



FICC MARKETS
STANDARDS BOARD

Conflicts of Interest

Statement of Good Practice

Transparency Draft

June 2019

I. Introduction

1. The FICC Markets Standards Board

The FICC Markets Standards Board (“FMSB”) was established in 2015 in response to the Fair and Effective Markets Review in the UK with a mandate to issue Standards designed to improve conduct and raise standards in the wholesale Fixed Income, Currencies and Commodities (“FICC”) markets. The FMSB will work to build up a body of Standards (“Standards”) and Statements of Good Practice (“SGPs”) over time, prioritising those areas where FMSB member firms (“Member Firms”) consider there is a lack of clarity in the standards of behaviour expected of market participants, or a lack of understanding of the issues relevant to a product or transaction type, or evidence of poor conduct.

2. Applicability of FMSB Statements of Good Practice

FMSB SGPs are issued by the FMSB from time to time. SGPs do not form part of the FMSB Standards and they are not subject to FMSB’s adherence framework. Rather, they reflect FMSB’s view of what constitutes good or best practice in the areas covered by the SGPs in question. Member Firms are expected, and other firms are invited, to consider their own practices in light of the relevant SGP, and make any changes to such practices that they deem to be appropriate. Failing to do so will not, however, create any presumption or implication that a firm has failed to meet its regulatory or other obligations.

Full details of the Member Firms are available at <https://fmsb.com>: [FMSB](#). SGPs will be shared with non-member firms and their affiliates, who are encouraged to consider them. Information on SGPs will be made available to users of the wholesale FICC markets (e.g. corporates and end investors) so that they may be made aware of their existence and the FMSB’s expectation of market conduct.

The FMSB will, as part of its normal course of business, periodically review the applicability of its published SGPs to ensure they are relevant and up to date for market conditions.

3. Relationship with law and regulation

FMSB Standards and SGPs do not impose legal or regulatory obligations on Member Firms, nor do they take the place of regulation. In the event of any inconsistency, applicable law, rules and regulation will prevail. In developing Standards and SGPs, certain relevant regulators will in many cases have commented on their drafting, alongside Member Firms and other bodies, such that the Standards and SGPs, once finalised and published, are intended to represent an authoritative statement of global good practices and processes.

4. Relationship with other industry codes (“Codes”)

Other Codes already exist in relation to certain FICC markets, such as the FX Global Code, whilst others are in the process of being produced. There will be some overlap between the work of the FMSB and such other bodies and the FMSB will seek to ensure it adopts a

consistent approach in cases of overlap wherever possible, and will seek to avoid issuing a Standard or SGP where the subject matter is already covered adequately by existing regulation or a Code issued by another body. It may draw attention to Member Firms of an existing code and request that Member Firms act in a manner consistent with it, once appropriate steps have been taken to confirm its applicability.

II. Conflicts of Interest

1. Background

Following the global financial crisis and subsequent high-profile enforcement cases in relation to market misconduct, including those involving FICC markets (such as the LIBOR and WMR Fix scandals), there has been increased focus on conflicts of interest that can arise in the financial markets. A conflict of interest can be potentially detrimental not only to the firms involved but also to the financial markets more generally and, of course, to clients.

The FMSB's Behavioural Cluster Analysis study ([BCA study](#)) published in July 2018 identified 25 types of behaviour relating to market misconduct that occurred repeatedly across the market enforcement cases reviewed. In many instances, market misconduct may indicate the existence of an undetected or unmanaged conflict of interest.

As a result, many of the Core Principles and Good Practice Statements contained in the Standards and Statements of Good Practice of the FMSB aim to prevent or manage and mitigate conflicts of interest that have been associated with FICC markets. Examples include conflicts of interest that can occur in connection with reference price transactions (see the Reference Price Transactions Standard) and commodity binary options (see the Binary Options Standard for the Commodities Markets).

The ability of FICC market participants, and particularly buy and sell side firms operating in FICC markets (hereafter "Firms"), to: i) identify situations in which conflicts of interest may arise; and then ii) prevent or appropriately manage and mitigate those conflicts of interest, is one way in which instances of market misconduct can be minimised and, thereby, help to promote fair and effective FICC markets.

