



27 September 2010

Via e-mail: poovindree.naidoo@fic.gov.za

The Director
Financial Intelligence Centre
P/Bag X177
CENTURION
0046

Dear Sirs

CONSULTATION DOCUMENT FROM THE FINANCIAL INTELLIGENCE CENTRE

The Law Society of South Africa (LSSA) has considered the above matter and wish to comment as follows:

1. Paragraph 1.1.5 on page 5

We are of the view that the penalty of R10 000 for natural persons or R50 000 for legal persons should be "not more than". In other words, when considering to penalize, specific circumstances should be taken into consideration and an appropriate penalty should be levied.

2. Paragraph 3.3.4 on page 9

We believe that the fee of R10 000 to lodge an appeal is inappropriate. Such an excessive amount will have the effect of prohibiting appeals. Not only will any natural person be unduly limited, but smaller law societies, for example the Free State Law Society, will hardly be able to afford a fee of R10 000.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Lizette Burger".

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The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

Office of the Director

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Ref Nr FIC/7667/5

10 August 2010

Mr R Daya
Law Society of South Africa
145 Mears Street
Sunnyside
PRETORIA

Dear Mr Daya

Consultation document recommending:

- a) **Regulations in respect of the Financial Intelligence Centre Amendment Act, 2008**
- b) **Commencement date of the Financial Intelligence Centre Amendment Act, 2008**
- c) **Amendments to Schedule 1 and Schedule 2 of the Financial Intelligence Centre Act, 2001**

Attached please find the consultation document which contains recommendations relating to the regulations to the Financial Intelligence Centre Amendment Act, 2008(Act 11 of 2008), as well as the proposed commencement date of the Amendment Act.

The consultation document also contains recommendations for technical amendments to Schedule 1 and recommendations to amend Schedule 2 of the Financial Intelligence Centre Act, 2001(Act 38 of 2001).

You are invited to submit comments on the consultation document before 6 September 2010 to:

The Director

Financial Intelligence Centre

Private Bag X177

CENTURION

0046

Telefax: (012) 641 6378

E-mail: poovindree.naidoo@fic.gov.za ; or prenisha.jagganath@fic.gov.za

The Centre can be contacted for further information at the contact particulars above or at the following telephone numbers: (012) 641 6236 / 641 6237.

Kind regards



**MURRAY MICHELL
DIRECTOR**



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

CONSULTATION DOCUMENT RELATING TO-

- I) THE COMMENCEMENT OF THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT, 2008 (ACT 11 OF 2008)
- II) THE REGULATIONS EMANATING FROM THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT, 2008
- III) THE AMENDMENTS TO SCHEDULE 1 AND SCHEDULE 2 OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)

INTRODUCTION

The Financial Intelligence Centre (“Centre”) has begun a process of reviewing the current legislative framework with the view of improving South Africa’s legal and institutional framework and to strengthen the implementation of measures to combat money laundering and terrorist financing. The enactment of the Financial Intelligence Centre Amendment Act, 2008 (Act 11 of 2008), (“the Amendment Act”), is the first phase in this process. The Amendment Act was signed into law by the President in August 2008 and will come into operation on a date to be determined. The consultation document is aimed at eliciting comments on the proposed commencement date for the Amendment Act as well as the regulations emanating from the Amendment Act. The comments received will be used to refine the Centre’s proposals. The final regulations and commencement notice will thereafter be submitted to the Minister of Finance for approval.

The technical amendments to Schedule 1 and amendments to Schedule 2 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), (“the FIC Act”), is a separate but parallel initiative in the review process. Schedule 1 contains the list of accountable institutions while Schedule 2 contains the list of supervisory bodies that are responsible for ensuring compliance of the provisions of the FIC Act by accountable institutions supervised or regulated by that particular supervisory body. Here again, the consultation document is aimed at eliciting comments on the proposed amendments to Schedule 1 and 2.

The consultation document is divided into two parts and will discuss both the implementation issues emanating from the Amendment Act as well as proposed amendments to Schedule 1 and 2 of the FIC Act.

Comments on the consultation document should be submitted to the Centre by 6 September 2010 to:

The Director

Financial Intelligence Centre

Private Bag X177

CENTURION

0046

Telefax: (012) 641 6378

E-mail: poovindree.naidoo@fic.gov.za ; or prenisha.jagganath@fic.gov.za

An electronic version of this consultation document is available on the Internet at:

www.fic.gov.za

The Centre can be contacted for further information at the contact particulars above or at the following telephone numbers: (012) 641 6236 / 641 6237.

