AREA : Corporate Governance

SECTION : Governance

ITEM : Conflicts of Interest Management

OBJECTIVE

The purpose of this Conflicts of Interest Management Policy is to outline a suitable approach and response to the identification and management of conflicts of interest.

This policy complies with the procedures prescribed in the amendment to the General Code of Conduct for Financial Services Providers and Representatives, Board Notice 58 of 2010, which sets out provisions regarding the treatment of Conflicts of Interest.

The general principles of the regulations provide as follows:

1. Financial Services Providers (FSPs) must avoid, and where this is not possible, mitigate conflicts of interest.
2. All actual or potential conflicts of interest in respect of a client must be disclosed to the client in writing and must include: the disclosure of all ownership or financial interests (excluding immaterial financial interests) that the FSP or representative has or is eligible for, and the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest.

POLICY

Element places a high priority on its clients' interests. This policy deals with conflicts of interest between Element, or its employees, and its clients when providing a service to its clients. As conflicts of interest affecting clients could undermine the integrity and professionalism of our business, any instances must be identified as early as possible. If conflict situations cannot be avoided, they must be managed equitably and in the client's interest. Detecting potential or recognised conflicts of interest that could compromise the interest of its clients and managing and limiting the impact of conflicts of interest therefore constitute an integral part of Element's duties and obligations.

What do we mean by Conflict of Interest?

A conflict of interest is a situation where the interests of Element, in the exercise of its activities, and the interests of its clients, are directly or indirectly in competition, and which could significantly prejudice its clients' interests. This concerns Element in its capacity as financial services provider (FSP) and all individuals working for Element. A conflict of interest may occur in the provision of an investment service. A conflict of interest may be recognised (actually identified) or potential (conceivable).

What is a conflict of interest situation?

Conflict of interest situations that could prejudice a client may take a variety of forms, whether or not Element suffers any financial loss and independently of whether the actions or the motivations of the employees involved are intentional. At least five types of situations are defined to help determine whether a potential conflict of interest situation might occur:

- Element or an employee will realise a financial gain or avoid a potential loss at the client's expense
- The interest of Element or an employee may differ from the client's interest
- Element or an employee exercises the same professional activity as the client
- Element or an employee is persuaded to favour one client over another (whether for financial reasons or otherwise)
- Element or an employee will gain an advantage (financial or in kind) from a third party in the execution of the service conducted on behalf of a client.

Prevention, detection and management

Element has identified specific potential conflicts of interest in relation to its activities. These may be encountered by Element when they deliver their services to clients. For each situation, Element has analysed whether the risk is actual or potential for one or more of its clients. To handle potential or actual conflict of interest situations, Element may:

- Conduct the transaction while, given the conflict of interest generated by it, implementing procedures that enable appropriate management of the situation in order to avoid damaging the interests of the client in question;
- Avoid conducting the transaction that would potentially generate a conflict of interest;
- Inform the client that certain conflicts of interest cannot be properly handled and communicate the necessary information about the type and origin of the conflict of interest to the client, so that the client can make a fully informed decision regarding the proposed transaction.

Element has established a management policy for conflicts of interest enabling it to prevent potential conflicts of interest, manage actual conflicts of interest and communicating them effectively to clients. This policy is based on a system of prevention, detection, management, communication and recording conflicts of interest.

Training: Element informs its associates and makes them aware of the undertakings and restrictions concerning their actions with regard to the conflict of interest management policy in place. Awareness training is provided to staff.

Detection: Element has drawn up a list of recognised and potential conflicts of interest, by recording conflicts of interest and identifying the types of situations generating the conflicts and the associated risks.

Procedure if a conflict of interest arises: the Chief Investment Officer is responsible for the operation and condition of the conflicts of interest register. If a new potential or actual conflict of interest should arise, the CIO will send a memo to management so that the transaction that could potentially generate a conflict of interest may be accepted or declined, and managed in the client's interest. If a conflict of interest cannot be properly managed, the necessary information on the type and origin of the conflict of interest will be communicated to the client, to enable the client to make a fully informed decision. All the documents and supporting evidence will be archived by Element.

In general, all measures and procedures will be taken to ensure the required level of independence.

Management: Element manages potential and actual conflict of interest situations based on the following:

Ethical principles - Predominant among these rules are the principles of client sovereignty, equity, impartiality, respect for professional secrecy, market integrity and compliance with laws and regulations.

