

# **Guidance for Efficient Regulation of Conflicts of Interest Facing Market Intermediaries**

## **Final Report**



**OICJ-IOSCO**

**EMERGING MARKETS COMMITTEE  
OF THE  
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## **List of Abbreviations**

<b>CIS</b>	Collective Investment Scheme
<b>CMA</b>	Capital Market Authority (Oman)
<b>CMB</b>	Capital Markets Board (Turkey)
<b>CMSA</b>	Capital Markets & Services Act 2007 (Malaysia)
<b>CNV</b>	Comisión Nacional de Valores (Panama)
<b>CVM</b>	Comissão de Valores Mobiliários Brazil
<b>DIFC</b>	Dubai International Financial Centre
<b>DFSA</b>	Dubai Financial Services Authority
<b>EMC</b>	Emerging Market Committee
<b>FSB</b>	Financial Services Board (South Africa)
<b>FSCMA</b>	Financial Investment Services and Capital Markets Act (Korea)
<b>IPO</b>	Initial Public Offering
<b>JSC</b>	Jordan Securities Commission
<b>M&amp;A</b>	Merger and Acquisition
<b>MIFID</b>	Markets in Financial Instruments Directive
<b>RNSC</b>	Romanian National Securities Commission
<b>SC</b>	Securities Commission Malaysia
<b>SCA</b>	Emirates Securities and Commodities Authority, UAE
<b>SEBI</b>	Securities and Exchange Board of India
<b>SEC</b>	Securities and Exchange Commission (Nigeria)
<b>SEC</b>	Securities and Exchange Commission (Sri Lanka )
<b>SEC</b>	Securities and Exchange Commission (Thailand)
<b>SECP</b>	Securities and Exchange Commission of Pakistan
<b>SEO</b>	Securities and Exchange Ordinance 1969 (Pakistan)
<b>SFC</b>	Superintendencia Financiera de Colombia
<b>SRO</b>	Self Regulating Organization
<b>WG3</b>	Working Group 3

## EXECUTIVE SUMMARY

The last few years have seen a significant growth in the involvement of market intermediaries in the financial market, which has led to increased complexity in the range of business services provided as well as the usage of financial products and instruments. The recent financial crisis and several corporate scandals have given rise to concern over the workings of market intermediaries due to their inherent agency structure that gives rise to conflict of interests. Many cases have arisen where intermediaries are not working in the best interests of their clients. Further, due to providing a wide range of services, market intermediaries are prone to conflicts of interest, which can lead them to diverge from adopting strategies and behavior which their clients will benefit from.

The evolving market scenario combined with an enhanced role of globalization in financial markets have prompted regulators to find improved regulations to address conflicts of interests faced by market intermediaries which pose a risk to the health of any financial system. There are apprehensions over the methods and strategies adopted for the regulation of market intermediaries to manage conflict of interests. Regulators have come under fire from various sections and have been grilled for using soft regulation in relation to market intermediaries<sup>1</sup>. The increased role of globalization in the financial markets has also led to circumstances which have called for greater alignment in the regulatory scope of different jurisdictions. Therefore, regulation of financial markets needs to be developed with a focus towards commonly accepted rules for the regulation of conflicts of interest. Consequently, an increasing number of IOSCO members are in the process of adopting new regulations, to target conflicts of interest.

The Emerging Market Committee (EMC) meeting held on 5 November 2009, mandated Emerging Market Committee's Working Group 3 (WG3) on "Supervision of Market Intermediaries" to develop, for emerging markets regulators, the "Guidelines for Regulation of Conflicts of Interest Facing Market Intermediaries".

Market intermediaries provide a range of services and are hence placed at an informational advantage over other players in the financial market. Imperfections in the financial market and asymmetric information are the prime reasons which can lead to the exploitation of conflicts of interest by market intermediaries. Difficulties with regulation of conflicts of interest faced by market intermediaries arise due to problems in identifying all the situations which can cause a conflict. Strong and harsh regulation towards conflicts can take away the advantages a market intermediary possesses through the means of

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<sup>1</sup> [www.financialpolicy.org/DSCEatwell.pdf](http://www.financialpolicy.org/DSCEatwell.pdf) -

[www.unctad.org/templates/Download.asp?docid=11243&lang=1](http://www.unctad.org/templates/Download.asp?docid=11243&lang=1)

[www.ibanet.org/Document/Default.aspx?DocumentUid=8EC32CFD...](http://www.ibanet.org/Document/Default.aspx?DocumentUid=8EC32CFD...)

economies of scope. On the other, hand soft regulation will create an incentive for intermediaries to exploit the interests of their clients, which would lead to a loss in investor confidence. Therefore, regulatory framework should create a balance between the two and most importantly aim to affect the behavior of the management of an intermediary through emphasizing the importance of adopting strict internal control measures to avoid conflicts of interest from arising.

This report examines the role of market intermediaries in the financial markets and highlights different scenarios where conflicts of interest can take place. The report goes on to identify remedies and create suitable guidelines which can be used by EMC jurisdictions for better management of conflicts of interest.

# Chapter 1 Purpose, Scope and Methodology of the Report

## 1.1 Purpose of the Report

The purpose of this report is to develop guidance for IOSCO EMC member jurisdictions for efficient regulation of the conflict of interests facing market intermediaries, to protect the interests of investors and ensure proper management of risk, in line with IOSCO Objectives and Principles of Securities Regulation<sup>2</sup>, Principle 31<sup>3</sup> that requires market intermediaries to establish an internal function that delivers compliance with standards for internal organization and operational conduct. This report builds on previous work undertaken by the IOSCO Technical Committee which has analyzed conflicts of interest which arise in particular services offered by market intermediaries<sup>4</sup>.

Market intermediaries provide many different services within financial markets; hence many scenarios prevail where the market intermediary could be faced with a conflict of interest. In particular, full-service investment firms providing a full range of services including brokerage, market making, investment banking and asset management have higher potential to confront conflicts of interest, regardless of whether these services are offered through in-house or affiliation.

Conflicts for an intermediary can exist with a client as well as between groups of clients. Asymmetric information<sup>5</sup> available to the intermediary is the root cause of the conflicts. As an intermediary possesses information from a number of clients or investors it has an informed advantage over its clients. This can lead to situations where a department or business unit within the intermediary would benefit more than a different part or department of the intermediary, or a situation where the intermediary prefers certain clients over others with the hope of receiving further business in the future. The conflicts of interests between brokerage and dealing, asset management and other securities businesses, and corporate finance

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<sup>2</sup> <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf>

These consist of 38 Principles of securities regulation (including, the 8 new principles which have been added in June 2010) which are based upon three objectives of securities regulation: protecting investors; ensuring that markets are fair, efficient and transparent; reducing systemic risk.

<sup>3</sup> IOSCO Principle 31 of the *IOSCO Objectives and Principles of Securities Regulation* for market intermediaries states the following:

“Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.”

<sup>4</sup> IOSCO “Market Intermediary Management of Conflicts that arise in Securities Offerings, Final Report”, Nov 2007.

IOSCO “Report on Analyst Conflict of Interest”, September, 2003.

IOSCO “Conflicts of Interest of CIS Operators”, May 2000.

IOSCO “Private Equity Conflicts of Interest, Consultation Report”, November 2009.

<sup>5</sup> Asymmetric information refers to an imbalance of information when dealing with multiple parties.

services and other securities businesses are specifically highlighted in this report. The report is divided into following five parts;

1. Structure of market intermediaries and conflict of interest that exists (role of market intermediary and why conflicts arise, Type 1 and Type 2 conflicts, firm client conflicts, conflicts between different clients and conflicts between different departments or business units of an intermediary).
2. Regulatory framework used in EMC jurisdictions to deal with conflicts of interest (internal control system, disclosure, suspension of transactions, information barriers between departments and affiliates and a review committee for conflicts)
3. Regulation for different types of conflicts of interest that exist (between corporate finance services and other securities businesses, asset management services and other securities businesses, brokerage and dealing).
4. Guidelines and suggestions for better regulation of conflicts of interests. This also covers areas which EMC jurisdictions feel are common and most significant in the context of conflicts of interests.
5. Conclusion and way forward.

## ***1.2 Scope of Study Conducted***

The Emerging Market Committee's research covers the supervisory framework of EMC member jurisdictions to address conflict of interests and focuses on the following activities of market intermediaries:

- Brokerage and/or proprietary trading;
- Securities offerings and other investment banking services; and
- Asset management business, separately or in combination with other securities services.

For the purpose of this study, the term

**'Regulators'** refers to regulators of the capital market activities particularly those activities listed in above para.

**'Market intermediaries'** means the securities firms carrying out financial investment services such as brokerage, dealing, asset management service, etc., regardless of the type of financial products. The



market intermediary could also provide corporate finance services such as IPO underwriting and merger and acquisition (M&A) consulting. The range of permissible businesses may differ from jurisdiction to jurisdiction depending on their legal frameworks.

**‘Brokerage’** means purchasing and selling securities in the secondary market for another person’s account regardless of the title thereof.

**‘Dealing’** means purchasing and selling securities in the secondary market for its own account regardless of the title thereof.

The term “dealing” in this survey does not include corporate finance services defined below.

**‘Asset management service’** means operating funds raised from more than one investor without any control by investors over the investment decision, and distributing benefits of the investment. For jurisdictions that separate the collective investment schemes (CIS) distributor from the CIS operator, the term “asset management service” in this survey includes CIS distribution.

**‘Corporate finance service’** refers to the financial services related to the capital structure of a company. It may include underwriting IPO securities in the primary market, business of arranging for and intermediating the M&A of companies, or acting as an agent for that purpose, business of providing advisory services on the M&A of companies, or business of managing properties of a private equity company. The range of permissible businesses may vary from jurisdiction to jurisdiction depending on their legal frameworks.

### ***1.3 Assessment Methodology***

A survey questionnaire was circulated amongst the EMC member jurisdictions to obtain feedback to analyze their practices and key features of regulatory regimes governing the conflicts of interests facing market intermediaries. The survey was divided into the following four sections:

- i. Business structure of market intermediaries
- ii. Regulatory framework for preventing conflict of interests
- iii. Regulations for different types of conflict of interests
- iv. Practical considerations and actions for regulatory improvement

## 1.4 *Surveyed Jurisdictions*

The EMC would like to acknowledge EMC members from the following jurisdictions for providing valuable information pertaining to their jurisdictions:

<b>S.No.</b>	<b>JURISDICTION</b>	<b>REGULATORY AUTHORITY</b>
1.	Argentina	Comisión Nacional de Valores
2.	Bermuda	Bermuda Monetary Authority
3.	Brazil	Comissão de Valores Mobiliários (CVM) Brazil
4.	British Virgin Islands	British Virgin Islands Financial Services Commission
5.	Cayman Islands	Cayman Islands Monetary Authority
6.	Chinese Taipei	Financial Supervisory Commission
7.	Colombia	Superintendencia Financiera de Colombia (SFC)
8.	Dubai International Financial Centre (DIFC)	Dubai Financial Services Authority (DFSA)
9.	India	Securities and Exchange Board of India (SEBI)
10.	El Salvador	Superintendencia de Valores
11.	Jordan	Jordan Securities Commission (JSC)
12.	Korea	Financial Supervisory Service, Korea
13.	Malaysia	Securities Commission Malaysia (SC)
14.	Montenegro	Securities Commission of the Republic of Montenegro
15.	Nigeria	Securities and Exchange Commission (SEC)
16.	Oman	Capital Market Authority (CMA)
17.	Pakistan	Securities and Exchange Commission of Pakistan (SECP)
18.	Panama	Comisión Nacional de Valores (CNV)
19.	Romania	Romanian National Securities Commission (RNSC)
20.	South Africa	Financial Services Board (FSB)
21.	Sri Lanka	Securities and Exchange Commission (SEC), Sri Lanka
22.	Thailand	Securities and Exchange Commission (SEC)
23.	Turkey	Capital Markets Board (CMB)
24.	United Arab Emirates.	Emirates Securities and Commodities Authority (SCA), UAE

## 1.5 *Introduction*

Market intermediaries range in size from two people firms to multinational businesses and may carry a business offering limited services and products, or multiple businesses offering a variety of services and products. Market intermediaries can provide many different financial services such as brokerage, dealing, asset management and corporate finance or affiliate with other market intermediaries providing different financial services. These market intermediaries are extremely prone to conflicts of interests as they can deal in more than one function for a particular client or a group of clients.

Conflicts between a firm and client are normal in business as both look to increase their wealth. Conflicts do not always need regulation but in situations where a firm is providing multiple services to a client, the firm could have an incentive of providing false or misleading information to the client for its own benefit. The synergies created through combining multiple activities within a financial institution, is one of the driving force behind the development of financial institutions. However, synergies and conflicts of interest go hand in hand with one another. In order to eliminate conflicts of interest, synergies from expanding the umbrella of services under one financial institution need to be eliminated, hence a trade off between the two exists.

In most jurisdictions surveyed, market intermediaries are allowed to operate in multiple businesses simultaneously. The structure of intermediaries differs from jurisdiction to jurisdiction according to the complexity of their capital markets and legal structure. All jurisdictions in the survey responded that intermediaries were involved in brokerage and dealing. Almost all jurisdictions permit intermediaries to undertake corporate finance services. Furthermore, asset management services were undertaken by intermediaries in the surveyed jurisdictions. Conflicts of interest arising from concurrently undertaking these services will be highlighted in Part III of this report.

## Chapter 2

### *Conflicts of interest*

Conflict of interests are a fundamental and pervasive issue both in developed and emerging capital markets where transactions between the market participants are primarily assisted by market intermediaries. Market intermediaries in primary and secondary capital markets have to balance their own interests, the interests of their partners and those of issuers and investors. Conflicts of interest usually arise due to an imbalance of information between two or more parties. Reliable information is a necessary tool for markets to serve their purpose efficiently. Asymmetric information between different parties creates the possibility where the party with access to more reliable information can take advantage of the situation. Asymmetry of information such as in the case where a business manager is better informed about his firm's risks and returns as compared to a purchaser of the firm's securities, can lead to problems faced through adverse selection<sup>6</sup> and moral hazard<sup>7</sup>.

#### **2.1 Definition of Conflicts of Interest**

The term conflict of interest is widely used in commercial and legal transactions and is acknowledged in the codes of ethics of various professional bodies, to identify behavior that is unacceptable. Despite international usage of the term, there is no universally accepted definition of conflicts of interest. To further accentuate the problem, the globalization of the world's financial markets has led to different definitions and regulations of what constitutes a conflict in different jurisdictions. Conflicts of interest are normally attributed to imperfections in the financial markets and asymmetric information.

Previous work by IOSCO<sup>8</sup> has dealt in regulating conflicts of interest in various areas of the capital market but has not provided a general definition of what constitutes a conflict of interest. Similarly the EU has established a number of rules regarding situations where a conflict of interest arises in the capital markets but has so far abstained from a general definition<sup>9</sup>. Not all conflicts of interest create market failures i.e. where the transacting parties are unable to find appropriate contractual solutions themselves, hence only those conflicts that can result in market failure should be addressed. Most jurisdictions surveyed responded that they did not have a legal definition of what constitutes a conflict of interest in

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<sup>6</sup> A situation where sellers possess information that buyers don't, leading to inappropriate selection.

<sup>7</sup> The risk that a party to a transaction has not entered into a contract in good faith.

<sup>8</sup> IOSCO "Market Intermediary Management of Conflicts that arise in Securities Offerings, Final Report", Nov 2007, "Statement of Principles for addressing sell-side Securities Analyst conflicts of interest", September 2003, "Conflicts of Interest of CIS Operators" May 2000.

<sup>9</sup> The EU Commission Directive 10 Aug, 2006. Implementing Directive to EU "Markets in Financial Instruments Directive (MIFID), April 2004".

place, but for the sake of this report a conflict of interest is said to arise when the interests of particular firms and investors are pursued at the expense of other firms and investors.

## **2.2 *Classification of Conflicts of Interest***

Situations creating a conflict of interest could occur between a company and a client (type 1 conflict), between different groups of clients (type 2 conflict) and also within an organization, team or department (intragroup conflict). Not every mentioned conflict affects all institutions, the size and nature of the conflict varies depending on the complexity of the business structure in place at the institution. The different types of conflicts of interest that can arise are described below:

### **2.2.1 *Firm/Client Conflicts***

Type-1 conflicts take place between a firm's own economic interests and the interests of its clients, usually reflected in the extraction of rents or mispriced transfer of risk. A firm holds an informational advantage over its clients, which can lead to the firm not necessarily working in the client's best interest. In addition to direct firm-client conflicts, indirect conflicts such as collusion between the firm and a fiduciary acting as an agent for the client could also exist. Market intermediaries, due to the various services offered, may provide the information made available to them by a client to benefit their proprietary trading desk rather than the client. Such conflicts can also arise where the intermediary takes part in an underwriting for a business and on the other hand is also a commercial lender to the same business. This could lead to false and misleading advice being provided to the client, hoping that the money made from the underwriting will be used to clear the debt the business owes to the intermediary.

### **2.2.2 *Client/Client Conflicts***

Type-2 conflicts are present between a firm's clients or types of clients, which place the firm in a position of favoring one client at the expense of another. Such situations arise as not all investors are on an equal informational footing. Institutional investors often expend resources on research purposes, giving them an advantage over individual investors who typically lack the ability to engage in the same level of research. When the intermediary deals with several clients it is under no obligation to serve one client over the other, therefore it could lead to a situation where it prefers one client over the other due to a promise of future business or better business relationships. Such a case could take place where a securities offering is oversubscribed and the intermediary provides preferential treatment to certain clients. A more serious conflict can arise in a situation where clients of the intermediary are on different market sides. If an intermediary serves different clients who are issuers and investors respectively, a conflict could arise in the pricing of the offer as the issuer could want a higher price to be set in order to maximize his income, while the investor would want to purchase the securities at a reasonable price.

### ***2.2.3 Intra Group Conflicts***

Intra Group conflicts in this case refer to the incompatibility, incongruence, or disagreement between members, business units or departments of an intermediary or between subsidiaries or branches of an internationally active financial group across jurisdictions regarding their goals, functions or activities. A simple example of this could be that an internationally active financial group's management decisions may be in the best interest of the group but at the expense of loss of profits, costs or other sacrifices on the side of their subsidiaries or branches. If this is the case, there is a reasonably high likelihood that interests of the group's clients in one jurisdiction may be sacrificed for the benefit of its clients in other jurisdiction(s). In more complex situations a financial intermediary undertaking different services will not always work in the best interest of all departments or affiliates. A transaction which could be beneficial for one service area of the intermediary could be detrimental for the other. In general, intra group conflicts may be discussed as part of discussions on Type-1 and Type-2 conflicts above, as they are mostly triggered by the intention of an intermediary or an internationally active financial group to place its own benefits over those of their clients and may be effectively prevented where its subordinate business entities or units are treated equally in accordance with clearly stipulated standards governing the entire intermediary or group.

### ***2.3 Regulatory Framework for Preventing Conflicts of Interest***

The growing number of recent corporate scandals suggests that markets are inefficient and that new regulations are needed to prevent any further loss of investor confidence in the financial system<sup>10</sup>. Regulation of conflicts of interest needs to find a balance between over and under regulation. Inadequate regulation can result in costly failures while over-regulation can prove detrimental to the financial industry through a cautious approach by both investors and intermediaries. The grounds for regulation of conflicts of interest vary from jurisdiction to jurisdiction depending on legal requirements in place. Regulation of conflicts of interest can be stated in statutes made by the legislature, supervisory regulations issued by securities regulators or other government agencies and industry rules or guidelines issued by Self Regulating Organizations (SRO). In a few jurisdictions where there were no regulatory grounds to control conflicts, market intermediaries have made their own rules to deal with conflicts of interest for their internal control purposes.

In all the jurisdictions surveyed conflicts of interest facing market intermediaries were governed through regulations issued by the securities regulator or government agencies while half of the jurisdictions governed conflicts through statutes made by the legislature or via guidelines issued by SRO's. The securities regulator has the authority to regulate conflicts of interest in all the countries surveyed while

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<sup>10</sup> "Can the Market Control Conflicts of Interest in the Financial Industry" Eugene N. White, May 2004.

SRO's were also able to regulate conflicts in some jurisdictions. General principles such as prohibition of conflicts of interest, duty of care and duty of loyalty are covered by the regulations in place in most jurisdictions surveyed while the laws and regulations in place in other jurisdictions account for more specific provisions depending on the nature of the conflict at hand.

Several different strategies can be adopted in order to effectively address the problems posed to market intermediaries by conflicts of interest. As market intermediaries are prone to conflicts of interest due to their structure, the primary strategy would involve the creation of an organizational structure which prevents or minimizes conflicts of interest from taking place and focuses on altering the behavior of different players within the intermediary so that it works in the best interest of its clients. For an appropriate organizational structure to be put in place for market intermediaries, different measures can be put in place by jurisdictions. Most jurisdictions surveyed rely on a mix of strategies mentioned below:

### ***2.3.1 Disclosure of Conflicts***

Disclosure is an extremely popular procedure used by jurisdictions to address conflicts of interest. In situations where a conflict arises within an intermediary and it is unable to ensure fair treatment towards the client, disclosure of the conflict should be made mandatory in order to allow the client to make an informed decision. However, mandatory disclosure may be insufficient as intermediaries may hide relevant information. In order for disclosure to be effective and meaningful for the client it needs to be complete and timely, taking into account all aspects where a conflict can arise. Effective disclosure reduces information asymmetries between different parties in a transaction and protects against the problems posed by adverse selection and moral hazard. Nonetheless, disclosure is a complex strategy and intermediaries usually underestimate the risk of a conflict arising, leading to a lack of disclosure to their clients. As a result, some supervisory oversight may be needed, since regulators can observe information regarding firms' conflicts of interest and can take actions to prevent intermediaries from exploiting conflicts of interest.

### ***2.3.2 Information Barriers***

Information barriers (Chinese Walls) are used in several of the jurisdictions surveyed to mitigate the risk posed by conflicts of interest. Information barriers are used in firms to block or hinder the flow of information from one department to another. This is important for market intermediaries due to their complex structure for e.g. an information barrier could be set up between the research division in an intermediary and the investment banking division, as the research department could produce a biased report on a company whose underwriting is being done by the intermediary. For information barriers to properly take affect it is essential that the procedures are clearly defined so that only the concerned divisions have access to any information that is deemed confidential. Information barriers can be of a

physical nature such as separation of different departments from one another or they could involve classification of documents and computer security protections. However, intermediaries need to be careful while setting up information barriers since stringent separation of functions through barriers can seriously reduce synergies of information collection, thereby preventing intermediaries from taking advantage of economies of scope in information production.

### ***2.3.3 Limitation/Prohibition of Business Conduct***

Nearly all the jurisdictions surveyed impose limitations on business conduct. When a conflict arises and an intermediary feels that it cannot be dealt with even after disclosure of the conflict to the client, the intermediary should refrain from acting, therefore protecting its customer from issues created by the conflict. Intermediaries should also refrain from acting where the conduct is prohibited in the law. Limitations on business conduct should be placed with great care as it could have negative implications in the market, due to investors seeing this as a bottleneck or viewing this as a hindrance towards investing in the concerned firm. The procedures defined for imposing limitations on business conduct need to be properly defined for this strategy to work properly. An intermediary should be able to identify and realize situations where it will not be able to work in the best interest of its client. This strategy should only be used as a last resort.

### ***2.3.4 Self Control and Firm's Internal Conflict of Interest Management***

Many jurisdictions rely on intermediaries to be able to manage the conflict of interest internally. This strategy depends on a market intermediary and its management being aware of situations where a potential conflict of interest can take place. Most intermediaries are divided into different business units where each unit functions as a sole business. For this strategy to be implemented adequately it is important that the management look at the bigger picture and not just individual divisions. An intermediary can create an internal conflict of interest management committee which deals with identifying and addressing conflicts of interest. The committee formed by the market intermediary can establish a conflict management process which is followed through the internal control mechanisms. What is observed in the market is that financial companies such as internationally active financial groups that are large in size or engage in a wide range of financial activities tend to have in place effective mechanisms to manage conflicts of interest. However, this is often not the case for many smaller companies due to costs and other practical difficulties.

### ***2.3.5 Regulatory Surveillance / Examinations***

A high percentage of jurisdictions surveyed use regulatory surveillance to assess if firms are compliant with the regulatory framework in place to counter conflicts of interests. Regulatory surveillance of firms



through on site and off site inspections is a regular feature in almost all jurisdictions. Regulatory surveillance can be used to check the internal controls for dealing with conflicts that market intermediaries have in place and to ensure that intermediaries are following the rules and regulations laid down in the laws or guidelines relating to conflicts of interest. Examinations for market intermediaries on conflict of interest can encompass the following areas: assessing the adequacy, effectiveness, and sufficiency of policies, procedures and controls in minimizing conflicts; reviewing to identify, analyze and weigh the effectiveness of internal conflict of management systems, Chinese Wall policies and procedures; and recommending procedures to further increase and strengthen an intermediaries internal conflict of management mechanism. Surveillance could also be used to detect and address cases where insider trading may take place. Furthermore, the regulator can also get involved in surveillance or examination of an intermediary upon the request of a client who feels that an intermediary might be exposed to a conflict of interest during its conduct.

### ***2.3.6 Caveat Emptor***

Caveat Emptor is a Latin phrase for “let the buyer beware” and is a strategy adopted for consumer or investor protection. A few regulators in the jurisdictions surveyed use Caveat Emptor as a strategy to alleviate market intermediary’s conflict of interest. In the case of a conflict of interest this suggests that investors or clients should be informed about the deal or transaction they are getting themselves in. It places importance on the investor or client to make sure that they avoid situations where a conflict of interest could take place while dealing with a market intermediary. Once Caveat Emptor has been informed to the client he will be getting involved in any transaction at his own risk.

## Chapter 3

### Regulations for different types of conflicts of interest

Due to a market intermediary providing a wide range of services many different types of conflicts of interests exist amongst them. The wider the range of services provided by a single market intermediary the greater the possibility of conflicts of interest which can be exploited. Such behavior by a firm or individuals will obstruct the efficient allocation of resources to their most productive uses and benefit the intermediary as a whole or a business unit within the intermediary. However, acting in such a manner can also have a detrimental effect on the intermediary's reputation, giving rise to a trade off between both circumstances. Regulatory action should be taken where necessary to reduce a conflict, but it needs to be balanced against any reduction in the economies of scope created through providing a combination of financial services.

This section will underline particular situations/areas within the range of services provided by the market intermediary where conflicts of interest may arise, such as: conflicts between brokerage and dealing; conflicts between corporate finance services and other securities/business services; conflicts that arise between asset management services and other securities/business services, and the regulatory framework, available in EMC jurisdictions, to manage and mitigate these conflicts. Furthermore, this section will highlight the incentives for a market intermediary to act in a conflicted manner and assess the costs and impact it places on its clients.

#### ***3.1 Conflicts Between Brokerage and Dealing:***

Through providing brokerage services an intermediary is purchasing and selling securities in the secondary market for a clients account. Clients place orders with a broker and the broker tries to satisfy those orders by purchasing or selling securities. In return for the brokers service they are given a commission by the client for each transaction made. Dealing on the other hand involves purchasing and selling securities in the secondary market for the intermediaries own account (proprietary trading).

By undertaking both these services concurrently many situations arise where the intermediary can favor its own interests over the interests of its clients. Providing brokerage and dealing services can put the intermediary in a situation where it is in direct conflict with its clients. Circumstances can arise where the intermediary can make use of its dealing services after gaining some valuable information through its brokerage clients. An intermediary can also allocate profitable securities to its own account rather than the client's, where the availability of the security is limited at a certain price. Different areas where conflicts can arise when an intermediary is acting as a broker facilitating customer traders and also engaging in proprietary trading or dealing are mentioned below:

### **3.1.1 Churning**

Churning is said to take place when a broker is involved in excessive trading in a client's account for the purpose of generating commissions. The conflict here arises between the broker's interest and the interest of the client. Brokers want to maximize their income through commissions received from excess trading, which may lead them to make unprofitable investments for their client. Most of the regulatory authorities have rules prohibiting churning - excessive trading for the purpose of generating commissions to the detriment of clients' interest. When irregularities are found, regulators investigate them and build a case for legal action by looking into the trading record, the nature of the trades, the person in control of the purchase and selling activities, and the frequency of trades made over a certain period of time.

All respondents, except Colombia, United Arab Emirates, and Sri Lanka stated that they have measures against churning. The regulatory measures include prohibiting order execution that is not in line with the investor's investment strategies and ensuring that transactions are fair and reasonable in the context of the investor's financial situation and investment objectives. Furthermore, activity letters and periodic confirmation of account objectives and strategy are often required in order to safeguard market intermediaries against churning. The regulators, in most cases, have the authority to issue administrative cease and desist from processing orders, and file the complaint for injunctive relief in court when churning is discovered. Additional legal actions such as suspension of license or registration, financial remedy or imprisonment can also be enforced.

In Cayman Islands, the Securities Investment Business Regulations (Code of Conduct) require licensees to ensure that transactions are fair and reasonable to the client. More specifically, the Statement of Guidance on Client Understanding, Suitability, Dealing and Disclosure prohibits a license-holder from carrying out transactions with unnecessary frequency or in excessive size, or for a client for whom the license-holder has discretion over the account's investment scheme. In case of breach, the Securities Investment Business Law allows the authority to revoke a license, impose a condition on a licensee, apply to the court for remedies like disgorgement, restitution or injunction, or require the licensee to take any other necessary action.