PART 1

FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT, 2008

1. BACKGROUND

1.1 The Amendment Act aims to improve the position of the Centre and supervisory bodies to monitor and enforce compliance with the legislation by introducing the following changes-

1.1.1 The Centre and supervisory bodies would be able to issue directives to accountable institutions to, among others, provide information, reports or statistical returns;

1.1.2 Every accountable institution and every reporting institution would be required to register with the Centre. The objective with the obligation to register with the Centre is to ensure that the Centre is aware of the number of institutions that fall within the ambit of the FIC Act as well as to provide the Centre with details about these institutions such as the type of business being conducted and the physical address.

1.1.3 Supervisory bodies will have clearly defined powers to ensure compliance by accountable institutions supervised or regulated by it. This will remove all uncertainty as to the role of supervisory bodies in relation to their functions in terms of the FIC Act.

1.1.4 The Centre and supervisory bodies will be able to conduct inspections of institutions to ensure compliance with the FIC Act. Some of the powers of an inspector include directing a person to appear for questioning and entering and inspecting premises where the institution conducts business.

1.1.5 A range of administrative penalties may be applied by the Centre or a supervisory body in relation to breaches of compliance with the FIC Act, which include:

- a caution not to repeat a particular conduct,
- a reprimand,
- a directive to take remedial action or cease a particular action,
- the restriction or suspension of certain specified business activities,
- a monetary penalty not exceeding R10 000 000 in respect of natural persons and R50 000 000 in respect of legal persons.

1.1.6 Provision is made for the establishment of an appeal board to consider the actions taken by the Centre and supervisory bodies. The Centre will provide the administrative support to the board of appeal.

1.2 To ensure the consistent application of the legislation, the Amendment Act requires that memoranda of understandings be concluded between the Centre and each of the supervisory bodies. These memoranda of understandings are to deal with, among others, co-ordinating the exercising of the respective parties' powers and the performing of their functions. Ideally, these arrangements should be concluded before the Amendment Act comes into operation.

2. THE COMMENCEMENT OF THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT, 2008 (ACT 11 OF 2008)

2.1 The President signed and assented to the Amendment Act on the 27th of August 2008. The Amendment Act will come into operation on a date determined by the Minister by notice in the Government Gazette.

2.2 The Centre chose to delay the operational date of the Amendment Act to allow for supervisory bodies (and the Centre) to develop the necessary mechanisms and processes in order for them to carry out its supervisory powers in terms of their legislative mandate. The Centre has, during this period, been developing the IT infrastructure to receive the registration of accountable institutions and reporting institutions electronically.

2.3 The delayed operational date, in addition, allowed the Centre to continue with the consultations around the amendments to Schedule 1 and 2 of the FIC Act. Proposals for the amendments to Schedule 1 and 2 will be discussed in detail in Part 2 of this consultation document. However it is important to note, at this stage, that it is the intention of the Centre to coordinate the process of amending the Schedules with the bringing into operation of the Amendment Act. This will ensure that all new supervisory bodies added to Schedule 2 and any supervisory bodies deleted from Schedule 2 are certain of their future obligations in terms of the legislation.

2.4 The Centre proposes that the date the Amendment Act comes into operation be 1 December 2010. This consultation document will give the supervisory bodies a clear indication of the time period in which to have the necessary processes in place in order for them to carry out their functions.

2.5 The Centre, however, proposes that the commencement notice together with the regulations be published in the Gazette early in October 2010.

2.6 Annexure "A" contains the draft Commencement Notice.

3. THE REGULATIONS EMANATING FROM THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT, 2008

3.1 The regulations relating to the registration of accountable institutions and reporting institutions (section 43B(1))

3.1.1 Section 43B of the Amendment Act requires every accountable institution and every reporting institution to register with the Centre. The intention of compelling all institutions to register with the Centre is to ensure that the Centre is aware of the number of institutions that fall within the ambit of the FIC Act as well as to provide the Centre with details about the institutions such as the type of business being conducted and their physical address.

3.1.2 The regulations are to contain the period within which an accountable institution and a reporting institution must register with the Centre. The particulars that must accompany the registration will be prescribed in the form of a directive issued by the Centre.

