



Financial
Intelligence Centre

CONSULTATION ON THE DRAFT PUBLIC COMPLIANCE COMMUNICATION 112

Guidance on the 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, 2001 (act 38 of 2001).

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The South African Institute of Stockbrokers (SAIS)

comments on

***Financial Intelligence Centre
Draft Public Compliance Communication 112***

1. **Name and surname of submitters**
Ms Kashnie Naidoo
Ms Erica Bruce
2. **Entity name**
The South African Institute of Stockbrokers (SAIS)
3. **Email address**
kashnie@sais.co.za
ericab@navigare.co.za
4. **Number of this submission**
1 of 2

General Comments

We note that the following:

“controlled client” - means a client whose funds and uncertificated securities are under the control of the Authorised User and whose settlements take place via the CSDP of the Authorised User.

“non-controlled client” - means a client whose funds and uncertificated securities are not under the control of the Authorised User who has appointed his own CSDP to settle transactions on his behalf.

The Primary Client we refer to in this document is an Institutional Asset Manager (AM) who is an authorised FSP and an accountable institution.

The FIC Act defines the client as “***in relation to an accountable institution, means a person who has entered into a business relationship or a single transaction with an accountable institution***”. It is our submission that in this context, in relation to an Authorised User, a client, means a person **who has entered into a business relationship or a single transaction with an Authorised User**. In short, we state that the Authorised User client base consists of professional Asset Managers (AM) who are the Primary Clients of the authorised user and the person that has entered into a business relationship with the authorised user. These Primary Clients are FSP’s who are accountable institutions regulated by the Financial Sector conduct Authority (“FSCA”) and the listed corporates are regulated by the Johannesburg Securities Exchange (“JSE”) where applicable.

The Primary Client (AM) may have their own clients whom the Authorised User i.e., does not have a direct business relationship with or undertake transactional activities for. It is an independent relationship where there are no third parties considered in the process. The Authorised User conducts the client identification and due diligence on the Primary Client (AM) and conducts CDD to ensure that the

Primary Client's identity, beneficial ownership, client legal structure, representatives, the nature of business, the purpose of relationship, the source of funds are obtained and documented in line with the authorised users RMCP.

The authorised user will make certain that S20A is complied with and ensure that there are no anonymous accounts in their books. The name of the client, bank details CSDP and jurisdiction will be obtained for all underlying client accounts of the Primary Client at a minimum. As such S21 does not apply to the Underlying Client Accounts of the Primary Client, as there is no business relationship between the Authorised User and the Underlying Client accounts of the Primary Client.

The SAIS' opinion is as follows:

1. The PCC Notice must include the previous Exemption 4(b) and 2 in the motivation. Authorized users do not believe that Exemption 4(b) is covered in PCC 43 which deals with a shared client.
2. "Counterparty" is a previously defined term in the Financial Markets Act (FMA) and the Margin Rules and has a different meaning in both these pieces of legislation. The SAIS therefore suggests that the definition of "counterparty" must be amended and propose the terms "Primary Client" and "Underlying Client Accounts" be used. As the term "Counterparty" is defined in other legislation it is felt that using the term "counterparty" to suit the purposes of this PCC will only create confusion. An amendment is therefore vital.
3. S21 does not apply to the Underlying Client Accounts of the Primary Client, as there is no business relationship between the Authorised User and the Underlying Client Accounts. As such, no Customer Due Diligence (CDD) information can be obtained and validated from these Underlying Client Accounts and no monitoring and reporting on those activated can take place. Consequently, the SAIS is of the opinion that S21 does not apply to underlying client accounts as these are not clients of the Authorised User, no cash and shares are in the control of the Authorised User and no business relationship has been established. As a result, S21 cannot apply. Furthermore, no risk rating, monitoring, or reporting can be performed on any of these underlying accounts. The authorised user will ensure compliance with S20A and ensure that there are no anonymous accounts in their books. The name of the client, bank details CSDP and jurisdiction will be obtained for all underlying accounts of the Primary client.
4. The SAIS notes that the Authorised User cannot perform continuous transactional monitoring for a non-controlled "Primary client". This category of client and their customer profile does not allow continuous monitoring and mechanisms to identify any potential suspicious transactions due to their trading patterns across multiple authorised users and FSPs.

5. The SAIS is of the opinion that it will be beneficial to include the definitions of controlled client and non-controlled client within the ambit of the business of an Authorised User.
6. Please note that the following terms are all synonymous and can be used interchangeably. They have the same meaning as:
 - Asset Manager;
 - Investment Manager; and
 - FSP
 - Institutional Asset manager (IAM)
 - Intermediary
 - Person/Client

The above are all referred to in the document as the “Primary Client” (Counterparty).

