

## **Chapter 3 – CONFLICTS OF INTEREST**

### *Introduction*

Regulated Persons should be guided by the general principle that they are required to act honestly, fairly, and professionally in accordance with the best interests of their clients. This requirement entails that Regulated Persons should seek to avoid situations of conflict of interest in so far as this is possible. In general, conflicts of interest would occur when a Regulated Person has an interest of its own that conflict with the interest or interests of other clients or entities for whom the Regulated Person may be acting in some capacity. Due to the very nature of the activities of Regulated Persons, there might be instances where potential situations of conflicts of interest inevitably arise, in which case Regulated Persons are still required to manage and mitigate such situations in order to avoid causing detriment to their clients. In the event that avoidance or management of conflicts of interest is not successful, disclosure of such conflicts should be made. However, such disclosure should only be made as a last resort and in accordance with the requirements of this Rulebook.

This Chapter is aimed at setting out requirements for Regulated Persons to have in place organisational and administrative arrangements aimed at identifying, preventing and managing conflicts of interest, including the drawing up of appropriate policies and procedures for the implementation of such arrangements. In this respect, proportionality is given the necessary emphasis as the Regulated Person is allowed to take into consideration the nature and size of its business in adhering to the Rules set out in this Chapter.

The issue of remuneration is also tackled in this Chapter in so far as it may give rise to conflicts between the Regulated Person's commercial interests and its duties to act in the best interest of its clients. These Rules also tackle the issue of inducements such as commissions and other third party payments since in certain cases such payments may give rise to situations of conflicts of interests which may damage the interests of clients.

### Application

The Rules and relative Guidance set out under Part A shall apply to all Regulated persons, except as otherwise indicated, and in relation to the provision of a Service, the requirements set out therein shall apply to a Regulated Person who provides services to its clients regardless of the classification of the Client to whom the service is provided – as either retail, professional or eligible counterparty. Provided that Regulated Persons falling under paragraph (iii) and (iv) of the definition of Regulated Person in the Glossary, shall only be required to adhere to requirements set out in this chapter in so far as they carry out the distribution of insurance-based investment products.

The Rules and any relative Guidance set out under Part B shall apply to Regulated Persons which fall under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, including UCITS Management Companies, except as otherwise indicated.

The Rules and any relative Guidance set out under Part C shall apply Rules Applicable to Regulated Persons which fall under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, excluding UCITS management companies, except otherwise indicated.

The Rules and any relative Guidance set out under Part D shall apply to Regulated Persons falling under paragraph (i) of the definition of 'Regulated Persons' in the Glossary which are licensed to provide the services of Underwriting of Financial Instruments and/or Placing of Financial Instruments with or without a firm commitment basis.

**PART A**

**General Rules**

- R.3.1.1 For the purposes of this Section the term “Regulated Person” shall refer to all Regulated Persons except as otherwise indicated, provided that Regulated Persons falling under paragraph (iii) and (iv) of the definition of Regulated Person in the Glossary, shall only be required to adhere to requirements set out in this chapter in so far as they carry out the distribution of insurance-based investment products.
- R.3.1.2 In relation to the provision of a Service, the requirements set out in this Chapter shall apply to a Regulated Person who provides services to its clients regardless of the classification of the Client to whom the service is provided – as either retail, professional or eligible counterparty.
- R.3.2. A Regulated Person shall act honestly, fairly, professionally in accordance with the best interests of its clients.
- R.3.3 A Regulated Person shall adopt appropriate and transparent reporting lines within its organisation or group, where applicable, to ensure that issues involving risks of non-compliance with conflicts of interest rules and wider conduct of business rules are given the necessary priority. The Management body of the Regulated Person shall be promptly informed of such risks in order for them to take any necessary decision to ensure that in any case the Regulated Person acts in the best interest of its Clients, or in the case of a UCITS management company, in the best interest of the UCITS scheme it manages and of its unit-holders.
- R.3.4 A Regulated Person shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organisation of the Regulated Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients or, in the case of a UCITS management company, of UCITS Schemes it manages.

