



# **financial intelligence centre**

## **REPUBLIC OF SOUTH AFRICA**

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**PUBLIC COMPLIANCE COMMUNICATION 23 (PCC 23):  
THE SCOPE AND MEANING OF ITEM 11 OF SCHEDULE 1 TO  
THE FINANCIAL INTELLIGENCE CENTRE ACT NO 38 OF 2001**

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, 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 FIC Act in areas where there have been non-compliance with the guidance provided by the Centre.

## **PCC Summary**

**The Centre views a “person who carries on the business of lending money against the security of securities” to be any institution that lends money against the security of any asset included in the definition of “securities” in the Financial Markets Act, Act No. 19 of 2012 (the FMA).**

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## **Objective**

The objective of this PCC is to provide the Centre's view on the scope and application of a “person who carries on the business of lending money against the security of securities” as designated in item 11 of Schedule 1 to the FIC Act.

## **1. Introduction**

- 1.1 The reference in item 11 of Schedule 1 to the FIC Act to a person who lends money against the security of securities, was taken from a definition in the Stock Exchanges Control Act, Act No. 1 of 1985 (the SECA) which referred to a "carrier against shares". This definition was later removed from the SECA and the SECA had been repealed and replaced by the Securities Services Act, Act No. 36 of 2004 (the SSA). The SSA has since been replaced by the FMA.
- 1.2 The SECA definition referred to a practice on an exchange where a trader could lend money to a client to fund a purchase of shares against the security of shares bought by the client in previous trades. The word "securities" in item 11 therefore had a specific meaning referring to instruments that were traded on an exchange such as shares, debentures, and futures contracts.

## **2. The Centre's view**

- 2.1 The FMA does not have a similar definition and the abovementioned practice is no longer followed in trades on the exchange. The term "securities" furthermore has a specific definition in the FMA and does not refer to security for debts in general.
- 2.2 It's the Centre's view that where an institution lends money against and accepts any of the instruments as listed in the definition of securities in the FMA as security for that loan, then that institution is engaging in the lending of money against the security of securities and would fall within item 11 of Schedule 1 to the FIC Act. The Centre interprets the term securities in item 11 to the FIC Act to include all of the instruments as defined in the FMA.
- 2.3 Item 11 of Schedule 1 refers to a person/entity that "carries on the business of". The term "carries on the business" means that whatever is referred to in item 11 of Schedule 1 to the FIC Act must be a regular feature of the person's/entity's business and not an occasional activity undertaken by the person/entity.

### **3. Conclusion**

- 3.1 A person/entity that lends money and accepts, as security, and as a regular feature of their business, any of the instruments included in the definition of securities in the FMA will be regarded as an accountable institution in terms of item 11 of Schedule 1 to the FIC Act and must comply with the relevant provisions of the FIC Act including section 43B of the FIC Act that provides for registration with the Centre.

For any further enquiries regarding this PCC23, please contact the Centre on 0860 222 200, or by sending an email to: [fic\\_feedback@fic.gov.za](mailto:fic_feedback@fic.gov.za).

**Issued By:**

**The Director  
Financial Intelligence Centre  
12 September 2013**

## **Securities as defined in the FMA**

“Securities” is defined in the FMA, as follows:

**“securities” -**

(a) means -

- (i) shares, depository receipts and other equivalent equities in public companies, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
  - (ii) debentures, and bonds issued by public companies, public state-owned enterprises, the South African Reserve Bank and the Government of the Republic of South Africa;
  - (iii) derivative instruments;
  - (iv) notes;
  - (v) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act; and
  - (vi) instruments based on an index
- (b) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
- (c) the securities contemplated in paragraphs (a)(i) to (vi) and (b) that are listed on an external exchange;

- (d) an instrument similar to one or more of the securities contemplated in subparagraphs (a) to (c) prescribed by the registrar to be a security for the purposes of this Act;
- (e) rights in the securities referred to in paragraphs (a) to (d), but excludes
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  - (i) money market securities, except for the purposes of Chapter IV; or if prescribed by the registrar as contemplated in paragraph (d);
  - (ii) the share capital of the South African Reserve Bank referred to in section 21 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); and
  - (iii) any security contemplated in paragraph (a) prescribed by the registrar.