



# JSE Compliance Forum

Surveillance  
10 September 2007



163 ↑ 10/28/70 ↓ 10/28 1/2 ↑ 10/28 4/6 ↓ 10/28 563 ↑ 10/28 8/70 ↓

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## AGENDA

- Welcome
- Christopher Malan – FIC Senior Manager Compliance
- Pieter Smit – FIC Senior Manager Legal and Policy
- Ursula M'Crystal – FIC Senior Manager Monitoring and Analysis
- Shaun Davis – GM JSE Surveillance
- Anne Clayton – Senior Manager Surveillance
- Closing





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*A presentation at the  
JSE Compliance Forum*

**Presented by:**

*Christopher Malan  
Compliance and Prevention Department  
The Financial Intelligence Centre*



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## **BACKGROUND**

- Established in February 2002 in terms of the Financial Intelligence Centre Act, 38 of 2001
- Operational (receiving suspicious transaction reports) since February 2003
- Became a Schedule 3A Public Entity on 5 December 2003
- Divisions within the FIC:
  - Monitoring and Analysis,
  - Compliance and Prevention,
  - Strategic Research & Legislation Development, and
  - Administration and Support Services;
- Approximately 65 staff members



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## **OBJECTIVES**

- Identify proceeds of unlawful activities
- Combat money laundering activities
- Combat terrorist financing and related activities
- Make information collected by it available to Investigating Authorities, Intelligence Services & SARS
- Exchange information with similar bodies in other countries



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## **FUNCTIONS**

- Collect, process, analyse and interpret information
- Inform, advise and cooperate with investigating authorities, supervisory bodies, SARS and the intelligence services
- Monitor and give guidance to accountable institutions, supervisory bodies and other persons regarding FIC Act duties and responsibilities
- Retain information in a manner as set out in the Act



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## FIC STRUCTURE AND STAFFING COMPONENTS

### **DIRECTOR**

Oversees policy & strategic direction, is FIC Accounting Authority

- Communication/ Press liaison
- Strategic Research

### **COMPLIANCE AND PREVENTION**

#### **Liaises and Inspects for compliance of**

- Accountable institutions
- Supervisory Bodies
- Non-supervised accountable institutions
- Capacity building, such as develop 'FIC Academy'

#### **Public Awareness**

- Provides awareness and training

### **MONITORING & ANALYSIS**

#### **Analyses and Refers**

- Collects & stores STRs and other reports
- Analyses data and adds value
- Develops referrals to law enforcement
- Exchanges information with international fuis and law enforcement agencies;
- Maintains statistics

### **LEGAL & POLICY**

#### **Administers Act and Develops coherent policy framework**

- Develops legislation;
- Liaises with standards setter: FATF and Esaamlg;
- Monitors typologies and trends;
- Liaises with National Treasury & other relevant government departments
- Liaises with MLAC and provides admin support

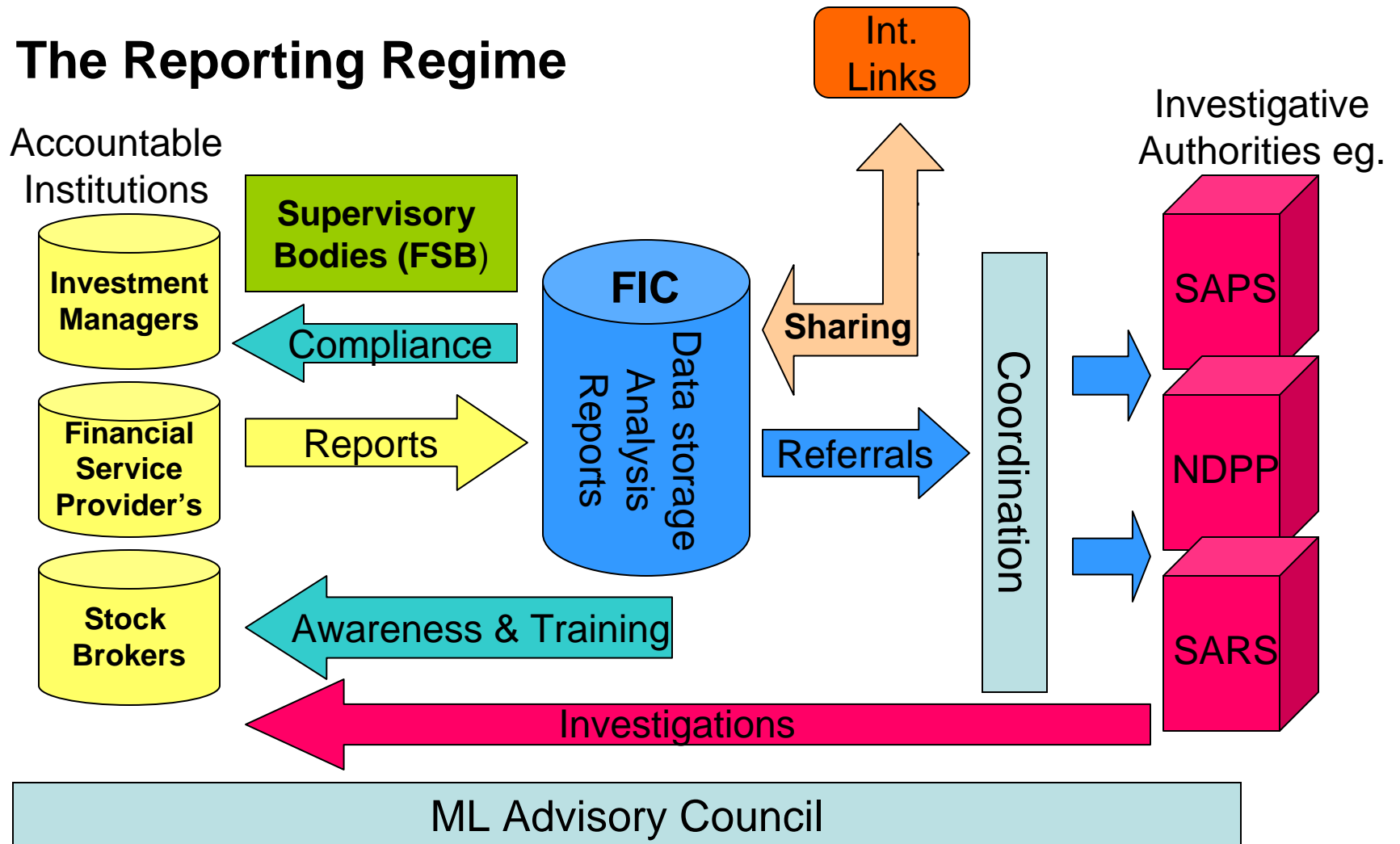
### **ADMINISTRATON & SUPPORT SERVICES**

