

A large, stylized sunburst or fan-like graphic is positioned on the left side of the slide. It features a central circular hub with a blue and white color scheme, from which numerous white, curved segments radiate outwards. The graphic is partially overlaid by a diagonal band that is blue on the left and brown on the right.

# **UPDATE ON TWIN PEAKS IMPLEMENTATION**

**INSURANCE REGULATORY SEMINAR  
2 & 5 NOVEMBER 2015**

Presenter: Jonathan Dixon



# Agenda

- Twin Peaks overview
- 'Twin Peaks' Bill
- Financial Sector Conduct Authority (FSCA)
  - Objectives
  - Functions
  - Cooperation and collaboration
  - Making regulatory instruments
  - Administrative actions
- Regulatory paradigm shift
- FSCA regulatory strategy
- Implications for the FSCA
- Transition to FSCA



# Twin Peaks – in brief

*A new financial regulatory architecture structured around 'objectives' of financial regulation and supervision rather than an 'industry silos' approach*

Rationale:

- Incorporates lessons from financial crisis
- Judged particularly relevant for SA:
  - Prominence of financial conglomerates
  - Financial stability enhanced through role of SARB
  - Allows for dedicated focus on market conduct issues



# Twin Peaks

**MARKET CONDUCT**

Conduct of Business

Market Integrity

Consumer Education

**FSCA**

**PRUDENTIAL**

Banking

Insurance

Financial  
Conglomerates

**PA**

**FINANCIAL STABILITY**

Financial Stability  
Oversight Committee

Financial Market  
Infrastructure

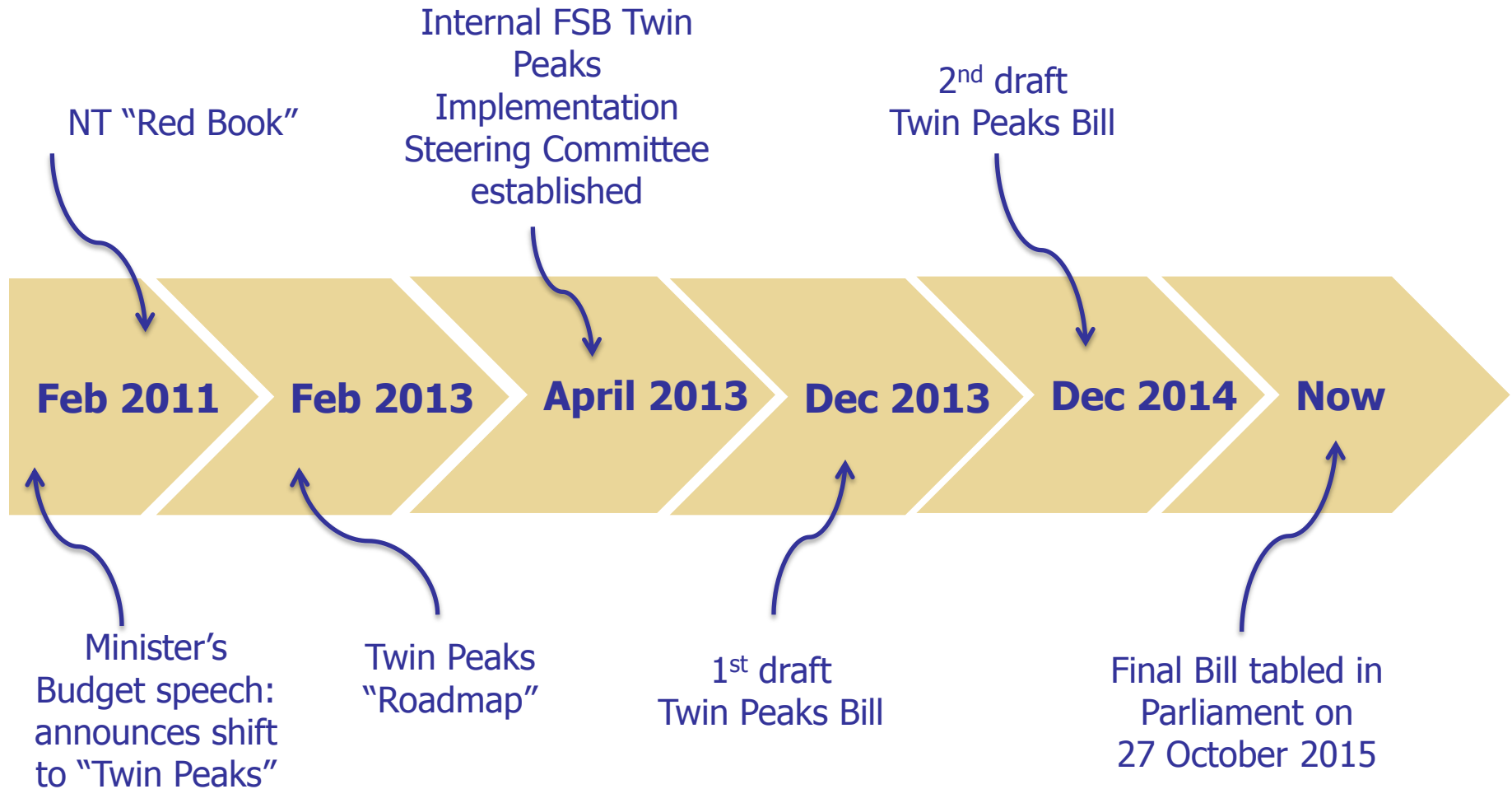
Resolution Authority

**SARB**





# Twin Peaks timelines





# 'Twin Peaks' Bill

- Official name: Financial Sector Regulation Bill (FSR Bill)
- Objective: To implement the Twin Peaks framework (consistent with international best practice)
- Key features:
  - Establishes new regulators (FSCA, PA)
  - Governance arrangements for new regulators
  - Establishes objectives of new regulators and entrenches new approach to regulation and supervision
  - Framework for financial stability oversight
  - Addresses gaps in current regulatory powers



# FSR Bill overview

- ❑ Financial Stability powers and mechanisms
- ❑ Establishment of the 2 new regulators (PA and FSCA)
  - ❑ Objectives, Functions, Governance, Staff and resources
- ❑ Co-operation and collaboration between financial regulators
- ❑ Making of regulatory instruments
- ❑ Administrative actions
  - ❑ Licensing, Supervision & Enforcement
- ❑ Financial Services Ombuds
- ❑ Financial Services Tribunal
- ❑ Finances, Levies & Fees
- ❑ Miscellaneous
  - ❑ Information sharing, Financial Sector Information Register
- ❑ Transitional and saving provisions



