



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

**PUBLIC COMPLIANCE COMMUNICATION No. 25 (PCC 25) –
SCOPE OF ITEM 12 OF SCHEDULE 1 TO THE FINANCIAL INTELLIGENCE
CENTRE ACT, ACT NO. 38 OF 2001, AS AMENDED**

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 in terms of the FIC Act. Guidance provided by the Centre is authoritative in nature. An accountable institution must apply guidance issued by the Centre, or demonstrate an equivalent level of compliance with the relevant obligations under the FIC Act. It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act where an accountable institution does not follow guidance issued by the Centre and cannot demonstrate compliance with the legal obligations to which the guidance relates.

PCC Summary

A person who carries on the business of a financial services provider (FSP) and who is authorised in terms of the Financial Advisory and Intermediary Services Act, Act No. 37 of 2002 (the FAIS Act), to provide advice and intermediary services as defined in the FAIS Act in respect of any financial product is an accountable institution in terms of item 12 of Schedule 1 to the FIC Act.

The scope of item 12 excludes advice and intermediary services in respect of a short term insurance contract or policy referred to in the Short-term Insurance Act, Act No. 53 of 1998 (the Short-term Insurance Act) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, Act No. 131 of 1998 (the Medical Schemes Act).

This PCC should be read with PCC13 which deals with scope of item 12 in relation to registered auditors.

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, non-commercial, use or non-commercial use within your organisation. Apart from any use permitted under the Copyright Act, Act No. 98 of 1978, all other rights are reserved.

Objective

The objective of this PCC is to provide clarity on the scope of item 12 of Schedule 1 of the FIC Act.

1. Introduction

- 1.1 A person who carries on the business of an FSP and who is authorised or required to be authorised in terms of the FAIS Act, to provide advice and intermediary services as defined in the FAIS Act in respect of any financial product fall within the ambit of item 12 and is an accountable institution in terms of item 12 of Schedule 1 to the FIC Act.
- 1.2 The scope of item 12 excludes advice and intermediary services in respect of a short term insurance contract or policy referred to in the Short-term Insurance Act and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act.

2. The Centre's View

- 2.1 Item 12 of 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 FAIS Act, 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 and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act.”

- 2.2 Persons or entities who provide advice or intermediary services as defined in the FAIS Act on financial products (excluding short term insurance and health service benefits) 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.
- 2.3 Where FSPs provide advice and intermediary services in respect of products that are exempted from the provisions of Parts 1 and 2 of Chapter 3 of the FIC Act, as envisaged in Exemption 7 of the Exemptions to the FIC Act, such FSP is an accountable institution and is still obliged to register with the Centre and to comply with all other requirements of the FIC Act. Exemption 7 only applies to the provisions of Parts 1 and 2 of Chapter 3 of the FIC Act.

- 2.4 Where an FSP conducts the business of a reporting institution (i.e. a motor vehicle dealer or a Kruger Rand dealer), the FSP must also register as a reporting institution with the Centre. This institution will therefore be registered as an accountable institution in terms of item 12 of Schedule 1 to the FIC Act and as a reporting institution in terms of schedule 3 to the FIC Act. This institution will be allocated with two separate registration reference numbers by the Centre.
- 2.5 Where an FSP uses a juristic representative that is also an accountable or a reporting institution in its own right, such accountable or reporting institution is required to comply with all the requirements of the FIC Act. This includes registration with the Centre and submitting financial intelligence reports. All intelligence reports must be submitted to the Centre directly and may not be submitted to the FSP for which it acts as a juristic representative.
- 2.6 It is important to note that FSPs which are not accountable institutions in terms of the FIC Act 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. Licence Categories

- 3.1 The following categories of financial services and subcategories of financial products in respect of which authorisation is granted or is required to be granted in terms of the FAIS Act fall within the ambit of item 12:

3.1.1 Category I

Renders financial services other than the financial services mentioned in Categories II, IIA, III and IV in respect of any of the following financial products:

- Long-term Insurance subcategory A
- Long-term Insurance subcategory B
- Long-term Insurance subcategory C
- Retail pension benefits
- Pension fund benefits (excluding retail pension benefits)
- Securities and instruments: shares
- Securities and instruments: money market instruments

- Securities and instruments: debentures and securitised debt
- Securities and Instruments: warrants, certificates and other instruments acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, convert securities and instruments in relation to shares, money market instruments, debentures and securitised debt.
- Securities and Instruments: bonds
- Securities and Instruments: derivative instruments excluding warrants
- Participatory interests in collective investment schemes
- Forex investment business
- Long-term deposits
- Short-term deposits
- Friendly society benefits

3.1.2 Category II – Discretionary FSP

Discretionary FSP means a discretionary FSP as defined in the Notice of Codes of Conduct of Administrative and Discretionary FSPs, 2003. A discretionary FSP renders intermediary services of a discretionary nature as regards the choice of a particular financial product referred to in the definition of “administrative FSP” but without implementing any bulking. The following financial products fall within Category II:

- Long-term insurance subcategory B
- Long-term insurance subcategory C
- Retail pension benefits
- Pension fund benefits (excluding retail pension benefits)
- Securities and instruments: shares
- Securities and instruments: money market instruments
- Securities and instruments: debentures and securitised debt
- Securities and Instruments: warrants, certificates and other instruments acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, convert securities and instruments in relation to shares, money market instruments, debentures and securitised debt.
- Securities and Instruments: bonds

- Securities and Instruments: derivative instruments excluding warrants
- Participatory interests in collective investment schemes
- Forex investment business
- Long-term deposits
- Short-term deposits

3.1.3 Category IIA – Hedge Fund FSP

Hedge Fund FSP means a Hedge Fund FSP as defined in the Notice of Codes of Conduct for Administrative and Discretionary FSPs, 2003. A Hedge Fund FSP must also apply for a Category II licence.

3.1.4 Category III – Administrative FSP

Administrative FSP means an administrative FSP as defined in the Notice of Codes of Conduct for Administrative and Discretionary FSPs, 2003. An administrative FSP renders intermediary services in respect of financial products referred to in paragraphs (a), (b), (c) (excluding any short-term insurance contract or policy referred to), (d) and (e), read with paragraphs (h), (i) and (j) of the definition of “financial product” in section 1(1) of the FAIS Act, on the instructions of a client or another FSP and through the method of bulking. The following financial products fall within Category III:

- Long-term insurance subcategory B
- Long-term insurance subcategory C
- Retail pension benefits
- Pension fund benefits (excluding retail pension benefits)
- Securities and instruments: shares
- Securities and instruments: money market instruments
- Securities and instruments: debentures and securitised debt
- Securities and Instruments: warrants, certificates and other instruments acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, convert securities and instruments in relation to shares, money market instruments, debentures and securitised debt.
- Securities and Instruments: bonds

- Securities and Instruments: derivative instruments excluding warrants
- Participatory interests in collective investment schemes
- Forex investment business
- Long-term deposits
- Short-term deposits

3.1.5 Category IV – Assistance Business FSP

Assistance Business FSP means a FSP that renders intermediary services in relation to the administration of assistance policies on behalf of the Insurer to the extent agreed to in terms of a written mandate between the Insurer and the Assistance Business FSP.

4. Conclusion

- 4.1 The scope of item 12 only extends to licenced FSPs and institutions that carry on the business that requires registration in terms of the FAIS Act by providing advice and intermediary services as defined in the FAIS Act in respect of any financial product as set out in the different license categories above.

For any further enquiries regarding this Public Compliance Communication No. 27, please contact the Centre on 0860 222 200, or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

**The Director
Financial Intelligence Centre
13 February 2014**

Item 12 of Schedule 1 to the FIC Act

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).