#### **Provides various support functions and services to the Centre, including:**

- |  |  |                    |
|--|--|--------------------|
| • Financial and Administrative management; | Procurement;                             | Human Resources;   |
| • Registry and document storage services;  | In-house staff training and development; | Security services; |
| • Communication and marketing;             | In-house Legal services;                 |                    |
| • Information & Communication Technology;  |  |                    |

# FINANCIAL INTELLIGENCE CENTRE

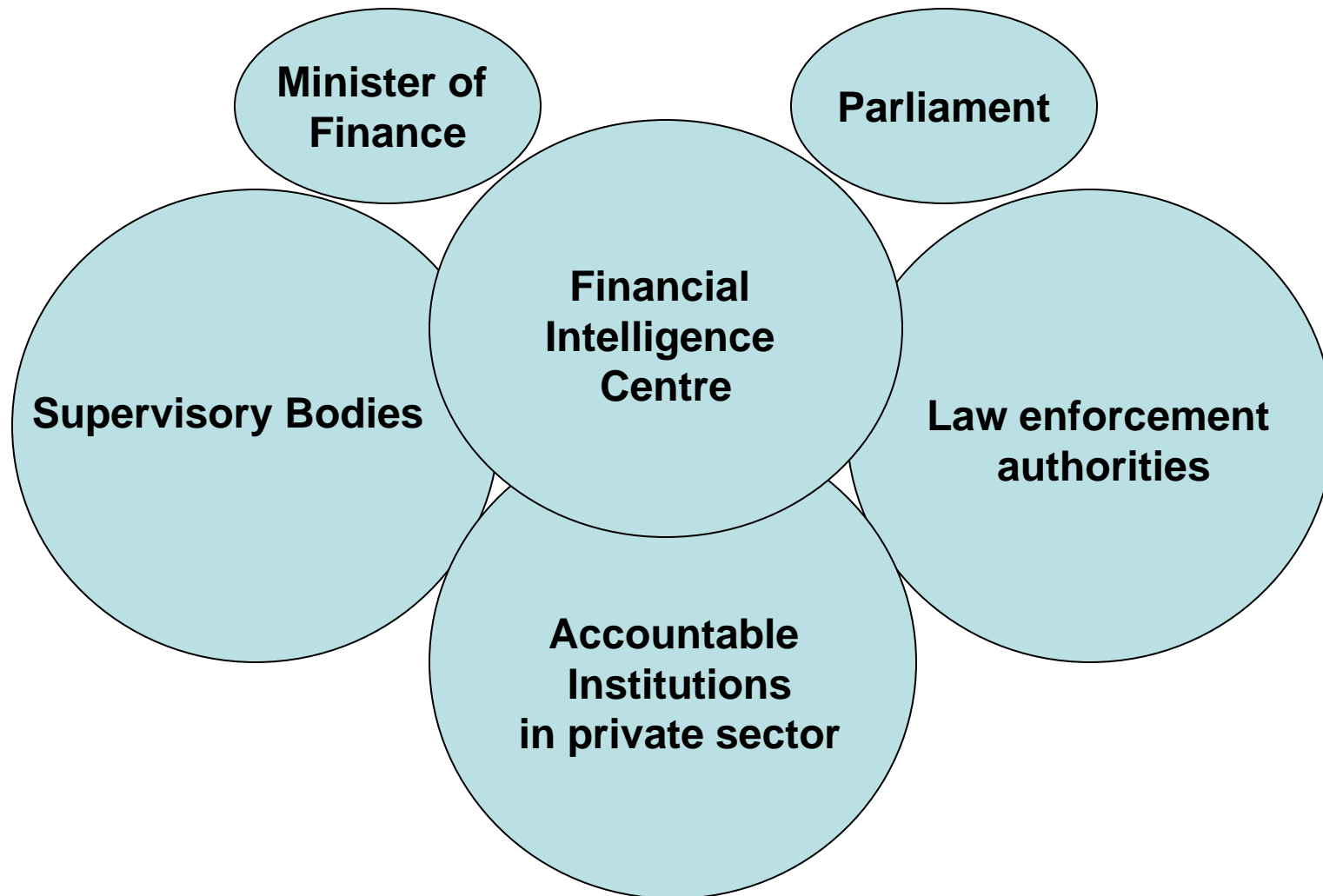
## The Reporting Regime





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## **CORE INSTITUTIONAL STAKEHOLDERS**