Similarly, in Korea, Article 68 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) forbids soliciting a non-professional investor too frequently without taking into consideration his investment objective, financial status, investment experience, etc. For noncompliance, administrative sanctions such as cancellation of a license (Article 420) or a monetary fine of no more than 50 million won (Article 449) can be levied.

Dubai Financial Services Authority (DFSA) also has laid out detailed regulations regarding churning. Executing orders for a client in the market intermediary's own discretion or transacting with an excessive frequency is considered churning. Depending on the gravity of noncompliance, the broker may see its license terminated or restricted and/or be required to seek approval of the DFSA before any future action is taken.

### **3.1.2 *Front Running***

This is a problem that arises when an intermediary deals in brokerage services and is also involved in proprietary trading. The conflict exists when a broker is involved in dealing services through executing orders for the intermediary's account, while taking advantage of advanced knowledge of pending orders from its client. For example, a broker who gets information from a client to undertake an order can place the same order for the intermediary's dealing account before that of the clients. Regulators in most cases regard this as an unethical market behavior in which a broker is not acting in the client's best interest.

The majority of the respondents prohibit market intermediaries from trading for their own accounts based on the information obtained from clients' orders, and the intermediaries need to carry out adequate supervisory responsibilities such as record keeping, maintaining an information barrier between proprietary trading desk and brokerage division, and disclosing any conflicts of interest to ensure that no one takes advantage of private, incoming order-flow information.

Many jurisdictions enforce an obligation of fair dealing on brokers and dealers, and in case of misconduct, disciplinary sanctions are imposed. The types of sanctions range from monetary penalty, disgorgement of profits, warnings, and suspension of business to cancellation of license in more severe cases. Some jurisdictions such as the British Virgin Islands and Chinese Taipei have measures which require an appointment of a qualified adviser on the issue and/or the removal of individuals liable for breach.

In Malaysia, Capital Markets & Services Act 2007, Guidelines on Market Conduct and Rules of Bursa Malaysia Securities Exchange all state that priority must be given to the client's orders, and both administrative and civil actions may be taken for noncompliance. In Pakistan, Securities and Exchange Ordinance 1969 (SEO) strictly prohibits insider trading, which encompasses front-running, by specifically defining insider and inside information, and the person found responsible for breach is liable to a fine, cancellation of registration, bar on services etc. depending on the nature of such defaulting persons occupation/ involvement. Regulations for Proprietary Trading and Code of Conduct for Brokers forming part of the Brokers and Agents Registration Rules also provide measures for curtailing front-running.

### ***3.1.3 Unfair Practices in Analysis, Report Preparation and Distribution***

This situation can involve an intermediary creating a false or misleading report about a company which its client holds a stake in. The broker can use this to persuade its client to buy or sell the concerned security and do the opposite while transacting in its own account. This would be equivalent to the broker taking money from the client and putting it into the intermediary's dealing account. To prevent such conflict, internal controls are necessary to ensure that analysts exercise independence and diligence in analyzing investments and disclose all matters that could influence independence or objectivity of the report. Many jurisdictions require the full and complete disclosure in analysis reports of actual and potential conflicts of interest faced by the individual analyst, establishment of information barriers between research and investment banking divisions, and internal restrictions on analysts owning shares in companies they cover.

Unlike other jurisdictions which regulate unfair practices in analysis report preparation and distribution with laws and government rules, Panama uses the intermediary's internal control to ensure analysts' independence and objectivity. Most of other jurisdictions currently apply regulations against market manipulation or insider trade to analysts as well. In some jurisdictions like Dubai (DIFC) and Jordan, investors can claim against analysts to recover damages caused by analyst misconduct.

In Conduct of Business (COB) 6.3, Dubai (DIFC) has laid out detailed legislation regarding unfair investment research practices. It calls for sufficient internal control procedures to monitor and manage such analyst conflicts of interest. Examples of internal control mechanism include Chinese walls, analyst remuneration structure and trading restrictions, and conflict disclosures.

Pakistan requires analysts to have reasonable justification in their research recommendations, disclose any conflicts of interest that can harm the objectivity of the report, and retain all records used to support their views. In case of misconduct, the regulatory authority can cancel or suspend a registration, and the related person may be imprisoned or fined under the SEO.

### ***3.1.4 Conflicts Between Clients in Order Aggregation and Allocation of Securities***

Order aggregation of client accounts or client accounts with proprietary accounts often results in conflicts of interest as it can benefit a certain client or the intermediary itself at the expense of other clients. Brokers may be inclined to combine orders for administrative convenience and to achieve lower execution costs typically associated with larger orders. Unless it is consistent with the duty to seek best execution for its clients, aggregation in general is forbidden.

Since brokers could defraud clients by allocating trades inequitably among clients, they are often required, before entering an aggregated order, to produce a written statement specifying the accounts to be aggregated and how it intends to allocate the order among those clients. Allocation must be made fairly between a client and the other parties whose interests have been aggregated by taking into account all factors including the sequence in which the orders were received, any relevant instructions received from the client, the relative sizes of the orders, and the current liquidity of the market.

Order aggregation is prohibited, if not constrained to certain conditions, in most surveyed jurisdictions. In Dubai (DIFC), COB stipulates that aggregation of orders is allowed under certain conditions. A broker can aggregate orders when the aggregation will not disadvantage any client, the basis and effect of aggregation are disclosed to the clients, and it has written standards and policies of aggregation. Allocation must be made fairly and equitably and the details of allocation must be kept in record.

The Capital Market Law and Executive Regulation in Oman states that the priority for execution should follow the order of price, time, and type of order. It also requires market intermediaries to establish the internal control system to ensure fair placement, execution, and allocation of orders.

Pakistan, on the other hand, forbids brokers from engaging in any aggregation of a client's order with other clients' orders or with own account orders. Noncompliance could be subject to a monetary penalty or a suspension of "membership which leads to suspension of license/registration.

### ***3.2 Conflicts of Interest That May Arise Between Corporate Finance Services and Other Securities/Business Services***

Corporate finance services are the services related to the capital structure of a company. This could include underwriting IPO securities in the primary market, business of arranging for and intermediating the mergers and acquisitions of companies, or acting as an agent for that purpose, business of providing advisory services on the merger and acquisition of companies, or business of managing properties of a private equity company. The range of permissible services may vary from jurisdiction to jurisdiction depending on their legal frameworks.

Corporate finance is part of the services provided by investment banks. Investment banks gain economies of scale and scope, through provision of financial services which tackle information asymmetries in the capital market. Investment banks have recently been at the centre of criticism due to an apparent lack of independence in their behavior and policies with regards to the objectiveness and independence of their research reports and analyst recommendations. Conflicts of interest are a consequence of the function of investment banks which intermediate the interaction between issuers and investors in the capital market. Issuers will benefit from overly optimistic research while investors on

the other hand will benefit from unbiased research. If the incentives at the intermediary for the provision of these two services are not properly aligned, employees at one side of the firm will be tempted to distort information to the advantage of their clients and the profit of their own department or business unit within the intermediary<sup>11</sup>.

The previous report published by IOSCO<sup>12</sup> covered in detail the types of conflicts of interest that arise in securities offerings and how market intermediaries manage those conflicts. This report further broadens the scope by addressing the typical types of business conducts which can cause conflicts of interest as market intermediaries carry out both corporate finance services – e.g. securities offering and M&A - and other securities businesses.

The main conflicts faced while providing corporate finance services are examined below:

### ***3.2.1 Pricing (Underpricing/Overpricing)***

The problem of pricing a security would arise during a securities offering. As the intermediary is dealing with both sides of the market - the issuer and the investor, it may favor one side over the other in terms of setting a price at which the security would be made available. The issuer would want the best possible price for the security while an investor would want to purchase the security at a price favorable to him. This could provide an intermediary with incentives to underprice or overprice the security.

Securities could be underpriced by a market intermediary due to a high demand existing for the securities at offer. The intermediary might believe that a lower share price would lead to a higher value of shares sold. This could be beneficial to the reputation of the intermediary as well as increase the net fee it receives. The market intermediary could have strong ties with an institutional investor and underprice a security in order to benefit the investor. Furthermore, a security could be underpriced if the proprietary trading desk at the intermediary is interested in purchasing the security at offer. The conflict created through underpricing will be greater where the fee the intermediary charges is related to a successful issue.

In the same way an intermediary could have an incentive to overprice securities. If the intermediary through its proprietary trading desk or in any other form has an ownership in the security at offer, it may look to charge a higher price. In the case where the issuer is a debtor to the intermediary, it might look to set a higher price in order to retrieve the maximum amount for the issuer, in order to pay back its debt to the intermediary.

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<sup>11</sup> “Investment Banks, Scope and Unavoidable Conflicts of Interest” Eric Sirri, Federal Reserve Bank of Atlanta, Economic Review, Fourth Quarter 2004.

<sup>12</sup> *Market Intermediary Management of Conflicts that Arise in Securities Offerings – Final Report*, Technical Committee of the IOSCO, November 2007.

When overpricing or underpricing happens, the market intermediaries involved are required to file a disclosure report outlining the reasons and effects to prevent such conflict of interest. Preferably, the intermediary's proprietary trading desks, sales teams, research analysts, brokerage clients and affiliated owners should not be involved in the pricing process as their interests are not aligned with that of the issuer.

According to the survey, while 6 jurisdictions did not regulate pricing, Chinese Taipei requires a full disclosure of the method, principle, and calculation used to derive the price when underwriting securities. It also stipulates situations where further explanation for price difference is required. Likewise, in Turkey, if the initial public offering (IPO) price of a security is different from the listed or nominal price, an evaluation report should be prepared and disclosed.

In Thailand, the pricing method is not regulated but certain parties, who could have influence over pricing, are restricted from being allocated shares.

### ***3.2.2 Preferential Allocation of Securities to More Profitable Clients***

An opportunity for a conflict of interest arises during an oversubscribed issue where an intermediary has a say in the allocation of securities. This could cause a market intermediary to prefer certain clients over others based on personal ties or the promise of future business. For instance, preferential allocation can be made to a more favored trading client, perhaps a large and high commission-paying hedge fund as a sign of appreciation for the business it has provided or in return for a potential trading commission. To resolve this issue, fair and reasonable allocation criteria and methods must be put in place before any allocation is made. Disclosure of actual allocations will ensure that an issuer is informed about the allocation decisions made on its behalf by the intermediary.

Amongst the 11 jurisdictions which regulate allocation, discrepancy in the details of regulation still exists. In Thailand, allocations must be made fairly with one exception. The Securities and Exchange Commission of Thailand allows trade volume to be used as a criterion of allocation. In addition, a market intermediary must submit an allocation report outlining the criteria of allocation, the persons allocated, and the proportions of securities allocated, to the Commission within 45 days of the end of the allocation period. Some jurisdictions, like Turkey and Malaysia, have more general provisions enforcing intermediaries to allocate securities fairly and equally among clients.

In Chinese Taipei, it is forbidden that securities are allocated to parties related to the issuer or the underwriter who have material interest in the securities. In Korea, regulations also prohibit



discrimination against certain subscribers in securities allocation with no legitimate reasons. Violation of the regulations may result in cancellation of license, imprisonment or a fine.

### ***3.2.3 Advising Multiple Bidders in a Transaction***

An intermediary could find itself faced with a conflict of interest where it is representing the interests of two or more bidders in a security offering. As mentioned above allocation of securities could be an area of conflict. The intermediary, due to its preferences could provide misleading advice to one of the clients in order to benefit another client. Advising multiple bidders can bring more commission revenue to the firm. However, an investment advisor must act solely in the best interest of the client, even if that interest is in conflict with the advisor's financial interest. If such situation arises, investment advisors must disclose any conflict or potential conflict to their clients.

Around a third of the countries surveyed regulated this issue while in one jurisdiction such practices are allowed. To avoid the conflict of interest arising from advising multiple bidders in the same transaction, in Chinese Taipei, the lead manager is required to publish a book building or a competitive auction announcement in the newspapers with detailed information about the bid. In Colombia, this is also considered as a type of conflict of interest subject to a fine, suspension or cancellation of a license.

It is interesting to note that in Montenegro, market intermediaries are allowed to advise multiple bidders in the same transaction. Similarly, in 7 other jurisdictions such as Bermuda, Nigeria and Oman, no regulation against advising multiple bidders is indicated.

Even among the jurisdictions which do not entirely prohibit advising multiple bidders, such as Dubai (DIFC), Korea and many others, the market intermediaries are required to have adequate internal control systems to identify, prevent and manage conflicts of interest between clients.

### ***3.2.4 Advising the Seller and a Potential Buyer in the Same Transaction***

A conflict of interest is inevitable when a financial advisor who is supposed to act in the best interests of his/her client advises both a buyer and a seller in the same corporate finance transaction like an M&A deal. Their interests directly clash since the buyer desires the lowest possible price whereas the seller wants the highest possible price. Under such circumstances, an investment advisor owes professional duties to both sides in a transaction, which may create disputes and put the advisor's integrity and reputation at risk. Due to the opposing interests of the seller and a potential buyer, an advisor can represent and promote one side only at the cost of the other. The best way to avoid this is to refrain from acting on behalf of both the buyer and the seller. If this is not possible, informed consent is suggested to be obtained from the client and proper information barriers should be put in place.

A third of the countries surveyed regulated this issue while one jurisdiction allows such practices to take place. In both Korea and Chinese Taipei, the market intermediary is required to inform the client about the conflicting roles it is going to play in the transaction. In 6 other jurisdictions including Thailand and Dubai (DIFC), there are relatively broad provisions in place to regulate dual advising instead of specific rules against it. In Montenegro, the market intermediary is allowed to engage in such practices, while 7 other jurisdictions reported no specific regulations governing dual advising exist.

### ***3.2.5 Exaggerated Investment Solicitation or Sales of Securities Underwritten by the Intermediary***

During the process of underwriting a securities offering, an intermediary has an incentive to make misleading statements in order to sell the security. Since the compensation for a corporate finance transaction is often based on the successful completion of a deal, the market intermediary may have the incentive to distribute the underwritten securities with overly optimistic reports or an exaggerated sales pitch. It appears that the optimistic reports are designed more to promote the issuer's interests rather than to fulfil the needs of the investor. If the solicitation is biased or fraudulent, investors will earn lower than expected returns or could even lose a significant portion of their investments.

An effective underwriting would benefit the intermediary's reputation and would help in bringing business in the future. The problem arises when the underwriting is done on a firm commitment basis i.e. an underwriting where an investment bank commits to buy and sell an entire issue and assumes all financial responsibility for any unsold shares<sup>13</sup>. This may influence the intermediary to provide advice that is not in the best interest of the investors, due to its own interest in a successful underwriting. Such a conflict can also arise where the underwriting is done on a best efforts basis<sup>14</sup>.

More than half of the jurisdictions surveyed regulate this conflict using government rules and laws. Mostly jurisdictions use general disciplinary actions to deal with non-compliance. In one case imprisonment is also used. Exaggerated sales pitch such as profit guarantee is prohibited in Montenegro. In Pakistan, quoting an expert in the prospectus to invite subscription needs to be done with care. The Companies Ordinance 1984 stipulates that a market intermediary must ensure the expert is independent from the company and prior consent must be obtained from the expert where the issue of a prospectus contains a statement by him. Thailand also has a detailed provision allowing only the information from the prospectus to be given to clients.

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<sup>13</sup> IOSCO "Market Intermediary Management of Conflicts that arise in Securities Offerings, Final Report", Nov 2007

<sup>14</sup> Underwriting on a Best Efforts basis would involve the underwriter doing its best to oversee but not guaranteeing the sale of a security in the primary market.

In Malaysia, the CMSA strictly forbids any false or misleading information that could induce a client into investing in the underwritten securities. Additionally a person who underwrites a security cannot solicit or recommend the same security unless this fact is disclosed in advance. Similarly, in Chinese Taipei, Stock Exchange Corporation rules and OTC rules stipulate that investment solicitations should be made independently and must not harm the interests of the clients.

### ***3.2.6 Publishing Favorable Analysis Reports***

There is inherent potential of conflict of interest when an analyst for a brokerage firm covers the stock of a company while the corporate finance division of the same firm underwrites securities of the same company. Thus, a situation arises which makes it difficult for the analyst to preserve his independence and objectivity. Investment banking services have been under scrutiny due to the objectiveness and independence of their research or analysis reports. The research team or analyst is given the task of analyzing stocks or securities and forming recommendations of buy or sell based on its analysis. A market intermediary could publish a favorable analysis report in a case where the client is a debtor of the intermediary. The intermediary will expect that a favorable report would lead to a stronger underwriting in case of an offering and the proceeds would be used to pay back the intermediary.

Corporate executives look at the overall performance of the investment bank and especially review how favorably it has been writing about the company in its research reports, when selecting an underwriter, and tend to expect an optimistic recommendation report from the underwriter they chose. This may create a situation where market intermediaries could be tempted to promise issuers favorable research recommendation in return for a future business opportunity. There could also be outside pressures by the issuer or major shareholders on an analyst to make a favorable recommendation through various means such as refusing to provide key information to the analyst unless he appears willing to publish a positive opinion of the company. Favorable analysis reports could also be created in order to raise the price of a security, in a situation where the intermediary itself has a shareholding in the concerned security.

While a favorable research report could benefit the issuer by bringing more investment and ensuring a successful completion of a deal, it can harm the investors by misleading them into a not-so-profitable investment. In other words, there is a great chance that a market intermediary would have financial or other incentives to favor the interest of the issuer at the expense of the investors' by writing a biased report.

Many jurisdictions, as a result, require market intermediaries to establish and maintain adequate procedures to protect research analysts from conflicts of interest, and supervise the work of analysts, the content of their reports, and the reasonableness of their ratings. They also demand physical separation of

research and corporate finance division and prohibit research analysts from participating in solicitation of corporate finance service. Furthermore, research analysts' compensation should not be linked directly or indirectly to revenues from corporate finance service or performance evaluation by personnel in the corporate finance division.

Regulations in Chinese Taipei and Bermuda state that any relationship that could impair the objectivity and independence of research reports must be disclosed. In Thailand, the market intermediary is banned from publishing analysis reports for an issuer 15 days before the issuing date until the closing date. If a report is to be published on other dates between the filing date and 30 days after the closing date, it must be based only on the information in the prospectus, prepared independently by the research unit, accompanied by conflicts of interest disclosure, prepared professionally and fairly, and submitted to the SEC the next day after it is published.

### ***3.2.7 Using Non Public Insider Information Obtained in the Process of Underwriting Securities***

During its dealings with clients in the process of underwriting securities, an intermediary gets its hands on non public insider information relating to the firm. This can turn out to be a severe conflict due to an intermediary's business structure and its dealings with multiple clients concurrently. Insider information will provide the intermediary with information about the true value of the security and a better understanding of the general financial health of the company. The intermediary can use this information to either buy or sell securities on its own account or provide the information to the benefit of preferential clients.

Exploiting material, nonpublic information of the issuer and profiting based on the privileged information is a clear breach of fiduciary duty owed to the corporate finance client. Maintaining client confidentiality is crucial to market intermediaries providing corporate finance services, especially to the large multi-service providers. Clients must be able to have the confidence that information about themselves will not be exploited for the benefit of other clients with different interests or other divisions within the intermediary.

Hence, Chinese walls are required to restrict the flow of information between different departments, and prevent leakage of sensitive corporate inside information, which could influence the advice given to other investors and allow the insiders to take advantage of facts that are not yet disclosed to the general public. The use of inside information is generally perceived to be the biggest evil amongst the different conflicts and severe legal action has been taken against many individuals in different countries.

Other than the jurisdictions which did not provide answers, almost all respondents heavily regulate insider trading and stated that they have measures against it. Most jurisdictions consider it is illegal for anyone with inside information to buy or sell stocks based on their special knowledge or transmitting such information as it could cause financial damage to the issuer and undermine market integrity.

In Bermuda, General Business Conduct and Practice Code of Conduct prohibits a market intermediary from knowingly trading on non-public information and also from transmitting any material nonpublic information to others to allow them to benefit from such information. Likewise, in Thailand, market intermediaries shall not take advantage of nonpublic inside information obtained in the process of underwriting securities, and must have Chinese wall between the underwriting unit and other units. Oman's Executive Regulation states that insiders should not exploit undisclosed material information when dealing in the securities of the issuer especially during the period while it is disclosed to the public. In Oman and Turkey, imprisonment or a monetary penalty is imposed on violators. In Montenegro, the regulation defines insiders in greater depth and prohibits them from acting on any unpublished information that could benefit certain participants in a trade.

### ***3.3 Conflicts of Interests That May Arise Between Asset Management Services and Other Securities Businesses / Services***

Asset management services deal with operating funds raised from more than one investor without any control by those investors over the investment decisions and distributing benefits of the investment. Asset management services in this report will include CIS distribution. CIS are a vehicle for pooling the investments of individuals in order to obtain professional management of the investors' pooled assets. Investors put their trust in the operator of the CIS to act in their best interests and reward the operator through loyalty and payment of fees<sup>15</sup>.

As an intermediary providing asset management services can reserve judgment on how to operate funds from its investors, many situations creating a conflict of interest can take place. The separation of ownership and management of the fund is what brings about the conflict. The conflict essentially exists between those who invest in the funds and those who organize and operate them. In the case of a market intermediary, provision of asset management services can conflict with other responsibilities of the intermediary due to its various functions. Due to an increasing use of asset management services by both institutional and individual investors, the proper regulation of these services is critical in achieving the objectives of securities regulation as mentioned by IOSCO<sup>16</sup>. The different ways in which such conflicts can occur are mentioned below:

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<sup>15</sup> IOSCO "Conflicts of Interest of CIS Operators, Report of the Technical Committee" May 2000.

<sup>16</sup> IOSCO "Objectives and Principles of Securities Regulation" June, 2010

### ***3.3.1 CIS Operation and Proprietary Trading***

An intermediary organizing a CIS could use the CIS's assets for its own gain and thus to the detriment of the CIS investors. The provision of several services by the intermediary will pose a problem since the ownership of the fund lies with the investors but the decision making power is left to the CIS operator. The proprietary trading function of an intermediary would directly be competing with its CIS operation to invest in profitable securities, creating circumstances which may lead to conflicting interests for a market intermediary. There are many different ways in which this could occur.

The intermediary could use the information gained through its CIS operation to benefit its proprietary trading. Where intermediaries engage in proprietary trading they may front run orders based on price sensitive information to their own accounts. The intermediary can place profitable investments in its own account and place unprofitable investments which it has to allocate in order to fulfill its other obligations into the CIS. While operating a CIS an intermediary invests in a security and hence could allocate trades with favorable prices into its own account and trades with unfavorable prices into the CIS. In this way, intermediaries operating a CIS could rid themselves of unattractive securities by dumping them into the CIS.

Conflicts of interest can occur where a CIS does not inform its investors about how ownership rights attached to their assets will be used. In such a case the CIS can use its ownership and control rights, particularly voting rights that it may have in companies in which the CIS invests to benefit its proprietary trading account. A conflict creating situation can also arise where the board of directors of the CIS operated by the intermediary is not independent, and thus investment decisions are made for the intermediary's benefit rather than the investors. Where a CIS operator has discretion when appointing directors, custodians and depositories, they may have the incentive to select persons who are likely to make favorable decisions to the CIS operator rather than act in the best interest of the CIS and CIS investors.

As a measure to safeguard the investors, Malaysia has a regulation that stipulates a CIS operator must act in the best interest of the client and when there is a conflict between the clients' interests and the asset management's own interest, clients' interests must be given priority. And the operator should not take advantage of the client information for its own benefit and the fund's property should be held separately from the property of the CIS operator. Along the same line, in Korea, a CIS operator is forbidden from pursuing its own interest at the expense of the interest of the CIS the operator manages.

In Romania, the market intermediaries are required to establish sound administrative and accounting procedures to deal with CIS transactions and to arrange adequate internal control systems to minimize the risk of conflicts of interest between the investors and CIS or between CIS themselves.

SEC guidelines in Thailand more specifically state that CIS operators must ensure appropriate control mechanisms are put in place in order to prevent conflict of interests between the CIS and the operator's proprietary unit. Inter-account transactions are allowed only when they are necessary and beneficial to the CIS, and are in accordance with the fund's objectives.

### ***3.3.2 CIS operation / Sales of CIS Interests Vs Brokerage***

Since an intermediary purchases and sells securities for its brokerage clients and also makes investments as part of its CIS operation, there exists the possibility of a conflict of interest arising when both duties are undertaken simultaneously. On the other hand the sales of CIS interests can give rise to another potential conflict of interest for an intermediary undertaking brokerage services. In such a case the intermediary could have an incentive to satisfy its brokerage clients by allocating the sales of CIS interests to their account.

By nature, the market intermediary operating CIS funds generally takes the liberty of deciding whom it directs CIS portfolio trades to. Due to its discretion, the intermediary may be tempted to direct its CIS portfolio trades to its brokerage unit or brokerage affiliate without making efforts to seek best price and execution. In such case, the interest of CIS clients will be sacrificed for the benefit of its brokerage unit or brokerage affiliate. Due to the intermediary having the final say on whom to allot assets to, it may also prefer certain brokerage clients over others when dealing with the sale of CIS interests. This could also be a cause of concern when a new client is given preferential benefits over existing ones.

In a competitive industry an intermediary might offer benefits such as first allocation of an in demand security or a lower commission charge in order to try and induce a potential client. As existing clients will be unaware of this treatment, it could pose a potential conflict of interest. While dealing in CIS, an intermediary is made available with information from many different investors. This information could be provided by the intermediary to the benefit of its premier brokerage clients and hence to the detriment of the CIS investors.

The conflict of interest created between an intermediary's CIS operation and brokerage unit is regulated by half of the Jurisdictions. In order to avoid the conflict, regulations in Korea prohibit CIS operators from providing direct or indirect benefit to a broker/dealer who sells CIS securities against investors' interests. In Thailand, CIS operators are also required to establish guidelines and measures to prevent leakage of information obtained from the CIS operation to brokers.

In Bermuda, market intermediaries can only direct CIS fund trades to affiliated brokers with a disclosure of such relationship to the investors. Any material non public information of the CIS operation that could be exploited should not be communicated to brokers.

In Pakistan, CIS operation cannot be performed concurrently with brokerage services, and only sale and distribution of CIS units are allowed. Sri Lanka is not exposed to conflict of interests between CIS operation and other financial services as they do not allow CIS operators to act as market intermediaries.

### ***3.3.3 CIS operation Vs Corporate Finance Services***

An intermediary taking part in CIS operation alongside corporate finance services would be undertaking activity for both sides of the market which can create a potential conflict of interest. During a securities offering an intermediary would be representing the issuer through its corporate finance services and the investor through its CIS operation. This can cause an intermediary to make decisions involving pricing or allocation for its own benefit or according to its preferences.

CIS funds under management of the intermediary or its affiliates may be given preferential allocation of IPO securities. Taking such measures to benefit the CIS investors would not be in the best interest of the issuer of securities hence the conflict of interest. On the contrary the intermediary in some cases may also have an incentive to work in the interest of the issuer of securities, thus to the detriment of the CIS fund.

If a security underwritten by the intermediary is undersubscribed, it can allocate the securities to the CIS funds. The undersubscribed security may be valued at a very high price which would adversely impact the CIS fund. Since the investors have no control over the management of the funds such a decision by the intermediary could be against the objective of the fund. Such a situation is more likely to occur when the intermediary is underwriting the security on a firm commitment basis.

Although the conflict of interest between CIS and corporate finance services is a serious one, not many jurisdictions seem to have specific guidelines against the conflict of interests arising between CIS operation and corporate finance services because this type of conflict could be found in jurisdictions where the financial market is sufficiently developed to generate financial business activities in the corporate finance business as well as where the market intermediary is allowed to perform both the financial services concurrently.

Among the 6 countries which do have regulations in place, Malaysia requires CIS managers to allocate securities fairly among clients and all transactions must be conducted at an arm's length. In Chinese



Taipei, CIS operators providing discretionary investment services are allowed to invest in corporate finance transactions underwritten by an affiliate only when related conflict of interests are disclosed to the clients and written consent is obtained. In Thailand, purchasing unsubscribed securities underwritten by the intermediary itself or an affiliate without appropriate justification is regarded as breach of fiduciary duty to the clients.

### ***3.4 Regulations for Other Conflicts of Interest in EMC Member Jurisdictions***

**South Africa:** Rebate arrangements between intermediary and CIS operator where client is not getting benefit of rebate. All rebates must be disclosed upfront and if not possible to give the monetary value, the value must be given later.

**Malaysia:** Even though there are provisions regarding the appointment of a related party as trustee to a fund, Securities Commission of Malaysia has not approved such appointment as it may create possible conflicts of interests. A management company of a fund shall not delegate investment management function to an external fund manager who is a related party to the trustee of the said fund.

## Chapter 4

### *Regulatory Challenges and Practical Considerations*

The jurisdictions surveyed for this report highlighted the need for more regulatory attention for certain types of conflicts of interest. The more significant types of conflicts of interest faced by jurisdictions include:

- Using non public insider information obtained in the course of the business
- Front-running
- Churning
- Cherry picking<sup>17</sup>
- Unfair treatment among investors
- Unfair practice in analysis report preparation and distribution

The regulatory challenges recognized by the securities regulators differ from jurisdiction to jurisdiction depending on each jurisdiction's market situation. However, as the results of the survey reflect, conflicts of interests connected to corporate finance services are recognized or regulated in fewer jurisdictions than conflicts of interests related to other financial services such as brokerage and dealing. The jurisdictions face the challenge to establish an appropriate internal controls procedure that effectively manages the conflict of interests in these scenarios.

