

CONSULTATION NOTE

Relating to the draft Public Compliance
Communication No. 112 (PCC 112) on
identification of money laundering and terrorist
financing risks and associated customer due
diligence for clients of authorised users of an
exchange in terms of the Financial Intelligence
Centre Act

19 February 2021

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INTRODUCTION

1. The Financial Intelligence Centre (Centre) has issued Draft Public Compliance Communication 112 (Draft PCC 112) for consideration by all accountable institutions in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 200) (FIC Act).

MOTIVATION

2. The Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) was amended with effect from 2 October 2017. As part of these amendments and a move towards a risk-based approach, the exemptions to the FIC Act were removed.
3. The stockbroking industry, as authorised users of an exchange in terms of item 4 of Schedule 1 to the FIC Act, relied on the exemptions 8 and 9 from a customer due diligence (CDD) perspective. Specifically that;
 - a. Exemption 8 determined that in instances where a person or entity acts on behalf of foreign clients, the South African stockbroker was exempted from having to comply with all customer identification and verification requirements relating to those clients. This exemption was applicable on condition that the business was accepted from a person or institution where the anti-money laundering and counter terrorist financing (AML/CFT) standards were equivalent to that of South Africa and where the person or entity who acted on behalf of the foreign clients confirmed in writing to the satisfaction of the South African accountable institution, that the clients were properly identified and verified and that records of such clients were kept; and
 - b. Exemption 9 determined that a stockbroker was exempted from compliance with some of the customer identification and verification requirements in respect of business conducted with a client who is a legal entity and a non-controlled client. It also determined that a stockbroker was exempt from compliance with certain customer identification and verification and record keeping requirements in respect of clients that are foreign companies and

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situated in countries where the AML/CFT compliance standards were equivalent to that of South Africa.

4. The consequence of the removal of these exemptions have had an impact on the authorised user industry in both understanding and complying with their obligations in respect of CDD.
5. This draft PCC focuses on the application of money laundering and terrorist financing (ML/TF) risk identification and the resulting risk-based approach towards CDD of an authorised user's client.
6. The Centre seeks to provide further clarity on the application of CDD obligations in respect of scenarios of an authorised users client's *client*, emphasising that this issue must be addressed through understanding the ML/TF risks associated with their clients, that includes an understanding of the ML/TF risk presented by their clients' *client*.
7. Several stakeholders, including the Financial Sector Conduct Authority (FSCA) and relevant industry bodies have been extensively consulted in the compilation of this draft PCC.

CONCLUSION

8. Commentators are invited to comment on the draft PCC112 by submitting written comments [via the online comments submission link only](#) . Any questions or requests relating to this draft PCC112 may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received until, **Wednesday, 10 March 2021**, by close of business.
9. The Centre intends on concluding the consultation on this Draft PCC 112 by publishing a final version no later than Wednesday, 31 March 2021.

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COMMUNICATION WITH THE CENTRE

10. The Centre has a dedicated compliance contact centre geared to assist accountable and reporting institutions to understand their registration obligations in terms of the FIC Act. Please call the compliance contact centre on +2712 641 6000, and select option 1.

11. Compliance queries may also be submitted online by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the Centre's website and submitting an online compliance query.

Issued By:

The Director Financial Intelligence Centre
Private Bag X177
CENTURION
0046

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