The primary aim of this Statement of Good Practice is to provide guidance for Firms as they consider ways in which to help to provide that conflicts of interest that arise both specifically in connection with their FICC markets business, and more generally across the Firm, can be identified, and then prevented, or appropriately managed and mitigated.

2. Scope and application

While relevant to all FICC market participants, the guidance contained in this SGP is primarily designed for Firms and their employees operating in Europe.

Its scope is limited to guidance on core regulatory obligations that apply when conflicts of interest arise for Firms, with a particular focus on those conflicts of interest that can occur on the "public side" of a Firm - which is involved in the sales and trading of publicly listed and/or over-the-counter securities or financial instruments - and particularly in connection with those conflicts of interest that may arise when participating in FICC markets.

3. Definition and types of conflicts of interest

For the purposes of this SGP, a *conflict of interest* may arise in a Firm when there is a divergence of interests, duties or responsibilities between two or more parties and, as a result, serving the interests of one party may cause detriment to another.

The different types of conflicts of interest that can arise for Firms can be divided into 3 broad categories. Each category includes multiple situations and scenarios in which potential conflicts of interest may arise, depending on the facts:

- **Client¹ vs Client**: when potentially conflicting interests between different Clients or different types of Clients may arise.

Examples include:

- Different Clients placing competing orders to deal in the same instrument;
- Firms operating multiple business areas where the interests of Clients in one business area may adversely impact interests of Clients in another business area (n.b. this could also be an example of Firm vs Client below).
- A public side business area operating in a principal capacity holding an equity investment in a company, where a private side business area is seeking to advise a potential buyer of this company.

- **Firm vs Client**: when potentially conflicting interests between Client interests and the interests of a particular business of the Firm may arise.

Examples include:

- A public side business area holding a risk position in connection with its market making activities while a private side business area within the Firm is advising investors with respect to an inverse economic position.

- **Employee vs Firm/ Employee vs Client**: when (i) outside business activities or interests, such as directorships and investments (including those of family members) and/or (ii) personal relationships and/or responsibilities (including both those in the course of employment with the Firm as well as personal relationships outside the Firm), of an employee that could impair his or her judgment or may be perceived as interfering with their responsibilities to act on behalf of the Firm and/or a Client (hereafter, conflicts of interest described in (i) and (ii) are referred to as “personal conflicts”).

Examples include:

- Giving or receiving gifts or entertainment to or from persons or entities with whom the Firm conducts or intends to conduct business where the value or frequency may potentially impact the individual’s behaviour or be perceived as improper.

¹ For the purpose of this SGP, a reference to “Client” does not necessarily include all counterparties in FICC markets of a Firm: each transactional relationship should be determined on its facts.

III. Good Practice Statements and Commentary

1. Identification of conflicts of interest²

Good Practice Statement 1: Firms should take appropriate measures to identify conflicts of interest between the Firm and a Client, between Clients, or between the Firm's employees and the Firm and/or a Client.

Examples of ways in which Firms can help to ensure that conflicts of interest are identified include:

- (i) Having policies, procedures and controls in connection with conflicts of interest in place that are applicable to each business area and which include, among other things, examples of scenarios relevant to each business area, including the FICC markets business, in which conflicts of interest could arise;
- (ii) Having policies, procedures and/or employee codes of conduct in place that are applicable to certain employee activities, interests or relationships which could give rise to personal conflicts (defined in Section II above). These could require, for example:
 - a. Employees of the Firm to disclose to such Firm certain (I) outside business activities or interests, including directorships and investments (including those of family members), and/or (II) personal relationships and/or responsibilities inside and/or outside the Firm, which could give rise to a conflict of interest, and provide timely updates of any material changes to such disclosures;
 - b. Timely documentation and appropriate review of employee disclosures by the Firm to identify personal conflicts and determine any further action that may be required, in accordance with the relevant policies and procedures of the Firm; or
 - c. Periodic employee attestation of compliance with relevant policies, procedures and/or codes of conduct;
- (iii) Undertaking and documenting a periodic review of each business area in the Firm, including the FICC markets business, for the purpose of identifying scenarios or situations which could or have arisen that create conflicts of interest in connection with the operation of each business area (see also Good Practice Statement 5 - Record keeping of conflicts of interest).

