Financial Sector
Conduct Authority

South African Reserve Bank
Prudential Authority

Public comments received on the Consultation Paper: Joint Standard on Fit and Proper Person Requirements for Significant Owners

July 2019

List of Commentators

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Comments on the Consultation Paper

No.	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
General				
1.	ASISA	General	ASISA members welcome the regulators' intention, as far as is reasonably possible, to create a single set of standards for Fit and Proper Requirements for Significant Owners across different types of financial institutions. Generally speaking, the principle that significant owners of regulated financial institutions should be fit and proper is supported. However, insofar as the practicalities and implementation regarding section 158 is concerned, the various issues raised with National Treasury by ASISA during the consultation phase on the various draft versions of the Financial Sector Regulation ("FSR") Bill have not been addressed in the Draft Joint Standard, as had been expected. In addition, the Draft Standard introduces new principles which, in ASISA members' view raise additional issues, including in regard to practicalities and implementation. Whilst a number of these issues may be unintended consequences, they have the real potential to cause severe problems for a broad range of stakeholders, and not only the entities in which persons are significant owners.	***Noted. The draft Joint Standard has been significantly amended and the requirements imposed through the draft Joint Standard is now predominantly applicable directly to significant owners as opposed to being applicable to the financial institution itself. We believe that this approach would alleviate a lot of the practical concerns that have been raised.***
2.	ASISA		Duplication of the same activities to be carried out Sections 158(3)(a) & (b) of the FSR Act require the significant owner to obtain prior written approval or give prior notification to the Authority, as the case may be. Section 159(1) requires the Regulator to make standards that "must be complied with by significant owners of financial institutions". The Draft Joint Standard, however, does not appear to constitute a standard for compliance by significant owners. It is a standard for compliance by financial institutions. So the requisite standard that the regulator must make under section 159(1) remains outstanding.	***The draft Joint Standard has been significantly revised to address this concern by primarily imposing obligations directly on significant owners. Duplicate obligations have also been deleted to the extent possible.***

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			If it is intended that the way in which the compliance by significant owners is to be achieved is through indirect enforcement by financial institutions via this Draft Standard, it is submitted that this will be unreasonable and impractical. The Draft Joint Standard places significant obligations on financial institutions to satisfy themselves of the very aspects that one would think that the regulator is considering or has already considered in granting or refusing the application made to it by the significant owner in terms of section158 of the FSR Act. So whereas this section does refer to “a person” not being permitted to enter into various arrangements which perhaps could include the financial institution itself, the context of Chapter 11 had led ASISA members to understand that this “person” wherever referred to in the Chapter is a person who is a potential significant owner. It is submitted that on reading the Chapter holistically, this is a reasonable (and it is submitted, the correct) interpretation. However, paragraph 8.2 of the Draft Standard refers to the financial institution “notifying the responsible authority of the proposal for the person to become a significant owner” and paragraph 9.2 states that “Where a financial institution proposes a significant owner” (the context indicates that this proposal by the financial institution is to the authority). The FSR Act gives no indication that the financial institution would be required to make any such applications for approval or notifications. The result is that the FSR Act requires the significant owner to make application and the Standard requires the financial institution to make application – for exactly the same purpose. It is submitted that this duplication is unnecessary and burdensome. PROPOSAL: The Joint Standard should set out requirements for significant owners as required by section 159 of the FSR Act, not obligations for financial institutions, many of which it will be	

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			impossible for them to carry out.	
3.	ASISA		<u>The definition of “significant owner”</u> The definition of “significant owner” in the FSR Act is extremely broad and clarity is required regarding its application in different contexts. Until such clarity is obtained it is difficult to comment meaningfully on all aspects of the Draft Standard. In a group of companies, “significant owner” can be read to have reference to ultimate beneficial owners of the shares in the ultimate holding company of a financial institution. This exacerbates the difficulties highlighted below in regard to the responsibilities that the draft Joint Standard seeks to impose on the boards of financial institutions. The relevant financial institution does not control ((and in many cases will not have any awareness nor can it reasonably be expected to) who its shareholders are (except where the directors of the Financial Institution are also the major shareholders) and certainly where it is a subsidiary in a group, it does not control who the shareholders of its ultimate holding company are or necessarily have access to such shareholders to require them to complete assessments and to monitor their compliance with fit and proper requirements. The situation becomes really problematic in the context of a listed holding company, which could also be included in terms of the draft Standard by virtue of being a controlling company of a financial institution. Clarity is required on who would be regarded as significant owners of a financial institution where such institution is a subsidiary in a group, including where the ultimate holding company in the group is listed and to what extent “look through” may be required. The definition of “significant owner” does not only refer to shareholding but also extends to persons which (directly, or indirectly) have the ability to “control or influence materially” the strategy of the financial institution which ability	***Noted. The revised draft Joint Standard, which now places all obligations directly on the significant owner as opposed to the financial institution, should alleviate a lot of the practical issues you have raised, and should in particular address the concern in as far as it relates to the financial institution. When a person becomes a significant owner, as explained in the specific scenarios you highlighted, predominantly relates to the definition of significant owner as defined in the FSRA. Some of those concerns can potentially not be addressed through the Joint Standard, e.g. where specific requirements relating to significant owners are contained in the FSRA. The concerns pertaining to the wide scope of the term significant owner relates to the definition of significant owner as defined in the FSRA which is outside the scope of the Joint Standard. Some of the concerns you raise in this regard can potentially not be addressed through the Joint Standard, e.g. where specific requirements relating to significant owners are contained in the FSRA.*** ***A distinction must be drawn between issues that can be addressed through the revised Joint Standard and issues that need to be addressed through a separate FSRA process.*** ***We recommend that you consider the revised Joint Standard and assess to what extent the new approach adopted in the Joint Standard influences the positioning of your specific comment, specifically bearing in mind that the –*** • ***definition of significant owner, and certain requirements surrounding significant owners, are contained in the FSRA; and*** • ***Joint Standard cannot change the requirements that are contained in the FSRA.***