5. PCC Summary

The counterparty, as client of an authorised user of an exchange (authorised user), is the person who provides the authorised user with a mandate. An authorised user must first identify the money laundering and terrorist financing (ML/TF) risks their client, being the counterparty, presents prior to determining if they will continue with any arrangement with the client.

There are three (3) scenarios in respect of how an authorised user can interact with their clients, or counterparties in this document, namely a direct interaction with a client, an indirect interaction with a client, and a direct interaction where there is a counterparty and the client of the counterparty involved. An authorised user does not have a customer due diligence (CDD) obligation towards the client of the counterparty. However, in order for the authorised user to effectively understand the ML/TF risks associated with its client, as counterparty, sufficient information needs to be obtained by the authorised user about the client of their counterparty.

The SAIS' comments are as follows:

If the authorised user performs CDD on their primary client (i.e. the counterparty) as per their documented RMCP and performs their own Risk assessment as part of the approved RBA of their primary client, the requirement for “sufficient information” to be obtained with respect to the Underlying Client Accounts i.e. client of the counterparty, is not understood.

It is the view of the SAIS that no information is required to be obtained from the primary clients (counterparty's) underlying client accounts i.e. the client. They are

not the client of the Authorised User and do not have a business relationship with the Authorised User. Therefore there is no legal justification for Underlying Client Accounts to provide the Authorised User with any information.

6. Objective

The objective of this draft PCC is to assist authorised users in applying effective risk management and customer due diligence (CDD) in engagements with their clients.

It is the view of the SAIS that the objective of this draft PCC is to assist Authorised Users to apply effective risk management and CDD in instances where previous exemptions were applied specifically Exemption 2, 4(b), 8, and 9.

7. Glossary

“Authorised user” refers to an authorised user of an exchange as referred to in Item 4 of Schedule 1 to the FIC Act “FIC Act” refers to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001).

“FSP” refers to a financial services provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002) (FAIS Act). “The Centre” means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

The SAIS is in agreement with the definitions.

8. Client of the counterparty

“Client of the counterparty” refers to the client of the counterparty, where the counterparty is an authorised user’s client, and where the authorised user has not established a business relationship nor conducted a single once-off transaction with the client of the counterparty, either directly or indirectly.

The SAIS is of the opinion that the word “counterparty” should be changed to avoid confusion as stated in point 2 of the General Comments (above). To reiterate, it is proposed that the terms “Primary Client” and “Underlying Client Accounts” be used.

Point 2 of the General Comments (above) covered the instances where Exemption 4(b) was previously used. No CDD is required for the Underlying Client Accounts of the Primary Client as this client falls outside S21 and therefore this does not apply.

9. Counterparty

“Counterparty” refers to the client of the authorised user, also the authorised user’s client, who provides the authorised user with a mandate. The term counterparty in this draft PCC means the same as client, prospective client as the client of an authorised user.

As stated in point 2 of the General Comments (above), the SAIS would prefer the term “counterparty” be amended as per the recommendation. “Counterparty” is a previously defined term in the Financial Markets Act (FMA) and the Margin Rules and has a different meaning in both these pieces of legislation.

The SAIS therefore suggests that the definition of “counterparty” must be amended and proposes the terms “Primary Client” and “Underlying Client Accounts” be used. As the term “Counterparty” is defined in other legislation it is felt that using the term “counterparty” to suit the purposes of this PCC will only create confusion. An amendment is therefore vital as this term has a different meaning in the market.

It is suggested that “Primary Client” mean the same as client, “prospective client” mean the same as the “client of the Authorised User”. It is further suggested that “Underlying client accounts” may be used to refer to the client of the “Primary Client”.

10. Foreign intermediaries

“Foreign intermediaries” refers to foreign individuals and/or institutions that conduct business similar to what is generally understood as the business of an FSP in South Africa, where such entities are neither authorised FSPs in terms of the FAIS Act, nor considered as accountable institutions in terms of the FIC Act.

The SAIS notes the definition of foreign intermediaries and further suggests that the definition include a reference to equivalent regulation aligned to SA standards.

11. Intermediary

“Intermediary” refers to the direct client of an authorised user where such a client does not act on its own behalf but on behalf of its clients.

The SAIS notes the definition of intermediary, who would be dealt with as the Primary Client. However, the SAIS wishes to highlight the fact that an intermediary (Primary Client) can be a controlled or a non-controlled client and may have different CDD requirements.

1. Introduction

This PCC is intended for authorised users of an exchange as referred to in item 4 of Schedule 1 to the FIC Act.

