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# **CONFLICTS OF INTEREST & DISCLOSURE POLICY**

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**FOR**

**Octofin Short Term Ins. Consultants**

**FSP NO: 4932**

## SECTION 1 - CONFLICTS OF INTEREST

### 1. Underlying principles

#### 1. The General Code of Conduct

The General Code of Conduct contains various provisions which are indicative of the relevance of conflict of interest and fair treatment of clients.

##### ***Section 3(1)(b) stipulates that –***

“A provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;”

##### ***Section 3(1)(c) stipulates that –***

“A provider or a representative must, in writing, at the earliest reasonable opportunity –

- (i) disclose to a client any conflict of interest in respect of that client, including –
  - (aa) the measures taken, in accordance with the conflict of interest management policy of the provider referred to in subsection 3A(2), to avoid or mitigate the conflict;
  - (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
  - (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and
- (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed.

##### ***Section 3(1)(d) stipulates that –***

“the service must be rendered in accordance with the contractual relationship ..... and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider.”

##### ***Section 3(1)(f) stipulates that –***

“the provider must not deal in any financial product, for own benefit, account or interest where the dealing is based upon advanced knowledge.... which would be expected to affect the prices of such product.”

##### ***Section 7(1)(c)(vi) stipulates that –***

“.... a provider must .... in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:

the nature, extent and frequency of any incentive, remuneration, consideration ..... which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service ....”

##### ***Other –***

The General Code of Conduct also prescribes that you should disclose to a client the fact that you hold 10% or more shares in a product supplier and whether you received more than 30% of your remuneration from one product supplier over a 12 months period.

## 2. Board Notice 58 of 2010

In January 2007 the FSB released a discussion paper on conflict of interest and transparent disclosure.

The paper gives the following background to the matter:

The General Code of Conduct for Authorized Financial Services Providers and their Representatives, 2003, currently requires financial services providers and their representatives to disclose to the client the existence of actual or potential conflicts of interest. However, there does not appear to be a common understanding of which indirect benefits need to be disclosed, or how disclosure is to be carried out. Currently there are not efficient conflict management policies in place within financial institutions. The absence of conflict management policies and a generic understanding of what conflict of interest is and the impact on a providers' behaviour can lead to unfair treatment of consumers and the rendering of inappropriate financial services by providers. Disclosure of direct and indirect benefits is generally not made in a consistent or transparent manner across the industry. This has resulted in the perception that non-cash incentives and other benefits are not being disclosed, or where they are disclosed, such disclosure is vague and inadequate. This is damaging to the public's perception of the integrity of the financial services industry.

The above mentioned concerns have now been addressed and promulgated in Board Notice 58 of 2010 where sections 1 and 3 of the General Code of Conduct have been amended and broadened.

## 3. Conflict of interest

A conflict of interest involves the actual, apparent or potential abuse of the trust that people have in professionals. The simplest working definition states: A conflict of interest is a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional's judgment is likely to be compromised. A potential conflict of interest involves a situation that may develop into an actual conflict of interest. It is important to note that a conflict of interest exists whether or not decisions are affected by a personal interest. A conflict of interest implies only the potential for bias, not the likelihood.

Section 1 of the General Code of Conduct defines conflict of interest as –

“any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, -

- (a) influence the objective performance of his, her or its obligations to that client; or
- (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client,

including, but not limited to –

- (i) a financial interest;
- (ii) an ownership interest;
- (iii) any relationship with a third party.”

## 4. Disclosure

The actual or potential existence of a conflict of interest may, in itself, not be a wrongdoing or undesirable practice. It is, however, imperative to properly disclose the nature and monetary value, if determinable, of such conflict to a client. Such disclosure can be made prior to rendering of financial services or in the record of advice, and should preferably be recorded in a register kept by the provider. Full disclosure allows a potential client to decide whether, in the client's view, a conflict situation may indeed be biasing advice and the client will therefore be better equipped to assess whether the advice given is being unduly influenced.

## **5. Conflict of interest policy**

Section 3A(2)(a) of the General Code of Conduct stipulates that every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.

A provider must thus have a documented policy on conflict of interest stipulating the objectives and processes in managing conflict of interest. All providers, key individuals, representatives, associates and administrative personnel should commit to such policy and the processes should be monitored on an ongoing basis.

The provider should keep and maintain a register in which all actual or potential conflicts are recorded. Below is an example of how you can structure a policy document and register. Keep in mind that no specific format is required and that you can adapt and amend the example to suit your own circumstances.