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## **LEGISLATION**

**Financial Intelligence  
Centre Act  
No 38 of 2001**

**Regulations**

**Exemptions**

**Guidance Notes**



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## **MONEY LAUNDERING**

- Money laundering involves criminals and their associates trying to hide the fact that their funds come from illegal activities
- In order for crime to pay, a criminal must be able to enjoy whatever it is they have taken and are not entitled to
- Criminals channel dirty money through legitimate businesses and institutions such as banks, casinos, estate agencies, brokers, etc



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## **WHY LAUNDER MONEY**

- Avoid prosecution
- Increase profits/reinvest in criminal activities
- Avoid seizure of accumulated wealth
- Appear legitimate

Money laundering is NOT about cash – its about the PROCEEDS of crime



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## **THE EFFECT OF MONEY LAUNDERING**

- Any business or person who aids money laundering can suffer immense damage to their reputation. Honest clients and prospective investors do not want to be associated with such institutions
- Money laundering is costly to investors and the economy. Countries that attract money launderers and criminals may find it difficult to create conditions for sustainable development and achieve long-term economic growth
- Need partnership between private and public sectors. Brokers need to take their responsibilities seriously, implement control measures and report to the FIC. Supervisory bodies should oversee compliance effectively



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## **MONEY LAUNDERING IN THE STOCK EXCHANGE INDUSTRY**

- May be used at advanced stages (layering and integration stages)
- Cash may be converted into another form of property such as shares, securities or other financial products
- May be through nominee companies or trusts
- The liquidity of many investment products allows launderers easy and quick movement of their money from one product to another, mixing lawful and illicit proceeds and integrating them into the legitimate economy



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## **MONEY LAUNDERING IN THE STOCK EXCHANGE INDUSTRY ...*cont***

- Launderers generally use two methods for earning funds and causing economic instability in the stock markets:

### **Stock market operations**

- They use individual stock traders for buying and selling shares and making profits like any other person interested in the stock market. Their operations are legitimate, but the source of their investments or the ownership of their companies is not

### **Stock market manipulation/pump and dump**

- Artificial inflation of a stock based on misleading information. This typical sort of securities fraud generates proceeds and is therefore a predicate offense for money laundering in most jurisdictions.



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## **TERRORIST FINANCING**

- Terrorists, like everyone else, need funds for their activities and property to organise and co-ordinate them from
- While money laundering involves hiding the nature, source or location of “dirty money”, terror financing can be sourced from “dirty money” as well as legitimate income which is then used in an improper way



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## **GENERAL DUTIES IN TERMS OF FIC ACT**

- Internal administrative duties:
  - Duty to formulate internal rules (s42)
  - Duty to appoint a compliance officer (s43)
  - Duty to train staff (s43)
  - Duty to keep records (s22)
- Duty to establish and verify the identity of clients (s21)
- Duty to report to the FIC:
  - Suspicious Transaction reports (s29)
  - Terror property reporting (s28A)
  - Cash threshold reporting not yet enacted (s28)



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## **INTERNAL RULES**

**S42 – An accountable institution must formulate and implement internal rules**

**Regulation 25 - 27**

Internal rules must include issues on:

- The establishment and verification of client identities
- Record keeping
- Reporting of information

The board of directors and senior management are responsible for compliance with the FIC Act. Internal rules must be approved by the board of directors and senior management



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## **INTERNAL RULES ....cont**

### **Section 42 (4)**

- An accountable institution must, on request, make a copy of its rules available to the Centre and a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution

### **Section 37 (1)**

- No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance by an accountable institution, supervisory body, reporting institution, the South African Revenue Services or any other person with a provision of this part



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## **APPOINTMENT OF COMPLIANCE OFFICER (Section 43)**

- An accountable institution has a duty to formally appoint a compliance officer
- The compliance officer should have general knowledge of the overall operations of the institution and interact with all of the departments and branches to keep abreast of changes that may require action to manage perceived risk
- The compliance officer must have sufficient authority and independence to have access to all areas of the institution's operations and to effect corrective action



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## **TRAINING AND MONITORING OF COMPLIANCE (Section 43)**

- An accountable institution must provide training to its employees on the FIC Act and internal rules applicable to them
- A compliance officer is responsible for ensuring that training takes place
- Training manual must frequently be updated
- Training should be ongoing with regular refresher courses
- Employees may be assessed to evaluate level of knowledge and understanding
- Employees should be blocked from dealing with clients if they have not yet received training on FIC Act and internal rules



## **DUTY TO KEEP RECORDS**

### **S22 – Record keeping**

- Documents that must be kept

What procedure does AI follow in terms of record keeping?

Who has access to these records, is it documented?

- Period to keep records

- Third parties

Are records readily available?

Is there a policy in place that outlines the access control to these records?





