

FINANCIAL SECTOR LEVIES BILL

RESPONSES TO PUBLIC COMMENTS RECEIVED ON THE DRAFT LEVIES BILL

June 2017

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List of Commentators

Agency/ Organisation		Contact Person
1.	Association for Savings & Investment South Africa (ASISA)	Rosemary Lightbody
2.	Johannesburg Stock Exchange (JSE)	Anne Clayton
3.	The Banking Association South Africa (BASA)	Raksha Semnarayan
4.	The Professional Provident Society (PPS)	Michelle Dirkse
5.	Liberty Group	Yvonne Perumal
6.	Peregrine Equities	Warren Chapman
7.	South African Institute of Stock Brokers (SAIS)	Erica Bruce
8.	Institute of Retirement Funds Africa (IRF)	Sizakele Khumalo

COMMENTS ON THE FINANCIAL SECTOR LEVIES BILL

Section 1: Definitions			
Reviewer	Section	Issue	Decision
BASA	"levies"	<p>We need to better understand the associated costs structures for establishment of the entities. Financial institutions will be paying fees/levies to the Ombuds as well. Does the payment to the Ombud include a contribution to the Ombud Council?</p> <p>Recommendation: Provide a breakdown of initial costs anticipated by the regulators.</p>	<p><i>Please see the Impact Study on the Twin Peaks reforms, published in April 2016, as well as the Supplement to the Impact Study which was published along with the Levies Bill (all available on www.treasury.gov.za/twinpeaks). These give an indication of the anticipated costs of the new regulators.</i></p> <p><i>With regard to the Ombud Council, note that this body is in effect a new body. The current Financial Services Ombud Council (FSOS Council) is a part time body that is wholly funded by the Financial Services Board, off the FSB's own budget. (No levies are currently collected for funding the FSOS Council directly). The Ombud Council is intended to be a fulltime body with a staff contingent, including a chief ombud. It therefore requires an independent and reliable funding source. Given that the FSR Bill makes membership of an ombud scheme compulsory for all financial institutions, funding of 2.5% of the levy paid by a financial institution is proposed for the Ombud Council. Cost-saving measures will be used where appropriate – for example the Ombud Council could share office space with the FSCA if feasible, and leverage off its infrastructure. As with other levies payable, the FSCA will collect all payments from financial institutions, and distribute to the Ombud Council the relevant amount.</i></p> <p><i>The Levies Bill specifies the levy payment for the Ombud Council, Pensions Fund Adjudicator and Ombud for Financial Service Providers. These are</i></p>

			<i>separate payments. The membership payments payable to the industry ombud schemes are not specified as these are not statutory bodies.</i>
BASA	“levy period”	The banks need sufficient time for budgeting purposes. There must be a realistic, reasonable commencement date for levies.	<i>There will be a substantial transitional period between the enactment of the FSRB and the establishment of the FSCA that will allow sufficient time for banks to budget. The Minister will determine the commencement date, but likely to be 1 April 2018.</i>
Liberty	“pension fund”	There is a definition of pension fund as well as a retirement annuity; however, there is no reference to preservation funds, which are defined separately in the Pension Funds Act as well as in the Income Tax Act.	<i>Definitions of “pension preservation fund” and “provident preservation fund” added to the Bill.</i>
BASA	“special levy”	<p>The additional special levy of 15% is onerous and may be deemed to be excessive. We need to understand the rationale behind the special levy requirements which includes the associated costs structures for establishment of the regulatory entities.</p> <p>It is acknowledged that additional funding will be required to implement the strengthened market conduct policy framework and the system wide supervision. We understand that this will be achieved through a special levy. However, the Bill is silent on whether or not the special levy will cease after the first two years following the commencement of the Bill.</p> <p>Recommend:</p> <ul style="list-style-type: none"> • Provide a breakdown of initial costs anticipated by the regulators. • Provide a breakdown of the rationale and costing behind the special levy requirements. • Align the special levy to the rate of inflation. <p>For purposes of certainty we propose the insertion of section 4(3): “the special levy payable by the supervised entities for the initial cost associated with the establishment of the Prudential Authority, the Financial Sector Conduct Authority, the Financial Services Tribunal and the Ombud Council will terminate after two years following the commencement of the Prudential</p>	<p><i>The wording in the Bill has been made clearer as to the purpose and duration of the special levy.</i></p> <p><i>The proposed clause 4(3) has not been added to the Bill as clause 4(1) provides that an implementation special levy is payable by supervised entities in the first two levy periods only following the commencement of this Act, to provide for the initial costs associated with the establishment of the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA), the Financial Services Tribunal and the Ombud Council.</i></p> <p><i>A preliminary breakdown of initial costs anticipated for the establishment of the FSCA and the PA is being prepared.</i></p>

