

An Overview of the Role and Functions of Selected Financial Role Players to Protect Financial Stability and Promote Market Integrity in South Africa

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Abstract

The South African Reserve Bank (SARB) and other financial role players such as the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA), the National Credit Regulator (NCR), the Financial Intelligence Centre (FIC), the Financial Stability Oversight Committee (FSOC), the Financial Sector Contingency Forum (FSCF), the Financial Sector Council of Regulators (FSCR) and the Financial Sector Inter-Ministerial Council (FSIC) play a significant role in the protection and promotion of financial stability and market integrity in South Africa. The SARB has the primary mandate to promote financial stability while the FSCA promotes market integrity and enhances market efficiency through promoting the fair treatment of financial customers by providing financial literacy programmes. As technology advances and new players enter the market, traditional financial institutions are faced with increased competition and the need to adapt and innovate to stay relevant. In this regard, regulatory frameworks and the functions of regulatory bodies should be constantly reviewed to conform to developments in financial technology (fintech) and to safeguard consumer interests. This article examines the role and functions of the aforementioned financial role players in terms of the *Financial Sector Regulation Act (FSR Act)* and other relevant financial sector laws. This is done to evaluate the effectiveness of their role and functions in protecting and promoting financial stability and market integrity in line with recent fintech and artificial intelligence (AI) developments. The article also evaluates the importance of cooperation and collaboration among the financial role players to enable them to adequately fulfil their mandates.

Keywords

Financial stability; market integrity; roles and functions; *FSR Act*.

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1 Introductory remarks

Cooperation and collaboration between the South African Reserve Bank (SARB) and other financial role players such as the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA), the National Credit Regulator (NCR), the Financial Intelligence Centre (FIC), the Financial Stability Oversight Committee (FSOC), the Financial Sector Contingency Forum (FSCF), the Financial Sector Council of Regulators (FSCR), the Financial Sector Inter-Ministerial Council (FSIC) and relevant Cabinet Ministers is essential for the promotion, protection, enhancement and maintenance of financial stability and market integrity in South Africa.¹ This follows the fact that the role and functions of financial sector regulators are interconnected and they can be achieved through optimum coordination among all the relevant regulators.² Several measures have been established under the *Financial Sector Regulation Act*³ to foster regulatory cooperation and collaboration in the South African financial sector. For example, the *FSR Act* establishes the duty to cooperate and collaborate between the SARB and other financial role players. It also provides for the duty to conclude Memorandums of Understanding (MOUs) on the cooperation and collaboration arrangements between financial role players. The *FSR Act* also introduced some bodies to facilitate cooperation and collaboration between the SARB and other financial role players.⁴ It is important that the role and functions of the financial sector role players be prevented from overlapping by providing clear regulatory boundaries for

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¹ Van Niekerk and Van Heerden 2020 *SALJ* 113; Llewellyn "Institutional Structure of Financial Regulation" 28; Godwin and Schmulow 2015 *SALJ* 758; Schmulow 2017 *AJICL* 394.

² Llewellyn "Institutional Structure of Financial Regulation" 28; see related comments by Chitimira 2014 *Speculum Juris* 110; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 8; Godwin and Schmulow 2015 *SALJ* 758.

³ *Financial Sector Regulation Act 9 of 2017 (FSR Act)*, see ss 26 and 76; Godwin and Schmulow 2015 *SALJ* 758; Qumba 2022 *SALJ* 92; Godwin 2017 *LFMR* 183; Schmulow 2017 *AJICL* 395.

⁴ See ss 20(1), 27, 77, 79(2) and 83(1) of the *FSR Act*; Godwin and Schmulow 2015 *SALJ* 759; Van Niekerk and Van Heerden 2020 *SALJ* 118; Godwin 2017 *LFMR* 151, 152; see related comments by Godwin, Li and Ramsay 2016 *HKLJ* 938.

each role player. This approach will ensure effective cooperation and collaboration between the SARB and other financial role players.⁵ To this end, this article analyses the role and functions of the SARB and other relevant financial role players to determine whether they have adopted adequate measures to consistently fulfil their duties and cooperate and collaborate as provided under the *FSR Act*.⁶

2 The role and functions of the SARB to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

Financial stability occurs when a financial sector inspires general confidence through its resilience to systemic risks and its ability to efficiently offer financial services, its ability to offer financial products, and its ability to perform its roles and functions without interruption.⁷ Market integrity generally occurs when financial markets are subject to little financial crime, have strong enforcement mechanisms, rely on fairness and efficiency, and offer transparent financial products.⁸ The *FSR Act* establishes the role and functions of the SARB in relation to the promotion, protection, enhancement and maintenance of financial stability in South Africa.⁹ It provides that the SARB is the primary guardian of financial stability in South Africa.¹⁰ However, the *FSR Act* does not expressly provide for the role and functions of the SARB in relation to market integrity. In this regard the authors argue that the SARB has a key role in promoting, protecting and enhancing market integrity through cooperating and collaborating with other financial role players such as the NCR and the FSCA and aiding them to fulfil their mandates.¹¹

⁵ Godwin 2017 *LFMR* 184; Godwin and Schmulow 2015 *SALJ* 759; Schmulow 2017 *AJICL* 396; Godwin, Li and Ramsay 2016 *HKLJ* 630.

⁶ Sections 26 and 76 of the *FSR Act*; Van Heerden and Van Niekerk 2017 *THRHR* 643; Godwin, Howse and Ramsay 2017 *SALJ* 667; Van Heerden and Van Niekerk 2018 *LFMR* 156.

⁷ Section 4 of the *FSR Act*; see related comments by Van Heerden and Van Niekerk 2017 *THRHR* 643; Van Heerden and Van Niekerk 2018 *LFMR* 156; Schinasi 2004 <https://www.imf.org/external/pubs/ft/wp/2004/wp04187.pdf> 4.

⁸ Austin 2017 *Wm & Mary Bus L Rev* 219; Schwartz, Byrne and Stempel *Market Integrity* 14; Fodor 2008 *JFC* 262.

⁹ Section 12 of the *FSR Act*; *Constitution of the Republic of South Africa*, 1996 (the Constitution) s 255; Van Heerden and Van Niekerk 2018 *LFMR* 156; De Jager 2013 *SA Merc LJ* 496.

¹⁰ Section 12 of the *FSR Act*; s 255 of the Constitution; Van Heerden and Van Niekerk 2017 *THRHR* 643; Van Heerden and Van Niekerk 2018 *LFMR* 156.

¹¹ See s 76 of the *FSR Act*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 13; Van Heerden and Van Niekerk 2018 *LFMR* 156.

The *FSR Act* provides that the SARB is primarily mandated to protect and promote financial stability.¹² This means that the SARB is responsible for making key decisions in matters relating to financial stability in South Africa. The mandate of the SARB also entails the duty to restore and/or maintain financial stability in relation to systemic events or financial crisis.¹³ The SARB's financial stability mandate also gives rise to other role and functions. For example, the SARB is required to monitor any risks to financial stability, conduct financial stability reviews and cooperate and collaborate with other financial sector role players to protect and to promote financial stability in the South African financial sector.¹⁴ The *FSR Act* requires the SARB to cooperate and collaborate with the PA, the FSCA, other financial regulators and state organs to fulfill its financial stability mandate.¹⁵ This shows that the SARB does not perform its duties and functions in isolation. Accordingly, the *FSR Act* establishes platforms to foster cooperation and collaboration between the SARB and other financial role players through discussions and consultations. It specifically provides measures to foster cooperation and collaboration between the SARB and other financial role players to promote, protect, enhance and maintain financial stability.

The *FSR Act* establishes two bodies, namely, the Financial Stability Oversight Committee (FSOC) and the Financial Sector Contingency Forum (FSCF) to facilitate the SARB's financial stability objective.¹⁶ The role and functions of the FSOC and the FSCF will be discussed in more detail later in this article. The SARB does not have the freedom to make decisions regarding how it fulfills its financial stability mandate because it is required to act in a manner determined by the Minister of Finance and the Governor of the SARB.¹⁷ This could suggest that the SARB's role and functions also rely on extensive consultation and coordination with the National Treasury.

¹² Section 11 of the *FSR Act*; s 3 of the *Reserve Bank Act* 90 of 1989; National Treasury 2011 <https://www.treasury.gov.za/twinpeaks/20131211%20-%20item%202%20a%20safer%20financial%20sector%20to%20serve%20south%20africa%20better.pdf>; Schmulow 2017 *AJICL* 394; De Jager 2013 *SA Merc LJ* 499.

¹³ Section 12 of the *FSR Act*; see related comments by Osode 2021 *IJEEL* 12; Godwin, Kourabas and Ramsay 2016 *Int'l Law* 275; also see Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 13.

¹⁴ Sections 12, 15, 20 and 26 of the *FSR Act*; Van Heerden and Van Niekerk 2018 *LFMR* 157; see related comments by Allen 2014 *Geo J Int'l L* 934; also see Taylor 2009 *Connecticut Insurance Law Journal* 66.

¹⁵ Section 26 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 115; Godwin and Schmulow 2015 *SALJ* 759; Schmulow 2017 *AJICL* 396; Qumba 2022 *SALJ* 95.

¹⁶ Sections 20 and 25 of the *FSR Act*; SARB 2016 <https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-stability/A%20new%20macroprudential%20policy%20framework%20for%20South%20Africa.pdf>; Van Heerden and Van Niekerk 2018 *LFMR* 156; Godwin, Howse and Ramsay 2017 *SALJ* 665.

¹⁷ Section 11(2)(a) of the *FSR Act*; Van Heerden and Van Niekerk 2018 *LFMR* 157; see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 116; also see De Jager 2013 *SA Merc LJ* 497.