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## **DUTY TO ESTABLISH AND VERIFY CLIENTS**

**S21** – An accountable institution may not establish a business relationship or conclude a single transaction unless the prescribed steps have been taken to establish and verify the identity of:

- The client
- The person representing the client
- The person for whom the client may be acting



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## HOW TO REPORT

- Complete prescribed form – on FIC website
- Prefer internet based reporting
- Only in exceptional cases may report be faxed or hand delivered
- May NOT be posted





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## **TERROR FINANCING REPORTING**

POCDATARA: Protection of Constitutional Democracy  
Against Terrorist and Related Activities Act No. 33 of 2004 –  
prevent and combat terrorist and related activities and the  
financing of terrorism:

- Obligation to report certain offences linked to terrorist activity, including terrorist financing;
- FICA – sec 28a – property;
- POCDATARA – sec 25 – UN Sec list;



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## **EXEMPTION 8**

- Members of stock exchange and financial instrument traders are exempted from complying with
  - section 21 and section 22
- in respect of the clients on whose behalf a person or an institution is acting when entering into a business relationship with the accountable institution
- If in a FATF member country
- Should confirm in writing to the satisfaction of the accountable institution that the person or institution will have obtained and recorded the identities of all such clients in the manner required by that country's anti-money laundering legislation



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## **EXEMPTION 9**

- Members of stock exchange and financial instrument traders are exempted from complying with
  - regulation 7(f) – (j); 8 (c); 9(h) – (j); 10 (c) and (e)
  - section 22 (1) (a) – (e), (h) and (i)
- in respect of a business relationship established, or single transaction concluded, with a client which is a legal person or a non-controlled client as defined in the Rules of the JSE Securities Exchange South Africa, as amended



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## **EXEMPTION 9 ...cont**

- Members of stock exchange and financial instrument traders are exempted from complying with the provisions of
  - regulation 9 (h), 9 (i), 9 (j), 9 (k), 10 (c) 10 (d) and 10 (e) , and of
  - section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act
- in respect of a person or an institution with whom the accountable institution enters into a business relationship, if that person or institution is situated in a FATF member country



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## **MONITORING OF COMPLIANCE AND GUIDANCE**

- Onsite visits by supervisory bodies
- Future joint onsite visits between the Centre and the supervisory body
- JSE Guidance Notes vs FIC Guidance Notes



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## **A REMINDER**

### **•15 Years or R10 000 000**

- Failure to identify persons
- Failure to keep records
- Destroying or tampering with records
- Failure to report suspicious or unusual transactions
- Failure to send report to FIC
- Misuse of information

### **•5 Years or R1 000 000**

- Failure to formulate and implement internal rules
- Failure to provide training or appoint a compliance officer



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## **CONTACT**

- **General information: [www.fic.gov.za](http://www.fic.gov.za)**
- **Queries: [fic\\_feedback@treasury.gov.za](mailto:fic_feedback@treasury.gov.za)**



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## QUESTIONS





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**Presentation to the JSE Compliance Forum**

# **MUTUAL EVALUATION PROCESS**

# **FIC ACT AMENDMENTS**

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## OVERVIEW

- **ME Process**
  - **Background**
  - **Relevance**
  - **Implications**
  
- **Amendments to the FIC Act**
  - **Problem area addressed**
  - **Objectives sought to achieve**
  - **Implications**



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## **ME Process**

### **Background**

- **Mutual Evaluation is a method of peer review used by FATF to ensure implementation of its standards among its members**
- **Mechanism to ensure that members implement measures to combat money laundering in accordance with international best practice**



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## ME Process

### Background

- FATF is an inter-governmental body of 33 members including South Africa
- Purpose to develop and promote national and international policies to combat money laundering and terrorist financing
- Objective to generate political will to bring about legislative and regulatory reforms in these areas
- Has set internationally accepted standards for full spectrum of measures to combat money laundering and terror financing: 40 + 9 Recommendations
- Members hold each other mutually accountable for implementation of standards through mutual evaluation process



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### **ME Process**

#### **Relevance**

- **Mutual evaluation will measure the adequacy of South Africa's laws and other measures on money laundering and terror financing as well as implementation of those measures by all role players**
- **Reflects strengths and weaknesses and overall effectiveness of framework to combat money laundering and terrorist financing**
- **Also reflects the effectiveness of various individual elements of this framework**
- **Result will be a public reflection of South Africa's commitment to combat money laundering and terror financing across the range of role players: policy-makers, law enforcement and regulators / supervisors**



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## **ME Process**

### **Implications**

- **FATF Secretariat assembles a team of assessors from various member countries**
- **Assessed country completes ME Questionnaire and provides legislation etc.**
- **On-site visit comprising at least ten days of interviews between assessment team and all authorities involved in implementing the anti-money laundering framework of assessed country**
- **In interviews assessors will**
  - **Clarify understanding of information**
  - **Obtain information when an issue is not fully addressed**
  - **Investigate new issues that arise during the on-site visit**
  - **Interrogate to test the truth of information already provided**



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## **ME Process**

### **Implications**

- **JSE, as a supervisory body, will have to provide information on its supervision of compliance by securities dealers with the requirements of South African anti-money laundering and terror financing measures**
- **Relevant FATF recommendation: R 23 on regulation and supervision of financial institutions**
- **Essential criteria of assessment methodology provide indication of expectations in order to meet this recommendation:**
  - **Supervisors must prevent criminals from holding a significant interest in financial institutions through licensing and “fit and proper” requirements**
  - **Supervisors must apply relevant measures from Core Principles in a similar manner for anti-money laundering and terror financing purposes**



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## **ME Process**

### **Implications**

- **Supervisor also expected to understand obligations of supervised institutions in order to provide information on its supervisory approach**
- **Implies that supervisor knows what is required of supervised institutions in respect of customer due diligence, record keeping, reporting and internal systems and policies**
- **Supervisor is not expected to account for gaps in legislative framework in relation to standards**
- **General obligation of cooperation and information sharing among authorities including supervisors and law enforcement (R31)**