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			includes being able to appoint 15% of its governing body. Within the context of a group of companies, this may well refer to various persons and entities throughout the group, which lends further difficulties to practical implementation of the Standard. The definition of “significant owner” can also be read to refer to investment managers acting under discretionary mandates from their clients. An investment manager could be regarded as a significant owner based on shares held across the portfolios of several clients who are unrelated to one another. The investment managers do not have any economic interest in the shares, nor do they control the voting rights in all instances, but may have the power to dispose in terms of client mandates. Both investment managers and their clients could then fall within the ambit of the definition, as could trustees of collective investment schemes, meaning there could be many cases where there is more than one entity that qualifies as a significant owner in a single financial institution and in respect of the same holding or “indirect” interest. In addition, clients may terminate mandates at any time or the holding could exceed a mandate limit due to market movements and it is neither reasonable nor feasible to require an investment manager to obtain the consent of a regulator in these cases. Investment managers are in any event already regulated financial institutions required to meet fit and proper requirements. Clarity is required as to how significant owner investment managers will need to be treated by Financial Institutions in the application of the Joint Standard. This is dealt with in more detail below and a proposal is made in this regard. Similarly, collective investment scheme managers could also fall within the definition based on holdings in their collective investment scheme portfolios (for example, because the buying and selling of shares held in collective investment scheme portfolios is in the first instance a function of the manager, even if this is generally delegated to an investment manager). As with investment managers, collective	

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			investment scheme managers are regulated financial institutions. This concern was raised in ASISA's comments on the FSR Bill, and members had understood that these issues would be resolved through Standards. However, the Draft Standard is not giving the requisite clarity and guidance and in many instances is unfortunately creating greater uncertainty and impracticalities.	
4.	ASISA		<u>Relationship between the Financial Institution and its "significant owners"</u> As stated above, our reading of sections 158 and 159 of the Act is that the onus is on the significant owner/future significant owner to obtain the necessary approvals or give the notifications (as required by the relevant provisions) and to comply/demonstrate compliance with the applicable fit and proper requirements. The regulator would need to assess compliance with fit and proper requirements on receipt of an application or notification. The Draft Joint Standard appears to place these responsibilities on the financial institution/its board and we have difficulty understanding how the directors of a financial institution can be held responsible for something they do not control (i.e. the ownership of the institution). The Draft Joint Standard appears to equate significant owners with key persons and representatives of a financial institution, where compliance is much more within the institution's powers to control and monitor and fails to recognize the material differences between the financial institution's authority (in this case, lack thereof) over its owners and its authority over employees or agents that it appoints. While in some instances, it may be practically possible for the board of directors of a financial institution to assess whether significant owners/potential significant owners meet requirements, more often this will simply not be practically possible.	***Noted. The draft Joint Standard has been significantly revised to address this concern by primarily imposing obligations directly on significant owners.***

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			We will refer to the above General Comments in our further comments below as these are relevant in many instances.	
5.	ASISA	General	**<u>Scenarios to consider in the light of significant ownership provisions, with focus on investment management activities</u>** By virtue of the fact that the Draft Standard applies to controlling companies of financial institutions (which in many cases are listed entities), and if "look through" as referred to above is required, it will impose severe trading constraints in respect of the shares of significant owners and financial institutions, constraints that have not been in place up until now. The impact on the efficiency of the market will be serious, and is a deep concern to ASISA members. 1. We have listed below scenarios that will arise and which are not catered for in the Draft Standard, whether generally or specifically. Most of these types of scenarios were raised during the consultation phase on the FSR Bill (if not specifically, then in principle), and we had understood at the time that they would be addressed in the Draft Standard. Please note that in practice it could well transpire that other scenarios will also arise. a. Transitional arrangements ☐ Scenario: Investment managers are not the beneficial holders of the financial institution's securities, nor do they in all cases hold or control the voting rights – sometimes the investment manager's clients do. However, assuming that the investment manager has the power to dispose of the shares held by its clients and assume the aggregated client holding equates to 15.1% or more (i.e. "a qualifying stake"). The investment manager is thus a significant owner as defined, as at 1 January 2019. If the investment manager is so deemed to be a significant owner, what happens when the investment manager wants to dispose of client holdings that will result in the aggregate holding falling below 15% – can it	***Please see our responses to your comment relating to t<u>he definition of "significant owner" above.</u>*** ***<u>The specific proposal you make at the end of this comment indicated that</u> it is impractical to require prior approval and in some cases, even prior notification that a person will cease to be a significant owner is regarded as problematic. Please note that the revised Joint Standard adopts a different approach with regards to prior approval and notification. As per our previous response, a distinction needs to be drawn between any approval and notification requirements contained in the FSRA, and any approval and notification requirements contained in the Joint Standard. Any practical concerns with the approval and notification requirements contained in the FSRA cannot be addressed through the Joint Standard. Please note that any requirements relating to approval of significant owners has been removed from the Joint Standard. With regards to notification requirements, the Joint Standard has been revised to only require notification by a financial institution to the Authorities within 30 days of a financial institution becoming aware of a significant owner. We believe that this would address the practical concerns from the financial institution's perspective.***

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			be assumed that all that will be needed in that case will be a notification (unless the entity is a SIFI – section 158(3)) i.e. no condition of approval will have been issued previously that required the investment manager to obtain approval to exit? b. Mandate terminations ☐ Scenario: Assuming that the investment manager has the power to dispose of the shares held by its clients and assume the holding equates to 15.1% or more (i.e. “a qualifying stake”). The investment manager is thus a significant owner as defined as at 1 January 2019. Those clients can terminate their mandate at any point in time (or request that the investment manager immediately dispose of certain holdings in their portfolios), which could result in the investment manager’s clients’ aggregate holding falling below 15%. At that point, the investment manager is then no longer a significant owner as defined. Whilst notification of this disposal made by the investment manager on or as soon as reasonably possible after adherence to its clients’ instructions could work, prior approval (in the limited circumstances provided for in the Chapter on Significant Owners) would be a problem in that a client’s ability to terminate a mandate (or to issue such instructions as mentioned) would be frustrated, if not unduly restricted, as the investment manager would not be able to give effect to the instruction until such time as the approval is granted. This could result in a breach of the mandate between the investment manager and the client. c. Corporate Actions e.g. share buy-backs ☐ Scenario: A person (investment manager) has the ability to dispose of or control the disposal of 14% of the financial institution’s securities, and does not otherwise fall within the ambit of clause 157(1) (i.e. until it has disposal rights of 15%) but a	

