

# CODE OF CONDUCT FOR MARKET INSTITUTIONS

## 1.0 INTRODUCTION

- 1.1 Market institutions must observe the highest standards of governance in conducting their affairs and ensure the highest standards of fairness, probity and professionalism when exercising regulatory functions and responsibilities. This Code of Conduct for Market Institutions (“this Code”) sets out the principles of conduct, and best governance practices for such institutions, decision-makers within the institution and its personnel.

In this Code, the phrase “market institution” or “institution” refers to each of the approved exchanges, clearing houses or central depositories under the Securities Industry Act 1983 (SIA), the Futures Industry Act 1993 (FIA) and the Securities Industry (Central Depositories) Act 1991 (SICDA). The phrase “market participant” refers to any person(s) and/or body corporate that are bound by the rules of a market institution.

### Objective of the Code

- 1.2 The objectives of this Code are to provide guidance to individuals in these institutions as to standards of governance and conduct, and to ensure that there is integrity in the performance of the institution’s regulatory functions and responsibilities.
- 1.3 All of these individuals must have a clear understanding of the functions and responsibilities of the institutions and adhere to the high standards of conduct and integrity required of them. The Code is intended to assist by clarifying and reinforcing the duties and functions of the institutions, decision-makers and personnel. The Code is also intended to provide guidance on the more difficult issues of conduct and integrity.
- 1.4 The general principles that should apply to each institution under this Code include the following, that:
- Each institution should adopt clear, consistent, fair and equitable **regulatory processes** as well as adhere to the highest level of transparency with regard to its regulatory processes.
  - Each institution should adopt **best practices** of governance, in particular with a view to ensuring the fairness and probity of regulatory and other decisions. This entails ensuring that the relevant individuals are fully aware of the institution’s and their own duties and responsibilities to the public as well as their fiduciary responsibilities, and that individuals within the institution adhere to high professional and ethical standards.
  - There should also be procedures to ensure **accountability** for decisions and actions of market institutions and the relevant individuals within the institution.

### How to use the Code

- 1.5 The Code incorporates the minimum standards of conduct that are required under the general law. These are mainly standards under company law and the statutes governing the respective markets and their institutions. The provisions of the Code are, however, in addition to the general law requirements, and should not be read or implemented to substitute the law.

- 1.6 The Code reinforces the high standards of conduct and integrity expected of the market institutions and the relevant individuals. Institutions should formulate more detailed rules and procedures to apply in particular areas relevant to a particular institution's business conduct. This Code should also be used as a basis to establish detailed policies, procedures or decision-making structures at all levels within each institution.

### **To whom the Code applies**

- 1.7 Generally, the Code sets general standards that should apply to the conduct of all individuals within the institution and this will include their staff where relevant, for example, with regard to dealing with confidential information (Also see Section 3.4, below).
- 1.8 A strong emphasis of the Code will nevertheless be in respect of individuals within the market institution who are involved in taking regulatory actions and in making decisions. Because a large part of such responsibilities for such action lie with the board of directors or its equivalent, committees of boards or senior personnel, a significant portion of this Code will deal with the responsibilities of those who are "decision-makers". These are directors or their equivalent such as members of any committee, management or any other person having the power to make decisions or influence decision-making within the institution. This would include, for instance, a chief executive officer that is not a member of the board or committee.
- 1.9 The matters set out in the Code should be made known and available to everyone to whom it applies. All written policies and procedures of the institution arising from the recommendations of the Code should also be made available to everyone to whom it applies.

### **The areas covered by the Code**

- 1.10 The Code will cover the following areas:
- Regulatory processes
  - Standards of conduct for market institution's decision-makers and personnel
  - Accountability

## **2.0 THE REGULATORY PROCESSES**

### **2.1 Introduction**

- 2.1.1 It is imperative that the institutions exercise, and are seen to exercise these powers in a manner that promotes confidence and integrity in the market. This requires:
- the source and scope of such regulatory powers to be clear
  - the regulatory process and its objectives to be transparent, consistent and fair
  - that regulatory decisions can be upheld and not questioned for partiality or dishonesty.

