal Value.
1st by General Corporate Finance Deal Flow for the 6th time in 7 years.
1st by General Corporate Finance Deal Value.
2nd by M&A Deal Flow and Deal Value (Africa, excluding South Africa).
2nd by BEE Deal Flow and Deal Value.

2016

1st by M&A Deal Flow.
1st by General Corporate Finance Deal Flow.
2nd by M&A Deal Value.
3rd by General Corporate Finance Deal Value.

2015

1st by M&A Deal Flow.
1st by General Corporate Finance Deal Flow.

DealMakers

2014

1st by M&A Deal Flow.
1st by M&A Deal Value.
1st by General Corporate Finance Deal Flow.

2013

1st by M&A Deal Flow.
1st by M&A Deal Value.
1st by Unlisted Deals - Deal Flow.

CONGRATULATIONS TO DIRECTOR BRIDGET KING

who has been named an exclusive Legal Influencer for Financial Services in the Lexology Content Marketing Awards Q1 2019 for Africa and Middle East.

Legal Influencer
LEXOLOGY.



OUR TEAM

For more information about our Finance & Banking practice and services, please contact:



Deon Wilken
National Practice Head
Director
T +27 (0)11 562 1096
E deon.wilken@cdhlegal.com



Stephen Boikanyo
Director
T +27 (0)11 562 1860
E stephen.boikanyo@cdhlegal.com



Adnaan Kariem
Director
T +27 (0)21 405 6102
E adnaan.kariem@cdhlegal.com



Bridget King
Director
T +27 (0)11 562 1027
E bridget.king@cdhlegal.com



Jacqueline King
Director
T +27 (0)11 562 1554
E jacqueline.king@cdhlegal.com



Izak Lessing
Director
T +27 (0)21 405 6013
E izak.lessing@cdhlegal.com



Mashudu Mphafudi
Director
T +27 (0)11 562 1093
E mashudu.mphafudi@cdhlegal.com



Preshan Singh Dhulam
Director
T +27 (0)11 562 1192
E preshan.singh@cdhlegal.com



Pierre Swart
Director
T +27 (0)11 562 1717
E pierre.swart@cdhlegal.com

Vusiwe Ngcobo
Senior Associate
T +27 (0)11 562 1329
E vusiwe.ngcobo@cdhlegal.com

Stephanie Goncalves
Associate
T +27 (0)11 562 1448
E stephanie.goncalves@cdhlegal.com

Kgotso Matjila
Associate
T +27 (0)11 562 1215
E kgotso.matjila@cdhlegal.com

Jordan Maze
Associate
T +27 (0)21 481 6361
E jordan.maze@cdhlegal.com

Sidasha Naidoo
Associate
T +27 (0)11 562 1422
E sidasha.naidoo@cdhlegal.com

Andile Sangweni
Associate
T +27 (0)11 562 1046
E andile.sangweni@cdhlegal.com

Mashudu Thidiela
Associate
T +27 (0)11 562 1862
E mashudu.thidiela@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

©2019 8271/SEP

