South African Reserve Bank

FSB

Draft Code of Conduct for the South African Over-the-Counter Markets

October 2015

Foreword

The recent problems besetting the international financial markets, and in particular the foreign exchange markets, highlighted the need for more involvement by legislators and regulators in previously largely unregulated markets. The South African Reserve Bank (SARB) and the Financial Services Board (FSB) consulted with various offshore supervisory authorities who have sanctioned some of their banking institutions over improper trading practices, such as Front-running, mismanagement of client orders and option strikes, collusion, sharing of confidential information and/or manipulation of foreign exchange benchmarks.

Against this background, the SARB and the FSB deemed it appropriate to conduct a review of the foreign exchange trading operations by authorised dealers in South Africa. As with the review of the Johannesburg Interbank Average Rate (Jibar), which culminated in the adoption of the Jibar Code of Conduct in March 2013, this review intended to confirm and, where appropriate, strengthen the level of compliance to best practice by minimising the risk of manipulating markets and sharing confidential information, thereby enhancing the transparency, efficiency and integrity of the financial markets.

Soon after the commencement of the foreign exchange review it became evident that the South African over-the-counter financial markets in general, and not only the foreign exchange market, would benefit from a code of conduct. Hence the SARB and the FSB engaged participants in the South African over-the-counter (OTC) financial markets to draft an appropriate unified Code of Conduct (Code).

The Code aims to ensure that the highest levels of professionalism and integrity are maintained in the South African financial markets. The Code will be reviewed as and when necessary, but at a minimum once every two years. The

Code is also intended to serve as a template to assist the authorities in supervising market conduct with regard to the financial markets as described.

While the Code was compiled with the active involvement of participants in the South African financial markets, it needs to be acknowledged that the drafting of the Code benefitted from reference to other codes used in the international financial markets, in particular the Treasury Markets Association Code of Conduct and Practice, March 2014, the Guidelines for Foreign Exchange Trading Activities of the New York Foreign Exchange Committee, November 2010, the Non-Investment Products Code for Principals and Broking Firms in the Wholesale Markets, November 2011 and the Model Code of the Financial Markets Association (ACI), November 2013.

Disclaimer

Although the Code of Conduct was drafted to be as comprehensive as possible, it does not provide a detailed standard of conduct and market participants should not rely on this Code alone to formulate their risk management strategies and policies. The efficient management, administration and the maintenance of discipline in the over-the-counter financial markets remain the responsibility of the Market Participants, who should also ensure that their employees are acquainted with these measures, and that they accept and abide by them.

Should any inconsistency arise between this Code and any legislative enactment, the latter would take precedence in the interpretation thereof. Should a situation arise where it is uncertain whether a particular transaction fully complies with the legal, regulatory and contractual requirements, it is advised that Market Participants should seek relevant professional advice.

The South African Reserve Bank, the Financial Services Board and the Financial Markets Liaison Group shall not be liable for any damage or loss suffered as a result of any use of, or reliance on, the contents of this Code.

1. Introduction

1.1. The Code has been drafted by the SARB and the FSB in consultation with the Financial Markets Liaison Group (FMLG), a consultative forum that represents a joint initiative between the SARB and key participants in the financial markets. The FMLG is chaired by the Deputy Governor responsible for the Financial Markets Department of the SARB. In addition to the members of the FMLG the following associations were consulted in the drafting of the Code: The Banking Association of South Africa (BASA), the International Banking Association (IBA), the Association of Corporate Treasurers of Southern Africa (ACTSA), the Association for Savings and Investment South Africa (ASISA) and the South African Institute of Chartered Accountants (SAICA).

1.2. The Code is applicable to the following over-the-counter (OTC) financial markets:

1.2.1. money and interest rate markets;

1.2.2. spot and forward foreign exchange market;

1.2.3. the market for unlisted bonds ;

1.2.4. commodities market; and

1.2.5. derivative products pertaining to these markets, such as options, credit derivatives, forward rate agreements (FRAs), currency and interest rate swaps.

2. General principles

2.1. Banks play different roles in the financial markets, some act as Market Makers while others participate purely to facilitate client transactions. The extent to which Banks take proprietary positions in the OTC financial markets may also differ. In the final instance, however, they all service the financial needs of their clients and the broader economy. As such, all Market Participants have a responsibility to uphold the integrity of the market by abiding by the spirit as well as the letter of the best standards of market conduct.

2.2. The integrity and smooth functioning of the OTC financial markets in South Africa depend on the trust, honesty and good faith of all Market Participants. This exacting standard of behaviour should extend to all transactions, including those entered into through electronic means.

2.3. This Code does not detract from any of the responsibilities or duties applicable to any of the Market Participants to whom this Code relates. These Market Participants still have the responsibility to familiarise themselves with, and abide by, all applicable laws in South Africa.

2.4. When dealing with clients, Market Participants should take reasonable steps to ensure in writing that they understand the terms, conditions and risks associated with a transaction and have independently decided to enter into the transaction at their own account and risk.

2.5. Market Participants who provide advice to clients should in so doing ascertain the impact of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

3. Role and responsibilities

3.1. Role and responsibilities of Banks

3.1.1. Banks should establish an oversight function and appropriate governance arrangements to regularly review all aspects of trading, and in particular ethics and market conduct. The oversight function should entail appropriate governance arrangements which have been approved at the level of the Bank's Board of Directors, or executive committee.

3.1.2. Robust procedures regarding the oversight function should be developed and maintained, documented and made available to the relevant regulatory authorities on request. These procedures should include:

3.1.2.1. the terms of reference of the oversight function;
3.1.2.2. criteria to select members of the oversight function; and
3.1.2.3. the summary details of membership of any committee or arrangement charged with the oversight function, with declarations of conflicts of interest and processes for election, nomination or removal and replacement of committee members, should be clearly documented.

3.1.3. Banks are required to put in place well documented policies, procedures and controls to enhance market conduct by ensuring confidentiality of information. Banks should prevent Front-running of client transactions, insider trading, manipulation of benchmarks, mismanagement of client orders and option strikes. These policies should be reviewed regularly.