## **2.2 Transparency**

2.2.1 Institutions should adopt clear, consistent, fair and equitable regulatory process as well as the highest level of transparency with regard to the regulatory process of each market institution. In order to ensure that this standard is maintained, these principles apply:

- Rules must be clear and, if a new rule is introduced, sufficient time must be given for affected parties to comply with it. In this connection, when proposing new rules including those in important operational areas, the relevant market institutions (should except in cases of an emergency or other similar extenuating circumstances) consult with representatives from the industry.
- There should be public disclosure of policies where possible. At all times communication policies should be in place to make information accessible to market participants.

## **2.3 Fairness and probity of regulatory decisions**

2.3.1 Regulatory action may take the form of disciplinary action such as reprimands, fines and suspension or termination of membership. Regulatory action may, in addition, also determine whether any compensation should be made to an aggrieved investor, out of funds that are kept by the market institutions in respect of defalcation or failure of a market participant. As front-line regulators, market institutions are judges in their own case when determining whether regulatory action is to be taken. Firstly, they evaluate whether a breach of their business rules has occurred, decide on the action to be taken and then impose the sanction or make an award where applicable. The person affected would generally be restricted to stating its case to representatives of the institution itself and not to any independent third party.

2.3.2 In making such decisions, each market institution should ensure that:

- a. Its business rules and any other documents that set out the source and scope of the institution's regulatory powers are clearly drafted. Market institutions are front-line regulators, and their powers to take regulatory action against their market participants stem from their respective business rules and relevant statute. Market institutions should at all times ensure that their powers are clearly set out and communicated to the market participants and where applicable, the investor. This will usually involve having procedures for checking and interpreting the business rules, fulfilling any pre-conditions, complying with procedures and ensuring the proper levels of authority in the institution are making that decision.
- b. It has written guidelines for the senior management on taking disciplinary action against breach of the respective business rules or procedures of the institution. The guidelines should set out:
  - the policy considerations of the institution especially its duty to act in the public interest and its function of preserving market or financial integrity
  - the objectives of taking disciplinary action and holding a hearing
  - guidelines on the circumstances or situations to which a particular action should apply or under which compensation would need to be given.
  - a review of previous regulatory decisions

- aggravating or mitigating factors to be considered
  - the extent of the senior management's powers
- c. The principles of natural justice are adhered to in the regulatory process, whether the process is conducted via a formal hearing or by other means. These principles are:
- at the outset, the market participant should be informed of the nature of the complaint against it and why regulatory action is being considered
  - the market participant should then be given a reasonable opportunity to state its case before a regulatory decision is made
  - the market participant should have the right to appeal against a regulatory decision to persons other than those making the first decision
  - grounds are given for making the decision

These principles also apply in a situation where compensation is being claimed by an investor.

- d. There are written procedures for the conduct of any hearing. These procedures must be circulated to all attendees well in advance of a hearing and it is imperative that they are adhered to:
- The market participants are to be informed in advance of the matters on which the hearing intends to deliberate at the hearing.
  - The right of the market participants and where applicable, the complainant, to have representation.
  - The manner the hearing will be conducted and the process involved in making the regulatory decision
  - the order in which the parties are to address the hearing
  - how evidence or substantiating documents are to be produced
  - how the outcome of the hearing will be communicated to the parties.
- e. Minutes of a disciplinary hearing are recorded in writing by someone who is not participating in the hearing. Recorded statements of any person giving a statement should be read aloud to that person who should be asked to sign and confirm the accuracy of such statements. A copy of any such recorded statement should be made available to the person who made the statement upon his request subject to strict terms of confidentiality.
- f. The grounds for a regulatory decision pursuant to a disciplinary hearing are recorded in writing.