		<i>Authority, the Financial Sector Conduct Authority, the Financial Services Tribunal and the Ombud Council.”</i>	
ASISA	Definition of Ombud Council	There is no definition in the definition section for “Ombud Council”- it appears that this has been left out inadvertently, as all the other financial sector bodies have been defined.	<i>Unless otherwise indicated, words and expressions not defined in subsection 1 of the Levies Bill have the same meaning ascribed to them in terms of the Financial Sector Regulations Bill (FSRB). See clause 1(2).</i>
Section 3: Levies			
Reviewer	Section	Issue	Decision
BASA	3	There are a number of other financial contributions which are made by banks to various regulatory institutions such as BASA, PASA and the like. These institutions are not included within the ambit of the Levies Bill. Has National Treasury taken all the other contributions by the banks into consideration in formulating the Levies Bill?	<i>These are separate institutions with their own cost structures and expenses. The levy payable to the PA and FSCA is structured such that the regulatory and supervisory expenses by the PA and the FSCA are covered.</i>
PPS	4	We would kindly request the Regulatory Body to consider reducing the overall fees with at least 15%. The fee to be paid to the Prudential Authority will be 47% more than what the Solvency Assessment and Management (SAM) levy was. The service provider will also be expected to pay a special levy over two years. The increased levies should be reconsidered in the current economic climate and be accordingly reduced.	<i>The quantum of the levy is such that it is expected to cover the expenses of the regulators. Unfortunately, the expenses are not dependent on the economic climate, and hence levies cannot take economic climate into account. This approach gives a measure of stability to the levies from year to year.</i>
ASISA	3 & 4	ASISA members expected an increase in levies to finance the new twin peaks system. However, the quantum of the proposed increases is unexpected. In its document dated 1 February 2013 “Implementing a twin peaks model of financial regulation in South Africa”, the Financial Regulatory Reform Steering Committee stated on page 29 that “in preliminary estimates, the overall cost implications were projected to be relatively modest because they essentially involve a shift of resources from one institution to another”. Without the two-year 15% implementation levy, two large financial services ASISA member groups have calculated that the levies across their groups (excluding banks) will increase by approximately 12% and 13% respectively. Again without the two-year 15% special levy, one investment manager calculates an overall increase of	<i>The calculations of costs of supervision will continuously be refined to determine if levies could be reduced, including phasing-in. Clause 4(2) has been amended to provide for capping of the special levy at 15% to facilitate the use of any available reserves at the commencement of the Bill.</i>

		<p>approximately 20%. This is indicative of a substantial increase across the industry.</p> <p>We note from page 68 of the Financial Services Board Annual Report 2016 - Statement of financial performance for the year ended 31 March 2016 – that the total expenses for that year were approximately R660 million. These expenses would have included supervision of both the conduct and prudential aspects of non-bank financial institutions. The “Original estimated costs” and “Final proposed income” as per Table 1 of the Supplement to the Impact Study of the Twin Peaks Reforms published by National Treasury, reflect estimated annual expenses of approximately R1 billion for the supervision of both the conduct and prudential aspects of insurers and banks. Members would like to understand what led to the approximate one-third increase in expenses and how the income generated by the increased levies will be allocated.</p> <p>ASISA members therefore request information as to how the future estimated expenses of the financial sector bodies have been calculated, both the ongoing expenses and also the set up / establishment costs to which the implementation levy will be applied. An indication of why the large increase to the basic, ongoing levy is required will be appreciated, together with a breakdown showing the expenses to which these ongoing levies will be directed. In the Financial Services Board Annual Report 2016 CFO’s review, it is stated that “the FSB will request approval from National Treasury to retain the surplus funds, some of which will be used to fund the cost of implementing the twin peaks regulatory model.” ASISA members would like more detail in this regard. In other words, insight is sought into the estimated budget both for the establishment costs of the twin peaks model, and also for the ongoing annual expenses, that give rise to the two-year.</p> <p>15% establishment levy and the ongoing, increased expenses, respectively. Clause 240 of the Financial Sector Regulation Bill requires consultation on fee and levy proposals, as well as publication of the budget and an explanation of the variation from the previous year’s budget. It is submitted that particularly in the present instance, it is reasonable for such an explanation to be provided to stakeholders.</p>	
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		Significantly increased costs such these levies can impact negatively on ASISA members' ability to contain increases in their product and service charges, at a time when government is urging the industry to reduce these charges.	
Section 4: Special implementation levy			
Reviewer	Section	Issue	Decision
ASISA	4	The 15% implementation levy should not be extended beyond the proposed period of two years. Members seek assurance that a subsequent amendment to the legislation to extend the period, over which this levy will be applied, will not be sought.	<i>Agreed. Clause 4(1) provides that an implementation special levy is payable by supervised entities in the first two levy periods only following the commencement of this Act, to provide for the initial costs associated with the establishment of the PA, the FSCA, the Financial Services Tribunal and the Ombud Council.</i>
Section 5: Adjustment of amounts and levy formulae			
Reviewer	Section	Issue	Decision
BASA	5(1) & (3)	It is unclear from the provision as to the variables to be used in respect of the adjustment of amounts and levy formulae. s5(3) refers to a "financial year". Recommendation: <ul style="list-style-type: none"> Clarity is required on the variables to be used. We propose that the term "financial year end" must be defined to provide clarity and certainty (whose financial year end?) 	<i>Agreed. All references to "financial year" have been replaced by "levy period".</i>
Peregrine	5	We recommend that there should be a regulatory requirement for substantial industry engagement before the adjustment of fee and levy formulae as described in Paragraph 5 to improve checks and balances and to increase confidence in the regulatory framework	<i>Noted. Clause 5 of the Bill provides for the application of sections 239 and 240 of the Financial Sector Regulation Act in respect of the determination of levies. These sections set out the requirements for public consultation.</i>
SAIS	5	We understand competent regulation needs funding and therefore SAIS agrees that a levy could be a beneficial way of contributing towards successfully regulated markets. However, further engagement with industry bodies is essential before the adjustments to amounts and new levy formulas are finalised. We believe this will result in better outcomes and greater confidence within the	<i>Agree. Clause 5 of the Bill provides for the application of sections 239 and 240 of the Financial Sector Regulation Act in respect of the determination of levies. These sections set out the requirements for public consultation.</i>