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			financial institution decides, in any situation, to embark on a corporate action, such as a share buy-back. This results in the investment manager inadvertently crossing the 15% threshold and thus being a significant owner. This would require the investment manager to obtain prior approval but it is not clear how this could be possible. Also, what if approval is not granted – is the investment manager forced to dispose of client holdings? What does this mean for the financial institution itself - can it not pursue the corporate action until the investment manager has approval? Provision should be made to carve out for situations like this i.e. where circumstances beyond the control of the person/ investment manager result in that person falling within the ambit of section 157(1) and, in particular, section 157 (1)(c) read with section 158. ☐ Scenario: A person (investment manager) holds convertible bonds in a financial institution. When is it envisaged that approvals (assuming the conversion thereof result in the investment manager becoming a significant owner) need to be obtained, if at all? d. Acquisitions / new operating entities ☐ Scenario: An investment manager's clients hold 16% in a listed entity, and none of the listed entity's subsidiaries are financial institutions (or the listed entity holds less than 15% in a financial institution). The listed entity then acquires 100% or establishes a subsidiary which operates as a duly licensed insurer or bank or other financial institution included in the Draft Standard (whether or not the core business of the listed entity is in financial services). Instantly then, the investment manager is deemed to be a significant owner. What must the investment manager do now? What if the investment manager is required to get regulatory approval which is refused (e.g. on account of the regulator's view	

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			that such holding is prejudicial to the financial institution – see section 158(7)) and/or doesn't then meet the financial institution's fit and proper requirements? ☐ Scenario: Similar to the above. The investment manager's clients hold* 16% in a listed entity, and in that group there is an insurer/bank/other financial institution subsidiary. The investment manager now wants to hold less than 15% of the listed entity. Where prior notification (or approval) is required for the disposal: ☐ it would unfairly prejudice a significant owner if it was unable to dispose of its interest in a group of companies where only one of those companies is an insurer/bank/other financial institution; ☐ the relevant financial sector regulator's powers would extend to entities that are not insurers/banks/other financial institutions by virtue solely of those entities being related to a financial institution; and nt a the commercial transaction could materially impact the share price of a group of companies where only one or a few of the companies within the group are insurers/banks/other financial institutions. e. Market movements ☐ Scenario: Investment managers may not be intending to cross the threshold (upwards of 15%, say from 14 to 17%) but the market price movements on any particular day or at any moment can change that in an instant, and the manager wants to act instantly in the best interests of its clients. f. "Cross-shareholdings" ☐ Scenario: A person (investment manager) has the ability to dispose of or control the disposal of 14% of the financial institution's securities, and does not otherwise fall within the ambit of clause 157(1) i.e. until it has disposal rights of 15%. At the same time, a number of portfolios of various collective investment	

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			schemes (not managed by the investment manager above) hold about 14% of the financial institution's securities. Assume the trustee of those schemes is the same entity e.g. X, but is not related to the investment manager. Under the Collective Investment Schemes Control Act, the trustee holds the voting rights, meaning the trustee is on the verge of being a significant owner. Assuming the investment manager is managing portfolios of a collective investment scheme whose trustee is X. The investment manager then wants to acquire 1% of the financial institution's securities. On a literal application of the FSR Act and the Draft Standard, it means both X and the investment manager will have to apply for approval, and both do so through the financial institution, and then the authority if the financial institution is comfortable. If this is required of X, it means X must monitor, on an aggregated basis, the holdings of its various CIS managers. It means that until and unless the CIS has sought for and obtained approval (which, importantly, the investment manager would never know is needed to occur), the investment manager will not be able to acquire the intended shares for its portfolio. g. Prior notifications ☐ In cases where only prior notification is required where a significant owner is about to cease to be a significant owner, the process and procedure also needs to be sufficiently robust and efficient e.g. so as not to bring to the fore some of the various issues noted elsewhere in this submission e.g. proprietary/price-sensitive information; market abuse etc. PROPOSAL: In certain cases, as illustrated by the examples set out above, and especially for disposals, it is impractical to require prior approval and in some cases, even prior notification that a person will cease to be a significant owner is problematic. The Joint Standard should provide for this and we propose that in the	

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			case of investment managers, and managers and trustees of collective investment schemes falling into the definition of significant owner, only notification as soon as reasonably possible after the fact should be required - similar to the disclosure requirements set out in section 122 of the Companies Act. A further option to be considered would be for blanket-type approvals to be issued by the regulator on application (under section 157(4)) from such investment manager entities, whether or not they are already significant owners of a financial institution.	
6.	SPGRE	Introductory Statement	S&P Global Ratings Europe Limited ("SPGRE") appreciates the opportunity to comment on the Consultation Paper on a proposed joint standard on fit and proper person requirements for significant owners ("the Draft Joint Standard") as released for comment on 5th October 2018 by the Prudential Authority and the Financial Sector Conduct Authority ("the Authority"). In this response, reference is made to the Financial Sector Regulation Act 9 of 2017 ("the FSRA"), the Credit Rating Services Act 24 of 2012 (as amended, "the CRSA") and Board Notice 166 of 2013 setting out the fit and proper requirements for credit rating agencies ("CRAs") in accordance with section 5(1)(d) of the CRSA. SPGRE, through its branch in the Republic, is registered as an External Credit Rating Agency (as defined in section 1 of the CRSA, "External CRA"). SPGRE is an indirect wholly owned subsidiary of S&P Global Inc. ("SPGI") which is a company incorporated in the State of New York, USA and publicly listed on the New York Stock Exchange. SPGRE is part of S&P Global Ratings, the global CRA operating through a group of affiliated companies performing credit rating services, each of which is a direct or indirect wholly owned subsidiary of SPGI.	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***

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			SPGRE is concerned that, the proposals set out in the Draft Joint Standard as currently drafted do not represent international best practice in CRA policy and would impose an unnecessary and disproportionate burden on SPGRE and its parent(s), notwithstanding the statement in the final sentence of section 5 of Annexure C of the Draft Joint Standard.	
7.	Moody's	General	Moody's Investors Service ("MIS") would like to thank the Financial Sector Conduct Authority ("FSCA") and the Prudential Authority ("PA") for the opportunity to comment on the proposed Joint Standard on Fit and Proper Person Requirements for Significant Owners ("the Joint Standard"). MIS takes note of the proposed Joint Standard and the objective of aligning existing fit and proper requirements on significant owners in sectoral legislation with international standards. With respect to Credit Rating Agencies ("CRAs"), we would like to highlight that there are no fit and proper person requirements on significant owners of CRAs in either the Credit Rating Services Act ("CRS Act") or international standards. As the Joint Standard illustrates, the CRS Act does not provide the FSCA with the requisite authority to regulate fit and proper person requirements for significant owners of CRAs. As such, the Joint Standard is not applicable to CRAs. Given this inapplicability, it would be more appropriate to include CRAs along with the other financial institutions listed as "out of scope" in the table under section 4 of the Joint Standard. It is noted that the FSCA has requested National Treasury to provide it with the necessary authority to regulate fit and proper person standards for significant owners of CRAs. Should amendments to the CRS Act be proposed with respect to fit and proper person requirements on significant owners of CRAs, MIS	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***