3.1.4. The policies, procedures and controls should at a minimum extend to communication via telephone, facsimile, e-mail and chat rooms. All communication channels should be regularly monitored by Management and the compliance function. They should furthermore be subject to internal audit and assurance provided by an external party. All Banks who actively participate in the OTC financial markets, should, where possible, implement appropriate modern electronic monitoring systems for all communication mediums.

3.1.5. In line with the King Code of Governance Principles and the King Report on Governance (King III) (2009), the so-called three lines of defence model, is recommended to Banks to increase the co-ordination and efficiencies of assurance activities. Internal and external audit provides independent assurance on governance, risk and control. Compliance and other oversight functions facilitate risk assessments, which include advising and providing assurance on applicable laws and regulations and in formulating policies and recommended procedures to enable compliance. Business operations (line management), as the first line of defence, are responsible for the day-to-day management of all governance, risk and control activities. Consequently, Management is ultimately responsible for the conduct of Employees under their control.

3.1.6. Management of Banks should ensure that their Employees have the necessary knowledge and expertise in treasury and/or market operations and are capable of carrying out their duties. Banks must ensure that their Employees receive training on policies related to market conduct. Training should be mandatory and should take place regularly. Either classroom or web based training or a combination of the two is acceptable, provided that Employees are formally assessed.

3.1.7. All Banks are responsible for the actions of their Employees. This responsibility includes:

3.1.7.1. ensuring Employees are made aware of, and comply with, any other relevant guidance that may from time to time be issued, which supplements or updates this Code; and

3.1.7.2. ensuring that Employees comply with any regulatory requirements that may be applicable or relevant to a Bank's activities in the financial markets. When establishing a relationship with a new counterparty or client, Banks should take steps to make them aware of the precise nature of the terms and conditions of their obligations for the business to be conducted.

3.1.8. Banks should ensure that all front office Employees have a mandate which clearly articulates their responsibilities, activities, trading limits, authorised products and asset classes.

3.1.9. All Banks should identify any potential or actual conflicts of interest that might arise when undertaking financial market transactions, and take measures either to eliminate conflicts, or manage them so as to ensure the fair treatment of their clients. These measures would serve to minimise the possibility of insider trading, Front-running of client transactions or inappropriate sharing of sensitive market information. The required measures would at the very least extend to the segregation of duties between sales staff and professional dealers. The segregation of duties should include that the order books of Banks be under the control of sales staff as and when required.

3.1.10. All Banks should know their counterparty. This is essential where the nature of the business undertaken requires the assessment of creditworthiness.

3.1.11. As part of the "know your client/counterparty" principle, Banks should take great care to prevent their transactions in the financial markets being used to facilitate money laundering or terrorist financing.

3.1.12. Banks engaged in trading in the OTC financial markets should ensure that sufficient technical and operational capability are employed so that end-to-end transaction processing can take place, in both normal and peak market conditions, without undue impact on the processing timeline.

3.1.13. Banks should establish an independent whistle-blowing policy and provide protection to Employees who report instances of perceived wrongdoing. The whistle-blowing facility should be available to external parties as well. The whistle-blowing policy should provide that those Employees who are aware of misconduct without reporting it, are equally culpable.

3.1.14. Banks need to ensure that their leave policies contain mandatory annual leave periods for Employees and they should see to it that this requirement is strictly enforced. As a general guideline Employees should be required to take at least ten consecutive working days leave every year. During the period of mandatory annual leave Employees should have limited or no physical access to the premises or information technology systems of the Bank.

3.1.15. Banks should ensure that the performance assessment and compensation of Employees takes adequate account of governance, compliance and market conduct, and not solely of profit generated.

3.1.16. Banks should ensure strict access control to the treasury markets and the dealing room in particular. Access to the dealing room by both non-authorised personnel and visitors should be limited in terms of frequency and duration. Strict access controls should also apply to information technology systems and confidential information.

3.1.17. Banks should adopt an internal review function in order to test risk management, compliance practices and controls. This should be a regular process.

3.1.18. Banks should formulate a business continuity plan to ensure business continuity in the front, middle and back offices in the event of a market disruption or crisis. The contingency plan should be subject to periodic review and practical exercises should be organised from time to time to familiarise Management and staff with the arrangements under a contingency situation.

3.1.19. Management involved in the front office, middle office and back office should participate in the professional community and in industry forums in order to remain up to date with developments.

3.1.20. Regular internal meetings should be held between Employees from the front office, middle office and back office in order to share information, ensure quality, identify risks and agree on measures to be taken.

3.2. Role and responsibilities of Inter-Dealer Brokers

3.2.1. Inter-Dealer Brokers must obtain the approval of the applicable authorities, prior to commencing business.

3.2.2. Inter-Dealer Brokers may only conduct their broking business between Banks.

3.2.3. When a deal is arranged through an Inter-Dealer Broker, the broker should act in a way that does not unfairly favour one party to the transaction over another, irrespective of what brokerage arrangements exist between the broking firm and its clients.

3.2.4. Inter-Dealer Brokers are not allowed to engage in any discretionary fund management capacity.

3.3. Role and responsibilities of Treasury Outsourcing Companies

3.3.1. Treasury Outsourcing Companies must obtain approval from the applicable authorities, prior to commencing any business. This currently includes approval from the Financial Surveillance Department of the SARB, through an Authorised Dealer, prior to commencing any foreign exchange business.

3.3.2. Treasury Outsourcing Companies may not buy or sell foreign currency for their own account and may not borrow or lend foreign currency.

3.3.3. Treasury Outsourcing Companies may only act in the market as intermediaries, never as principals. They should accordingly only interact with Authorised Dealers on behalf of their clients. Prior to such business being conducted they should be properly mandated by their clients to act as their agents.

3.3.4. Treasury Outsourcing Companies earn their income from various sources, which should be totally transparent to all parties concerned.

3.3.5. The services provided by Treasury Outsourcing Companies may include identifying, monitoring and managing foreign exchange risks as well as completing and handling of documentation, general administration of clients' foreign exchange exposure and conclusion of spot/forward and derivative transactions with Authorised Dealers. All transactions with Authorised Dealers may only be entered into in the names of clients.

