

# **CONFLICTS OF INTEREST POLICY**

**Issuer Regulation Division**

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## 1. Definitions

<b>Board Notice</b>	Board Notice 1 of 2015 – Conflicts of Interest dated 2 January 2015 as issued by the Registrar and published in the Government Gazette (No.38369)
<b>Conflicts Officer</b>	the employee appointed by the Director: Issuer Regulation responsible for the administration of this Conflicts Policy
<b>EXCO</b>	the executive committee of the JSE, as constituted from time to time
<b>FMA</b>	the Financial Markets Act, No. 19 of 2012, as amended
<b>FSCA</b>	the Financial Sector Conduct Authority
<b>Issuer Regulation</b>	the Issuer Regulation Division of the JSE responsible for setting the Listings Requirements and enforcement thereof
<b>Listings Requirements</b>	the listings requirements of the JSE, as prescribed by Section 11(1)(b) of the FMA
<b>Registrar</b>	the Registrar of Securities Services pursuant to the FMA
<b>Regulated Parties</b>	as prescribed by Section 11(5) the FMA, the listings requirements are binding on an issuer, their directors, officers, employees and agents
<b>SRO Oversight Committee</b>	the Group SRO Oversight Committee comprising independent non-executive directors, being a JSE Board sub-committee responsible for overseeing the regulatory oversight of the JSE pursuant to its mandate and the Board Notice

## 2. Scope

### 2.1 Introduction

Issuer Regulation is required to follow an established internal governance process to identify (i) potential, (ii) perceived or (iii) actual conflicts of interest between its regulatory functions and the commercial services of the JSE.

Section 62 of the FMA requires that market infrastructures take the necessary steps to avoid, eliminate, disclose and otherwise manage possible conflicts of interest that could arise between their regulatory functions and commercial services. The FMA further prescribes the steps that the market infrastructure must take, which includes the implementation of arrangements that comply with the requirements prescribed by the Registrar and that those arrangements must be documented and be publicly available.

The Registrar prescribed the governance arrangements with which market infrastructures must comply in the Board Notice, as follows:

- (a) establish an appropriate and effective internal governance process to identify potential, perceived or actual conflicts of interest between its regulatory functions and its commercial services;
- (b) record, adopt and implement, to the satisfaction of the Registrar, effective and appropriate policies and measures to address the situation where a potential, perceived or actual conflict of interest is identified, to avoid or manage and disclose the conflict, which measures must include –
  - (i) the separation of its commercial services from its regulatory functions;
  - (ii) procedures to prevent inappropriate access to information by employees responsible for either the commercial services or the regulatory functions;
  - (iii) clear guidelines for employees in respect of the security and confidentiality of confidential information;
- (c) appoint a committee comprised of suitably qualified persons to ensure that the market infrastructure complies with (a) and (b) above;

- (d) take the necessary and appropriate steps to ensure that the committee is able to independently fulfil its functions and that it does not have a conflicting duty to management or the controlling body of the market infrastructure;
- (e) set out the manner in which the market infrastructure will deal with breaches in respect of (a) and (b) and the sanctions and actions that will be taken by the market infrastructure in the event of such breaches.

## **2.2 Purpose**

The purpose of this Conflicts Policy is to document the measures the JSE applies in compliance with the requirements in 2.1(a), (b) and (e) above in order to:

- (a) avoid or manage and disclose occurrences of the conflicts of interest that have been identified by the JSE in relation to the JSE's issuer regulation function; and
- (b) consider and manage instances in which new conflicts of interest are identified.

## **2.3 Application**

This Conflicts Policy covers all employees of Issuer Regulation, as well as contractors, consultants and secondees.

## **3. The SRO Oversight Committee**

The JSE is a self-regulatory organisation and is required in terms of the FMA to perform certain regulatory functions in respect of the markets that it operates and the authorised members of those markets. The SRO Oversight Committee is a standing committee of the JSE Board and was established in order to assist in mitigating the possibility of any potential conflicts of interest between the JSE's regulatory functions and its commercial services. This committee has an independent role, providing oversight of all regulatory matters, policies and related activities of the JSE Group. The SRO Oversight Committee functions as the appointed committee as prescribed by the Registrar in the Board Notice, in 2.1(c) above.