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			would welcome the opportunity to provide comment on the proposed standards at this time.	
Statement explaining the need for the draft Joint Standard				
8	SPGRE	Explanatory Statement	Regulation of significant owners In section 3.1 of Chapter 1, the Draft Joint Standard refers to the "regulation of significant owners". In our reading, this suggest direct regulation of significant owners. In our view this is not consistent with Chapter 11 of the FSRA which concerns the assessment of the fitness and propriety of actual and proposed significant owners and, where relevant, the approval of such significant owners. In particular in section 5 of Annexure C to the Draft Joint Standard it is stated that the "FSCA has requested the National Treasury to propose amendments to the Act to empower it to specifically regulate significant owners of credit rating agencies." This statement suggests to us that the Authority is seeking powers to directly regulate significant owners of CRAs rather than requiring CRAs to assess the fitness and propriety of their significant owners. Seeking jurisdiction to directly regulate owners of CRAs may significantly and adversely impact the financing of CRAs, in particular in case of groups of CRAs that are domiciled and/or listed in third countries. In case parent entities and holding companies were considered as significant owners, the adverse impact on CRAs would be even more significant and immediate. We therefore suggest that the Authorities clarify this matter	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***
9.	SPGRE	3.2	SPGRE is concerned that, the proposals set out in the Draft Joint Standard as currently drafted do not represent international best practice in CRA policy and would impose an unnecessary and disproportionate burden on SPGRE and its parent(s), notwithstanding the statement in the final sentence of section 5 of	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***

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			Annexure C of the Draft Joint Standard. Cross-sector consistency Chapter 1 of the Consultation Paper states that the "draft Joint Standard aims to establish consistent fit and proper person requirements for significant owners" of certain financial sector entities. In our view, however, the stated intent of cross- sector consistency is not achieved, given the inconsistencies in the treatment of branches of External CRAs relative to the treatment of branches of foreign entities in other sectors. In particular, section 3.2 sets out an exemption from the Draft Joint Standard for branches of foreign reinsurers referred to in the Insurance Act, 2017, and for branches of foreign financial institutions referred to in the Banks Act, 1990. As there is no apparent reasons to treat branches of foreign CRAs any different, we request that the Joint Standard to be submitted to Parliament also applies the exemption in section 3.2 also to External CRAs. Besides achieving cross-sector consistency, such exemption would also much better reflect the current size of market for credit rating services and in doing so being more proportionate	
10.	ASISA	Section 4.1	We agree with the reasons for excluding certain entities from the ambit of the Draft Standard. However, whilst this section provides for those entities to which the Draft Standard applies and also lists in the Table certain entities in respect of which the Draft Standard does not apply, 3.2 – 3.4 of the Draft Standard itself does not list all those entities expressly included in the Table. To avoid ambiguity, we propose that "only" is added to the introductory sentence of 3.1 of the Draft Standard, so that it reads "This Joint Standard only applies to all:" and/or that section 3 of the Draft Standard be expanded (after clause 3.4) to expressly exclude the entities listed in the Table.	***Noted. Please see revised approach. The draft Joint Standard applies to all financial institutions and significant owners of all financial institutions, and a separate exemption will be issued excluding certain financial institutions and significant owners of certain financial institutions from the draft Joint Standard.***

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11.	A2X	6.	Clarity is required on the meaning of the statement "In the event of any inconsistencies that may arise on implementation of the draft Joint Standard, the draft Joint Standard will prevail."	***In context of the FSRA, if there are other requirements in other subordinate legislative or regulatory instruments which are inconsistent with this Joint Standard, then this Joint Standard will prevail.***
Annexure A: Joint Standard SO1				
12.	ASISA	Objectives and key requirements of Joint Standard	The third paragraph refers to a board-approved policy that a financial institution must have to test and assess the fitness and propriety of its significant owners. The above General Comments are relevant to this and we question the appropriateness of requiring such a policy given the difficulties a financial institution could face in implementing and enforcing it. While it is understood that the Governance and Operational Standards for Insurers ("GOI 4") contain a similar requirement, the Joint Standard will replace section 7 and other provisions of GOI 4 relating to significant owners and it is submitted that this presents an opportunity to make amendments to the provisions currently set out in GOI 4 where appropriate.	***Noted. See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
13.	JSE	3	The JSE falls within the scope of the Joint Standard on Fit and Proper Person Requirements for Significant Owners ("the Joint Standard") and is deemed an "eligible financial institution" as a result of this definition including "market infrastructures", which incorporates both exchanges and clearing houses. The shares of the JSE are listed on the exchange and subject to the JSE listing requirements and the direct oversight in terms of these requirements of the FSCA. The JSE proposes that publicly traded companies be included in the exceptions set out in the table on page 7 of the consultation paper and that a further exemption to this effect be added to section 3 of the Joint Standard for the reasons set out below. Section 157(1) of the Financial Sector Regulation Act, No. 7 of	***Noted. The revised draft Joint Standard, which now places all obligations directly on the significant owner as opposed to the financial institution, should alleviate the concern in as far as it relates to the financial institution as it will no longer be required to monitor significant ownership and assess fit ness and propriety of significant owners. However, the concerns pertaining to the significant owner relates to the definition of significant owner as defined in the FSRA, and this is not something that can necessarily be addressed through the draft Joint Standard, which is subordinate legislation. This concern will therefore have to be addressed through other means. Specific significant owners can potentially be included in the relevant exemption notices. However, please note that we disagree that there should be a blanket***