3.3.6. The settlement of foreign exchange transactions must, accordingly, be accommodated through the bank account of the client with the Authorised Dealer and not that of the Treasury Outsourcing Company.

3.4. Role and responsibilities of Employees

3.4.1. Employees must subscribe to the highest ethical and moral standards which should be inculcated by their employers.

3.4.2. Employees should be familiar with the Code, conduct themselves at all times in a thoroughly professional manner and undertake transactions in a way that is consistent with the principles set out in this Code.

3.4.3. When entering into or arranging individual deals, or advising clients, Employees should seek to ensure that they do not provide misleading information or misrepresent the nature of any transaction in any way. Employees should also exercise careful judgement in assessing whether the information they receive is accurate and can be substantiated. They should refrain from passing on misleading information or unfounded market rumours, which may disrupt market order or cause damage to other Market Participants. It is particularly unacceptable for Employees to pass on misleading information in an effort to manipulate the market.

3.4.4. All Employees have an obligation to maintain client confidentiality. In the OTC markets, clients expect Employees to provide market information, often referred to as "market-colour." While this is an understandable aspect of the market, Employees should share information circumspectly. It is always unacceptable to mention the names of clients to other Market Participants, even after transactions have been executed in the market. It is also unacceptable to mention transactions while they have not finally been concluded. When transactions have been executed they may be referred to in very general terms, without divulging any specific details. The same rules apply to any information about the order books of Banks and any reference to it should be general in nature, without referring to particular market levels, amounts or names of clients.

3.4.5. Employees should pursue training opportunities offered by their employers. They should use these opportunities to improve their knowledge on technical topics, such as products or trends in the market, as well as acceptable market conduct. Any assistance provided by employers to achieve professional qualifications should be actively pursued.

4. Personal conduct, standards and controls

4.1. **Confidentiality**

4.1.1. Employees are privy to highly confidential information. In order to preserve a reputable market, it is essential that strict standards of confidentiality are maintained.

4.1.2. All Employees must sign a confidentiality undertaking and must be properly trained in identifying and handling confidential or sensitive information. Management should promptly investigate any breach in confidentiality in accordance with in-house policies and procedures. Depending on the findings, appropriate disciplinary action must be taken as breaches of confidentiality are regarded as very serious.

4.1.3. Employers and Employees have a duty to familiarise themselves with this Code and the requirements of all relevant legislation governing insider trading, Front-running client transactions, sharing confidential information, collusion, manipulation of benchmarks or markets in general and market abuse. Employees may not seek to profit from confidential information, or assist anyone with such information to make a profit for themselves, connected parties their employer or clients.

4.2. **Conflict of interest and dealing for personal account**

4.2.1. The practice of dealing for personal account, either in-house or externally has several implications including potential conflicts of interest. Consequently, employers should have appropriate policies and controls in place in order to prevent conflicts of interest, prejudice towards clients and prejudice towards the employer itself. As a general guideline Employees should obtain permission from Management to enter into transactions in the financial markets. As a further guideline an appropriate holding period should be stipulated in internal policies and procedures.

4.2.2. Employees should be trained to identify situations that may potentially raise concerns around conflicts of interest and a disclosure mechanism should be set up. Management should clearly define what constitutes a material interest in a transaction conducted for a client. Banks should refrain from advising or dealing in such a transaction, unless appropriate disclosure of such material interest has been made to the client and all reasonable steps have been taken to ensure that the client is treated fairly.

4.3. **Fraud and other criminal activities**

4.3.1. All employers and Employees should be alert to matters which could give rise to fraud, deception, theft, forgery, corruption or other illegal activities. Strong administrative controls must be put in place to prevent the perpetration of fraud and other criminal activities. In the event of any suspicious transactions or circumstances Employees must notify their employers without delay.

4.4. **Money laundering/know your counterparty**

4.4.1. All Market Participants are reminded of their obligations under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). These obligations include the need to "know your client" and Market Participants should take all the necessary steps to satisfy themselves that their transactions are not being used to facilitate money laundering or the financing of terrorist activities. Employers should formulate clear policies and procedures in this regard, and proper systems and controls must be instituted to ensure compliance with the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), the regulations promulgated in terms thereof, as well as the Exemption Notices and Public Compliance Communication Notices.

4.4.2. Employees should be aware of their obligations relating to money laundering and report any suspicious transactions to Management, the compliance officer or to the appointed officer responsible for money laundering control and reporting.

4.5. **Honesty, fairness and diligence**

4.5.1. When a Market Participant acts for a client in a transaction, it should exercise due care and diligence, bearing in mind the best interests of clients.

4.5.2. All Market Participants should conduct their business in an honest and fair manner, safeguarding the integrity of the markets. Fraudulent, deceptive and manipulative practices are strictly forbidden.

4.6. Gambling

4.6.1. The practice of making personal bets or wagers has frequently been a cause for concern amongst Management as well as regulators. Excesses or abuse of such gambling can lead to serious consequences, including conflict of interest and personal financial ruin. Employers should have a policy in place that discourages gambling activities in the workplace.

4.6.2. In the event that the practice is not forbidden, employers must have a clearly defined policy on control of this activity.

4.7. Abused substances

4.7.1. Problems connected with abused substances, such as drugs and alcohol have been identified as a growing concern in both social and business circles in many countries. Although attitude, legislation and social tolerance, on this issue, vary between cultures, employers should have appropriate policies in place to deal with the problem.

4.7.2. Employers should take all reasonable steps to educate their Employees about possible signs and effects of the use of drugs, including alcohol and other abused substances. Policies should be developed and clearly announced for dealing with Employees who are found to be substance abusers.

4.7.3. The judgement of any Employee under the influence of such substances may be impaired and their ability to function diminished. They are also likely to be vulnerable to outside inducement to conduct business not necessarily in the best interest of their employers or the market in general.

4.8. Entertainment and gifts

4.8.1. While in the past entertainment and gifts may have been more freely offered in the normal course of business, more recently the norms of society have changed to discourage entertainment and gifts as far as possible. Employers should have policies and appropriate monitoring in place to deal with entertainments and gifts. These policies should address the various circumstances that might arise in this regard.