The SAIS notes the statement above. However, point 5.1 below states the following:

*“Although this draft PCC is based on stock broking scenarios within the authorised user industry, **accountable institutions can apply the principles contained in this draft PCC when they have comparable scenarios.**”*

The SAIS would want to ensure that the statement above does not cause confusion in relation to the application of the use PCC112.

*1.2 This PCC seeks to assist authorised users in applying effective risk management and CDD in direct and/or **indirect engagements** with their clients, as counterparties.*

The SAIS suggests the wording be amended to read as follows:

This PCC seeks to assist authorised users in applying effective risk management and CDD in indirect engagements with their Primary Clients-Underlying client accounts.

1.3 An authorised user must first assess the ML/TF risk posed by a counterparty to a transaction or business relationship before they can determine whether to enter into any arrangement with this client, and similarly prior to the booking of any trade. In so doing, disruption or interruption to stock broking trade will be limited.

The SAIS is in agreement that the counterparty is the Primary Client with whom the Authorised User enters into a business relationship i.e. the other accountable institution who is an authorised FSP as defined under the FAIS Act.

The statement *“In so doing, disruption or interruption to stock broking trade will be limited”* does not make sense. Further clarity is required.

It must be noted that the timing of the booking/allocation of a trade to the Primary Clients – Underlying client accounts will in some cases have a timing issue which was previously covered under Exemption 2. The information regarding the underlying accounts is only received after the instruction is received by the Primary Client and is executed by the authorised user and therefore cannot be done prior to the execution of the trade.

2. Client Determination and ML/TF Risk Assessment

- 1.2 *A person who has entered into a business relationship or a single transaction with an accountable institution, is considered to be the counterparty or client of an accountable institution. An authorised user must determine who **its client** is during the on-boarding stage.*

The SAIS agrees with the above statement. The SAIS further proposes the replacement of the word counterparty with “Primary Client”. The client of the Authorised User is the “Primary client” and not the Primary Client’s Underlying client accounts.

As previously mentioned, “Counterparty” is a term defined in the Financial Markets Act and the Margin Rules and has a different meaning in both pieces of legislation. The use of the word counterparty in the PCC will only cause confusion.

- 2.2 *The authorised user’s risk management and compliance programme (RMCP) must provide for the manner in which the institution determines if a person is a client or a prospective client.*

The SAIS notes the statement above. The client of the Authorised User is the “Primary client” and not the Primary Clients Underlying client accounts.

- 2.3 *An authorised user must understand and assess the ML/TF risks introduced by each of its clients. As part of understanding and assessing the ML/TF risks that the authorised user’s client presents holistically, the authorised user must*

*understand and assess what inherent ML/TF risks the **client of the counterparty presents.***

The SAIS is in agreement with the statement that, “An authorised user must understand and assess the ML/TF risks introduced by each of its clients”.

The SAIS is of the opinion that the following statement should be removed as it has no basis.

“the authorised user must understand and assess what **inherent ML/TF risks the client of the counterparty presents.**”

The Authorised User must understand and assess what inherent ML/TF risk the “primary client” i.e. the counterparty presents, as only the business relationship has been established with the Primary client and not with the underlying the client of the Authorised User, who is the “Primary client” and not the “Underlying client accounts” i.e. client of the counterparty.

The Authorised User has no access to any CDD information or other related information that will enable the Authorised User to perform the inherent risk assessment of the underlying client accounts of the primary client i.e. the counterparty. It is further noted that the Authorised User never establishes a business relationship with the Underlying Client Accounts. Therefore there are no CDD, transactional monitoring etc...requirements that are applicable.

2.4 *There are three (3) scenarios in respect of how an authorised user can interact with their clients, each of which having associated CDD compliance requirements.*

Firstly, where a client engages and enters into a business relationship or transaction directly with an authorised user and indirectly through representation by a third party or indirectly on behalf of a third party. Lastly, the direct client of the authorised user may have their own clients that are not party to the transaction and or business relationship between the authorised user and the authorised users’ client. The below diagram sets out these scenarios: Image 1:

Scenario of direct and indirect interaction with clients

A - Direct client interaction Direct client interaction with authorised user per s21(1)(a)

B - Indirect client interaction Indirect client interaction with authorised user; client representing third party per s21(1)(b); and client represented by third party per s21(1)(c)

C - Client of the counterparty No business relationship between the authorised user and the client of the counterparty.

A: The SAIS in agreement - Direct client interaction

B: This scenario would depend on whether the client is a controlled or non-controlled client.

C: Underlying Client accounts of the Primary Client

There is no business relationship between the Authorised User and the underlying clients of the Primary Client (old Exemption 4b scenario) in this scenario. Therefore, no S21 requirements are applied to the Underlying Client Accounts of the Primary client as the Authorised User has no relationship with them at all.