# FSCA Objectives

The objective of the Financial Sector Conduct Authority is to—

- (a) enhance and support the efficiency and integrity of the financial system; and
- (b) protect financial customers by—
  - (i) promoting fair treatment of financial customers by financial institutions; and
  - (ii) providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions; and
- (c) assist in maintaining financial stability.





# FSCA Functions

- (1) In order to achieve its objective, the Financial Sector Conduct Authority must—
  - (a) regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions;
  - (b) co-operate with, and assist, the SARB, the FSOC, the PA and the NCR, as required in terms of this Act;
  - (c) co-operate with the CMS in the handling of matters of mutual interest;
  - (d) promote, to the extent consistent with achieving its objective, sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Comp. Commission;
  - (e) promote financial inclusion;
  - (f) regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions;
  - (g) administer the collection of levies and the distribution of amounts so received;
  - (h) conduct and publish research relevant to its objective;
  - (i) monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers; and
  - (j) formulate and implement strategies and programs for financial education.



# FSCA Functions (cont.)

- (2) The FSCA may not regulate and supervise credit agreements except with the concurrence of the NCR, but may regulate and supervise financial services provided in relation to a credit agreement.
- (3) The FSCA must also perform any other function conferred on it in terms of any other provision of this Act or other legislation.
- (4) The FSCA may do anything else reasonably necessary to achieve its objective, including—
  - (a) co-operating with its counterparts in other jurisdictions; and
  - (b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.



# FSCA Functions (cont.)

- (5) When performing its functions, the FSCA must—
  - (a) take into account the National Credit Act and regulatory requirements for financial institutions that are authorised and regulated under that Act;
  - (b) take into account the need for a primarily pre-emptive, outcomes focused and risk-based approach, and prioritise the use of its resources in accordance with the significance of risks to the achievement of its objective; and
  - (c) to the extent practicable, have regard to international regulatory and supervisory standards and circumstances prevalent in the Republic.
  
- (6) The FSCA must perform its functions without fear, favour or prejudice.