*G.3.1 Where the proposed specific organisational measures and procedures are not appropriate to manage and prevent conflicts of interest from damaging the interests of the Client, a Regulated Person should demonstrate that alternative measures or procedures ensure that the activities of the Regulated Person are carried out in accordance with the best interest of the Clients and are not biased by conflicting interests of the Regulated Person.*

R.3.5 For the purposes of identifying conflicts of interest that may adversely affect the interests of a Client, a Regulated Person shall take into account, by way of minimum criteria whether the Regulated Person or a Relevant Person, or a person directly or indirectly linked by way of control to the Regulated Person, is in any of the situations indicated in the following non-exhaustive list, whether as a result of providing services or activities or otherwise:

- a) the Regulated Person or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the Client; or
- b) the Regulated Person or that person has an interest in the outcome of a service provided to the Client (or in the case of a UCITS management company, of another Client of a transaction carried out on behalf of the Client), which is distinct from the Client's interest in that outcome; or
- b) the Regulated Person or that person has a financial or other incentive to favour the interest of another Client or group of clients over the interests of the Client or of the UCITS scheme; or
- c) the Regulated Person or that person carries on the same business as the Client, or in the case of a UCITS management company, whether it carries on the same activities for the UCITS scheme and for another Client or Clients which are not the UCITS scheme; or
- d) the Regulated Person or that person receives or will receive from a person other than the Client an inducement in relation to a service provided to the Client, in the form of monies, goods or services, other than the commission or fee for that service in the case of restricted advice.

In the case of insurance business, a situation of conflict of interest in terms of this Rule shall also be deemed to subsist where the Regulated person or other

Related Persons involved in the distribution of insurance-based investment products are involved in the management or development of the insurance-based investment products.

R.3.6 The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the Regulated Person or certain persons connected to the Regulated Person or the group of which the Regulated Person forms part, or from the performance of services and activities, and the duty the Regulated Person owes to a Client; or between the differing interests of two or more of its Clients, (or in the case of a UCITS management company of two or more UCITS schemes which it manages) to whom the Regulated Person owes in each case a duty.

G.3.2 *It is not enough that the Regulated Person may gain a benefit if there is not also a possible disadvantage to a Client, or that one Client to whom the Regulated Person owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such Client.*

R.3.7 A Regulated Person shall establish, implement and maintain an effective conflicts of interest policy which is appropriate to the size and organisation of the Regulated Person and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients or, in the case of a UCITS management company, of UCITS Schemes it manages.

Where the Regulated Person is a member of a group, the policy shall also take into account any circumstances of which the regulated person is or should be aware, which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

R.3.8 A Regulated person shall keep and regularly update a record of the service, ancillary service or activity carried out by or on behalf of the Regulated Person in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

R.3.9 A Regulated Person shall establish, implement and maintain remuneration policies and practices and ensure that such remuneration policies and practices adopted by the Regulated Person do not give rise to conflicts of interest which could, in the short, medium and long term adversely affect the interests of its clients or, in the case of a UCITS management company, of UCITS Schemes it manages.

R.3.10 A Regulated Person shall not be regarded as fulfilling its obligations under R.3.2, or under R.3.4 where it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit in connection with the provision of a Service, to or by any party except the Client or a person on behalf of the Client, other than where the fee, commission, payment or benefit:

- a) is designed to enhance the quality of the relevant service to the Client; and
- b) does not impair compliance with the regulated person's duty to act in the best interests of the Client;

Provided that if a fee, commission, payment or benefit as referred to in this Rule subsists, a Regulated Person shall also be required to disclose to clients the information set out in R.1.5.11 - R.1.5.12 of this Rulebook.