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## **ME Process**

### **Implications**

- **South Africa has to, and will be, combating money laundering whether subject to mutual evaluation or not**
- **South Africa must continuously strive to improve the measures in its framework as well as the implementation of those measures**
- **Mutual evaluation process provides benchmark to measure our efforts and identify areas where we can improve**



## **FIC Act Amendments**

### **Problem Area**

- **Provisions for effective administrative enforcement of obligations under FIC Act must be improved:**
  - **FIC Act makes supervision of compliance with its provisions the responsibility of various supervisory bodies, but does not expressly make this part of the functions of supervisory bodies**
  - **FIC Act does not give supervisory bodies powers to exercise with regard to supervision of compliance with the Act**
  - **FIC Act does not provide for administrative penalties in respect of compliance failures**



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## **FIC Act Amendments**

### **Objectives**

- **Provide a clear mandate for supervisory bodies to supervise and enforce compliance with the obligations on accountable institutions under the Act**
- **Provide the Centre and supervisory bodies with a broad range of powers to assist in determining compliance and identifying compliance failures**
- **Provide a broad range of administrative penalties which may be imposed in cases of non-compliance with the Act**
- **Provide an appeal procedure concerning the sanctions imposed by the Centre and supervisory bodies**



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## **FIC Act Amendments**

### **Implications**

- **Supervision of compliance with obligations of FIC Act will be part of core function of supervisory bodies**
- **Supervisors will be able to processes to execute this function and draw on powers in FIC Act as well as other legislation**
- **Supervisors will be able to select appropriate reaction to compliance failures from range of sanctions in terms of FIC Act as well as other legislation**
- **Coordination between supervisors and supervisors and Centre required to avoid duplication and best allocation of resources**



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**THANK YOU**

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**PRESENTATION  
TO  
THE JSE**

**STATISTICS ON REPORTS RECEIVED AND  
GENERAL FEEDBACK ON TRENDS**

**10 SEPTEMBER 2007**



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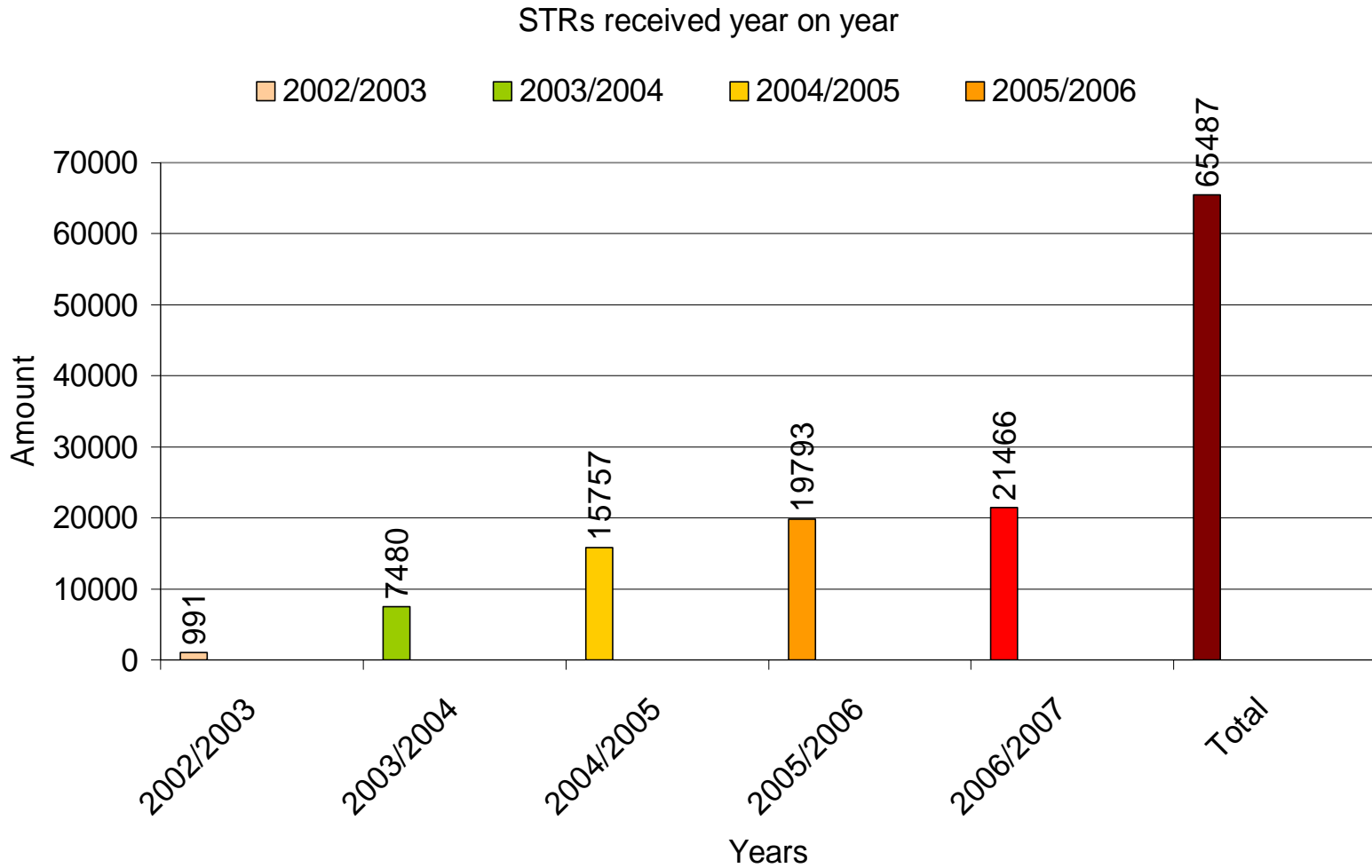
## **Reporting and Analysis**

- 21 466 suspicious transaction reports received.
- Majority of these reports were received from financial service providers such as banks, brokers, foreign exchange dealers, insurance providers, investment managers and services, and money remitters (18 799 reports constituting 88% of all reports).



