30 April 2008

Mr NM Nene
Chairperson: Portfolio Committee on Finance
Parliament
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Dear Sir

COMMENT ON THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL, 2008

In response to your request for comments on the Financial Intelligence Centre Amendment Bill, 2008 (the Bill), attached please find the comment letter prepared by the South African Institute of Chartered Accountants (SAICA).

We thank you for the opportunity to provide comments on the Bill. Please do not hesitate to contact us should you wish to discuss any of our comments.

Yours sincerely

Tonia Jackson
Project Director – Financial Services

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Schedules 1 and 2
We understand that the schedules to the Financial Intelligence Centre Act, 2001 (FICA) may be updated once FICA has been amended. We submit that had the amendments to the schedules been drafted at the same time as the Bill, our comments might have been different.

There is still some confusion about the role of accounting bodies such as SAICA. SAICA is not a regulator and is not one of the supervisory bodies listed in Schedule 2 of FICA. Chartered accountants (SA) may be accountable institutions in terms of FICA when conducting certain transactions or providing certain services, but in those instances they will be governed by one of the supervisory bodies. Two examples are:

- Chartered accountants (SA) that are registered auditors are regulated by the Independent Regulatory Board for Auditors (IRBA) in terms of the Audit Profession Act, 2005; and

- Chartered accountants (SA) who are registered as financial service providers are regulated by the Financial Services Board (FSB) in terms of the Financial Advisory and Intermediary Services Act, 2002.

To provide more clarity within the legislation we recommend that as part of the amendments in the Bill, the references to "*public accountant*" and the repealed "*Public Accountants and Auditors Act, 1991*" in Schedule 1 and 2 be updated to "*registered auditor*" and "*Auditing Profession Act, 2005*" respectively.

Section 1
We support the name "*Counter-Money Laundering Advisory Council*." The name more appropriately conveys the purpose of the council.

Section 1A
We agree with the inclusion of a provision to resolve conflicts between FICA and other provisions in law. However, the proposed amendment to section 1 is very wide. Some industry specific Acts have similar provisions which may make this requirement difficult to interpret. We recommend including an alternative mechanism to resolve conflicts coordinated by the Financial Intelligence Centre (the Centre). This could for example form part of the memorandum of understanding required in section 45(1D) or be made the responsibility of a separate forum.

Section 4
Clarification is required of what "*other persons*" are envisaged in this section.

Section 40(6A)
We have two views on this section:

The Centre is given discretion as to whether it will provide information to other supervisory bodies. In our view, certain types of information should always be made available to other supervisory bodies and this requirement should be specified in the

memorandum of understanding between the Centre and the various supervisory bodies.

On the other hand, the provision allowing the Centre to make available any information obtained during an inspection to any "*organisation that is affected by, or has an interest in that information"* may be interpreted too widely. In our view the words "*affected by*" and "*an interest*" should be clearly defined.

The comma after "*department*" should be replaced with "*or*".

The reference to a "*self-regulating association*" requires clarification.

Section 43A
The Centre is empowered to issue directives to all institutions to whom FICA applies. In our view, this section should be amended to ensure that directives issues by the Centre do not conflict with legislative and regulatory requirements of other supervisory bodies.

Sections 45(1) and 45(1D)
We note that in terms of section 45(1) "*Every supervisory body is responsible for supervising and enforcing compliance with this Act by all accountable institutions regulated or supervised by it.*"

Section 45(1D) has been inserted with the aim of coordinating the supervisory functions of a supervisory body and the Centre. We support this proposal as it should help to avoid the duplication of costs and performance of functions. We recommend that the memorandum of understanding include provisions to avoid the scenario envisaged in section 45B(6)(a).

Some accountable institutions are multi-disciplinary and could be subject to separate inspections by two supervisory bodies. For example, audit firms could be subject to inspections by both the FSB and IRBA where they provide investment advice. Provision should be made to coordinate inspections by different supervisory bodies to avoid undue disruption of operations and duplication of costs.

Section 45B(1)
We recommend that the words "*at any reasonable time*" be changed to "*during ordinary working hours.*" In our view, the notice period should also be specified in this section.

Section 45B(5)(b)(iv)
The meaning of "*in the public interest*" requires clarification.

Section 45C(9)
We suggest that this section be revised to make the publication of decisions discretionary. In our view, publication of all decisions relating to less serious infractions will serve no purpose and will not be conducive to accountable institutions and supervisory bodies working together to eliminate future violations.

In addition to the current authority not to publish a decision to preserve confidentiality, the section should give authority to omit the names of third parties involved in the published decision.

Section 45E
We recommend inserting a 'secrecy' provision similar to section 45B(5)(a) but relating to information obtained by the appeal board when carrying out its function.

Section 68
We would like to understand why it was considered necessary to increase the fines and penalties to what is, in our view, a very high level.

We are concerned that the penalties for non-registration are excessive.