The payment or benefit which enables or is necessary for the provision of the Service, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the Regulated Person's duties to act honestly, fairly and professionally in accordance with the best interests of its Clients, is not subject to the requirements set out in the first subparagraph.

Provided further that, in the case of UCITS Management Companies, the provisions of this Rule and R.3.36 - R.3.39 shall only apply when such UCITS Management Company offers the following services:

- (a) management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more Financial instruments;

(b) as non-core services:

- i. investment advice concerning one or more Financial instruments;
- ii. safekeeping and administration in relation to units of collective investment undertakings.

R.3.11 A Regulated Person shall establish specific arrangements and internal procedures enabling the Regulated Person to identify, classify and evaluate all types of fees, commissions and non-monetary benefits prior to the provision of any service provided to its Clients.

G.3.3 *The policies and procedures referred to in R.3.11 above should be followed when assessing the legitimacy of the payments and non-monetary benefits, and the basis for the decision/evaluation process should also be indicated.*

#### **Operational Independence Rules**

R.3.12 Regulated Persons shall take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their Clients or between the interests of one client and another, including those caused by the receipt of inducements from third parties or by a Regulated Person's own remuneration and other incentive structures.

Provided that, in the case of UCITS management companies, the steps required by this Rule to identify and to prevent or manage conflicts of interest shall also apply to conflicts of interest between the UCITS management company and its Clients, between one of its Clients and a UCITS Scheme, or between two UCITS Schemes, that arise in the course of providing any services.

G.3.4 *A Regulated person should manage conflicts of interest even when soliciting or accepting inducements where this would conflict with a Regulated person's duties to its Clients.*

G.3.5 *A Regulated Person that offers such inducements should consider whether doing so conflicts with its obligations to act in the best interests of the Client.*

G.3.6 *A Regulated Person shall carry out periodic monitoring and assessment of the strategic objectives of the Regulated Person, its internal organisation and its policies for the provision of services and activities. Such monitoring should be aimed at ensuring a Regulated Person's continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors.*

R.3.13 A Regulated Person shall ensure that its tied agents are not involved in any activities which may give rise to a conflict of interest which could be detrimental to the Regulated Person's clients.

#### **Conflicts of Interest Policy Rules**

R.3.14 The conflicts of interest policy established in accordance with R3.7 shall be set out in writing and shall include the following:

- a) the identification of, with reference to the services and activities carried out by or on behalf of the regulated person, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the client or one or more other clients;
- b) procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflicts from damaging the interests of the client.

R.3.15 Regulated persons shall ensure that the procedures and measures provided for in R3.14 paragraph (b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in R3.14 paragraph (a) carry on those activities at a level of independence appropriate to the size and activities of the regulated person and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

R.3.16 For the purposes of R3.14 (b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and

appropriate for the Regulated Person to ensure the requisite degree of independence:

- a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
- b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients (or to investors in the case of UCITS management companies) whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the Regulated Person;
- c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities;
- e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where such involvement may impair the proper management of conflicts of interest.

R.3.17 If the adoption or the practice of one or more of the measures and procedures referred to in R.3.16 does not ensure the requisite degree of independence, a Regulated Person shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

R.3.18 The Regulated Person shall assess and periodically review, at least annually, the conflicts of interest policy established in accordance with R.3.7 and shall take all appropriate measures to address any deficiencies. A Regulated

Person shall not be permitted to rely on disclosures of conflict of interest as a defence to any deficiency in the effectiveness of its conflicts of interest policy.

### Remuneration Policy Rules

R.3.19 The provisions under this subtitle relating to the Remuneration Policy Rules shall apply to all Relevant Persons within a Regulated Person who can have a material impact, directly or indirectly, on Services and Ancillary Services provided by the Regulated Person, to the extent that the remuneration of such persons and related non-financial incentives may create a conflict of interest that encourages them to act against the interests of the clients.