2.5 *The above scenarios will assist the authorised user in determining who their clients are, and to ascertain the level of information required to determine the ML/TF risk and the required level of CDD, where applicable, to be applied in respect of their client as the counterparty **and the client of the counter party.***

The SAIS makes the following suggestions:

- a) Replace “Counterparty” with “Primary Client”; and
- b) Remove the following “...**and the client of the counter party**”.

The Authorised User will not have the authority or information to conduct any CDD on the Underlying Client Accounts of the Primary Client, i.e. the counterparty, as the Primary Client has not establish a business relationship with Authorised User and therefore are not the clients of the Authorised User.

There are different scenarios for controlled and non-controlled clients. If the client is a controlled client that is a shared client, it will fall within the ambit of PCC43 and be treated as such.

2.6 *An **authorised user has CDD obligations in respect of clients who are onboarded either in direct engagement with a client (scenario A) and/or in an indirect engagement with a client (scenario B), as expressed in section 21(1)(a), 21(1)(b) and 21(1)(c) of the FIC Act.***

The SAIS is in agreement with scenario A, as it is a direct client.

With respect to Scenario B this depends on whether the client is a controlled client, a non-controlled client or shared client.

It should be noted that the Authorised User will not have the authority or information to conduct any CDD on the Underlying Client Accounts of the Primary Client, i.e. the counterparty, as the Authorised User has not established a business relationship with Primary Client and therefore the Primary Client is not the client of the Authorised User.

2.7 *It can occur that there is a direct relationship between the authorised user and their client, where the authorised user's client is controlling funds on behalf of the client of the counterparty (scenario C). The authorised user has a CDD obligation towards their client and in fulfilling this obligation they must obtain sufficient information about the client of the counterparty in order to identify and assess the ML/TF risk that the authorised user's client, as counterparty, presents.*

The SAIS suggest that the following changes be effected:

- a) Replace "Counterparty" with "Primary Client"; and
- b) Replace client of Counterparty with "Underlying Client Accounts".

The SAIS suggests the following wording:

It can occur that there is a direct relationship between the Authorised User and their Primary Client, where the Authorised User's Primary Client is controlling funds on behalf of the Primary clients underlying Client accounts (scenario B).

Please note this is Scenario B not Scenario C.

See your extract of Scenario B - Indirect client interaction Indirect client interaction with authorised user; client representing third party per s21(1)(b); and client represented by third party per s21(1)(c)

There are different scenarios for controlled and non-controlled clients. If the client is a controlled client that is a shared client, it will fall within the ambit of PCC43 and be treated as such. Therefore certain CDD information can potentially be acquired.

It is noted that in the case of a non-controlled client, the Authorised User will only know the clients' name, bank, CSDP details and jurisdiction to facilitate settlement.

They will not have access to any other information to enable them to perform CDD on the client for the primary client i.e. the counterparty.

Authorised Users will not be able to practically implement this if it is not removed. It is in line with business practice and RMCP requirements as the client if the Primary client i.e. the counterparty, is **not** the client of the Authorised User and they do not control their cash and scrip in any way.

2.8 The inherent risk that the client of the counterparty presents to the authorised user can be taken into account as part of the client risk indicator, (refer to Guidance Note 7, which sets out the various indicators that should be taken into account when assessing the ML/TF risk a client as counterparty presents).

The SAIS suggests that 2.8 be removed. Once again it is reiterated that the Underlying Client Accounts of the Primary Client is not the client of the Authorised User. Therefore S21 does not apply. With no CDD information, no risk assessment can be conducted on the Primary Clients Underlying Client Accounts and there can be no monitoring of these transactions.

Example 1: Basic practical scenarios as listed in image 1

Scenario A

Client establishes a business relationship and or conducts a single once-off transaction with the authorised user directly. There is no FSP or foreign intermediary involved.

Scenario A is noted.

Scenario B

An FSP establishes a business relationship with an authorised user on behalf of the authorised user's client. The client is both a client of the FSP and the authorised user Or.

The client establishes a relationship with the authorised user, on behalf of another person, and acts according to the instruction of that other person.

The SAIS suggests the following changes to Scenario B:

- a) An FSP establishes a business relationship with an Authorised User as a Primary Client on behalf of the FSP's client, who is the Underlying Client

Account. The underlying client is both a client of the FSP and the Authorised User.

Or

- b) The Primary Client establishes a relationship with the Authorised User, on behalf of another person (underlying client) and acts according to the instruction of the Primary Client, who is authorised to act on behalf of the underlying client.

It should be noted that this client could be a controlled client and a non-controlled client.

