

08 December 2014

To : All Financial Institutions as defined in the NAMFISA Act,
No. 3 of 2001

DIRECTIVE : **CONFLICT OF INTEREST**

Effective date: **With Immediate Effect**

1. Introduction

- 1.1 This directive is issued by virtue of NAMFISA's functions and powers in terms of the Namibia Financial Institutions Supervisory Authority Act No 3 of 2001 section 4(2) (h) (herein after referred to as "*the NAMFISA ACT*").
- 1.2 The objective of this directive is to prohibit undue behavior and provide guidance to the providers of financial services in identifying, evaluating, and managing conflicts of interest created by the current practice regarding the entertainment and other benefits offered or received by or from service providers or their representatives.

2. Background:

- 2.1 NAMFISA has noted with concerns the practice of financial services providers or their representatives offering or receiving remuneration in the form of gifts, hospitality or entertainment to or from third parties.
- 2.2 A financial services provider must at all times render financial services honestly and fairly, with due care, skill and diligence and in the interests of clients and the integrity of the financial services industry.
- 2.3 Remuneration or incentives offered and/or other indirect consideration payable by another provider, a product supplier or any other person could be viewed as a potential conflict of interest.

3. **Applicability:**

- 3.1 The directive on conflict of interest is applicable to any institution and those acting on behalf of it in relation to the provision of financial or ancillary services to clients within the ambit of NAMFISA, including but not limited to:

Advisors;
Brokers;
Collective Investment Schemes;
Custodians;
Dealer;
Friendly Societies;
Fund Administrators;
Investment Managers;
Medical Aid Schemes;
Portfolio Managers;
Pension Funds;
Stock Broker;
Trustees;
Microlenders, and
Representatives of all of the above.
Any other persons that is registered or licensed by NAMFISA.

- 3.2 In addition, it includes unregulated third parties that are contracted by financial services providers for the ultimate benefit of the entities listed above.

4. **Definitions:**

- 4.1 *Conflict of Interest* – any situation in which a financial service 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 financial services provider or representative from rendering an unbiased and fair financial service to that client or from acting in the best interest of that client, including but not limited to:

- i) A financial interest;
- ii) An ownership interest; and
- iii) Any relationship with a third party.

4.2 *Financial Interest* – any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentives or valuable consideration, other than –

- a) An ownership interest; or
- b) Training that is not exclusively available to a select group of providers or representatives

4.3 *Immaterial Financial Interest* – Any financial Interest with a determinable monetary value, the aggregate of which does not exceed N\$500 in any calendar year from the same third party in that calendar year received by –

- (a) A provider who is a sole Proprietor; or
- (b) A representative for that representatives direct benefit;
- (c) A provider, who for its benefit or that of some or all of its representatives, aggregates; the immaterial financial interest paid to its representative

4.4 *Ownership Interest* –

- (a) Any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or a proprietary interest held as an approved nominee on behalf of another person; and
- (b) Includes any divided, profit share or similar benefit derived from that equity or ownership interest.

4.5 *Third party* –

- (a) A product supplier;
- (b) Another provider;
- (c) An associate of a product supplier or provider; and
- (d) A distribution channel; and
- (e) Any person, who in terms of an agreement or arrangement with a person referred in paragraph (a) to (d) above, provides a financial interest to a financial services provider or its representative.

5. **General:**

5.1 A financial services provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interest of clients and the integrity of the financial services industry.

5.2 A financial services provider shall take reasonable steps to identify circumstances that could pose a conflict of interest and must manage conflicts of interest fairly,

both between itself and its customers and between one customer and another client.

- 5.3 The financial services provider must take all reasonable steps to identify the types of conflicts of interest that arise, or may arise, in the course of carrying out financial or ancillary services or services between the provider and a client or one client and another. Once a provider has identified an actual or potential conflict, it must maintain and operate effective organizational arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients.

6. The law

- 6.1 Section 3(a) of the NAMFISA Act states that one of the functions of NAMFISA is *"to exercise supervision, in terms of this Act or any other law, over the business of financial institutions and over financial services."*
- 6.2 Section 4(2)(h) of the NAMFISA Act further states that NAMFISA *"may do anything which is necessary or expedient to perform its functions."*

7. Directive:

- 7.1 No financial services provider or his/her representative shall solicit, receive or offer any financial interest to or from any third party for:
- a) Giving preference to the quantity or value of business secured for the provider to the exclusion of the quality of the services rendered to the client;
 - b) Preferences in channeling of business to a particular product provider;
 - c) Giving preference to a specific product supplier, where representative may recommend more than one product supplier to a client; or
 - d) Giving preference to a specific product of a product supplier, where representative may recommend more than one product of that product supplier to a client.
- 7.2 The provider may not avoid, limit or circumvent or attempt to circumvent compliance through an associate or an arrangement involving an associate.
- 7.3 Financial services providers or representatives may only receive, solicit or offer remuneration or benefits in the form of:
- a) Commission;
 - b) Fees for rendering financial services as agreed per contract in writing with the client; and

- c) Fees for rendering of services to a third party which is reasonably commensurate with the services rendered.
- 7.4 An immaterial financial interest shall only be received, solicited or offered to/by a financial services provider or his/her representative where such interest will be considered trivial and inconsequential by a reasonable and informed third party, weighing all the specific facts and circumstances and was offered in the normal course of business without the specific intent to influence decision making.
- 7.5 Where immaterial financial interests were offered or received, the financial service provider shall maintain a log of all interests on a yearly basis so that cumulative interest does not exceed N\$500 limits (both monetary amount and number of occasions).
- 7.6 The financial services provider must disclose to the client the existence of any personal interest in the relevant services, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the client.
- 7.7 A financial service provider must develop conflict of interest management policy which contains at minimum the following;
- a) Identification of circumstances that will likely lead to a risk of conflict of interest;
 - b) Implementation of controls to reduce and eliminate such risk;
 - c) Reporting procedures in the event of conflict of interest;
 - d) Timely disclosure in writing to the clients and NAMFISA on any interest or activities that may represent a conflict of interest and obtaining their consent to act in such circumstances;
 - e) Training of staff on Conflict of Interest



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