3.1.3 It is proposed that the registration be submitted to the Centre electronically using the Centre's internet website. In instances where the institution does not have access to the internet it could submit its registration through other means such as a fax transmission, registered post or hand delivery.

3.1.4 It is important to note the distinction in paragraph (1) and (2) in regulation 27A. Paragraph (1) refers to accountable institutions and reporting institutions listed in Schedules 1 and 3 as of 1 December 2010. Paragraph (2) refers to any future additions to either Schedule 1 or 3 subsequent to the commencement of the Amendment Act.

3.1.5 The intention of the Centre is to publish the regulations in the first two weeks in October in order to allow institutions a window period till 1 December 2010 in which to register with the Centre.

3.1.6 The proposed wording for the regulation is contained in Annexure “B” below.

3.2 The regulations for a supervisory body to submit a written report to the Centre on any action taken by a supervisory body (section 45(1C))

3.2.1 In terms of section 45(1C) of the Amendment Act the regulations must provide for the period within which a supervisory body must submit a written report to the Centre on any action taken against an accountable institution in terms of the FIC Act.

3.2.2 It is proposed that the supervisory body submit a written report to the Centre within 30 days after it makes the decision to take a particular action in terms of the FIC Act or any order, determination or directive made in terms of the FIC Act.

3.2.3 It is further proposed that the written report be submitted to the Centre at the contact particulars specified by the Centre. This could occur either electronically through an email or fax transmission or by registered post or hand delivery.

3.2.4 The proposed wording for the regulation is contained in “Annexure B” below.

3.3 The regulation for the manner in which an appeal is to be lodged and the accompanying fee (section 45D(1)(b))

3.3.1 The Amendment Act makes provision for any institution or person to appeal against the decision of the Centre or supervisory body to impose an administrative sanction on that institution or person.

3.3.2 Section 45D(1)(b) of the Amendment Act requires the Minister to prescribe the manner in which the appeal must be lodged as well as to prescribe the amount of the fee to accompany the lodging of the appeal.

3.3.3 The Centre proposes that the appeal be lodged with the chairperson of the appeal board. It further recommends that the notice of appeal be in writing in the form of an affidavit, stating the particular decision or decisions appealed against, the grounds of appeal and must also provide particulars of where the appellant will accept delivery of all documents relating to the appeal.

3.3.4 The fee recommended by the Centre when lodging an appeal is R10 000-00.

3.3.5 The proposed wording for the regulation is contained in “Annexure B” below.

ANNEXURE A: DRAFT GOVERNMENT NOTICE:

GOVERNMENT NOTICE

NATIONAL TREASURY

No.

October 2010

**COMMENCEMENT OF THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT
ACT, 2008 (ACT NO. 11 OF 2008)**

I, Pravin J Gordhan, Minister of Finance, hereby determine in terms of section 29 of the Financial Intelligence Centre Amendment Act, 2008 (Act No. 11 of 2008), that this Act become effective on 1 December 2010.

PRAVIN J GORDHAN

MINISTER OF FINANCE

ANNEXURE B: DRAFT REGULATIONS:

NATIONAL TREASURY

FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT NO. 38 OF 2001)

**AMENDMENT OF MONEY LAUNDERING AND TERRORIST FINANCING CONTROL
REGULATIONS**

I, Pravin J Gordhan, Minister of Finance, hereby publish the regulations set out in the Schedule hereto made by me in terms of Section 77 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

PRAVIN J GORDHAN

MINISTER OF FINANCE

SCHEDULE

Definitions

1. In these regulations, “the Regulations” mean the Money Laundering and Terrorist Financing Control Regulations, 2002, published in Government Notice No. R. 1595 of 20 December 2002 as amended by GN R456 in Government Gazette 27580 of 20 May 2005.

Amendment of Regulation 1

2. Regulation 1 of the Regulations is hereby amended by the insertion after the definition of ‘suspicious or unusual transaction or series of transactions’ of the following definition:

“the Amendment Act’ means the Financial Intelligence Centre Amendment Act, 2008 (Act 11 of 2008).”

Insertion of Regulation 27A

3. The following regulation is hereby inserted after regulation 27 of the Regulations:

“Period for and manner of registration by accountable institutions and reporting institutions

27A. (1) Every accountable institution referred to in Schedule 1 of the Act and every reporting institution referred to in Schedule 3 of the Act must register with the Centre in terms of section 43B of the Act on 1 December 2010.