The *FSR Act* provides that the SARB should take into consideration the views and information shared by other financial regulators when fulfilling its financial stability mandate.¹⁸ The *Act* also requires other financial role players to assist and share information with the SARB and the FSOC relating to maintaining or restoring financial stability to foster cooperation and collaboration between all relevant financial role players.¹⁹

The SARB is required to enter into a MOU to establish cooperation, collaboration and information sharing arrangements with other financial role players to effectively promote financial stability.²⁰ The SARB relies on the information gathered by the FIC to detect and monitor unusual transactions concluded by the perpetrators of financial crime that are likely to threaten financial stability and the integrity of the financial markets.²¹ The SARB also fulfills its financial stability mandate by gathering relevant information on financial stability from other financial role players such as the PA, the FSCA, the FIC and the NCR. During the corona virus (COVID-19) pandemic, the SARB cooperated and collaborated with the FSCA, the PA and the NCR to protect financial stability and market integrity by offering supervisory and regulatory relief to financial customers,²² but it struggled to fulfil its duties and functions. In this regard, its cooperation and collaboration with other financial role players such as the PA, the FSCA, the FIC and the NCR was also severely affected.

As noted earlier, the SARB does not have an express mandate to promote, protect, enhance and maintain market integrity in South Africa. However, the SARB may use its statutory powers and authority as the central bank to promote market integrity by monitoring risks that may weaken the financial

¹⁸ Section 26(2) of the *FSR Act*; see related comments by Allen 2014 *Geo J Int'l L* 935; Godwin and Schmulow 2015 *SALJ* 766; Van Heerden and Van Niekerk 2018 *LFMR* 158.

¹⁹ Section 27(1) of the *FSR Act*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; also see Schwarcz 2008 *Georgetown Law Journal* 194; SARB 2016 <https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-stability/A%20new%20macroprudential%20policy%20framework%20for%20South%20Africa.pdf> 31.

²⁰ Section 27(1) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 119; Godwin 2017 *LFMR* 184; Schmulow 2017 *AJICL* 401.

²¹ Section 21 of the *Financial Intelligence Centre Act 38 of 2001 (FICA)*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Van Niekerk and Van Heerden 2020 *SALJ* 108-114; Sharrock *Law of Banking and Payment* 41.

²² PA date unknown <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf>; see related comments by Chitimira *Market Abuse Regulation* 178.

sector.²³ For example, the SARB may use its power to monitor risks to detect systemic events that may threaten market integrity. Also, the SARB's duty to cooperate and collaborate with the FSCA implies that it has a role in the promotion, protection and enhancement of market integrity by assisting the FSCA to promote market integrity.²⁴ The SARB is also required to have regard to other state organs whose role and functions affect market integrity.²⁵ These include the Department of Trade and Industry, which determines interest rates on credit agreements in terms of the *National Credit Act*.²⁶ Accordingly, the authors submit that the SARB also plays a crucial role in the promotion, protection, enhancement and maintenance of market integrity through its cooperation and collaboration with other financial role players such as the FSCA and the NCR.

3 The role and functions of the PA to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The *FSR Act* also established the PA²⁷ to oversee prudential supervision and regulation in South Africa. The PA operates as an independent juristic person, separate from the SARB.²⁸ The role and functions of the PA include promoting and enhancing the safety and soundness of financial institutions; promoting and enhancing market integrity, and protecting consumers from the risks posed by financial institutions which fail to fulfill their obligations. Moreover, the PA is obliged to cooperate and collaborate with the SARB to promote, protect and maintain financial stability.²⁹ However, the *FSR Act* does not expressly impose on the PA a duty to protect, promote, enhance and maintain market integrity. The PA should promote and enhance the

²³ Section 11(2)(a) of the *FSR Act*; Van Heerden and Van Niekerk 2018 *LFMR* 157; see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 116; also see De Jager 2013 *SA Merc LJ* 497.

²⁴ Sections 12, 26 and 76 of the *FSR Act*; see related comments by Chitimira and Magau 2022 *EIRP Proceedings* 360; also see Sharrock *Law of Banking and Payment* 41; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Van Niekerk and Van Heerden 2020 *SALJ* 115.

²⁵ PA date unknown <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf> 27.

²⁶ Section 11(2)(b) of the *FSR Act*; s 103 of the *National Credit Act* 34 of 2005 (*NCA*); Van Heerden and Van Niekerk 2018 *LFMR* 157; see related comments by Goodspeed 2017 *SA Financial Regulation Journal* 15.

²⁷ Section 32 of the *FSR Act*; Goodspeed 2017 *SA Financial Regulation Journal* 15; Van Heerden and Van Niekerk 2018 *LFMR* 159; Godwin 2017 *LFMR* 185.

²⁸ Section 32 of the *FSR Act*; Chitimira and Magau 2022 *EIRP Proceedings* 366; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Van Niekerk and Van Heerden 2020 *SALJ* 118.

²⁹ Section 33 of the *FSR Act*; see related comments by Van Heerden and Van Niekerk 2017 *THRHR* 642; Van Heerden and Van Niekerk 2018 *LFMR* 159.

safety and soundness of market infrastructures to maintain market integrity in South Africa.³⁰

The PA is required to assist, share information, cooperate and collaborate with the SARB, the FSCA, the NCR, the FIC, the Competition Commission and other relevant financial role players to promote financial stability and enhance market integrity.³¹ It is expressly required to support sustainable competition and cooperate and collaborate with the Competition Commission.³² The PA plays a key role in enhancing the integrity of financial markets by ensuring healthy competition for sustainability in the South African financial markets.

Furthermore, the PA is required to cooperate and collaborate with the FSCA in accordance with the *FSR Act*.³³ Accordingly, the PA should do more to promote and enhance market integrity by cooperating and collaborating with other financial role players such as the FSCA and the Competition Commission. Moreover, the *FSR Act* should be amended to expressly oblige the PA to promote and enhance market integrity in South Africa. This could prevent regulatory gaps and overlaps between the PA and other financial role players.

The *FSR Act* imposes an obligation on the PA to promote and enhance sustainable competition in the financial sector.³⁴ In this regard, the PA's role is similar to that of its United Kingdom (UK) counterpart, the Prudential Regulatory Authority (PRA). However, its role is different from that of the Australian Prudential Regulatory Authority (APRA).³⁵ In the UK, the PRA plays a significant role in promoting market integrity through ensuring viable competition but the same cannot be said about the Australian APRA.³⁶ The PA should cooperate and collaborate with the Competition Commission.³⁷

³⁰ Section 33(b) of the *FSR Act*; see related comments by Godwin 2017 *LFMR* 185; Godwin, Howse and Ramsay 2017 *SALJ* 670; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12.

³¹ Sections 34(1)(a)-(b) and 26 of the *FSR Act*; Chitimira and Magau 2022 *EIRP Proceedings* 366; Van Niekerk and Van Heerden 2020 *SALJ* 118; Visagie-Swart and Lawack 2020 *SA Merc LJ* 148.

³² Section 34(1)(d) of the *FSR Act*; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Chitimira and Magau 2022 *EIRP Proceedings* 366.

³³ Section 57(a)-(b)(i) of the *FSR Act*; Chitimira *Market Abuse Regulation* 41; see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 119; also see Osode 2021 *IJEEL* 13; Visagie-Swart and Lawack 2020 *SA Merc LJ* 132.

³⁴ Section 34(1)(d) of the *FSR Act*; Osode 2021 *IJEEL* 14.

³⁵ Osode 2021 *IJEEL* 14; Godwin, Howse and Ramsay 2016 *JBR* 106; Godwin, Kourabas and Ramsay 2016 *Int'l Law* 283; Jensen and Kingston 2010 *JIBFL* 549.

³⁶ Qumba 2022 *SALJ* 105; Godwin and Ramsay 2015 *CIFR Paper* 252; Godwin, Li and Ramsay 2016 *HKLJ* 628; Jensen and Kingston 2010 *JIBFL* 556.

³⁷ Section 34(1)(d) of the *FSR Act*; Osode 2021 *IJEEL* 14; see related comments by Goodspeed 2017 *SA Financial Regulation Journal* 16; also see Manguzvane and Muteba Mwamba 2019 *International Review of Applied Economics* 632.

However, the *FSR Act* does not expressly provide for such cooperation and collaboration.³⁸ It is submitted that this status quo is justifiable because it is consistent with the legislative intent to make the PA a separate regulatory body that is independent from other regulatory bodies.³⁹ The effective cooperation and collaboration between the PA and the Competition Commission could enhance market integrity in South Africa.

The PA should further promote financial stability in South Africa. The *FSR Act* provides that the PA should assist in maintaining financial stability and participate in the mitigation of risks that affect financial stability by enforcing any measures that are recommended by the SARB from time to time.⁴⁰ The PA and the National Treasury cooperate and collaborate with each other to develop policies on any matters relating to the financial sector.⁴¹ In the last three years the PA has cooperated and collaborated with the SARB through, *inter alia*, the designation of systematically important financial institutions and the designation of regulatory instruments to supervise financial institutions.⁴² To alleviate the effects of the COVID-19 measures on financial stability and market integrity, the PA collaborated with the NCR to provide credit to PA-regulated financial institutions and develop regulatory instruments.⁴³ Therefore, the PA has to date managed to cooperate and collaborate with the SARB and other financial role players to adequately protect financial stability and enhance market integrity in South Africa.⁴⁴ The *FSR Act* grants the PA the authority to do anything it deems necessary to

³⁸ Section 34(1)(d) of the *FSR Act*.

³⁹ Osode 2021 *IJEBL* 14; see related comments by Botha and Makina 2011 *IBERJ* 30; Godwin and Schmulow 2015 *SALJ* 760; Schmulow 2011 *AJICL* 401.

⁴⁰ Section 34(1)(f) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; Van Heerden and Van Niekerk 2017 *THRHR* 642; Van Heerden and Van Niekerk 2018 *LFMR* 159; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Chitimira and Magau 2022 *EIRP Proceedings* 366.

⁴¹ PA date unknown <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf> 29; Visagie-Swart and Lawack 2020 *SA Merc LJ* 132.

