


**Amendment of the General Code of Conduct to make provision for revised Conflicts of Interest requirements for FSPs. The applicable General Code of Conduct chapter's in BOTH the key individual's (7.3.2) and the Representatives (5.3.4) First Level Regulatory Examination Study Guides must now include the following.<sup>i</sup>**

**Background**

The Registrar of Financial Services Providers recently amended the General Code of Conduct for authorised financial services providers and representatives (Board Notice 58 of 2010, published 19 April 2010) to make provision for new requirements relating to "Conflicts of interest" within the FAIS environment.


The First Level Regulatory Examination for key individuals and representatives includes **the applicable qualifying criteria**, namely, "**Discuss how to ensure transparency and manage conflicts of interest**". Put simply the legislation requires industry to avoid any practice that might make it impossible to render an unbiased and fair financial service to a client.

	<p><b>Implementation of the Conflicts of Interest amendments:</b></p> <p>Implementation of this amendment has already commenced and will be fully in force by April 2011.</p>
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**Brief summary of BN 58 of 2010**

**Key definitions in terms of the revised Code re Conflicts of Interest "COI"**

Amendments to the Code include new definitions to clarify and place in context frequently used terms, including financial interest, immaterial financial interest, and ownership interest.

	<p><b>"Conflicts of Interest" is defined as:</b></p> <p>...Any situation in which a provider or representative has an actual or potential interest that may, in rendering financial service to a client, –</p> <ul style="list-style-type: none"><li>a. influence the objective exercise of his, her or its obligations to a client,</li><li>b. prevent a provider or representative from rendering an unbiased and fair financial service, or from acting in the interests of a client;</li></ul> <p>This interest includes, but is not limited to – a financial interest; an ownership interest; or any relationship with a third party.</p>
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**“financial interest”** means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, *other than an ownership interest; training*, that is not exclusively available to a selected group of providers or representatives on products and legal matters relating to those products; general financial and industry information; specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation, associated with that training.

**“immaterial financial interest”** means any financial interest with a determinable monetary value, the aggregate of which does not exceed R1 000 in any calendar year from the same third party in that calendar year received by; a provider who is a sole proprietor; or a representative for that representative's direct benefit; or a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives.”

**“ownership interest”** Any *equity or proprietary interest for which fair value was paid by the owner at the time of acquisition, other than equity or a proprietary interest held as an approved nominee on behalf of another person.*  
*Including: any dividend, profit share or other benefit derived from that equity or ownership interest.*

### **Revision of Section 3 of the General Code of Conduct for Financial Services Providers and key implementation dates**

#### **2.1 General provisions**

A provider and a representative must avoid (or mitigate where avoidance is not possible) any COI between the provider and a client or the representative and the client.

At the earliest reasonable opportunity, a provider/representative must, in writing-disclose to the client any COI in respect of that client, including

2.1.1 Measures taken to avoid or mitigate the conflict.

2.1.2 Any ownership interest or financial interest other than immaterial interest that the provider or representative may be or become eligible for

2.1.3 The nature of the relationship or arrangements with a third party that gives rise to a COI in clear, concise, sufficient detail

#### **IMPLEMENTATION DATE FOR 2.1, 2.1.2 AND 2.1.3: IMMEDIATE**

2.1.4 Inform the client of the COI Management Policy and how it may be accessed.  
**IMPLEMENTATION DATE FOR 2.1.4: 19 APRIL 2011** (takes effect 12 months after the date the Board Notice was released).

## **2.2 Insertion of new section 3A in the General Code**

2.2.1 The revised Code enforces limitations on financial services providers with regard to what they may receive from third parties in respect of their financial services business, or give to other financial services providers and representatives of the latter – covered in Section 3A(1)(a) and (c).

### **IMPLEMENTATION DATE FOR 2.2.1: 19 OCTOBER 2010**

2.2.2 Section 3A(1)(b) introduces limitations on the way financial services providers pay incentives to their representatives. The section discourages giving undue preference to certain product suppliers or products created by product suppliers.

A provider may not offer any financial interest to a representative of that provider for giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients, or giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client, or giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client

### **IMPLEMENTATION DATE FOR 2.2.2: 19 APRIL 2011** (takes effect 12 months after the date the Board Notice was released)

### **2.2.3 Section 3A(2)(a) (b) (c) (d) (e) (f) re the adoption and implementation of a COI management policy** that complies with the FAIS Act.

A conflict of interest management policy must be written in an easily comprehensible form and manner –provide for the management of conflicts of interest and include mechanisms for the identification of conflicts of interest; measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest; measures for the disclosure of conflicts of interest; processes, procedures and internal controls to facilitate compliance with the policy; consequences of non-compliance with the policy by the provider's employees and representatives; specify the criteria for accepting or offering, and disclosing any immaterial financial interest the provider or its representatives may accept or offer; specify any financial interest that the provider or its associates will offer a representative and motivate how that financial interest complies with the legislation

Also includes: training staff on the COI policy, ongoing compliance of the policy, the publication of such a policy, a list of all associates and names of third parties in which FSP holds an ownership interest and vice versa (incl. nature and extent thereof)

### **IMPLEMENTATION DATE FOR 2.2.3: 19 APRIL 2011** (takes effect 12 months after the date the Board Notice was released)

### **2.3 Section 3A(3) re circumvention**

A provider may not avoid, limit or circumvent (or attempt to) compliance with the above through an associate or an arrangement involving an associate.

**IMPLEMENTATION DATE FOR 2.3: 19 OCTOBER 2010**

### **2.4 3A(4) (a) re CO/FSP obligations to report**

A compliance officer or, where the provider need not in terms of the Act have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.

(b) The report must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

**IMPLEMENTATION DATE FOR 2.4: IMMEDIATE**

### **CHECKLIST TO ASSIST IN THE CONTROLLONG AND AVOIDING OF CONFLICTS OF INTEREST WITHIN THE FINANCIAL SERVICES SECTOR AND THE FAIS ENVIRONMENT.**

- How do you identify conflicts of interest?
- What are the procedures for assessing and evaluating conflicts?
- Do the arrangements you have in place enable you to decide how to respond to or deal with a conflict?
- Does the FSP have a written policy on conflicts of interest?
- When were your arrangements last reviewed and updated?
- How does the organization's structure support the management of conflicts?
- What information barriers exist in the FSP? How do they help in managing the flow of information?
- How do your conflicts arrangements ensure that clients are not treated unfairly?
- How do your conflicts arrangements ensure that the advice rendered is appropriate?
- How were the conflicts policies approved in your organisation?
- How are conflicts arrangements communicated to other members of staff and the other stakeholders, including clients?

- Is there a nominated person responsible for the implementation, reviewing and updating of internal policy?
- Are there procedures in place to identify instances of non-compliance? How is non-compliance dealt with and recorded?
- What impact do remuneration and other benefits practices have on the internal management of conflicts?
- And the impact on trading or other dealing practices?
- Are there processes in place to ensure that the quality of service provided is not significantly compromised by the presence of conflicts of interest?
- What procedures are used to assess the seriousness of a conflict?
- Is there an escalation process for ensuring that serious conflicts are referred to senior management responsible?
- In what circumstances would you avoid conflicts altogether? How are these decisions made and are they recorded appropriately?

## **DISCLOSING CONFLICTS**

- What procedures are in place for disclosing conflicts?
- How does one ensure that clients receive adequate and specific disclosures?
- How does one ensure that procedures are followed consistently and at all times?
- What disclosures do you give for financial service advice?
- How do you deal with conflicts of a confidential nature?

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<sup>i</sup> This revision will be included in future printings of the study guides