		market, reassuring and upholding equal accountability and contributions. In order to do this, we believe that we would need a better understanding of the rules associated with the calculation of this fee, the process around the fee model, the collection and distribution of this income and how it is managed and monitored.	
Section 6: Exemption from levy			
Reviewer	Section	Issue	Decision
BASA	6	<p>The Bill provides that “a financial sector body may only exempt a supervised entity from the payment of a levy or a part of the levy on sound reasons”. What criteria would be applied to satisfy the granting of an exemption? By way of example, the Financial Markets Act provides for an exemption under section 6(3)(m) which provides that,</p> <p><i>“the registrar may exempt any person or category of persons from the provisions of a section of the Act if the registrar is satisfied that-</i></p> <p><i>(i) The application of the said section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and</i></p> <p><i>(ii) The granting of the exemption will not-</i></p> <p><i>(aa) conflict with the public interest; or</i></p> <p><i>(bb) frustrate the achievement of the objects of the Act.</i></p> <p>Recommendation: We propose that a similar set of criteria be included as part of this provision, which criteria should be aligned with the objectives of the FSR Bill.</p>	<i>Clause 6(3) has been amended to provide for more explicit criteria to be applied in considering an exemption.</i>
Peregrine	6	<p>We note the scope for a financial sector bodies to be exempted from a levy or part of a levy. The body, terms and reasons of the exemptions should be made public.</p> <p>As a general point, given the quasi-regulatory function performed by exchanges and infrastructure providers, such entities should be required to transparently publish the terms of all pricing models and any exemptions available or granted in a manner akin to the obligation on a regulator such as the FSB or the SARB to publish exemptions and the like in the government gazette. In fact, the need for such transparency is much greater as regards the quasi regulators such as the exchanges or Strate given the potential inherent conflict of</p>	<i>Proposed amendments to clause 6 address this.</i>

		interest under which they function given that they also operate as commercial, for profit organizations.	
Liberty	6	Unclear as to what particulars the financial sector body would require to grant the exemption or what reasons may be acceptable as sound.	<i>Clause 6(3) has been amended to provide for more explicit criteria to be applied in considering an exemption.</i>
SAIS	6	Exemptions of levies in total or in part should also be debated by industry in order to have market buy-in and ensure effectiveness and transparency. SAIS therefore believes that the information should be made public.	<i>Clause 6(3) has been amended to provide for more explicit criteria to be applied in considering an exemption.</i>
BASA	6(3)	S6(3) states that “a financial sector body may only exempt a supervised entity from the payment of a levy or a part of the levy on sound reasons”. Recommendation: We suggest that the wording “ <u>sound reasons</u> ” be reconsidered, alternatively defined, so that there is clarity regarding the intent.	<i>Clause 6(3) has been amended to provide for more explicit criteria to be applied in considering an exemption.</i>

Schedule 1: Prudential Authority

Reviewer	Section	Issue	Decision
JSE	General: Schedule 1 & 2	<p>Calculation of the exchange levies</p> <p>We have not repeated the points raised in our discussion on the accuracy of the formulae provided for in the Schedule as it is our understanding that the percentages used in the calculation will be adjusted before the final version of the Bill and Schedule is passed. We have also not repeated our comments on the price point of the levies. However, we are of the view that there should be no material change to the supervisory effort of FSCA relative to the current supervisory effort of the FSB in respect of the JSE and the levy payable by the JSE to the FSCA should therefore be approximately the quantum of the total of the two levies (Exchange levy and DMA levy) currently paid, adjusted for an inflationary increase.</p> <p>The JSE appreciates the drivers of the model to calculate levies in respect of exchanges, particularly the need to encourage competitiveness in the market and to ensure that the levies do not serve as a barrier to entry for new exchanges.</p>	<p><i>The overarching intention is to increase our current level of oversight.</i></p> <p><i>Please see our proposed amendments in Schedule 1 of the Levies Bill.</i></p>