(2) Any person or category of persons added to the list in Schedule 1 or Schedule 3 of the Act after the commencement of this regulation must register with the Centre within 90 days after the amended Schedule 1 or Schedule 3 is published by notice in the Gazette.

(3) Any person or category of persons who, on commencing a new business, fall within the list of accountable institutions or reporting institutions in Schedule 1 and Schedule 3 respectively must, within 90 days of the day the business opened, register with the Centre.

(4) The registration of an accountable institution and a reporting institution contemplated in subregulation (1), (2) and (3) must be in accordance with the format specified by the Centre and must be submitted to the Centre electronically by means of the internet-based reporting portal provided by the Centre for this purpose at the following internet address: <http://www.fic.gov.za>.

(5) If a person does not have the technical capability to register in accordance with subregulation (4) that person must submit the registration on a form specified by the Centre at the contact particulars specified by the Centre from time to time for this purpose.

(6) The registration of an accountable institution or a reporting institution is not a licensing process and no license will be issued on the completion of a registration contemplated in subregulation (1),(2) and (3).

(7) No fee is payable for a registration contemplated in subregulation (1), (2) or (3)."

Insertion of Regulation 27B

4. The following regulation is hereby inserted after regulation 27A of the Regulations:

“Period within and manner in which supervisory body must submit written report to Centre

27B. (1) A supervisory body must, as contemplated in section 45(1C) of the Act, within 30 days after taking a decision to institute an action against an accountable institution in terms of the Act or any order, determination or directive made in terms of the Act submit a written report to the Centre on any action taken or intended to be taken against that accountable institution.

(2) A supervisory body must submit the written report contemplated in subregulation (1) in accordance with the format specified by the Centre at the contact particulars specified by the Centre for this purpose.”.

Insertion of Regulation 27C

5. The following regulation is hereby inserted after regulation 27B of the Regulations:

“Manner in which appeal is to be lodged and payment of fee

- 27C.** With regard to an appeal contemplated in section 45D(1) of the Act,
- (a) the appellant must lodge an appeal against a decision of the Centre or supervisory body with the chairperson of the appeal board within 30 days from the date when notice of such decision was received in writing by the appellant;
 - (b) the notice of appeal, contemplated in paragraph (a), must be accompanied by an affidavit containing in full the particulars of the appellant, the decision appealed against, the grounds for the appeal and must also state the physical address where the appellant will accept delivery of all documents relevant to the appeal;
 - (c) the appellant must deliver the notice of appeal to the address specified on the notice to impose the administrative sanction;
 - (d) the appellant must, with the appeal, pay an amount of R10 000-00 to the Centre.”.

6. Commencement

These Regulations shall come into operation on 1 December 2010.

PART 2

AMENDMENTS TO SCHEDULE 1 AND 2 TO THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)

1. BACKGROUND

1.1 The technical amendments to Schedule 1 and amendments to Schedule 2 of the FIC Act, is a separate but parallel initiative in the review process. Schedule 1 contains the list of accountable institutions and thus effectively determines the scope of the FIC Act, while Schedule 2 contains the list of supervisory bodies that are responsible for ensuring compliance with the provisions of the Act.

1.2 The proposed amendments to Schedule 1 are necessitated by the fact that a number of the Acts referred to in the Schedule have been replaced by new legislation. The objective with the proposed amendments is to make the consequential corrections to items of Schedule 1 that are affected by these legislative changes without expanding the current scope of the accountable institutions. The process of revising the Schedule to incorporate new categories of accountable institutions will be done at a later stage.

1.3 The objective of the proposed amendments to Schedule 2 is to provide more specificity to the description of the supervisory bodies that are responsible for supervising compliance with the FIC Act. This need for greater clarity is brought about by the adoption of the FIC Amendment Act, 2008, (Act 11 of 2008) which expands the functions and powers of supervisory bodies in relation to the supervision of compliance with the FIC Act. In addition, the proposed amendments also seek to make consequential corrections to some of the descriptions of Supervisory Bodies in accordance with legislative changes that have taken place since the enactment of the FIC Act.

1.4 The consultation document only discusses items where there are proposed amendments. Comments are invited on these proposed amendments.

2. PROPOSED AMENDMENTS FOR SCHEDULE 1

2.1 Item 1 relates to an attorney as defined in the Attorneys Act 1979 (Act 53 of 1979). It is proposed that this item should only apply to practicing attorneys. The proposed amendment therefore refers to a practitioner who has been awarded a fidelity fund certificate.