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			2017 ("FSRA") states that "…*a person is a significant owner of a financial institution* *<u>if the person</u>* (our emphasis), *alone or together with a related or inter-related person, has the ability to control or influence materially the business or strategy of the financial institution*." It is the view of the JSE that a significant owner of a listed company does not have the ability to materially control or influence the business or strategy of a listed company despite Section 157(2) stating at (c) that a person has the ability referred to in (1) by virtue of the person "…*directly or indirectly, alone or together with a related or inter-related person, (holding) a qualifying stake in the financial institution*." and a "qualifying stake" being defined as inter alia holding "*at least 15% of the issued shares of the financial institution*". Section 66(1) of the Companies Act, Act 71 of 2008, requires that the business and affairs of a company be under the management and direction of its directors and these directors are authorised to exercise all of the powers and perform the functions of the company in accordance with the Companies Act and the Memorandum Of Incorporation of the company. The directors of the company must perform their duties for the company and not in respect of the instructions of a single shareholder, even if that shareholder is a single or a dominant majority shareholder. Directors run the risk of personal liability in respect of losses, damages or costs in the event that the instructions of a dominant or majority shareholder are followed without due consideration being given by them to their duties and functions in respect of the company. While we acknowledge that a company with a single shareholder that holds 51% of its issued share capital may be subject to the will and potentially act in the interests of that dominant	***exemption for all significant owners of public listed companies as a significant owner of a public company can, through its voting rights, influence the business to some extent. Therefore, in our opinion significant owners of public listed companies should still meet the relevant fit and proper requirements. The authorities are, however, open to further proposals in this regard and the JSE is welcome to propose and phrase specific scenarios where significant owners of listed financial institutions should be exempted.***

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			shareholder, it is our view that a listed company with a wide shareholder base that is actively traded (possibly in multiple jurisdictions) is by contrast, not subject to the same risk. In public companies with sound governance and risk management practices, a person or entity may be a “significant owner” and hold a “qualifying stake” as defined in the FSRA, the ability of this person or entity to exercise control over the operations of a listed company in terms of strategy and management, is limited. In the event that the financial standing, competence and integrity of a significant owner of the shares of a listed company are called into question, this would not have a discernible impact on the prudential business management of the listed company. This principle holds true for both listed and unlisted public companies, but is more relevant in the context of publicly traded companies, given that the practical elements in terms of the ownership of shares in publicly traded companies make it impractical and costly for listed companies and their shareholders to comply with Chapter 11 of the FSRA and the draft standard: - Trading in listed public companies takes place on all business days and thresholds of ownership could be exceeded in terms of both increases and decreases of shareholding intra-day, which would require daily monitoring (which itself would be impractical); - Given that ownership levels fluctuate in actively traded shares, and following the process of assessment and aggregation that would need to be undertaken by the issuer, the information that will be produced is likely to be outdated by the time it is submitted to the responsible authority. Transactions in the share that take place on the following trading day could have changed the ownership position, rendering any action on the part of the responsible authority in respect of a particular shareholder either	

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			inappropriate or unnecessary; - The ownership of listed companies is for the most part in the hands of institutional clients and shares are held in the nominee companies of the Central Securities Depository Participants ("CSDPs"). Daily interrogation of such would be necessary, as would a secure means of transmission of the shareholder information to the JSE for analysis – the risks associated with such are of concern, given the steep rise in cybersecurity breaches of late; - In instances in which shareholders have mandated Asset Managers to invest on their behalf in terms of discretionary mandates, such shareholdings may be held across a number of CSDPs and the information of all CSDPs in respect of identified shareholders would need to be aggregated on a daily basis in order to obtain an accurate picture of ownership (which would be impractical); - In order for investors that invest directly in listed companies, or their mandatee in the case of managed accounts, to comply with Sections 158(2) and (3), the investor or mandatee would need to obtain written approval from the FSCA (being the responsible authority for the financial sector law in terms of which the JSE is licensed) prior to either becoming a significant owner or decreasing their ownership to such an extent that they cease to be a significant owner. The likelihood of their being able to compute the percentage of their ownership, make an application to the FSCA and obtain written approval prior to effecting a transaction with their authorised user, in a market in which the price of the share may be volatile, is impractical and obviates the purpose and benefits associated with a free market for listed securities.	
14.	ASISA	3.1	The Draft Standard applies to the entities listed in 3.1. On page 8	***Noted. See revised draft Joint Standard and accompanying***

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			of the Consultation Paper it is stated that the Draft Standard will not apply to a "holding company of a financial conglomerate", and that "A dedicated project to develop the regulatory framework for financial conglomerates has been initiated by the PA." The entities listed in 3.1 (specifically controlling companies of banks and insurers) may well also be the holding company of a financial conglomerate. It is important that it is clear which framework will be applicable in such an instance.	***Exemption Notices. . Future publications on the framework for Financial Conglomerates will provide further clarity. Financial conglomerates will be designated and advised of their designation by the Prudential Authority***
15.	ASISA	4.1	See General Comments above. We cannot see how the board of directors can be held responsible for compliance by significant owners. Significant owners are responsible for compliance and must demonstrate compliance with fit and proper requirements to the regulator(s). The board does not decide or control who the shareholders are. The most that can be expected of a board is to notify the relevant regulator of matters, including non-compliance, that come to its attention.	***Noted. See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
16.	BASA		Section 159(1)(a) of the FSRA states that:- "a financial sector regulator must make standards, that must be complied with by significant owners of financial institutions, with respect to fit and proper person requirements..". Recommendation We submit that the primary requirement of the Act is for the <u>significant owner itself to comply with this Joint Standard</u>, as opposed to the financial institution, while the institution's board of directors have the primary responsibility for testing and assessing the fitness and propriety of the significant owner (as set out in paras. 5.4 and 5.5 of the draft Joint Standard).	***Noted. See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
17.	ASISA	4.2	It is not clear whether the external auditor's assurance must be provided on an annual basis or ad hoc. This is a new requirement	***Noted. See revised draft Joint Standard which significantly modifies the referenced obligation placed on financial***

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			for CIS management companies and has a cost implication. We would request the paragraph be re-worded as suggested below to make it clear that this requirement is limited to only on request by the regulator and not an annual basis, which we believe is the intention. "4.2 If requested, a financial institution's external auditor must provide assurance to the financial institution and the responsible authority, ~~if requested~~, that the financial institution complies with the requirements of this Joint Standard or part thereof." In any event, we do not believe the onus should be on the board of the financial institution to comply with the significant owner approval, notification and fit and proper requirements and we cannot therefore see how its auditors can provide the assurance referred to. The auditors of the financial institution would not necessarily have access to the relevant significant owners and their data in order to assess compliance.	***institutions.***
18.	SAIA		The SAIA member recommends that the assurance be provided by the financial institution's internal audit function.	***Noted. See revised draft Joint Standard which significantly modifies the referenced obligation placed on financial institutions.***
19.	Discovery Limited and Discovery Bank Limited	5.1	"The FSRA also requires approval of, or notification to, the responsible authority of any arrangement that will result in a significant owner increasing or decreasing the extent of its ability to control or influence materially the business or strategy of the financial institution." 1) Clarity is required on whether notification or approval is required from the responsible authorities. Clarity is also required on which of the two responsible authorities (i.e. Prudential Authority or Financial Sector Conduct Authority), such notification/approval should be sent to or sought from. In instances where the entity is governed by both the Prudential	***Noted. See revised draft Joint Standard.***