⁴² PA date unknown <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf> 29; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 14; Chitimira and Magau 2022 *EIRP Proceedings* 367.

⁴³ PA date unknown <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf> 28; see related comments by Osode 2021 *IJEBL* 23; also see Susskind and Vines 2020 *Oxford Review of Economic Policy Journal* 1, 6.

⁴⁴ Sections 33(d) and 34(b) of the *FSR Act*, see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 118; Van Heerden and Van Niekerk 2017 *THRHR* 642; Van Heerden and Van Niekerk 2018 *LFMR* 159; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Chitimira and Magau 2022 *EIRP Proceedings* 366.

fulfil its objectives.⁴⁵ This includes cooperating with its counterparts from other jurisdictions and relevant international bodies to protect, promote and maintain financial stability and market integrity in South Africa.⁴⁶

4 The role and functions of the FSCA to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The FSCA is an independent market conduct regulator in South Africa.⁴⁷ The FSCA was established as a separate regulatory body that is obliged to cooperate and collaborate with the SARB, the PA, the FIC, the NCR, the Competition Commission and other relevant state organs to protect, promote, maintain and enhance financial stability and market integrity in South Africa.⁴⁸ The FSCA has a duty to promote and enhance market integrity and market efficiency by protecting and promoting the fair treatment of financial customers and promoting financial literacy programmes.⁴⁹ The *FSR Act* also requires the FSCA to adopt measures to maintain financial stability.⁵⁰

The FSCA plays a significant role as the enforcement authority of anti-market abuse laws to protect and enhance the integrity of South African financial markets.⁵¹ To fulfill this mandate, it cooperates and collaborates with the FIC and other enforcement authorities to curb market misconduct and related financial crimes in South Africa. However, there has not been significant cooperation and collaboration between the FSCA, the South African courts, law enforcement agencies and other financial role players to

⁴⁵ Section 34 of the *FSR Act*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Chitimira and Magau 2022 *EIRP Proceedings* 366; see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 121.

⁴⁶ Section 34(3) of the *FSR Act*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 12; Chitimira and Magau 2022 *EIRP Proceedings* 366.

⁴⁷ Section 56 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 115; Godwin and Schmulow 2015 *SALJ* 759; Schmulow 2017 *AJICL* 398; Govender 2019 *Without Prejudice* 6.

⁴⁸ See ss 57 and 58 of the *FSR Act*; Osode 2021 *IJEEL* 18; Qumba 2022 *SALJ* 99; Van Niekerk and Van Heerden 2020 *SALJ* 118; Van Heerden and Van Niekerk 2017 *THRHR* 636.

⁴⁹ Section 57(a)-(b) of the *FSR Act*; Chitimira *Market Abuse Regulation* 41; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 9; Chitimira and Magau 2022 *EIRP Proceedings* 366.

⁵⁰ Section 57(c) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 119; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 9; Chitimira and Magau 2022 *EIRP Proceedings* 366.

⁵¹ Sections 32-34 and 167-174 of the *FSR Act*; Chitimira *Market Abuse Regulation* 41; Van Wyk 2019 *THRHR* 395; Schmulow 2017 *Law and Financial Markets Review* 165.

promote financial stability and market integrity in South Africa.⁵² The FSCA does not have the power and authority to prosecute any illicit market conduct cases. As such, there is need for cooperation and collaboration arrangements between the FSCA, courts and enforcement authorities such as the South African Police Service (SAPS) and the National Prosecuting Authority (NPA) to ensure the effective detection, investigation and prosecution of such cases.⁵³ To date, there have been very few successfully prosecuted cases in this regard. This could suggest that there are inadequate cooperation and collaboration arrangements between the FSCA and the FIC, the SAPS and other relevant role players.⁵⁴ Accordingly, it is submitted that the *FSR Act* should be amended to enact provisions that specifically give effect to the cooperation and collaboration between the FSCA, the FIC, the courts, the SAPS and other relevant role players to promote and enhance market integrity in South Africa.

The *FSR Act* also requires the FSCA to participate in relevant international bodies, and cooperate and/or collaborate with its international counterparts so as to achieve its objectives.⁵⁵ Cross-border cooperation and collaboration between the FSCA and other international regulatory bodies is essential for combatting financial crimes that affect market integrity and financial stability.⁵⁶ The FSCA has taken steps to collaborate with international organisations such as the United States Securities and Exchange Commission (SEC) to enhance the monitoring, detection, investigation and control of cross-border market misconduct that affects market integrity and financial stability in South Africa.⁵⁷ The FSCA is also a signatory of the International Organisation of Securities Commissions (IOSCO).⁵⁸ The IOSCO assists it with relevant information to enforce, detect

⁵² See related comments by Chitimira and Lawack 2013 *Obiter* 212; Chitimira and Lawack 2012 *Obiter* 552; Chitimira *Market Abuse Regulation* 160.

⁵³ Chitimira *Market Abuse Regulation* 45; see related comments by Luiz 2011 *SA Merc LJ* 163; Osode 1999 *AJICL* 705; Chitimira 2014 *Mediterranean Journal of Social Sciences* 245.

⁵⁴ See related comments by Luiz 2011 *SA Merc LJ* 162; also see Chitimira 2019 *IJEBL* 110; Schmulow 2017 *Law and Financial Markets Review* 168.

⁵⁵ Section 58(4) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 120; Qumba 2022 *SALJ* 101; see related comments by Osode 2021 *IJEBL* 18.

⁵⁶ Schmulow 2017 *AJICL* 395; Basel Committee on Banking Supervision 2012 <https://www.bis.org/publ/bcbs230.pdf> principle 3; see related comments by Keenan 2006 *Norton Journal of Bankruptcy Law and Practice* 135; Bordo and Schwartz 1999 *JIMF* 686.

⁵⁷ Chitimira *Market Abuse Regulation* 46; Chitimira and Lawack 2012 *Obiter* 552; see related comments by Chitimira 2019 *IJEBL* 110; Schmulow 2017 *Law and Financial Markets Review* 168.

⁵⁸ Marcacci 2012 *Richmond Journal of Global Law and Business* 24; IOSCO 2002 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf>; IOSCO Board 2019 <https://www.bis.org/cpmi/publ/d189.pdf>.

and investigate financial crime and market misconduct in South Africa.⁵⁹ This shows that the FSCA has so far made considerable efforts to cooperate and collaborate with other international bodies and financial role players to promote financial stability and market integrity. This is commendable because it empowers the FSCA to combat cross-border market misconduct and financial crime.

The FSCA has regulatory powers to request information from other regulatory bodies⁶⁰ and investigative authority which allows it to investigate any matter or financial institution if it suspects non-compliance with the relevant legislation to promote market integrity.⁶¹ Market integrity involves, *inter alia*, fair customer treatment, sound financial institutions, the prevention of financial crime, and financial literacy. Accordingly, the FSCA may make conduct standards applicable to relevant financial role players to promote market integrity through ensuring financial literacy, reducing risks to combat financial crimes and encouraging the fair treatment of customers. This enables it to assist the SARB to maintain financial stability.⁶² The FSCA may also require specific action from a financial institution if it reasonably believes that the actions or conduct of that institution pose a risk to market integrity or when the financial institution or financial role player contravenes any financial sector laws.⁶³ This is applicable if such actions, conduct or contraventions are committed within the scope of the objectives of the FSCA or if the conduct has affected or is likely to affect market integrity and financial stability.⁶⁴ However, the FSCA may not issue directives relating to financial stability without prior consultation with and the approval of the SARB. The SARB and the FSCA have concluded a MOU to establish cooperation and collaboration arrangements in matters relating to, *inter alia*, combatting money laundering and the financing of terrorism, the SARB's

⁵⁹ Marcacci 2012 *Richmond Journal of Global Law and Business* 26; Malaysia Securities Commission 2015 <https://www.sc.com.my/development/international/cross-border-co-operation/list-of-iosco-multilateral-mou-signatories>; see related comments by Chitimira and Lawack 2013 *Obiter* 208.

⁶⁰ Section 58 of the *FSR Act*; see related comments by Qumba 2022 *SALJ* 104; Chitimira *Market Abuse Regulation* 42.

⁶¹ Sections 134-139 of the *FSR Act*; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 10; Sithole 2018 *Financial Sector Conduct Authority* 22.

⁶² Section 106(2)(a)-(e) of the *FSR Act*; Viljoen, Lallo and Bunge "Financial Sector Regulation Act: Implementing Twin Peaks and the Impact on the Industry" 8; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 10; Schmulow 2017 *Law and Financial Markets Review* 169.

⁶³ Section 144(1) and (4) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; see related comments by Godwin and Schmulow 2015 *SALJ* 761; Van Wyk 2019 *THRHR* 396.

⁶⁴ Section 144(4) of the *FSR Act*; Van Heerden and Van Niekerk 2017 *THRHR* 647; Van Niekerk and Van Heerden 2020 *SALJ* 119; Van Wyk 2019 *THRHR* 395; Schmulow 2017 *LFMR* 169.

financial stability objectives, information exchange and the monitoring of financial stability risks.⁶⁵

Although the FSCA is an independent juristic person, it does not perform its role and functions in isolation. The emphasis on cooperation and collaboration when fulfilling its regulatory duties under the *FSR Act* ensures that the FSCA constantly consults, assists and discusses matters relating to common interests with other financial role players such as the SARB, the FIC, the PA and the NCR. The *FSR Act* also obliges other financial role players such as the PA to cooperate, collaborate and assist the FSCA in fulfilling its functions and objectives.⁶⁶ This shows the significance of cooperation and collaboration between the SARB and other financial role players in protecting, promoting, maintaining and enhancing financial stability and market integrity in South Africa. However, the *FSR Act* fails to expressly provide statutory provisions and/or regulations on the cooperation and collaboration between the FSCA, the FIC, the SAPS and the courts to detect, investigate and prosecute financial markets misconduct cases. It is essential that the *FSR Act* be amended to enact adequate provisions that effectively enhance the combatting of financial crime and promote financial stability and the integrity of South African financial markets. The FSCA and the SAPS should conclude cooperation and collaboration MOUs to enhance the prevention and investigation of market misconduct and financial crime that threatens financial stability and market integrity in South Africa.⁶⁷

5 The role and functions of the FSOC to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The FSOC is a committee established by the *FSR Act* to deal with all matters relating to financial stability.⁶⁸ The FSOC supports the SARB in fulfilling its financial stability mandate. The FSOC was also established to facilitate cooperation and collaboration between the SARB and other financial regulators such as the PA, the FSCA, the FIC and the NCR for the purpose of protecting, promoting, maintaining and enhancing financial

⁶⁵ SARB and FSCA 2022 https://www.fsca.co.za/Regulatory%20Liaison/MOU_FSCA%20and%20SARB.pdf; see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 119; also see Qumba 2022 *SALJ* 102.

