

CONSULTATION FEEDBACK

Relating to the draft public compliance communication No. 111 and the issuance thereof in public compliance communication 50 guidance on measures required for the mitigation of loss of intelligence data due to reporting failures

31 March 2021

INTRODUCTION

1. The Financial Intelligence Centre (Centre) issued draft public compliance communication 111 (draft PCC 111) for consideration by all accountable institutions, supervisory and all other bodies in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 18 November 2020, with the consultation period ending 18 December 2020.
2. The Centre received consultation comments from 12 commentators from different sectors including: motor vehicle dealers, insurance, banking, compliance consultancy, attorneys, and stockbroking industries.
3. This document highlights the feedback received, and the Centre's response thereto, from a high-level thematic perspective. The detailed feedback and responses can be found [here](#).

THEMATIC FEEDBACK

Reporting failures that warrant the Directive 3 process to be followed

4. The Directive 3 process must be followed by reporters for all reporting failures, where a report is due, and the reporter only becomes aware after the prescribed reporting period that a regulatory report should have been filed with the Centre. This distinction is clearly set out in Part A in the updated PCC 50.

Late reporting

5. The PCC 50 does not cover instances where a reporter has filed a regulatory report late, where the report was due, and the reporter was aware of the obligation to submit this regulatory report. Where a reporter files a regulatory report after the prescribed reporting period has passed, this is a reporting failure and that reporter has not met their obligations in terms of the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations). The reporter may be subject to enforcement action as a result thereof.

6. The reporter must notify the Centre when regulatory reports are filed late, as expressed in goAML Notice 4A. The goAML Notice 4A sufficiently addresses the issue of when a report is filed late, and as such is not considered in this PCC50.

Confirmation of received regulatory reports

7. The e-mail and message board notification confirming receipt of the regulatory report on the Financial Intelligence Centre's (FIC's) registration and reporting platform does not constitute confirmation that the reporter has fully discharged their reporting duty. Both the e-mail and notification on the message board merely indicates that the regulatory report has been rejected or received by the Centre's reporting platform. The onus is still on the reporter to ensure that all the requirements as set out in the FIC Act, the MLTFC Regulations and registration platform are complied with.
8. The purpose of this inclusion is to ensure that the reporter understands the implication of reporting failures.

Definitions

9. There was a call to define certain words used in the PCC 111. Where no definition or elaboration is given, the words and/or terminology must be read in the ordinary dictionary meanings thereof.
10. The word "incorrect" in the definition of "defectively filed regulatory reports" does not extend the ambit of the FIC Act. Whether the information in the regulatory report falls within the "mandatory information" or "readily available" category in terms of the MLTFC Regulations, such information must still be accurate. The ordinary dictionary meaning of the word "incorrect" applies.
11. The definition of reporting failure is a general term that includes all instances which lead to the loss of intelligence data to the FIC and, includes the non-submission of

reports and the defective filing of reports. This has been applied in Part A and Part B of the PCC 50.

12. The Centre does not distinguish between whether a reporting failure is systemic, has a large impact or whether the reporting failure is an isolated event when determining if the reporter should advise the Centre. This may well be considered during the remediation process, and/or supervisory process, which is out of the scope of this PCC.

Intention and knowledge

13. A reporting failure remains a reporting failure regardless of whether it was intentional or not. In addition, a reporting failure remains a reporting failure regardless of whether the reporter has knowledge thereof or no knowledge thereof.

Start remediation before notifying Centre

14. It is not the intention of this PCC that the reporter wait for the Centre before initiating steps to remediate a reporting failure, i.e. commencing with internal investigations and/or corrective actions. However, in the instance where the reporter is ready to submit missed reports, the Centre must first give consent prior to the submission of these reports. This is to ensure that the Centre is able to effectively manage the flow of the data and ensure no system backlogs are created as a result of these submissions. The PCC 50 addresses this issue.

Reporting information required in terms of the MLTFC Regulations for reports

15. Reporters must implement controls to ensure that all mandatory information is provided in the regulatory report and where applicable “readily available information” must also be provided as required in terms of the MLTFC Regulations. It is not adequate for reporters to state that information cannot be provided in regulatory

reports because such data is not captured into the reporter's internal systems. This inability to capture all information as required, could be a cause of a reporting failure. The reporter remains liable for any non-compliance and may face enforcement action for the reporting failure.

Condonation

16. The MLTFC Regulation 24(2) falls outside of the ambit of the PCC. The PCC deals with the various reporting failures.

CONCLUSION

17. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the PCC 111 where appropriate.

18. The final PCC 50 has been issued on Wednesday, 31 March 2021.

COMMUNICATION WITH THE FIC

19. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1. Queries can also be submitted online by clicking on <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the FIC's website and submitting an online compliance query

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