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			Authority and the Financial Sector Conduct Authority to which of the two responsible authorities should the notification/approval be sent to or sought from. 2) Clarity is further required on what timelines such notifications or approvals need to be submitted, and in what prescribed manner.	
20.	BASA		We request that "assurance" be clearly defined – is this required as part of a "full statutory audit" or will an "independent review" suffice? Can an organisation require this from their auditors and has IRBA (Independent Regulatory Board for Auditors) agreed to providing this type of assurance?	***Independent confirmation would suffice. See revised draft Joint Standard.***
21.	ASISA	5.2	See General Comments.	***As above.***
22.	A2X	5.3	What constitutes "commensurate" financial resources- how will this assessment of financial fitness be calculated? This will have an impact on the cost implications of compliance.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
23.	ASISA	5.4	Flowing from the issues raised in our General Comments, we question the appropriateness of requiring such a policy given the difficulties a financial institution could face in implementing and enforcing it. As stated above, these requirements apply to significant owners who should be responsible for demonstrating compliance.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
24.	ASISA	5.5	As stated and explained above, we disagree with the first sentence.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
25.	A2X		What is the timeline for such notification to the Authority?	***See revised draft Joint Standard.***
26.	ASISA	6.	See General Comments as well as our comments in relation to 5.4.	***See revised draft Joint Standard.***
27.	ASISA	6.2.b	6.2.b requires an annual assessment for significant owners. This	***See revised draft Joint Standard which significantly modifies***

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			is an amendment to the current requirements for insurers and new for collective investment scheme management companies. GOI 4 only requires annual assessment for key persons and not for significant owners. We believe that this should remain inapplicable to significant owners as it is an extremely onerous requirement and for the reasons explained in the general Comments, in some instances impossible for the financial institution to enforce.	***the requirement and places the onus on the significant owner.***
28.	BASA		We are mindful of the cost implications of annual fit and proper assessments for significant owners. Recommendation Given the scale of conducting a fitness and propriety assessment on significant owners, we suggest that the assessments be done on a two yearly basis or at minimum every 18 months.	***See revised draft Joint Standard which significantly modifies the requirement.***
29.	SAIA		Annual testing may not be practicable considering the potential volumes of significant owners that have to be assessed for fitness and propriety. The SAIA member recommends fit and proper assessments at least every second year for significant owners.	***See revised draft Joint Standard which significantly modifies the requirement.***
30.	ASISA	6.2.f	Clarity is required as to whom such reporting must be done. It is not clear whether this is to the Board or the Authorities. We cannot see how a financial institution can be expected to force significant owners to complete assessments, provide documentation and consent to its policies. As stated above, the financial institution should only be required to report on matters, including non-compliance, that come to its attention. At most a financial institution should be required to have a reasonable process in place to monitor changes in significant ownership (assuming access to such information) and to notify the regulator after the fact, e.g. within 30 days after a change comes to its attention (as per section 17(2) of the Insurance Act). Should a financial institution be found to be non-compliant with the requirements that	***See revised draft Joint Standard which significantly modifies the requirement.***

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			are being proposed and receive a financial penalty for such non-compliance, this would impact all owners, not just significant owners. It is non-compliant significant owners that should be penalized rather than the institution.	
31.	BASA	6.2.c	While it is accepted that sufficient documentation be retained for each fit and proper assessment for audit purposes. Recommendation We propose that the related record retention and keeping make provision for electronic storage and attestations to the responsible authority with the undertaking that the documentary evidence of the process will be made available if required.	***Comment is noted, electronic storage of documents is acceptable.***
32.	BASA	6.2.f	Par 6(f) actually reads: "*The policy and procedures must include adequate provisions …………. for the protection of such a person*." It is submitted that a board policy, being a document of internal application to a company, cannot adequately provide protection to a third party, be they a director, or employee of the company, or an external party, who chooses to make a confidential report as envisaged in 6.2.f.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
33.	BASA	6.2.g	Care must be taken to recognise and comply with the Protection of Personal Information Act (POPIA) requirements in this regard.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
34.	ASISA	6.3	For the reasons explained above, there is a material distinction between having fit and proper policies that apply to an institution's key persons or other employees or agents and its owners.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
35.	BASA		We are not sure why there is a need to include this paragraph – if an institution wants to incorporate the Policy in the broader fit and proper policy, it will do so without the Standard giving it "permission".	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***

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36.	SAIA	6.4	Compliance with this requirement is dependent on the completion of the process for the designation of controlling companies as per Communication 3 of 2018 - Designation of Insurance Groups and controlling company.	***The comment is noted. Also see revised draft Joint Standard.***
37.	SPGRE		Cross-sector consistency Chapter 1 of the Consultation Paper states that the "draft Joint Standard aims to establish consistent fit and proper person requirements for significant owners" of certain financial sector entities. In our view, however, the stated intent of cross- sector consistency is not achieved, given the inconsistencies in the treatment of branches of External CRAs relative to the treatment of branches of foreign entities in other sectors. In addition, section 6.4 sets out that for insurance groups and banking groups the significant owners to be assessed are those of the ultimate parent entity or holding company rather than those of the direct parent entity, or other entities in the corporate hierarchy. As this is not explicitly stated in relation to other sectors, we request that it be clarified that section 6.4 also applies to groups of CRAs (as defined in section 1 of the CRSA).	***See revised draft Joint Standard and accompanying Exemption Notices.***
38.	SAIA	7	The SAIA member recommends that the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) provide guidance in respect of credible sources from whom information pertaining to significant owners can be sourced.	***See revised draft Joint Standard.***
30.	ASISA	7.2.b	Clarification is sought regarding (i), (ii) (iii), which we believe should be (i) or (ii), as follows: "b. The person has been convicted (and that conviction has not been expunged) or is the subject of pending proceedings which may lead to such a conviction under any law in any jurisdiction, of an offence: i. under a law relating to the regulation or supervision	***See revised draft Joint Standard.***