⁶⁶ Section 34(1)(b) of the *FSR Act*; Osode 2021 *IJEEL* 18; Qumba 2022 *SALJ* 99; Van Niekerk and Van Heerden 2020 *SALJ* 118; Van Heerden and Van Niekerk 2017 *THRHR* 636.

⁶⁷ See related comments by Chitimira *Market Abuse Regulation* 44; Chitimira and Lawack 2013 *Obiter* 212; Chitimira and Lawack 2012 *Obiter* 552; Luiz 2011 *SA Merc LJ* 163.

⁶⁸ Section 20 of the *FSR Act*; see related comments by Godwin and Schmulow 2015 *SALJ* 765; Qumba 2022 *SALJ* 112; also see Van Heerden and Van Niekerk 2018 *LFMR* 157.

stability.⁶⁹ The main function of the FSOC is to facilitate cooperation and coordination between the SARB and other financial role players for the purpose of financial stability. However, there are no express provisions relating to the FSOC's duty to promote market integrity in South Africa under the *FSR Act*.⁷⁰ In this regard, it appears that the FSOC has a duty to maintain market integrity through its duty to prevent and manage risks to financial stability.⁷¹ This follows the fact that a threat to financial stability may also adversely affect the integrity of the financial markets.

The FSOC serves as a forum for discussion between the SARB and other financial role players in all matters relating to financial stability. Essentially, the FSOC fosters cooperation and collaboration between the SARB and other financial role players such as the PA, the FSCA, the FIC and the NCR to promote and to enhance financial stability by creating a platform for discussions and information sharing.⁷² The FSOC also serves as an advisory committee that is tasked with the duty of advising the SARB and the Minister of Finance on measures to protect, promote, and maintain financial stability, mitigate and manage systemic risks or potential risks that threaten financial stability.⁷³ Thus, the FSOC plays an important role in the cooperation and collaboration between the SARB and other financial role players to enable them to fulfill their mandates.⁷⁴

The FSOC comprises of senior officials of other financial role players such as the SARB, the PA, the FSCA, the FIC and the NCR. In this regard, it is submitted that the membership of the FSOC fosters high-level coordination through information sharing, consultation and discussions on matters of common interest between the SARB and the key financial role players in South Africa.⁷⁵ The role and functions of the FSOC include recommending

⁶⁹ Section 20(2)(b) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 117; Godwin 2017 *LFMR* 187; Van Heerden and Van Niekerk 2018 *LFMR* 158.

⁷⁰ See s 21 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 117; see related comments by Hollander and Van Lill 2019 <https://ideas.repec.org/p/sza/wpaper/wpapers325.html> 12; also see Godwin, Howse and Ramsay 2017 *SALJ* 670.

⁷¹ Section 21(c) of the *FSR Act*; see related comments by Schmulow 2015 *CIFR Paper Series* 9; Goodspeed 2017 *SA Financial Regulation Journal* 18; Van Heerden and Van Niekerk 2018 *LFMR* 158.

⁷² Van Heerden and Van Niekerk 2018 *LFMR* 158; Van Heerden and Van Niekerk 2017 *THRHR* 645; see related comments by Qumba 2022 *SALJ* 96; also see Godwin, Li and Ramsay 2016 *HKLJ* 635.

⁷³ Section 21(c)(i)-(ii) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 117; see related comments by Qumba 2022 *SALJ* 96; Schmulow 2017 *AJICL* 398; also see Osode 2021 *IJEBL* 18.

⁷⁴ Godwin, Li and Ramsay 2016 *HKLJ* 630; Llewellyn "Institutional Structure of Financial Regulation" 28; Godwin, Howse and Ramsay 2017 *SALJ* 701; Godwin and Schmulow 2015 *SALJ* 758.

⁷⁵ See related comments by Schmulow 2017 *AJICL* 398; also see Osode 2021 *IJEBL* 18; Godwin and Schmulow 2015 *SALJ* 761.

the designation of systemically important financial institutions; advising the relevant Minister and the SARB on mechanisms regarding the promotion, protection, prevention of risks, crisis management and prevention; recommending mechanisms to protect, promote, maintain and enhance financial stability to relevant state organs; management or prevention of risks to financial stability; and performing any other relevant functions imposed by financial sector laws.⁷⁶ These duties are fulfilled through consultation and discussions between the member institutions. The FSOC is supposed to meet every six months to discuss matters relating to financial stability, and to relevant share information.⁷⁷ The purpose of holding regular FSOC meetings is to foster cooperation and collaboration between the SARB and the member institutions, such as the FSCA, the PA, the FIC and the NCR. Accordingly, the FSOC performs its role and functions in a manner that facilitates cooperation and collaboration between the SARB, and other regulators to promote, protect, maintain and enhance financial stability and market integrity in South Africa.

Having regard to the role and functions of the FSOC, it is submitted that the FSOC was established to create a platform for the SARB and other financial role players to make decisions relating to the SARB's financial stability mandate. It is a platform that enables the financial role players to cooperate and collaborate to protect and maintain financial stability through regular meetings, consultations and discussions. However, we submit that the role and functions of the FSOC are limited to facilitating cooperation and collaboration and do not extend to the enforcement of regulatory coordination in South Africa. As such, there remains a gap in relation to the enforcement to ensure consistency in inter-agency coordination to promote, protect, enhance and maintain financial stability and market integrity in South Africa.

6 The role and functions of the FSCF to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The FSCF was established under the *FSR Act* to assist the FSOC with the discovery of potential systemic risk events so that appropriate measures to mitigate such risks can be adopted.⁷⁸ The main function of the FSCF is to assist the FSOC with the implementation of measures to mitigate identified

⁷⁶ Section 21 of the *FSR Act*; see related comments by Godwin, Howse and Ramsay 2017 *SALJ* 681; Van Heerden and Van Niekerk 2017 *THRHR* 652; see related comments by Chitimira 2020 *Acta Universitatis Danubius Juridica* 280.

⁷⁷ Section 24 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; see related comments by Godwin and Schmulow 2015 *SALJ* 761.

⁷⁸ Section 25(2) of the *FSR Act*; Schmulow 2017 *AJICL* 395; Godwin, Howse and Ramsay 2017 *SALJ* 670; Godwin, Kourabas and Ramsay 2016 *Int'l Law* 279.

systemic risks. It has a duty to assist the FSOC to fulfil its objectives by fostering cooperation and collaboration between its member institutions.⁷⁹ It should be noted that FSCF does not have a mandate separate from the role and functions of the FSOC. Thus, like the FSOC, the FSCF does not have an express duty to promote and enhance market integrity in South Africa. The FSCF ensures that the FSOC effectively and efficiently fulfills its duties of providing the FSOC with relevant information to execute its mandate.⁸⁰

The FSCF receives administrative support from the SARB to fulfil its functions effectively.⁸¹ It is submitted that the relationship between the FSCF and the FSOC is founded on cooperation and collaboration. The primary objective of the FSCF is to assist the FSOC to identify potential risks and establish plans and mechanisms to mitigate risks that threaten financial stability and market integrity.⁸² However, there is no direct coordination between the SARB and the FSCF. Instead cooperation and collaboration between the SARB and the FSCF is done through the FSOC. Moreover, the *FSR Act* does not expressly provide for the conclusion of cooperation and collaboration MOUs between the FSCF and the FSOC to curb overlaps and regulatory gaps between the two committees. The FSCF and the FSOC have seemingly overlapping functions and the lack of clear cooperation and collaboration arrangements or demarcation of functions might result in overlaps between the functions of the FSOC and those of the FSCF.⁸³ This follows the fact that both the FSCF and the FSOC are manned by the same personnel, the Deputy Governors of the SARB. Accordingly, the potential overlaps and regulatory gaps between the role and functions of the FSCF and the FSOC, which could threaten financial stability and market integrity in South Africa, should be adequately addressed.

⁷⁹ See related comments by Chitimira 2020 *Acta Universitatis Danubius Juridica* 280; Godwin, Howse and Ramsay 2017 *SALJ* 681; Van Niekerk and Van Heerden 2020 *SALJ* 118; Van Heerden and Van Niekerk 2017 *THRHR* 652.

⁸⁰ Section 25(1) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; see related comments by Schmulow 2017 *AJICL* 398; also see Osode 2021 *IJEEL* 18; Godwin and Schmulow 2015 *SALJ* 761.

⁸¹ Section 25(6) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; Van Heerden and Van Niekerk 2017 *THRHR* 652; see related discussion by Chitimira 2020 *Acta Universitatis Danubius Juridica* 280; Godwin, Howse and Ramsay 2017 *SALJ* 681.

⁸² Section 25(2) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; see related comments by Godwin, Howse and Ramsay 2017 *SALJ* 681; Godwin 2017 *LFMR* 152.

⁸³ See related comments by Van Heerden, Van Niekerk and Huls 2020 *THRHR* 510; Van Niekerk and Van Heerden 2020 *SALJ* 118.

