

**PROCEDURE ON
CONFLICTS OF
INTEREST &
INDUCEMENTS**

NIBC

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1. INTRODUCTION

1.1. Purposes and principles

With the designing of the Markets in Financial Instruments Directive ¹(MiFID), and thus establishing a single financial market within the European Union, two major objectives played an important role, namely:

- the protection of investors and market integrity by laying down harmonised regulations that govern the activities of licensed intermediaries; and
- the promotion of honest, transparent, efficient and integrated financial markets.

These objectives can be achieved via (more) comprehensive rules regarding:

- the conduct for investment firms to protect the client; and
- the negotiation and execution of transactions in financial instruments on various trading platforms and/or by investment firms.

In order to adhere to these principles, NIBC Bank N.V. (NIBC) introduces this procedure. By indicating when (possible) conflicts of interests can arise as well as how NIBC handles inducements, transparency and the interests of clients protected.

1.2. Effective date

This amended Procedure comes into effect on 20 April 2011. It replaces the Procedure as issued on June 1, 2009. NIBC reserves the right to amend this Procedure from time to time if circumstances (e.g. changes to legislation and regulations) make this necessary. NIBC will follow the appropriate procedures for this and will notify its staff members immediately.

2. CONFLICTS OF INTEREST

2.1. General rules

According to the DFSA, NIBC has to take all reasonable steps in order:

- to identify conflicts of interest between itself and its clients or between one client and another, and;
- to have an effective administrative organisation and internal controls (AO/IC) in place designed to mitigate the risks arising from these conflicts.

¹ The MiFID has been incorporated in the Financial Supervision Act ("DFSA") as from November 1st 2007.

2.2. Types of conflicts

In general there are four types of (possible) conflicts of interest:

- when NIBC is engaged or wishes to engage in a number of different activities for the same client or project;
- when different entities within NIBC are engaged or wish to engage in the same activity for the same client or project;
- when NIBC has own interests with regard to activities rendered to a client; and
- when NIBC renders the same activities to different clients.

Please note that the abovementioned conflicts do not only concern NIBC and its staff members but also other parties or persons involved amongst which affiliated parties (e.g. stakeholders).

2.3. Identification of conflicts

Identifying the conflicts upfront, is the first stage in safeguarding of the position of the client. Possible clashes of interest between the different activities and/or interests must be identified before rendering a service to a client. If you become aware of any conflicts of interest in the relationship between NIBC and our clients, or among clients themselves, you must contact your line manager or Group Compliance immediately.

It is the responsibility of line management to maintain an overview of the possible conflicts of interest within their area of attention.

2.4. Control framework

The second stage in mitigating conflicts of interest is the set up of an internal control framework. This framework consists of several Compliance Procedures via which the position of the client is safeguarded. These Procedures are:

- **Procedure Engagement & Compliance Committee**
All possible conflicts of interest will be reported to the Engagement & Compliance Committee which decides on how to treat the conflict (please refer to the Procedure Engagement & Compliance Committee). This Committee decides on a case by case basis on possible conflicts of interest. This has resulted in a more in depth analysis of subcategories of the aforementioned four basic types of conflicts.
- **Procedure on Chinese Walls**
By structuring so called Chinese Walls between the various (Strategic) Business Units (BU), the interests of the client are protected. Sensitive information is only shared between those who need to know that information in order to do their proper work. As soon as a staff member becomes conflicted due to his work, he/she needs to refrain from performing activities to that client.
- **Procedure on Additional Functions**
Staff members need to notify in My Compliance Overview the additional function, which they want to accept/ practice. Possible conflicts that might arise when accepting or practicing an additional function will be assessed by the Engagement & Compliance Committee prior to the acceptance thereof.

- **Procedure Gifts & Entertainments**

Gifts and entertainments offered by NIBC's clients may influence the behaviour of staff members in a way that conflicts with the interest of NIBC or the (other) clients. Therefore staff members need to notify in My Compliance Overview the Gifts and Entertainments they receive in relation to their performed activities. Possible conflicts that might arise when accepting Gifts and Entertainments can be assessed prior to the acceptance thereof.

- **Procedure on Private Investment Transactions**

Staff members are not allowed to use information obtained in their work for their personal benefit. Furthermore, staff members are only allowed to invest in NIBC products and NIBC related products after specific approval by the Engagement & Compliance Committee and under privileged conditions.

2.5. Informing clients

Stage three in mitigating conflicts of interest is to be transparent towards the clients with regard to the identified conflicts that might arise, or are about to arise when conducting business. Possible measurements will be implemented in order to act in the best interest of the client. Ultimately it may be decided by the Engagement & Compliance Committee not to render a new service towards the client.