MANAGEMENT OF CONFLICTS OF INTEREST

A Conflict of interest encompasses a range of factors such as:

- Rules regarding personal transactions
- Professional ethics of employees
- Use of sensitive or privileged information, insider dealing, and professional secrecy
- Respect for clients' interests
- Respect for professional obligations in relation to the market and specific to Element

In order to manage conflicts of interests, Element has put in place the following internal controls:

- A control system to ensure monitoring of the conflicts of interest and corrective measures taken;
- Separation of functions to ensure independence of actions;
- Prohibition or control of multiple activities exercised by associates;
- Prohibition or control of remunerated advisory activities of associates with respect to companies whose securities are held in an undertaking;
- Information barriers where access to files, folders and documents is restricted.

This policy forms part of Element's Corporate Governance Policies which include, but are not limited to:

- Code of Conduct
- Personal account trading
- Gifts and Entertainment

CONFLICTS OF INTEREST MANAGEMENT POLICY FRAMEWORK

The following diagram sets out the policy framework for how Element and its employees deal with the management of conflicts of interest:

Identify Conflict of Interest

Escalate to Conflicts Officer in writing (e-mail accepted)

Log onto Conflicts Register (date and contents of conflict)

Assess conflict for materiality by senior management/compliance (financial interest)

Decision is made as to materiality

Proceed

Disclosure required

Log reason for acceptance in Conflicts Register

Monitor for compliance (on-going)

Avoid

Log reason for avoiding conflict
in Conflicts Register

If the conflict can be resolved immediately, take the necessary action and advise compliance. The on-going status of the conflict is to be recorded in the register. If the conflict requires further clarity and investigation by any other party, insert comments as appropriate in the appropriate register.

CONFLICTS OF INTEREST CONTROL MEASURES

DISCLOSURE OF AFFILIATIONS

In order to ensure proper corporate governance, and the accountability and transparency of the FSP, relevant persons are required to declare any private interests that might affect the carrying out of their duties. They are also required to take steps to resolve any conflicts that arise in a way that protects the public interest. To fulfill this requirement, any relevant interests must be declared on the Register of Interests. These are personal or business interests that might influence their judgement, deliberation or action as employees of the FSP, or which might be perceived by a reasonable member of the public as doing so.

DISCLOSURE OF INTERESTS AND CONTROL MEASURES

- The disclosure of interests must be completed by the FSP (as the entity), key individuals in the FSP and members of the management board.

In order to ensure proper governance, and the accountability and transparency of the FSP, relevant persons are required to declare any private interests that might affect the carrying out of their duties. The key persons will also be required to take steps to resolve any conflicts that arise in a way that protects the clients of the FSP. To fulfill these duties, any relevant interests must be declared on the Register of Interests.

- The defining purpose of this disclosure is to be able to provide information to clients about the relevant interests of the FSP and the key individuals. These are personal or business interests that might influence their judgement, deliberation or action, or which might be perceived by a 'client' as doing so.
- Relevant parties must consider whether they need to disclose personal involvement with persons or organisation which clients might reasonably think could influence their judgement.
- Any interest which comes to light should be declared prior to discussion at a Management Board meeting. It should take place irrespective of whether the interest has already been recorded in the register.
- Where there is uncertainty about whether a particular interest should be declared, advice should be sought from the compliance officer of the FSP.
- The interest disclosure should be intended as a record available to clients on request. All material conflicts of interest should however be disclosed to affected clients. An appropriate mechanism would be to disclose such conflicts in the initial disclosure documentation of the FSP, or other suitable means.
- It is each person's responsibility to inform the internal person responsible for conflicts of interest, including compliance, of any relevant changes as they occur and to register their interests in the register provided.
- The disclosure will be reviewed on an annual basis by Compli-Serve as the designated compliance officer.
- Where there is a complaint received about a failure of the FSP to disclose a relevant interest, the complaint should immediately be sent to compliance for evaluation and response.

DEFINITIONS

Conflict of interest: means 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.

Financial interest: "fi" any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than –

(a) an ownership interest;
(b) Training, that is not exclusively available to a selected group of providers or representatives, on -
  (i) products and legal matters relating to those products;
  (ii) general financial and industry information;
  (iii) specialized technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;

Ownership interest "OI" means –
(a) any equity or ownership interest, for which fair value was paid by the owner, other than equity or an ownership interest held as an approved nominee on behalf of another person;
(b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

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) a provider who is a sole proprietor; or
(b) a representative for that representative's direct benefit;
(c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives."

Third party means –
(a) a product supplier;
(b) another provider
(c) an associate of a product supplier or a provider;
(d) a distribution channel;
(e) any person who in terms of an agreement or arrangement with a person referred to in (a) to (d) above provides a financial interest to a provider or its representatives.

Reviewed by: **Terence Craig**
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