7 The role and functions of the FSCR to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The *FSR Act* established the FSCR to facilitate cooperation, collaboration and consistency of action between the SARB and member institutions of the FSCR, namely, the Department of Trade and Industry, the Department of Health, the NCR, the FIC, the Medical Schemes, the National Consumer Commission and the Competition Commission.⁸⁴ The establishment of FSCR was probably borrowed from Australia, which also established a Council of Financial Regulators (CFR), but there is no similar body in the UK.⁸⁵ The FSCR facilitates cooperation, collaboration, coordination, consultation and consistency of action among the relevant role players. The FSCR has created a forum for its constituent institutions to discuss and to share information relating to matters of common interest.⁸⁶ However, it is argued that the membership of the FSCR raises an area of difficulty when compared to that of the Australian CFR.⁸⁷ The membership of the FSCR does not include the main financial role players in South Africa, namely, the SARB, the PA and the FSCA. As such, it is difficult to understand how the FSCR may promote financial stability and enhance market integrity without the input of the PA and the FSCA. The FSCR facilitates general cooperation and collaboration between the SARB and other financial role players.⁸⁸ In this regard, there is a need to amend and reconsider the membership of the FSCR so as to include the main financial role players, namely the PA and the FSCA, as in the case in Australia. This could enhance the discussions, coordination, transparency, mutual collaboration and good relationships between the SARB and other financial role players with the purpose of promoting, protecting, enhancing and maintaining financial stability and market integrity in South Africa.

The FSCR does not have other substantive powers and functions that go beyond its facilitating and coordinating role. The authors submit that this approach might have been implemented as a measure to prevent the roles and functions of the FSCR from cutting across the objectives and functions

⁸⁴ Section 79 of the *FSR Act*.

⁸⁵ Section 79(2) of the *FSR Act*; Godwin and Schmulow 2015 *SALJ* 768; Van Niekerk and Van Heerden 2020 *SALJ* 123; Van Heerden, Van Niekerk and Huls 2020 *THRHR* 501.

⁸⁶ Section 79(2) of the *FSR Act*; Godwin and Schmulow 2015 *SALJ* 768; Van Niekerk and Van Heerden 2020 *SALJ* 123; Qumba 2022 *SALJ* 96; Osode 2021 *IJEEL* 20.

⁸⁷ Schmulow 2017 *AJICL* 401; Godwin, Howse and Ramsay 2017 *SALJ* 665; see related comments by Godwin, Kourabas and Ramsay 2016 *Int'l Law* 282.

⁸⁸ Section 79(3) of the *FSR Act*; Godwin and Schmulow 2015 *SALJ* 761; see related comments by Godwin, Li and Ramsay 2016 *HKLJ* 635; Godwin 2017 *LFMR* 187.

of its member institutions.⁸⁹ This means that the FSCR is not expressly authorised to enforce the duty to cooperate and collaborate between the SARB and its member institutions.⁹⁰ Nonetheless, this lack of enforcement powers on the part of the FSCR affects its transparency and compliance with the duty to cooperate, collaborate and conclude relevant MOUs. The FSCR should have the duty and powers to consistently enforce and compel cooperation and collaboration between the relevant financial role players.

The FSCR is a forum for discussing and resolving matters that could threaten financial stability and market integrity.⁹¹ The *FSR Act* provides that the FSCR should meet at least twice in a year.⁹² However, two meetings in a year are not sufficient to effectively enhance adequate coordination and collaboration of all role players to promote financial stability and market integrity in South Africa. In Australia, the CFR meets at least four times a year to identify, discuss, and assist each other in matters of common interest.⁹³ As such, there is a need for regular FSCR meetings to harmonise its regulatory functions and to ensure adequate cooperation and collaboration between the SARB and other financial role players.

The FSCR should not be regarded as the only forum for inter-agency coordination between financial sector role players. This means that its powers and functions should not limit the powers and functions of its member institutions in relation to cooperation and collaboration with each other.⁹⁴ In addition to the role and functions of the FSCR to facilitate cooperation and collaboration, it should be empowered to coordinate and resolve any conflicts that arise between financial role players.

⁸⁹ Section 79(4) of the *FSR Act*; see related comments by Kourabas "Trends and Theory in Financial Regulation" 35; Kourabas 2018 *JBFLP* 187; Godwin and Schmulow 2015 *SALJ* 762.

⁹⁰ Section 79(2) of the *FSR Act*; Kourabas 2018 *JBFLP* 187; Godwin, Li and Ramsay 2016 *HKLJ* 635; also see Godwin 2017 *LFMR* 185.

⁹¹ Section 79 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; Schmulow 2017 *AJICL* 401; Godwin, Howse and Ramsay 2017 *SALJ* 665.

⁹² Section 80(1) of the *FSR Act*; Godwin and Schmulow 2015 *SALJ* 768; Van Niekerk and Van Heerden 2020 *SALJ* 118; see related comments by Kourabas 2018 *JBFLP* 188.

⁹³ Hanrahan 2019 *LFMR* 127; Schmulow, Fairweather and Tarrant 2018 *Law and Financial Markets Review* 195; Godwin and Ramsay 2015 *CIFR Paper* 251; Jensen and Kingston 2010 *JIBFL* 549.

⁹⁴ See related comments by Godwin and Schmulow 2015 *SALJ* 767; Kourabas 2018 *JBFLP* 188; Godwin, Li and Ramsay 2016 *HKLJ* 638.

8 The role and functions of the FIC in promoting, protecting, enhancing and maintaining financial stability and market integrity under the *FSR Act*

The FIC is established under the *Financial Intelligence Centre Act (FICA)*.⁹⁵ The FIC is responsible for customer verification, keeping transaction records, monitoring customer account activities, reporting suspicious transactions and facilitating risk assessment programmes to combat financial crime in South Africa.⁹⁶ Notably, the FIC is not expressly obliged to promote, protect, enhance and maintain financial stability and market integrity under the *FICA* and *FSR Act*. However, the FIC is required to monitor transactions and report unusual transactions to enable the detection of financial crimes such as money laundering and market abuse that affects market integrity and financial stability.⁹⁷ The *FSR Act* requires the FIC to cooperate and collaborate with the SARB, the FSOC, the FSCA, the PA and the NCR to fulfill its duties and functions.⁹⁸ This entails that the FIC also plays a key role in promoting, protecting, enhancing and maintaining financial stability and market integrity in South Africa.⁹⁹ The FIC has entered into a MOU with the PA and the SARB which promotes cooperation, collaboration and information sharing between the relevant institutions.¹⁰⁰ In this MOU, the FIC has agreed to protect and enhance financial stability by participating in the FSOC, the FSCR and the FSCF.¹⁰¹ This entails that the FIC is required to cooperate and collaborate with the member institutions of the FSCR, the FSOC and the FSCF to promote financial stability and market integrity. The FIC fulfills its financial stability and market integrity functions by providing relevant information to the SARB and other financial role players.

⁹⁵ Section 2 of *FICA*; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 43; Chitimira 2021 *JMLC* 790.

⁹⁶ Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 44; Burchell 2010 *SAJCJ* 178; De Koker 2003 *JMLC* 29; see related comments by Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 16.

⁹⁷ Section 21 of the *FICA*; see related comments by Chitimira 2021 *JMLC* 790; Schlenther 2013 *JMLC* 131; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 44.

⁹⁸ Section 76 of the *FSR Act*; see related comments by Chitimira *Market Abuse Regulation* 42; Van Niekerk and Van Heerden 2020 *SALJ* 118; Godwin 2017 *LFMR* 186; Van Heerden and Van Niekerk 2018 *LFMR* 158.

⁹⁹ Section 76 of the *FSR Act*, ss 4 and 5 of *FICA*. See related comments by Van Niekerk and Van Heerden 2020 *SALJ* 125; also see Chitimira *Market Abuse Regulation* 46.

¹⁰⁰ See s 77 of the *FSR Act*; see related comments by Van Niekerk and Van Heerden 2020 *SALJ* 125; FIC, SARB and PA 2018 [https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20\(Combined\).pdf](https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20(Combined).pdf).

¹⁰¹ Sections 76 and 77 of the *FSR Act*; FIC, SARB and PA 2018 [https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20\(Combined\).pdf](https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20(Combined).pdf) para 5.2.

However, there is no cooperation and collaboration MOUs between the FIC, the courts and law enforcement agencies such as the SAPS. There is a need for cooperation and collaboration MOUs between the FIC and the SAPS to enhance the detection and prosecution of market misconduct matters in South Africa. Such cooperation and collaboration should enable the SAPS to access information held by the FIC to enhance the detection of market misconduct and financial crime which affects financial stability and market integrity. The courts should also hear market misconduct cases that are reported by the FIC.

9 The role and functions of the NCR to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The NCR was established under the *National Credit Act*¹⁰² with the primary purpose of monitoring and regulating the South African credit industry.¹⁰³ It should be noted that the NCR does not have express role and functions on the promotion and protection of financial stability and market integrity in South Africa. However, it is obliged to ensure that the credit market is accessible to all consumers by monitoring it so as to promptly detect, prosecute, investigate and where possible, prevent credit market misconduct.¹⁰⁴ The NCR performs these functions to indirectly promote and protect the integrity of the financial markets. However, the NCR does not fulfill these functions in isolation, since financial sector regulators are required to cooperate and collaborate with the SARB and with each other in terms of the *FSR Act*.¹⁰⁵

To date, the NCR has entered into several MOUs to promote cooperation, collaboration and information sharing arrangements with the SARB, the FSCA, the PA and the Credit Ombud.¹⁰⁶ These MOUs, *inter alia*, formalise and strengthen relationships, appropriate coordination and collaboration among all role players. The MOU regarding cooperation and collaboration arrangements between the NCR, the FSCA and the Credit Ombud plays a significant role in preventing overlaps and regulatory gaps among these role

¹⁰² Section 12 of the *NCA*; Vessio 2008 *SA Merc LJ* 228; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 13; Van Heerden 2013 *De Jure* 969.