The account manager involved is responsible for informing the client. The client should be informed pro actively, in writing and in a timely manner. The written message has to include the relevant details of the (possible) conflict of interest in order for the client to evaluate the consequences. The following elements are mandatory:

- the nature of the (potential) conflict;
- the parties involved (on an anonymous basis were required) and their role regarding the (potential) conflict;
- NIBC's involvement/role regarding the (potential) conflict; and
- the measures of control that are in place.

3. INDUCEMENTS

3.1. General rules

The DFSA requires NIBC, when providing investment services and/or where appropriate ancillary services, to act honestly fairly and professionally in accordance with the best interests of its clients. In this respect the DFSA sets standards for² the payment and receipt by investment firms of fees, commissions and non-monetary benefits – commonly referred to as 'inducements'.

This is because such benefits, in some circumstances, could place a financial institution in a situation where it would not be in compliance with the general duty to act in accordance with the best interests of clients. This could for example be the case when a financial institution holds itself out as getting the best deal for its client, and the inducement influences its placement of business in a way that is contrary to its clients' interests or a financial institution is involved in settlement of claims and also receives a profit commission that influences how

² See Art. 4:90 (1) and (2) of the DFSA and Art. 168a of the Decree on market conduct financial companies (*Besluit gedragstoezicht financiële ondernemingen*)

it settles claims on behalf of its clients in a way that is contrary to its clients' interests. Please note that the DFSA standards for inducement are also applicable to payments between different entities within the group of NIBC.

In principle, no inducements are to be received or paid, to or by third parties, that are not necessary to render the investment service or that enables the rendering of that investment service unless the client has been informed thoroughly, accurately and in an understandable manner on the amount and nature of the inducement before the investment service is provided. All documents and other communication directed at the client should at all times be in line with these standards.

The provisions on inducements are not applicable to:

- payments within NIBC, such as internal bonus programmes; and
- small gifts and minor hospitality to individual staff members below a level specified in the Procedure on Gifts & Entertainments.

The following rules of conduct must be adhered to when providing and/or receiving fees, commissions or non-monetary benefits in relation to investment services and/or ancillary services. Staff members involved with these services should carefully consider the requirements mentioned below prior to providing or receiving such payments.

3.2. Payments provided to or by the client

NIBC is allowed to pay or receive fees, commissions or non-monetary benefits in relation to an investment or ancillary service provided to a client if and when the payment refers to a fee, commission or non-monetary benefit directly paid to or by the client or a person on behalf of the client.

3.3. Payments provided to or by NIBC

Furthermore NIBC is allowed to pay or receive fees under the following conditions:

- if and when the payment enables or is necessary for the provision of the service; and
- the payment cannot give rise to conflicts with NIBC's duty to act honestly, fairly and professionally in accordance with the best interest of the client.

Examples of these so-called 'proper fees' are custody costs, settlement and exchange fees, regulatory levies or legal fees.

3.4. Third party receipts and payments

Third party payments are only allowed under the following conditions:

- it must be designed to enhance the quality of the relevant service to the client and it must not impair compliance with NIBC's duty; and
- there must be a clear and extensive prior disclosure to the client.

The following factors can be used as guidelines in determining whether the first condition is being met:

- the type of service and the (agreed) duty of NIBC;
- the expected benefit to the client in comparison to the expected benefit to NIBC;
- does the payment or receipt result in an incentive for NIBC to act other than in the best interest of the client and is it likely that NIBC's behaviour will be influenced;

- the relationship between NIBC and the entity which is receiving or providing the benefit; and
- the nature of the benefit, the circumstances in which it is paid or provided and whether any conditions are attached to it.

The second condition, being the disclosure requirement, appears to be primarily concerned with circumstances in which a client will bear the cost of a payment or receipt of a monetary or non-monetary benefit to or by NIBC, which also results in some benefit to NIBC or other (groups of) clients. The reason lies in the fact that the interests of NIBC and its client are not necessarily the same or aligned or those payments or receipts may also benefit other (groups of) clients that receive similar services.

The following conditions should be met with regard to disclosure:

- disclosure should be provided to the client at the time the arrangement is proposed;
- the notification should contain information about the existence, nature and amount of the fee, commission or benefit, and to the service or product to which it relates or, where the amount cannot be ascertained, the method of calculating that amount to such an extent that the client can make an informed decision on whether to proceed with the investment or service.

The account manager involved is responsible for informing the client. The client should be informed in writing.