		<p>However, the methodology for the calculation of the levies for exchanges has some challenges.</p> <p>The JSE is required to extensively consult within predefined notice periods for implementation with market participants on any changes to trade, clearing and settlement costs. The JSE currently imposes a levy on investors to recover its external regulatory costs and, as mentioned, we intend to continue this practice in future to recover the new regulatory levies imposed by the two authorities. The consultation and implementation period may be lengthy, particularly if the recovery of the costs by the JSE requires system changes. An example of one of the challenges that we will face is that the JSE does not currently have a mechanism to recover costs based on value traded in the derivatives markets.</p> <p>Our view is that a model with a low floor and an ad valorem based on value traded may not be an appropriate model as -</p> <p>a) It does not accurately reflect the intensity required to supervise an exchange. The intensity of supervision required is driven by the number of types listed products, the variety of asset classes, the nature of the traded market and the complexity of securities listed and traded.</p> <p>b) In the absence of a cap on the levy, the cost is unpredictable for an exchange and its customers and poses a risk of over-recovery of expenditure by the financial sector bodies in periods of high volume.</p> <p>c) The low floor (base amount) may not be sufficient to cover the supervisory effort associated with each market infrastructure, particularly in respect of a new entrant which may require intensive supervisory effort in a start-up phase, and a possible event driven expense of a market abuse investigation.</p> <p>d) An ad valorem levy applied to value traded in the bond market is not proportional to the supervisory effort required in this market due to the high denominations in which bonds are traded (and therefore the high value of trading in bonds relative to other asset classes) but the lower level of regulatory risks associated with bond trading relative to most other asset classes.</p> <p>e) Similarly, derivatives are traded as a number of contracts rather than a value and it would be inappropriate to use the value of the underlying instruments or</p>	
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Peregrine Equities	General: Schedules 1&2- Authorised Users	<p>We are concerned that authorised users of exchanges are excluded from the Financial Sector Levies Bill and are not levied. As client facing market participants authorised users require their own category and appropriate fees should directed towards them. While the self-regulation model of a single exchange and its authorised users may have served the market historically, there are several conflicts of interest, which may already have manifested themselves. There is a concern that under the proposed new regulation, existing exchanges could use their regulatory powers over their users to protect the exchange's own interests. This risk is amplified where there is cross ownership and shared management and directorships of other infrastructure providers who also have</p>	<p><i>The FMIs will retain regulatory and supervisory oversight in respect of users and participants. In terms of the Financial Markets, Act 2012 (FMA) authorised users are regulated by exchanges in terms of exchange rules. The FSB in turn is responsible for the supervision and regulation of market infrastructures including licensed exchanges. Consequently, the levying of authorised users falls with the regulatory powers of the licensed exchanges.</i></p>

		regulatory and monopolistic pricing powers and also operate for profit. We cite the JSE and STRATE as examples. Authorised users and market participants need to be subject to independent and coordinated regulation and need to be free from regulatory fear or favour from those with whom they have a commercial relationship.	<i>In terms of section 62 of the FMA, a market infrastructure must, where applicable, take necessary steps to avoid, eliminate, disclose and otherwise manage possible conflicts of interest between its regulatory functions and its commercial services.</i>
BASA	General : Schedules 1&2	<ul style="list-style-type: none"> • The suggested approach (in Schedule 1) impacts significantly on the banking industry as it presents a steep increase from the present funding model. BASA has been consulting extensively with its member banks and we have been considering appropriate funding solutions for the Prudential Authority, which we would like to engage further with NT, the SARB and FSB. We set out these possible models in our submission. • Licenses will be based on activities and entities have various activities. How does this factor into the levy calculation, e.g. One legal entity with multiple activities. • What is the "variable amount" based on? • Is the Liability amount based only on Audited amounts? • How do levies impact holding company licences? Danger of double counting. • Will the fee be per sector licensed or per legal entity? Risk of double counting. 	<i>Please see our proposed amendments to the Schedules of the Levies Bill.</i>
Peregrine	General: Methodology	We note that there is inconsistency in terms of the application of base amounts and variable amounts. These may drive undesired outcomes and create uneven playing fields. More engagement is required to understand the benefits of levying variable amounts on one type of regulated financial sector body and not another. The same logic applies to the creation of caps of levies.	<i>Noted. Adjustments have been made to the Bill for better consistency across the financial sector levy bodies as well as type of supervised entity.</i>
SAIS	General: Application of variable costs and caps	One of the aims of the National Bill is to create an inclusive financial market. SAIS is concerned that the lack of consistency when applying initial and variable costs, as well as applying floor and cap costs might negatively affect the desired outcomes. SAIS is of the firm view that there is a greater need for interaction between industry and the regulator to better understand the desired outcomes and to find an efficient practical solution.	<i>Noted. Clause 5 of the Bill provides for the application of sections 239 and 240 of the Financial Sector Regulation Act in respect of the determination of levies. These sections set out the requirements for public consultation.</i>

			<i>Please see our proposed amendments to the Schedules of the Levies Bill.</i>
BASA	Road Accident Fund	We note that the Road Accident Fund (RAF) forms part of the levies Schedule for the Prudential Authority. Is it envisaged that the PA will regulate the RAF going forward as no mention of this occurred in the FSRB? Overall, the additional costs are significant and will impact on banks and consumers in various ways.	<i>The RAF is currently regulated by the FSB and reference to the RAF is made in the FSRB in clauses 301, Schedule 1, Schedule 2 and Schedule 4. The PA will, going forward be the responsible authority for the Financial Supervision of the Road Accident Fund Act. The revenue of the RAF is in the region of R22bn per annum. Treasury is of the view that the impact of the additional costs on the banks and/or consumers will be minimal.</i>
Liberty	Long Term Insurance	Liabilities are not defined. Confirmation is required that these liabilities mean gross policy holder liabilities less policy holder liabilities under pension funds, provident funds (including preservation funds) and retirement annuities.	<i>Agree. Section 5 of the Bill requires financial sector bodies to on preparing levy estimates and determining the levy for a levy period to specify the meaning of any terms referred to in the levy formulae set out in the Schedules. Going forward policy holder liabilities under pension funds, provident funds (including preservation funds) and retirement annuities issued by insurers will continue to be excluded from the liabilities that are provided for in the levy formulae. Please see our proposed amendments to the Levies Bill.</i>