### **3.0 STANDARDS OF CONDUCT**

- 3.1.1 The "best practices" prescribed below are derived from, or are an extension of principles that underlie securities, futures and corporations law, both statutory and case law. However, one of the main objects of this section is also to assist those involved in decision-making to identify for themselves when conflicts of interests may arise and to be aware of the appropriate action that may need to be taken to deal with them.

3.1.2 These individuals, particularly decision-makers, are expected to have high standards of personal integrity, and these standards may be higher than the minimum standard of human conduct enforced by criminal law. The minimum standards of personal integrity that should apply to a decision-maker of a market institution are:

- compliance with the provisions of the SIA, FIA or SICDA whichever is applicable, particularly in relation to misuse of price-sensitive information and dealing in securities or futures contracts
- compliance with the provisions of the Companies Act 1965 and principles of company law, as may be applicable
- adherence to Minister of Finance's conditions of approval in respect of the market institution, if applicable
- adherence to the requirements of this Code of Conduct
- adherence to policies and procedures of the institution applying to directors and decision-makers, including the disclosure of assets and conflicts, and requirements contained in the articles of association.

As mentioned in section 1.8, this Code is intended to apply to all persons that are in a position to make decisions or take regulatory action, or to influence such decisions or actions. As such, for the purposes of this Code, the duties that may be generally limited to directors under law will also apply to such individuals. The duties referred to in this Code may for example extend to a chief executive officer who is not also a director, a member of an exchange committee or other decision-making committee. Institutions are therefore required to have in place procedures to ensure that appropriate actions are taken against transgressions of standards of integrity.

3.1.3 In the context of market institutions, it is important to emphasise that individuals must uphold the principle that **the interests of the public must prevail over any other conflicting interests**. Generally, directors have fiduciary obligations to the company including the duty to act bona fide in the best interests of the company. These fiduciary obligations also apply in the case of directors of market institutions. However, in the case of market institutions, these institutions provide facilities and services that affect the public and which could affect the financial system. In view of this, statute specifically refers to the principle that the institution and where relevant its board or the relevant body must uphold the interests of the public over the interests of the institution itself. Therefore, **if there is a conflict between the interests of the public and the interests of the institution itself, decision-makers must ensure that the interests of the public prevail**.

## 3.2 Duties of decision-makers

3.2.1 The decision-makers within the market institutions also have fiduciary obligations to the institution under company law. The pertinent duties of the decision-makers for the purposes of this Code are:

- The duty to act bona fide in the best interests of the company
- The duty to avoid conflicts of interest
- The duty to act for a proper purpose
- The duty of skill, care and diligence

3.2.2 It is important to emphasise that these duties should apply, where relevant, to all relevant decision-makers.

- 3.2.3 **Duty to act bona fide in the interests of the institution over the interests of persons nominating them.** A decision-maker must act in good faith in the best interests of the company. This means the interests of the company as a whole, over and above the interests of a particular group of shareholders or persons nominating him. In this connection, a decision-maker should not use his directorship or other position as a means to serve or promote the particular interests of the group that elected him, so that his duty to his principal is always subject to his duty to act in the best interest of the company.

It must be borne in mind that each board member must at all times act in the interests of the public, and then only bona fide in the interests of the institution over and above the interests of the group that elected him.

- 3.2.4 **Duty to avoid conflicts of interests.** The current regulatory system contemplates the involvement of practitioners in the governance of institutions, while providing checks and balances in the form of independent directors appointed by the Minister of Finance. However, this structure in itself does not diminish the need for the institution to have its own arrangements to deal with conflicts of interests. It is necessary for front-line regulatory organisations to have adequate arrangements to deal with conflicts of interests at all levels in the organisation. As front-line regulators with considerable powers, they must exercise, and be seen to exercise, their powers for the purposes of sound regulation rather than for the personal or other interests of their individual decision-makers. Decisions by the institutions must be made, and be seen to be made, with full information without any suggestion of improper influence or self-interested regulation, so that the validity and quality of decisions are not adversely affected. The discussion below is intended only to assist decision-makers to identify conflicts. However, the primary responsibility for the proper handling of a conflict remains with the individual with the conflict.