*G.3.7 The reference to non-financial incentives in R.3.19 above shall include but is not limited to, in-kind benefits and career progression.*

R.3.20 Without prejudice to the requirements established in SLC 1.37 of Part BI of the Investment Services Rules transposing Article 88(1) of Directive 2013/36/EU, the arrangements referred to in R.3.45 shall also ensure that the management body defines, approves and oversees a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients. UCITS Management Companies shall also be subject to the provisions emanating from the UCITS Directive in addition to the requirements provided for hereunder.

*G3.8 The management body of a Regulated Person should assume clear responsibilities across the business cycle of the firm, in the areas of the identification and definition of the strategic objectives, including the remuneration of sales staff and the approval of new products for distribution to clients.*

R.3.21 A Regulated Person shall have written remuneration policies, which should be periodically reviewed.

R.3.22 In defining its remuneration policies, a Regulated Person shall ensure that:

- (a) Clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the Regulated Person in the short, medium or long term;

- (b) Remuneration policies and practices do not create incentives that may lead Relevant Persons to favour their own interests or the Regulated Person's interest to the potential detriment of Clients.

R.3.23 When designing remuneration policies and practices, a Regulated Person shall also take into consideration all relevant factors such as, but not limited to, the role performed by Relevant Persons, the type of service or product offered and the methods of distribution, whether advised or non-advised, face-to-face or through telecommunications, in order to prevent potential conduct of business and conflict of interest risks from adversely affecting the interests of its Clients and to ensure that the Regulated Person adequately manages any related residual risk.

R.3.24 Relevant persons shall not be remunerated or have their performance assessed in a way that conflicts with the Regulated person's duty to act in the best interests of its clients as set out in R.3.2, in particular, through remuneration, sales targets or otherwise which provide an incentive for recommending or selling a particular Product to a retail client when another product may be better suited to meet the client's needs.

G.3.9 *Where a Regulated Person's remuneration policies and practices link remuneration directly to the sale of specific products or a specific category of such product, this could indicate that a Regulated Person is not in compliance with conduct of business or conflict of interest requirements.*

R.3.25 Remuneration and similar incentives shall be principally based on criteria reflecting compliance with any applicable laws and regulations, the fair treatment of clients and the quality of services provided to clients, so that an appropriate balance between fixed and variable components of remuneration is maintained at all times, and provided that in any event the remuneration structure does not favour the interest of the Regulated Person or its employees against the interests of any Clients.

R.3.26 When designing remuneration policies and practices, a Regulated Person shall ensure that the ratio between the fixed and variable components of the remuneration is appropriate in order to take into account the best interests of their clients.

- R.3.27 The remuneration policies and practices shall allow for the operation of a flexible policy on variable remuneration, including, where appropriate, the possibility to pay no variable remuneration at all.
- G.3.10 *When assessing performance for the purposes of determining variable remuneration, a Regulated Person should not only take sales volumes into account as this can create conflicts of interest which can ultimately result in detriment to the client. When determining the remuneration for tied agents, firms may take the tied agents special status (usually as self-employed commercial agents) and any other existing requirements into consideration.*
- R.3.28 A Regulated Person's remuneration policies and practices shall define appropriate criteria to be used to assess the performance of Relevant Persons, which assessment shall not be solely or predominantly based on quantitative commercial criteria, but shall be based on qualitative criteria encouraging the Relevant Persons to act in the best interests of the Client.
- R.3.29 Where remuneration is, in whole or in part, variable, a Regulated Person's remuneration policies and practices shall define appropriate criteria to be used to align the interests of the Relevant Persons or the Regulated Person and that of the Clients.
- R3.30 The remuneration policy which should be in place for a Regulated Person as required by R.3.9 shall be drawn up, approved and implemented by the Management Body of the Regulated Person, and the Management Body shall be responsible for the prevention of, and dealing with any relevant risks that such remuneration policies and practices can create.
- The Management Body of the Regulated Person shall also ensure that the Compliance Officer is involved in the establishment and the subsequent reviews of the remuneration policy.
- R.3.31 The Compliance Officer of a Regulated Person shall verify that the Regulated Person's remuneration policies and practices comply with conduct of business and conflicts of interest requirements, and shall therefore also have access to all relevant documents.
- R.3.32 A Regulated Person's remuneration policies and practices shall include and provide for the maintenance of measures enabling the Regulated Person to

effectively identify where the Relevant Person fails to act in the best interests of the client and to take remedial action.