Most of the responding jurisdictions understand the importance of regulating conflicts of interest and have legislative proposals or regulatory considerations under way to improve current regulations on conflicts of interest in order to prevent conflicts from occurring due to the business conduct of market intermediaries. In Pakistan, there are various on-going actions to improve the market system and regulatory framework as well as to amend laws in order to enhance the investor protection system and prevent potential conflicts of interests involving market intermediaries.

While most regulatory authorities have been paying attention to the above types of conflicts of interests, in some jurisdictions such as Cayman Islands and Panama, there have been no sanctions imposed to date. In case of noncompliance, the related market intermediary is subject to a monetary fine in most of the responding jurisdictions.

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<sup>17</sup> "Cherry picking" means the act of selecting profitable assets for the intermediary's own account and placing unprofitable assets in clients' accounts in the course of asset management.

#### ***4.1 Guidelines and Appropriate Regulatory Structure for Management of Conflicts of Interest***

One of the objectives of any financial regulatory body or supervisory agency is to eliminate financial crime and maintain efficient, orderly and clean financial markets. There is a growing concern over the risks generated by financial institutions exploiting the information they legitimately receive for illegitimate purposes. Such actions can cause serious damage to market confidence. Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interest of clients and ensure proper management of conflict of interest and to maintain fair, orderly and efficient financial markets.

Greater alignment in regulatory scope and rules and the consequential development of rules and procedures across all jurisdictions would lead to more efficient management of conflicts of interest and reduce cost for both market intermediaries and customers. The government in Australia decided to impose an obligation on the entire financial services industry to have adequate arrangements for managing conflicts of interest rather than just focusing on particular issues or a specific sector<sup>18</sup>. This was done in order to bring uniformity of regulation in financial services as far as is practicable. However, the increasingly global nature of modern capital markets means that, even if implementation of international regulatory principles and standards were universal, the benefits of these principles and standards could be defeated if financial regulators and law enforcement agencies lack the ability to take effective enforcement action, to share enforcement-related information, and coordinate investigations. In this context it is essential to develop a framework for facilitating regulators in different jurisdictions to better manage conflicts of interest. It is also important that regulations and rules are created which have an impact in changing the behavior adopted by firms'. As conflicts of interest may arise in a number of forms as the survey findings indicate and the degree of sophistication of capital market differs across jurisdictions, it is practically inevitable for securities regulators to set up high-level rules and for market intermediaries to be encouraged to use their best judgment to avoid or mitigate conflicts of interest. The following are suggested guidelines for effective regulation, monitoring and resolution of conflicts of interest of market intermediaries that would help guide securities regulators when they develop their own legal and regulatory framework:

► ***Active involvement of senior management of market intermediaries:***

The process for identifying and mitigating conflicts of interest should be developed in an appropriate manner. Senior management of the intermediary should be engaged fully in all aspects of conflicts identification and take a broad view of the risks posed to their business. The responsibility for

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<sup>18</sup> ASIC "Managing Conflicts of Interest in the Australian Financial Services Industry" May 2006.

conflicts identification and management should be clearly allocated to specific individuals and controls to mitigate conflicts need to be reviewed on a regular basis<sup>19</sup>. For this purpose a formal conflicts policy needs to be put in place.

► **Clear and concise policy to be adopted:**

The conflicts of interest policy must identify conflicts arising due to provision of different services by an intermediary and specify procedures to deal with each particular case. The policy should be able to highlight conflicts of interest according to the business structure and activities of the market intermediary.

Clearly stated policy and procedures assist in limiting unnecessary use of discretion and communicate to all concerned i.e., internal employees, customers, regulators, etc. the intent and procedures of the intermediary.

► **Adequate disclosure to be made:**

Disclosure of an actual or potential conflict should be made to a customer to the extent that it does not entail a situation where the confidential information of other customers cannot be protected as a result of such disclosure. In case where a firm is not reasonably confident that other procedures and measures in place for management of the conflict will prevent the risk of damage to the client's interests, disclosure should be mandatory. However, over reliance should not be placed on disclosure.

► **Information barriers:**

Information barriers need to be carefully set up between different departments or affiliated businesses during sensitive times balancing the effect of reduction of synergies of information collection, to that of economies of scope in information production. Departments in an intermediary which are prone to conflicts (such as research and investment banking departments) should be separated to prevent the flow of information between the two groups.

► **Effective procedures to be put in place:**

The intermediary should pay special attention to the activities of investment research and advice, proprietary trading, asset management, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and

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<sup>19</sup> [http://www.fsa.gov.uk/pubs/ceo/conflicts\\_18nov05.pdf](http://www.fsa.gov.uk/pubs/ceo/conflicts_18nov05.pdf)

acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked to the firm performs a combination of two or more of those activities.

Jurisdictions should ensure that the procedures and measures are in place requiring relevant persons engaged in different business activities involving a conflict of interest, carry on those activities at a level of independence appropriate to the size and activities of the firm and the group to which they belong.

Effective procedures should be in place to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest, where the exchange of that information may harm the interests of one or more clients.

► **Remuneration to commensurate the activities**

There needs to exist a separation of a link between the remuneration of relevant persons engaged in one activity and the remuneration of or revenues generated by different relevant persons engaged in another activity where a conflict of interest may arise in connection to those activities<sup>20</sup>.

► **Maintaining record of activities**

Intermediaries should be required to keep and regularly update a record of all the different kinds of activities it has carried out which has given rise to a conflict of interest. This would help the intermediary in identifying situations which give rise to conflicts in order to prevent them from occurring in the future.

► **Specific prohibitions and stringent penalties**

Regulators need to encourage market intermediaries to adopt internal control mechanism to effectively address conflicts of interest. Where possible, the regulatory framework should cover these requirements along with clearly defined penalties and punishments for non compliance thereof. Intermediaries that are exploiting conflicts of interest need to be severely reprimanded.

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<sup>20</sup> The EU Commission Directive 10 Aug, 2006. Implementing Directive to EU “Markets in Financial Instruments Directive (MiFID), April 2004”

## Chapter 5

### Conclusion

Conflicts of interest cannot be accepted as an unavoidable fact of life, even though the existence of conflicts is inherent in the business model of most firms. Conflicts of interest faced by market intermediaries have become a significant problem for the financial industry as a whole and it is essential for regulators to tackle this issue. Recent scandals in the financial industry world wide have put doubts over markets ability to adequately control conflict of interests. Regulators have come under fire for not having sufficient and appropriate regulations in place to counter the risks posed by conflicts of interest. New regulations for management of conflicts of interest are required to prevent any further loss of investor's confidence in the financial system.

In evaluating remedies it is important to consider that the market intermediaries providing information to financial markets have access to a lot of information. Policies should be designed so that remedies increase the effectiveness of these agents rather than constrain them. Market discipline in the form of penalties and litigation that is focused towards limiting conflicts is important. A lack of information makes it difficult to punish firms exploiting conflicts of interest. The suggested guidelines can be used to address this problem, however the applicability of the guidelines will vary from jurisdiction to jurisdiction.

The EMC has identified and attempted to draw out some guidelines for the management of conflicts of interest facing market intermediaries that can be considered by the jurisdictions contemplating to implement or create regulations for conflict of interest management. The EMC would however like to stipulate that in implementing these guidelines, there is no standard or prescriptive set of rules that can apply across the board.

This Report does not purport to recommend tools and methods as necessary or appropriate for all jurisdictions. Whether a given method is beneficial for a specific jurisdiction can only be determined by the respective regulator keeping in view its approach to supervision and taking into account the market practices, business structure of intermediary's and legal requirements of that jurisdiction. Individual regulators would have to tailor their systems to fit the circumstances of their own markets.

Moving forward regulators need to realize that new regulations should be focused towards changing the behavior of intermediaries, as it is the only solution to try and eliminate conflicts of interest. Several regulators have implemented certain guidelines or are in the process of strengthening their regulatory framework to better tackle the risks posed by market intermediaries' conflict of interests. Mechanisms should be put in place between different jurisdictions to develop interface among regulators to share

experiences and information relating to better management of conflicts of interest facing market intermediaries. Such interaction will also enhance bilateral cooperation and initiative between member jurisdictions.

## References:

1. <i>Conflicts of Interest and Market Discipline among Financial Services Firms</i> , Inglo Water, New York University, 2003
2. <i>Conflicts of Interest of Financial Intermediaries – Towards a Global Common Core in Conflicts of Interest Regulation</i> , Christoph Kumpan and Patrick C. Leyens, ECFR 2008.
3. <i>Conflicts of Interest Among Market Intermediaries</i> , Stewart Mayhew, U.S Securities and Exchange Commission – International Institute Presentation.
4. The EU Commission Directive 10 Aug, 2006. Implementing Directive to EU “Markets in Financial Instruments Directive (MIFID), April 2004”
5. <i>Investment Banks, Scope and Unavoidable Conflicts of Interest</i> , Eric Sirri, Federal Reserve Bank of Atlanta, Economic Review, Fourth Quarter 2004
6. ASIC, <i>Managing Conflicts of Interest in the Australian Financial Services Industry</i> , May 2006.
7. Can The Market Control Conflicts of Interests in the Financial Industry, Eugene N. White, May 2004
8. IOSCO, <i>Conflicts of Interest of CIS Operators</i> , Report of the Technical Committee, May 2000
9. IOSCO, <i>Market Intermediary Management of Conflicts that arise in Securities Offerings</i> , Final Report, Nov 2007
10. IOSCO, <i>Report on Analyst Conflict of Interest</i> , September, 2003
11. IOSCO, <i>Private Equity Conflict of Interest</i> , Consultation Report, November, 2009
12. United Nations Conference of Trade and Development, <i>Central Banks, Financial Crisis and Rebalancing of Economic and Financial Management</i> , Dr. Yaga Venugopal Reddy, March 2009
13. <i>The Challenges Facing International Financial Regulation</i> , John Eatwell, Queens College Cambridge, <a href="http://www.financialpolicy.org/DSCEatwell.pdf">http://www.financialpolicy.org/DSCEatwell.pdf</a>
14. <i>Market Abuse and Conflicts of Interest – The FSA Approach</i> , Speech by Hector Sants, Managing Director, Wholesale & Institutional Markets, FSA The Financial Crime Forum Asia Pacific, Hong Kong, June 2006.



## Annex – I

### IOSCO EMC WORKING GROUP ON REGULATION OF MARKET INTERMEDIARIES

#### Questionnaire for Survey of EMC Member Jurisdictions on the “Regulation of Conflict of Interests facing Market Intermediaries”

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#### **BACKGROUND :**

Under current market circumstances where a single market intermediary provides many different financial services such as brokerage, dealing, asset management, and corporate finance, or affiliates with other market intermediaries with different financial services, regulators as well as market participants should be aware of the increasing risk of conflict of interests.

The new mandate of WG3 approved at the EMC meeting on 5 November 2009 aims to provide EMC members with the proper guidance for regulating conflicts of interests of which type and degree could vary depending on the level of capital market development and complexity. The mandate is intended to identify the conflicts of interests governed by each EMC member, and to make detailed analyses of their regulatory regimes to help prevent or mitigate the conflict of interests each of them encounters. The particular types of conflicts of interests pertaining to each type of the securities business – brokerage/dealing, corporate finance, and asset management service - will also be examined.

In order to execute the new mandate appropriately, the project team will circulate the survey questionnaire to understand the key features of EMC members’ regulatory regimes governing the conflicts of interests facing market intermediaries.

#### **DEFINITIONS :**

For the purpose of this survey, key terms are defined as follows:

**‘Market intermediaries’** means the securities firms carrying out financial investment services such as brokerage, dealing, asset management service, etc., regardless of the type of financial products.

The market intermediary could also provide corporate finance services such as IPO underwriting and M&A consulting. The range of permissible businesses may differ from jurisdiction to jurisdiction depending on their legal frameworks.

**‘Conflict of interests’** means the act of pursuing the interests of particular firms or investors at the expense of the interests of others and it could occur between the client – investor, issuer, etc – and the market intermediary carrying out a single or multiple financial investment services, or between different clients or market intermediaries.

**‘Brokerage’** means purchasing and selling securities in the secondary market for another person’s account regardless of the title thereof.

**‘Dealing’ means** purchasing and selling securities in the secondary market for its own account regardless of the title thereof.

The term “dealing” in this survey does not include corporate finance services defined below.

**‘Asset management service’** means operating funds raised from more than one investor without any control by investors over the investment decision, and distributing benefits of the investment.

The jurisdictions that separate the collective investment schemes (CIS) distributor from the CIS operator should note that the term “asset management service” in this survey includes CIS distribution.

**‘Corporate finance service’** refers to the financial services related to the capital structure of a company. It may include underwriting IPO securities in the primary market, business of arranging for and intermediating the merger and acquisition of companies, or acting as an agent for that purpose, business of providing advisory services on the merger and acquisition of companies, or business of managing properties of a private equity company. The range of permissible businesses may be different from jurisdiction to jurisdiction depending on their legal frameworks.

**‘In-house business’** means a securities firm operating multiple financial businesses within its corporate organization.

**‘Affiliate’s business’** means a securities firm having affiliates that operate multiple financial businesses.

**‘Churning’ means** excessive trading in a client’s account by a broker for the purpose of generating commissions.

**‘Front-running’ means** execution of orders by a stock broker for its own account while taking advantage of advance knowledge of pending orders from its clients.

**‘Cherry picking’ means** the act of selecting profitable assets for the intermediary’s own account and placing unprofitable assets in clients’ accounts in the course of asset management.

### **CONTACT DETAILS :**

Name of jurisdiction:	
Name of contact person and contact details:	

### **QUESTIONS :**

#### **SECTION I. BUSINESS STRUCTURE OF MARKET INTERMEDIARIES**

The questions in Section I are asked to identify the relationship between the business structures of market intermediaries allowed in EMC members jurisdictions and the probability of conflict of interests. Provided the business structure allowing securities firms to have multiple financial businesses become more complicated, the conflict of interests is more likely to occur between clients and firms or among clients.

1. Please indicate in the table below the financial services that market intermediaries are authorized to operate in your jurisdiction.

Financial Service	Mark with O	Type of authorization (e.g. license, registration)	Regulatory authority	Number of financial intermediaries <sup>21</sup>
Brokerage				
Dealing				
Corporate finance service				
Asset management service				

2. Which of the financial services mentioned in the previous question is a market intermediary in your jurisdiction allowed to operate concurrently?

- a. Brokerage only
- b. Brokerage and dealing only
- c. Brokerage, dealing and corporate finance service only
- d. Brokerage, dealing, corporate finance service and asset management service
- e. Any other combination of brokerage, dealing, corporate finance service and asset management service
- f. We classify financial services differently

2-1. If your answer to Q 2 is 'e' or 'f' please provide the combination or a brief description of the situation in your jurisdiction respectively.

2-2. If your answer to Q 2 is 'c' or 'd' or 'e', which of the following corporate finance services are allowed?

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<sup>21</sup> Please provide statistics for each business. If a single market intermediary operates multiple businesses, count the firm for each type of business it is engaged in.

- a. Securities underwriting (including related ancillary services such as valuation and issuing analyst reports) only
- b. Securities underwriting and other corporate finance services such as M&A advisory and financing

2-2-1. If your answer to Q 2-2 is 'a', please provide a brief description of the underwriting related ancillary services.

2-2-2. If your answer to Q 2-2 is 'b', please provide a brief description of other corporate finance services.

2-3. If your answer to Q 2 is 'd' or 'e', which of the following asset management services are allowed?

- a. CIS operation only
- b. Sale or distribution of CIS interests only
- c. CIS operation and sale of CIS interests

2-3-1. If your answer to Q 2-3 is 'a' or 'c', please clarify whether in-house CIS operation is allowed or only the CIS operation by its affiliate is allowed.

- a. In-house business
- b. Affiliate's business
- C.** If there is no particular restriction, please provide the percentage of each business structure in your jurisdiction

## SECTION II. REGULATORY FRAMEWORK FOR PREVENTING CONFLICT OF INTERESTS

Questions in Section II are to identify rules or regulations of your jurisdiction governing conflicts of interests facing market intermediaries, regardless of the types of financial services they provide.

Questions in this section cover the overall business operation of market intermediaries and are not limited to particular types of business practices causing conflict of interests.

3. Does your jurisdiction provide explicit (legal) definition of what constitute a “conflict of interests”?

Yes / No

- 3-1. If your answer to Q 3 is Yes, is the definition general that deals with various areas /situations of the capital markets such as securities offering, CIS operators/distributors, etc., or specific for the area of market intermediaries?

- a. General
- b. Specific to the area of market intermediary
- c. Any other area

- 3-1-1. Please provide the definition of ‘Conflict of interest’ in your jurisdiction:

- 3-2. If your answer to Q 3 is No, what implicit definition does your jurisdiction consider to focus legal strategies that prevent conflict of interests? Please explain:

4. Where are the grounds for regulating conflicts of interest in your jurisdiction? Please mark as many answers as apply to your jurisdiction.

- a. in statutes made by the legislature
- b. in supervisory regulations issued by securities regulators or other government agencies
- c. in industry rules or guidelines set by SROs
- d. No regulatory grounds exist. Market intermediaries have discretion to deal with conflicts of interest for internal control purpose only.
- e. Others. Please specify.

4-1. If you have marked more than one item in Q 4, is there a regulatory hierarchy in place – i.e. more serious conflicts are regulated by statutes and less serious ones by agency rules and so on? Please explain.

5. Who has the authority to regulate conflict of interests?

- a. Securities regulator
- b. Self-regulatory organizations
- c. No outside regulation exists. Market intermediaries manage conflicts of interests by themselves.
- d. Others. Please specify.

6. How specific are the regulations in your jurisdiction?
- a. Only general principles – e.g., prohibition of conflicts of interest, duty of loyalty, and duty of care – apply.
  - b. In addition to general principles as overarching regulations, we also have specific provisions in laws and regulations for each type of major conflicts of interests.
  - c. Others

6-1. Please provide details for your answer to Q 6 regardless of which one you chose and also explain the nature of fiduciary obligation of the market intermediary to various types of clients in your jurisdiction.

7. What legal strategies / measures are available in your jurisdiction to address the market intermediary's conflict of interest: Please mark as many answers as apply to your jurisdiction.
- a. Disclosure of conflicts
  - b. Information barriers
  - c. Limitation/prohibition on business conduct
  - d. Regulatory Surveillance/examinations
  - e. Firm's internal conflict of interest management
  - f. Self responsibility of market intermediary
8. Which of the following measures/options are adopted/relied by the regulator in your jurisdiction to mitigate market intermediary's conflict of interest: Please mark as many answers as apply to your jurisdiction.



- a. Caveat emptor
- b. Board and auditor oversight
- c. Self reporting/ compliance officer
- d. Policies and procedures
- e. Disclosures
- f. Rules against specific abuse- compliance enforcement
- g. Information barriers (Chinese wall)

9. Is it mandatory for market intermediaries to set up an internal control system to identify, assess, manage and control potential conflicts of interests?

Yes / No

9-1. If yes, what are the grounds/criteria for the rule– e.g., laws / government rules or industry self-regulation?

Please briefly describe each provision.

10. When the possibility of conflict of interests is discovered, is the requirement for market intermediaries to disclose such conflict of interest to their customers is:

- a. Mandatory
- b. Voluntary

10-1. If disclosure is mandatory, what are the grounds for the rule – e.g., laws / government rules or industry self-regulation?

Please briefly describe each provision.

10-2. If disclosure is voluntary, please explain the methods you use to ensure effective disclosure in different situations of conflict of interest – e.g., off-site surveillance, random checks, system audit, etc.

11. Is it mandatory for market intermediaries to suspend doing business with a particular group of clients when it is difficult to reduce the possibility of conflict of interests with the clients to a certain level – a level that does not compromise investor protection?

Yes / No

11-1. If yes, what are the grounds for the rule – e.g., laws / government rules or industry self-regulation?

Please briefly describe each provision.

12. Is it mandatory for a market intermediary to set up information barriers or Chinese walls between departments that are prone to conflicts of interests? (If yes, please answer Q. 12-1 through Q. 12-4-1)

Yes / No

12-1. What are the grounds for the rule – e.g., laws / government rules or industry self-regulation?

Please briefly describe each provision.

12-2. Please indicate the departments obligated to set up a Chinese wall with each other – e.g., between brokerage/dealing and underwriting, between brokerage/dealing and asset management service.

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12-3. Does the Chinese wall provision in your jurisdiction contain the following? If you have other rules other than those mentioned below, please describe them briefly.

	Yes / No	Brief description
Prohibition of information sharing		
Prohibition of dual duties (Prohibition of holding more than one position concurrently)		
Physical separation (Prohibition of sharing office space and/or data-processing equipment, etc.)		
Strict separation of departments and their work		
Restrictions on meetings and/or communication (Duty of record keeping, etc.)		
Others		

12-4. Are there wall crossing provisions that allow exceptions of the above rules?

Yes / No

12-4-1. If yes, what are the grounds for the exceptions – e.g., laws / government rules or industry self-regulation?

Please briefly describe each provision.

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13. Is it mandatory for a market intermediary to set up and manage a separate deal team on a deal by deal basis when multiple deals are handled simultaneously?

Yes / No

13-1. If yes, how are they regulated?

- a. By laws / government rules
- b. By industry self-regulation
- c. By intermediary's internal rules

14. Is it mandatory for market intermediaries to set up information barriers or Chinese walls with other companies or affiliates? (If yes, please answer Q.14-1. and Q.14-2.)

Yes / No

14-1. Please specify the scope of those companies – e.g., holding company, subsidiaries, affiliates, other affiliated parties.

14-2. What are the grounds for the rule – e.g., laws / government rules, industry self-regulation? Please briefly describe each provision.

15. Is the regulatory surveillance/ examination of market intermediary to address any possibility of conflict of interest a regular feature in your jurisdiction? (If yes, please answer Q.15-1. and Q.15-2.)

Yes / No

- 15-1. Please give scope of the regulatory surveillance pertaining to conflict of interest and also indicate its frequency.

- 15-2. What are the grounds for the rule – e.g., laws / rules, regulation or regulatory policy and practices?

Please briefly describe each provision.

16. In the event that market intermediaries face situations that actually give rise to conflicts of interests or hold potential for conflicts of interests, is it mandatory for market intermediaries to address such situations and to reduce the risk of conflicts?

Yes / No

- 16-1. If yes, what are the grounds for the rule – e.g., laws / government rules, industry self-regulation?

Please briefly describe each provision.

17. Is it mandatory for a market intermediary to have a review committee that deals with conflicts of interest internally?

Yes / No

17-1. If yes, please provide a brief description.

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### SECTION III. REGULATIONS FOR DIFFERENT TYPES OF CONFLICT OF INTERESTS

Questions in this section are to identify the rules or policies governing the particular types of conflicts of interests pertaining to each type of the securities business - brokerage/dealing, corporate finance, and asset management service. If any of the three types of businesses is neither in operation nor authorized to operate in your jurisdiction, please state “not in operation (or authorized)” in your answer.

#### 18. Questions for conflicts of interests that may arise between brokerage and dealing

Type of conflict of interests	Whether it is regulated (Yes / No)	Regulatory means <sup>22</sup>	Details of regulation	Regulatory responses to noncompliance (Sanctions/remedies)
Churning				
Front-running				
Unfair practices in analysis report preparation and distribution <sup>23</sup>				
Conflict of interests between clients in order aggregation and allocation of securities				
Others				

<sup>22</sup> E.g., laws / government rules, industry self-regulation, or intermediary’s internal controls

<sup>23</sup> E.g., issuing favorable analysis reports on companies with which the analyst has business interests or giving preference to corporate clients over individual investors in providing analysis reports

19. Questions for conflicts of interests that may arise between corporate finance services and other securities businesses / services

Type of conflict of interests	Whether it is regulated (Yes / No)	Regulatory means	Details of regulation	Regulatory responses to noncompliance (Sanctions/remedies)
Pricing (underpricing/overpricing)				
Preferential allocation of securities to more profitable clients				
Advising multiple bidders in the same transaction				
Advising the seller and a potential buyer in the same transaction				
Exaggerated investment solicitation or sales of securities underwritten by the market intermediary				
Publishing favorable analysis reports for an issuer in business relationship with the market intermediary				
Using nonpublic insider information obtained in the process of underwriting securities				
Others				



20. Questions for conflicts of interests that may arise between asset management services and other securities businesses / services

Type of conflict of interests	Whether it is regulated (Yes / No)	Regulatory means	Details of regulation	Regulatory responses to non-compliance (Sanctions/remedies)
<b>CIS operation vs. proprietary trading</b>				
Using information from CIS operation for the intermediary's proprietary trading				
Improper inter-account transactions between CIS assets and the intermediary's own assets (Cherry picking, etc)				
The intermediary using voting power in relation to the equity investment by the CIS under its operation for its proprietary trading				
Board of directors of the CIS operated by the intermediary is not independent and thus investment decisions are made for the benefit of the intermediary				
Others				

Type of conflict of interests	Whether it is regulated (Yes / No)	Regulatory means	Details of regulation	Regulatory responses to non-compliance (Sanctions/remedies)
<b>CIS operation / sales of CIS interests vs. brokerage</b>				
Particular brokerage clients (often more profitable clients) may receive preferential treatment over others in the sale of CIS interests				
Incoming clients may be offered inducement such as preferential benefits that are not available to existing clients				
Directing CIS portfolio trades to the intermediary's brokerage unit or affiliated brokers				
Leaking information obtained from CIS operation to premier brokerage clients				
Others				

Type of conflict of interests	Whether it is regulated (Yes / No)	Regulatory means	Details of regulation	Regulatory responses to non-compliance (Sanctions/remedies)
<b>CIS operation vs. corporate finance services</b>				
Preferential allocation of IPO securities to CIS funds under management by the intermediary or its affiliates				
The CIS operated by the intermediary purchasing the unsubscribed securities underwritten by the intermediary				
Others				

21. Are there any other types of conflicts of interests that take place in your jurisdiction due to market intermediaries performing multiple functions?

If any, please provide a brief description of the conflicting situations and regulatory measures to address them.

**SECTION IV. PRACTICAL CONSIDERATIONS AND ACTIONS FOR REGULATORY IMPROVEMENT**

22. Please provide us with the list of the types of conflicts of interests that requires most attention in your jurisdiction and briefly explain corresponding regulations. If there are multiple types of conflicts of interests given similar weight in the financial regulatory regime of your jurisdiction, please describe all of them. There are no limits on the number of types of conflicts of interest for the answer of this question.

Type of conflict of interests	Level of significance (Most significant: 1 ~ least significant: 5)	Level of Frequency of violation (Most frequent:1 ~ least frequent: 5)	Related regulations	Average level of sanctions imposed by regulatory authorities (Most serious: 1 ~ least serious: 5) * Please describe types of sanctions as well.

23. If there are legislative proposals or regulatory considerations under way to improve current regulations on conflicts of interests in your jurisdiction, please give a general description of them with expected outcomes and time frame if available.

----- **END OF QUESTIONNAIRE** -----

Thank you for your contribution to this survey questionnaire. Your valuable input will certainly help us successfully accomplish the mandate.

If you have any inquiry or need any further assistance regarding this survey questionnaire, please contact Mr. Byunghyun Min of the Financial Supervisory Service, Korea by email ([bhmin@fss.or.kr](mailto:bhmin@fss.or.kr)) or by phone (82-2-3145-7140).

Kindly submit the completed questionnaires to Mr. Kiyoung Choi ([kiyoung@iosco.org](mailto:kiyoung@iosco.org)) at the IOSCO General Secretariat and copy the same to Ms. Khalida Habib ([khalida.habib@secp.gov.pk](mailto:khalida.habib@secp.gov.pk)) at Securities and Exchange Commission of Pakistan and Mr. Byunghyun Min (([bhmin@fss.or.kr](mailto:bhmin@fss.or.kr)) and Mr. DoHyun Nam ([namdohyun@fss.or.kr](mailto:namdohyun@fss.or.kr)) at the Financial Supervisory Service, Korea by 15 April 2010

## Annex - II

### IOSCO EMC WORKING GROUP ON REGULATION OF MARKET INTERMEDIARIES

#### SUMMARY OF RESPONSES of

#### Questionnaire for Survey of EMC Member Jurisdictions on the “Regulation of Conflict of Interests facing Market Intermediaries”

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### BACKGROUND :

Under current market circumstances where a single market intermediary provides many different financial services such as brokerage, dealing, asset management, and corporate finance, or affiliates with other market intermediaries with different financial services, regulators as well as market participants should be aware of the increasing risk of conflict of interests.

The new mandate of WG3 approved at the EMC meeting on 5 November 2009 aims to provide EMC members with the proper guidance for regulating conflicts of interests of which type and degree could vary depending on the level of capital market development and complexity. The mandate is intended to identify the conflicts of interests governed by each EMC member, and to make detailed analyses of their regulatory regimes to help prevent or mitigate the conflict of interests each of them encounters. The particular types of conflicts of interests pertaining to each type of the securities business – brokerage/dealing, corporate finance, and asset management service - will also be examined.

In order to execute the new mandate appropriately, the project team circulated the survey questionnaire to understand the key features of EMC members’ regulatory regimes governing the conflicts of interests facing market intermediaries.

Regulatory authorities of following 24 jurisdictions have provided the responses on the survey questionnaire:

**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates.**

### DEFINITIONS :

For the purpose of this survey, key terms are defined as follows:

**‘Market intermediaries’** means the securities firms carrying out financial investment services such as brokerage, dealing, asset management service, etc., regardless of the type of financial products.

