



**GUIDANCE ON RESOLVING  
POTENTIAL CONFLICTS OF  
INTEREST CONCERNING  
MEMBERS  
OF THE  
GUERNSEY FINANCIAL  
SERVICES COMMISSION**

1. Section 9 of Schedule 1 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 states:
  - “(1) A member of the Commission who has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter shall disclose the nature of his interest at a meeting of the Commission and the disclosure shall be recorded in the minutes of the Commission.
  - (2) For the purposes of this paragraph a general notice given by a member of the Commission to the effect that he is a member, or director, of a specified company or firm and is to be regarded as interested in any matter concerning that company or firm is a sufficient disclosure in relation to any such matter.
  - (3) A member of the Commission need not attend in person at a meeting of the Commission in order to make any disclosure required under this paragraph if he makes disclosure by a notice in writing delivered to the Chairman and that notice is brought to the attention of every meeting of the Commission at which such deliberations as are referred to in sub-paragraph (1) of this paragraph are to take place and before those deliberations commence.”

As a matter of policy the option provided by section 9(3) of Schedule 1 specified above is not used by members of the Commission.

2. Members who have financial or other interests (including other regulatory roles) relevant to the Commission’s regulatory role (whether those interests are personal or family or through firms of which they are directors or employees) will from time to time find that their Commission work exposes them to potential conflict of interest. Such a potential conflict of interest arises when, unless they take steps to manage or avoid it, they would be expected as part of their Commission work to take part in a discussion or a decision which concerned such a financial or other interest. In order to preserve the good name of the Commission and of individual members, and to ensure that decisions are not tainted, members need to manage or avoid such potential conflicts effectively.
3. For the reasons set out in paragraph 2 above, members have adopted this guidance, which is to be followed in letter and in spirit.
4. Members are to treat all non-publicly available information which is acquired during their Commission work as confidential and are not to pass it to third parties. The regulatory legislation administered by the Commission imposes penalties (including imprisonment) for the wrongful disclosure of information.
5. Members should take scrupulous care to avoid using information which they have acquired during their Commission work to influence any financial decisions taken outside their Commission role, whether on their own behalf or

on behalf of others.

6. During their Commission work, members should be alert to the possibility of a conflict of interest occurring when the business before the Commission or arising in other circumstances relates in some way, directly or indirectly, to their financial or other interests (including other regulatory roles). When members see such a potential conflict of interest they should declare the potential conflict to the Chairman and the other members and, advised by him or the Vice-Chairman, take steps to manage or avoid the potential conflict. Annex A enlarges on the proper handling of potential conflicts.
7. As a buttress to paragraphs 4 to 6, members are required to disclose their holdings of a range of financial interests which are relevant to their role. Details are set out in the information pack prepared for members by the Commission's Policy and International Affairs Division.
8. Since compliance with section 9 of Schedule 1 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 and this guidance can be difficult, especially for members whose professional lives outside the Commission involve them in advising on and taking investment decisions, officers of the Commission should consider carefully before giving potentially market sensitive information to members.

Guernsey Financial Services Commission  
April 2005

## **ANNEX : POTENTIAL CONFLICTS OF INTEREST**

### **Introduction**

1. A potential conflict of interest arises in a situation where a member may be affected in his action by a direct or indirect personal interest or association of his own.
2. Potential conflicts of interest may arise in various ways, for example, as a result of:
  - ◆ the member's direct or indirect financial interest in the matter;
  - ◆ a direct or indirect financial interest held by a commercial undertaking with which the member has connections;
  - ◆ another regulatory role such as appointment as a member of another regulatory body;
  - ◆ a present or past business or personal association or relationship, whether of warmth or antipathy, with those affected or likely to be affected;
  - ◆ a responsibility, for example, as a trustee, to act in the interest of one or more other persons;
  - ◆ an expectation of a future interest (for example, future employment);
  - ◆ a previous association with the matter;
  - ◆ an interest arising from membership of a society or of a common interest grouping, such as a trade association;
  - ◆ sectional interest of a sector with which the individual is connected, for example of the banking, stockbroking or life assurance sectors.

### **Disclosure**

3. In dealing with a potential conflict of interest, the starting point will be to disclose it. This enables others, who are not affected by the potential conflict, to assist in deciding how it should be managed. Timely disclosure will enable action to be taken to deal with it without affecting the quality or promptness of regulatory action.
4. An officer of the Commission may, if he/she considers it appropriate, draw a potential conflict to the attention of the affected member or to the attention of members generally.
5. Sometimes, it may be desirable for potential conflicts of interest to be covered in a general advance disclosure. This may be the case, for example, where decisions which might be affected by the conflict may be expected to come up regularly, and continuing arrangements are needed to manage the potential conflict effectively.
6. However, disclosure must also be made at any time when the potential conflict becomes apparent. This will usually be at a meeting of the members. A general advance disclosure is no substitute for a specific disclosure in such a case.

7. A business or personal association or relationship with those affected or likely to be affected will not necessarily lead to a potential conflict of interest. The starting point is disclosure of the association or relationship so that it is transparent and the other members have an opportunity to consider whether or not there are any implications.
8. There may, exceptionally, be a case in which it is acceptable for a member with a potential conflict simply to withdraw from involvement in the matter concerned, without disclosing the interest. This may be appropriate, for example, where disclosure of the potential conflict could itself involve breach of the individual's duties (for example, duties of confidentiality relating to a proposed takeover). However, the member in such a case should ensure that his non-involvement is clearly established.
9. Members of the Commission who are partners in firms of lawyers or accountants which may be retained by and/or receive remuneration from those affected or likely to be affected (whether through litigation or otherwise) shall either (a) arrange for Chinese walls to be in place at the firm or business so that there are no conflicts of interest arising from other parts of the firm or (b) put in place arrangements whereby other partners in the firm advise the member that they are or may be retained by and/or receive remuneration from an affected person or a person likely to be affected – any conflict or potential conflict should then be disclosed to the other members of the Commission. The member shall advise the other members of the Commission whether option (a) or option (b) has been adopted by the firm.

### **Safeguards Following Disclosure**

10. Sometimes, the risk posed by a potential conflict of interest will mean that safeguards beyond disclosure need to be introduced. This will depend on the nature and directness of an individual's interest, and the nature and importance of the problem to which it gives rise.
11. Accordingly, where disclosure alone is insufficient, and the problem concerns the quality or validity of regulatory decision-taking, the individual concerned should not take part in the decision-taking process. This will mean that he does not vote and takes no active part in discussions, for example, by contributing to them or chairing them. It may also mean that he is not physically present at them, for example, if his presence could inhibit free debate.
12. Likewise, where disclosure alone is insufficient and the problem concerns the use of information, it will generally be right for the individual concerned not to be given access to the information. This will mean excluding him from distribution of documents or part of documents, or attendance at meetings, on the subject concerned.
13. Members may ask for advice from Commission officers on appropriate safeguards to prevent particular potential conflicts of interest. Irrespective of whether or not officers are asked for advice, they may ask members not to take

part in a decision-taking process. Officers may also not give members access to information if that is appropriate to prevent potential conflicts of interest. Any such decisions by the executives are to be disclosed to all members.

14. In some cases, the application of these safeguards may have such a regular and significant impact on a member's role that effective and prompt decision-taking means that he needs to stand down from a position he holds.

### **Seeking and Giving Advice**

15. Where advice on the handling of a potential conflict of interest is needed by a member, it should be sought when it is disclosed. Those responsible for advice or decision-taking on the handling of conflicts of interest should always look at the issue from the viewpoint of an outsider. Decisions on handling conflicts of interest must be publicly defensible.