Schedule 2: Financial Sector Conduct Authority

Reviewer	Section	Issue	Decision
ASISA	General: Clarification of definitions and terms used in schedule 2	It will be important to ensure that the definitions in the Bill correspond with what is intended in the “Type of supervised entity” column in the schedules. This does not always appear to be the case. For example, preservation funds: Currently these are expressly provided for. It is assumed that they will fall into the same levy category as retirement annuity funds, although this is not the current position. Clarification is therefore requested. It is proposed that specific reference to preservation funds be made in Schedule 2 to avoid doubt, and that definitions of pension preservation fund and provident preservation fund be included.	<i>Definition added to the Bill.</i>

BASA	FAIS	<ul style="list-style-type: none"> Regarding the FAIS value of investment components that are in foreign currency: is “that date” intended to indicate that the exchange rate on 31 August of the levy year should be used or does it mean investment date? For FAIS persons authorised in multiple categories, what multiple should be used for subcategories (2) and (3)? These multiples are included for all other categories but not for this one. 	<p><i>The respective FSPs have to declare their fund value as at 30 June of the levy period. This means the exchange rate will be as at 30 June. The 31 August is the deadline for all FSPs to rectify their representatives’ registers before the levy run which is conducted the following day being 1 September.</i></p> <p><i>We assume the question is in relation to the categories and not subcategories. Subcategories are also interchangeably referred to as products. In terms of the FAIS Act, persons authorised in multiple categories, will be levied on the highest category they have been approved for.</i></p>
BASA	External Market Infrastructures	We note that the external market infrastructures have not been included as part of Schedule 2. We wish to know or understand whether the exclusion is intentional and if so, what the rationale is for the exclusion. If this exclusion was unintentional, we suggest that the external market infrastructures be included as part of Schedule 2 as these market infrastructures will be supervised and regulated by the Financial Sector Conduct Authority. It is critical that the regulators ensure level playing fields within our financial markets (i.e. external market infrastructures should be treated the same or in a similar manner as the domestic market infrastructures. As such, external market infrastructures (whether licensed or recognized by our South African regulators) should also be required to pay levies to the Financial Sector Conduct Authority as its regulator or licensing authority.	<i>If an external market infrastructure has a local presence with members in SA it must be supervised and levied accordingly.</i>
Liberty	Long Term Insurance: Caps	It is not equitable that some institutions have a maximum cap and others not i.e. Banks have a R15m cap but insurers are uncapped. We propose the inclusion of an appropriate cap for all institutions.	<i>A maximum levy payable by different types of insurers has been proposed.</i>
ASISA	Long Term Insurance: Application of BN 81 of 2016	Board Notice 81 of 2016 currently provides that levies on long-term insurers are calculated based on policy liabilities being reduced by liabilities in respect of pension fund organisations and friendly societies. It is assumed that this exclusion of pension fund and friendly society liabilities will remain, in which case an express provision in the Bill is necessary. The calculations of the estimated impact of the new levy structure set out in our submission have been	<i>Section 5 of the Bill requires financial sector bodies to on preparing levy estimates and determining the levy for a levy period to specify the meaning of any terms referred to in the levy formulae set out in the Schedules.</i>

		made on the basis of this assumption. However, if the exclusion is not maintained there will be a substantial, unreasonable increase in levies payable by insurers. One large insurer has calculated an increase of 32% in the levies that will be payable if this exclusion is done away with.	<p><i>Going forward policy holder liabilities under pension funds, provident funds (including preservation funds) and retirement annuities issued by insurers will continue to be excluded from the liabilities that are provided for in the levy formulae.</i></p> <p><i>The variable amount of the levy formulae has been reconsidered in light of the fact that policy liabilities will no longer be reduced by liabilities in respect of pension fund organisations and friendly societies.</i></p>
Liberty	Pension Funds: Occupational funds, RA Funds and Commercial Umbrella Funds	<p>The calculation only refers to members, and does not include the exclusions of certain member types as is mentioned in BN81 of 2016 paragraph 3(1):</p> <p>(excluding any member or such person, whose benefit in the fund remained unclaimed or who is a beneficiary fund)</p> <p>It is proposed that the exclusions in B N81 of 2016 should be included.</p>	<i>Noted.</i>
Liberty	Pension Funds: Pension Funds Administrators	<p>The calculation only refers to members, and does not include the exclusions of certain member types as is mentioned in BN81 of 2016 paragraph 3(1):</p> <p>(excluding any member or such person, whose benefit in the fund remained unclaimed or who is a beneficiary fund)</p> <p>It is proposed that the exclusions in B N81 of 2016 should be included.</p>	<i>Noted.</i>
ASISA	Pension Funds: Umbrella Funds	The levy payable by Commercial Umbrella Funds is no longer capped as per the current regime (currently capped at R2 556 435.) This increases the impact on large commercial umbrella funds (membership greater than 180 000) and the calculations of one large administrator of these funds show an increase of 32% in levies payable. We would like to understand the reasoning for removing the cap.	<p><i>We agree to this, it severely impacts the current margins in umbrella funds, which are already low and umbrella funds have an important role in our economy in terms of protecting the vulnerable persons.</i></p> <p><i>The initial intention for the cap was to cap the levy payable by large industry/union type funds consisting of mainly lower paid workers. This has always been the case until the 2016 levy year when a large commercial umbrella fund reached the cap.</i></p>