- 3.2.5 The decision-maker cannot be seen to act in good faith in the interests of the company when he is placed in a position where his views or judgements are likely to be biased. It is the personal responsibility of each decision-maker to determine if he can continue to provide unbiased and independent views to the institution and to perform his duties with impartiality in the light of his interests.

- 3.2.6 A conflict of interest arises in a situation where a decision-maker with responsibility to act in the interests of others may be affected by his action by a personal interest or association of his own. The following are examples of situations where a conflict of interest may arise, for example, as a result of:

- The individual's direct or indirect financial interest in the matter.
- A direct or indirect financial interest held by a commercial undertaking with which the decision-maker has connections.
- A present or past business or personal association or relationship, with those affected or likely to be affected.
- An expectation of a future interest.
- An interest arising from membership of an association or interest group.
- Sectional interests of a sector with which the individual is connected, e.g. stockbroking.

- 3.2.7 Not all these will necessarily give rise to a significant conflict of interest in every case. **The test is whether an independent third party might reasonably take the view that, there**

**is a real risk that the impartiality of the decision-maker's judgement or course of action might be affected by the conflicting interest.**

### 3.2.8 Guidelines for dealing with conflicts of interest

Decision-makers should take steps to ensure that decisions are made, and are seen to be, unaffected by any conflict of interest. They must ensure that any conflict of interest to which they may personally be subject to does not affect the impartiality of the regulatory action or create a risk that the action could be called into question and such action must be publicly defensible. The following are guidelines for the individual to deal with conflicts:

- a. It is the personal responsibility of each decision-maker to disclose his interests.
- b. A decision-maker should disclose any interests that he may have at the outset, and at least before any discussion on the matter has begun. This allows the rest of the decision-makers to assess the effect of the conflict on the validity and quality of decision-making and assist in determining how best to proceed with handling the matter.
- c. In the case of conflicts that are expected to crop up regularly in discussions before the board, or where the potential conflict is known - for example in the case of decision-makers nominated by industry participants, a general advance disclosure will suffice. However, it is still good practice to make specific disclosures at the time of conflict to draw the minds of the board or decision-making body to the issue, rather than to assume that silence on the part of the board or decision-making body means acknowledgement and acquiescence of the conflicting interest.
- d. It is the personal responsibility of each decision-maker to determine if he can continue to provide unbiased and independent views to the company and to perform his duties with impartiality in the light of his interests. Each decision-maker must continuously ask himself whether an independent third party would take the view that there is a real risk that the individual's impartiality would be affected by the conflicting interest. In case of doubt the decision-maker should declare his interest, abstain or withdraw from the proceeding, as may be appropriate.
- e. If a person is a decision-maker of both company A and company B, he is expected by both companies to do the best that he can in both their interests in relation to a proposed contract or arrangement. (A company, in this situation, may include a company such as a stockbroking company of which he is a director, for example, and a company, which is a market institution.) He is definitely in a position of true conflict and must proceed according to the provisions in the articles of association regarding conflict of interests.
- f. If the articles permit an interested decision-maker to vote, that decision-maker must ensure that he directs his mind to the public interest and acts in the public interest. If he is unable to do so and to put aside his other interests, he should refrain from discussions on the basis of personal integrity, even from voting regardless of the rights afforded to him by the articles.
- g. The public interest prevails over any other conflicting interests that the decision-maker has. The interest of the institution in turn prevails over any other conflicting interests of the individual decision-maker, other than the public interest. An individual decision-

maker who is unable to direct his mind to the prevailing interests and act accordingly should abstain from discussions and voting.