R.3.33 Relevant Persons shall be clearly informed, at the outset, of the criteria that will be used to determine the amount of their remuneration and the steps and timing of their performance reviews. The criteria used by Regulated Persons to assess the performance of Relevant Persons should be recorded in a manner which easily accessible and understandable.

G.3.11 *A Regulated Person should avoid creating unnecessarily complex policies and practices (such as combinations of different policies and practices, or multi-faceted schemes, which increase the risk that Relevant Persons' behaviour will not be driven to act in the best interests of clients, and that any controls in place will not be as effective to identify the risk of detriment to the client). This may potentially lead to inconsistent approaches and hamper proper knowledge or control of the policies by the Compliance function.*

R.3.34 A Regulated Person shall ensure that the organisational measures it adopts regarding the launch of new products appropriately take into account their remuneration policy and the risks that these products may pose. In particular, before launching a new product, a Regulated Person shall assess whether the remuneration features related to the distribution of that product comply with the Regulated Person's remuneration policy and therefore do not pose conduct of business and conflicts of interest risks. This process shall be appropriately documented by Regulated Persons.

R.3.35 A Regulated Person shall set up and maintain adequate controls to ensure compliance with its remuneration policies and practices to ensure that they deliver the intended outcomes. Such controls should include at the very least; monitoring calls for telephone sales, sampling of advice and client portfolios provided to check suitability, and going through client documentation on a regular basis.

### **Inducements Rules**

R.3.36 Where a Manufacturer distributes its products to clients through a Distributor and pays a commission to a Distributor based on levels of business introduced, the Manufacturer must be able to demonstrate that these arrangements:

- (a) do not impair the Distributor's duty to act in the best interests of clients;
- (b) do not give rise to a conflict of interest between the Distributor and the client.

R.3.37 A Regulated Person providing its Clients with advice on an independent basis shall not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the services to Clients.

Provided that minor non-monetary benefits that are capable of enhancing the quality of service provided to a Client and are of a scale and nature such that they could not be deemed to impair compliance with the Regulated Person's duty to act in the best interest of the client shall be clearly disclosed and would be excluded from the application of this Rule.

R.3.38 The Management Body shall adopt and at least annually review the general principles of the inducements policy referred to in R.3.11, and shall be responsible for and oversee its implementation. The tasks referred to in the first sentence shall be undertaken only by members of the Management Body who do not perform any executive functions in the Regulated Person concerned and who have expertise in risk management and remuneration. The Management Body shall also ensure that the Compliance Officer is involved in the establishment and the subsequent reviews of the inducements policy.

R.3.39 A Manufacturer which distributes its products to clients through a Distributor shall not impose a requirement on such a Distributor to introduce a specified level of business from clients in order to retain an appointment from that Manufacturer.

**Part B**                    **Rules Applicable to Regulated Persons which fall under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, including UCITS Management Companies.**

R.3.40 For the purposes of this Section the term "Regulated Person" shall refer to a person which falls under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, and includes a UCITS management company.