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# STRs received year-on-year

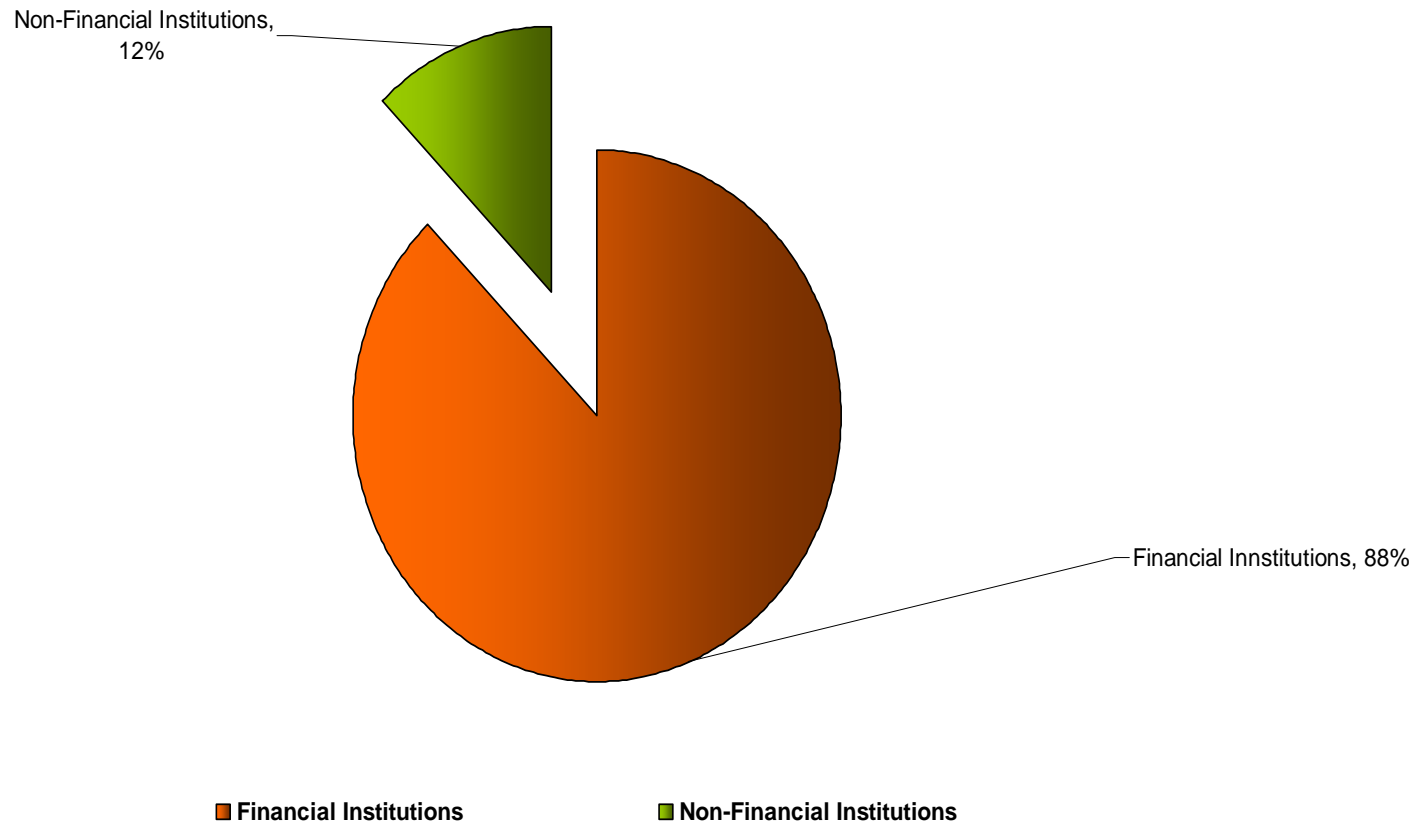




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## Financial/ Non-financial reporting for year

