

# CONFLICTS OF INTEREST POLICY

Market Regulation Division

10 January 2023



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## 1. Scope

### 1.1 Introduction

The Financial Markets Act, 2012 (Act No. 19 of 2012) (“the FMA”) in section 62 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 states that the steps that the market infrastructure is to take in this regard must include 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 Board Notice 1 of 2015 published in *Government Gazette* 38369 of 2 January 2015, as follows:

- (a) establish a process to identify potential, perceived or actual conflicts of interest;
- (b) record, adopt and implement effective and appropriate policies and measures to address potential, perceived or actual conflicts of interest that have been identified, in order 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);
- (d) take the steps necessary 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.

### 1.2 Purpose

The purpose of this policy is to document the measures implemented by the JSE in compliance with the requirements in 1.1(b) 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 market regulation function; and
- (b) consider and manage instances in which new conflicts of interest are identified.

### 1.3 Application

This policy applies to all employees of the Market Regulation Division of the JSE, as well as contractors, consultants and secondees.

## 2. 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 Self-Regulatory Oversight Committee (“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 also functions as the appointed committee pursuant to the governance requirements prescribed by the registrar in Board Notice 1 of 2015, as mentioned in 1.1(c) above.

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

The JSE has identified the instances in which conflicts of interest could potentially arise between its commercial activities and market regulation functions as follows –

- 3.1 Inadequate resourcing of the market regulation function in managing the JSE's costs.
- 3.2 Inappropriate approval and implementation of JSE rules, which could include:
  - 3.2.1 failing to implement rules that are necessary for the effective regulation of the market but which could adversely affect the members' use of the JSE's commercial services;
  - 3.2.2 implementing rules that may enhance the commercial objectives of the JSE but do not achieve an appropriate level of market integrity and investor protection; or
  - 3.2.3 implementing rules that unfairly promote the interests of the JSE above those of its members.
- 3.3 An inappropriate approach to the approval of membership or the provision of additional regulated services, which could result in an application for membership or the provision of additional regulated services being approved, resulting in the JSE providing commercial services (or additional commercial services) to the applicant despite a failure by the applicant to meet all of the applicable regulatory requirements.
- 3.4 Failure to exercise enforcement powers responsibly, which could include:
  - 3.4.1 failing to initiate enforcement action against or to appropriately sanction a member of the JSE for misconduct if such enforcement action or sanction could adversely affect the member's ongoing use of the JSE's commercial services ; or
  - 3.4.2 initiating enforcement action against a member firm or one of its employees with the intention that the penalty imposed will be applied for the commercial benefit of the JSE.
- 3.5 Inappropriate conduct of market regulation staff in managing potential conflicts of interest in the performance of their regulatory duties.
- 3.6 Failure to secure confidential regulatory information resulting in such information being accessed by non-regulatory JSE staff.

### **4. 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 as implemented by the Market Regulation Division.

New conflicts of interest that are identified by way of the reporting mechanisms of the Market Regulation Division and are assessed as relevant, will be added to the list of conflicts of interest in section 3 above.

#### **4.1 Resourcing of the Market Regulation Division**

On an annual basis the Director: Market Regulation provides, to the satisfaction of the SRO Oversight Committee, the necessary assurance that the Market Regulation Division was adequately funded during the period and that the JSE made all necessary technology and staff resources available to the Market Regulation Division to support the effective performance of the market regulation function.

#### **4.2 Approval of the JSE rules and directives**

All new rules and directives and amendments to the prevailing rules and directives of the JSE are adopted from a JSE perspective by a Rules Committee, which is a committee established in terms of the JSE rules and appointed by the SRO Oversight Committee. The Rules Committee comprises the Director: Market Regulation and the JSE Legal Counsel.

#### **4.3 Approval of applications for membership and the provision of regulated services**

All applications for membership and the provision of additional regulated services are reviewed and processed by the Market Regulation Division prior to submission to the Membership Committee for its determination. The Membership Committee is established in terms of the JSE rules and appointed by the SRO Oversight Committee, and comprises the Director: Market Regulation and the JSE Legal Counsel.

Applications for voluntary termination of membership and matters that have been assessed by the Market Regulation Division as warranting the involuntary termination of membership, in terms of the criteria set out in the JSE rules, are presented to the Membership Committee for its determination.

#### **4.4 Enforcement action**

All disciplinary charges preferred by the Market Regulation Division are heard by an independent enforcement body called the Disciplinary Committee, which is a committee established in terms of the JSE rules and appointed from time to time by the Director: Market Regulation.

Recovery of costs through enforcement action will be for the benefit of the JSE. An enforcement penalty will first be applied to cover any external costs incurred by the JSE in taking enforcement action against the respondent that have not been recovered through a costs order granted by the Disciplinary Committee. The balance of an enforcement penalty will be paid to a JSE investor protection fund.

#### **4.5 Conduct of the staff of the Market Regulation Division**

All Market Regulation Division staff are subject to a code of conduct, which incorporates the required standards of conduct in avoiding or managing conflicts of interest, including those relating to the reporting of any perceived or actual conflicts of interest, market abuse or member misconduct that they may identify.

The code of conduct also specifies the type of gifts, entertainment and hospitality that may not be accepted by the staff of the Market Regulation Division and sets out the limited circumstances in which entertainment or hospitality may be accepted, subject to certain disclosure and record keeping requirements.

#### **4.6 Confidential information**

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

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