2.2 Item 3 refers to an “estate agent as defined in the Estate Agents Act, 1976 (Act 112 of 1976)”. The Estate Agents Act 1976 has been repealed and now refers to the Estate Agency Affairs Act, 1976 (Act 112 of 1976). Item 3 will remain the same in Schedule 1 but the title of the Act will be updated to refer to the Estate Agency Affairs Act.

2.3 Item 4 refers to a financial instrument trader as defined in the Financial Markets Control Act, 1989 (Act 55 of 1989), and item 15 which refers to a member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985). Both these Acts have been repealed and replaced by the Securities Services Act, 2004 (Act 36 of 2004). It is proposed therefore that item 4 be amended to include both these items by referring to an authorised user of an exchange as defined in the Securities Services Act, 2004. Item 15 on the Schedule will, subsequently, be deleted.

2.4 Item 5 refers to a “management company registered in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981)”. The Unit Trusts Control Act, 1981, has been repealed and replaced by the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002) and a “management company” is referred to as a “manager” in the latter Act. It

is proposed therefore that Item 5 be amended to refer to the term “manager” as defined in the Collective Investment Schemes Act, 2002, but to exclude all managers who only conduct business in Part VI of that Act, so as not to expand the scope of the revised Schedule to include participation bond managers (which currently fall outside the scope of Schedule 1).

2.5 Item 8 includes a reference to an “insurance broker and an agent of an insurer”. The proposed change to Item 8 will leave out the reference to an insurance broker and agent of the insurer. This amendment is consequential to the proposed amendments to Item 12 which are discussed below.

2.6 Item 12 currently refers to a “person who carries on business of rendering investment advice or investment broking services including a public accountant as defined in the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), who carries on such a business”. This item refers to advisory and intermediary services that have subsequently come to be regulated in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002, “the FAIS Act”). It is therefore proposed that item 12 be reworded in accordance with the definition of a financial services provider, authorised in terms of the FAIS Act to provide advice and intermediary services. This description would include any professional (such as a public accountant for example), who carries on such a business for which an authorisation in terms of the FAIS Act is required. It is also proposed that services of this nature in respect of short term insurance and health services benefits provided by medical aid schemes (which currently fall outside the scope of Schedule 1) be excluded from this item.

2.7 The proposed amendments to Items 4 and 12 of Schedule 1 will effectively encapsulate the concept of investment managers which is referred to in items 17 and 18

of the Schedule. As a consequence, it is proposed that these two items be deleted from Schedule 1.

2.8 The proposed wording for the amendments to Schedule 1 is contained in “Annexure C” below.

3. PROPOSED AMENDMENTS FOR SCHEDULE 2

3.1 The supervisory bodies that fall within the scope of the FIC Act are listed in Schedule 2 to the Act. They are the following:

- the Financial Services Board
- the South African Reserve Bank
- the Registrar of Companies
- the Estate Agency Affairs Board
- the Independent Regulatory Board for Auditors
- the National Gambling Board
- the JSE Limited
- the Law Society of South Africa

3.2 Item 2 of Schedule 2 refers to the “South African Reserve Bank as defined in the South African Reserve Bank Act, 1989 (Act 90 of 1989)”. It has become apparent, however, that it is only certain departments within the South African Reserve Bank that can perform the functions of a supervisory body as envisaged in the FIC Act and that it is not appropriate therefore to consider the whole of the South African Reserve Bank as a supervisory body. It is recommended therefore that the reference to The South African Reserve Bank in Item 2 to Schedule 2 be replaced with a reference to three specific departments of the South African Reserve Bank, as follows:

- a) The National Payment System Department of the South African Reserve Bank authorised to perform the functions in respect of the powers and duties contemplated in section 10(1)(c) of the South African Reserve Bank Act, 1989, (Act 90 of 1989);
- b) The Office for Banks and the Registrar of Banks as contemplated in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990) respectively, and
- c) The Financial Surveillance Department within the South African Reserve Bank, delegated and assigned by the Minister of Finance to perform all the powers, functions and duties assigned to and imposed on the Treasury under the Exchange Control Regulations issued under section 9 of the Currency and Exchanges Act No. 9 of 1933.