Financial and non-financial reports for financial year 2006/2007

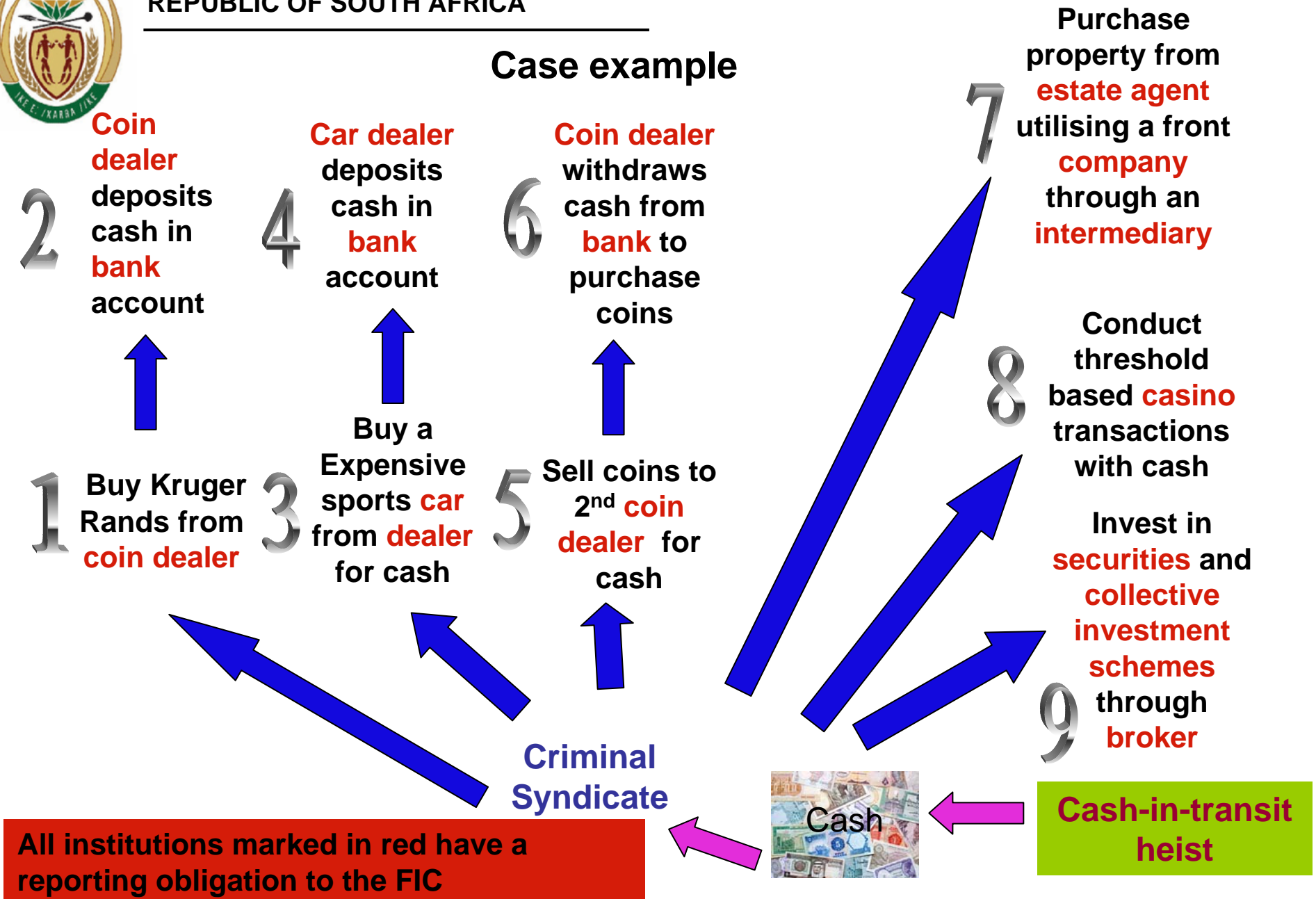




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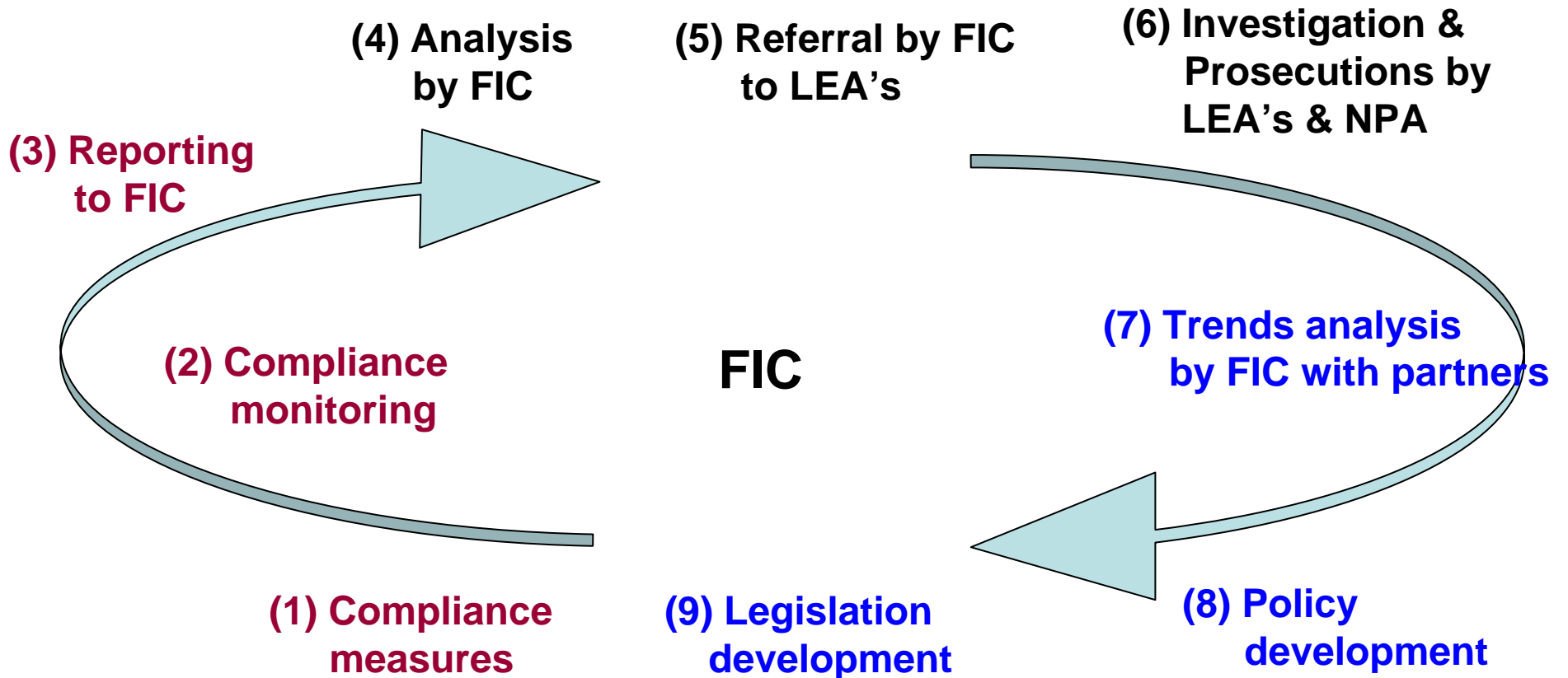
## Case example





