



## **CONFLICT OF INTEREST**

### **General duty on a FSP (BN 58 OF 2010)**

A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interest of clients and the integrity of the financial services industry:-

“History shows that where ethics and economics come in conflict, victory is always with economics. Vested interest has never been known to have willingly divested itself unless there was sufficient force to compel it”– BR Ambedkar

### **Previous provisions General Code section 3(1) (b) and (c)**

The provider must disclose to the client the existence of any personal interest in the relevant services, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the client. Non-cash incentives offered and / or other indirect consideration payable by another provider, a product supplier or any other person the provider could be viewed as a potential conflict of interest

### **Defining Conflict of Interest**

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

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

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

including, but not limited to:-

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

## **1. The General Code of Conduct**

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

### ***How do you manage COI? Section 3(1) (b) stipulates that –***

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

“May not avoid, limit or circumvent or attempt to circumvent compliance through an associate or an arrangement involving an associate”

### ***How do you mitigate COI? Section 3(1) (c) stipulates that –***

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

- (i) disclose to a client any conflict of interest in respect of that client, including –
  - (aa) the measures taken, in accordance with the conflict of interest management policy of the provider referred to in subsection 3A(2), to avoid or mitigate the conflict;
  - (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;

- (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and
- (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed.

**Specific duties of provider:**

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

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

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

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

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

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

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

***Other –***

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

**2. Board Notice 58 of 2010**

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

The paper gives the following background to the matter:

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

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

### 3. Conflict of interest

A conflict of interest involves the conflicted person to perform his duties, sell his skills or act in any manner where he does so for own benefit (interest) and to the actual or potential detriment of his employer, client or any other person. Examples are competing with your employer or selling a specific product because there is a hidden benefit for the seller, such as a kickback or undisclosed commission.

A conflict of interest in the financial services scenario is a situation in which financial or other personal considerations have the potential to compromise advice given or influence professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional's judgment is likely to be compromised. A potential conflict of interest involves a situation that may develop into an actual conflict of interest. It is important to note that a conflict of interest exists whether or not decisions are affected by a personal interest.

The actual or potential existence of a conflict of interest may in itself not be an undesirable practice. It is imperative to properly disclose the nature and monetary value of such conflict to a client. Such disclosure can be made prior to rendering of financial services or in the record of advice, and should also be recorded in a register. Full disclosure allows a potential client to decide whether, in the client's view, a conflict situation may influence advice provided. The client will therefore be better equipped to assess whether the advice given may be flawed or influenced unduly. The General Code of the FAIS Act defines conflicts of interest as: Refer page 1

### 4. Disclosure

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

### 5. Conflict of interest policy

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

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

The provider should keep and maintain a register in which all actual or potential conflicts are recorded.

## **POLICY ON CONFLICT OF INTEREST**

**FSP name: Procon Insurance Brokers CC {CC = Close Corporation}**

**FSP number: 4176**

### 1. Introduction; Purpose of the policy

The General Code of Conduct for Financial Services Providers requires financial services providers and their representatives to disclose to their clients the existence of actual or potential conflicts of interest.

There needs to be a common understanding of what constitutes a conflict of interest, which direct and indirect benefits need to be disclosed to consumers and how to disclose these. All providers require efficient conflict management policies to ensure that there is no unfair treatment of consumers or rendering of inappropriate financial services by providers.

Disclosure of direct and indirect benefits need to be made in a consistent and transparent manner. Providers have to avoid vague and inadequate disclosures.

## **2. Our objectives (Procon Insurance Brokers CC)**

- The CC, from a governance perspective, wants to do business where no actual or potential conflicts of interest exists and furthermore, if there is any aspect relating to its business that could potentially give rise to a conflict of interest or where a client may perceive any aspect to be a conflict of interest, to disclose such conflict in a transparent manner and alert clients of such actual or potential conflicts of interest.
- The CC is committed to comply with the standards and prescriptions set by the Financial Services Board and has adopted this policy.
- The CC requires its employees (if any) to be aware of what constitutes such conflicts and, through this awareness, ensure that employees do not find themselves in situations where there may be clashes between own interest and that of the company or a client.
- The CC requires that its employees not compete with it in any manner.

## **3. Application of the definition of conflicts of interest**

In determining whether there is or may be a conflict of interest to which the policy applies, the CC considers whether there is a material risk of damage to the client, taking into account whether the provider, its representative, associate or employee –

- is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
- has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
- has a financial or other incentive to favor the interest of another client, group of clients or any other third party over the interests of the client;
- 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 legislated commission or reasonable fee for that service.

The policy defines possible conflicts of interest as, amongst others:

- conflicts of interest between the provider and the client;
- conflicts of interest between our clients if we are acting for different clients and the different interests conflict materially;
- conflicts of interest where associates, product suppliers, distribution channels or any other third party is involved in the rendering of a financial service to a client;
- holding confidential information on clients which, if we would disclose or use, would affect the advice or services provided to clients.