# Co-operation & collaboration

- The FSCA, PA, NCR, FIC & SARB must co-operate and collaborate when performing their functions i.t.o. financial sector laws, NCA & FICA, including—
  - generally assisting and supporting each other in pursuing their objectives;
  - sharing information about matters of common interest;
  - striving to adopt consistent regulatory strategies;
  - co-ordinating, to the extent appropriate, actions in terms of financial sector laws, the NCA & FICA, including in relation to—
    - standards and other regulatory instruments;
    - licensing;
    - supervisory on-site inspections and investigations;
    - enforcement;
    - information sharing;
    - recovery and resolution; and
    - reporting by financial institution;
  - minimising duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities;
  - agreeing on attendance at relevant international forums; and
  - developing, to the extent appropriate, consistent policy positions, including at relevant SA and international forums.



# Co-operation & collaboration (cont.)

- ❑ The FSCA, PA, NCR, FIC & SARB must, at least annually, as part of their annual reports or on request, report to the Minister, the Cabinet member administering the NCA and the National Assembly on measures taken to co-operate and collaborate with each other
- ❑ The FSCA, PA, NCR, FIC & SARB must, as soon as practicable but not later than six months after the date on which this Chapter comes into effect, enter into one or more **MoU's** to give effect to their obligations
- ❑ A **Financial System Council of Regulators (FSCR)** is established to facilitate co-operation and collaboration, and, where appropriate, consistency of action, by providing a forum for senior representatives to discuss, and inform themselves about, matters of common interest
- ❑ Institutions represented on FSCR: NT, dti, DoH, PA, FSCA, NCR, CMS, FIC, NCC, CC, SARB, and any other determined by Minister



# Co-operation & collaboration (cont.)

- ❑ A **Financial Sector Inter-Ministerial Council** is established to facilitate co-operation and collaboration between Cabinet members administering legislation relevant to the regulation and supervision of the financial sector by providing a forum for discussion and consideration of matters of common interest
- ❑ Ministers represented: Finance, Health, Economic Development, and “Cabinet members responsible for consumer protection and consumer credit matters”
- ❑ The Cabinet members responsible for consumer protection and consumer credit matters may request the Council to consider and inform the Minister and the Cabinet members whether or not a relevant provision in a financial sector law, a Regulation or a regulatory instrument provides for a standard of protection for financial customers that is equivalent to, or higher than, the protection provided for them in terms of the NCA or the CPA
- ❑ If not, Council can make recommendations to amend the relevant provision, or to take other lawful and appropriate action, to ensure equivalent protection
- ❑ The Council may require an independent evaluation of the effectiveness of co-operation and collaboration between FSCA, PA, NCR, FIC, SARB, CMS & CC



# Co-operation & collaboration (cont.)

- ❑ A **Financial Stability Oversight Committee (FSOC)** is established to—
  - support the SARB in performing its functions in relation to financial stability;
  - facilitate co-operation and co-ordination of action among the FSCA, PA, NCR, FIC & SARB in respect of matters relating to financial stability.
  
- ❑ The FSOC has the following functions:
  - A forum to be informed, and to exchange views, about the activities of the FSCA, PA, NCR, FIC & SARB regarding financial stability;
  - Make recommendations to the Governor on the designation of SIFIs;
  - Advise Minister and SARB on steps to be taken to prevent risks to financial stability and matters relating to crisis management and prevention;
  - Make recommendations to other organs of state regarding steps that are appropriate for them to take to prevent risks to financial stability; and
  - any other function conferred on it in terms of applicable legislation
  
- ❑ The Governor must establish a **Financial Sector Contingency Forum (FSCF)** to assist the FSOC with identification of potential risk that systemic events will occur and the co-ordination of appropriate plans to mitigate those risks.
  
- ❑ FSCF includes representation from FSCA



# Co-operation & collaboration (cont.)

- ❑ The FSCA must —
  - co-operate and collaborate with the SARB and other financial sector regulators to maintain, protect and enhance financial stability;
  - provide info to the SARB and FSOC as they may reasonably request;
  - promptly report to the SARB any matter of which the FSCA becomes aware that poses or may pose a risk to financial stability; and
  - gather info from financial institutions that concerns financial stability.
  
- ❑ The SARB must take into account any views expressed and any info reported by the financial sector regulators; and any recommendations of the FSOC.
  
- ❑ The financial sector regulators and the SARB must, not later than six months after this Chapter takes effect, enter into one or more **MoU's** with respect to how they must co-operate and collaborate with, and provide assistance to, each other and otherwise perform their roles and comply with their duties relating to financial stability.