## **4. Process to identify potential, perceived or actual conflicts of interest**

Issuer Regulation is required to appoint a Conflicts Officer, a senior employee, responsible for recording existing and newly identified conflicts of interests in accordance with this Conflicts Policy. The Conflicts Officer must (i) advise the Director: Issuer Regulation of any amendments and/or developments in the FMA and the Board Notice as it relates to conflicts of interests and (ii) act as the central point and liaison in respect of conflicts of interest between the regulatory function performed by Issuer Regulation and the commercial services of the JSE.

Conflicts of interests between the regulatory functions of Issuer Regulation and the commercial services of the JSE can be identified and reported on by any party including JSE staff, shareholders, stakeholders, investors and/or members of the public. Conflicts can be lodged *via* email directly to the Conflicts Officer at [IRConflicts@jse.co.za](mailto:IRConflicts@jse.co.za).

New conflicts of interests identified in terms of the Conflicts Policy must be reported by the Director: Issuer Regulation to the SRO Committee.

## **5. Potential conflicts of interest identified by the JSE**

The JSE has identified the instances in which conflicts of interest could potentially arise between the regulatory functions performed by Issuer Regulation and the commercial services of the JSE as follows –

### **5.1 Inadequate resourcing of the Issuer Regulation function**

Failure on the part of the JSE to invest in appropriate technology or apply sufficient resources – funding or people - to support the Issuer Regulation function, with the intention of containing the overall costs of operating the JSE in order that the profits of the JSE may be maximised.

### **5.2 Inappropriate influence when amending the Listings Requirements and/or setting listing standards**

Inappropriate influence when amending the Listings Requirements and/or setting listing standards, exerted by those responsible for commercial services of the JSE, aimed at enhancing the business of the JSE but not achieving the appropriate level of market integrity and investor protection; and/or

### **5.3 Failure to apply the Listings Requirements**

Failure to apply existing Listings Requirements because of undue influence exerted by those responsible for commercial services of the JSE, aimed at enhancing the business of the JSE but not achieving an appropriate level of market integrity and investor protection.

### **5.4 Failure to exercise enforcement powers consistently and responsibly**

Failure to exercise enforcement powers consistently and responsibly, which could include:

- 5.4.1 Failure to enforce the Listings Requirements because of undue influence exerted by those responsible for commercial services of the JSE, aimed at enhancing the business of the JSE but not achieving an appropriate level of market integrity and investor protection; and/or
- 5.4.2 Failure to enforce the Listings Requirements against the directors, officers and employees of the JSE, where appointed to other issuers, to avoid an adverse impact on the commercial services and/or reputation of the JSE, which as a result could negatively impact the business of the JSE; and/or

### **5.5 Inappropriate use of fines**

The appropriation of fines, issued by Issuer Regulation against Regulated Parties, for the benefit of the commercial services of the JSE.

### **5.6 Failure to secure confidential information**

Failure to implement sufficient security measures by Issuer Regulation in respect of confidential information, which could enable the use of this information by JSE staff outside of Issuer Regulation in a manner that would be to the benefit of the commercial services of the JSE.

## **6. Management of conflicts of interest**

The management of conflicts of interest takes place in accordance with the policy statements expressed below and the associated processes of Issuer Regulation.

New conflicts of interest that are identified by way of the reporting mechanisms of Issuer Regulation and those identified as relevant, will be added to the list of conflicts of interest in section 5 above.

## **6.1 Resourcing of Issuer Regulation**

On a bi-annual basis the Director: Issuer Regulation provides, to the satisfaction of the SRO Oversight Committee, the necessary assurance that Issuer Regulation was adequately funded during the period under review and that the JSE made all necessary technology and staff resources available to Issuer Regulation to support the effective performance of its regulatory functions.