## **4. Management - Dealing with conflicts of interest – measures under BN 58 of 2010**

The following directive applies to fees and commissions payable:

- The provider and its representatives may receive commissions authorised in terms of applicable legislation only.
- The provider and its representatives may only receive fees authorised in terms of applicable legislation, or fees or remuneration for services rendered to a third party, if those fees are reasonably commensurate to the service being rendered.
- The provider may only charge fees for the rendering of a service in respect of which commission or fees are not received if such fees are specifically agreed to by a client in writing. Fees may be stopped at discretion of the client. The provider will determine the fees payable and no representative has the authority to determine fees payable or enter into a fee agreement without authorisation.
- The provider and its representatives may receive limited immaterial financial interests.

- The provider may only hold or obtain any financial interest for a consideration or fair value that is reasonably commensurate to the value of the financial interest that is paid by the provider or representative at time of receipt thereof.

The provider will not offer any financial interest to any representative for –

- giving preference to the quantity of business secured for the provider to the exclusion of quality service;
- giving preference to a specific product supplier where more than one supplier can be recommended to a client;
- giving preference to a specific product of a supplier where more than one product of that supplier can be recommended.

## 5. Control measures

The following measures were adopted to manage identified conflicts. These measures are necessary in dealing with any potential conflict of interest to ensure impartiality and avoid a material risk of harming any clients' interests.

- **Internal processes:**

This policy sets out the procedures to manage and curb potential conflicts of interest. Representatives, associates and employees receive guidance and training in these procedures and they are subject to monitoring and review processes. There are specific measures and consequences in place for non-compliance with the conflict of interest policy.

- **Confidentiality barriers:**

Representatives, associates and employees respect the confidentiality of client information. No such information may be disclosed to a third party without the written consent of a client.

- **Monitoring:**

The key individual in charge of supervision and monitoring of this policy will regularly provide feedback on all related matters. The policy will be reviewed annually.

- **Disclosure:**

Where there is no other way of managing a conflict, or where the measures in place do not sufficiently protect clients' interests, the conflict must be disclosed to allow clients to make an informed decision on whether to continue using our service in the situation concerned. The monetary value of non-cash inducements will be disclosed to clients in all cases.

- **Publication:**

The conflict of interest management policy is available for inspection at the office of the provider and published on the CC's website where it is referred to in the Procon (PC) page under the heading "Other matters of Importance" .It will be published in appropriate media if prescribed by the FSB.

- **Report:**

The conflict of interest policy is reported on in the annual report submitted to the FSB.

- **Identification of conflict of interest:**

Employees, representatives and associates (if any) will receive training and educational material in order to be able to identify potential and actual conflicts of interest.

- **Avoidance of conflict of interest:**

This is achieved by:

- ensuring that all employees, representatives and associates have an understanding and adopt the conflict of interest policy and control measures;
- conducting regular inspections on all commissions, remuneration, fees and financial interests proposed or received in order to avoid non-compliance;
- keeping a register of conflicts of interest.

## **6. Particular management measures**

The management of Procon Insurance Brokers CC herewith accepts the company's responsibilities conferred by the FAIS Act and Code as well as its general obligation to transact with clients, potential clients and the public in general in an open and transparent manner.

In order to protect the interests of clients the policy on conflicts of interest sets out to achieve:

- of circumstances which may give rise to actual or potential conflicts of interest entailing material risk of damage to client interests;
- to establish appropriate structures and systems to manage any such conflicts; and
- to maintain systems in an effort to prevent damage to the interests of our clients through identified conflicts of interest.

## **7. Receipt of gifts**

Any gift, where the value exceeds three hundred rand (R300), received in a consecutive 12 month period from an employee/ any external party/ FSP must be declared to their supervisor who will determine whether such gift constitutes conflict of interest.

The supervisor will decide whether the gift can be accepted or not. 2nd and subsequent gifts (from the same party/person/FSP) will also be declared and a decision will be taken whether the gift constitutes conflict of interest and if the gift can be accepted. All gifts will be noted on the register.

## **8. Consequences of non-compliance**

Any person that fails to adhere to the policy will be subject to disciplinary action. If found guilty on any conflict of interest an employee will be dismissed and if he or she is a representative, debarment procedures has to be instituted and the FSB informed thereof.

## **9. Responsible Person**

In order to ensure that Procon Insurance Brokers complies with the various Acts and Regulations that governs conflicts of interest and corruption and to protect the rights of whistle-blowers, the Close Corporation has appointed Mr. PCMP Höll as the responsible person.

The responsible person shall maintain all registers associated with this policy, ensure that employees adhere to the prescriptions and methodologies laid down in terms of this policy, update the policy when necessary and ensure proper communication thereof to all existing and new employees.

The policy shall be updated and new measures instituted as required by changes in law and determined by the CC's operations. Changes that affect the policy will be communicated by the Financial Services Board, regulatory authorities and the key individual to the Close Corporation.

## **10. Documentation**

The following registers and documentation dealing with conflict of interest situations have been instituted and must be used by personnel at all relevant times:

- Register of gifts given
- Register of gifts received
- Disclosure notice
- Commission disclosure (quotes, presentations and policy documents)
- Honesty and integrity undertaking
- Conflicts of interest register.

Thank You