Scenario C

*The **underlying client** instructs an FSP to buy or sell listed instruments or have agreed a discretionary portfolio management with an FSP. The FSP places an order to buy/sell listed instruments with an investment provider (another FSP). The **investment provider establishes a relationship with the authorised user**. The authorised user executes transactions on a stock exchange on the instructions of the investment provider. There is no business relationship between the client of the counterparty and the authorised user. (Note that this would also be applicable when dealing with a foreign intermediary instead of an FSP).*

The question is raised as to why the additional FSP is in the example. Collective Investment Schemes / Funds, the CIS MANCOs appoint a FSP Discretionary or Non-Discretionary Manager, who manage the funds and who place orders with an Exchange Authorised User in the management of their licenced authority to manage the funds. There is only one FSP i.e. the Primary Client.

It is suggested that the following be deleted:

“The FSP places an order to buy/sell listed instruments with an investment provider (another FSP)”.

The following wording is suggested:

*“There is no business relationship between the **underlying client** of the Primary Client and the authorised user. (Note that this would also be applicable when dealing with a foreign intermediary instead of an FSP).”*

2.9 *It is the Centre’s recommendation that authorised users should avoid establishing a business relationship with a foreign intermediary, where that foreign intermediary has no information available on its clients (i.e., no information of the client of the counterparty). This would present a heightened ML/TF risk. The authorised user, however, retains the discretion to decide with whom it establishes a business relationship based upon its risk appetite and risk-based approach. The authorised user remains liable for any noncompliance with the FIC Act that stems from such business relationships and/or single transactions.*

It must be noted that over 50% of flow is generated from foreign trade in South Africa.

The following wording is suggested:

“It is the Centre’s recommendation that where a foreign intermediary has no information available on its clients, that authorised users should exercise caution in dealing with such intermediaries and exercise enhanced due diligence on such intermediaries to ensure that ML/TF risks are identified and mitigated as per their RMCP.”

2.10 *See the Centre’s Guidance Note 7 {**insert link**} for a detailed discussion on the risk-based approach and other customer due diligence (CDD) considerations.*

The SAIS notes the statement above. It further notes that this should be used when the Authorised User has established a business relationship with a Primary Client.

3. Understanding the ML/TF Risk Associated with the Client of the Counterparty

3.1 *In order for the authorised user to have a full understanding of the ML/TF risk that is present in the relationship and/or transaction, they are to identify the risks that their client, either as a direct client, or as a counterparty, brings. **Included in this determination is the ML/TF risks posed by the client of the counterparty.***

As per previous comments, the SAIS suggests that the term “counterparty: must be replaced with the term “Primary Client”, to avoid confusion.

It further suggests the following statement be removed:

“Included in this determination is the ML/TF risks posed by the client of the counterparty.”

Once again, it is reiterated that the underlying client of the Primary Client is not the client of the Authorised User. Therefore S21 does not apply. With no CDD information, no risk assessment, no transaction monitoring can be conducted on the Primary Clients' Underlying Client Accounts.

To ensure that the Authorised User does not breach S20A, Anonymous Clients, minimum information will be obtained from the Underlying Clients of the Primary Client, who is a non-controlled client i.e., name, bank details, jurisdiction and CSDP details. Thereby ensuring that the Authorised User is compliant with S20A.

The roll-out of the requirement of the CDD of the Primary Client information, to correctly assess the Authorised Users' business relationship as well as CDD requirement to the Primary Client, will place a significant administrative burden on the FAIS CAT II Discretionary FSPs. To assist the FSPs (Primary Client) to comply with information requests from all Exchange Authorised Users, a "**minimum information standard approach**" can be applied. FSPs (Primary Client) trade with various Exchange Authoriser Users in order to obtain *best execution prices* for their clients (the funds). This is important in treating clients fairly. Therefore a "minimum information standard approach" will allow the FSPs (Primary Client) to have this information on hand to provide, on request from the various Exchange Authorised Users, who hold a business relationship.

An Exchange Authorised User market-wide minimum information standard approach on Primary Clients – underlying clients' accounts, will allow Exchange Authorised Users to operate on a level / competitive playing field and further remove risk of Authorised Users potentially obtaining less client information for more trading and therefore attracting systemic regulatory risk into the marketplace.

It will provide clarity on a minimum standard for the Exchange Authorised User market where there has been and remains much uncertainty on their FICA obligations to obtain information on Underlying Client Accounts with whom they have no business relationship.