4.8.2. Employees must neither offer inducements to conduct business, nor solicit them from the Employees of other institutions. Gifts or entertainment should not be excessive in value or frequency and employers should monitor the form, frequency and cost of entertainment and gifts that Employees offer or receive.

4.9. Misinformation and rumours

4.9.1. Financial markets are generally responsive to news on economic and political developments. It is not surprising therefore that misinformation emanating from various sources is often relayed through the market telephone lines and screens. Employees should refrain from passing on information, which they know to be false, misleading or deceptive. They should therefore exercise careful judgement in assessing that information is accurate and can be substantiated.

5. Authorisation, telephone recording and documentation

5.1. Authorisation, responsibility for dealing activity

5.1.1. The process of appointment and/or authorisation of Employees is an important and formal function of control. The recognition of Employees' roles and authority should be set out in writing by employers lest there be ambiguity as to the transactions, instruments or markets in which an Employee may trade.

5.1.2. In general a risk framework and dealing mandates should be in place. These should cover at a minimum the following: the types of transactions, instruments and markets that an Employee may engage in, the trading platform, stop loss limits, limits on counterparties, open position limits and mismatch position limits. Confirmation, settlement and reporting procedures must be addressed as well as the relationships with Market Participants and clients.

5.2. Retaining telephone recordings and electronic messages

5.2.1. Market Participants are expected to use equipment to record telephone conversations, which helps investigate and resolve differences and disputes between counterparties should they arise.

5.2.2. All conversations undertaken by Employees, including those of Employees in the back office who are responsible for affirming deals, or passing manual payment instructions, should be recorded.

5.2.3. Employers should ensure compliance with the relevant legislation pertaining to making and retaining recordings. Counterparties and clients should be informed in advance that conversations are recorded.

5.2.4. Procedures should be established to ensure proper handling of recordings to ensure their security, integrity and confidentiality. The retention period should be determined having regard to the nature of the transactions. For longer term instruments, such as interest rate swaps and FRA's, differences may arise only when the first movement of funds is to take place. It is therefore advisable that records for such deals be retained for five years after the maturity date.

5.2.5. All records of communication emanating from the dealing room, such as e-mails and chat rooms should, in addition to the recordings of telephone discussions, be retained. Clear guidelines regarding recording and retention of telephone conversations and electronic messages should be defined and implemented.

5.2.6. The policy on recording telephone conversations and recording electronic text messages should impose controls to ensure recording is not deliberately or inadvertently interrupted.

5.2.7. These safeguards are necessary in order to ensure that such records are accepted as credible evidence in assessing market conduct, resolving disputes or accepted as evidence in a court of law.

5.2.8. As a minimum requirement, the policy should clearly state who has access to the recordings and electronic text message records, and who can listen to or read them and under what conditions.

5.3. **Terms and documentation**

5.3.1. In general it is common for transactions to be subject to legal documentation binding the two counterparties to standard conditions and undertakings. These will typically take the form of either signed master agreements exchanged between the counterparties, or of standard terms. Such documentation should be signed by appropriately authorised Management of both transacting institutions, preferably before any transaction is entered into. Procedures should be in place to enable documentation to be completed and exchanged as soon as possible.

5.3.2. All such legal documentation should be retained in an independent area following standard policies on security and segregation of duties.

5.3.3. Employees should be advised when such legal documentation is in place. The contents of any specific clauses in the description of the dealing relationship between the contracting parties must be followed in any ensuing transactions.

5.3.4. When trading any of the products mentioned in the Code, Employees should make it clear whether or not they propose to use standard terms and, where changes are proposed, these should also be specifically agreed. If these changes are substantial, it is recommended that these amendments are negotiated and agreed before the conclusion of the deal.

5.3.5. For instruments where standard terms do not exist, particular care and attention should be paid to negotiation of terms and conditions.

6. Inter-Dealer Brokers and brokerage

6.1. The role of brokers

6.1.1. As described in paragraphs 3.2.2 and 3.2.3, the role of Inter-Dealer Brokers and electronic broking platforms is to act only as intermediaries (both as principals and name givers) and arrangers of deals.

6.1.2. Management of both Banks and Inter-Dealer Brokers should play an active role in overseeing the relationship and use of electronic broking platforms.

6.1.3. Management at Banks are responsible for the choice of Inter-Dealer Brokers and electronic broking platforms. They should ensure that Inter-Dealer Brokers and electronic broking platforms have been authorised by the relevant licensing authority where applicable.

6.1.4. Management of Banks should monitor the patterns of Inter-Dealer Broker and electronic broking platform usage and be alert to possible undue concentration of business.

6.2. Brokerage

6.2.1. Brokerage is freely negotiable. Negotiation of brokerage should be done by the Management of Banks and brokers.

6.2.2. Any deviation from previously agreed brokerage arrangements should be approved by the Management of both parties and recorded in writing.

6.2.3. Brokers normally quote dealing prices excluding brokerage.

6.2.4. Brokerage bills should be promptly settled.

6.3. Passing of names by Inter-Dealer Brokers

6.3.1. An Inter-Dealer Broker should disclose the name of a counterparty only when the latter has a serious intention to trade at the quoted price. Names should be provided one at a time. It is only when the first name is rejected that the second name should be put forward.

6.3.2. Banks are encouraged to provide Inter-Dealer Brokers with early indications of the names of counterparties that are not acceptable. They may specify the types of instruments or maturities in which they would not wish to deal with certain counterparties.

6.3.3. Banks may also provide indications on difference in prices/rates, if any, in relation to different counterparties.

6.4. Name substitution/switching by brokers

6.4.1. Inter-Dealer Brokers typically do not reveal the names of counterparties until the amount and price/rate are agreed upon. It is therefore possible that, after these details are agreed, the name of one counterparty may prove unacceptable to the other due to the unavailability of a credit line. In these circumstances, it is accepted market practice that Inter-Dealer Brokers will attempt to substitute a third name to stand between the two original counterparties to clear the transaction.

6.4.2. As the two offsetting transactions will utilise credit and because they are often executed at a price/rate that might be off-market owing to the time it takes to arrange a name substitution, such activities should be identified as switching transactions and they should be monitored and controlled.