The market intermediary could also provide corporate finance services such as IPO underwriting and M&A consulting. The range of permissible businesses may differ from jurisdiction to jurisdiction depending on their legal frameworks.

**‘Conflict of interests’** means the act of pursuing the interests of particular firms or investors at the expense of the interests of others and it could occur between the client – investor, issuer, etc – and the market intermediary carrying out a single or multiple financial investment services, or between different clients or market intermediaries.

**‘Brokerage’** means purchasing and selling securities in the secondary market for another person’s account regardless of the title thereof.

**‘Dealing’** means purchasing and selling securities in the secondary market for its own account regardless of the title thereof.

The term “dealing” in this survey does not include corporate finance services defined below.

**‘Asset management service’** means operating funds raised from more than one investor without any control by investors over the investment decision, and distributing benefits of the investment.

The jurisdictions that separate the collective investment schemes (“CIS”) distributor from the CIS operator should note that the term “asset management service” in this survey includes CIS distribution.

**‘Corporate finance service’** refers to the financial services related to the capital structure of a company. It may include underwriting IPO securities in the primary market, business of arranging for and intermediating the merger and acquisition of companies, or acting as an agent for that purpose, business of providing advisory services on the merger and acquisition of companies, or business of managing properties of a private equity company. The range of permissible businesses may be different from jurisdiction to jurisdiction depending on their legal frameworks.

**‘In-house business’** means a securities firm operating multiple financial businesses within its corporate organization.

**‘Affiliate’s business’** means a securities firm having affiliates that operate multiple financial businesses.

**‘Churning’** means excessive trading in a client’s account by a broker for the purpose of generating commissions.

**‘Front-running’** means execution of orders by a stock broker for its own account while taking advantage of advance knowledge of pending orders from its clients.

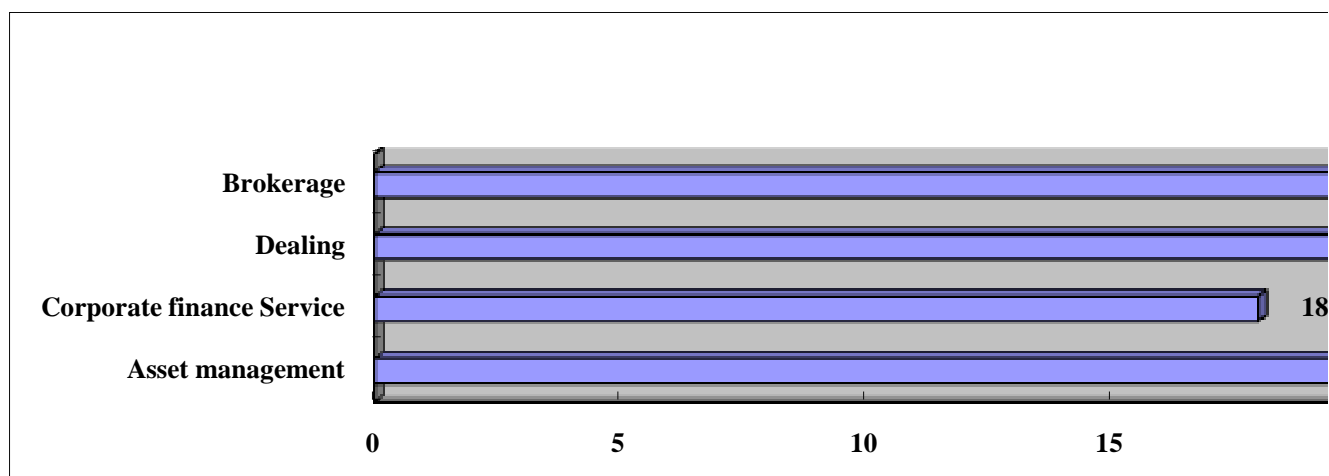
**‘Cherry picking’** means the act of selecting profitable assets for the intermediary’s own account and placing unprofitable assets in clients’ accounts in the course of asset management.

## SUMMARY OF RESPONSES :

### SECTION I. BUSINESS STRUCTURE OF MARKET INTERMEDIARIES

*The questions in Section I are asked to identify the relationship between the business structures of market intermediaries allowed in EMC members jurisdictions and the probability of conflict of interests.*

1. Please indicate in the table\* below the financial services that market intermediaries are authorized to operate in your jurisdictions. [*\* the table in the questionnaire deleted*]



- All jurisdictions responded
- All jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates**) responded that brokers and dealers are permitted.
- All jurisdictions are solely regulated by the Regulatory authority except **South Africa and Malaysia**.

In **South Africa** brokers are regulated by the Johannesburg Stock Exchange and dealers are jointly regulated by the Regulatory Authority and the Stock Exchange.

In **Malaysia** brokers and dealers are jointly regulated by the Regulatory Authority and the Stock Exchange while fund managers are regulated solely by the SC.

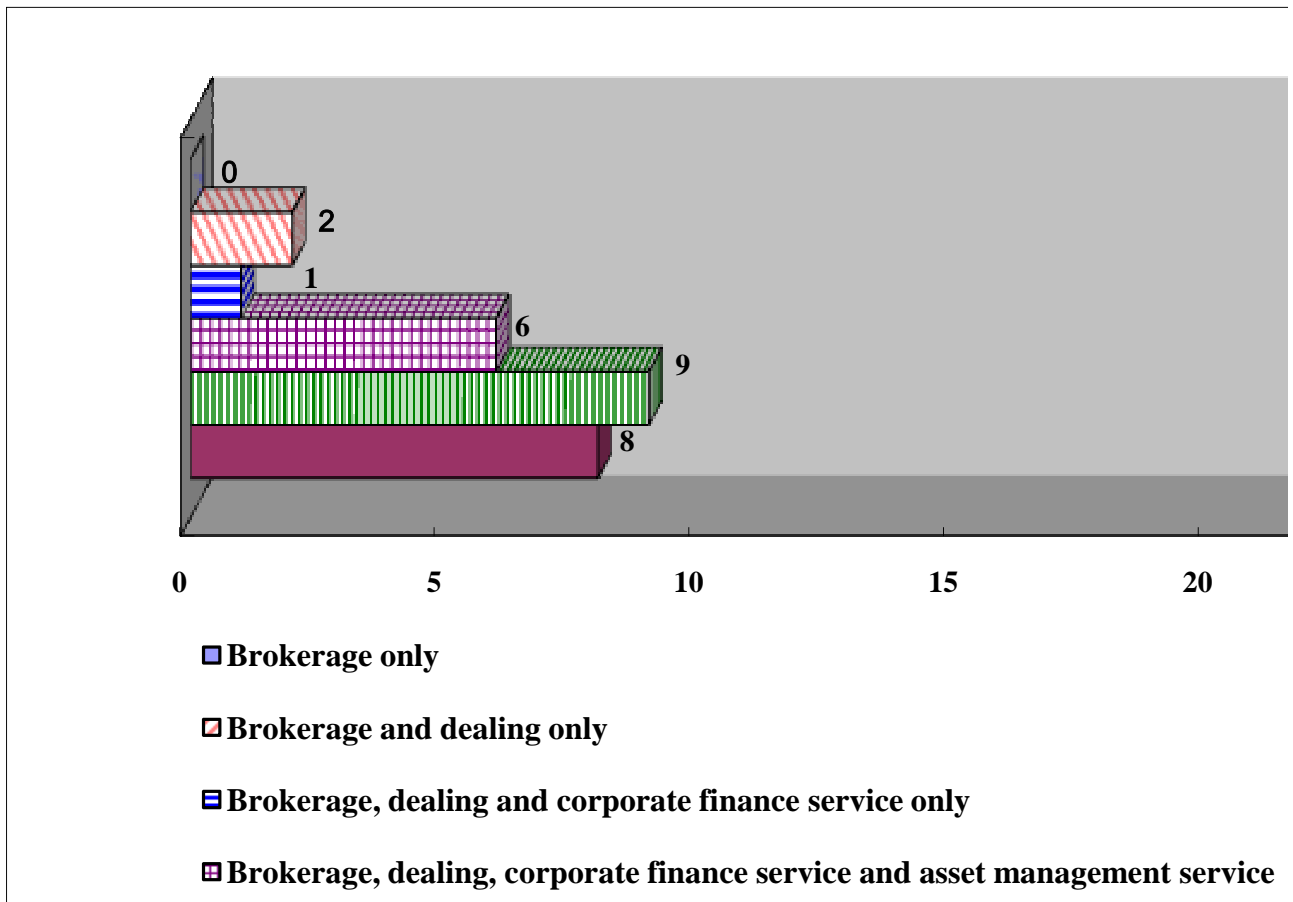
- 18 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, Sri Lanka, Thailand, and Turkey**) permit intermediaries to operate corporate finance services and regulation is carried out by the Regulatory Authority, except **Malaysia**.



In **Malaysia** market intermediaries operating corporate finance services are jointly regulated by the Regulatory Authority and the Stock Exchange.

- 23 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, and Turkey**) authorise asset management services. Regulation is performed by the Regulatory Authority in each jurisdiction.

2. Which of the financial services mentioned in the previous question is a market intermediary in your jurisdictions allowed to operate concurrently?



- All jurisdictions responded.
  - Brokerage only
    - All jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates**) replied that they have no intermediaries that are only brokerages.

- b. **Brokerage and dealing only**
  - 2 jurisdictions (**Argentina, Montenegro**) reported having this type of intermediary.
- c. **Brokerage, dealing and corporate finance service only**
  - 1 jurisdiction (**United Arab Emirates**).
- d. **Brokerage, dealing, corporate finance service and asset management service.**
  - 6 jurisdictions (**Colombia, El Salvador, India, Panama, Romania, and South Africa**).
- e. **Any other combination of brokerage, dealing, corporate finance service and asset management service.**
  - 9 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Jordan, Korea, Malaysia, Oman, Pakistan, and Thailand**).
- f. **We classify financial services differently**
  - 8 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), Nigeria, Sri Lanka, and Turkey**).

2-1. If your answer to Q 2 is 'e' or 'f' please provide the combination or a brief description of the situation in your jurisdictions respectively.

The following jurisdictions replied under 'e'

- **Bermuda** - Investment providers can apply for any combination of the following:
  - Dealing in investments
  - Arranging deals in investments
  - Investment advice
  - Managing investments
  - Safeguarding and administering investments.
- **Brazil** - Intermediaries, which includes banks, may apply for licences for all four services.
- **Chinese Taipei** - Any combination of services is permitted.
- **Jordan** - A company can be licensed to provide any financial service depending upon laws and regulations.

- **Korea** - Financial firms doing brokerage or dealing are not allowed to operate asset management services concurrently. This may change under new legislation.
- **Malaysia** - A company only needs to hold one license to carry out one or more of the 6 regulated activities: dealing in securities, trading in futures contracts, fund management, advising on corporate finance, investment advice, and financial planning.
- **Oman** - The licensed company that seeks to carry out more than one activity shall satisfy the minimum limit of capital and shareholders' equity separately for each activity for which it has applied. Also market makers can only operate as such and shall provide liquidity to one or more securities listed in the market.
- **Pakistan** - Brokers, dealers and brokerage houses can undertake only sale/distribution of CIS units. A Non-Banking Finance Company (NBFC) can undertake asset management and investment advisory services. An Asset Management Services Company (AMC) cannot provide any of the corporate finance services. An NBFC can engage in brokerage services only through a separate affiliated entity. An Investment Finance Company licensed as an NBFC corporate finance services under NBFCs and Notified Entities Regulations 2008.
- **Thailand** - Currently the combination is 'c' but combination 'e' will be allowed from 2012.

The following jurisdictions replied under 'f':

- **Argentina** - Brokerage and dealing, only, can operate concurrently. Asset management Services must be done by another entity legally separate.
- **British Virgin Islands** - Did not provide details.
- **Cayman Islands** - Licensees can engage in any combination of securities activities, however the Authority does not regulate corporate finance service providers.
- **Chinese Taipei** - Securities Investment Trusts may also provide advisory services.
- **Dubai (DIFC)** - "The DIFC's financial sector is generally classified as asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, international equities exchange, and international commodities derivatives exchange."
- **Nigeria** - In Nigeria, Broker Dealer, Portfolio Manager (asset management service) and Corporate Investment Adviser (corporate finance service) are related functions. The Law allows them to sponsor minimum of 2 sponsored individuals to be able to operate in any of these services/combination of services. For functions that are not related, each function/service has minimum number of sponsored individuals to be registered by the Commission. A sponsored individual is a professional or a principal officer held out as experts by a registered market participant. The Law requires them

to be registered by the Commission aside from the registration done by the companies.

- **Sri Lanka** - Investment Managers, Margin Providers and Underwriters are allowed to act concurrently. Stock Brokers and Dealers are allowed to act concurrently (Please note that stock brokers are not considered as market intermediaries as mentioned above.
- **Turkey** - License for securities firms and brokerages cover also dealing activities while intermediation for the purchase and sale of derivative instruments require another license. Securities firms are licensed for portfolio management, instead of asset management service, which also covers capital market activities, and rep-reverse repo and investment consultancy.

Banks may undertake

- a) intermediation in the purchase and sale of capital market instruments that are previously issued either; 1) off exchange, or 2) on exchange, except for shares,
- b) repurchase and reverse repurchase agreements
- c) intermediation for the purchase and sale of derivative instruments as a whole or partially on the basis of categories including the futures and options contracts based on economic and financial indicators, capital market instruments, commodities, precious metals and foreign currencies.

Non-deposit banks may also undertake activities such as intermediation in the issuance or public offering of capital market instruments, portfolio management and investment consultancy in addition to the above mentioned activities.

**2-2. If your answer to Q 2 is 'c' or 'd' or 'e', which of the following corporate finance services are allowed?**

- a. Securities underwriting (including related ancillary services such as valuation and issuing analyst reports) only

- **Turkey**

- b. Securities underwriting and other corporate finance services such as M&A advisory and financing

- **Brazil, Chinese Taipei, Colombia, El Salvador, India, Jordan, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Thailand, and United Arab Emirates.**

**2-2-1. If your answer to Q 2-2 is 'a', please provide a brief description of the underwriting related ancillary services.**

- **Turkey** - Intermediation includes the works for determining the public offer period, determining the amount and issue price together with the issuer or/and shareholder, application to the Board after drawing up the prospectus and other documents and information necessary for the registration application, making use of consultancy services for the accuracy of the information in the registration application documents,

establishment of a sales group providing teller services, registration, organization of domestic and international campaigns for the sales and promotion of capital market instruments to be offered to public, undertaking of institutional finance activities such as organization of sale, similar activities and undertaking of other liabilities mentioned in the intermediation agreement. In addition to these, organizations with the certificate of authorization for intermediation in the public offer may undertake activities such as financial and economic analyses with regard to the corporation whose capital market instruments shall be offered to public and market research, harmonization of the financial statements of the related corporation with the capital market legislation and determination of the documents and information to be disclosed to public. Within the scope of intermediation in public offers, during private placements, brokerage houses and non-deposit banks may also intermediate in organizing the issuance of debt instruments as required by the related corporation and privately placing these issues to a certain group of investors or domestic – international institutional investors.

**2-2-2. If your answer to Q 2-2 is ‘b’, please provide a brief description of other corporate finance services.**

- **Brazil** - According to the expertise of each intermediary, corporate finance services may be provided as part of the commercial strategy of each institution and include a wide range of activities. Some of them are not directly regulated by any regulator (e.g. M&A, advisory services in some situations).
- **Chinese Taipei** - Other services which can be provided include financial advisory and consulting on a range of business and financial matters including restructuring and asset financing.
- **Colombia** - Advice on financial engineering, services concerning companies' mergers and acquisition, privatization process and investments' programs. By Decree 4939 of 2009, the government included advice on purchase or sale of securities registered in the RNVE as a securities intermediation activity.
- **El Salvador** - Market intermediaries are allowed to provide the following corporate finance services: granting loans with the purpose of acquiring securities; receiving credits, trading with repurchase agreements, and complementary activities, such as underwriting, primary placement, and advising.
- **India** - Other corporate services include advisory, consultancy, issue management services as per SEBI (Merchant Bankers) Regulations, 1992 but strictly exclude NBFC activities which in turn includes financing.
- **Korea** - In addition to securities underwriting and related ancillary services, the corporate finance services may include the business of the merger and acquisition of companies as principal or agent and the business of managing properties of a private equity company.
- **Malaysia** - Underwriting falls under the definition of dealing in securities. Other corporate finance services include giving advice concerning fund raising and take-

over and mergers, compliance with the listing requirements of the stock exchange in relation to the raising of funds or related party transactions and arrangement or restructuring of a listed corporation or a subsidiary of the listed corporation of its assets or liabilities.

- **Oman** - Margin Financing & IPO and new share issues.
- **Pakistan** - A corporate brokerage house can be appointed as Book Runner in case of Book Building for an IPO, whereas a Corporate Brokerage House can be appointed as Lead Manager by the Issuer/ Offeror.  
Brokers and Investment Finance Companies (IFC) may act as adviser and arranger for Merger and Acquisition of Companies.  
Further, an entity that fulfils the prerequisites laid down in the Balloters, Underwriters and Transfer Agents Rules, 2001 may act as an underwriter. Accordingly, brokers and IFC's that fulfil the said requirements can also act as underwriters to an issue.
- **Panama** - Acting as subscriber or placement agent of securities issuances and public offerings. The execution of functions inherent to payment, registration and transfer agencies. The Broker-Dealer Houses may perform other secondary activities such as rental of safe deposit boxes, company assessment regarding capital structure, industrial strategy and related themes, as well as assessment and other services concerning companies' mergers and acquisitions, which shall be stated on their business plan.
- **South Africa** - M&A advisory.
- **Thailand** - Underwriting IPO/PO, allocating of securities, issuing analyst report, and M&A advisory.

2-3. If your answer to Q 2 is 'd' or 'e', which of the following asset management services are allowed?

- a. CIS operation only
  - **British Virgin Islands, Colombia**
- b. Sale or distribution of CIS interests only
  - **Chinese Taipei, El Salvador, Pakistan, and South Africa**
- c. CIS operation and sale of CIS interests
  - **Bermuda, Brazil, British Virgin Islands, Chinese Taipei, Dubai (DIFC), India, Korea ,Malaysia, Oman, Panama, Romania, South Africa, Thailand, and Turkey**

2-3-1. If your answer to Q 2-3 is ‘a’ or ‘c’, please clarify whether in-house CIS operation is allowed or only the CIS operation by its affiliate is allowed.

a. In-house business

- **Bermuda, Chinese Taipei, Dubai (DIFC), Malaysia, Panama, and Turkey**

b. Affiliate’s business

c. If there is no particular restriction, please provide the percentage of each business structure in your jurisdiction

- **Brazil, British Virgin Islands, Colombia, India, Korea, Oman, Romania, South Africa, and Thailand.** No jurisdiction disclosed the percentage of each business structure.

## **SECTION II. REGULATORY FRAMEWORK FOR PREVENTING CONFLICT OF INTERESTS**

*Questions in Section II are to identify rules or regulations of your jurisdictions governing conflicts of interests facing market intermediaries, regardless of the types of financial services they provide. Questions in this section cover the overall business operation of market intermediaries and are not limited to particular types of business practices causing conflict of interests.*

3. Does your jurisdiction provide explicit (legal) definition of what constitute a “conflict of interests”?

All jurisdictions responded.

- 6 jurisdictions (**Argentina, Colombia, El Salvador, Montenegro, Oman, and South Africa**) replied that there is an explicit definition of conflicts if interest in their jurisdictions.
- 18 jurisdictions (**Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Nigeria, Pakistan, Panama, Romania, Sri Lanka, Thailand, Turkey, and United Arab Emirates**) replied that there is no legal definition of what constitutes a “Conflicts of Interest”.

3-1. If your answer to Q 3 is Yes, is the definition general that deals with various areas/situations of the capital markets such as securities offering, CIS operators/distributors, etc., or specific for the area of market intermediaries?

- a. General
  - 3 jurisdictions (**Argentina, Oman, and South Africa**) have general definitions.
- b. Specific to the area of market intermediary
  - 3 jurisdictions (**Colombia, El Salvador, and Montenegro**) have specific definitions for an intermediary.
- c. Any other area
  - No jurisdictions replied under this heading.

**3-1-1. Please provide the definition of ‘Conflict of interest’ in your jurisdictions.**

- **Argentina** - There are sections providing the duty of loyalty at the capital markets, where there is an obligation to prevent any kind of conflict of interest.
- **Colombia** - Situation under which a person faces several alternatives of conduct regarding opposite interests, none of which can be privileged because of legal obligations.
- **El Salvador** - According to the securities law in El Salvador, there is conflict of interest when the broker-house trade securities issued by companies that are part of its corporate group:  
 “The securities regulator (Superintendence of Securities) shall issue regulations to be met by brokerage houses in the conduct of their operations, including general provisions on dealing in securities issued by companies belonging to the same business group with the brokerage house, with the aim to avoid conflicts of interest.
- **Montenegro** - When a licensee has material interest in securities business it conducts for a client or any other connection which may cause conflict of interest related to that business, it may not conduct that business unless it takes appropriate activities to provide that both material interest and relatedness do not contravene client’s interest.
- **Oman** - The regulations of Capital Market Authority doesn't define the conflict of interests specifically but the Commercial Company Law refers to it in article (107) which provides” Likewise, a member of the board director or any of the key staff on the company, shall not utilize the information accessible to him by virtue of his position for the achievement of a benefit for himself or for his minor children or for any of his immediate relative up to the fourth degree as a result of dealing in the company’s securities.”
- **South Africa** - “Conflict of interest” means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client,
  - (a) influence the objective performance of his, her or its obligations to that client; or
  - (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client, including, but not limited to –
    - (i) financial interest; (ii) ownership interest; (iii) any relationship with a third party.

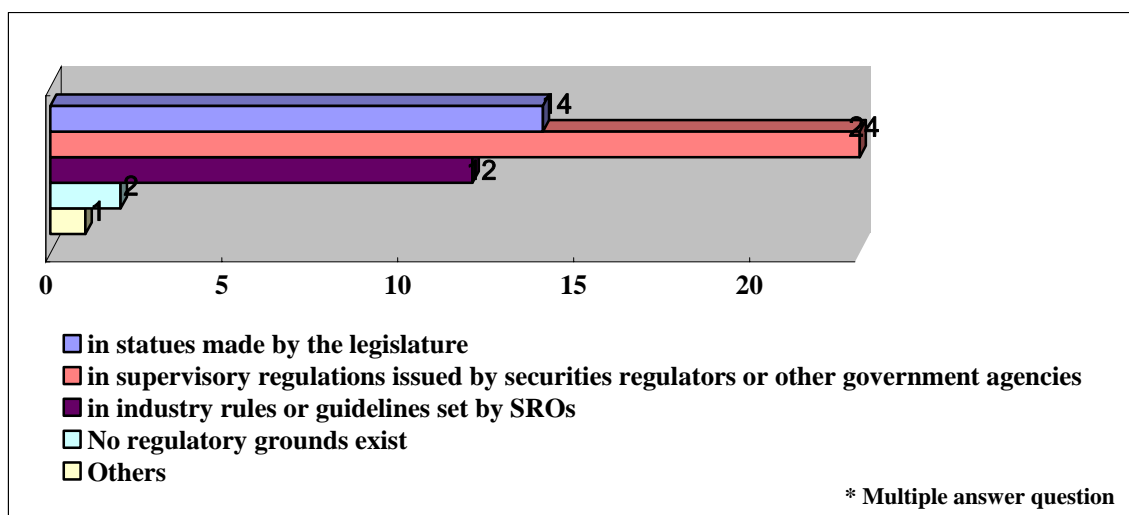


3-2. **If your answer to Q 3 is No, what implicit definition does your jurisdiction consider to focus legal strategies that prevent conflict of interests? Please explain:**

- **Bermuda** - “an investment provider shall avoid conflicts of interest on any matter that could reasonably be expected to impair its independence or objectivity.”
- **Brazil** - There is no general definition of “conflict of interests”, but it is possible to say that a conflict of interests should be considered as a situation when a financial services provider has multiple interests that create incentives to act in such a way to misuse or conceal information.
- **British Virgin Islands** - Regulated Market Intermediaries are required to treat each client fairly and where they have an interest in or are party to a transaction they must take steps to ensure that their clients are fairly treated and are not disadvantaged.
- **Cayman Islands** - The interests of a client conflict with the interests of the licensed entity/service provider.
- **Chinese Taipei** - There are numerous rules and regulations governing the conduct of intermediaries and trusts in place; at all times, responsible persons and employees of intermediaries shall fulfill due diligence and the fiduciary duty of a good administrator and shall act in good faith in the conduct of business operations. There are penalties and sanctions that may be imposed for “conflict of interest” breaches.
- **Jordan** - While there is no explicit definition of the conflict of interests, there are rules and regulations to prevent the potential or found risk of conflicts of interests on the course of the business of the financial firm.
- **India** - Conflicts of interest that may arise from official duties and responsibilities of market intermediaries and its corporate interests or personal interests of its employees and clients should be prevented.
- **Korea** - Article 44 and Article 45 of the FCSMA provides a description of where “conflict of interests” can occur, and defines management and responsibilities regarding prevention of “conflict of interests”.
- **Malaysia** - There are provisions prescribed in the law, rules and guidelines that aim to address situations of conflict of interest. These include limiting the person from making recommendations or effecting transactions without disclosing his/her interests, segregating key duties or functions, not providing rumors or speculative statements on any securities to clients, etc. Appropriate supervisory and internal control procedures must be in-place to ensure fair and equitable allocation of securities, impartial recommendations and strict adherence to the confidentiality of price-sensitive information.
- **Nigeria** - Intermediaries are registered per function as long as they meet the requirements of the law.

- **Pakistan** - The Code of Conduct that apply to registered brokers defines malpractices, execution of orders, breach of trust, business and commission, fairness to clients, and investment advice as potential areas of conflict of interest.
- **Panama** - The institutional code of conduct of the National Securities Commission, define conflict of interest as follows, activities, relations, association that may interfere in the independent exercise of good judgment in favour of the supervised entities or investing public.
- **Romania** - The national legal provisions in force stipulates that in order to identify the conflict of interests. There is a comprehensive regulatory list of items constituting “conflict of interest”.
- **Sri Lanka** - SEC has incorporated provisions on conflict of Interest in its draft General Rules for all Market Intermediaries which is available in the website for public consultation at present. <http://www.sec.gov.lk/>
- **Thailand** - The SEC’s rule doesn’t provide the definition for conflict of interest. However, it states some circumstances which prevent conflicts of interest.
- **Turkey** - The Principles of the Communiqués applicable to intermediary activities, investment consultancy, and portfolio management companies and the Association of Capital Market Intermediary Institutions states that all financial institutions are required to consider client's interest first and treat all clients in a fair manner when conflict arises.
- **United Arab Emirates** - THE REGULATION AS TO BROKERS states that "A Broker observe commercial custom in this respect and the principles of loyalty, justice, equality and concern for the clients' interests and the executing of their orders issued to it in the order of priority in which they arrived ". There is an additional requirement that the employees thereof fairly perform their duties and render the required care to the interests of the client avoiding any conflict with the interests of the company or the interests of any other client.

4. **Where are the grounds for regulating conflicts of interest in your jurisdiction?  
Please mark as many answers as apply to your jurisdiction.**



a. in statutes made by the legislature

- 14 jurisdictions (**Argentina, Brazil, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, Jordan, Korea, Malaysia, Pakistan, Panama, Romania, and South Africa**) replied that statute governs the resolution of conflict of interest.

b. in supervisory regulations issued by securities regulators or other government agencies

- 24 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates**) replied that regulation of conflict of interest is defined in supervisory regulations.

c. in industry rules or guidelines set by SROs

- 12 jurisdictions (**Argentina, Brazil, Chinese Taipei, Colombia, El Salvador, Korea, Malaysia, Pakistan, Panama, South Africa, Turkey, and United Arab Emirates**) replied that the resolution of conflict of interest is in the rules and guidelines set by SROs.

d. No regulatory grounds exist. Market intermediaries have discretion to deal with conflicts of interest for internal control purpose only.

- 2 jurisdictions (**British Virgin Islands, Turkey**) replied that this way is used.

e. Others. Please specify.

- 1 jurisdiction (**Romania**) replied that there are rules in the market participants rule book and also in the intermediaries own procedures.

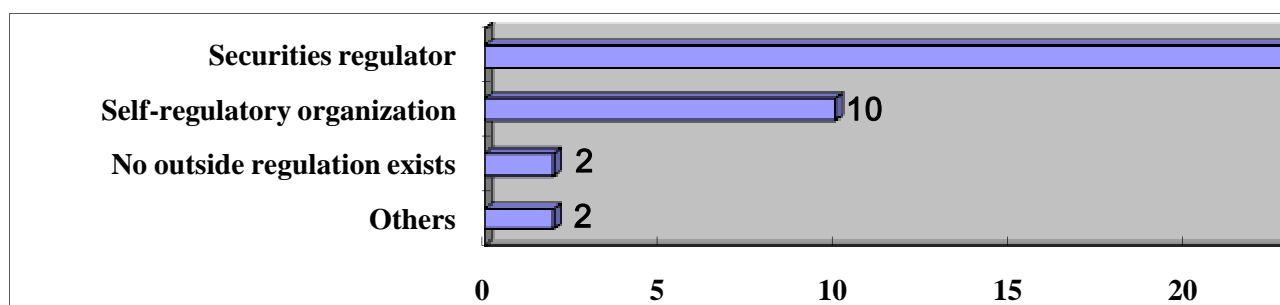
4-1. If you have marked more than one item in Q 4, is there a regulatory hierarchy in place – i.e. more serious conflicts are regulated by statutes and less serious ones by agency rules and so on? Please explain.