- 3.2 *Although the authorised user does not have a CDD obligation in respect of the client of the counterparty, they would need to obtain sufficient information about the client of the counterparty in order to understand the risk associated to the authorised user's client (counterparty).*

The SAIS is of the opinion that to ensure that the Authorised User does not breach S20A, minimum information should be obtained from the **Underlying Client** of the **Primary Client**, who is a non-controlled client i.e. name, bank details, jurisdiction and CSDP details. Thereby ensuring that the Authorised User is compliant with S20A

3.3 *The information pertaining to the client of the counterparty obtained from the authorised user's client would differ for each type of client and business relationship. Such information could be sourced from the counterparty's onboarding processes and CDD criteria that they apply to their clients (i.e., client of the counterparty). This information could include:*

The SAIS is of the opinion that to ensure compliance with S20A of the Act the minimum information should be obtained from the Underlying Client of the Primary Client (non-controlled client) i.e. name, bank details, jurisdiction and CSDP details.

As no business relationship has been established with the Underlying Client the Authorised User is not able to request any further information from the underlying client. The CDD information for the underlying client will be collected by the Primary Client as per their RMCP, as is required by the FIC Act. Once gain we reiterate, the business relationship is held by the primary client and not the authorised user.

3.3.1 *Information regarding the nature of the client of the counterparty, e.g., legal persons, natural person whether it is a pension fund, an insurer, or a Collective Investment Scheme (CIS) manager;*

The SAIS in agreement that this should be received for the underlying client from the Primary Client. The information to be received is name, bank details, CSDP details and jurisdiction received from the Primary Client, ensuring that the authorised user complies with S20A of FIC Act i.e. no anonymous clients. It is noted that this is received from the Primary Client when the allocation is done by the Authorised User and after the trade has been concluded (dealt with under the old exemption 2).

3.3.2 *Whether the counterparty conducts business with domestic prominent influential persons or foreign prominent public officials:*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.3 *Whether the counterparty scrutinises client information for sanctions purposes, and if any clients of the counterparty matched on a South African sanction's regime list (see guidance note 6A);*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.4 *The processes and procedures relating to CDD, including ongoing client monitoring, followed by the counterparty on the client of the counterparty;*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.5 *Whether the counterparty is registered with an appropriate authority;*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.6 *Compliance by the counterparty with other anti-money laundering and terror financing obligations such as record-keeping, training, reporting and the use of a RMCP;*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.7 *Whether the counterparty has an effective and efficient process for understanding and assessing the ML/TF risk the client of the counterparty presents, as well as the results of such risk assessment;*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.8 *The AML/CTF regime that applies where the counterparty resides, in the case of foreign business, or from where business is received.*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.9 *The perceived levels of organised crime and corruption and the regulatory regime in the country of origin, in the case of foreign business, or from where business is received;*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.10 *Whether secrecy provisions apply to the jurisdiction in the case of foreign business;*

The SAIS notes that this is done as part of the due diligence conducted by Authorised User on the Primary Client, in line with authorised users RMCP.

3.3.11 *Whether the counterparty would be willing and able to disclose the names and details of the clients of the counterparty, upon request;*

It is noted that most Primary Clients will not make information of their Underlying Clients available beyond the information received to facilitate the allocation to the underlying client account i.e., name, bank details, jurisdiction and CSDP details as is standard business practice.

3.3.12 *Whether the client of the counterparty makes use of cash payments; and.*

The SAIS is of the opinion that this is not applicable and should be removed. Authorised Users do not accept cash.

3.3.13 *The distribution channels and marketing strategies used by the counterparty and the risks associated with other institutions that are part of this value chain.*

The SAIS is of the opinion that this is not applicable and should be removed. The marketing strategy does not form part of ML /TF risk assessment process

1. Practical Application of CDD on Authorised Users' Clients

4.1 *The practical CDD application in relation to the three (3) scenarios of authorised user interactions with client's, as summarised in image 1, are expanded on below:*

The above statement is noted.

Scenario A

4.1.1 *The client is the direct client of the authorised user, the authorised user must assess the client's ML/TF risk and conduct CDD in respect of that client, in accordance with section 21(1)(a) of the FIC Act, and the authorised user's RMCP.*

The SAIS agrees with the above statement.

Example 1

Client X who is a registered Company, in their own name using their own funds goes to Authorised User A to purchase listed instruments of Company B. Authorised User A must determine the risk associated with Company X and must complete the required CDD for Company X including required beneficial ownership, as company X is a legal person. Company X did not establish the business relationship with Authorised User A through an FSP.

The SAIS agrees with the above statement.

Scenario B

4.1.2 The authorised user must assess the ML/TF risk and conduct CDD on **its client as the authorised representative/intermediary and the person on whose behalf the client is acting**, in terms of section 21(1)(b) of the FIC Act as detailed in the authorised user's RMCP.