6.4.3. If requested by an Inter-Dealer Broker to clear a transaction through name switching, an Employee must ensure that he or she has the authority to switch names and that any such transaction is executed as promptly as possible within policy guidelines. It is not good practice to leave a deal overnight without acceptable names having been passed.

6.4.4. An Employee must not seek, nor accept, favours from an Inter-Dealer Broker for switching names.

7. Prime-Brokers

7.1. A Prime-Broker agrees to intermediate specified eligible transactions between a client and any one or more approved executing dealers. While the client can contact the dealer directly to enter into a transaction, the transaction is “given up” to the Prime-Broker, with the result being one transaction between the dealer and the Prime-Broker, and an offsetting transaction between the Prime-Broker and the client.

7.2. Management of Prime-Brokers should ensure that Employees understand the confidentiality requirements of each client, and if this is not provided by the client, they should still keep information about a client’s give-up trading confidential.

7.3. The Prime-Broker is obliged to take on a trade only when the material terms of the trade have been agreed upon by the executing dealer and the client. If such details do not match, the Prime-Broker should reject the trade in the manner provided in the appropriate agreements.

7.4. Prime-Brokers should perform due diligence with respect to clients and take all precautionary measures to protect themselves, their clients and their reputation.

7.5. The designated agreement, also referred to as a “give-up agreement”, (between the Prime-Broker and executing dealer) and the Prime-Broker agreement (between the Prime-Broker and the client) should specify the permitted transactions types, tenors and credit limits and should define how these limits should be calculated.

7.6. Prime-Brokers, executing dealers and clients should all have internal controls that monitor the permitted transaction types, tenors and credit limits.

7.7. These controls allow the executing dealers and clients only to execute trades that the Prime-Brokers have authorised. They allow the Prime-Broker to determine whether they are obliged to accept a trade when it is given up to them.

7.8. A Prime-Broker should confirm transactions if the type and tenor of transactions are authorised under the give-up agreement and if the transactions are within the applicable limits. Prior to confirming the transactions the Prime-Broker should also receive transaction notifications from the executing dealer and the client.

7.9. Prime-Brokers should be able to assess the credit exposure to any client and should preferably have systems in place to do this in real time.

8. Dealing practice

8.1. Prohibited trading practices as outlined in section 80 of the Financial Markets Act, 2012 (Act No. 19 of 2012), are also, for purposes of this Code, applicable to the OTC financial markets. In this regard no person may participate, for own account or on behalf of another person, knowingly, directly or indirectly, or under circumstances where he or she ought reasonably to have known that he or she is participating in any practice which has created or is likely to have the effect of distorting prices and creating an artificial appearance of market activity (market manipulation).

8.2. In particular, no person may enter into the following trading practices:

8.2.1. Approving or entering into a transaction –

8.2.1.1. to buy at successively higher prices or to sell at successively lower prices for the purpose of unduly influencing the market price;

8.2.1.2. which involves no change in the ultimate beneficial ownership or with the knowledge that an opposite transaction(s) at substantially the same price has/have been or will be entered into by or for the same or different persons, with the intention of creating (a) a false or deceptive appearance of the trading activity in; or (b) an artificial market price;

8.2.1.3. to buy or sell in an auction and cancelling such order immediately prior the auction matching, for the purpose of creating a false or deceptive demand or supply appearance or an artificial price;

8.2.1.4. effecting or assisting in effecting a market corner; or

8.2.1.5. maintaining an artificial transaction price.

8.3. **Dealing at off-market rates**

8.3.1. The Code strongly discourages the practice of dealing at off-market rates. The practice should only be condoned by employers under stringent conditions.

8.3.2. Dealing at off-market rates should be avoided as this practice may result in concealment of a profit or loss, in the perpetration of fraud, tax evasion or the giving of an unauthorised extension of credit. Where, however, the use of off-market rates may be necessary, they should only be entered into with the prior express permission of the Management of both parties to the deal. The cash flow implications of dealing at off-market rates should be taken into account in the pricing.

8.3.3. When setting the rates to extend the maturity of a transaction, the ruling near term rate should be fixed immediately at or within the current spread, to reflect current rates at the time the transaction was entered into.

8.4. **Electronic trading and electronic broking**

8.4.1. Where Banks make facilities available to their clients for internet trading or online trading, or participate themselves in electronic dealing or electronic broking, the conditions and controls should be comprehensively stated in the relevant policies.

8.4.2. Banks should have a clear understanding of the potential risks involved in these activities and put in place effective controls to manage such risks. The “know your client” and anti-money laundering provisions have particular relevance in this area and should be strictly adhered to.

8.4.3. Employers should be aware of the operational risks in using an electronic broking platform, such as the possibility of off-market trades. They should familiarise their Employees with such risks and put in place adequate controls restricting the access to such platforms to authorised Employees.

8.4.4. Any deliberate attempt at gaming and abuse, such as the flashing of orders on electronic broking platforms are strongly discouraged. It is important that when a price is submitted to any electronic trading platform, it is done in good faith with intent to deal.

8.4.5. All bid-offers submitted to electronic broking platforms should remain in the matching system for at least the minimum period of time defined by the platform operator. In general Banks should be fully compliant with all platform operational agreements.

8.4.6. Employees should exercise caution when inputting quotes on electronic broking platforms or online trading platforms, particularly in cases when prices/rates placed on the electronic platform can be dealt directly without reconfirmation of prices.

8.4.7. Banks that offer trading to clients via the internet or online trading platforms should satisfy themselves of the security of the system. They should notify their counterparties and clients as soon as they identify any threat or breach of security.

8.4.8. In planning for possible disruption to the various electronic platforms, there should be written agreements between the owners and the users of platforms, setting out the procedures and the allocation of risks in the event of a disruption.

8.4.9. Electronic trading platform operators should ensure that trade confirmations, in the appropriate form, are sent out in a timely manner after the completion of any deal.

8.4.10. Each electronic trading platform operator is responsible for producing clear and transparent rules under which participants may engage on the platform. These should be documented and agreed by each participant, whether being a Bank or client, prior to accessing the venue.