This effectively means that the National Payment System Department, the Office of the Registrar of Banks and the Financial Surveillance Department are all nominated as Supervisory Bodies. [Note: By SARB media release of 30 July 2010 it was confirmed that the name of the Exchange Control Department would change to the Financial Surveillance Department with effect from 02 August 2010.]

3.3 It is proposed that the reference in Item 3 of Schedule 2 to the Registrar of Companies as defined in the Companies Act, 1973 (Act 61 of 1973) be removed as this body is not in a position to carry out a direct oversight function over the activities of accountable institutions in relation to their compliance with the FIC Act.

3.4 Item 4 of Schedule 2 refers to the “Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act 112 of 1976)”. It is proposed that this be amended to refer to the Estate Agency Affairs Board as established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976).

3.5 Item 5 of Schedule 2 refers to the “Public Accountants and Auditors Board established in terms of the Public Accountants and Auditors Act, 1991 (Act 80 of 1991)”. The Public Accountants and Auditors Act, 1991 (Act 80 of 1991) has been repealed and replaced by the Auditing Profession Act, 2005 (Act 26 of 2005), which Act created a juristic person known as the Independent Regulatory Board for Auditors as the successor to the Public Accountants and Auditors Board, to regulate the auditing profession.

It is proposed therefore that Item 5 of the Schedule 2 be amended to replace the reference to the Public Accountants and Auditors Board by a reference to the Independent Regulatory Board for Auditors.

3.6 Item 6 of Schedule 2 refers to the National Gambling Board established in terms of the National Gambling Act, 1996 (Act 33 of 1996). The National Gambling Act, 1996 (Act 33 of 1996), has been repealed and replaced by the National Gambling Act, 2004 (Act 7 of 2004). In addition it has become apparent that the provincial licensing authorities have an important role with regard to the supervision of compliance by their licensees which is already provided for in section 31(1)(e) of the National Gambling Act, 2004 (Act 7 of 2004). It is proposed therefore that the reference to the National Gambling Act, 1996 (Act 33 of 1996), be replaced with a reference to National Gambling Act, 2004 (Act 7 of 2004) and in addition that reference be made to a provincial licensing authority as defined in section 1 of the National Gambling Act, 2004 (Act 7 of 2004).

3.7 Item 7 of Schedule 2 refers to the “JSE Securities Exchange South Africa”. During the development of the Financial Intelligence Centre Amendment Act, 2008 discussions with the JSE Ltd as well as the Financial Services Board have indicated that it would be more appropriate to consider the Financial Services Board as the

appropriate supervisory body, responsible for compliance by authorised members of securities exchanges. It is therefore proposed that Item 7 be deleted from Schedule 2. As a result the JSE Ltd will cease to be a supervisory body in terms of Schedule 2 and its role will be taken over by the Financial Services Board.

3.8 Item 8 of Schedule 2 refers to the Law Society of South Africa. It has become apparent in the course of the development of the Financial Intelligence Centre Amendment Act, 2008, that it is more appropriate to consider provincial law societies as the supervisors for the attorney's profession as the Law Society of South Africa has no legislative mandate to ensure compliance by the profession. It is therefore proposed that Item 8 of Schedule 2 be amended to delete the reference to the Law Society of South Africa and to replace it with a reference to a law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).

3.9 The proposed wording for the amendments to Schedule 2 is contained in "Annexure D" below.

ANNEXURE C: PROPOSED WORDING FOR SCHEDULE 1:

SCHEDULE 1

LIST OF ACCOUNTABLE INSTITUTIONS

| ITEM | CURRENT WORDING | RECOMMENDED WORDING |
|------|--|---|
| 1 | An attorney as defined in the Attorneys Act, 1979 (Act 53 of 1979). | [An attorney] <u>A practitioner who holds a fidelity fund certificate as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979).</u> |
| 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). | 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 Agents Act, 1976 (Act 112 of 1976). | An estate agent as defined in the Estate [Agents] <u>Agency Affairs Act, 1976 (Act 112 of 1976).</u> |
| 4 | A financial instrument trader as defined in the Financial Markets Control Act, 1989 (Act 55 of 1989). | <u>An authorised user by an exchange as defined in the Securities Services Act, 2004 (Act 36 of 2004).</u> |
| 5 | A management company registered in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981) | <u>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).</u> |
| 6 | A person who carries on the 'business of a bank' as defined in the Banks Act, 1990 (Act 94 of 1990) | 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) | A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993) |