¹⁰³ Section 12(2) of the *NCA*; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 13; Simpson 2013 *Without Prejudice* 9; Vessio 2008 *SA Merc LJ* 228.

¹⁰⁴ Sections 13(a)-(d), 14-15 and 16-25 of the *NCA*; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 13; see related comments by Van Heerden and Coetzee 2011 *De Jure* 42.

¹⁰⁵ Sections 26, 27, 76 and 77 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 119; Chitimira *Market Abuse Regulation* 41; Godwin, Howse and Ramsay 2017 *SALJ* 668.

¹⁰⁶ FSCA and NCR 2018 https://www.fsca.co.za/Regulatory%20Liaison/MoU_%20FSCA%20and%20NCR.pdf para 2.1.

players. This is essential for effective cooperation and collaboration to promote, protect, enhance and maintain market integrity in South Africa. The NCR has also entered into an MOU with the SARB and the PA to cooperate and collaborate on the promotion of financial stability.¹⁰⁷ Although the NCR is not statutorily and expressly mandated to promote and protect financial stability, it cooperates and collaborates with the SARB to maintain, protect and enhance financial stability.¹⁰⁸ It performs this duty by providing assistance and sharing relevant information with the SARB and the FSOC to maintain financial stability. In this regard it is clear that the NCR has made some efforts to cooperate and collaborate with the SARB and other financial role players to promote, protect, enhance and maintain financial stability and market integrity in South Africa. For instance, the NCR adopted some measures to collaborate with the SARB during the COVID-19 pandemic to re-structure and re-position credit interest rates in order to ensure that financial customers do not become over-indebted.

10 The role and functions of the FSIC to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

The role and functions of state organs and cabinet members in promoting, protecting, enhancing and maintaining financial stability and market integrity in South Africa cannot be overemphasised. The *FSR Act* established the FSIC to facilitate cooperation and collaboration between the cabinet members who are responsible for administering financial sector laws and other role players.¹⁰⁹ The FSIC was established as a forum for cabinet members to discuss matters of common interest such as policy objectives, domestic and international regulatory challenges.¹¹⁰ Therefore, the FSIC is a forum that fosters cooperation and collaboration among the relevant cabinet members and other financial role players such as the SARB, the

¹⁰⁷ SARB, PA and NCR 2018 <https://www.resbank.co.za/content/dam/sarb/publications/prudentialauthoritypa-financial/sector-regulation-act/2018/8803/PA-SARB-NCR-Memorandum-of-Understanding.pdf>.

¹⁰⁸ See SARB, PA and NCR 2018 <https://www.resbank.co.za/content/dam/sarb/publications/prudentialauthoritypa-financial/sector-regulation-act/2018/8803/PA-SARB-NCR-Memorandum-of-Understanding.pdf> paras 4.1.2.1-4.1.2.2; see related comments by Van Heerden and Van Niekerk 2017 *THRHR* 652; Van Heerden, Van Niekerk and Huls 2020 *THRHR* 501; Godwin, Howse and Ramsay 2017 *SALJ* 668.

¹⁰⁹ Section 83(2) of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 118; Godwin, Howse and Ramsay 2017 *SALJ* 692; see related comments by Qumba 2022 *SALJ* 97; see related comments by Van Heerden and Van Niekerk 2017 *THRHR* 652.

¹¹⁰ Section 83 of the *FSR Act*; Godwin, Howse and Ramsay 2017 *SALJ* 692; Van Niekerk and Van Heerden 2020 *SALJ* 118; National Treasury 2011 <https://www.treasury.gov.za/twinpeaks/20131211%20-%20item%202%20a%20safer%20financial%20sector%20to%20serve%20south%20africa%20better.pdf> 18.

FSCA and the PA. The FSIC comprises of the Minister of Finance, the Minister of Trade and Industry, the Minister of Health and the Minister of Economic Development.¹¹¹ The membership of the FSIC suggests that it is a high-level decision-making forum with a significant role to play in promoting, protecting, enhancing and maintaining financial stability and market integrity in South Africa.

The FSIC is obliged to facilitate cooperation and collaboration between the SARB, financial regulators and relevant government officials. It ensures that financial sector laws, policies and cabinet decisions do not jeopardise financial stability and market integrity objectives as well as other matters relating to financial sector regulation.¹¹² The FSIC is also tasked with evaluating the cooperation and collaboration mechanisms established in South Africa every two years.¹¹³ The decision to burden the FSIC with the duty to evaluate cooperation and collaboration mechanisms should be reconsidered since the members of the FSIC are politically exposed persons (PEPs) who hold prominent public offices and are regarded as high risk customers.¹¹⁴ PEPs are natural persons who are regarded as high risk customers due to their ability to abuse the power vested in them to commit financial crimes such as bribery, corruption and embezzlement.¹¹⁵ Accordingly, the decision to make cabinet members actively involved in matters relating to financial stability, market integrity and financial sector regulation is not very prudent.

11 The role and functions of the SAPS and the courts to promote, protect, enhance and maintain financial stability and market integrity under the *FSR Act*

Notwithstanding the fact that the *FSR Act* does not provide any provisions relating to the roles and functions of the SAPS and the South African courts to promote, protect, enhance and maintain financial stability and market integrity in South Africa, the *FICA* provides that the FIC may refer suspected market misconduct cases to the SAPS or any other law enforcement authority.¹¹⁶ The SAPS plays a significant role in the investigation of matters

¹¹¹ Section 83(3) of the *FSR Act*; Schulze 2017 *Annual Survey of South African Law* 512; Godwin and Schmulow 2015 *SALJ* 768; Godwin, Howse and Ramsay 2017 *SALJ* 692.

¹¹² Section 83 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 134.

¹¹³ Sections 86(1)(a) and (b) and 86(5) of the *FSR Act*.

¹¹⁴ Choo 2008 *JMLC* 372; Choo 2010 *Trends and Issues in Crime and Criminal Justice* 2; Menz 2020 *Journal of Financial Crime* 969.

¹¹⁵ Choo 2008 *JMLC* 373; Choo 2010 *Trends and Issues in Crime and Criminal Justice* 2; Menz 2020 *Journal of Financial Crime* 969.

¹¹⁶ Sections 44-45 of *FICA*; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 16; see related comments by Chitimira *Market Abuse Regulation* 41; also see Jooste 1990 *De Ratione* 25; Jooste 2006 *SALJ* 289.

threatening financial stability and market integrity while the South African courts adjudicate against the perpetrators on such matters.¹¹⁷ This shows that the SAPS and the courts have roles to play in protecting and promoting financial stability in South Africa. Be that as it may, there are no established arrangements to facilitate cooperation and collaboration between the SARB, financial role players and the law enforcement authorities to protect financial stability and enhance market integrity.¹¹⁸ In this regard, there is a need for the enactment of adequate provisions that expressly regulate cooperation and collaboration between the SARB and the law enforcement authorities in South Africa so that they may effectively detect, investigate and combat financial crimes that threaten financial stability and market integrity.

12 Concluding remarks

The promotion, protection, enhancement and maintenance of financial stability and market integrity in South Africa rely on the effective performance of the role and functions of all role players, as discussed in this article. Thus, financial role players such as the SARB, the FSCA, the FIC, the PA, the NCR, the FSIC, the FSCR, the FSIC and the FSCF should adequately and consistently cooperate and collaborate with each other to promote, protect, enhance and maintain financial stability and market integrity in South Africa.¹¹⁹ This follows the fact that the roles and functions of the SARB and other financial role players are interconnected. The SARB and other financial role players should collaborate well with each other to adopt adequate measures to promote and maintain financial stability and market integrity.¹²⁰ The financial role players should also embrace financial technology and artificial intelligence when conducting their duties and functions. This could enable all financial role players to timeously detect and combat systemic risks and financial crimes such as money laundering, insider trading, terrorist financing and market manipulation. Moreover, the cooperation and collaboration between financial role players should be carefully utilised to avoid overlapping and the challenges of double jeopardy and over regulation. All financial role players should conclude cooperation and collaboration MOUs that are regularly reviewed to ensure that they optimally conduct their duties and functions. Financial role-players should

¹¹⁷ Jooste 1990 *De Ratione* 25; Jooste 2006 *SALJ* 289; Chitimira *Market Abuse Regulation* 46; Chitimira and Lawack 2013 *Obiter* 216.

¹¹⁸ Jooste 1990 *De Ratione* 25; Jooste 2006 *SALJ* 290; Chitimira *Market Abuse Regulation* 46; Chitimira and Lawack 2013 *Obiter* 217.

¹¹⁹ Van Niekerk and Van Heerden 2020 *SALJ* 112; Llewellyn "Institutional Structure of Financial Regulation" 28; Godwin and Schmulow 2015 *SALJ* 758; Godwin 2017 *LFMR* 185; Godwin, Howse and Ramsay 2017 *SALJ* 670.

¹²⁰ Van Niekerk and Van Heerden 2020 *SALJ* 112; Llewellyn "Institutional Structure of Financial Regulation" 28; Godwin and Schmulow 2015 *SALJ* 758; Godwin 2017 *LFMR* 185; Godwin, Howse and Ramsay 2017 *SALJ* 670.

be statutorily obliged to cooperate and collaborate with the enforcement authorities to ensure the effective detection, investigation and prosecution of any conduct that may negatively affect financial stability and market integrity in South Africa.

