



Financial intelligence centre

REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION No. 13 (PCC13)

SCOPE OF ITEM 12 OF SCHEDULE 1 TO THE FINANCIAL INTELLIGENCE CENTRE ACT, NO. 38 OF 2001, AS AMENDED, IN RELATION TO REGISTERED AUDITORS

The Financial Intelligence Centre (the Centre) provides the guidance contained in this Public Compliance Communication (PCC) in terms of its statutory function under section 4(c) of the Financial Intelligence Centre Act No. 38 of 2001, as amended, (the FIC Act) read together with Regulation 28 of the Money Laundering and Terrorist Financing Control Regulations (the Regulations) issued in terms of the FIC Act.

Section 4(c) of the FIC Act empowers the Centre to provide guidance in relation to a number of matters concerning compliance with the obligations of the FIC Act.

Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the Regulations issued under the FIC Act. Guidance provided by the Centre is authoritative in nature. An accountable institution must comply with the FIC Act and Regulations read with guidance issued by the Centre, and where there is a departure explain the reasons for not adhering to the guidance provided by the Centre. It is important to note that enforcement action may emanate as a result of non-compliance with the provisions of the FIC Act in areas where the guidance provided by the Centre, has not been adhered to.

PCC Summary

Registered auditors who are registered with the Independent Regulatory Board for Auditors in terms of the Auditing Profession Act No 26 of 2005 (the Auditing Profession Act) and who carry on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act No 37 of 2002 (the FAIS Act) to provide advice and intermediary services in respect of the investment of any financial product, fall within the ambit of item 12 of Schedule 1 to the FIC Act and are accountable institutions in terms of the FIC Act.

Registered auditors that provide the services described in item 12 of Schedule 1 to the FIC Act should also be registered with the Centre in terms of section 43B of the FIC Act. By implication these registered auditors should also be issued with licenses as financial services providers by the Financial Services Board (the FSB) as required by the FAIS Act.

Both the FSB and Independent Regulatory Board for Auditors (the IRBA) are supervisory bodies in terms the FIC Act and will work together to avoid duplication of supervision, particularly in the area of an inspection of these types of entities.

Disclaimer

The publication of a PCC concerning any particular issue, as with other forms of guidance which the Centre provides, does not relieve the user of the guidance from the responsibility to exercise their own skill and care in relation to the users' legal position. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

Copyright Notice

This PCC is copyright. The material in a PCC may be used and reproduced in an unaltered form only for personal and non-commercial use within your

organisation. Apart from any use permitted under the Copyright Act No. 98 of 1978, all other rights are reserved.

1. Objective

The objective of this PCC is to provide clarity on the scope of item 12 of Schedule 1 of the FIC Act in respect of auditors who are registered with the IRBA in terms of the Auditing Profession Act.

2. Application of this PCC

This PCC applies to auditors who are registered with the IRBA and who carry on the business of a financial services provider requiring authorisation in terms of the FAIS Act, to provide advice and intermediary services in respect of the investment of any financial product (excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).

3. Scope of Item 12 of Schedule 1 to the FIC Act in relation to financial services providers and registered auditors

3.1 Item 12 of the amended Schedule 1 to the FIC Act reads as follows:

“A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice and intermediary services in respect of the investment of any financial product (but excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998)).”

- 3.2 Persons or entities which provide advice or intermediary services on the investment of financial products (excluding short term insurance and health service benefits) e.g. long-term insurance business or other investment business, are accountable institutions in terms of item 12 of Schedule 1 to the FIC Act and must comply with the relevant provisions of the FIC Act.
- 3.3 Financial services providers which are, in terms of their license conditions in terms of the FAIS Act, limited to the provision of advice and intermediary services exclusively on short-term insurance and/or medical aid membership, are not accountable institutions and are excluded from the requirements of the FIC Act which apply to accountable institutions.
- 3.4 It is important to note that financial services providers which are not accountable institutions nevertheless have to comply with the provisions of section 29 of the FIC Act which requires every business to report suspicious or unusual transactions to the Centre.
- 3.5 Registered auditors, which provide the type of advisory and intermediary services described above, are accountable institutions in terms of item 12 of Schedule 1 to the FIC Act by virtue of them conducting this business. This implies that these registered auditors should also have a license as a financial services provider in terms of the FAIS Act.

Example 1:

Auditing firm, ABC Auditors, provides services as a registered auditor. ABC Auditors controls, by way of shareholding and/or agreements, a separate legal entity, XYZ Financial Advisors that provides investment advice and as such, XYZ Financial Advisors is required to be licensed by the FSB in terms of the FAIS Act. As a consequence, XYZ Financial Advisors is also an accountable institution in terms of the FIC Act. It therefore has to comply with the provisions of the FAIS Act and the FIC Act.

4. Scope of Supervisory Bodies

- 4.1 On 01 December 2010, Schedule 2 to the FIC Act which lists supervisory bodies was amended. The “Public Accountants and Auditors Board”, as supervisory body, was replaced by the IRBA, as defined by the Auditing Profession Act.
- 4.2 Both the IRBA and the FSB are listed as supervisory bodies in item 5 and item 1 of Schedule 2 of the FIC Act, respectively, and are responsible for ensuring that institutions registered in terms of both the FAIS Act and the Auditing Profession Act comply with the relevant provisions of the FIC Act.
- 4.3 The FSB and the IRBA will work together to avoid duplication of supervision, particularly in the area of an inspection and any enforcement action arising from non-compliance in terms of the FIC Act of an affected registered auditor that is also registered with the FSB in terms of the FAIS Act.

For any further enquiries regarding this PCC 11, please contact the Centre on **0860 342 342**, or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

**The Director
Financial Intelligence Centre
25 January 2012**

Glossary

Schedule 1

List of Accountable Institutions

- 1 A practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979).
- 2 A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988)
- 3 An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
- 4 An authorised user of an exchange as defined in the Securities Service Act, 2004 (Act 36 of 2004).
- 5 A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of the Collective Investment Schemes Control Act (Act 45 of 2002).
- 6 A person who carries on the 'business of a bank' as defined in the Banks Act, 1990 (Act 94 of 1990)
- 7 A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993)
- 8 A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998).
- 9 A person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in

respect of which a license is required to be issued by the National Gambling Board or a provincial licensing authority.

- 10 A person who carries on the business of dealing in foreign exchange.
- 11 A person who carries on the business of lending money against the security of securities
- 12 A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice and intermediary services in respect of the investment of any financial product (but excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).
- 13 A person who issues, sells or redeems travellers' cheques, money orders or similar instruments.
- 14 The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).
- 15
- 16 The Ithala Development Finance Corporation Limited.
- 17
- 18
- 19 A person who carries on the business of a money remitter.

Schedule 2
List of Supervisory Bodies

- 1 The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).
- 2 The South African Reserve Bank in respect of the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989) and the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990) and the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961.
- 3
- 4 The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976, (Act 112 of 1976).
- 5 The Independent Regulatory Board for Auditors established in terms of the Auditing Profession Act, 2005 (Act 26 of 2005).
- 6 The National Gambling Board established in terms of the National Gambling Act, and retained in terms of the National Gambling Act, 2004 (Act 7 of 2004).
- 7
- 8 A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).
- 9 A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 (Act 7 of 2004).