² Any reference to "conflicts of interest" contained in the Good Practice Statements and commentary in this Statement of Good Practice shall refer to: i) perceived, potential and/or actual conflicts of interest; and ii) all types of conflicts of interest as defined in Section II (i.e. Client vs Client, Firm vs Client, and Employee vs Firm/Client); and any reference to "personal conflicts" shall refer to perceived, potential and/or actual conflicts of interests referred to in Section II - Employee vs Firm/Client.

The periodic review could involve documenting:

- a. **the types** of conflicts of interest in each business area that have been identified;
 - b. **measures to prevent or appropriately manage** such conflicts (see Good Practice Statement 2 - Measures to prevent or manage and mitigate conflicts of interest); and
 - c. **escalation measures** that may be applicable to such conflicts (see Good Practice Statement 3 - Internal escalation of conflicts of interest where appropriate); and
- (iv) Establishing appropriate governance structures to help to provide, among other things, that employee disclosures (in (ii) above) are appropriately documented and reviewed, and that any periodic reviews (in (iii) above) are undertaken and reported, in accordance with Firm policy and procedures (see also Good Practice Statement 6 - Governance and Oversight).

2. Measures to prevent or manage and mitigate conflicts of interest

Good Practice Statement 2: Firms should ensure they have effective measures (including appropriate governance) in place designed to prevent or appropriately manage and mitigate those conflicts of interest that have been identified and/or which may arise from time to time.

Examples of ways in which a Firm can help to provide that conflicts of interest are prevented or appropriately managed and mitigated include having:

- (i) Policies, procedures and/or employee codes of conduct that (subject to all applicable legal and regulatory obligations of the Firm) require:
 - a. the use of information barriers to help restrict the use and disclosure of confidential information, including:
 - i. ad-hoc and temporary arrangements such as specific deal team procedures; and
 - ii. more permanent arrangements (which could be procedural or physical information barriers, or a combination of both, such as information barriers that typically exist between the public and private side of Firms) and organisational structures (including the independent management of certain business areas of the Firm from each other) which, in each case, are intended to ensure segregation of duties where appropriate;
 - b. appropriate handling of confidential information, particularly that of Clients; and

- c. a process for the pre-clearance of certain transactions and activities of the Firm for conflicts of interest as considered relevant by the Firm - taking account of its business and transaction mix. Such pre-clearance may involve the imposition of conditions where appropriate (e.g. ad-hoc information barriers or the segregation of duties) to assist with the prevention or management of conflicts of interest. Alternatively, a Firm may take the view that the proposed transaction or activity should be declined if the potential conflict of interest is not one the Firm considers can be appropriately managed and mitigated with the measures available (including the possibility of disclosure to the Clients concerned (see (e) below));
 - d. A process, with respect to personal conflicts:
 - i. for employee disclosure and/or pre-clearance of proposed outside business activities and/or interests and investments (commonly referred to as personal account dealing) which could give rise to personal conflicts, as considered relevant by the Firm; and
 - ii. that enables Firms to apply appropriate measures which help to provide that personal conflicts that may arise can be prevented or appropriately managed and mitigated, such as: requiring employees to decline certain external roles, or abstain from exercising certain voting rights or involvement (e.g., recusal from a particular third party board decision); and
 - e. Disclosure to Clients, either generally or on a case by case basis, and in line with relevant legal and regulatory requirements, which includes sufficient detail to enable Clients to make an informed decision to proceed with the service or transaction, in light of the existence of the conflict of interest. This may, in some cases, include pro-active Client communications regarding specific waiver requests;
- (ii) Governance structures and processes that provide senior management of the Firm with the opportunity to review and consider on a periodic basis the effectiveness of existing measures to prevent or appropriately manage and mitigate conflicts of interest and the approach taken to managing conflicts of interest. This could involve a periodic review (independent of those employees involved in day to day processes relating to conflicts of interest) of policies and procedures in connection with the handling of conflicts of interest, as well as case studies on the identification, and prevention or management of conflicts of interest which have arisen in the past (see also Good Practice Statement 6 - Governance and Oversight).