8.5. **Consummation of a deal**

8.5.1. All Banks, whether by telephone, electronic trading or Inter-Dealer Broker, have a duty to be clear on whether the prices they quote are firm or merely indicative. Prices quoted by electronic brokers or Inter-Dealer Brokers should be taken to be firm in marketable amounts, unless otherwise qualified.

8.5.2. An Employee quoting a firm price either through an Inter-Dealer Broker, on an electronic trading system or directly to another Bank, client or foreign Bank, is committed to deal at that price in a marketable amount, provided the counterparty's name is acceptable.

8.5.3. What constitutes a marketable amount in a particular market will generally be familiar to Market Participants.

8.5.4. Banks should not provide quotes which they have no intention of honouring. If Employees have reasonable grounds to suspect that other Market Participants are engaging in practices that compromise the integrity of the market, such as making a quote for immediate withdrawal for the purpose of misleading the market, they should promptly report the incident to their employers. Employers should escalate the report to the relevant authorities where appropriate.

8.5.5. Employees are bound to a deal once the price and any other key commercial terms have been agreed. Oral agreements are considered binding, the subsequent confirmation serves as evidence of a deal, but should not override terms agreed orally.

8.5.6. Where Inter-Dealer Brokers are involved, it is their responsibility to ensure the Bank providing the price is made aware immediately it has been dealt upon. As a general rule, a deal should only be regarded as having been done where a broker's contact is positively acknowledged by the Bank.

8.5.7. When dealing in fast moving markets, a Bank can assume that a price given to an Inter-Dealer Broker is good only for a short length of time, typically a matter of seconds. However, since Banks have prime responsibility for prices put to an Inter-Dealer Broker, the onus is on their Employees to satisfy themselves that their prices have been taken off unless a time limit is placed by the Bank on his interest at the outset.

8.6. **Use of mobile phones**

8.6.1. As a general guideline the Code supports the prohibition on the use of personal unmonitored mobile devices from the dealing room.

8.6.2. Where the use of such devices is allowed, employers should have in place a written policy which specifies the circumstances under which such use may be approved. These circumstances would typically refer to an emergency or disaster recovery situation.

8.7. **Position parking**

8.7.1. The parking of deals or positions with any counterparty should be forbidden and this should be reflected in the relevant Bank policies.

8.8. After-hours and off-premises dealing

8.8.1. After-hours and off-premises dealing is generally not supported by this Code. However, while some Banks may run dealing rooms around the clock, it is clearly not a feasible option for all. Hence, with global dealing occurring for 24 hours a day, there may be occasions when Banks need to cover their risk positions outside the normal trading hours or when Employees are away from the dealing room.

8.8.2. Such dealing activity should only be conducted by Employees who have proper approval and authorisation. Employers should specify the type of transactions that are permitted and the limits imposed as well as a procedure for the prompt reporting and recording of such transactions.

8.9. Stop-loss orders

8.9.1. Before a stop-loss order is placed and accepted, the counterparties involved should have a clear understanding of the terms and conditions involved, which should be explicitly spelt out and documented. Those terms and conditions may include the period during which the order is valid, circumstances that trigger the order, discretion, if any, in execution of the order, the circumstances that allow the exercise of such discretion and also the liability of the Bank accepting the order in case of a slippage in execution. The terms and conditions should be clear on the market sources that will be used to determine whether the trigger level has or has not been met.

8.9.2. This Code acknowledges that in fast moving market conditions there is no guarantee that an order will be executed at a pre-determined price, hence a clear agreement between the Bank and client is required.

8.9.3. Actively triggering stop-loss orders to the benefit of Banks, or "jamming the market" in order to trigger a stop-loss order is prohibited.

8.10. **Dealing with unidentified principals**

8.10.1. Banks should not seek or accept transactions on behalf of clients whose existence or identity have not been disclosed. It is acknowledged that instances such as the pooling of retail deposits by money market funds can occur where the Bank receives a deposit without knowledge of the individual depositors. These deposits are placed in the name of the money market fund and "know your client" will apply to the fund and not the underlying depositors. It is accepted that the money market funds are responsible for "know your client" and anti-money laundering provisions for the underlying depositors.

8.10.2. Banks may further deal with nominee companies who in their own right have met "know your client" requirements. It is, however, incumbent upon nominee companies themselves to ensure that principals who have beneficial interests in the said companies have met the requisite "know your client" standards.

8.11. **Contribution to benchmarks/fixings**

8.11.1. Banks may directly or indirectly contribute to external and internal benchmarks that are used by clients for transactional and valuation purposes.

8.11.2. It is incumbent upon Banks who contribute to external or internal benchmarks to abide by relevant global standards for financial benchmarks.

8.11.3. Banks must have appropriate policies and procedures in place to ensure the integrity and robustness of the process of contributing to benchmarks.

8.11.4. Banks must establish and maintain adequate and effective organisational and governance arrangements for the process of making benchmark submissions. Under no circumstances can collusive or manipulative behaviour with regard to benchmarks be tolerated.

8.12. Mark-to-market best practice

8.12.1. Banks who engage in trading should regularly mark-to-market their trading positions. The results of these mark-to-market activities should be available to Management as soon as practically possible.

8.12.2. Banks need to have in place procedures for the independent checking of the mark-to-market process by an independent risk function, who should be completely separate from the front office.

9. Payments and confirmations

9.1. Confirmation procedures

9.1.1. Transactions with other Banks, foreign banks or clients, should be confirmed as soon as possible after the terms of the deal are agreed. Banks should ensure that they have prompt and efficient confirmation and settlement procedures in place.

9.1.2. These procedures are a deterrent to unauthorised dealing. In addition, the sooner a trade problem is identified, the easier and often less expensive it is to resolve. It is recommended that Banks establish escalation procedures to resolve unconfirmed transactions.

9.1.3. Regular verbal deal checks help contracting parties identify and resolve discrepancies in transaction details, such as amounts and value dates.

9.1.4. The frequency of verbal deal checks should depend on the volatility of the market and the number of transactions entered into, but it is recommended that there should at least be a verbal check at the end of every trading day.

9.1.5. On completion of the verbal deal check, both parties should acknowledge that the deal(s) have been agreed upon. Where differences are identified, they should be resolved expeditiously.