An authorised user must assess the ML/TF risk of the Primary Client (AM) – non controlled and not their underlying client accounts. The Authorised User will not have the obligation to conduct any CDD in terms of S21 on the Underlying Client Accounts of the Primary Client, as they have not established a business relationship with the underlying client accounts and therefore the underlying client is not the client of the Authorised User. The SAIS is of the opinion that to ensure that the Authorised User does not breach S20A, minimum information will be obtained from the Underlying Client of the Primary Client i.e. name, bank details, jurisdiction and CSDP details. Therefore, the authorised user is in compliance with S20A of the FIC Act.

4.1.3 *The authorised user must assess the ML/TF risk and conduct CDD on the person who is acting on behalf of the client as the authorised representative/intermediary and its client, in terms of section 21(1)(c) of the FIC Act as detailed the authorised user's RMCP.*

An authorised user must assess the ML/TF risk of the Primary Client (AM) – non controlled and not their underlying client accounts. The Authorised User will not have the obligation to conduct any CDD in terms of S21 on the Underlying Client Accounts of the Primary Client, as they have not established a business relationship with the underlying client accounts and therefore the underlying client is not the client of the Authorised User. The SAIS is of the opinion that to ensure that the Authorised User does not breach S20A, minimum information will be obtained from the Underlying Client of the Primary Client i.e., name, bank details, jurisdiction and CSDP details. Therefore, the authorised user is in compliance with S20A of the FIC Act.

Example 2

Client H acts on the behalf of person G to invest in exchange traded instruments using Authorised User K to perform the trade. Client H has a mandate from person G. Authorised User K, in terms of section 21(1)(b) of the FIC Act has an obligation to understand the risk associated with both Client H and person G, and to perform the required CDD on both Client H and person G in terms of their RMCP (Person G is the client of Authorised User K.

The SAIS is not in agreement with the example. Please refer to the amended scenarios below:

Client H: Primary Client (non-controlled client-relationship with authorised user).

Person G: Underlying Client (no relationship with authorised user).

Note: The Authorised User will not have the authority or information to conduct any CDD on the Underlying Client Accounts of the Primary Client, as they have not established a business relationship with Underlying Client Accounts and therefore are not the client of the Authorised User. To ensure that the Authorised User does not breach S20A, minimum information will be obtained from the Underlying Client of the Primary Client (non-controlled client) i.e. name, bank details, jurisdiction and CSDP details. Therefore the Authorised User is in compliance with the FIC Act. It is further noted that instructions are received from the Primary Non-Controlled Client

when the allocation is done by the Authorised User and after the trade has been concluded (dealt with under the old exemption 2)

OR

Client H: Primary Client (controlled client-relationship with authorised user).

Person G: Underlying Client (no relationship with authorised user).

However certain CDD information may be acquired as the cash and securities are held at the Authorised User.

Example 3

FSP A acts on the behalf of client B to invest in exchange traded instruments using Authorised User C to perform the trading. FSP A has a mandate from client B. Authorised User C, in terms of section 21(1)(c) of the FIC Act has an obligation to understand the risk associated with both FSP A and client B, and to perform the required CDD on both FSP A and client B in terms of their RMCP. (Client B is the client of Authorised User C).

The SAIS is not in agreement with the example. Please refer to the amended scenarios below:

FSP A: Primary Client (non-controlled client-relationship with authorised user)

Client B: Underlying Client (no relationship with authorised user)

Note: The Authorised User will not have the obligation to conduct any CDD on the Underlying Client Accounts of the Primary Client - i.e., the counterparty, as they have not established a business relationship with Underlying Client Accounts and therefore are not the client of the Authorised User.

To ensure that the Authorised User does not breach S20A, minimum information will be obtained from the Underlying Client of the Primary Client (non-controlled client) i.e., name, bank details, jurisdiction and CSDP details. Therefore the Authorised User is in compliance with the FIC Act. It is further noted that instructions are received from the Primary Non-Controlled Client when the allocation is done by the Authorised User and after the trade has been concluded (dealt with under the old exemption 2)

OR

FSP A: Primary Client (controlled client-relationship with authorised user)
Client B: Underlying Client (no relationship with authorised user).
However certain CDD information may be acquired as the cash and securities are held at the Authorised User.

Scenario C

4.1.4 *The authorised user acts in accordance with its client's direct instructions to trade a specific instrument on the market. The authorised user is therefore not deemed to be acting on the instruction of another person/entity, but on the instruction of their client, the counterparty, directly.*

The SAIS is in agreement with the statement and suggests that Counterparty be changed to Primary Client.