Note that measures described under this Good Practice Statement 2 may be employed in combination with escalation measures described below under Good Practice Statement 3, where appropriate and in accordance with a Firm's policy and procedures.

3. Internal escalation of conflicts of interest where appropriate

Good Practice Statement 3: Firms should ensure that appropriate measures (such as policies and procedures) are in place which help to provide for the appropriate escalation of those conflicts of interest identified.

Examples of ways in which Firms can help to provide that those conflicts of interest which are identified may, if appropriate, be escalated through appropriate channels include:

- (i) having policies and procedures which clearly outline escalation requirements in connection with different types of conflicts of interest that may arise within particular business areas or more generally across a Firm (i.e. those conflicts of interest which are not peculiar to a particular business area);
- (ii) establishing governance procedures for the escalation of conflicts of interest which address the nature and urgency of the risk of the conflict of interest arising. This may include timely escalation to a senior business head or to Risk/Legal/Compliance where a potential conflict of interest may need to be prevented or appropriately managed and mitigated in real time, and subsequent reporting to a governance forum. Governance procedures should be established in accordance with the Firm's internal procedures; and
- (iii) providing regular training on conflicts of interest policies and procedures to all relevant employees (see Good Practice Statement 8 - Training).

Note that escalation measures described under this Good Practice Statement 3 may be employed in combination with measures described above under Good Practice Statement 2, where appropriate and in accordance with a Firm's policy and procedures.

4. Controls for conflicts of interest

Good Practice Statement 4: Firms should establish and maintain controls to help to provide that conflicts of interest, including those which may arise in connection with the Firm's participation in FICC markets, can be identified, and prevented or appropriately managed (including escalated, where appropriate) and mitigated, in accordance with the Firm's policies and procedures.

Examples of ways in which Firms can establish and maintain controls to help ensure adherence to the Firm's policies and procedures relating to conflicts of interest include:

- (i) establishing a control framework which provides details of the various measures used by the Firm to help it comply with its conflicts of interest policies and procedures, as appropriate; and
- (ii) undertaking a periodic review (independently from those establishing and managing the control framework, as well as those subject to it) of the control framework to help to ensure it remains fit for purpose.

Any controls developed in connection with the Firm's responsibilities in connection with conflicts of interest should be proportionate and appropriate to the Firm's business, taking account of its nature, size, complexity, diversity (operationally and geographically) and risk profile.

5. Record keeping of conflicts of interest

Good Practice Statement 5: Firms should ensure that appropriate records are established and kept up to date with respect to any conflicts of interest identified by the Firm in connection with their services or activities, including those specifically relating to their participation in FICC markets.

Examples of ways in which Firms can help to ensure that appropriate records are established and kept up to date with respect to conflicts of interest identified by the Firm in connection with their respective services or activities, including those involving the FICC markets business, could include:

- (i) establishing and maintaining appropriate records in which services and business activities of a Firm (including those in connection with its FICC markets business), as well as any (a) outside business activities or interests, such as directorships and investments (including those of family members) and/or (b) personal relationships and/or responsibilities (including both those in the course of employment with the Firm as well as personal relationships outside the Firm) subject to disclosure, are considered for the purposes of identifying any conflicts of interest which could arise in connection with each business area, service or business activity;
- (ii) having policies and procedures which help to provide that conflicts of interest that are identified by the Firm are appropriately recorded, including measures taken to prevent or appropriately manage and mitigate any such conflicts of interest that have arisen; and
- (iii) providing for the reasonable design of systems appropriate for record keeping in connection with conflicts of interest that have been identified to help promote the provision of accurate and timely management information (see Good Practice Statement 6 - Governance and Oversight).

6. Governance and Oversight

Good Practice Statement 6: Firms should provide for relevant senior management oversight of the existence, prevention and/or appropriate management and mitigation, and risk, of conflicts of interest for each business area, including the FICC markets business. In particular, relevant senior management should be updated regularly of any conflicts of interest that have arisen in which there has been a risk of harm to Clients.

Appropriate governance should be established and maintained, as well as accurate and timely management information generated for this purpose.