- h. A decision-maker must not place the interests of the person that nominated him over the interests of the public and that of the institution. A decision-maker should not use his directorship or other position of influence as a means to serve or promote the particular interests of the person that nominated him.
- i. A decision-maker should not, in respect of the institution's and the decision-making body's confidential affairs, act as a channel of communication for the group that elected him.
- j. If the institution foresees a conflict arising due to commercially sensitive information being disclosed, the management of the institution may consider the extent of information and the manner of divulging the information, as it thinks fit, in order to enable a decision to be reached.
- k. Sometimes it may not be sufficient for an interested decision-maker to merely abstain from discussion and voting. Where the presence of an interested decision-maker may inhibit a full and frank discussion on the issue, the interested decision-maker should absent himself from the meeting.
- l. Institutions should have in place an alternative or fall-back decision-making structure to revert to in the event any of the following situation occurs :-
  - Where members of the decision-making body, who are excluded from the discussions and voting, form a large number or a majority resulting in a lack of quorum; or
  - After exclusion of the interested decision-makers, the decision-making body is unable to reach a decision or a majority decision, notwithstanding there is sufficient quorum;the decision-making body may move the decision to be taken by the alternative or fall-back decision-making structure  
  
The decision of the alternative or fall-back decision-making structure shall then be adopted by the primary decision making body. This is to allow the decision-making body to continue to operate effectively in these situations.
- m. Records must be kept of disclosures of conflict of interest and steps taken to manage the conflict.

3.2.9 **Duty to act for a proper purpose.** The market institutions are usually vested with considerable powers to take action in relation to the markets and their participants. These powers are necessary in view of the responsibilities of the institutions and include the power to suspend trading, to impose fines on market participant and to institute default action or to award compensation. However, a decision-maker should not exercise his powers for purposes other than those for which they were conferred. It is possible for a decision-maker to breach this duty, even if he honestly believes that his actions are in the best interests of the company. Therefore, the decision-maker should familiarise himself with these powers



and the objectives of exercising them so that he can perform his duty to act for a proper purpose effectively.

- 3.2.10 **Duties of skill, care and diligence.** A decision-maker must act with the amount of skill that is reasonably expected of a person with his knowledge and experience. He must take such care over the institution's affairs as he would reasonably take in his own affairs. He must also exercise reasonable diligence when performing his duties. A decision-maker of a market institution should familiarise himself with the primary functions, responsibilities and activities of the institution. He must understand the nature of the public interest that is to be served by the institution, evaluate for himself the merits of proposals that come before the board or decision-making body for discussion or approval, and not remain passive and rubber-stamp decisions. He must contribute effectively to the decision-making body by regularly attending meetings and utilising his skills and experience to enable sound and informed decisions to be made.

### 3.3 **Confidentiality and use of information**

- 3.3.1 In the performance of their functions and responsibilities, the market institutions receive and have access to confidential information relating to the market and its participants. It is crucial to the integrity of the market institution that the information obtained:

- remains confidential within the institution; and
- is not disclosed outside the market institution unless it is in the performance of its functions responsibilities and legal obligations.

- 3.3.2 Failure to adhere to this principle may result in an unwillingness of others to supply this information. Each market institution should therefore ensure that:

- a. All relevant individuals within the institution undertake to preserve the secrecy of information that they receive in the course of their duties. This requirement can be enforced on them by incorporating it into the employees' terms of employment or the relevant contract for service.
- b. All relevant individuals within the institution execute an undertaking of confidentiality regarding the information that they receive in the course of their duties. This undertaking must be expressed to continue beyond their period of service at, or period of service for, the institution and for as long as the information has not been made public.
- c. All relevant individuals within the institution are briefed on and understand the statutory provisions on the misuse of price-sensitive information and maintenance of secrecy. The criminal sanctions and civil liabilities for breaching those provisions should be highlighted.
- d. There are adequate internal controls to manage the confidentiality of information. At the minimum these controls should include:
  - disclosures of assets and conflicts of interest so that the institution is better able to trace unauthorised disclosures of information and the potential for misuse of information for other interests

- levels of authorisation for access to and release of information
  - maintenance of logical and physical security for all information systems
  - a system for regularly monitoring and reporting on access to and disclosures of information.
- e. Any unauthorised disclosure is treated seriously at the highest level within the institution and can lead to loss of employment or removal from office. There should also be procedures for bringing the matter to the attention of the regulatory authorities.