Bibliography

Literature

Allen 2014 *Geo J Int'l L*

Allen HJ "What is Financial Stability? The Need for Some Common Language in International Financial Regulation" 2014 *Geo J Int'l L* 929-952

Austin 2017 *Wm & Mary Bus L Rev*

Austin J "What Exactly is Market Integrity? An Analysis of One of the Core Objectives of Securities Regulation" 2017 *Wm & Mary Bus L Rev* 215-240

Bordo and Schwartz 1999 *JIMF*

Bordo MD and Schwartz AJ "Under what Circumstances, Past and Present, have International Rescues of Countries in Financial Distress been Successful?" 1999 *JIMF* 683-708

Botha and Makina 2011 *IBERJ*

Botha E and Makina D "Financial Regulation and Supervision: Theory and Practice in South Africa" 2011 *IBERJ* 27-36

Burchell 2010 *SACJ*

Burchell J "Organised Crime and Proceeds of Crime Law in South Africa, Albert Kruger: Book Review" 2010 *SAJCJ* 177-181

Chitimira 2021 *JMLC*

Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *JMLC* 789-805

Chitimira 2014 *Speculum Juris*

Chitimira H "Overview of Selected Role-Players in the Detection and Enforcement of Market Abuse Cases and Appeals in South Africa" 2014 *Speculum Juris* 108-124

Chitimira *Market Abuse Regulation*

Chitimira H *Market Abuse Regulation in SADC: South Africa, Namibia, Botswana and Zimbabwe* (Juta Cape Town 2022)

Chitimira 2014 *Mediterranean Journal of Social Sciences*

Chitimira H "The Gaps and Flaws in the Current South African Anti-Market Abuse Enforcement Framework in Relation to Selected Aspects of the Financial Markets" 2014 *Mediterranean Journal of Social Sciences* 236-253

Chitimira 2019 *IJEBL*

Chitimira H "Overview Analysis of the Anti-Insider Trading Enforcement Measures in Namibia and South Africa" 2019 *IJEBL* 103-117

Chitimira 2020 *Acta Universitatis Danubius*

Chitimira H "Historical Aspects of the Statutory Regulation of Financial Inclusion for the Poor and Low-Income Earners in South Africa" 2020 *Acta Universitatis Danubius* 269-284

Chitimira and Lawack 2013 *Obiter*

Chitimira H and Lawack VA "Overview of the Role Players in the Investigation, Prevention and Enforcement of Market Abuse Provisions in South Africa" 2013 *Obiter* 200-217

Chitimira and Lawack 2012 *Obiter*

Chitimira H and Lawack VA "An Analysis of the General Enforcement Approaches to Combat Market Abuse (Part 1)" 2012 *Obiter* 548-565

Chitimira and Magau 2022 *EIRP Proceedings*

Chitimira H and Magau P "A Legal Conspectus of Some Role-Players in the Development of Financial Education in South Africa" 2022 *EIRP Proceedings* 360-375

Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa*

Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42-66

Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica*

Chitimira H and Ncube M "The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa" 2020 *Acta Universitatis Danubius Juridica* 7-20

Choo 2010 *Trends and Issues in Crime and Criminal Justice*

Choo K "Challenges in Dealing with Politically Exposed Persons" 2010 *Trends and Issues in Crime and Criminal Justice* 1-6

Choo 2008 *JMLC*

Choo K "Politically Exposed Persons (PEPs): Risks and Mitigation" 2008 *JMLC* 371-387

De Jager 2013 *SA Merc LJ*

De Jager "The South African Reserve Bank: Blowing the Winds of Change (Part 2)" 2013 *SA Merc LJ* 492-512

De Koker 2003 *JMLC*

De Koker L "Money Laundering Trends in South Africa" 2003 *JMLC* 27-41

Fodor 2008 *JFC*

Fodor B "Measuring Market Integrity: A Proposed Canadian Approach" 2008 *JFC* 261-268

Godwin 2017 *LFMR*

Godwin A "Australia's Trek towards Twin Peaks: Comparisons with South Africa" 2017 *LFMR* 183-193

Godwin 2017 *LFMR*

Godwin A "Introduction to Special Issue – The Twin Peaks Model of Financial Regulation and Reform in South Africa" 2017 *LFMR* 151-153

Godwin and Ramsay 2015 *CIFR Paper*

Godwin A and Ramsay I "Twin Peaks – The Legal and Regulatory Anatomy of Australia's System of Financial Regulation" 2015 *CIFR Paper* 103-131

Godwin, Howse and Ramsay 2017 *SALJ*

Godwin A, Howse T and Ramsay I "Twin Peaks: South Africa's Financial Sector Regulatory Framework" 2017 *SALJ* 665-702

Godwin, Kourabas and Ramsay 2016 *Int'l Law*

Godwin A, Kourabas S and Ramsay I "Twin Peaks and Financial Regulation: The Challenges of Increasing Regulatory Overlap and Expanding Responsibilities" 2016 *Int'l Law* 273-298

Godwin, Li and Ramsay 2016 *HKLJ*

Godwin A, Li G and Ramsay I "Is Australia's Twin Peaks System of Financial Regulation a Model for China? (Part 1)" 2016 *HKLJ* 621-645

Godwin, Li and Ramsay 2016 *HKLJ*

Godwin A, Li G and Ramsay I "Is Australia's Twin Peaks System of Financial Regulation a Model for China? (Part 2)" 2016 *HKLJ* 935-960

Godwin and Schmulow 2015 *SALJ*

Godwin AJ and Schmulow AD "The Financial Sector Regulation Bill in South Africa, Second Draft: Lessons from Australia" 2015 *SALJ* 756-768

Goodspeed 2017 *SA Financial Regulation Journal*

Goodspeed I "Twin Peaks" *SA Financial Regulation Journal* 14-21

Govender 2019 *Without Prejudice*

Govender S "A Fintech Take on the Conduct of the Financial Institutions Bill" 2019 *Without Prejudice* 6-15

Jensen and Kingston 2010 *JIBFL*

Jensen A and Kingston M "The Australian Twin Peaks' Framework of Financial System Regulation: Australia and UK Compared" 2010 *JIBFL* 548-571

Jooste 1990 *De Ratione*

Jooste RD "Insider Dealing in South Africa - The Criminal Aspects" 1990 *De Ratione* 21-28

Jooste 2006 *SALJ*

Jooste R "The Regulation of Insider Trading in South Africa: Another Attempt" 2006 *SALJ* 284-301

Keenan 2006 *Norton Journal of Bankruptcy Law and Practice*

Keenan PJ "A New Chapter to Meet the Growing Need to Regulate Cross-Border Insolvencies" 2006 *Norton Journal of Bankruptcy Law and Practice* 128-142

Kourabas "Trends and Theory in Financial Regulation"

Kourabas S "Trends and Theory in Financial Regulation and Regulatory Design after the Global Financial Crisis" in Arner D *et al* (eds) *Research Handbook on Asian Financial Law* (Edward Elgar Cheltenham 2020) 30-48

Kourabas 2018 *JBFLP*

Kourabas S "Improving Australia's Regulatory Framework for Systemic Financial Stability" 2018 *JBFLP* 183-205

Llewellyn "Institutional Structure of Financial Regulation"

Llewellyn DT "Institutional Structure of Financial Regulation and Supervision: The Basic Issues" in World Bank Seminar *Aligning Supervisory Structures with Country Needs Seminar* (6-7 June 2006 Washington DC)

Luiz 2011 *SA Merc LJ*

Luiz SM "Market Abuse and the Enforcement Committee" 2011 *SA Merc LJ* 151-172

Manguzvane and Muteba Mwamba 2019 *International Review of Applied Economics*

Manguzvane M and Muteba Mwamba JW "Modelling Systemic Risk in the South African Banking Sector Using CoVaR" 2019 *International Review of Applied Economics* 624-641

Marcacci 2012 *Richmond Journal of Global Law and Business*

Marcacci A "IOSCO: The World Standard Setter for Globalized Financial Markets" 2012 *Richmond Journal of Global Law and Business* 23-44

Menz 2020 *Journal of Financial Crime*

Menz M "Show Me the Money-Managing Politically Exposed Persons (PEPs) risk in UK Financial Services" 2020 *Journal of Financial Crime* 968-980

Osode 1999 *AJICL*

Osode PC "Insider Trading Regulation in South Africa: A Public Choice Perspective" 1999 *AJICL* 688-710

Osode 2021 *IJEBL*

Osode P "Two Heads are Better than One: Assessing South Africa's 'Twin Peaks' Financial Regulation Model" 2021 *IJEBL* 9-29

Qumba 2022 *SALJ*

Qumba MF "A Comparative Analysis of the Twin Peaks Model of Financial Regulation in South Africa and the United Kingdom" 2022 *SALJ* 78-113

Schlenther 2013 *JMLC*

Schlenther B "The Taxing Business of Money Laundering: South Africa" 2013 *JMLC* 126-141

Schmulow 2017 *AJICL*

Schmulow A "Financial Regulatory Governance in South Africa: The Move towards Twin Peaks" 2017 *AJICL* 393-417

Schmulow 2017 *LFMR*

Schmulow A "Retail Market Conduct Reforms in South Africa under Twin Peaks" 2017 *LFMR* 163-173

Schmulow 2015 *CIFR Paper Series*

Schmulow AD "Twin Peaks: A Theoretical Analysis" 2015 *CIFR Paper Series* 8-22

Schmulow, Fairweather and Tarrant 2018 *Law and Financial Markets Review*

Schmulow A, Fairweather K and Tarrant J "Twin Peaks 2.0: Reforming Australia's Financial Regulatory Regime in Light of Failings Exposed by the Banking Royal Commission" 2018 *Law and Financial Markets Review* 193-202

Schulze 2017 *Annual Survey of South African Law*

Schulze W "Financial Institutions" 2017 *Annual Survey of South African Law* 494-554

Schwarcz 2008 *Georgetown Law Journal*

Schwarcz SL "Systemic Risk" 2008 *Georgetown Law Journal* 193-249

Schwartz, Byrne and Stempel *Market Integrity*

Schwartz RA, Byrne JA and Stempel E *Market Integrity: Do our Equity Markets Pass the Test?* (Springer Cham 2019)

Sharrock *Law of Banking and Payment*

Sharrock R *The Law of Banking and Payment in South Africa* (Juta Cape Town 2016)