### Personal Transactions Rules

R.3.41 A Regulated Person shall establish, implement and maintain adequate arrangements which prevent any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of article 2(1) of the Prevention of Financial Markets Abuse Act, 2005 or to other confidential information relating to Clients or transactions with or for Clients by virtue of an activity carried out by him on behalf of the Regulated Person, from:

- a) entering into a personal transaction in terms of the Prevention of Financial Markets Abuse Act, 2005 which meets at least one of the following criteria:
  - (i) it involves the misuse or improper disclosure of confidential information; or
  - (ii) it conflicts or is likely to conflict with an obligation of the Regulated Person under Directive 2014/65/EU (MiFID II) or Directive 2014/91/EC (UCITS V), the Investment Services Act and any rules issued thereunder, as applicable;
- b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by paragraph (a) above or the Investment Services Rules or would otherwise constitute a misuse of information relating to pending orders;
- c) without prejudice to Article 6(2) of the Prevention of Financial Markets Abuse Act, 2005, disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:
  - (i) to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) or the Investment Services Rules;

- (ii) to advise or procure another person to enter into such a transaction.

R.3.42 The arrangements required under R.3.41 must in particular be designed to ensure that:

- a) each relevant person covered by R.3.41 is aware of the restrictions on personal transactions, and of the measures established by the Regulated Person in connection with personal transactions and disclosure, in accordance with R.3.41;
- b) the Regulated Person is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the regulated person to identify such transactions;  
Where certain activities are performed by third parties, the regulated person shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the regulated person promptly on request;
- c) a record is kept of the personal transaction notified to the regulated person or identified by it, including any authorisation or prohibition in connection with such a transaction.

R.3.43 R3.41 and R3.42 shall not apply to the following kinds of personal transaction:

- a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
- b) personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the UCITS Directive or are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the

transactions are effected are not involved in the management of that undertaking.

**PART C**      **Rules Applicable to Regulated Persons which fall under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, excluding UCITS management companies.**

R.3.44      For the purposes of this Section the term “Regulated Person” shall refer to a person which falls under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, excluding UCITS management companies.

**Operational Independence Rules**

R.3.45      The management body of a Regulated Person shall define, oversee and be accountable for the implementation of governance arrangements that ensure effective and prudent management of the Regulated Person including the segregation of duties within that Regulated Person and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.

G.3.12      *A Regulated Person should specify concrete organisational requirements and procedures especially with respect to compliance, risk management, complaints handling, personal transactions, outsourcing and the identification, management and disclosure of conflicts of interest.*

G.3.13      *The management body should be responsible and accountable for the overall strategy of the Regulated Person, taking into account the Regulated Person’s business and risk profile. This provides the management body with effective oversight and control over the activities of the Regulated Person and data reporting services providers.*

**Inducements Rules**

R.3.46      A Regulated Person shall not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue which would infringe the requirements on conflicts of interest or inducements set out in R.3.7, R.3.12, R.3.41 and R.3.10.

**Rules relating to the production and dissemination of investment research**

R.3.47 A Regulated person which produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the Regulated Person or to the public, under their own responsibility or that of a member of their group, shall ensure the implementation of all the measures set out in R.3.15 in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

R.3.48 A Regulated person falling under the description of R.3.47 shall have in place arrangements designed to ensure that the following conditions are satisfied:

- a) financial analysts and other relevant persons must not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the Regulated person, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;
- b) in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the Regulated person's legal or compliance function;

- c) the Regulated person itself, financial analysts, and other relevant persons involved in the production of the investment research must not accept inducements from those with a material interest in the subject-matter of the investment research;
- d) the Regulated Person itself, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;
- (e) issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the Regulated Person's legal obligations, if the draft includes a recommendation or a target price.

For the purposes of this paragraph, 'related financial instrument' means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

*G.3.14 The measures and arrangements adopted by an investment firm to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as investment research should be appropriate to protect the objectivity and independence of financial analysts and of the investment research they produce.*

*Such measures and arrangements should ensure that financial analysts enjoy an adequate degree of independence from the interests of persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated.*

R.3.49 A Regulated Person which disseminates investment research produced by another person to the public or to clients may be exempted from complying with R.3.47 if the following criteria are met:

- a) the person that produces the investment research is not a member of the group to which the Regulated person belongs;

- b) the Regulated person does not substantially alter the recommendations within the investment research;
- c) the Regulated person does not present the investment research as having been produced by it;
- d) the Regulated person verifies that the producer of the research is subject to requirements equivalent to the requirements under these rules in relation to the production of that research, or has established a policy setting such requirements.