9.1.6. In the event of a dispute that entails an open risk for either counterparty; remedial action should be taken by immediately closing out the position. Regardless of how the dispute is eventually resolved, the contracting parties should take all reasonable steps to mitigate further losses.

9.1.7. In addition to verbal checking and verification of transaction details written confirmations provide a useful audit trail to facilitate investigation in the event of a dispute. Confirmation of deals should be made through electronic messaging systems such as SWIFT.

9.1.8. If a transaction is arranged through an Inter-Dealer Broker, the broker should promptly confirm the transaction with both counterparties.

9.1.9. Upon receipt of the confirmation, the contracting parties should make a prompt and thorough check. Deal verification should be conducted directly between the back offices of the two contracting parties. Back office Employees should not accept confirmations that come from front office Employees.

9.2. Payment and settlement instructions

9.2.1. To ensure smooth and efficient settlement, payment and settlement instructions should be provided to the counterparty in a timely manner. Details of the instructions should be thoroughly checked before they are relayed.

9.2.2. Regularly trading counterparties are advised to use standardised settlement instructions to provide greater clarity.

9.2.3. Any amendments in the payment and settlement instructions should be notified to the counterparty without delay. The new instructions should be relayed in writing to the counterparty, who will be required to acknowledge the receipt of such instructions.

9.3. Netting

9.3.1. The use of payment versus payment netting to reduce settlement risk is encouraged. In the case of foreign exchange, this extends to participation in the Continuous Linked Settlement (CLS) arrangements.

9.3.2. CLS was introduced to address the concerns of both central banks and the market regarding settlement risk in foreign exchange transactions. Settlement members to CLS have identified and agreed a number of best practices, so as to add to the reliability and smooth operation of CLS. Detailed and agreed best practices documents are available to all CLS Settlement Members.

9.3.3. This Code subscribes to the CLS best practices.

9.3.4. Payment, or settlement, netting involves settling payments due on the same date and in the same currency on a net basis.

9.3.5. Transactions that are to be included in net settlement should be confirmed individually in order to ensure that all trades are properly included in the settlement obligation. Banks should ensure that net settlement figures are agreed separately to the transaction confirmation process.

9.4. **Reconciliations**

9.4.1. Account reconciliations should be done regularly to detect missing, failed or erroneous entries at an early stage and to provide counterparties or clients with prompt feedback of issues.

9.4.2. Appropriate segregation of duties is required and reconciliations should be carried out by Employees who are not involved in processing of transactions that would affect the balances of accounts held with correspondent Banks.

10. Disputes, differences and mediation

10.1. When differences or disputes arise, Management of the counterparties involved are strongly advised to resolve or settle the issue quickly and fairly.

10.2. Any disputes, arising from the confirmation, settlement or reconciliation processes, should be handled in accordance with established escalation, dispute resolution and reporting procedures.

10.3. Where an open or unmatched position occurs due to discrepancies in the amount, currency, value day or other trade details, it is recommended that the dispute be resolved as soon as possible. Both counterparties should take action to resolve and neutralise the position.

10.4. Where an incorrect payment has been made, all the parties should make efforts to resolve the matter expeditiously and satisfactorily. The party which erroneously receives the funds should not seek to benefit unjustifiably from retaining the money and should compensate for usage of the funds.

10.5. Where an Inter-Dealer Broker makes a firm, unqualified quote but is unable to substantiate it when a transaction is proposed, the dealer has the right to require the Inter-Dealer Broker to honour the quote. The Inter-Dealer Broker normally compensates the Bank for the difference between the quoted price and the executed price. The difference should be settled by payment, or with mutual agreement, offset against brokerage charges. Settlement by a points system is not recommended.

10.6. Where an Inter-Dealer Broker concludes a deal which is misquoted against the market, it should be immediately resolved without unfair enrichment to either party.

10.7. If either party to a transaction makes an obvious mistake when quoting, the guiding principle should be that the parties amend the trade to the price that would have been agreed had the error not occurred, considering the prevailing market rates at the time that the transaction was initially concluded.

10.8. If a transaction is amended or cancelled after it has been confirmed, this should be promptly reported as an exception for the attention of front office Management.

11. Risk management

11.1. Risk management has become an integral part of Management responsibility in all institutions involved in dealing in the financial markets. While risk management typically involves a separate unit or department to assist in assessing and quantifying risks, the management of risk remains the responsibility of Management.

11.2. The objective of risk management in any institution involved in dealing is to ensure that the institution's dealing, positioning, credit extension and operational activities do not expose the institution to excessive losses. The effective and efficient management of risks can also assist in achieving business objectives.

11.3. The primary components of sound risk management include:

11.3.1. a comprehensive risk management policy and strategy for the entire institution;

11.3.2. effective oversight by the Board of Directors or an equivalent executive committee ;

11.3.3. detailed internal policies, procedures and controls on risk taking, with a specific focus on dealing limits;

11.3.4. adequate information systems for managing and reporting risk; and

11.3.5. a clear role clarification of who is responsible for assessing and managing risk in the individual departments.

11.4. The sophistication of risk management should be commensurate with the level of risk undertaken in the institution.

11.5. Physical and functional segregation between the dealing room, middle office and back office remains one of the basic tenets of sound risk management

Among other things this implies the separation of dealing, deal processing, accounting, and settlement as well as independent verification of prices, rates and yield curves used to mark-to-market exposures. It also implies independent frequent reporting of risk positions and dealing profits and losses to Management.

12. Market terminology

12.1.1. **"Authorised Dealer"** means, for purposes of this Code, Banks appointed by National Treasury, in conjunction with the SARB, to deal in foreign exchange in accordance with Exchange Control Regulation 2.

12.2. **"Bank"** means a public company and a local branch of a foreign bank registered or authorised in terms of the Banks Act, 1990 and shall include Authorised Dealer. This Code is applicable to Banks to the extent that they participate in the financial markets mentioned in paragraph 1.2.

12.3. **"Employee"** means all permanent, temporary or contractual employees of Market Participants who are mandated to undertake any of the activities set out in this Code. **Where indicated by paragraph headings Employee/s may mean only the Employees of a particular Market Participant**

12.4. **"Front-running"** means a process whereby a client's interests are exploited by Market Participants who trade for their own account off the back of a client order.