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			of a financial institution as defined in the FSRA or a corresponding offence under the law of a foreign country involving theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty; or ii. under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Parts 1 to 4 or sections 17, 20 or 21 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence under the law of a foreign country; ~~(iii)~~ where the penalty for the offence was, or may be, imprisonment or a significant fine.”	
40.	BASA	7.2. (a) – (c)	Our concern lies in the following parts of section 7: 7.2 a “*……. or is the subject of pending proceedings which may lead to such a conviction for a financial crime*.” 7.2.b “……… *or is the subject of pending proceedings which may lead to such a conviction under any law in any jurisdiction, of an offence*.” 7.2.c *“……….or is the subject of pending proceedings which may lead to a conviction of any other offence committed after the Constitution of the Republic of South Africa, 1996 took effect, where the penalty imposed for the offence was, or may be, imprisonment without the option of a fine*. Merely being the subject of pending proceedings which may lead to a conviction for a financial crime or other offence cannot constitute prima facie evidence of a lack of competence or integrity. Furthermore, being the subject of pending proceedings is not information that is generally in the public domain, and the financial institution may have difficulty in acquiring sufficient documentary evidence to support a conclusion. Also, even if such	***See revised Joint Standard which places the onus on the significant owner.***

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			information were to come into the possession of the financial institution, using it to come to such a conclusion could amount to prohibited processing in terms of SS26 and 33 of POPIA. Recommendation We suggest that the disqualifications in 7.2 (a-c) be limited to actual convictions of a crime or a civil judgment.	
41.	ASISA	7.2.h	A significant owner is not by virtue of significant ownership involved in the day to day business of a financial institution. This requirement is therefore not relevant in the context of significant owners. Alternatively, if the above is not accepted, then the issue arises of there being a conflict of interest and the individual recuses him/herself. If required to recuse themself on the basis of a disclosed conflict, would that recusal constitute an impairment of ability to discharge their duties? The person has an impaired ability to discharge his or her duties in respect of the business of the financial institution because of a conflict of interest <u>that is unable to be mitigated</u> or any other reason." It is suggested that, if it is to be included, the paragraph be amended by the insertion of the underlined clause as suggested.	***The comment is noted. However it is intentionally drafted in this manner to ensure that where a significant owner discharges any duty in relation to the financial institution, the person must not be impaired for any reason in discharging such duties.***
42.	BASA		Having regard to the fact that par 7 sets out prima facie disqualifications for competence or integrity of significant owners, our concerns include the following: • A significant owner would not typically have any duties to discharge in relation to the business of the financial institution of which they are a significant owner.	***The comment is noted, however it is intentionally drafted in this manner to ensure that factors which may impair the ability to discharge duties may be taken into account, it is intentionally not limited to only conflicts of interest. Also see comment above. In addition, this is a specific risk that has been identified in recent group wide failures.***

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			• "*Impaired ability to discharge his or her duties ……because of……. or any other reason*." We submit that the use of these words is too wide and subjective and may give rise to unfair practices. Recommendation We suggest that par 7.2.h be deleted in totality. • Alternatively, that the drafting be amended as follows: "The person has a conflict of interest".	
43.	ASISA	7.2.k	"Subject to section 8 below, any of the following constitutes prima facie evidence that a significant owner who is a natural person, may lack competence or integrity: k. The person has been refused a registration, authorisation or licence to carry out a trade, business or profession, or has had that registration, authorisation or licence revoked, withdrawn or terminated by a designated authority <u>because of matters relating to honesty, integrity, or business conduct."</u> The wording should be qualified as the authority may have "refused a registration, authorisation or licence" for reasons unrelated to fitness and propriety. A licence could be revoked for various reasons; this does not necessarily render someone unfit and improper. A recommendation would be to make this specific to circumstances of a lack of fitness and propriety. It is suggested that the paragraph be amended by the insertion of the underlined phrase.	***See revised draft Joint Standard, this has been revised to include "because of matters relating to <u>honesty, integrity, or poor business conduct"</u>.***
44.	SAIA		The SAIA member recommends that the refusal, revocation, withdrawal or termination of a registration, authorisation or licence to carry out a trade, business, or profession be qualified such that it relates /links to matters of fitness and propriety (honesty,	***See revised draft Joint Standard, this has been revised to include "because of matters relating to <u>honesty, integrity, or poor business conduct"</u>.***

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			integrity, financial resources or business conduct) only.	
45.	BASA	7.2.o	The phrase “demonstrated a lack of readiness or willingness to comply” is vague and unclear. Recommendation We suggest the following wording for 7.2.o “The person has failed to comply with legal, regulatory or professional requirements and standards.”	***See revised draft Joint Standard.***
46.	SAIA	7.2. (m), (n) and (o)	The SAIA member recommends that: -the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) jointly maintain a list of sanctioned individuals and entities that are not eligible for significant ownership, based on the person having knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, either the PA or the FSCA. -with reference to section 7.2 (n), guidance should be provided by the FSCA and the PA in terms of what would constitute a lack of readiness and willingness to comply with legal and regulatory requirements and standards as these concepts are difficult to establish.	***This comment is potentially academic considering the revisions that has been made to the draft Joint Standard.*** ***Disagree that further guidance is necessary in this regard.***
47.	ASISA	7.3	Would the financial institution be expected to monitor and assess the fit and proper status of the directors of the owner of the significant owner? The Financial Institution in this instance does not have the power to approve the appointments of directors of its significant owners. It will be difficult to obtain the required supporting documentary evidence that the legal person, who is a significant owner, meets competency and integrity requirements - this is especially true	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***

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			where the legal entity is not a listed company or is a foreign legal entity.	
48.	ASISA	7.5.a	The requirement for a significant owner to have adequate financing or funding and future access to capital, is very broad/unclear. It is submitted that this requirement in any event could only be appropriate in respect of direct shareholdings in the case of banks and non-linked insurers, not other financial institutions. Significant owners that are entities licensed by the authorities will have to meet financial standing requirements regarding their own businesses. It is submitted that in many instances it will not be reasonable for a person who is a significant owner through, for example, the “disposal right” of the definition of “qualifying stake”, and which person is not a shareholder in its own right, to be required to hold an additional amount of capital on hand. In addition, the beneficial holders in these instances are often institutional investors such as pension funds, and it is not reasonable to expect such investors to have this capital on hand. We are also concerned that where the provisions of the Draft Standard would require the financial institution to apply financial standing requirements to the proposed significant owner, the Draft Standard could require confidential and proprietary information of all potential significant owners, which is in any event not relevant to the entity in which shares are to be acquired, to be disclosed by the proposed significant owner to the financial institution and others.	***See revised draft Joint Standard which removes the referenced obligation placed on financial institutions.. The prima facie evidence element is retained however in respect of the significant owner.***
49.	A2X	7.5 (a) and (b)	Clarity on the definition of “adequate” is required for purposes of assessing “good financial standing”. These requirements appear to require a full and comprehensive financial assessment? Is this the intention?	***This concern has potentially been alleviated in the light of the revised draft Joint Standard which no longer requires financial institutions to conduct such an assessment. A significant owner must determine what financial resources is***