*G.3.15 Small gifts or minor hospitality below a level specified in the firm's conflicts of interest policy and mentioned in the summary description of that policy that is made available to clients should not be considered as inducements for the purposes of the provisions relating to investment research.*

*G.3.16 In drawing up a conflict of interest policy which identifies circumstances which constitute or may give rise to a conflict of interest, the Regulated Person should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the Regulated Person or a person directly or indirectly linked by control to the firm performs a combination of two or more of those activities.*

**PART D** **Rules for Regulated Persons falling under point (i) of the definition of 'Regulated Persons' in the Glossary which are licensed to provide the services of Underwriting of Financial Instruments and/or Placing of Financial Instruments with or without a firm commitment basis.**

R.3.50 For the purposes of this Part the term "Regulated Person" shall refer to a person which falls under paragraph (i) of the definition of Regulated Person in the Glossary to these Rules, which are licensed to provide the services of Underwriting of Financial Instruments and/or Placing of Financial Instruments with or without a firm commitment basis.

*Advising to undertake an offering*

- R.3.51 The Regulated Person, shall, before it accepts a mandate to manage the offering, have arrangements in place to ensure that it explains the following to the Client who is the Issuer:
- a) the various financing alternatives available, and an indication of the level of transaction fees associated with each;
  - b) the timing and the process the Regulated Person will take in respect to how it will reach its corporate finance advice in respect to pricing the offer;
  - c) the timing and the process the Regulated Person will take in respect to how it will reach its corporate finance advice in respect to placing of the offering;
  - d) details of the type of investors, to whom it is planned to offer the securities;
  - e) the job titles and departments of the relevant individuals involved in the production of corporate finance advice on the price and allotment; and
  - f) how it intends to manage conflicts of interest that may arise in circumstances where it places the relevant securities with investment clients of the firm or with its own proprietary book.

*Pricing*

- R.3.52 The Regulated Person should have in place systems, controls and procedures to identify and manage the conflicts that arise in relation to possible under-pricing and over-pricing of issues and involvement of Relevant Persons in this process including 'book building'. Specifically:
- a) the Regulated Person should have in place internal arrangements that ensure that the pricing of the offer does not promote the interests of other Clients or the Regulated Persons' interests, which are distinct from the interests of the Clients of the Issuer; and
  - b) the Regulated Person should have in place internal arrangements that manage or prevent a situation where individuals ordinarily responsible for providing Services to the Clients of the Regulated Person are involved directly in decisions about corporate finance advice to the Issuer on pricing.

- R.3.53 The Regulated Person shall provide Clients with information about how it determines the price of the offering and the timings involved. Specifically:
- a) the Regulated Person shall discuss with the Issuer any hedging or stabilisation strategies it plans to undertake with respect to the offer, including how these strategies may impact the Issuer's interests; and
  - b) the Regulated Person shall take reasonable steps to keep the Issuer informed on developments relevant to the pricing during the offering process.

*Placing*

- R.3.54 The Regulated Person shall have in place internal arrangements that prevent recommendations relating to the services of placing, from being inappropriately influenced by any existing or future relationships.
- R.3.55 The Regulated Person shall have in place internal arrangements that manage or prevent a situation where employees ordinarily responsible for providing Services to its Clients are involved directly in decisions about recommendations on allocation made to the Issuer.
- R.3.56 The Regulated Person shall not accept third party payments that are in conflict with the conditions of the inducements regulations in R.3.10 .