Examples of ways in which Firms can help to provide for appropriate governance to be established and maintained, include:

- (i) for the relevant period under review, providing relevant senior management of the Firm with appropriate oversight of:
 - a. the policies, procedures, controls and risks relating to conflicts of interest within the Firm;
 - b. instances of conflicts of interest that have occurred and how they have been prevented or appropriately managed and mitigated;
 - c. conflicts of interest that have been identified as new or not previously been identified, and/or which have required the use of measures or arrangements that have not previously been implemented by the Firm; and
 - d. any changes to the business model/products/services or the market in each business area which may give, or have given, rise to conflicts of interest in the previous period, or which may create newly identified conflicts of interest for the Firm/FICC markets business;
- (ii) for the relevant period, undertaking a review of activities of each business area for the purposes of identifying situations and scenarios in which conflicts of interest could arise within a Firm (see Good Practice Statement 1 - Identification of conflicts of interest);
- (iii) extrapolating management information obtained through the periodic review and record keeping of conflicts of interests more generally (see Good Practice Statement 5 - Record keeping of conflicts of interest) to help identify:
 - a. the frequency and nature of conflicts of interest that occur across a Firm, and promote consistency of approach to the prevention or appropriate management and mitigation of similar conflicts of interest that occur across the Firm; and
 - b. behavioural trends in connection with conflicts of interest which may be more easily identified through the use of this management information, thereby enabling Firms to potentially increase their responsiveness to any further remediation or preventative measures required, such as through firm wide or business area targeted training, including lessons learned.

7. Conflicts of Interest Policy, including related policies, procedures and codes of conduct

Good Practice Statement 7: Firms should establish, implement and maintain a written conflicts of interest policy, including related policies, procedures and/ or codes of conduct, as appropriate.

Examples of ways in which Firms can prepare and maintain a conflicts of interest policy include:

- (i) providing a working definition of what is understood to be a “conflict of interest” by the Firm;
- (ii) identifying circumstances in which conflicts of interest may arise; and
- (iii) Outlining or referring to related policies and procedures used to identify, prevent or appropriately manage and mitigate conflicts of interest, including policies and procedures relating to information barriers, segregation of duties and independence of business activities.

The following could also be included in a conflicts of interest policy, procedures, or code of conduct (as considered appropriate):

- a. relevant employee responsibilities, including a requirement to comply with relevant policies and procedures which provide guidance to employees on how they are expected to act and discharge their responsibilities at the Firm in connection with conflicts of interest (including guidance on the different types of conflicts of interest that, as employees, they are expected to avoid, including personal conflicts);
- b. responsibilities of senior management in relation to identification, prevention or appropriate management and mitigation of conflicts of interest, including oversight; and
- c. reporting requirements in connection with conflicts of interest. To help ensure consistency in approach, Firms may consider formalising reporting requirements, including the frequency of reporting to senior management or an oversight body (see Good Practice Statement 6 - Governance and Oversight).

8. Training

Good Practice Statement 8: Firms should establish, implement and maintain a training programme for all relevant employees, including those directly or indirectly involved in a Firm's participation in FICC markets, which provides guidance to be followed by those employees on the Firm's policies and procedures in connection with conflicts of interest.

Training by Firms in connection with conflicts of interest should be designed to provide employees with an awareness and understanding of the policies and procedures applicable to them in connection with the Firm's, and its employees', responsibilities in relation to conflicts of interest, including those relating to identification and escalation procedures, and self-disclosure obligations.

Where appropriate, training should be tailored to the targeted business area and the specific roles of the employees being trained.

The use of example scenarios that could give rise to conflicts of interest in the relevant business area, including the FICC markets business, may also be useful to increase awareness and understanding of Firm policies and procedures in connection with conflicts of interest.

The inclusion of example scenarios in training delivered to managers in relation to their supervisory responsibilities in relation to conflicts of interest, and to incoming staff, may help to highlight the risks of certain conflicts of interest arising in connection with their roles and responsibilities within the Firm.

Employees involved in a Firm's FICC markets business should be mindful of the risk that personal conflicts may arise in the course of their interactions with Clients, as part of their roles and responsibilities within the Firm. The inclusion of example scenarios involving outside business activities and interests, as well as gifts and entertainment, could also help to improve both the understanding of, and familiarity with, the types of situations in which personal conflicts of interest may arise.