ASISA	Collective Investment Schemes	Under the Type of supervised entity: Foreign collective investment schemes - “E = total net amount of assets managed on behalf of South African investors at end of previous quarter”. Currently, Board Notice 81 also refers to “assets managed on behalf of South African investors...” in the context of foreign collective investment schemes. What is meant by this is not always consistently understood. On what basis should the foreign CIS determine whether its investors are South African? Must there be a residence test? Does it refer to whether the investment funds originated in South Africa? Or does it only refer to investor assets that were introduced via the South African promoter of the foreign CIS? The Bill presents an opportunity to clarify this issue.	<i>This comment is surprising given that the FSB has been levying FCIS for almost 19 years and never once has this been raised by ASISA with the FSB as an issue. Treasury suggests that ASISA engages the FSB on this.</i>
ASISA	Collective investment Schemes	Members are appreciative of the fact that with regard to collective investment schemes, the previous unpredictable basis of calculation of schemes in securities has been replaced with a predictable basis. However, the overall increase in the levies gives rise to concern.	<i>The suggested levies are actual 2016/2017 inflation adjusted for 2017/18. This comment is thus unfounded.</i>
Schedule 3: Tribunal			
Reviewer	Section	Issue	Decision
ASISA	3 & 4	The new levies in addition to the implementation levies, of 2.5% each for both the Tribunal and The Ombud Council, further increase the costs to the supervised entities to which they apply.	<i>Noted.</i>
General comments			
Reviewer	Section	Issue	Decision
BASA	General: Budget process and levies	It remains unclear what the budgets of the respective Regulators are and how these are comprised. The levy schedules merely state the levy formulae and the maximum levy amount that can be levied on a supervised entity but does not provide clarity of how that number was arrived at. We request clarity regarding the factors which informed the sharp increase in the Regulators’ budget and also to what extent the estimated budget takes into account potential efficiencies that will be generated by the new institutional structures. We would also like to recommend that the budgeting process be transparent in line with international practice whereby the Regulators disclose the various components of the budget	<i>Noted. Section 5 of the Bill provides for the application of sections 239 and 240 of the Financial Sector Regulation Act in respect of the determination of levies. These sections set out the requirements for public consultation also in respect of the proposed budgets of the financial sector bodies.</i>

		with annual increases discussed and substantiated with reference to their underlying drivers.	
BASA	General: Cost of regulation and options for funding	<p>Introduction</p> <p>In general, the Twin Peaks approach as contemplated in the FSRB places equal focus on prudential and market conduct supervision, with a separate focus on financial stability. In this regard, the banking industry has, since publication of the first draft of the FSRB, worked closely with both Government and Regulators in a constructive manner in order to ensure that the policy priorities and desired outcomes identified in terms thereof, will be achieved in a fair and equitable manner. The Twin Peaks regulatory framework will bring many benefits to the financial sector. We however submit that the balance between promoting economic growth and regulation must be carefully considered in our developing economy.</p> <p>In addition to the above, and as a member of the Basel Committee on Banking Supervision, the Office of the Registrar of Banks within the SARB is committed to ensuring that the South African legislative framework relating to the regulation and supervision of banks and banking groups remains fully compliant with international standards and market best practice. To this effect, and in order to further strengthen and enhance South Africa's prudential regulatory framework for banks and banking groups, a large number of regulatory changes had been implemented since 2008. Compliance with the aforesaid not only required full commitment from the banking sector but also necessitated huge investments in people, systems and processes, coupled with a substantial increase in ongoing capital and related operating expenditure (the "cost to do business").</p> <p>New regulatory model</p> <p>The regulatory framework set out in the FSRB represents a totally new regulatory model. Given the required radical changes, and the creation of new regulatory and supervisory structures, the Bill introduces a new proposed funding/levies system on financial institutions. This is obviously necessary.</p> <p>However, this change does not stretch to updating, or amending, the traditional funding model currently underpinning the Office of the Registrar of Banks, specifically impacting the banking sector.</p>	<p><i>The PA has to increase capacity in policy and in its regulatory and supervisory resources to take on its expanded mandate which includes financial conglomerates, market infrastructures, insurers. In addition, the twin peaks introduce a shift in the manner in which the PA is financed.</i></p>