In such an instance the client of the counterparty is not the client of the authorised user, and no CDD obligations arise in respect of the client of the counterparty. However, in order to determine the ML/TF risk associated to the authorised user's client, as counterparty, they must obtain sufficient information of the client of the counterparty in order to make such a determination.

The SAIS is of the opinion that to ensure that the Authorised User does not breach S20A, minimum information will be obtained from the Underlying Client of the Primary Client i.e. name, bank details, jurisdiction and CSDP details. Therefore the authorised user is in compliance with the FIC Act. It is further noted that instructions are received from the Primary Non-Controlled Client when the allocation is done by the Authorised User and after the trade has been concluded (dealt with under the old exemption 2)

Note: The Authorised User will not have the obligation to conduct any CDD on the Underlying Client Accounts of the Primary Client - i.e., the counterparty, as they have not established a business relationship with Underlying Client Accounts and therefore are not the client of the Authorised User.

The SAIS suggests the removal of the following:

"However, in order to determine the ML/TF risk associated to the authorised user's client, as counterparty, they must obtain sufficient information of the client of the counterparty in order to make such a determination."

Example 4

Asset Manager X requests Authorised User Y to execute a trade. The client of Asset Manager X is a pension fund. Authorised User Y would need to perform CDD on Asset Manager X as its client. Authorised User Y would not have to conduct CDD on Asset Manager X's clients. In order to determine Asset Manager X's ML/TF risk, Authorised User Y would need to obtain sufficient information about Asset Manager X's clients in order to make a determination on the ML/TF risk associated with Asset Manager X.

The SAIS is of the opinion that to ensure that the Authorised User does not breach S20A, minimum information will be obtained from the Underlying Client of the Primary Client i.e., name, bank details, jurisdiction and CSDP details. Therefore, the authorised user is in compliance with S20 of the FIC Act. It is further noted that instructions are received from the Primary Client when the allocation is done by the Authorised User and after the trade has been concluded (dealt with under the old exemption 2)

As no business relationship has been established with the Underlying Client the Authorised User has no right to request any further information and therefore no other information can be requested from the Primary Client. The requirements below will be embedded in the Primary Clients RMCP as is required by the FIC Act. The business relationship is held by the primary client and not the authorised user.

It is suggested that the following be removed:

"In order to determine Asset Manager X's ML/TF risk, Authorised User Y would need to obtain sufficient information about Asset Manager X's clients in order to make a determination on the ML/TF risk associated with Asset Manager X."

Example 5

Foreign Asset Manager M requests Authorised User K to execute a trade. The client of Foreign Asset Manager M is a pension fund. Authorised User K would need to perform CDD on Foreign Asset Manager M as its client. The Authorised User K would not have to conduct CDD on the Foreign Asset Manager M's clients. In order to determine Asset Manager M's ML/TF risk, Authorised User K would need to obtain sufficient information about the Foreign Asset Manager M's clients in order to make a determination of the risks of foreign Asset Manager M. Where Foreign Asset Manager M cannot obtain sufficient information from its client, authorised user K must determine on a risk-based approach whether to continue or not to establish the business relationship.

In many instances the Foreign Asset Manager M will trade in one bulk account under their own name in the books of Authorised User K. Therefore, Authorized user K will never know who the underlying clients of Foreign Asset Manager M are, as Authorised User K does not have any relationship with them or any underlying client account loaded. As no business relationship has been established with the **Underlying Client** the Authorised User has no right to request any further information and therefore no other information can be requested from the **Primary Client**.

In instances where the client of Foreign Asset Manager M is known then the minimum information is requested to facilitate settlement i.e., name, bank details, jurisdiction and CSDP details.

The SAIS suggests the following be removed:

“In order to determine Asset Manager M’s ML/TF risk, Authorised User K would need to obtain sufficient information about the Foreign Asset Manager M’s clients in order to make a determination of the risks of foreign Asset Manager M. about the Foreign Asset Manager M’s clients in order to make a determination of the risks of foreign Asset Manager M”.

As no business relationship has been established with Foreign Asset Manager M’s Underlying Client, the Authorised User has no right to request any further information from the Primary Client.

5. Application of Principles Contained in this Draft PCC for Other Accountable Institutions

5.1.1 Although this draft PCC is based on stock broking scenarios within the authorised user industry, accountable institutions can apply the principles contained in this draft PCC when they have comparable scenarios.

The SAIS notes the statement above. This PCC is intended for Authorised User of an exchange, as referred to in item 4 of Schedule 1 to the FIC Act. Point 5.1 above states that although this draft PCC is based on stockbroking scenarios within the Authorised User industry, accountable institutions can apply the principles contained in this draft PCC when they have comparable scenarios.

The SAIS would like assurance that that the statement above does not cause confusion in relation to the application and objective of PCC12.