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				adequate and necessary to support the business of the financial institutions, taking into account the context of the business of the significant owner and financial institution.
50.	SAIA	7.5 (b)	The SAIA member requests the words "is not able or likely to" to be clarified.	***This is a reference to solvency and liquidity.***
51.	ASISA	7.5.c	Where a significant owner is a large organization, it is very likely that at any given time there are a number of pending civil proceedings to which the significant owner is party. This does not mean or result in the significant owner not being in good financial standing.	***This needs to be read in context, this relates specifically to unpaid debts. Business as usual civil proceedings are not included.***
52.	A2X		In what manner must this information be obtained? Through a questionnaire/ attestation by the respective person or entity or through for example, a credit bureau? This may impact on the potential cost of compliance.	***See revised draft Joint Standard.***
53.	ASISA	8.	Clause 8.1 of GOI 4 is missing from this paragraph. We submit that it should be included as the seriousness of the offence and passage of time have to be taken into account for an assessment of fitness and proprietary of natural persons who are significant owners.	***See revised draft Joint Standard.***
54.	ASISA	8.2	We believe that the notification (and approval) requirements of the FSR Act rest on the significant owner, not the financial institution. We do not believe the justification referred to is the duty of the financial institution.	***See revised draft Joint Standard which significantly modifies the referenced obligation placed on financial institutions..***
55.	A2X		It would seem the word "not" is missing in this context: "Where, in light of the considerations in section 7 above, a financial institution is of the view that a prospective significant owner is fit and proper, despite the fact that one or more of the criteria specified in section 7 above is NOT met.	***See revised draft Joint Standard.***

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56.		9.2	See previous comments. It is up to the significant owner to approach the regulator and not up to the financial institution to propose the significant owner to the regulator.	***See revised draft Joint Standard.***
57.	SPGRE	9	Approval of significant owners Notwithstanding our comments concerning section 3.2, we also request that section 9 be amended to clarify how regulatory approval of significant owners would apply to branches of foreign entities, including External CRAs. To the best of our knowledge, no other jurisdiction requires regulatory approval in case a legal or natural person taking an ownership share in a CRA. Typically, CRAs are merely required to notify the competent authority of changes in their ownership. A CRA may also be required to make certain disclosures and may be subject to restrictions relating to the ability to rate significant owners and/or significant holdings of their significant owners. For example, SPGRE makes disclosures concerning its beneficial owners in including in the Annual Report published in accordance with section 15 of the CRSA and Board Notice 168 of 2013. There are also no jurisdictions that we are aware of that require CRAs to submit fit and proper requirements concerning their significant beneficial owners.	***See revised draft Joint Standard and accompanying Exemption Notices.***
58.	ASISA	10.2.a	Presumably an incremental increase must be measured since the last notification/approval was obtained.	***Agreed.***
59.	Discovery Limited and Discovery bank Limited		"Any once-off or incremental increases or decreases in excess of 5%in the interest (securities, voting rights, other rights and the like) that constitutes the significant ownership of a person approved pursuant to section 158 (2)" 1) This section should be aligned to Section 37 of the Bank's	***See revised draft Joint Standard.***

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			Act. 2) Further clarity is required in relation to what constitutes an increase or decrease in excess of 5% "in the interest (securities, voting rights, other rights and the like) that constitutes the significant ownership". Please elaborate and assist with guidance.	
60.	ASISA	10.2.b	A "decrease in the interest" that constitutes the significant ownership of a person cannot result in that person becoming a majority shareholder.	***This may result in a significant owner no longer being regarded as a significant owner. However, see revised draft Joint Standard.***
61.	ASISA	10.2 General	a. The wording used in 10.2.a and b re "interest (securities, voting rights, other rights and the like)" is not only ambiguous, but also has the potential to vastly widen the ambit of the broad concept of a significant owner (as per section 157(1) of the FSRA). This is the case not only through the use of 'interest' but also language such as "and the like". We propose certainty to avoid ambiguity and unintended scope-creep, which can be best achieved by rather using the same language as is used in section 157(2) as far as is reasonably possible. b. . Overall, it appears that the intention of the Draft Standard, at least in the context of "qualifying stake" is to cater, in the case of increases in the qualifying stake, for multiples of 5% e.g. when crossing 20% of issued shares, 25% and so on. Likewise in the case of a decrease. If so, we believe the wording should be enhanced for purposes of clarity,. Another problem with the proposed wording in this regard is that, on a literal interpretation, "5% of" a holding of, say 15%, is 0.75%. We do not believe that an increase from a qualifying stake of 15% to 15.75% constitutes "material" change such that approval should be required, nor do we believe that it can be the regulator's intention to regulate such changes. The intention might be that approval and/or notification is only required for tranches of 5%, e.g. where a person becomes a significant owner by crossing the 15% threshold and going straight to 17%. If the intention is that thereafter, it would only be required to obtain prior approval	***See revised draft Joint Standard.***

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			when the holding is to subsequently become 22% or more (i.e. increase from 17% to 22%) in which case the wording would also need to be amended. If the intention of the proposed wording is to cover not only "qualifying stake" (which seems not to be the case but, as mentioned, the wording is unclear), but also the "power to appoint 15% of the members of the governing body" [section 157(2)(a)] and/or "consent of the person needed for the appointment of 15% of the members of the governing body" [section 157(2)(b)], it is not clear that this principle can be easily applied, especially in the case of section 157(2)(b). A possible alternative, assuming the intention is for the proposed principle to apply to these scenarios, is that it then provide for the person (significant owner) being able to appoint one additional member of the governing body than was previously the case (or approval being needed from that person for one additional member of the governing body being appointed than was previously the case).	
62.	BASA	11	The purpose of this paragraph is not clear. It seems to be merely stating the obvious, in that what it says is simply a re-stating of the provisions of the FSRA and other financial sector laws themselves. Recommendation We recommend that this paragraph be removed.	***Noted. See revised draft Joint Standard.***