		<p>The SARB, as part of its monetary policy requirements, requires all banks to maintain minimum reserve balances (interest free deposits, calculated roughly as 2,5 per cent of deposits received by banks from the general public) with the SARB on a daily basis. Although banks pay interest to their depositors on the amounts of deposits reserved/placed with the SARB in this regard, banks, in turn, do not earn any interest from the SARB on these deposits and have to absorb these interest costs (interest expenses) paid to their depositors.</p> <p>By way of example, and in line with the September 2016 information published by the SARB, banks had to maintain R89,3 billion of non-interest earning deposits with the SARB in the ensuing holding period. Should the average interest cost (interest payable by banks to their depositors on this amount) have amounted to an annual interest rate of 7% (for this purpose, equal to the current Repo rate of 7%, which is the rate at which the SARB lends money to commercial banks in the event of any shortfall of funds), the annual interest costs/expenses to be absorbed by the banks would amount to R6, 252 billion (R89, 308 billion x 7%). In turn, and with reference to the Repo rate mentioned above, should the SARB have lent the same non-interest bearing (interest free) deposits of the banks back to the banks, the SARB would have earned, on an annualised basis, R6, 252 billion (R89, 308 billion x 7%) from the banks by lending the banks' money back to them. This demonstrates that the requirement, which is only applicable to banks and not to other financial product and services providers such as registered insurers, has a severe impact on banks' cost and earning structures and already enable, in the widest sense, the SARB to generate substantial income (interest income), from the banks.</p> <p>As noted, banks are required by the SARB Act to "lend" the SARB some R89 billion at zero interest. This monetary policy instrument under an Act falling outside of the changes introduced by the FSRB, has traditionally funded the Office of the Registrar of Banks, via the SARB, thereby enabling the maximum annual licence fee for banks being set at a low R300 000.</p> <p>Given the creation of the new Prudential Authority, now encompassing certain non-bank financial institutions, to be funded directly from the new proposed levies covered by the Bill, it would be appropriate that the minimum reserve requirements applicable only to banks also be reviewed, as part of the overall sector regulatory changes. Specifically, and in line with similar practices in other</p>	
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	<p>jurisdictions, we propose that the SARB pay banks an interest return on their cash reserving requirements, in acknowledgement of the new proposed levies to fund the Prudential Authority (this would be in line with the provisions of S10A(3)(c) of the South African Reserve Bank Act, 1990). This interest rate could be in the range of 0.5-1.00% per annum, still significantly below the Repo rate return earned by the SARB.</p> <p>Proposed Solution: Funding Model of the Prudential Authority</p> <p>We suggest there are a number of possible models to address the Prudential Authority funding requirements. We reiterate that transparency and fairness across the full spectrum of the financial services industry and also within the banking industry should prevail. We are currently deliberating on the various possibilities and would appreciate the opportunity to meet with the Regulators to discuss the Prudential Authority requirements in more detail and agree on the most equitable model.</p> <p>Our thinking on possible funding proposals includes the models discussed below (or a combination):</p> <p>Model 1 – retain formula but adjust the cap</p> <p>Retain the current formula approach in respect of the Prudential Authority, as reflected in Schedule 1 of the Bill, but adjust the maximum levy of banks in a fair and equitable manner to a lower amount (between R5 and R15 million). Since the prudential regulation and supervision of banks already assist, support and complement the SARB's legal responsibility for financial stability and matters connected therewith, any shortfall in the Prudential Authority's budget should be carried by the SARB, which generates substantial income (interest income) from the banks as noted above. The above minimum reserve requirement is applicable to banks only and not to other financial product and services providers.</p> <p>Specific care should be taken to ensure that the cost structure is fairly and equitably absorbed by all regulated institutions in proportion to the real cost of supervising these institutions and not only the size of respective balance sheets. The cost to supervise a small to medium size bank is high, regardless of its balance sheet size.</p>	
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JSE	General: Market Infrastructures	<p>Market infrastructures</p> <p>Section 1 of the Bill provides for the definitions of “central counterparty”, “external central counterparty”, “trade repository and “external trade repository”, however the Schedule refers only to a “central counterparty” and “trade repository”. It is not clear whether it is intended that the terms central counterparty and trade repository, as set out in the Schedule, include external</p>	<p><i>Noted. All external market infrastructures with members in South Africa will be levied separately if they have local presence in South Africa.</i></p> <p><i>Noted. An independent clearing house with a licence from the FSCA will be levied as a separate entity.</i></p>

		<p>central counterparty and external trade repository or whether levies or fees are not applicable to these types of market infrastructures.</p> <p>Although “clearing house” is defined in section 1 of the Bill, no provision is made for this type of market infrastructure in the Schedule to the Bill. In terms of the Financial Markets Act, as amended, an entity may be licensed as an independent clearing house and not be licensed as a central counterparty. We recommend that the Schedule should include a levy payable by an independent clearing house that is not a licensed central counterparty or external central counterparty.</p> <p>No provision is made in the Schedule for the levying of an exempted market infrastructure (e.g. central counterparty), even though the process to exempt such an entity from licensing and the ongoing monitoring obligations by the relevant Authority will require significant supervisory resources. We respectfully recommend that provision is made in the Schedule for a levy for exempted market infrastructures which reflects the intensity of the supervisory effort required.</p>	<p><i>In terms of section 6(3)(m) of the FMA the Registrar may exempt any person or category of persons from the provisions of a section of the FMA if the Registrar is satisfied that-</i></p> <ul style="list-style-type: none"> <i>(i) The application of the said section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and</i> <i>(ii) The granting of the exemption will not</i> <ul style="list-style-type: none"> <i>(aa) conflict with the public interest; or</i> <i>(bb) frustrate the achievement of the objects of the FMA.</i> <p><i>Any market infrastructure that wishes to be exempted from the provisions of a section of the FMA will have to apply to the Registrar from such exemption and satisfy the Registrar that the jurisdictional requirements in section (6(3)(m) have been met. Once a market infrastructure has satisfied the said jurisdictional requirements the Registrar may exempt it from the relevant section of the FMA e.g. exchange licensing requirement in section 7(1). Assuming an exchange is exempted from the requirement to be licensed it will therefore not be a regulated person. The FMA defines a regulated person, inter alia, to mean a licensed exchange. The Registrar does not have the statutory power to levy an unregulated person.</i></p>
JSE	General: Budget, fees and levy proposals	<p>Budget, fees and levy proposals</p> <p>It is unclear whether the Supplement published with the Bill represents the budget required in terms of section 239(1) of the FSR Bill or whether the Supplement was published merely as an indicative guide as it provides no details in respect of the nature of the expenditure of each of the financial sector bodies. In addition, an estimate of expenditure giving rise to the special implementation levy has not been provided as required in terms of section 239(2).</p> <p>Table 2 of the Supplement sets out an estimated annual levy for central counterparties of R10m and the Schedule to the Bill provides for a levy of R10m</p>	<p><i>The budget published in terms of the section 239 of the FSR Bill will be published post the consultation process with the budgets and their levies etc.</i></p> <p><i>Over collections can be accounted for in the next levy cycle to adjust for the excess funds collected in the previous years.</i></p>