## **6.2 Amending the Listings Requirements and/or setting listing standards**

All amendments to the Listings Requirements are adopted in accordance with the Issuer Regulation Process on Amendments to the Listings Requirements.<sup>1</sup> This process deals with the various levels of engagement and public consultation processes required to ensure that proposed amendments to the Listings Requirements are transparent and process driven, subject to FSCA approval.

Any conflicts as regards inappropriate influence from the Board, EXCO and/or the CEO on proposed amendments to the Listings Requirements are reported to the SRO Oversight Committee, after which Issuer Regulation will make final the determination. The powers and decision-making process of Issuer Regulation excludes any involvement from the Board, EXCO and/or the CEO.

## **6.3 Application of the Listings Requirements**

The Board of the JSE has delegated its authority in relation to the Listings Requirements, excluding the removal of listings initiated at the instance of the JSE (which authority has been delegated to EXCO), to the Director of Issuer Regulation.

The management of Issuer Regulation, along with its staff, are responsible for the day-to-day operations of the regulatory functions, without any inappropriate influence from the Board, EXCO and/or the CEO. The powers and decision-making process of Issuer Regulation excludes any involvement of the Board, EXCO and/or the CEO.

## **6.4 Enforcement powers**

The Board of the JSE has delegated its authority in relation to the Listings Requirements, excluding the removal of listings initiated at the instance of the JSE (which authority has been delegated to EXCO), to the Director of Issuer Regulation.

The management of Issuer Regulation, along with its staff, are responsible for the day-to-day operations of the regulatory functions, without any influence from the Board, EXCO and/or the CEO. The powers and decision-making process of Issuer Regulation excludes any involvement of the Board, EXCO and/or the CEO.

## **6.5 Use of fines**

The whole or any part of the fines issued by Issuer Regulation are appropriated as follows:

- (a) External costs incurred by the JSE at its specific instance and request, in enforcing the provisions of the Listings Requirements, including but not limited to, attorney fees, senior counsel fees, forensic investigation fees and any fees that relate (direct or indirectly) to any investigative services or in support of any investigation initiated by the JSE;
- (b) External costs incurred by the JSE to create an observance and awareness as to the interpretation and application of the Listings Requirements in furtherance of the general principles of the Listings

<sup>1</sup> <https://www.jse.co.za/regulation/companies-issuer-regulation>

Requirements and the objects of the FMA; and

- (c) Project costs initiated by the JSE, which are directly associated with the Listings Requirements and falls within the sphere of research and/or analysis in financial markets regulation.

The Director of Issuer Regulation may withdraw and allocate funds from the Issuer Regulation fines reserve<sup>2</sup>, provided that the funds withdrawn from the Issuer Regulation fines reserve will be appropriated pursuant to the provision of the Listings Requirements and approval is obtained from the SRO Oversight Committee.

## **6.6 Confidential information**

All Issuer Regulation staff, as well as JSE staff that provide support services to Issuer Regulation, are required to attend mandatory training on conflicts of interest regarding the regulatory function performed by Issuer Regulation and the commercial services of the JSE.

The staff members of Issuer Regulation are bound by the confidentiality provisions as expressed in their JSE contracts of employment.

Issuer Regulation has implemented the necessary controls to safeguard the confidential information that it holds, which includes both physical access controls to Issuer Regulation, as well as controls over access to the information stored in the systems used by Issuer Regulation.

Issuer Regulation applies a clean desk approach in the JSE building, whereby no physical documents relating to Regulated Parties are freely accessible on desks, drawers and cabinets. On the basis that the JSE applies a flexible way of work, the same protocols are applied offsite.

## **7. Breaches of the Conflicts Policy**

Non-compliance with the contents of this policy may lead to disciplinary action in accordance with the disciplinary policies and procedures of the JSE.

## **8. Review**

The Conflicts Policy will be reviewed annually.

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<sup>2</sup> The Issuer Regulation fines reserve receives all fines issued by the JSE in terms of the Listings Requirements. The funds are not available for distribution to shareholders and can only be used as prescribed in terms of the Listings Requirements.