

## CONFLICT OF INTEREST

### 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.

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

“A provider (Deton Private Wealth) 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;”

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

“A provider (Deton PW) 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 (Deton PW) 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.

***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 (Deton PW) 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 (Deton PW) 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 (Deton PW), 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 (Deton PW) 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' behaviour 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 actual, apparent or potential abuse of the trust that people have in professionals. The simplest working definition states: A conflict of interest is a situation in which financial or other personal considerations have the potential to compromise or bias 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. A conflict of interest implies only the potential for bias, not the likelihood.

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.”

#### **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.

Below is an example of how you can structure a policy document and register. Keep in mind that no specific format is required and that you can adapt and amend the example to suit your own circumstances.

### **POLICY ON CONFLICT OF INTEREST**

**FSP name: *Deton Private Wealth (PTY)LTD***

#### **1. Introduction**

In terms of the Financial Advisory and Intermediary Services Act, 2002, *Deton Private Wealth* is required to maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to identify, monitor and manage conflict of interest. *Deton Private Wealth* has put in place a policy to safeguard its clients’

interests and ensure fair treatment of clients. The key information is summarised below. Detailed information can be obtained on request from the provider, compliance officer or key individual who is responsible to monitor and manage conflict of interest on behalf of *Deton Private Wealth*.

## 2. Our objectives

*Deton Private Wealth* is an authorized financial services provider, providing to its clients advice and intermediary services on long-term insurance, investments, short-term insurance and healthcare products. Like any financial services provider, *Deton Private Wealth* is potentially exposed to conflicts of interest in relation to various activities. However, the protection of our clients' interests is our primary concern and so our policy sets out how:

- we will identify circumstances which may give rise to actual or potential conflicts of interest entailing a material risk of damage to our clients' interests;
- we have established appropriate structures and systems to manage those conflicts; and
- we will maintain systems in an effort to prevent damage to our clients' interests through identified conflict of interest.

## 3. Conflict of interest

*Deton Private Wealth* strives towards ensuring it is able to appropriately and effectively identify and manage potential conflicts. It may manage potential conflicts through avoidance, establishing confidentiality barriers and by providing appropriate disclosure of the conflict to affected clients.

In determining whether there is or may be a conflict of interest to which the policy applies, *Deton Private Wealth* considers whether there is a material risk of damage to the client, taking into account whether *Deton Private Wealth* or a *Deton Private Wealth* 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 favour 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.

Our policy defines possible conflicts of interest as, *inter alia*:

- conflicts of interest between *Deton Private Wealth* 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

Specific monetary measures we focus on:

- we may only receive commissions authorized in terms of applicable legislation; or
- fees authorized 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; or
- fees for the rendering of a service in respect of which commission or fees above is not paid, if those fees are specifically agreed to by a client in writing and may be stopped at discretion of the client; or
- a limited immaterial financial interest as defined; or
- a 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.

We 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.

The measures *Deton Private Wealth* have adopted to manage identified conflicts are further summarized below. We consider them appropriate to our efforts to take reasonable care that, in relation to each identified potential conflict of interest, we act impartially to avoid a material risk of harming clients' interests.

- Procedures:

We have adopted appropriate procedures throughout our business to manage potential conflict of interest. Our representatives, associates and employees receive guidance and ongoing 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 our conflict of interest policy.

- Confidentiality barriers:

Our representatives, associates and employees respect the confidentiality of client information and disclose or use it with circumspect. No such information may be disclosed to a third party without the written consent of a client.

- Monitoring:

The key individual or compliance officer 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. In all cases, where appropriate and where determinable, the monetary value of non-cash inducements will be disclosed to clients.

- Publication:

We will publish our conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.

- Report:

The provider, compliance officer or key individual will include a report on the conflict of interest management policy in the annual compliance report submitted to the Registrar.

- Declining to act:

We may decline to act for a client in cases where we believe the conflict of interest cannot be managed in any other way.

## **5. Particular management measures**

- Identification of conflict of interest:

- create awareness and knowledge of applicable stipulations of the General Code of Conduct and relevant legislation relating to conflict of interest, through training and educational material;

- Avoidance of conflict of interest:

- ensure understanding and adoption of conflict of interest policy and management measures by all employees, representatives and associates;

- do regular inspections on all commissions, remuneration, fees and financial interests proposed or received in order to avoid non-compliance;

- keep a register of conflict of interest.