		per central counterparty indicating that only one central counterparty is envisaged in the South African market. However, it is our understanding from the discussion with National Treasury that it is expected that multiple central counterparties will be licensed in South Africa which could result in a significant over collection of levies.	
JSE	General Comments	<p>The JSE is supportive of and recognises the benefits of the new regulatory system and we are of the opinion that the Twin Peaks supervisory model will meet the policy objectives outlined in the Financial Sector Regulation Bill (“FSR Bill”). However, we firmly believe that these benefits should be balanced with the cost of the reforms which will inevitably raise the costs for financial consumers.</p> <p>Our concern, specifically, is in respect of the cumulative effect of the regulatory levies and fees which will be passed on by supervised entities to participants, investors and financial consumers. A significant increase in the cost of regulatory oversight which will translate into an increase in the cost of trading could lead to unintended consequences such as a decline in liquidity in the South African capital markets and the diminished attractiveness of South Africa as an investment destination.</p> <p>The JSE, like other global exchanges, is under extreme pressure to reduce execution, clearing and settlement costs and a significant increase in regulatory fees will necessitate that the JSE passes on this cost to market participants, potentially rendering the exchange uncompetitive as a trading venue and a listing venue, particularly in respect of the dual listed securities.</p> <p>In addition to our concerns regarding the potential impact on investors and the South African financial markets of a significant increase in the cost of supervision under a new regulatory structure recovered through regulatory levies, we are also concerned about the manner in which the Bill proposes to apportion the cost of regulatory supervision amongst the various market infrastructures.</p> <p>The JSE is of the firm view that regulatory levies or fees payable by a market infrastructure should be calibrated to the intensity of regulation and supervision required and should be proportional to the nature, scale and complexity of</p>	<p><i>We agree that regulatory levies or fees payable by a market infrastructure should be calibrated to the intensity of regulation and supervision required and should be proportional to the nature, scale and complexity of regulatory risks present in that type of market infrastructure. However, we are of the view that the value of trades provides an appropriate proxy for this.</i></p>

		regulatory risks present in that type of market infrastructure. We do not believe that a levy based on the value of securities traded with a low fixed fee component, as proposed, will achieve that objective.	
Liberty	General: Level of Fees- Cost of regulation	It is important to also note that regulatory pressures on financial institutions have resulted in higher costs of doing business which creates significant challenge for the financial services industry at large.	<i>Noted, but this also reduces risks. Costs will be kept to a minimum.</i>
Peregrine	General	<p>Peregrine Equities and the Peregrine group is very supportive of a robust regulatory framework and is also supportive of initiatives where both the private and public sector engage in a constructive manner to achieve outcomes desired in the impact study. Peregrine believes that a regulatory framework can be created that not only protects the public interest, but also that encourages investment of capital, stimulates economic activity, promotes competition, entrepreneurship and transformation, creates jobs and ultimately generates tax revenue. We appreciate that there are both explicit and implicit costs to the South African economy, but that these can be offset by the benefits of such a framework.</p> <p>The estimated revenue of the Financial Sector Regulation is provided, but there is no detail on the resources required and the cost of those resources. There is room for the industry and practitioners to contribute both structure and expertise for maximum efficiency. There is scope for industry bodies like the Banking Association of South Africa, the Association for Savings and Investment South Africa and the South African Institute of Stock Brokers to be engaged or to form partnerships in harmonizing the regulation and committing resources from its member firms.</p>	<i>Consultation on the regulatory strategies and processes will take place.</i>
SAIS	General	We are aware of Global regulations and the role the regulator plays in drafting these policies. SAIS is supportive of a robust regulatory framework and initiatives where Industry and regulators engage constructively to achieve practical outcomes that are in the interest of Financial Markets minimizing both systemic and market risk as well as the costs to the South African economy. We actively review new market regulation especially at present around the Financial Regulation Bill, Financial Sector Levies Bill and the Impact Study on Twin Peaks.	<i>Noted.</i>

		As an industry body we believe that there should be a closer working relationship between industry bodies and the regulatory authorities. A partnership would be beneficial in harmonizing regulations and to effectively commit resources, validated by market expertise as and when required.	
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