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## FIC “Value – Add” Chain





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## **Research Methodology**

- Careful selection of STRs received, not all
- Analysis to identify pattern/trend in the period selected
- Selected ones highlight serious concerns & require further analysis, e.g.
  - Geographical scanning
  - Account mostly abused
  - Account holder profile



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## **Trend Analysis**

1. Transgression of exemption 17 of FICA
  - Unbanked population: rural and low-income group
  - Mzansi accounts
  - Some provisions: debit transaction less than R5,000/24 hr period, balance less than R25,000/month cycle
  - Profile changed: exceed daily and monthly limits
  - Vulnerable to criminal syndicates -- less background checks



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## **Trend Analysis**

2. Abuse of Minors' accounts
  - Parents opening up accounts for minors
  - Suspicious and unusual transactional activity
  - Huge sums of money transacted
  - Possible ML and tax evasion
  - Abuse of housewives' accounts



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## **Trend Analysis**

3. Abuse of Home & Vehicle Loan Accounts
  - Constant depositing of money into the accounts
  - If not fully paid up, accounts receive large sums of money
  - Possible ML and tax evasion
  - Foreign deposits



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## Trend Analysis

4. Deposit/Refunds Scams
  - Mostly done with a fraudulent cheque
  - Deliberate deposit to a *wrong recipient*
  - Called to urgently refund them
  - Realise late that the cheque was fraudulent
  - Prevalent in Eastern and Western Cape



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## **Trend Analysis**

5. Purchasing of High Value Goods
  - Need to dissipate/hide money
  - Acquire goods such as property, vehicles, boats and other luxuries
  - Mostly foreign PEPs and high flyers involved
  - Involvement of intermediaries
  - Coastal areas and high value areas



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# **Case examples**



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## 2 MAIN DEVELOPMENTS IN JSE RULES OVER THE NEXT YEAR

- Integrated derivatives and Yield-X rules
- Application of common principles to equities rules





## MOTIVATION BEHIND THE DEVELOPMENTS

- Material differences between equities and derivatives rulebooks
- Equal application of derivatives rules to all derivatives members is problematic
- Changes in August 2005 to accommodate introduction of Securities Services Act did not address the issue of how members are managed and controlled
- Structure of the rulebooks does not facilitate ease of understanding and application



## KEY PRINCIPLES IN INTEGRATED DERIVATIVES RULES

- 3 main categories of authorised users -
  - ❖ Members
  - ❖ Trading participants
  - ❖ Clearing participants
- Requirements in the Rules and Directives flow from a number of core principles
- The arrangements made by a member to comply with its JSE regulatory obligations start with the board of directors and flow down through the executive management to the individuals whose functions impact the market and the firm's clients





## KEY PRINCIPLES IN INTEGRATED DERIVATIVES RULES (2)

### ➤ Registration with the JSE of all key individuals –

- ❖ Directors
- ❖ Chief Executive Officer
- ❖ Oversight functions including compliance
- ❖ Managers of key functions
- ❖ Investment managers, traders and advisors



### ➤ 3 types of JSE regulated services –

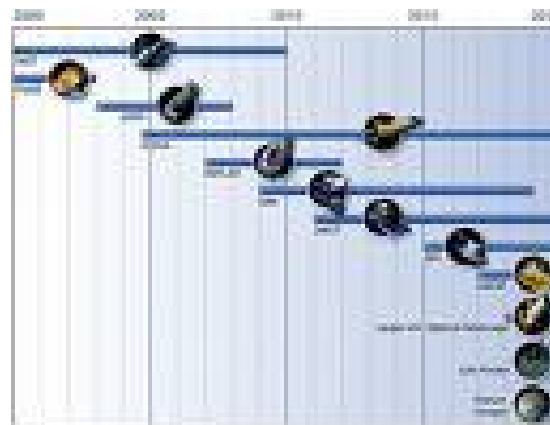
- ❖ Trading services
- ❖ Investment services
- ❖ Custody services

### ➤ Structure of the Handbook has directives integrated with the rules, with guidance where appropriate



## PROVISIONAL IMPLEMENTATION OF TIMELINES FOR INTEGRATED RULES

- Begin consultation with authorised users and the FSB in October
- Approval by JSE EXCO December / January
- Approval by FSB February / March
- Transitional provisions for effective date of certain sections ranging from 3 to 6 months.





## INCORPORATION OF COMMON PRINCIPLES IN EQUITIES RULES

- Establish core principles
- Implement the necessary governance structures and arrangements to support the member meeting its JSE regulatory obligations
- Registration with the JSE of key individuals
- Integrated rules, directives and guidance





## WAY FORWARD



- Member Reviews
  - ❖ Internal Rules
  - ❖ Onsite Reviews
  
- Future JSE Compliance Forums
  
- JSE Compliance Working Groups