# Making regulatory instruments

- ❑ Before making a regulatory instrument, the FSCA must publish a draft with —
  - a statement explaining the need for it and its intended operation;
  - a statement of its expected impact; and
  - a notice inviting submissions, allowing for a period of at least 2 months
- ❑ If a revised draft is materially different from the previously published draft the FSCA must repeat the consultation process
- ❑ FSCA can skip the consultation process if the delay would likely lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed regulatory instrument, but must start the consultation process as soon as practicable after it is issued and include in the explanatory statement reasons why the regulatory instrument has been made urgently
- ❑ When it is issued, the FSCA must publish a report of the consultation process, including a general account of the issues raised in the submissions and a response to the issues raised
- ❑ FSCA must submit regulatory instrument to NA within 14 days after it is made
- ❑ A regulatory instrument may be published in the Register, after it has been submitted to NA and a period of 30 days has elapsed, if Parliament is in session. It comes into operation on the date it is published in the Register or on a later date specified in the instrument.



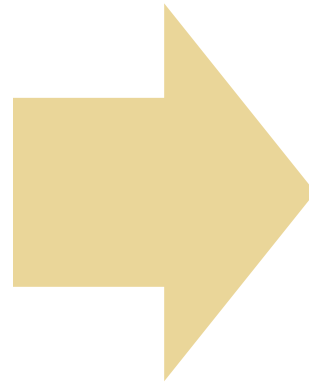
# Administrative actions

- ❑ The FSCA may establish an administrative action committee (AAC) to consider and make recommendations on administrative actions referred to it
- ❑ The FSCA may also delegate to the AAC the power to impose administrative penalties specified in the delegation
- ❑ The AAC determines its procedures, subject to any directions of the FSCA
- ❑ PAJA applies to any administrative action taken by the FSCA in terms of this Act or a specific financial sector law
- ❑ The FSCA may, by Notice in the Register (subject to consultation requirements), determine procedures for administrative action taken by it in terms of a financial sector law, which must –
  - be aimed at promoting a fair and consistent approach to administrative action
  - be consistent with the principles of PAJA and any applicable requirements of a financial sector law
  - If it is reasonable and justifiable in the circumstances, procedures for administrative action may depart from specific requirements of PAJA, in accordance with sections 3(4), 4(4) and 5(4) of that Act.
- ❑ Different procedures may be determined for different types of admin actions.



# Regulatory paradigm shift

- Backward-looking
- Compliance-based
- “One-size-fits-all”
- “Silo” approach



- Forward-looking
- Pre-emptive and proactive
- Outcomes-based
- Risk-based and proportionate
- Comprehensive and consistent
- Intensive and intrusive...

National Treasury, February 2011

*“A safer financial sector to serve South Africa better”*



# Regulatory strategy

- ❑ **The FSCA must (within 6 months after effective date) adopt and publish a regulatory strategy, which must:**
  - set out the regulatory and supervisory priorities for the next 3 years;
  - state the intended key outcomes of the strategy;
  - set guiding principles on how the FSCA will perform its regulatory and supervisory functions; its approach to administrative actions; and how it will give effect to the requirements applicable to it regarding –
    - transparency;
    - openness to consultation;
    - accountability;
  - be aimed at consistency with relevant international principles.



# Implications for FSCA

- ❑ Centralised capacity along ‘functional’ lines
  - Regulatory framework (standard setting), licensing; supervision; and enforcement functions organised centrally to ensure consistency
- ❑ IT system support to drive efficiency
  - Information system upgrades to support efficient business processes and to enable analysis and identification of risks
- ❑ Skills development to drive ‘judgment-based’ supervision
  - Outcomes focused approach requires supervisory judgment
  - Need specialist support teams and skills development
- ❑ Enhanced checks and balances
  - Expanded powers and ‘judgment-based’ approach require a robust system of review for consistency of regulatory decisions
- ❑ Robust mechanisms for consultation and cooperation
  - Stakeholder consultation on standard setting
  - Coordination with other regulators



# Transition to FSCA

- ❑ Oversight by FSB Regulatory Strategy Committee (RSC)
  - FSCA transition programme management
  - Organisational design for FSCA
  - Regulatory strategy for FSCA
- ❑ Organisational design
  - Independent international and local expert input
  - Guided by key design principles – including new regulatory approach
  - Functional design is informing organisational structure, operating model, business processes re-engineering, culture and change management
- ❑ Regulatory strategy
  - Informed by market conduct policy priorities and stakeholder consultation
- ❑ Phasing of transition





Questions?

Financial Services