- **Argentina** - There is no regulatory hierarchy in place.
- **Brazil** - In theory the hierarchy is statutes made by legislature at the top, rules issued by government regulators next and SRO rules at the last.
- **Cayman Islands** - The statutes and regulations in place are supported by the Rules, Regulatory Policies and Statements of Guidance put in place by the Cayman Islands Monetary Authority.
- **Chinese Taipei** - Supervisory regulations issued by the regulator have general rules for regulating conflicts of interest, and it authorizes SROs to prescribe detailed rules for internal control.
- **Colombia** - In our regulation, the law 1328 de 2009 and other Decrees and Resolutions it's mandatory that intermediaries prevent and manage conflict of interests.
- **Dubai (DIFC)** - The DFSA Administered Law is the core and is supported by the DFSA Rules.
- **El Salvador** - Conflict of interest (related to operation between brokerage houses and their own corporate Group) is regulated through all regulatory frameworks. A law has a higher hierarchy than regulations issued by the regulator or by the stock exchange.
- **Korea** - Related laws are superior to supervisory regulations which financial regulators or government agencies are delegated to make in terms of details implementation of related laws. SRO is the subordinate rule under laws and supervisory regulations, which is made to maintain sound market order and to protect investors.
- **Malaysia** - There is no specific regulatory hierarchy in managing conflict of interest. The SC has the power to make regulations (pursuant to section 378 of the Capital Markets & Services Act 2007 (CMSA)) and issue guidelines or practice notes (as provided under section 377 of the CMSA). The stock exchange has the power to issue rules, guidelines or directive, subject to the SC's approval pursuant to section 9 of the CMSA. Under the same provision, the SC can direct the stock exchange to amend its rules.
- **Panama** - The law has more hierarchy than regulatory agreements.
- **Romania** - The legal provisions in force (Regulation no. 32/2006 on investment firms and Regulation no. 15/2004) provide the general approach that an investment

firm and an asset management company shall follow in a situation of conflict of interests. CVNM Regulations have rules on “conflict of interest”.

- **Turkey** - Capital Market Board’s (CMB) regulations prevail over the rules of The Association of Capital Market Intermediary Institutions which are approved by the CMB.
- **United Arab Emirates** - Serious conflicts are dealt by the regulatory authority but routine violations are dealt by the stock exchanges (SROs).

## 5. Who has the authority to regulate conflict of interests?



All jurisdictions responded.

### a. Securities regulator

- In all 24 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates**) the Securities Regulator has authority.

### b. Self-regulatory organizations

- 10 jurisdictions (**Argentina, Brazil, Chinese Taipei, Colombia, El Salvador, Malaysia, Pakistan, Panama, South Africa, and United Arab Emirates**) SROs are also able to regulate conflict of interest.

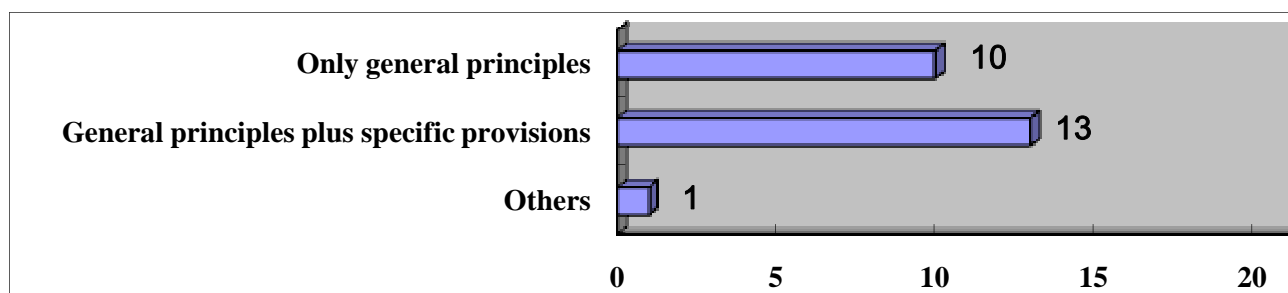
### c. No outside regulation exists. Market intermediaries manage conflicts of interests by themselves.

- In 2 jurisdictions (**British Virgin Islands, Turkey**) intermediaries resolve conflicts of interest.

### d. Others. Please specify

- In 2 jurisdictions (**Romania, Chinese Taipei**) market intermediaries set their own rules.

6. How specific are the regulations in your jurisdictions?



All jurisdictions responded.

- a. **Only general principles – e.g., prohibition of conflicts of interest, duty of loyalty, and duty of care – apply.**
  - 10 jurisdictions (**Bermuda, British Virgin Islands, Colombia, El Salvador, Jordan, Nigeria, Pakistan, Panama, Sri Lanka, and Turkey**) replied that general principles applied.
- b. **In addition to general principles as overarching regulations, we also have specific provisions in laws and regulations for each type of major conflicts of interest.**
  - 13 jurisdictions (**Argentina, Brazil, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Korea, Malaysia, Montenegro, Oman, South Africa, Thailand, and United Arab Emirates**) replied that they have specific legal provisions.
- c. **Others.**
  - 1 jurisdiction (**Romania**) responded.

6-1. Please provide details for your answer to Q 6 regardless of which one you chose and also explain the nature of fiduciary obligation of the market intermediary to various types of clients in your jurisdiction.

- **Argentina** - There are sections providing the general principle and specific rule for particular business activities regarding the duty of loyalty at the capital markets, where there is an obligation to prevent any kind of conflict of interest.
- **Bermuda** - Conflicts of interest are covered in the General Business conduct and Practice code of Conduct which sets out standards for the conduct and practice of business by investment providers. Investment providers have a fiduciary obligation to disclose conflicts of interest to their clients.

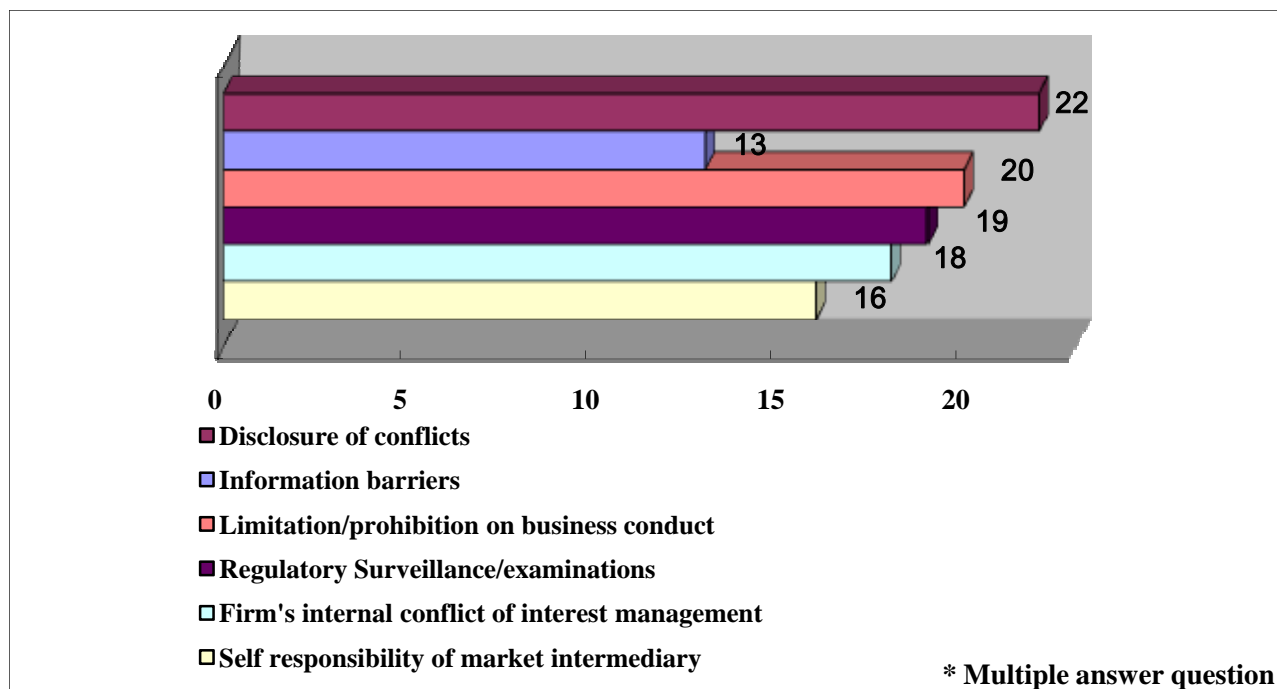
- **Brazil** - There are different sets of rules concerning conflicts of interests issued by the government, the regulator and the SROs.
- **British Virgin Islands** - Regulated Market Intermediaries are required to establish and maintain adequate and effective systems of internal controls which include the identifying and minimizing of areas of potential conflicts of interest and subjecting them to careful independent monitoring. Each market intermediary is required to disclose appropriate conflicts of interest to its clients and is required to treat each client fairly.
- **Cayman Islands** - The Securities Investment Business (Code of Conduct) Regulations require licensees to take reasonable steps to ensure that clients are given fair treatment when conflict of interest is identified. The Regulations provide that a licensee must act with high standards of market conduct and integrity towards clients.
- **Chinese Taipei** - There are various regulations and rules in place owing the duty of care, due diligence, fiduciary obligation of a good administrator and avoidance of conflict of interest in dealing with the instructions of clients.
- **Colombia** - The Colombian laws establish the definition of conflict of interest, general principles to prevent conflict of interest and the intermediaries must adopt in their code of conduct, the rules, procedures and politics to prevent, detect and manage conflict of interest between their clients and the brokerage firms.
- **Dubai (DIFC)** - The Principles for Authorised Firms are the overarching regulations, and serve as the foundation for further detailed rules. According to the Principles, authorized firms are required to ensure conflicts of interests are identified, prevented, or managed in a way that does not adversely affect the interests of the customers.
- **El Salvador** - Regulations include general definition about market intermediaries operations, including the importance to regulate trading of securities issued by a company that are part of the same corporate group as the brokerage house. Such market intermediaries operations are regulated through the Securities Law in El Salvador. However, regulations issued by the Stock Exchange include prohibition of broker house employees activities which may cause conflict of interest. Also, regarding fiduciary obligation of the market intermediary, the Securities Market Law defined that brokers and agents will be jointly liable for ordinary negligence and lack of adequate information for investors and consultancies serving them.
- **India** - Disclosures have to be made to the clients or their specific consent is taken to ensure that the clients' interests are not adversely affected. There are also provisions for restricting certain activities to avoid conflict of interest.
- **Jordan** - Applicable regulations address conflict of interest by general principles – such of prohibition of conflicts of interest, duty of loyalty, and duty of care – and market intermediaries must commit to these regulations.

- **Korea** - The FSCMA provides common regulations that apply to all financial investment businesses and conduct of business regulations that apply to each type of financial investment firms. Common regulations include Duty of Good Faith, Duty to Provide Product Guidelines to Investors, and Prohibition of Compensation of Losses; and adopt enhanced regulations such as Know-your-customers-rule and Prohibition of Unfair Solicitation.
- **Malaysia** - The fiduciary obligations of the market intermediary include disclosing its interests in securities to the clients as well as giving priority to client's order before its own. Conflicts that arise between market intermediaries and another intermediary should be deliberated and resolved amicably without affecting or prejudicing the interest of their clients. The company operating more than one function as permitted by its licensed must erect a Chinese Wall to maintain proper segregation of function to prevent the conflict of interests. To prevent unnecessary conflict situation, a broking intermediary shall also ensure that its dealer's representatives carry out client's instruction with proper skill, care, diligence and give priority to execution of orders in the sequence that they are received.
- **Montenegro** - The Laws on Securities and Rules on Conduct of Business of Licensed Participants at the Capital Market require all financial institutions to prevent and manage issues regarding conflict of interests, and in the case of such issue occurring, the institutions are responsible of ensuring fair treatment to all clients.
- **Nigeria** - Duty of Care, duty to disclose all information on transaction conducted on clients' behalf, duty to provide a statement of clients' account to the client.
- **Oman** - The Capital Market Authority determines many obligations to reduce conflict of interest such as having adequate systems to ensure a fair trading, not using unpublished information, and establishing "Chinese Walls".
- **Pakistan** - The Code of Conduct for brokers states the fiduciary obligation through clauses addressing integrity, exercise of due skill and care, malpractices, execution of orders, breach of trust, business and commission, fairness to clients, and investment advice. In addition, Non Banking Finance Companies and Notified Entities Regulations outline fiduciary duties of asset management companies.
- **Romania** - A general approach to avoid conflict of interests is provided by the primary legislation (Law no. 297/2004 on capital market). CNVM also issued regulation that address certain arrangements that market intermediaries must comply with in order to avoid conflict of interest.
- **South Africa** - General requirement to either avoid conflicts of interest or where they cannot be avoided to make appropriate disclosures. Specific requirements to avoid conflicts of interest in relation to PA trading and to disclose interest in securities that are the subject of research reports. General principles on management of conflict of interest and specific rules relating to the prohibition of situations which can lead to conflict of interest.



- **Sri Lanka** - There are specific rules for market participants to avoid conflicts of interest. The rules also call for full disclosure to clients and regulators.
- **Turkey** - The Principles of the Communiqués applicable to intermediary activities, investment consultancy, and portfolio management companies and the Association of Capital Market Intermediary Institutions state that all financial institutions are required of preventing, managing conflicts of interests, and considering client's interest first and treating all clients in a fair manner when such an issue occurs.
- **United Arab Emirates** - Brokers and their representatives shall respect the ethics of the Profession and refrain from anything such as to harm the reputation of the Market, its members or those transacting therein. A broker who obtains the Authority's approval to trade in securities in its own name and for its own account shall give the clients' instructions priority over broker's instructions.

7. **What legal strategies/measures are available in your jurisdiction to address market intermediaries' conflict of interest? Please mark as many answers as apply to your jurisdiction.**



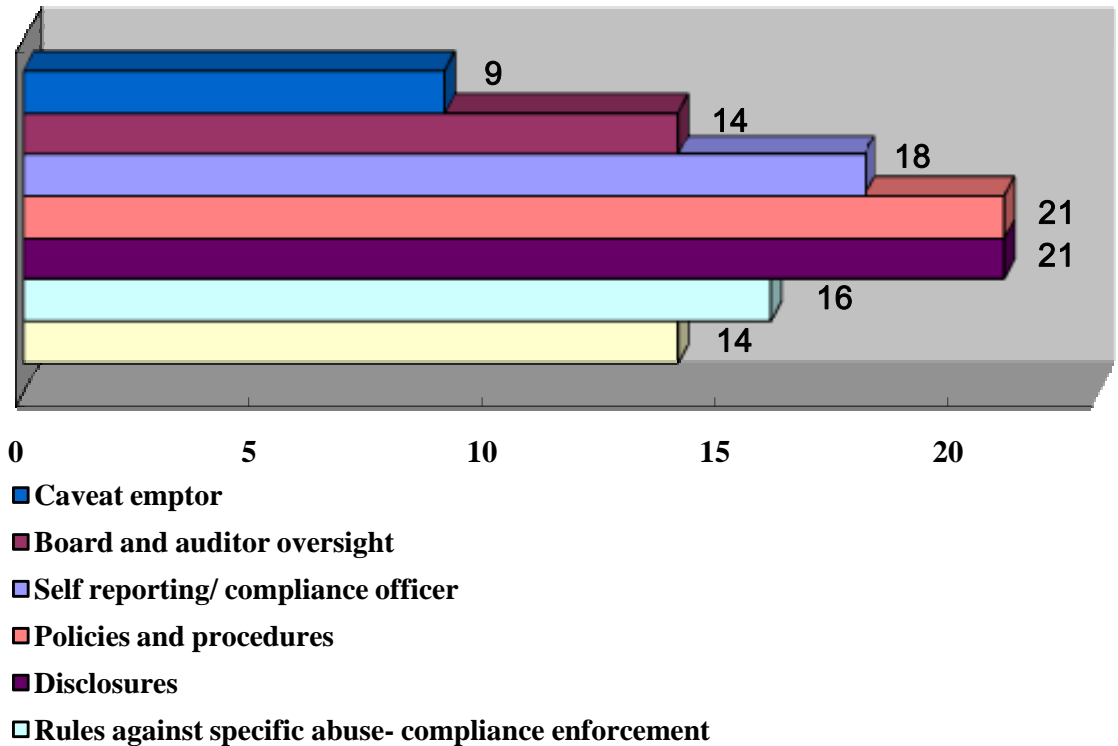
All jurisdictions responded.

a. **Disclosure of conflicts**

- 22 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Oman,**

Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, and United Arab Emirates) replied they had disclosure requirements.

- b. **Information barriers**
    - 13 jurisdictions (Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Korea, Malaysia, Oman, Romania, South Africa, and United Arab Emirates) have information barriers.
  - c. **Limitation/prohibition on business conduct**
    - 20 jurisdictions (Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Oman, Pakistan, Panama, Romania, South Africa, Thailand, Turkey, and United Arab Emirates) impose limitations on business conduct.
  - d. **Regulatory Surveillance/examinations**
    - 19 jurisdictions (Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Thailand, and United Arab Emirates) apply regulatory surveillance.
  - e. **Firm's internal conflict of interest management**
    - 18 jurisdictions (Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Oman, Panama, Romania, South Africa, and Thailand) rely on a firm's internal conflict of interest management.
  - f. **Self responsibility of market intermediary**
    - 16 jurisdictions (Argentina, Bermuda, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Nigeria, Pakistan, Romania, South Africa, Turkey, and United Arab Emirates).
8. Which of the following measures/options are adopted/relied on by the regulator in your jurisdictions to mitigate market intermediary's conflict of interest: Please mark as many answers as apply to your jurisdictions.



All jurisdictions responded.

- a. **Caveat emptor**
  - 9 jurisdictions (Cayman Islands, Chinese Taipei, India, Jordan, Malaysia, Oman, Pakistan, Thailand, and United Arab Emirates)
- b. **Board and auditor oversight**
  - 14 jurisdictions (Argentina, Bermuda, British Virgin Islands, Cayman Islands, Chinese Taipei, India, Korea, Malaysia, Nigeria, Oman, Pakistan, South Africa, Thailand, and United Arab Emirates)
- c. **Self reporting/ compliance officer**
  - 18 jurisdictions (Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, South Africa, Turkey, and United Arab Emirates)
- d. **Policies and procedures**
  - 21 jurisdictions (Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), India, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates)
- e. **Disclosures**
  - 21 jurisdictions (Argentina, Bermuda, Brazil, British Virgin Islands,

Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, South Africa, Sri Lanka, Thailand, and United Arab Emirates)

- f. **Rules against specific abuse- compliance enforcement**
    - 16 jurisdictions (Argentina, British Virgin Islands, Chinese Taipei, India, Jordan, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Thailand, Turkey, and United Arab Emirates)
  - g. **Information barriers (Chinese wall)**
    - 14 jurisdictions (Argentina, Brazil, British Virgin Islands, Chinese Taipei, Colombia, Dubai (DIFC), India, Korea, Malaysia, Oman, South Africa, Sri Lanka, Thailand, and United Arab Emirates)
9. **Is it mandatory for market intermediaries to set up an internal control system to identify, assess, manage and control potential conflicts of interests?**

All jurisdictions responded.

- 22 jurisdictions (Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Thailand, and United Arab Emirates) require market intermediaries to have internal control systems for potential conflicts of interest.
  - 2 jurisdictions (Sri Lanka, Turkey) do not require intermediaries to set up internal control systems for potential conflicts of interest.
- 9-1. **If yes, what are the grounds/criteria for the rule, e.g., laws / government rules or industry self-regulation? Please briefly describe each provision.**
- **Argentina** - LAW 17811 Section 77: Loyalty Duty, DECREE 677/01 : SECTION 8.- Loyalty and Diligence Duty, At Law 24083 and Decree 174/93 regarding CIS.
  - **Bermuda** - Section 5.1 of the Investment Business Act 2003 General Business Conduct and Practice Code of Conduct (the “Code”) (See also section 5.4). The investment provider shall establish internal rules or procedures to ensure fair treatment to all its clients.”
  - **Brazil** - On September 24th 1998 the National Monetary Council (a governmental body) issued Resolution #2.554, (As for the detail, please refer to the original answer of the responding jurisdiction.).

- **British Virgin Islands** - Section 29 of the Regulatory Code, 2009 (including Explanatory Notes) relays that licensees must establish and maintain an adequate and effective system of internal controls appropriate for the nature, size, complexity, structure and diversity of its business. There are specific provisions for all market intermediaries to ensure that it has in place proper mechanism to identify, mitigate and disclose conflicts of interest where appropriate.
- **Cayman Islands** - The Rule on Internal Controls applies to all licensees regulated by the Authority under the regulatory laws. This Rule sets out that a licensee must establish, implement, and maintain internal controls, strategies policies, and procedures appropriate for the size, complexity and nature of its activities. The Statement of Guidance on Internal Controls on Securities Investment Business sets the standards of best practice regarding internal controls, which includes controlling conflicts of interest.
- **Chinese Taipei** - The regulations and rules governing the operation of market intermediaries detail the role and function of an internal control department in each intermediary such as the Regulations Governing Securities Firms, the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets, the Regulations Governing Futures Commission Merchants, etc.
- **Colombia** - The Law 1328 of 2009 points out the obligation for the brokerage firms to manage the conflict of interests comply with such principles as transparency and impartiality for protecting the rights of the investors. The Decree 1121 of 2008 and the rules of self regulation establish that intermediaries must include in their code of conduct rules related to prevent conflict of interests between their clients and they must implement the adequate mechanism to detect, prevent and manage conflict of interests.
- **Dubai (DIFC)** - Authorised Firms must take steps to ensure that all types of conflicts of interest are managed in a way that does not adversely affect the interest of its clients, and ensure that all clients are fairly treated.
- **El Salvador** - By Law (Article65), brokerage houses are obliged to keep records of purchase and sale orders from their clients. At the same time, regulatory authorities issue regulations about those records. According to the Securities Market Law (Article 29), the stock exchange may issue regulations related to broker-dealer internal control, in order to ensure that the procedures in place provide an adequate level of protection and security to investors, and that in their execution legal requirements and procedures are fulfilled. Also, broker houses authorized for portfolio management, are required to set up internal control system to clearly identify assets that belong to portfolio in accordance with the provisions defined in regulation issued by Regulator (Article 28 -29. Portfolio Management Regulation). In that sense, the stock exchange has issued rules about broker houses back-office control and trading in the stock exchange systems.
- **India** - According to the regulations set out by SEBI, intermediaries have to ensure that there is no conflict of interests and at the same time, the intermediaries are given freedom to devise their own systems to ensure the same. Apart from this, there are

restrictions on undertaking certain activities by the intermediaries, as specified in the regulation.

- **Jordan** - government rules. For an example corporate governance rules and instructions of financial services licensing and registration, and code of ethics.
- **Korea** - Article 28  
(1) A financial investment firm shall establish appropriate procedures and standards (hereinafter referred to as “internal control standards”) that its officers and employees are required to meet in performing their duties in order to comply with Acts and subordinate statutes, manage assets in a sound manner, and protect investors, including the prevention of a conflict of interests, etc.  
(2) A financial investment firm (excluding a discretionary investment advisory company or non-discretionary investment advisory company prescribed by the Presidential Decree when taking into account the size of its assets, etc.; hereafter in this Article, the same shall apply) shall have not less than one person (hereinafter referred to as “compliance officer”) who monitors the compliance of the internal control standards, investigates any violation of the internal control standards, and reports the findings thereof to auditors or the audit committee.
- **Malaysia** - The CMSA, Rules of Bursa Malaysia Securities, the Chinese Walls Guidelines and KLSE/MESDAQ Joint Guidelines for Compliance Officers require the company to assess, manage and control the possible conflicts situations and to put in place proper internal control systems.
- **Montenegro** - Rules on Conduct of Business of Licensed Participants at the Capital Market require all licensees to be aware of specific situations which may lead to conflict of interest, and to take appropriate steps to prevent contravention of client's interest.
- **Nigeria** - The ISA requires maintenance of separate accounts and payment into certain trust **accounts**, accounts to be kept by capital market operator, right of copies of book entries of transaction and to inspect contract notes, keep register of securities, duty of auditor to report on internal control of public company.
- **Oman** - Article (146) of the Executive Regulation of The Capital Market Authority states that the company shall appoint a compliance officer. Also the Executive Regulation of The Capital Market Authority determines the duties of a compliance officer.
- **Pakistan** - Brokers registered to the SECP are required to nominate a compliance officer responsible for ensuring implementation and compliance with relevant regulatory framework. The Non Banking Finance Companies and Notified Entities Regulations 2008 specifically provide the conditions for important component of internal controls. Lastly, the NBFC regulations prohibit companies’ key executives from holding concurrent offices within the organization.
- **Panama** - Agreement 5-2003 provides that prevention of conflict of interest and implementation of adequate mechanism should be included in the code of conduct

for intermediaries. Applicable rules should prevent intermediaries from providing critical client information to inappropriate persons and treating clients in an unfair manner. In addition, intermediaries must be responsible of avoiding operational conflicts that may affect two or more clients when executing orders.

- **Romania** - The national legislation (Regulation no. 32/2006 on investment services) provides that the investment firm shall to establish a policy on conflict of interests. This policy implies that the investment firm must identify the circumstances that constitute or may give rise to a conflict of interests and must specify the procedures to be followed and the measures to be adopted in order to manage such conflicts.
- **South Africa** - Sub-ordinate legislation in the form of a Code of Conduct which asset managers must comply with and which is supervised by the regulator.
- **Thailand** - The SEC's rule requires market intermediaries to have an efficient and effective internal control and conflict of interest prevention system.
- **United Arab Emirates** - Article 6 of Financial Consultation & Financial Analysis: Licensees shall comply with all terms, conditions, and processes set forth in applicable resolutions along with the company's complying with the requirement to make full administrative, technical, and technological separation between the licensed activities in order to avoid conflict of interests.

**10. When the possibility of conflict of interests is discovered, is the requirement for market intermediaries to disclose such conflict of interest to their customers:**

- a. Mandatory**
- b. Voluntary**

All jurisdictions replied to this question.

- 18 jurisdictions (**Argentina, Bermuda, British Virgin Islands, Cayman Islands, El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, and United Arab Emirates**) have mandatory disclosure.
- 4 jurisdictions (**Colombia, Dubai (DIFC), Nigeria, and Turkey**) have voluntary requirements.
- 2 jurisdictions (**Brazil, Chinese Taipei**) have both mandatory and voluntary requirements.

**10-1. If disclosure is mandatory, what are the grounds for the rule – e.g., laws / government rules or industry self-regulation? Please briefly describe each provision.**

- **Argentina** - It is mandatory to inform to CNV and also SROs. CNV and SROs can decide to start an investigation or a disciplinary procedure in case they consider the best way to find the facts around the situation. Also customers can formulate a complaint at CNV or SROs if they consider that there was a situation that affects their interests.
- **Bermuda** - Section 5.4 of the Investment Business Act 2003 General Business Conduct and Practice Code of Conduct (the “Code”) states “Where conflicts of interest between an investment provider and its client are unavoidable, the investment provider shall disclose them fully to the client.”
- **Brazil** - According to CVM rules, there is mandatory disclosure for the following services, considering some specific situations:
  - a) Management investment funds (asset management);
  - b) Services of securities analysis;
  - c) Underwriting
 Concerning SRO rules, in the “Anbid’s Regulation and Best Practices Code for the Public Offerings of Securities’ Distribution and Acquisition”, article 13 states that “The Participating Institutions shall explicitly inform any possible conflicts of interest when participating in Public Offerings.”
- **British Virgin Islands** - Section 29 of the Regulatory Code, 2009 (including Explanatory Notes) relays that licensees must establish and maintain an adequate and effective system of internal controls appropriate for the nature, size, complexity, structure and diversity of its business. There are specific provisions for all market intermediaries to ensure that it has in place proper mechanism to identify, mitigate and disclose conflicts of interest where appropriate.
- **Cayman Islands** - The Statement of Guidance – Market Conduct states that clients should be informed of conflicts that arise.
- **Chinese Taipei** - In order to prevent conflict of interest, regulatory rules require that intermediaries must disclose any position it has taken which may be regarded as giving rise to a conflict of interest and must give periodic reports to the regulators, and regulators inspect intermediaries by off-site surveillance.
- **El Salvador** - Broker houses must report to the regulator on a monthly basis about operations made with person/corporation related to their corporate group, when they act as a portfolio manager.
- **India** - The same is as per Code of Conduct and obligations for intermediaries in respective SEBI Regulations.
- **Jordan** - Jordan securities law and instructions of financial services licensing and registration, trading directives and code of ethics as stated in our answer of question 2.3 especially article (17-c) in licensing and registration instructions which states the broker shall notify the client of the following: If the broker or any person attached thereto was a part or has an interest in the transaction executed in favour of the



client, the broker shall carry out the necessary procedures in order to protect the client's interest in case there is a clash of interest between the broker and the client.