Simpson 2013 *Without Prejudice*

Simpson B "The Hidden Teeth of the National Credit Act: Financial Law" 2013 *Without Prejudice* 8-9

Sithole 2018 *Financial Sector Conduct Authority*

Sithole A "Regulatory Strategy of the Financial Sector Conduct Authority: October 2018 to September 2021" 2018 *Financial Sector Conduct Authority* 1-75

Susskind and Vines 2020 *Oxford Review of Economic Policy Journal*

Susskind D and Vines D "The Economics of the COVID-19 Pandemic: An Assessment" 2020 *Oxford Review of Economic Policy Journal* 1-13

Taylor 2009 *Connecticut Insurance Law Journal*

Taylor MV "The Road from "Twin Peaks" – And the Way Back" 2009 *Connecticut Insurance Law Journal* 61-75

Van Heerden 2013 *De Jure*

Van Heerden C "Section 85 of the National Credit Act 34 of 2005: Thoughts on its Scope and Nature" 2013 *De Jure* 968-997

Van Heerden and Coetzee 2011 *De Jure*

Van Heerden C and Coetzee H "Perspectives on the Termination of Debt Review in Terms of Section 86(10) of the National Credit Act 34 of 2005" 2011 *De Jure* 36-65

Van Heerden and Van Niekerk 2017 *THRHR*

Van Heerden CM and Van Niekerk GM "Twin Peaks: The Role of the South African Central Bank in Promoting and Maintaining Financial Stability" 2017 *THRHR* 636-656

Van Heerden and Van Niekerk 2018 *LFMR*

Van Heerden CM and Van Niekerk GM "Twin Peaks in South Africa: A New Role for the Central Bank" 2018 *LFMR* 154-162

Van Heerden, Van Niekerk and Huls 2020 *THRHR*

Van Heerden CM, Van Niekerk GM and Huls NJH "Two Takes on Twin Peaks: A Comparative Appraisal of the Models of Financial Regulation in the Netherlands and South Africa" 2020 *THRHR* 491-510

Van Niekerk and Van Heerden 2020 *SALJ*

Van Niekerk G and Van Heerden C "The Importance of a Legislative Framework for Cooperation and Collaboration in the Twin Peaks Model of Financial Regulation" 2020 *SALJ* 108-144

Van Wyk 2019 *THRHR*

Van Wyk JS "A Comparative Analysis of the 'Regulatory Independence' of the Financial Sector Conduct Authority and the National Credit Regulator" 2019 *THRHR* 392-405

Vessio 2008 *SA Merc LJ*

Vessio ML "What Does the National Credit Regulator Regulate?" 2008 *SA Merc LJ* 227-242

Visagie-Swart and Lawack 2020 *SA Merc LJ*

Visagie-Swart L and Lawack V "An Overview of the First Draft of the Conduct of Financial Institutions Bill and the Potential Impact on the National Payment System in South Africa" 2020 *SA Merc LJ* 129-155

Legislation

Constitution of the Republic of South Africa, 1996

Financial Intelligence Centre Act 38 of 2001

Financial Sector Regulation Act 9 of 2017

National Credit Act 34 of 2005

Reserve Bank Act 90 of 1989

Internet sources

Basel Committee on Banking Supervision 2012
<https://www.bis.org/publ/bcbs230.pdf>

Basel Committee on Banking Supervision 2012 *Core Principles for Effective Banking Supervision* <https://www.bis.org/publ/bcbs230.pdf> accessed 26 March 2024

FIC, SARB and PA 2018 [https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20\(Combined\).pdf](https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20(Combined).pdf)

Financial Intelligence Centre, South African Reserve Bank and Prudential Authority 2018 *Memorandum of Understanding between the FIC and the SARB and the PA* [https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20\(Combined\).pdf](https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20(Combined).pdf) accessed 23 June 2021

FSCA and NCR 2018 https://www.fsca.co.za/Regulatory%20Liaison/MoU_%20FSCA%20and%20NCR.pdf

Financial Sector Conduct Authority and National Credit Regulator 2018 *Memorandum of Understanding between FSCA and NCR* https://www.fsca.co.za/Regulatory%20Liaison/MoU_%20FSCA%20and%20NCR.pdf accessed 25 June 2022

Hollander and Van Lill 2019 <https://ideas.repec.org/p/sza/wpaper/wpapers325.html>

Hollander H and Van Lill D 2019 *A Review of the South African Reserve Bank's Financial Stability Policies* <https://ideas.repec.org/p/sza/wpaper/wpapers325.html> accessed 26 March 2024

IOSCO 2002 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf>
International Organisation of Securities Commissions 2002 *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf> accessed 21 May 2022

IOSCO Board 2019 <https://www.bis.org/cpmi/publ/d189.pdf>
International Organisation of Securities Commissions Board 2019 *Responsibility E: A Compilation of Authorities' Experience with Cooperation* <https://www.bis.org/cpmi/publ/d189.pdf> accessed 14 July 2022

Malaysia Securities Commission 2015 <https://www.sc.com.my/development/international/cross-border-co-operation/list-of-iosco-multilateral-mou-signatories>

Malaysia Securities Commission 2015 *List of IOSCO Multilateral MOU Signatories* <https://www.sc.com.my/development/international/cross-border-co-operation/list-of-iosco-multilateral-mou-signatories> accessed 13 February 2022

National Treasury 2011 <https://www.treasury.gov.za/twinpeaks/20131211%20-%20item%202%20a%20safer%20financial%20sector%20to%20serve%20south%20africa%20better.pdf>

National Treasury 2011 *A Safer Financial Sector to Serve South Africa Better* <https://www.treasury.gov.za/twinpeaks/20131211%20-%20item%202%20a%20safer%20financial%20sector%20to%20serve%20south%20africa%20better.pdf> accessed 8 July 2021

PA date unknown <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf>

Prudential Authority date unknown *Prudential Authority Regulatory Strategy 2021-2024* <https://www.resbank.co.za/content/dam/sarb/what-we-do/prudential-regulation/PA%20Regulatory%20and%20Supervisory%20Strategy%202021.pdf> accessed 21 June 2022

SARB 2016 <https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-stability/A%20new%20macroprudential%20policy%20framework%20for%20South%20Africa.pdf>

South African Reserve Bank 2016 *A New Macroprudential Policy Framework for South Africa* <https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-stability/A%20new%20macroprudential>

%20policy%20framework%20for%20South%20Africa.pdf accessed 15 July 2021

SARB and FSCA 2022 https://www.fsca.co.za/Regulatory%20Liaison/MOU_FSCA%20and%20SARB.pdf

South African Reserve Bank and Financial Sector Conduct Authority 2022 *Memorandum of Understanding between the SARB and the FSCA* https://www.fsca.co.za/Regulatory%20Liaison/MOU_FSCA%20and%20SARB.pdf accessed 21 June 2021

SARB, PA and NCR 2018 <https://www.resbank.co.za/content/dam/sarb/publications/prudentialauthoritypa-financial/sector-regulation-act/2018/8803/PA-SARB-NCR-Memorandum-of-Understanding.pdf>

South African Reserve Bank, Prudential Authority and National Credit Regulator 2018 *Memorandum of Understanding between the SARB, the PA and the NCR* <https://www.resbank.co.za/content/dam/sarb/publications/prudentialauthoritypa-financial/sector-regulation-act/2018/8803/PA-SARB-NCR-Memorandum-of-Understanding.pdf> accessed 26 June 2021

Schinasi 2004 <https://www.imf.org/external/pubs/ft/wp/2004/wp04187.pdf>

Schinasi GJ 2004 *Defining Financial Stability. IMF Working Paper WP/04/187* <https://www.imf.org/external/pubs/ft/wp/2004/wp04187.pdf> accessed 26 March 2024

Viljoen A, Lallo V and Bunge S "Financial Sector Regulation Act: Implementing Twin Peaks and the Impact on the Industry" <https://www.ey.com/Publication/vwLUAssets/ey-financial-sector-regulation-act-twinpeaks/%24FILE/ey-financial-sector-regulation-act-implementing-twin-peaks-and-the-impact-on-the-industry.pdf> accessed on 02 April 2024.

List of Abbreviations

AI	Artificial Intelligence
AJICL	African Journal of International Comparative Law
APRA	Australian Prudential Regulatory Authority
CFR	Council of Financial Regulators
EIRP Proceedings	European Integration – Realities and Perspectives. Proceedings
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act 38 of 2001
FSCA	Financial Sector Conduct Authority
FSCF	Financial Sector Contingency Forum
FSCR	Financial Sector Council of Regulators
FSIC	Financial Sector Inter-Ministerial Council

FSOC	Financial Stability Oversight Committee
FSR Act	Financial Sector Regulation Act 9 of 2017
Geo J Int'l L	Georgetown Journal of International Law
HKLJ	Hong Kong Law Journal
IBERJ	International Business and Economics Research Journal
IJEBL	Interdisciplinary Journal of Economics and Business Law
Int'l Law	The International Lawyer
IOSCO	International Organisation of Securities Commissions
JBR	Journal of Banking Regulation
JBFLP	Journal of Banking and Finance Law and Practice
JFC	Journal of Financial Crime
JIBFL	Journal of International Banking and Financial Law
JIMF	Journal of International Money and Finance
JMLC	Journal of Money Laundering Control
LFMR	Law and Financial Markets Review
MOU	Memorandum of Understanding
NCA	National Credit Act 34 of 2005
NCR	National Credit Regulator
PA	Prudential Authority
PRA	Prudential Regulatory Authority
PEPs	politically exposed persons
SA Merc LJ	South African Mercantile Law Journal
SAJCJ	South African Journal of Criminal Justice
SALJ	South African Law Journal
SAPS	South African Police Service
SARB	South African Reserve Bank
SEC	Securities and Exchange Commission
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
UK	United Kingdom
Wm & Mary Bus L Rev	William and Mary Business Law Review