| ITEM | CURRENT WORDING | RECOMMENDED WORDING |
|------|---|---|
| 8 | A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998), including an insurance broker and an agent of an insurer. | A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998). [including an insurance broker and an agent of an insurer] |
| 9 | A person who carries on a business in respect of which a gambling license is required to be issued by a provincial licensing authority. | [A person who carries on a business in respect of which a gambling license is required to be issued by a provincial licensing authority] <u>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.</u> |
| 10 | A person who carries on the business of dealing in foreign exchange. | 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. | [A person who carries on the business of lending money against the security of securities] |
| 12 | A person who carries on the business of rendering investment advice or investment broking services, including a public accountant as defined in the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), who carries on such a business. | [A person who carries on the business of rendering investment advice or investment broking services, including a public accountant as defined in the [Public Accountants and Auditors Act, 1991 (Act 80 of 1991)] Auditing Professions Act, 2005 (Act 26 of 2005), who carries on such a business] <u>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, excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a</u> |

| ITEM | CURRENT WORDING | RECOMMENDED WORDING |
|------|--|---|
| | | <u>health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).</u> |
| 13 | A person who issues, sells or redeems travellers' cheques, money orders or similar instruments. | 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). | The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998). |
| 15 | A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985). | [A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985).] |
| 16 | The Ithala Development Finance Corporation Limited. | The Ithala Development Finance Corporation Limited. |
| 17 | A person who has been approved or who falls within a category of persons approved by the Registrar of Stock Exchanges in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985). | [A person who has been approved or who falls within a category of persons approved by the Registrar of Stock Exchanges in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985).] |
| 18 | A person who has been approved or who falls within a category of persons approved by the Registrar of Financial Markets in terms of section 5(1)(a) of the Financial Markets Control Act, 1989 (Act 55 of 1989). | [A person who has been approved or who falls within a category of persons approved by the Registrar of Financial Markets in terms of section 5(1)(a) of the Financial Markets Control Act, 1989 (Act 55 of 1989).] |
| 19 | A person who carries on the business of a money remitter. | A person who carries on the business of a money remitter. |

ANNEXURE D: PROPOSED WORDING FOR SCHEDULE 2:

SCHEDULE 2

LIST OF SUPERVISORY BODIES

| ITEM | CURRENT WORDING | RECOMMENDED WORDING |
|------|--|---|
| 1 | The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990). | The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990). |
| 2 | The South African Reserve Bank as defined in the South African Reserve Bank Act, 1989, (Act 90 of 1989). | <p>[The South African Reserve Bank as defined in the South African Reserve Bank Act, 1989, (Act 90 of 1989).] <u>The South African Reserve Bank in respect of-</u></p> <p><i>(a)</i> <u>the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989);</u></p> <p><i>(b)</i> <u>the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990), and</u></p> <p><i>(c)</i> <u>the Financial Surveillance Department within the Bank, delegated and assigned by the Minister of Finance in terms of section 9 of the Currency and Exchange Act No. 9 of 1933 and the Exchange Control Regulations, 1961.</u></p> |
| 3 | The Registrar of Companies as defined in the Companies Act, 1973 (Act 61 of 1973). | [The Registrar of Companies as defined in the Companies Act, 1973 (Act 61 of 1973).] |
| 4 | The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act 112 of 1976). | [The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act 112 of 1976).] <u>The Estate Agency Affairs</u> |

| | | |
|----------|---|--|
| | | <u>Board established in terms of the Estate Agency Affairs Act, 1976, (Act 112 of 1976).</u> |
| 5 | The Public Accountants and Auditors Board established in terms of the Public Accountants and Auditors Act, 1991 (Act 80 of 1991). | [The Public Accountants and Auditors Board established in terms of the Public Accountants and Auditors Act, 1991 (Act 80 of 1991).] <u>The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).</u> |
| 6 | The National Gambling Board established in terms of the National Gambling Act, 1996 (Act 33 of 1996). | The National Gambling Board established in terms of the National Gambling Act, [1996 (Act 33 of 1996)] <u>2004 (Act 7 of 2004).</u> |
| 7 | The JSE Securities Exchange South Africa. | [The JSE Securities Exchange South Africa.] |
| 8 | The Law Society of South Africa. | [The Law Society of South Africa.] <u>A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).</u> |
| <u>9</u> | | <u>A provincial licensing authority as defined in section 1 of the National Gambling Act, 2004 (Act 7 of 2004).</u> |