### **3.4 Employees' code of conduct**

- 3.4.1 The high standards of integrity expected of a market institution should also be reflected in the conduct of each of its employees. This standard of conduct can be enforced via a code of conduct for employees which is incorporated into the terms of employment.
- 3.4.2 At the minimum the code of conduct for employees of market institutions should have guidelines and procedures to cover:
- a. Compliance with the statutory provisions applying to employees of market institutions including the criminal sanctions and civil liabilities. These provisions include the prohibitions against any dealing in futures contracts or securities, misuse of price-sensitive information and secrecy. Any dealing must be clearly permitted by law, and if at all permitted by the institutions, it must be subject to stringent requirements for approval and internal procedures for reporting and monitoring. .
  - b. Avoidance of conflicts between the employee's other interests (including personal interests) on one hand, and the interests of the public and of the market institution on the other. The procedures to deal with this should include disclosure of assets in a periodic and regular basis, disclosure of any other employment, rules on receipt of gifts and on conflicting personal relationships. The procedures on disclosure of assets should apply to individuals who have access to sensitive information and those involved in the decision-making process.
  - c. Preserving confidentiality of information received by employees in the course of their duties. This includes procedures for executing a confidentiality undertaking, how confidential information is handled and communicated, and the authorisation levels for access to and disclosure of confidential information.
  - d. Misuse of information and position by the employee for purposes other than the performance of that employee's official duties.
  - e. Dealings with external parties in the performance of the employee's duties. Each employee should be made aware of how their conduct whilst performing their duties affects an external party's view of the institution, particularly where members of the public are concerned. There should be guidance on how to provide fair, equitable and arms-length treatment to all external parties, how to conduct oneself professionally and proper procedures for press releases or announcements. In this regard, there should be adequate training for all staff dealing with external parties, in particular, where rights of external parties would otherwise be affected. A case in point may be, for instance, where

a member of staff advises the external party on procedure and time limitations with regard to claims.

## **4.0 ACCOUNTABILITY**

- 4.1 Although a breach of the standards in this Code can lead to sanctions under company law, the SIA, FIA or SICDA, each institution should also ensure that:
- there is an internal and effective independent system or committee for monitoring the decisions and performance of the decision-makers against the prescribed standards of conduct;
  - there are procedures to remove or recommend the removal of a decision-maker from office for failing to adhere to the standards in this Code.
- 4.2 Each market institution should provide all decision-makers with a copy of this Code, the articles of association and any internal documents to ensure that they are fully aware of the particular procedures of the institution governing all aspects of conflict of interests.
- 4.3 Each market institution should have its own set of written procedures based on the principles and standards of this Code to give effect and support the Code. In addition, the internal procedures may include prescriptions for all employees, such as those set out in section 3.4. Such internal procedures should also be made available to all employees.
- 4.4 The institution should set out clearly the consequences of the failure to adhere to this Code, the internal procedures that are set out to support and give effect to the principles and standards of this Code. It should be made clear that breach of any of the procedures could lead to disciplinary action against staff, up to and including dismissal. It should also be clear that a breach by a decision-maker could lead to loss of office.
- 4.5 All institutions should give effect to the provisions of this Code and should continuously monitor compliance with the same. Compliance with this Code, the internal control procedures giving effect to the Code should be monitored and reviewed from time to time in order to ensure its continued effectiveness.