- **Korea - FSCMA Article 44** (Management of Conflict of Interests)  
(2) Where a financial investment firm finds the possibility of a conflict of interests after the identification and assessment pursuant to paragraph (1), the financial investment firm shall notify the investors concerned thereof in advance and execute purchase, sale or other transactions after lowering the possibility of a conflict of interests to a level that does not undermine the protection of investors through the methods and procedures prescribed by the internal control standards.
- **Malaysia - Section 91** of the CMSA requires disclosure of certain interests in securities when the licensed person makes recommendation on the acquisition or disposal of those securities to the clients. Similarly, section 97 requires the intermediary to disclose in the contract note when it is acting in the transactions as principal and not an agent.  
Paragraph 10.0(a)(i) of the Guidelines on Market Conduct states that the stock broking or its representatives must ensure that they disclose all potential conflicts to the clients.  
Clause 3.06 of the Guidelines on Compliance Function for Fund Managers requires fund managers to disclose any conflicts of interest to clients and prospective clients. Prospectus Guidelines for Collective Investment Schemes also require full disclosure regarding related party transactions and policy on dealing with conflict of interest situation.
- **Montenegro - Licensee shall inform the client on existence, type and source of conflict of interest, before conducting business on behalf and for the account of a client.**  
Notification referred to in paragraph 1 of this Article must contain sufficient data, enabling client to make a decision regarding conducting of securities business, in the light of which a conflict of interest arises.  
Licensee shall submit notification referred to in paragraph 1 of this Article, in writing.  
Licensee may not execute orders on its behalf, on behalf of member of licensee's body or other person employed at licensee, if this prevents simultaneous execution of clients' orders or, enables execution of clients' orders would be executed under less favourable conditions.
- **Oman - Article (139.d & g)** of the Executive Regulation provides that the company shall not use fraudulent or deceptive methods or provide false or incomplete information or conceal any material information in order to promote the security that it distributes. Also statement that the investor is acquainted with all the documents relating to the security and that he is aware of the rewards and risks of the security."  
Moreover, article 138 of the Executive Regulation provides that "The company shall inform the customer of any conflict of interest that may affect its objectivity."
- **Pakistan - The Brokers and Agents Registration Rules** states through its Code of Conduct that brokers should treat clients in a fair manner by clearly informing the

role of the broker (principal/ agent) and ensuring clients that no conflict of interests arises between him and the client. However, in the event of such an issue, he shall inform the client accordingly and shall not take advantage of the situation. Regulations for Proprietary Trading requires that a broker disclose to his customer placing an order in a particular security, while accepting such order, whether he intends to or carrying out proprietary trading in that security on that particular day.

- **Panama** - Agreement 5-03 they should comply with the code of conduct previously approved by the Commission, the compliance officer shall report to the Commission if such conflict of interest occurs.
- **Romania** - Regulation no. 32/2006 on investment services (article 98(2)) provides that “where organisational or administrative arrangements made by the investment firm to manage conflicts of interest are not sufficient to ensure that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the nature and sources of conflicts of interest to the client before undertaking business on its behalf.”  
The asset management companies have to ensure that the investors are informed of conflicts of interest to clients on the sources of income or on other benefits generated by the management of UCITS, in another form than management fees.
- **South Africa** - SRO rule. General requirement for brokers to disclose to clients conflicts of interest if they cannot be avoided.
- **Sri Lanka** - It is under the draft rules. Please refer the answer to the question 6.1
- **Thailand** - The SEC’s rule requires market intermediaries to have in place a system which prevents conflicts of interest. Regarding the client assets, the SEC’s rule requires market intermediaries to obtain approvals from clients before enter into any dealings which may resulted in conflicts of interest.
- **United Arab Emirates** - A broker who obtains the Authority’s approval to trade in securities in its own name and for its own account shall advise the client that the broker or any person associated therewith was a party to, or had an interest in the transaction executed for the account of the client. In case of a conflict of interest between the broker and the client, the broker must take the necessary procedures to protect the interests of the client.

**10-2. If disclosure is voluntary, please explain the methods you use to ensure effective disclosure in different situations of conflict of interest – e.g., off-site surveillance, random checks, system audit, etc.**

- **Brazil** - There is no predetermined way for detecting and enforcing voluntary disclosure – all available means mentioned in the question may be used.
- **Chinese Taipei** - To proceed with routine audits and special audits to ensure effective disclosure the conflict of interest.

- **Colombia** - The firm establishes the methods and procedures to manage the conflict of interests. Particularly, the self regulatory rules indicate that firms must adopt rules to prevent conflict of interests. If it's not possible, the firms should manage conflict under rules of disclosure information, obtain authorization to parts involved in conflict and prohibition to act in conflict, but the intermediaries have to implement those mechanisms to solve their conflicts.
- **Dubai (DIFC)** - Authorized firms aware of a conflict of interest must disclose the fact to the client in writing that provides a general/detailed description of the issue.
- **Nigeria** - Off/onsite inspection, surveillance, Code of Conduct for capital market operators.
- **Turkey** - There is no provision related to mandatory or voluntary disclosure of the conflict of interest for brokerage services. When there is a conflict of interest between the firm and the customer, the customer's interest prevails. When the conflict is between the customers, the securities firm has to be fair.

**11. Is it mandatory for market intermediaries to suspend doing business with a particular group of clients when it is difficult to reduce the possibility of conflict of interests with the clients to a certain level – a level that does not compromise investor protection?**

All jurisdictions responded.

- 10 jurisdictions (**Argentina, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Montenegro, Oman, Thailand, and United Arab Emirates**) responded that it was a mandatory requirement.
- 14 jurisdictions (**Bermuda, Brazil, British Virgin Islands, Cayman Islands, Colombia, El Salvador, Malaysia, Nigeria, Pakistan, Panama, Romania, South Africa, Sri Lanka, and Turkey**) have no such mandatory requirement.

**11-1. If yes, what are the grounds for the rule – e.g., laws / government rules or industry self-regulation? Please briefly describe each provision.**

- **Argentina** - As said above, intermediaries are required to refrain from acting in the case of conflict of interest, so they cannot do business if the clients' interest is involved.
- **Chinese Taipei** - When market intermediaries fail to prevent conflict of interests, the competent authority may impose sanctions to correct their conduct within a limited period of time, and those persons and institutions may not participate in such business according to the Futures Trading Law, the Securities Investment Trust and Consulting Act, the Taiwan Securities Association Rules Governing Underwriting and Resale of Securities by Securities Firms, etc.
- **Dubai (DIFC)** - Authorised firms unable to prevent or manage conflict of interests must decline to act for the client.

- **India** - The same is as per Code of Conduct and obligations for intermediaries in respective SEBI Regulations.
- **Jordan** - Jordan securities law especially Articles (21.52.57) and instructions of financial services licensing and registration Articles (3.17.32.52.63). trading directives articles (13.14) and code of ethics article(13) as stated in our answer of question 2.3.
- **Korea** - FSCMA  
Article 44 (Management of Conflict of Interests)  
(3) A financial investment firm shall not execute purchase, sale or other transactions where it is found to have difficulties in lowering the possibility of a conflict of interests pursuant to paragraph (2).
- **Montenegro** - LAW ON SECURITIES (Official Gazette of Montenegro, Nos. 59/00, 10/01, 53/09)  
Licensees shall inform the client on existence, type and source of conflict of interest, before conducting business on behalf and for the account of a client.  
Notification must contain sufficient data, enabling client to make a decision regarding conducting of securities business, in the light of which a conflict of interest arises.
- **Oman** - Article (133.4) of the Executive Regulation indicates that” Refuse any order by the customer if it infringes the laws and regulations or the fairness and integrity of dealing in securities. The broker shall record on the authorization the reasons for refusal and keep the same in the records.
- **Romania** - Regulation no. 32/2006 on investment services (article 98(4)) provides that “when conflicts of interest cannot be avoided or managed in accordance with its independent internal policy, the investment firm shall not provide investment services as counterparty to the client.
- **Thailand** - The SEC’s rule does not allow the market intermediaries to underwrite the stocks for their related companies and to allocate stocks to any of their related persons and companies.
- **United Arab Emirates** - Article (17) Bis Fourth of Decision No (1/R) Of 2000 Concerning The Regulation As To Brokers: In case of a conflict of interest between the broker and the client, the broker must take the necessary procedures to protect the interests of the client.

12. **Is it mandatory for a market intermediary to set up information barriers or Chinese walls between departments that are prone to conflicts of interests? (If yes, please answer Q. 12-1 through Q. 12-4-1)**

All jurisdictions responded.

- 17 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, Malaysia, Oman, Romania, South Africa, Sri Lanka, Thailand, and United Arab Emirates**) replied that there are mandatory requirements for information barriers.
- 7 jurisdictions (**Bermuda, El Salvador, Montenegro, Nigeria, Pakistan, Panama, and Turkey**) replied that there is no mandatory requirement to set up information barriers.

**12-1. What are the grounds for the rule – e.g., laws / government rules or industry self-regulation? Please briefly describe each provision.**

- **Argentina** - Laws, government rules and self regulations rules.  
There is a specific obligation requiring SROs to set up rules for their brokers intermediaries establishing the obligation to have Chinese walls between front office and back office.
- **Brazil** - Financial firms are required to set up a Chinese wall, by laws, SRO rules.
- **British Virgin Islands** - Section 29 of the Regulatory Code, 2009 (including Explanatory Notes) relays that licensees must establish and maintain an adequate and effective system of internal controls appropriate for the nature, size, complexity, structure and diversity of its business.  
There are specific provisions for all market intermediaries to ensure that it has in place proper mechanism to identify, mitigate and disclose conflicts of interest where appropriate.
- **Cayman Islands** - The Rule on Internal Controls issued by the Authority requires licensees to implement internal control policies and procedures. The Statement of Guidance on Internal Controls that explains the rule states that licensees should segregate duties and that personnel should not be assigned of conflicting responsibilities.
- **Chinese Taipei** - There are various regulations that require market intermediaries and trust enterprises to have strict segregation of personnel and duties and functions, the sharing of information and utilization, and the sharing of equipment or places of business.
- **Colombia** - The article 1.1.3.5 of Resolución 1200 de 1995 points out the intermediaries must establish independence between Intermediation of securities, advice departments and CIS.  
The self regulator - AMV incorporated if the brokerage firms develop their activities in the same financial floor, they have to adopt measures to administrate conflict of interests.
- **Dubai (DIFC)** - (COB 3.5.1) prevents or manages that conflict of interest by establishing and maintaining effective Chinese Walls to restrict the communication of the relevant information.

- **India** - The same is as per Code of Conduct and obligations for intermediaries in respective SEBI Regulations read with SEBI (Prohibition of insider trading) Regulations, 1992.
- **Jordan** - Jordan securities law especially Articles (52.57) and instructions of financial services licensing and registration Articles (3.17.32.52.63). Trading directives articles (13.14) and code of ethics article (13) as stated in our answer of question 2.3.
- **Korea** - FSCMA  
Article 45 provides for a number of situations where there may be conflict of interest and other client related matters.
- **Malaysia** - “Intermediaries that undertake more than one function are required to maintain proper segregation of those functions within an organization to prevent the flow of information between different parts of the organization which performs each function, and any conflict of interest which may arise as a result. Other requirements include separation of duties for principal and agency trading, prohibition of trading or research publication while in possession of material information, explicit separation between compliance and internal audit functions, restrictions on giving out financial assistance, loans, guarantees and indemnities to affected related companies, etc.”
- **Oman** - In addition, article (152) of the Executive Regulation provides that” There shall be “Chinese Wall” rules and procedures to ensure that the company or any related party does not improperly utilize undisclosed information. All licensed banks shall have “Chinese Walls” between the commercial banking and investment banking division.
- **Panama** - Intermediaries must have administrative procedures for the adequate control of its activities and risks. This must be included in the code of conduct.
- **Romania** - The regulation in force (Article 97(5) of the Regulation no. 32/2006 on investment services) establishes the procedures that have to be followed by the investment firm and by asset management firms so as to set up information barriers between departments that are prone to conflict of interest.
- **South Africa** - FAIS - General duty in law to have segregation of duties and proper internal controls which will include Chinese walls.
- **Thailand** - The SEC’s rule requires market intermediaries to set up Chinese walls between department and personnel that may cause conflicts of interest.
- **United Arab Emirates** - Regulatory Rules as mentioned at point no.9-1 above Article 6.

**12-2. Please indicate the departments obligated to set up a Chinese wall with each other – e.g., between brokerage/dealing and underwriting, between brokerage/dealing and asset management service**

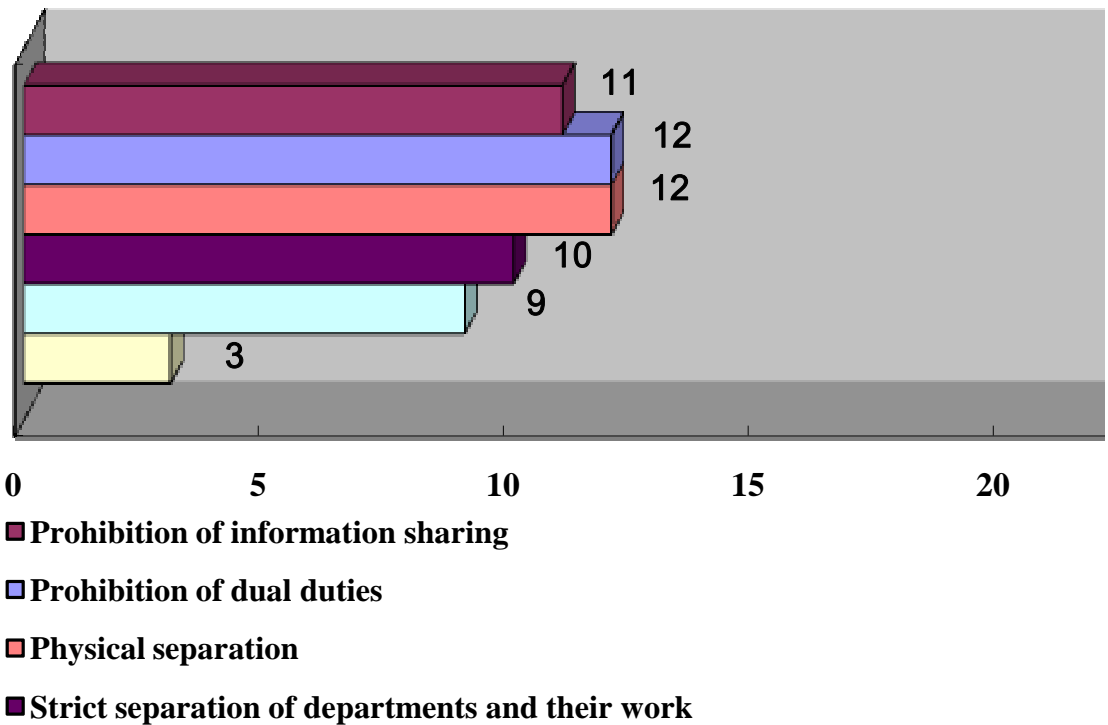
- **Argentina** - The Regulator requires that SROs set up rules for their brokers' intermediaries establishing the obligation to have Chinese walls between front office and back office. At Law 24083 and Decree 174/93 regarding CIS, there are many provisions regarding the prevention of conflict of interests between asset management company, depositary company and clients.
- **Brazil** - The Chinese wall provision applies to the asset management service and all other businesses of the same institution or financial conglomerates.
- **Cayman Islands** - Not specified.
- **Colombia** - The article 1.1.3.5 of Resolución 1200 de 1995 the intermediaries must establish independence between Intermediation of securities, advice departments and CIS. The different departments have to ensure compliance of their functions independently. They shall assure that information resulted from the respective activities in the different sectors is not, directly or indirectly, within the access of the rest sector, so that each function is performed independently.
- **Chinese Taipei** - Regulations require that the various activities of an intermediary or market participant must have clear distinctions between internal governance functions, and strict separation of each dedicated department and their work. Where there is potential for conflict of interest dealing and investment duties must be segregated.
- **Dubai (DIFC)** - The Compliance Officer is responsible of compliance matters, including this issue.
- **India** - The same is as per Code of Conduct and obligations for intermediaries in respective SEBI Regulations. Asset management companies are set up separately to avoid conflict of interest.
- **Jordan** - Brokerage and dealing; Different kinds of financial services.
- **Korea** - Enforcement Decree of FSCMA  
Article 50 (Information Barrier of Financial Investment Firm) (1)  
1. Information sharing between management of its own properties (excluding the management pursuant to the methods prescribed and publicized by the Financial Services Commission, including the deposit in financial institutions), brokerage, or dealing and collective investment scheme service or trust service: Provided, that the same shall not apply to the information sharing between corporate financing business (referring to the corporate financing business under subparagraph 3 of article 71 of the Act; hereafter in this Article, the same shall apply) of brokerage or dealing and corporate financing business of collective investment scheme service; or

2. Information sharing between corporate financing business and the management of its own properties or financial investment services (excluding corporate financing business).

- **Malaysia** - Between corporate finance and research/dealing/brokerage/asset management services; between research and corporate finance/dealing/brokerage/asset management services; and between brokerage corporate finance/research/dealing/ asset management services.
- **Oman** - Capital market law (80/98) and its Executive Regulation emphasizes the need to separate the departments. The Capital Market Authority focuses on the “Chinese wall” in banks that have license to invest in securities. So, all licensed banks shall have “Chinese Walls” between the commercial banking and investment banking division.
- **Panama** - The norm of conduct that all brokerage firms must adopt shall have the following provision according to Agreement 5-03.
- **Sri Lanka** - Please refer rule 5 of the roles for” investment managers” <http://www.sec.gov.lk>.
- **Thailand** - Between brokerage, dealing, underwriting and asset management.
- **United Arab Emirates** - Brokerage/dealing and Financial Consultancy.

**12-3. Does the Chinese wall provision in your jurisdiction contain the following? If you have other rules other than those mentioned below, please describe them briefly**





- 1) Prohibition of information sharing
  - Argentina, Brazil, Chinese Taipei, Colombia, India, Korea, Malaysia, Oman, Romania, Thailand, and United Arab Emirates.
- 2) Prohibition of dual duties (Prohibition of holding more than one position concurrently)
  - Argentina, British Virgin Islands, Cayman Islands, Chinese Taipei, India, Jordan, Korea, Malaysia, Oman, Romania, Thailand, and United Arab Emirates.
- 3) Physical separation (Prohibition of sharing office space and/or data-processing equipment, etc.)
  - Argentina, Brazil, Chinese Taipei, Colombia, India, Korea, Malaysia, Oman, Romania, Sri Lanka, Thailand, and United Arab Emirates.
- 4) Strict separation of departments and their work
  - Argentina, Brazil, Chinese Taipei, Colombia, India, Korea, Malaysia, Oman, Thailand, and United Arab Emirates.
- 5) Restrictions on meetings and/or communication (Duty of record keeping, etc.)

- **Brazil, Chinese Taipei, India, Korea, Malaysia, Oman, Romania, Thailand, and United Arab Emirates.**

6) **Others**

- **Brazil, Malaysia** - Financial restriction, periodic reporting
- **India** - Front running, Confidentiality, restriction on sales of investments, etc.
- 2 jurisdictions (**South Africa, Sri Lanka**) replied that they had provisions but did not indicate what they are.

12-4. **Are there wall crossing provisions that allow exceptions of the above rules?**

- 17 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Colombia, Dubai (DIFC), India, Jordan, Malaysia, Nigeria, Oman, Panama, Romania, Sri Lanka, Thailand, and United Arab Emirates**) replied that there were no such provisions.
- 2 jurisdictions (**Chinese Taipei, Korea**) replied that wall crossing is allowed.
- **El Salvador, Montenegro, Pakistan, South Africa, and Turkey** did not reply to this question.

12-4-1. **If yes, what are the grounds for the exceptions – e.g., laws / government rules or industry self-regulation? Please briefly describe each provision**

- **Chinese Taipei** - Under the Taiwan Stock Exchange Corporation Standards Governing Securities Firm Sites and Facilities, a securities dealer is allowed the sharing of equipment between proprietary securities trading and proprietary futures trading.
- **India** - Information sharing on need to know basis as given in Code of Conduct for Prevention of Insider Trading read with SEBI (Prohibition of insider trading) Regulations, 1992.
- **Korea** - The Enforcement Decree of FSCMA states that applicable regulations shall not apply to information provided under the conditions prescribed by the FSC. Regulation of Financial Investment Business describes the requirements that should be fulfilled for information sharing.

13. **Is it mandatory for a market intermediary to set up and manage a separate deal team on a deal by deal basis when multiple deals are handled simultaneously?**

All jurisdictions responded.

- 19 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Dubai (DIFC), Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Turkey, and United Arab Emirates**) replied that there is no mandatory requirement for separate deals teams.
- 5 jurisdictions (**Chinese Taipei, Colombia, El Salvador, India, and Thailand**) replied that there is such a requirement.

**13-1. If yes, how are they regulated?**

- **Chinese Taipei, Colombia, and Thailand** replied that the regulation is by laws and government rules.
- **Chinese Taipei and Colombia** also have implemented industry self-regulation.
- **Chinese Taipei** also replied that the regulation is done by intermediary's internal rules.

**14. Is it mandatory for market intermediaries to set up information barriers or Chinese walls with other companies or affiliates? (If yes, please answer Q.14-1. and Q.14-2.)**

All jurisdictions responded.

- 10 countries (**Argentina, Brazil, Chinese Taipei, El Salvador, India, Korea, Malaysia, Romania, Thailand, and United Arab Emirates**) replied that they have a mandatory requirement for information barriers.
- 14 countries (**Bermuda, British Virgin Islands, Cayman Islands, Colombia, Dubai (DIFC), Jordan, Montenegro, Nigeria, Oman, Pakistan, Panama, South Africa, Sri Lanka, and Turkey**) replied that there is no mandatory requirement for information barriers.

**14-1. Please specify the scope of those companies – e.g., holding company, subsidiaries, affiliates, and other affiliated parties.**

- **Argentina** - Law 24083 and Decree 174/93 regarding CIS, set up limitations and prohibitions for being member of both entities at the same time; also both entities must have different addresses, and must have internal controls in place to ensure this provision.
- **Brazil** - According to CVM rules, in the case of asset management, it is mandatory for all other companies. Concerning the rules issued by ANBIMA (SRO), the same information barriers and Chinese walls also applies.

- **Chinese Taipei** - There are regulations restricting the activities of directors and senior personnel when issues of investment are discussed in order to prevent conflict of interest and maintain the independence and confidentiality of business operations. Directors of Securities Trusts may not be members or directors of other entities in which the Trust funds may invest.
- **El Salvador** - Broker houses providing services or portfolio management, which are part of a corporate group including a bank, shall maintain completely separate operations with the group (Article 31. Portfolio management regulation, issued by the Regulator).
- **India** - All holding company, subsidiaries, affiliates, other affiliated parties
- **Korea** - A financial investment firm shall be prohibited from conducting any activity in providing financial investment services that are likely to cause conflict of interests with its affiliates or other companies.
- **Malaysia** - Paragraph 3.01 of the Chinese Wall Guidelines states that effective Chinese Walls shall be erected between dealer/future brokers and their affected related companies to ensure that any risk of the activities from the affected related companies do not affect the former. Affected related companies refer to companies within the group that are involved in the following activities: property or construction, credit or leasing, banking, business of dealing in securities, and holding company of the dealer or futures broker.
- **Romania** - Other brokers or other transacting parties.
- **Thailand** - Any related parties.
- **United Arab Emirates** - Other brokers or other transacting parties.

**14-2. What are the grounds for the rule – e.g., laws / government rules, industry self-regulation? Please briefly describe each provision**

- **Argentina** - Law and government Rules. Please see above.
- **Brazil** - Please refer to answer 12-1.
- **Chinese Taipei** - The regulations as previously described.
- **El Salvador** - Obligation for market intermediaries to keep their operations separate from other companies or affiliates is defined by regulations issued by the regulator. (Article 31. Portfolio management regulation, issued by the Regulator).
- **India** - The same is as per Code of Conduct and obligations for intermediaries in respective SEBI Regulations read with SEBI (Prohibition of insider trading) Regulations, 1992

- **Korea** - According to the FSCMA, providing information on the purchase and sale of financial investment products and other relevant information, an officer or an employee holding posts concurrently, sharing any office or data-processing equipment, and any other activities with the possibility of conflict of interests is prohibited.
- **Malaysia** - Paragraph 3.01 of the Chinese Wall Guidelines
- **Thailand** - The SEC's rule requires market intermediaries to have a proper security system to prevent unauthorized persons to access or modify the securities business information.
- **United Arab Emirates** - Article 18 (6) Of Decision No (1/R) Of 2000 Concerning The Regulation As To Brokers: Brokers and their representatives shall respect the ethics of the Profession and refrain from anything such as to harm the reputation of the Market, its members or those transacting therein.

15. Is the regulatory surveillance/ examination of market intermediary to address any possibility of conflict of interest a regular feature in your jurisdictions? (If yes, please answer Q.15-1. and Q.15-2.)

All jurisdictions responded.

- 17 jurisdictions (**Argentina, Brazil, British Virgin Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Malaysia, Montenegro, Oman, Pakistan, Panama, Romania, South Africa, Thailand, and United Arab Emirates**) responded that the regulatory surveillance is a regular feature of their market.
- 7 jurisdictions (**Bermuda, Cayman Islands, Colombia, Korea, Nigeria, Sri Lanka, and Turkey**) replied that regulatory surveillance is not a regular feature.

15-1. Please give scope of the regulatory surveillance pertaining to conflict of interest and also indicate its frequency.

- **Argentina** - CIS must immediately inform the CNB of any non-compliance action regarding conflict of interest rules. All divisions at CNV must fulfil an annual plan for external audit of regulated entity activities that include aspects regarding conflict of interests.
- **Brazil** - As part of its supervisory routines, conflicts of interest are a matter of constant examination. There is no pre-defined frequency for the surveillance of these conflicts.
- **British Virgin Islands** - The Commission has a robust onsite inspection program which looks at an entity's compliance the intermediaries' internal controls which

include controls in relation to the minimizing of conflicts of interests, as required by the Regulatory Code, 2009.

- **Chinese Taipei** - The regulators will conduct inspections on the securities firms, futures commission merchants, CIS managers and all other related enterprises, and conflict of interest are items that we look into. However, the frequency is not pre-defined.
- **Colombia** - The SFC, the self-regulatory body, is responsible of supervising intermediaries' activities regarding prevention, detection, and management of conflict of interests.
- **Dubai (DIFC)** - A risk management cycle is operated by the DFSA, and the frequency of the cycle is determined according to the aggregate risk assessment score of a firm.
- **El Salvador** - The Superintendence of Securities has a broad range of subjects for supervision, which include conflicts of interest. However, surveillance and examination are related to what is established by the law or by rules issued by the Superintendence (portfolio management and order execution between the broker house and other company in its corporate group).
- **India** - Analysis of periodic reports filed by the intermediaries and by carrying out risk based inspection of intermediaries.
- **Jordan** - Offsite surveillance and offsite & onsite inspection.
- **Malaysia** - Examinations on market intermediaries on conflict of interest will encompass the following areas: assessing the adequacy, effectiveness, and sufficiency of policies, procedures and controls in minimizing conflicts; reviewing to identify, analyze and weigh the effectiveness of Chinese Wall policies and procedures; and recommending procedures to further increase and strengthen analyst independence and company's Chinese Wall policies and procedures.  
The risk based approach is adopted in carrying out examinations on market intermediaries. As such, the examination frequency will be based on the respective examination plan for the year which is determined on a risk based basis.  
Market intermediaries also conduct self assessment in the form of Compliance and Risk Assessment Questionnaires to appraise their own risk position and control environment.
- **Montenegro** - Upon a client's request for control and to determine if the client's suspicion about conflicts of interests is substantiated.
- **Oman** - The most important practice that CMA forbids is insider /internal trading which is the most cause of conflict of interests. Therefore, CMA has regulated laws and legislations to prevent such practices.

- **Pakistan** - In case of the NBFC, there are annual onsite inspections and regular offsite inspections of entities to check their financial condition and compliance with the regulatory framework.
- **Panama** - The National Securities Commission has a broad scope responsibility of supervising various issues including conflict of interests that may occur in regulated entities.
- **Romania** - Regulatory approval of internal controls and management. On-site audit is performed every 3 years.
- **South Africa** - Compliance reports and in our onsite visits to monitor the conflict of interest policies and adherence to disclosure and prohibition.
- **Thailand** - The SEC, during on-site inspection, would look for any conflicts of interest which take place within the market intermediaries.
- **United Arab Emirates** - Online Surveillance on the trades done by the intermediaries and regular follow-up inspections of the intermediaries.

**15-2. What are the grounds for the rule – e.g., laws / rules, regulation or regulatory policy and practices? Please briefly describe each provision.**

- **Argentina** - CNV Internal Regulations.
- **Brazil** - Please refer to previous answers.
- **British Virgin Islands** - the Regulatory Code, 2009 (including Explanatory Notes) establishes the auditing requirements of the Regulator.
- **Chinese Taipei** - Inspection should be carried out in accordance with our Commission's Organic Act. SROs will also conduct surveillance in accordance with their self-regulations.
- **Colombia** - There is a legal framework for the intervention of government, the Regulator and the Self-regulator to supervise and intervene in the area of conflicts of interest.
- **Dubai (DIFC)** - The DFSA conducts regulatory surveillance with a variety of tools to protect and enhance the financial market. Recently, thematic and event driven reviews have become popular as a means to assess risk in the sector.
- **El Salvador** - The regulator is empowered to supervise and monitor the market intermediaries according to the foundation Law, and for that purpose, may request and review all documentation related to conflict of interest.
- **India** - The respective SEBI Regulations for various intermediaries.