- G.3.17 *In the context of underwriting and placing, practices which shall not be considered to be in the best interest of the Clients, include:*
- a) *an allocation made to incentivise the payment of a large amount of fees for unrelated services provided by the Regulated Person ('laddering').*
  - b) *an allocation made to a senior executive or a corporate officer of an existing or potential Issuer in consideration for the future or past award of corporate finance business ("spinning"); and*
  - c) *an allocation that is expressly or implicitly conditional on the receipt of future orders or the purchase of any other Service from the Regulated Person by a Client, or any entity of which the Client is a corporate officer.*

- R.3.57 The Regulated Person should have in place an allocation policy that sets out the process for developing allocation recommendations. This allocation policy should be provided to the Issuer before agreeing to undertake a placing. The

policy should set out relevant information to the extent it is known at that stage about the proposed allocation methodology for the issue.

- G.3.18 The Regulated Person should invite the Issuer to participate in discussions about the placing process so that the Regulated Person can take the interests of the Issuer into account, including by obtaining the Issuer's agreement to its proposed allocation policy for the transaction.*

*Retail Advice/Distribution*

- R.3.58 The Regulated Person shall have in place systems, controls and procedures to identify and manage the conflicts that arise where it provides Services to a Client to participate in a new issue, where the Regulated Person is in receipt of commissions/fees in relation to arranging the Issue. Underwriting fees received in such circumstances must comply with R.3.10. This should be documented in the Regulated Person's conflicts of interest policies, and reflected in the Regulated Person's inducement arrangements.

- R.3.59 Regulated Persons that engage in the placement of Financial Instruments issued by themselves (or other group entities) to their own Clients, including collective investment schemes managed by entities within Regulated Person's group, shall have in place clear procedures for the identification and management of the potential conflicts of interest that arise in relation to this type of activity. Such procedures shall include consideration of refraining from engaging in the activity, where conflicts of interest cannot be appropriately managed so as to prevent any adverse effects on Clients.

- R.3.60 When disclosure of conflicts of interest is required, Regulated Persons should explain the nature and source of the conflicts of interest inherent to this type of activity, providing details about the specific risks related to such practices so as to enable Clients to make an informed investment decision.

*Lending/Provision of credit*

- R.3.61 If the Regulated Person acted as arranger and the steps it took to manage the conflicts of interest were not sufficient to ensure that the risk of damage to the Client would be prevented, the Regulated Person shall disclose to the Client the specific conflicts of interest that have arisen in relation to the activities of the Regulated Person (or group entity) acting in its capacity as a credit provider, and the activity of the Regulated person acting as arranger for the securities offering.

R.3.62 Where one entity within a group is acting as a credit provider, and another is acting as arranger for a securities offering, the Regulated Person's conflict of interest policy should require that full information should be shared between the different entities, in relation to the Issuer's financial situation.

G3.19 *In circumstances where any previous lending or credit to the issuer client by the investment firm (or a group entity) may be repaid with the proceeds of the issue, investment firms should consider whether in such circumstances it would be appropriate to refrain from acting as arranger for the securities offering.*

#### *Record-keeping*

R.3.63 The Regulated Person should keep records of the content and timing of instructions received from its Clients. A record of the allocation decisions taken for each operation should be kept to provide for a complete audit trail between the movements registered in Clients' accounts and the instructions received by the Regulated Person. In particular, the final allocation made for each Client should be clearly justified and recorded. The complete audit trail of all steps in the underwriting and placing process should be made available on request to the MFSA.

#### *Oversight*

R.3.64 The Regulated Person should have in place a centralised process to identify all its potential underwriting and placing operations and keep a record of this information, specifying the date on which the Regulated Person was informed of potential underwriting and placing operations.

R.3.65 The Regulated Person should identify all potential conflicts of interests arising from other activities of the Regulated Person itself or of other members in its group, and implement appropriate management procedures. In some cases, if the conflict of interest cannot be managed by procedures or arrangements, the only way to manage the conflict would be for the Regulated Person not to engage in the operation.