12.5. **"Insider trading"** means the offences as described in section 78 of the Financial Markets Act, 2012 (Act No. 19 of 2012)

12.6. **“Inter-Dealer Broker”,** also referred to as a voice broker, interdealer broker or a foreign exchange broker, means an entity that is authorised to act as an intermediary by matching counterparties on mutually acceptable terms and passing names to enable the conclusion of transactions;

12.7. **“Jamming the market”** means trading in an inappropriate manner aimed at manipulating the market, such that the stop-loss order of a client is deliberately triggered.

12.8. **“Market maker”** means a Bank that is prepared to make two way prices at which it is willing to enter into transactions in the OTC markets.

12.9. **“Market Participant ”** means, for purposes of this Code, all Banks, Authorised Dealers, Inter-Dealer Brokers, Treasury Outsourcing Companies, Prime-Brokers registered and regulated in South Africa.

12.10. **“Position parking”** means the practice whereby two contract parties agree a deal, usually on the understanding that the contract will be reversed at a specified later date, at or near the original contract rate irrespective of the interim market rate change. The consequence of such an agreement is that for a period of time the obligations of an institution are excluded from its books of account and from Management or regulatory oversight.

12.11. **“Prime-Broker”** means an intermediary mandated to transact eligible transactions between a client and any one or more approved executing dealers. The transaction is “given up” to the Prime-Broker, with the result being one transaction between the dealer and the Prime-Broker and an offsetting transaction between the Prime-Broker and the client.

12.12. **“Treasury”** means, in relation to this Code, the Minister of Finance or an officer in National Treasury who, by virtue of the division of work in National Treasury, deals with the matter on the authority of the Minister of Finance.

12.13. **“Treasury Outsourcing Company”** means an intermediary that acts in the foreign exchange market purely on a mandated agency basis, executing client orders with Authorised Dealers and providing treasury management services.

Appendix A: Interbank Broking Conditions

CONDITIONS FOR THE ESTABLISHMENT OF A FOREIGN EXCHANGE BROKING BUSINESS IN SOUTH AFRICA

1. Foreign exchange brokers must obtain the formal approval of the South African Exchange Control before commencing with any foreign exchange broking business in the South African market.

2. Each foreign exchange broker must be incorporated as a limited liability company registered under the Companies Act (No. 61 of 1973) and must have a minimum subscribed capital of R200 000.

3. Foreign exchange brokers will at all times be wholly independent of Authorised Dealers in foreign exchange in South Africa. Authorised Dealers will under no circumstances acquire or hold any direct interests in a foreign exchange broking company.

4. Brokers act in the foreign exchange market as intermediaries only and never as principals. Thus they may not buy or sell foreign exchange for own account, may not hold foreign exchange and may not borrow or lend foreign exchange. If, due to a bona fide communications error, a broker should end up with an open position, the position should be closed out immediately and the profit or loss settled by way of a difference payment or by using a points bank. All such instances must be reported weekly to International Banking Department, as reiterated in paragraph 6 below.

5. At least one party to every foreign exchange transaction negotiated through a foreign exchange broker must be an Authorised Dealer in foreign exchange in South Africa. It will be the responsibility of the Authorised Dealer to observe all exchange control requirements regarding such transactions.

6. Foreign Exchange brokers will hold regular consultations with the South

African Reserve Bank. This will take place at the behest of either Bank Supervision or the International Banking Department. Furthermore, foreign exchange brokers will report regularly to the said Departments as follows:

Bank Supervision

a. Yearly audited Financial Statements (within 40 days of financial year-end).

b. A breakdown of monthly income and expenditure (by the fifteenth business day of the succeeding month).

Financial Markets

a. Spot turnover negotiated through each broker, broken down in the Dollar equivalent of each currency involved. It must be clearly indicated whether both principals involved are South African and whether one is foreign (weekly).

b. Forward turnover, in exactly the same format as for spot, but short-term swaps, i.e. overnight, tom/next and spot/next must be clearly separated (weekly).

c. All differences paid during the respective week accompanied by a full explanation of each (weekly).

d. All outstanding differences, including cases whether banks claim differences but the broker has not accepted responsibility for the full amount claimed (weekly).

e. All outstanding points, negative and positive, with South African and foreign banks. This figure must be accompanied by a statement from the broking firm's management that the management of the banks involved are aware of the points, agree with the totals and accept responsibility (weekly).

f. Every six months, of which once shall be with the yearly audited Financial

Statements, the management of each broking firm must submit a statement that they have complied with the requirements of this document.

7. The management of broking firms have to ensure that there are adequate management controls over all differences and outstanding points positions that are being run by their staff In particular, systems must be in place to agree regularly with the management of banks involved on outstanding positions.

8. In all transactions in the foreign exchange market, brokers shall quote dealing prices excluding commission charges and separately identify brokerage. Rates of brokerage should be agreed in advance and only be senior management on each side.

9. There will be no obligation on any Authorised Dealer or on the Reserve Bank to make use of foreign exchange brokers for their own foreign exchange transactions, but the Reserve Bank reserves itself the right to call on such services for any transactions it may in future decide to channel through the brokers.

10. Each foreign exchange broking firm will provide the Reserve Bank with a list of its shareholders, and will keep the Financial Markets Department informed of any changes or shareholders.

11. Each foreign exchange broking firm will keep the Reserve Bank informed of its postal address, the location of its Head Office and the names of the members of its Board of Directors and of its senior management staff. The International Banking Department should be informed immediately of any changes taking place.

12. The Reserve Bank obviously reserves itself the right to carry out inspections of the activities of any foreign exchange broker in South Africa. Any such inspection might for instance be to satisfy the Bank of the veracity of

information being supplied to it or to ascertain that management controls are adequate.

13. The Reserve Bank would appreciate receiving an invitation for representatives of its International Banking Department and Bank Supervision Department to attend the Annual General Meeting, solely in the capacity of an observer, of all foreign exchange brokers in South Africa.

14. The Reserve Bank reserves itself the right to impose further conditions should it be deemed necessary.