- **Jordan** - Jordan securities law especially Articles (15.17.1819.20.21.).
- **Malaysia** - “CMSA, Chinese Wall Guidelines, Rules of Bursa Malaysia Securities, Guidelines on Compliance Function for Fund Managers, Unit Trust Guidelines”.
- **Montenegro** - Control is initiated to determine if the procedures are in accordance with the Rules of the Commission and rules of brokerage house itself.
- **Oman** - Article (152) of the Executive Regulation indicates that: There shall be “Chinese Wall” rules and procedures to ensure that the company or any related party does not improperly utilize undisclosed information. Also article (301) of the Market law provides that “Insiders shall not deal in the securities of the issuer on the basis of undisclosed material information especially during certain periods”.
- **Pakistan** - In case of the NBFC, there are annual onsite inspections and regular offsite inspections of entities to check their financial condition and compliance with the regulatory framework.
- **Panama** - Law and regulatory policies. Article 8 of Decree Law No. 1 of 1999 allows CNV to establish the rules of good commercial standards and principles of ethics among the financial participants. We also have Agreement 5-2003 Whereby the Rules of Conduct, Information Rates and Operation Records are regulated. Code of conduct may include some rules regarding Conflicts of Interest.
- **Romania** - The reply did not indicate the grounds for the action.
- **South Africa** - Legislation
- **Thailand** - The SEC’s rule requires market intermediaries to have in place system which prevents conflicts of interest.
- **United Arab Emirates** - Regulatory Rules: Article (17) of THE REGULATIONS AS TO TRADING provides that "No person -whether alone or in collusion with others- shall be permitted to exploit information relating to the orders of investors for the purpose of achieving personal benefits for himself or for others."

16. **In the event that market intermediaries face situations that actually give rise to conflicts of interests or hold potential for conflicts of interests, is it mandatory for market intermediaries to address such situations and to reduce the risk of conflicts?**

All jurisdictions responded.

- 21 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Oman, Romania, South Africa, Sri**



**Lanka, Thailand, Turkey, and United Arab Emirates)** replied that there are mandatory requirements to reduce risk.

- 3 jurisdictions (**Nigeria, Pakistan, and Panama**) have no mandatory requirement to address and reduce the risk of conflicts.

**16-1. If yes, what are the grounds for the rule – e.g., laws / government rules, industry self-regulation? Please briefly describe each provision**

- **Argentina** - As said before, the potential conflict of interest is mentioned in the Decree 677/01 Section 8b. The Decree also requires the intermediaries to avoid conflicts of interest that can arise among clients.
- **Bermuda** - Investment providers are required to disclose conflicts of interest and links with associates to their clients.
- **Brazil** - This issue is addressed by Monetary Council Resolution #2.554. Please refer to answer 9-1 above.
- **British Virgin Islands** - Section 199 of the Regulatory Code (and the Explanatory Notes thereafter) also provides specific provision for all market intermediaries to ensure that it has in place proper mechanism to identify, mitigate and disclosure conflicts of interest where appropriate.
- **Cayman Islands** - The Securities Investment Business (Code of Conduct) Regulations require licensees to take reasonable steps to ensure that clients are given fair treatment when a conflict of interest is identified. The Statement of Guidance on Market Conduct states that a license holder.
- **Chinese Taipei** - Law and Regulations require market intermediaries to prevent conflict of interest in advance.
- **Colombia** - Some principles to reduce the risks of conflicts in the Resolución 1200 de 1995 have been established. Equally, the self regulator has developed rules to prevent and manage conflict of interest.
- **Dubai (DIFC)** - Authorized firms are required to establish and maintain Chinese Walls, disclose the matter in writing, or rely on a written policy of independence, which requires an employee to disregard any conflict of interest when advising a client or exercising a discretion.
- **El Salvador** - Obligation for market intermediary personnel to avoid a situation that would raise a conflict of interest is established by regulations issued by the stock exchange (Article 7. Ethical Regulation issued by the Salvadorian Stock Exchange).
- **India** - The same is as per Code of Conduct for intermediaries in respective SEBI Regulations read with SEBI (Prohibition of insider trading) Regulations, 1992.

- **Jordan** - Jordan securities law especially Articles (15.17.18.19.20.21.52.57) and instructions of financial services licensing and registration Articles (3.17.32.52.63). trading directives articles (13.14) and code of ethics article(13) as stated in our answer of question 2.3.
- **Korea** - Article 44 (Management of Conflict of Interests) states where there is a possibility of conflict of interest the investor must be notified and the level of conflict must not undermine investor protection.
- **Malaysia** - Rule 404.1(14) of the Rules of Bursa Malaysia Securities requires effective policies and procedures to minimize the existence of conflict of interests, potential or otherwise, between the intermediary and its clients. In cases where conflict of interests and/or conflict of duty cannot be avoided, the conflict shall be fully disclosed to the client prior to the execution of the transaction.
- **Montenegro** - Rules on Conduct of Business of Licensed Participants at the Capital Market require licensees to undertake appropriate steps to protect client's interest.
- **Oman** - Article (133.4) of the Executive Regulation indicates that an order may be refused by the broker if it infringes the laws and regulations or the fairness and integrity of dealing in securities.
- **Romania** - No information provided.
- **South Africa** - SRO rule. There is a general requirement to avoid conflicts of interest where possible and mitigate where unavoidable.
- **Sri Lanka** - Please refer to the rules -<http://www.sec.gov.lk>.
- **Thailand** - The SEC's rule requires market intermediaries to have in place system which prevents conflicts of interest.
- **Turkey** - According to the CMB Communiqués and self regulatory organization's regulations financial institutions are responsible of preventing and managing conflicts of interest, and treating all customers in a fair manner when such an issue occurs. The same is sated in the Association of Capital market Intermediary Institutions' Professional Rules.
- **United Arab Emirates** - Article (17) Bis\* Fourth 6 & 11 of DECISION NO (1/R) OF 2000 CONCERNING THE REGULATION AS TO BROKERS: Fourth, without prejudice to any other obligations provided for in this or any other Regulations, a broker who obtains the Authority's approval to trade in securities in its own name and for its own account shall comply with the following:
  6. To give the clients' instructions priority over broker's instructions.
  11. To advise the client that the broker or any person associated therewith was a party to, or had an interest in the transaction executed for the account of the client. In case of a conflict of interest between the broker and the client, the broker must take the necessary procedures to protect the interests of the client.

**17. Is it mandatory for a market intermediary to have a review committee that deals with conflicts of interest internally?**

All jurisdictions responded.

- 19 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, Jordan, Korea, Malaysia, Montenegro, Oman, Pakistan, Panama, Romania, South Africa, Sri Lanka, Thailand, Turkey, and United Arab Emirates**) do not require for mandatory review committees to review conflicts of interest internally.
- 4 jurisdictions (**India, Jordan, Oman, and South Africa**) have a requirement for mandatory review committees.
- 1 jurisdiction (**Nigeria**) did not provide an answer to this question.

**17-1. If yes, please provide a brief description.**

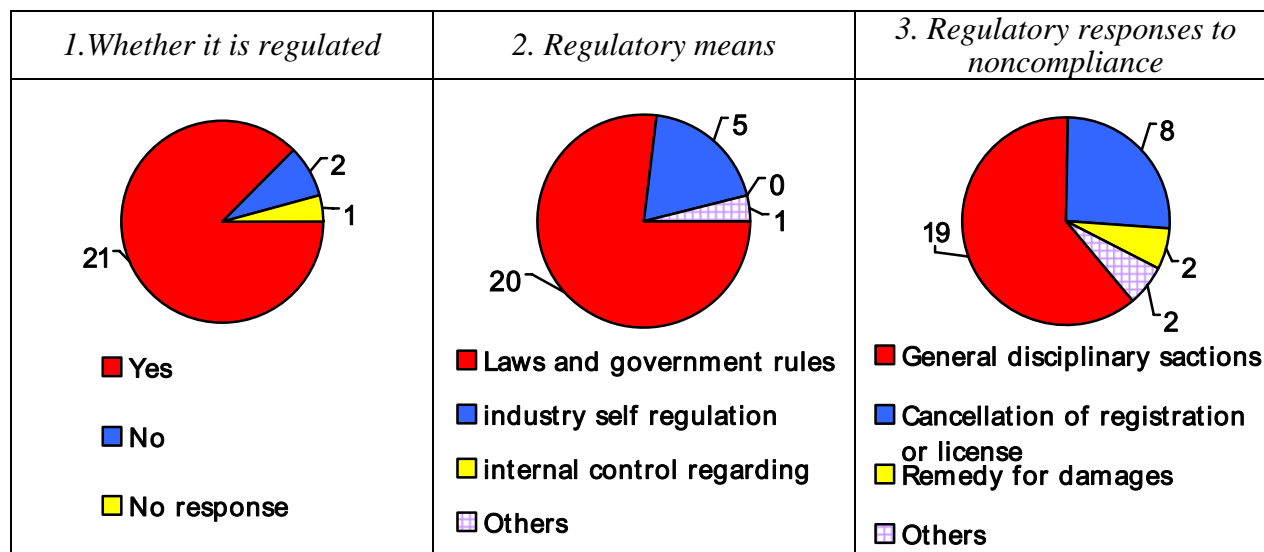
- **Jordan** Securities Commission sets the rules.
- **Oman** requires the appointment a compliance officer who reports to the Board of Directors.
- **South Africa** requires a “Conflict of Interest “management policy to be adopted by the Board or governing body”.

### SECTION III. REGULATIONS FOR DIFFERENT TYPES OF CONFLICTS OF INTERESTS

*Questions in this section are to identify the rules or policies governing the particular types of conflicts of interests pertaining to each type of the securities business - brokerage/dealing, corporate finance, and asset management service. If any of the three types of businesses is neither in operation nor authorized to operate in your jurisdiction, please state “not in operation (or authorized)” in your answer.*

#### 18. Conflicts of interests that may arise between brokerage and dealing

##### (1) Churning



\* 2, 3 : multiple answer question(hereafter)

##### (a) Whether it is regulated

- 21 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Thailand, and Turkey**) regulate churning that may arise between brokerage and dealing while 2 jurisdictions (**Colombia, United Arab Emirates**) do not.
- 1 jurisdiction (**Sri Lanka**) did not provide an answer to this question.

##### (b) Regulatory means

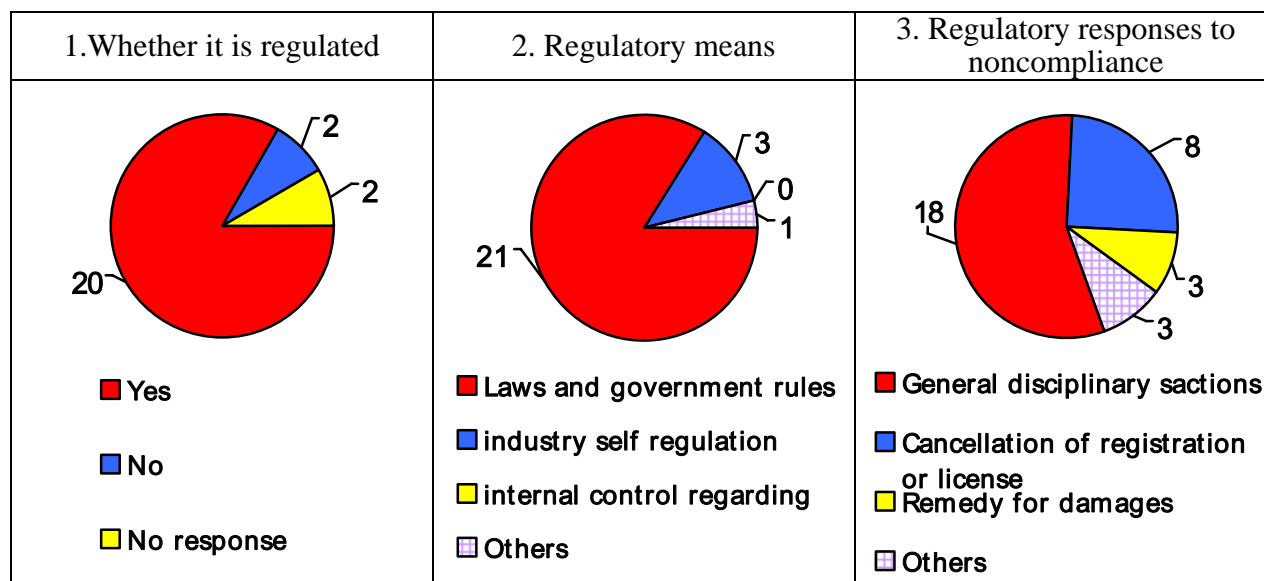
- 20 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Panama, Romania, Thailand, and Turkey**) regulate churning with laws and government rules.
- 5 jurisdictions (**Brazil, Cayman Islands, El Salvador and South Africa**) regulate churning with industry self regulation.

- None of the jurisdictions regulate churning with intermediary's internal control regarding.
- 1 jurisdiction (**Malaysia**) regulates churning with local laws such as rules of the exchanges

(c) Regulatory responses to non-compliance

- 19 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Pakistan, Panama, Romania, South Africa, Thailand, and Turkey**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 8 jurisdictions (**Cayman Islands, Dubai (DIFC), El Salvador, India, Korea, Pakistan, Romania, and South Africa**) impose cancellation of registration or license.
- 2 jurisdictions (**Cayman Islands, Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions have local measures such as requiring the licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**), and imprisonment, civil and administrative actions (**Malaysia**).

(2) Front-running



(a) Whether it is regulated

- 20 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, Romania, South Africa, Thailand, Turkey, and United Arab Emirates**) regulate front running that may arise between brokerage and dealing while 2 jurisdictions (**Colombia, Jordan**)

n) do not.

- 2 jurisdictions (**Montenegro, Sri Lanka**) did not provide answers to this question

(b) Regulatory means

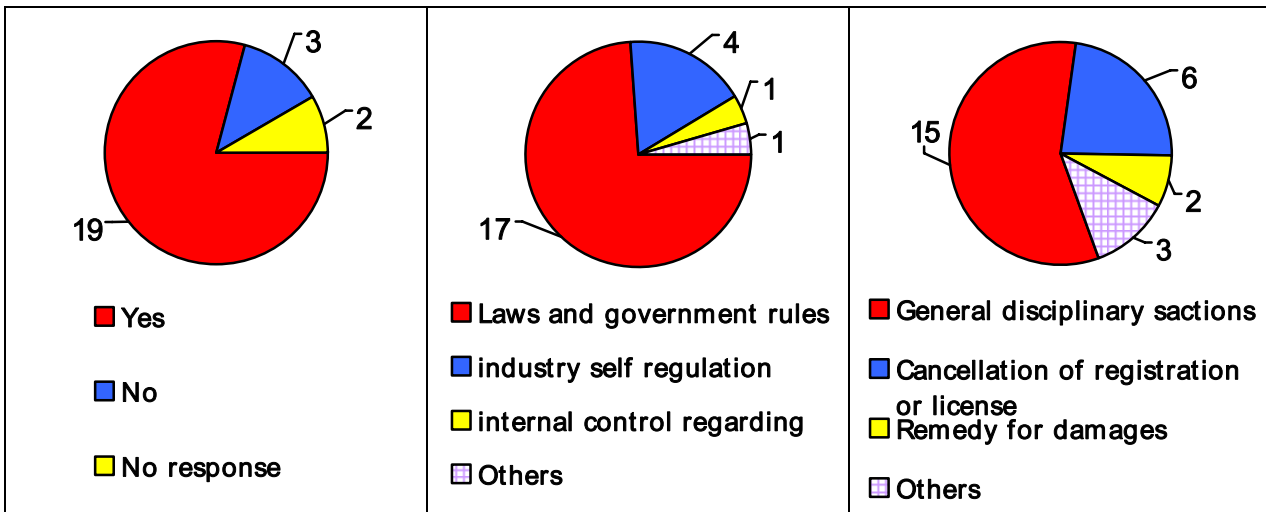
- 21 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, Romania, Thailand, Turkey, and United Arab Emirates**) regulate front-running with laws and government rules.
- 3 jurisdictions (**Brazil, Cayman Islands, and South Africa**) regulate front-running with industry self-regulation. None of the jurisdictions regulated this issue with intermediary's internal control.
- 1 jurisdiction (**Malaysia**) regulates front-running with local laws such as rules of the exchanges

(c) Regulatory responses to noncompliance

- 18 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Korea, Malaysia, Nigeria, Pakistan, Panama, Romania, South Africa, Thailand, Turkey, and United Arab Emirates**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 8 jurisdictions (**Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Korea, Romania, and South Africa**) impose cancellation of registration or license
- 3 jurisdictions (**Cayman Islands, Dubai (DIFC), and Pakistan**) impose remedy for damages due to violation.
- 3 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**), removal of responsible person (**Chinese Taipei**), and imprisonment, civil and administrative actions (**Malaysia**).

**(3) Unfair Practices in analysis report preparation and distribution**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
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(a) Whether it is regulated

- 19 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Oman, Pakistan, Panama, Romania, South Africa, Thailand, Turkey, and United Arab Emirates**) regulate unfair practices in analysis report preparation and distribution while 3 jurisdictions (**Colombia, El Salvador, Nigeria**) does not.
- 2 jurisdictions (**Montenegro, Sri Lanka**) did not provide answers to this question.

(b) Regulatory means

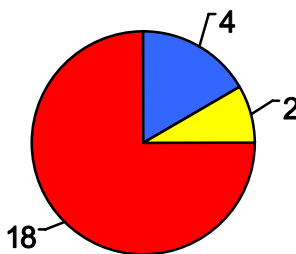
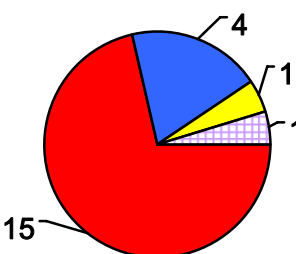
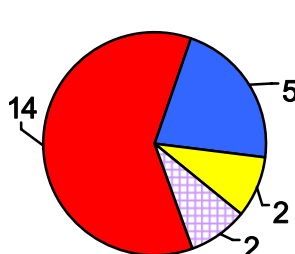
- 17 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Oman, Pakistan, Romania, Thailand, Turkey, and United Arab Emirates**) regulate unfair practices in analysis report preparation and distribution with laws and government rules.
- 4 jurisdictions (**Brazil, Cayman Islands, Malaysia, and South Africa**) regulate unfair practices in analysis report preparation and distribution with industry self-regulation.
- 1 jurisdiction (**Panama**) regulates unfair practices in analysis report preparation and distribution with intermediary's internal control.
- 1 jurisdiction (**Malaysia**) regulates unfair practices in analysis report preparation and distribution with local laws such as rules of the exchanges.

(c) Regulatory responses to noncompliance

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Pakistan, Panama, Romania, South Africa, Thailand, and United Arab Emirates**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).

- 6 jurisdictions (**Dubai (DIFC), India, Korea, Pakistan, Romania, and United Arab Emirates**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 3 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**), and imprisonment (**Pakistan, Malaysia**) and administrative or civil actions (**Malaysia**).
- 2 jurisdictions (**Bermuda, Cayman Islands**) did not provide an answer to this question.

**(4) Conflicts of interest between clients in order aggregation and allocation of securities**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>18 4 2</p> <ul style="list-style-type: none"> <li>■ Yes</li> <li>■ No</li> <li>■ No response</li> </ul>	 <p>15 4 1 1</p> <ul style="list-style-type: none"> <li>■ Laws and government rules</li> <li>■ industry self regulation</li> <li>■ internal control regarding</li> <li>■ Others</li> </ul>	 <p>14 5 2 2</p> <ul style="list-style-type: none"> <li>■ General disciplinary sactions</li> <li>■ Cancellation of registration or license</li> <li>■ Remedy for damages</li> <li>■ Others</li> </ul>

(a) Whether it is regulated

- 18 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Malaysia, Oman, Pakistan, Panama, Romania, South Africa, Thailand, and Turkey**) regulate conflicts of interests between clients in order aggregation and allocation of securities while 4 jurisdictions (**Colombia, Korea, Nigeria, and United Arab Emirates**) do not.
- 2 jurisdictions (**Montenegro, Sri Lanka**) did not provide answers to this question.

(b) Regulatory means

- 15 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan,**



**Malaysia, Oman, Pakistan, Romania, Thailand, and Turkey**) regulate conflicts of interests between clients in order aggregation and allocation of securities with laws and government rules.

- 4 jurisdictions (**Brazil, Cayman Islands, El Salvador, and South Africa**) regulate this issue with industry self regulation.
- 1 jurisdiction (**Panama**) regulates this issue with intermediary control.
- 1 jurisdiction (**Malaysia**) regulates this issue with local laws such as rules of the exchanges.

(c) Regulatory responses to noncompliance

- 14 jurisdictions (**Argentina, Brazil, British Virgin Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Malaysia, Pakistan, Panama, Romania, South Africa, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 5 jurisdictions (**Dubai (DIFC), El Salvador, India, Romania, and South Africa**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**), and imprisonment, civil and administrative actions (**Malaysia**).
- 2 jurisdictions (**Bermuda, Cayman Islands**) did not provide an answer to this question.

(5) Others

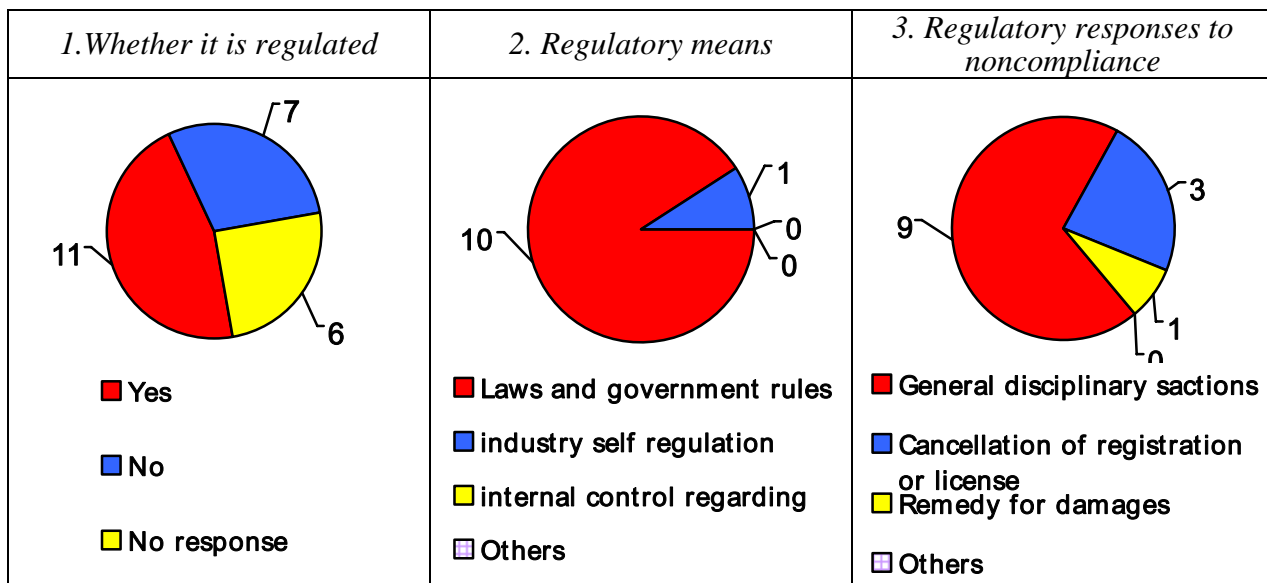
- **Korea:** Prohibition of representing both parties, prohibition on arbitrary transactions providing a specified person or the public with the research and analysis on the securities planned to be acquired from the date on which a contract of the public offering or secondary distribution is entered into after such securities have been initially listed on the securities market.
- **Turkey:** Professional Rules which members shall comply with in performing their capital market activities states that the employees of members shall, within the knowledge of the Member, not “provide personal benefit either from their own business environment or from business opportunities of their customers by using their positions.” In addition the Professional Rules which members shall comply with in performing their capital market activities requires members to establish rules which they consider appropriate and not to provide privilege to their employees in conducting business activities.
- **Chinese Taipei:** Under the article 36-1 of Regulations Governing Securities Firms, within two hours from the time market trading hours begin after a research report provided by a consulting services department of a securities

firm is publicly disclosed, other departments and personnel apart from that department may not engage in any trading of any security recommended in the research report, unless otherwise provided by this Commission.

Under article 35 of Regulations Governing Futures Merchants, when a futures commission merchant allows its own responsible persons, associated persons, or other employees, or their spouses, to open accounts to engage in futures trading, the procedures for executing their orders shall not be more favorable than for other customers in the same type of futures trading

### 19. Questions of conflicts of interests that may arise between corporate finance services and other securities businesses / services

#### (1) Pricing (underpricing/ overpricing)



\* 2, 3 : multiple answer question(hereafter)

(a) Whether it is regulated :

- 11 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Colombia, Dubai (DI FC), El Salvador, India, Jordan, Romania, Thailand, and Turkey**) regulate pricing issues that may arise between corporate finance services and other securities businesses/ services while 7 jurisdictions (**Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, and South Africa**) do not.
- 6 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Montenegro, Sri Lanka, and United Arab Emirates**) did not provide answers to this question.

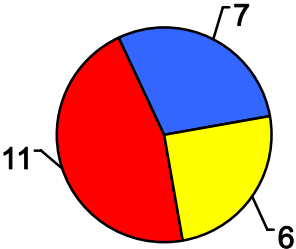
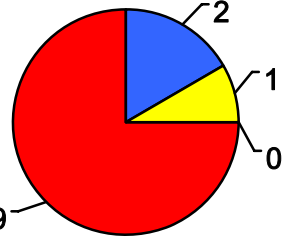
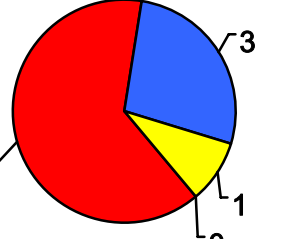
(b) Regulatory means

- 10 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Romania, Thailand, and Turkey**) regulate issues regarding pricing with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulated this issue with intermediary's internal control.
- 1 jurisdiction (**Colombia**) did not provide an answer to this question.

(c) Regulatory responses to noncompliance

- 9 jurisdictions (**Brazil, Colombia, Dubai (DIFC), El Salvador, Jordan, Romania, Thailand, and Turkey**) impose general disciplinary sanction (e.g., monetary penalty, suspension of business, warning).
- 3 jurisdictions (**Colombia, Chinese Taipei, and India**) impose cancellation of registration or license.
- 1 jurisdiction (**Jordan**) imposes remedy for damages due to violation.

(2) Preferential allocation of securities to more profitable clients

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>11 7 6</p> <ul style="list-style-type: none"> <li>■ Yes</li> <li>■ No</li> <li>■ No response</li> </ul>	 <p>9 2 1 0</p> <ul style="list-style-type: none"> <li>■ Laws and government rules</li> <li>■ industry self regulation</li> <li>■ internal control regarding</li> <li>■ Others</li> </ul>	 <p>7 3 1 0</p> <ul style="list-style-type: none"> <li>■ General disciplinary sanctions</li> <li>■ Cancellation of registration or license</li> <li>■ Remedy for damages</li> <li>■ Others</li> </ul>

(a) Whether it is regulated :

- 11 jurisdictions (**Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Oman, Panama, Romania, Thailand, and Turkey**) regulate preferential allocation of securities to more profitable clients while 7 jurisdictions (**Bermuda, Colombia, El Salvador, Malaysia, Nigeria, Pakistan, and South Africa**) do not.
- 6 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Mont**

enegro, Sri Lanka, and United Arab Emirates) did not provide answers to this question.

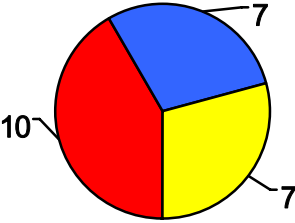
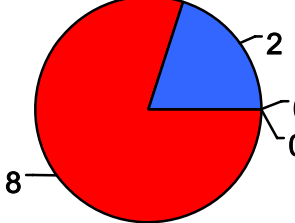
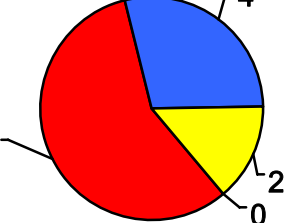
(b) Regulatory means

- 9 jurisdictions (**Brazil, Dubai (DIFC), India, Jordan, Korea, Oman, Romania, Thailand, and Turkey**) regulate preferential allocation of securities to more profitable clients with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- 1 jurisdiction (**Panama**) regulates this issue with intermediary’s internal control.

(c) Regulatory responses to noncompliance

- 7 jurisdictions (**Brazil, Dubai (DIFC), India, Jordan, Panama, Thailand, and Turkey**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning)
- 3 jurisdictions (**Chinese Taipei, India, and Korea**) impose cancellation of registration or license.
- 1 jurisdiction (**Jordan**) imposes remedy for damages due to violation.

(3) Advising multiple bidders in the same transaction

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>10 7 7</p> <ul style="list-style-type: none"> <li>■ Yes</li> <li>■ No</li> <li>■ No response</li> </ul>	 <p>8 2 0 0</p> <ul style="list-style-type: none"> <li>■ Laws and government rules</li> <li>■ industry self regulation</li> <li>■ internal control regarding</li> <li>■ Others</li> </ul>	 <p>8 4 2 0</p> <ul style="list-style-type: none"> <li>■ General disciplinary sactions</li> <li>■ Cancellation of registration or license</li> <li>■ Remedy for damages</li> <li>■ Others</li> </ul>

(a) Whether it is regulated

- 10 jurisdictions (**Brazil, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Romania, and Thailand**) regulate advising multiple bidders in the same transaction while 7 jurisdictions (**Bermuda, Malaysia, Nigeria, Oman, Pakistan, Panama, and South Africa**) do not.

- 7 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Montenegro, Sri Lanka, Turkey, and United Arab Emirates**) did not provide answers to this question.

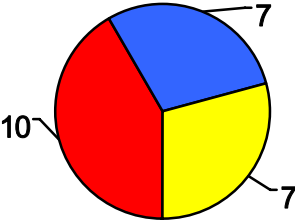
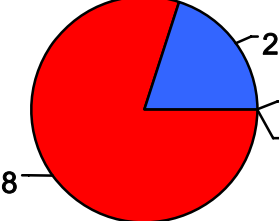
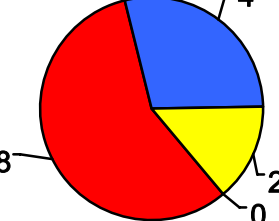
(b) Regulatory means

- 8 jurisdictions (**Brazil, Dubai (DIFC), El Salvador, India, Jordan, Korea, Romania, and Thailand**) regulate advising multiple bidders in the same transaction with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self regulation.
- None of the jurisdictions regulate this issue with intermediary’s internal control.
- 1 jurisdiction (**Colombia**) did not provide an answer to this question.

(c) Regulatory responses to noncompliance

- 8 jurisdictions (**Brazil, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 4 jurisdictions (**Colombia, Chinese Taipei, Dubai (DIFC), and India**) impose cancellation of registration or license.
- 2 jurisdictions (**Colombia, Dubai (DIFC)**) impose remedy for damages due to violation.

**(4) Advising the seller and a potential buyer in the same transaction**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>10 7 7</p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> Yes</li> <li><span style="color: blue;">■</span> No</li> <li><span style="color: yellow;">■</span> No response</li> </ul>	 <p>8 2 0 0</p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> Laws and government rules</li> <li><span style="color: blue;">■</span> industry self regulation</li> <li><span style="color: yellow;">■</span> internal control regarding</li> <li><span style="color: purple;">■</span> Others</li> </ul>	 <p>4 8 2 0</p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> General disciplinary sanctions</li> <li><span style="color: blue;">■</span> Cancellation of registration or license</li> <li><span style="color: yellow;">■</span> Remedy for damages</li> <li><span style="color: purple;">■</span> Others</li> </ul>

(a) Whether it is regulated

- 10 jurisdictions (**Brazil, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Romania, and Thailand**) regulated advising the seller and a potential buyer in the same transaction while 7 jurisdic

ions (**Bermuda, Malaysia, Nigeria, Oman, Pakistan, Panama, and South Africa**) did not.

- 7 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Montenegro, Sri Lanka, Turkey, and United Arab Emirates**) did not provide answers to this question.

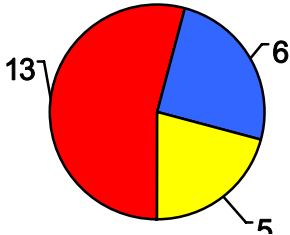
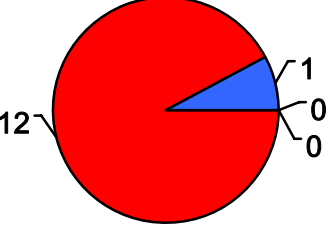
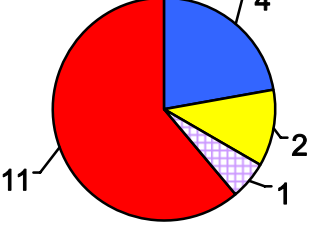
(b) Regulatory means

- 8 jurisdictions (**Brazil, Dubai (DIFC), El Salvador, India, Jordan, Korea, Romania, and Thailand**) regulate advising the seller and a potential buyer in the same transaction with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary’s internal control.

(c) Regulatory responses to noncompliance

- 8 jurisdictions (**Brazil, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 4 jurisdictions (**Colombia, Dubai (DIFC), India, and Korea**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 1 jurisdiction (**Romania**) provided no answer for this question.

**(5) Exaggerated investment solicitation or sales of securities underwritten by the market intermediary**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>13 6 5</p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> Yes</li> <li><span style="color: blue;">■</span> No</li> <li><span style="color: yellow;">■</span> No response</li> </ul>	 <p>12 1 0 0</p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> Laws and government rules</li> <li><span style="color: blue;">■</span> industry self regulation</li> <li><span style="color: yellow;">■</span> internal control regarding</li> <li><span style="color: purple;">■</span> Others</li> </ul>	 <p>4 11 2 1</p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> General disciplinary sanctions</li> <li><span style="color: blue;">■</span> Cancellation of registration or license</li> <li><span style="color: yellow;">■</span> Remedy for damages</li> <li><span style="color: purple;">■</span> Others</li> </ul>

(a) Whether it is regulated

- 13 jurisdictions (**Brazil, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Pakistan, Romania, and Thailand**) regulate exaggerated investment solicitation or sales of securities underwritten by the market intermediary while 6 jurisdictions (**Bermuda, El Salvador, Oman, Panama, South Africa, and Turkey**) do not.
- 5 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, United Arab Emirates, and Sri Lanka**) did not provide answers to this question.

(b) Regulatory means

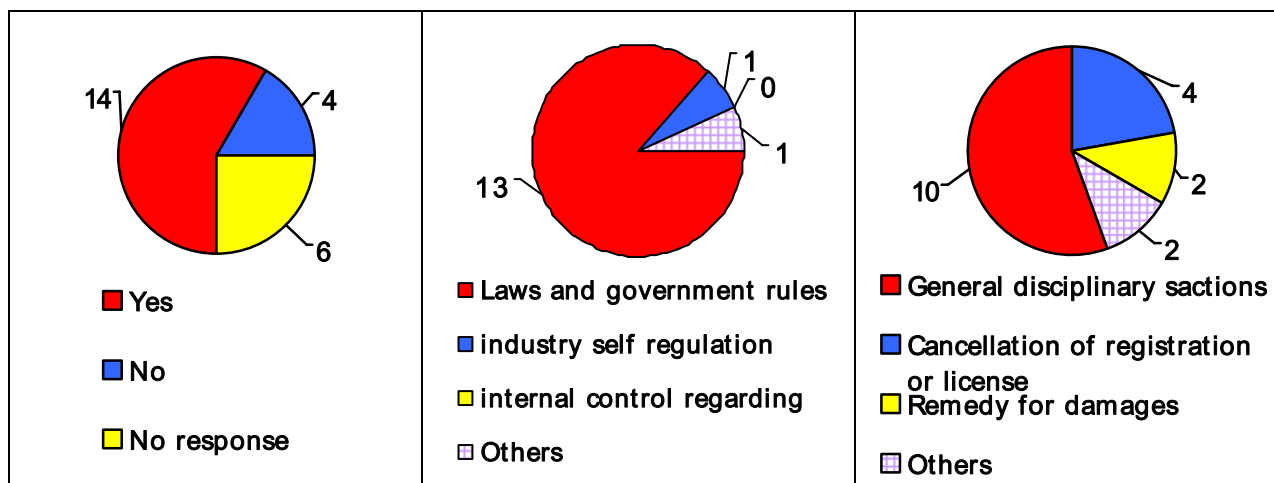
- **12 jurisdictions (Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Pakistan, Romania, and Thailand)** regulate exaggerated investment solicitation or sales of securities underwritten by the market intermediary with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary’s internal control.
- 1 jurisdiction (**Colombia**) did not provide an answer to this question.

(c) Regulatory responses to noncompliance

- 11 jurisdictions (**Brazil, Chinese Taipei, Colombia, Dubai (DIFC), India, Jordan, Korea, Malaysia, Nigeria, Pakistan, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 3 jurisdictions (**Colombia, Dubai (DIFC), India, and Korea**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 1 jurisdiction (**Malaysia**) imposes local measures such as imprisonment.
- 2 jurisdictions (**Montenegro, Romania**) did not provide answers to this question.

**(6) Publishing favourable analysis reports for an issuer in business relationship with the market intermediary**

<i>1. Whether it is regulated</i>	<i>2. Regulatory means</i>	<i>3. Regulatory responses to noncompliance</i>
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(a) Whether it is regulated :

- 14 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Romania, and Thailand**) regulate publishing favorable analysis reports for an issuer in business relationship with market intermediary while 4 jurisdictions (**Colombia, El Salvador, Panama, and South Africa**) do not.
- 6 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Sri Lanka, Turkey, and United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

- 13 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Pakistan, Romania, and Thailand**) regulate publishing favorable analysis reports for an issuer in business relationship with the market intermediary with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.
- 1 jurisdiction (**Oman**) did not provide an answer to this issue.
- 1 jurisdiction (**Malaysia**) regulates this issue with local laws such as rules of the exchanges.

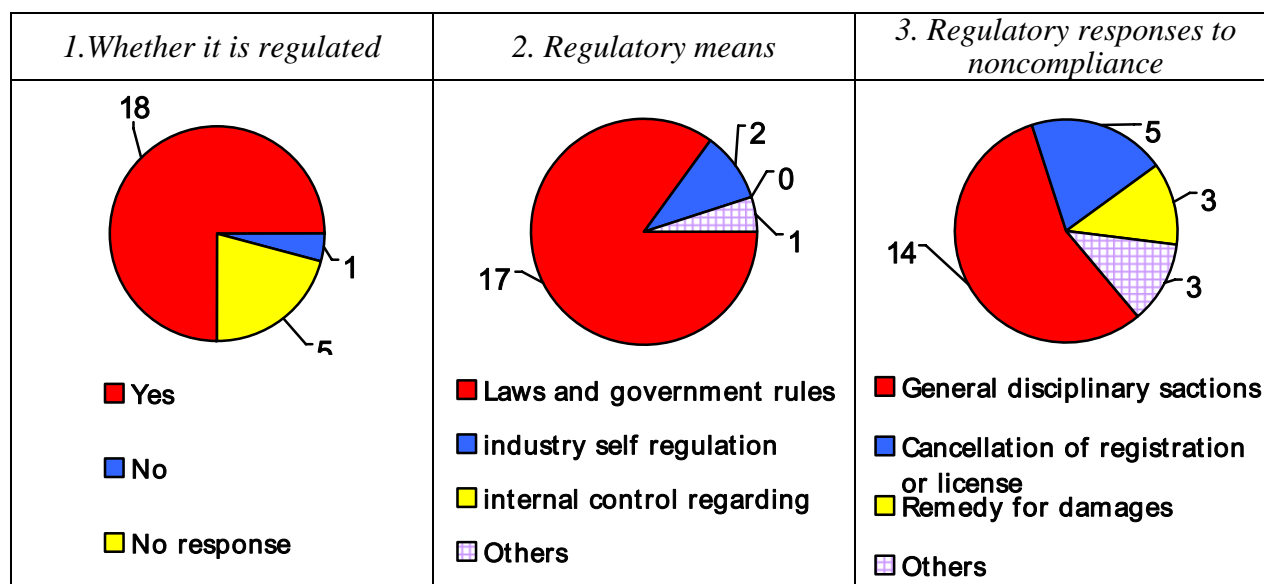
(c) Regulatory responses to noncompliance

- 10 jurisdictions (**Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Nigeria, Pakistan, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 4 jurisdictions (**Dubai (DIFC), India, Korea, and Pakistan**) impose cancellation of registration or license.



- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as imprisonment (**Malaysia, Pakistan**) or administrative actions (**Malaysia**).
- 4 jurisdictions (**Bermuda, Montenegro, Oman, and Romania**) did not provide an answer to this question.

(7) Using nonpublic insider information obtained in the process of underwriting securities



(a) Whether it is regulated :

- 18 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Romania, South Africa, Thailand, and Turkey**) regulate using nonpublic insider information obtained in the process of underwriting securities while 1 jurisdiction (**Panama**) does not.
- 5 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Sri Lanka, and United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

- 17 jurisdictions (**Bermuda, Brazil, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Montenegro, Nigeria, Oman, Pakistan, Romania, South Africa, Thailand, and Turkey**) regulate using nonpublic insider information obtained in the process of underwriting securities with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.

- None of the jurisdictions regulate this issue with intermediary's internal control.
- 1 jurisdiction (**Colombia**) provided no answer to this question.
- 1 jurisdiction (**Malaysia**) regulates this issue with local laws such as rules of the exchanges.

(c) Regulatory responses to noncompliance

- 14 jurisdictions (**Brazil, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Nigeria, Pakistan, South Africa, Thailand, and Turkey**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 5 jurisdictions (**Colombia, Dubai (DIFC), India, Korea and Pakistan**) impose cancellation of registration or license.
- 3 jurisdictions (**Dubai (DIFC), Jordan, and Pakistan**) impose remedy for damages due to violation.
- 3 jurisdictions impose local measures such as imprisonment (**Malaysia, Turkey, and South Africa**) or administrative actions (**Malaysia**).
- 4 jurisdictions (**Bermuda, Montenegro, Oman, and Romania**) did not provide an answer to this question.

(8) Others

- **Korea:** Brokers and dealers are not allowed to conduct any business activity that has the possibility occur conflicts of interest issues.
- **Chinese Taipei:** Under the article 36-1 of Regulations Governing Securities Firms, within two hours from the time market trading hours begin after a research report provided by a consulting services department of a securities firm is publicly disclosed, other departments and personnel apart from that department may not engage in any trading of any security recommended in the research report, unless otherwise provided by this Commission.
- **India:** There are two additional regulations related to conflict of interests. The first is prohibition merchant bankers managing the issue made by any body corporate which is an associate of the lead merchant banker. The second regulation requires every merchant banker to submit to the board the particulars of any transaction for acquisition of securities of any body corporate whose issues is being managed by it with fifteen days from the date of entering into such transaction.

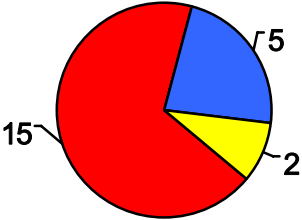
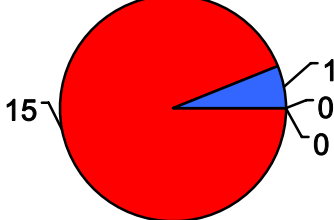
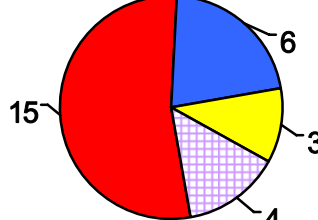
**20. Questions for conflicts of interests that may arise between asset management services and other securities businesses / services**

**(1) CIS operation vs. proprietary trading**

*\* The following two jurisdictions have no risk of conflicts of interests with respect to this issue due to local laws or financial market conditions:*

- **Pakistan:** Market intermediaries are not allowed to concurrently perform CIS operations and brokerage services.
- **Sri Lanka:** None of the Unit Trust Managing Companies (CIS) has been granted with the license to operate as market intermediaries.

**1) Using information from CIS operation for the intermediary’s proprietary trading**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p> <span style="color: red;">■</span> Yes  <span style="color: blue;">■</span> No  <span style="color: yellow;">■</span> No response         </p>	 <p> <span style="color: red;">■</span> Laws and government rules  <span style="color: blue;">■</span> industry self regulation  <span style="color: yellow;">■</span> internal control regarding  <span style="color: purple;">■</span> Others         </p>	 <p> <span style="color: red;">■</span> General disciplinary sactions  <span style="color: blue;">■</span> Cancellation of registration or license  <span style="color: yellow;">■</span> Remedy for damages  <span style="color: purple;">■</span> Others         </p>

\* 2, 3 : multiple answer question(hereafter)

(a) Whether it is regulated

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Oman, Romania, and Thailand**) regulate using information from CIS operation for the intermediary’s proprietary trading while 5 jurisdictions (**Bermuda, Nigeria, Panama, South Africa, and Turkey**) do not.
- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

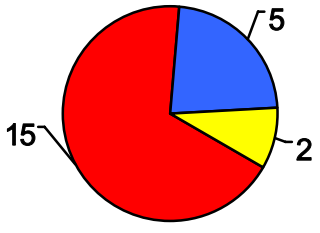
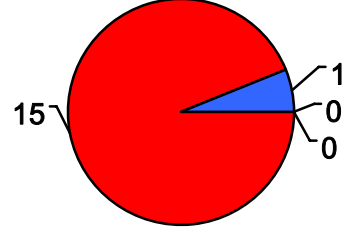
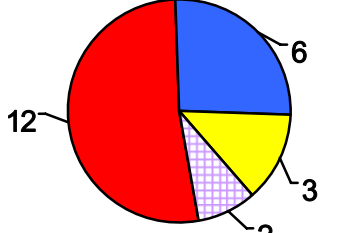
(b) Regulatory means

- 15 Jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Oman, Romania, and Thailand**) regulate using information from CIS operation for the intermediary’s proprietary trading with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary’s internal control.

(c) Regulatory responses to noncompliance

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Oman, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 6 jurisdictions (**Cayman Islands, Colombia, Dubai (DIFC), India, Korea and Romania**) impose cancellation of registration or license.
- 3 jurisdictions (**Cayman Islands, Dubai (DIFC), and Jordan**) impose remedy for damages due to violation.
- 3 jurisdictions impose local measures such as imprisonment (**Korea, Malaysia**), requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**), and civil and administrative actions (**Malaysia**).

2) Improper inter-account transactions between CIS assets and the intermediary's own assets (Cherry picking, etc)

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>15 5 2</p> <ul style="list-style-type: none"> <li>■ Yes</li> <li>■ No</li> <li>■ No response</li> </ul>	 <p>15 1 0 0</p> <ul style="list-style-type: none"> <li>■ Laws and government rules</li> <li>■ industry self regulation</li> <li>■ internal control regarding</li> <li>■ Others</li> </ul>	 <p>12 6 3 2</p> <ul style="list-style-type: none"> <li>■ General disciplinary sanctions</li> <li>■ Cancellation of registration or license</li> <li>■ Remedy for damages</li> <li>■ Others</li> </ul>

(a) Whether it is regulated

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Nigeria, Oman, Romania, and Thailand**) regulate improper inter-account transactions between CIS assets and the intermediary's own assets (cherry picking, etc) while 5 jurisdictions (**Bermuda, Colombia, Panama, South Africa, and Turkey**) do not.
- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

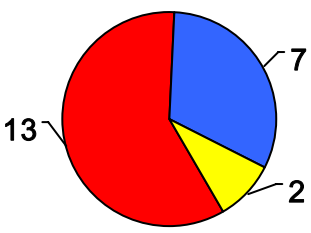
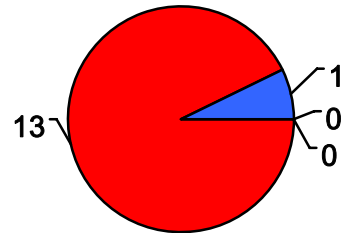
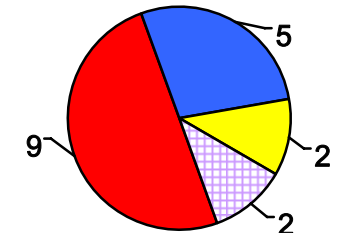
(b) Regulatory means

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Nigeria, Oman, Romania, and Thailand**) regulate improper inter-account transactions between CIS assets and the intermediary's own assets (cherry picking, etc) with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 12 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, El Salvador, India, Jordan, Korea, Nigeria, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 6 jurisdictions (**Cayman Islands, Dubai (DIFC), El Salvador, India, Korea, and Romania**) impose cancellation of registration or license
- 3 jurisdictions (**Cayman Islands, Dubai (DIFC), and Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**), and imprisonment, civil and administrative actions (**Malaysia**).

3) The intermediary using voting power in relation to the equity investment by the CIS under its operation for its proprietary trading

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p> <span style="color: red;">■</span> Yes  <span style="color: blue;">■</span> No  <span style="color: yellow;">■</span> No response         </p>	 <p> <span style="color: red;">■</span> Laws and government rules  <span style="color: blue;">■</span> industry self regulation  <span style="color: yellow;">■</span> internal control regarding  <span style="color: purple;">■</span> Others         </p>	 <p> <span style="color: red;">■</span> General disciplinary sanctions  <span style="color: blue;">■</span> Cancellation of registration or license  <span style="color: yellow;">■</span> Remedy for damages  <span style="color: purple;">■</span> Others         </p>

(a) Whether it is regulated

- 13 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, Korea, Malaysia, Oman, Romania, South Africa, and Thailand**) regulate the intermediary using voting power in relation to the equity investment by the CIS under its operation for its proprietary trading while 7 jurisdictions (**Bermuda, Colombia, India, Jordan, Nigeria, Panama, and Turkey**) do not.
- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

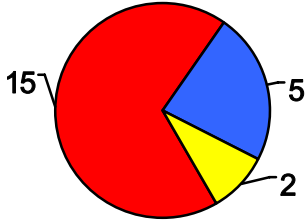
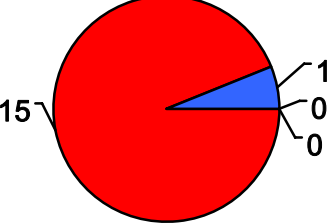
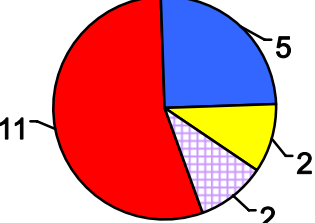
(b) Regulatory means

- 13 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, Korea, Malaysia, Oman, Romania, South Africa, and Thailand**) regulate the intermediary using voting power in relation to the equity investment by the CIS under its operation for its proprietary trading with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 9 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, El Salvador, Korea, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 5 jurisdictions (**Cayman Islands, Dubai (DIFC), Korea, Romania, and South Africa**) impose cancellation of registration or license.
- 2 jurisdictions (**Cayman Islands, Dubai (DIFC)**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person (**British Virgin Islands**), and imprisonment, civil and administrative actions (**Malaysia**).

4) **Board of directors of the CIS operated by the intermediary is not independent and thus investment decisions are made for the benefit of the intermediary**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p data-bbox="220 512 410 688"> <span style="color: red;">■</span> Yes  <span style="color: blue;">■</span> No  <span style="color: yellow;">■</span> No response </p>	 <p data-bbox="565 512 948 697"> <span style="color: red;">■</span> Laws and government rules  <span style="color: blue;">■</span> industry self regulation  <span style="color: yellow;">■</span> internal control regarding  <span style="color: purple;">■</span> Others </p>	 <p data-bbox="980 512 1370 709"> <span style="color: red;">■</span> General disciplinary sanctions  <span style="color: blue;">■</span> Cancellation of registration or license  <span style="color: yellow;">■</span> Remedy for damages  <span style="color: purple;">■</span> Others </p>

(a) Whether it is regulated

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Oman, Romania, and Thailand**) regulate the independency of the board of directors of the CIS operated by the intermediary to ensure fair investment decisions while 5 jurisdictions (**Bermuda, Nigeria, Panama, South Africa, and Turkey**) do not.
- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

- 15 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Jordan, Korea, Malaysia, Oman, Romania, and Thailand**) regulate independency of the board of directors of the CIS operated by the intermediary to ensure fair investment decisions with laws and government rules.
- 1 jurisdiction (**Brazil**) regulates this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 11 jurisdictions (**Argentina, Brazil, British Virgin Islands, Chinese Taipei, Colombia, El Salvador, India, Jordan, Korea, Romania, and Thailand**) impose general regulatory sanctions (e.g., monetary penalty, suspension of business, warning).

- 5 jurisdictions (**Colombia, Dubai (DIFC), India, Korea and Romania**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**) and imprisonment, civil and administrative actions (**Malaysia**).
- 1 jurisdiction (**Cayman Islands**) did not provide an answer to this question.

#### 5) Others

- **Korea:** A CIS manager shall not purchase, using collective investment property, securities acquired by the collective investment manager itself or by a relevant underwriter (underwriter who is in the same business group with a CIS manager, or who has sold collective investment securities of all the CIS managed by a CIS manager more than 30%).

#### (2) CIS operation / sales of CIS interests vs. brokerage

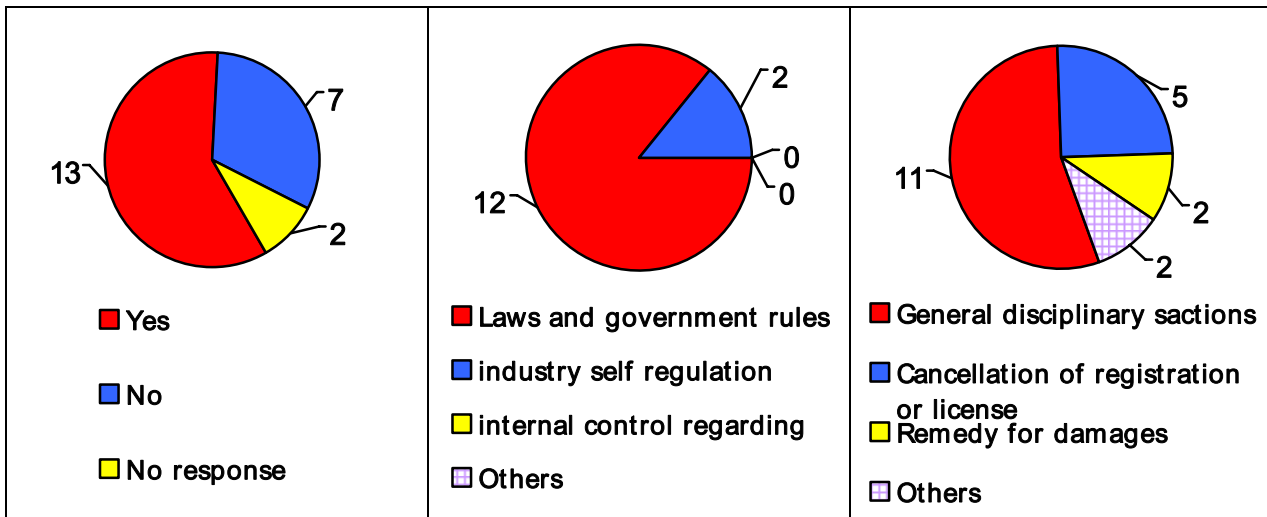
*\* The following two jurisdictions have no risk of conflicts of interests with respect to this issue due to local laws or financial market conditions:*

- **Pakistan:** Market intermediaries are not allowed to concurrently perform CIS operation and brokerage services.
- **Sri Lanka:** None of the Unit Trust Managing Companies (CIS) has been granted with the license to operate as market intermediaries.

#### 1) Particular brokerage clients (often more profitable clients) may receive preferential treatment over others in the sale of CIS interests

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
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(a) Whether it is regulated

- 13 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Korea, Malaysia, Panama, Romania, and Thailand**) regulate particular brokerage clients (often more profitable clients) receiving preferential treatment over others in the sale of CIS interests while 7 jurisdictions (**Bermuda, Colombia, El Salvador, Nigeria, Oman, South Africa, and Turkey**) do not.
- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

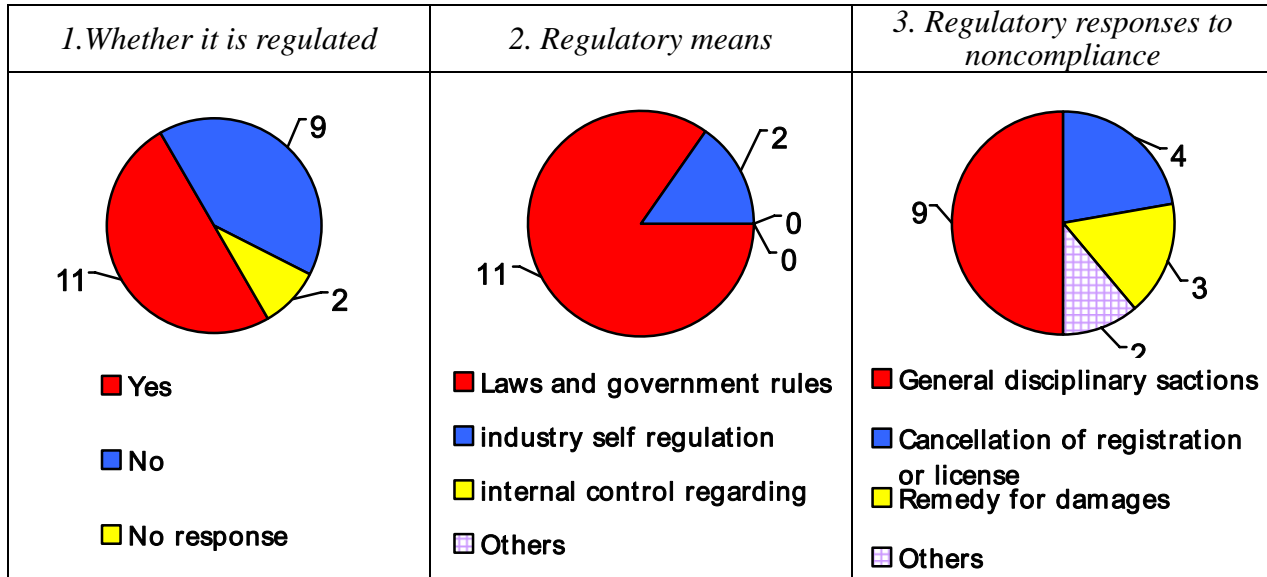
- 12 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Dubai (DIFC), India, Jordan, Korea, Malaysia, Panama, Romania, and Thailand**) regulate particular brokerage clients (often more profitable clients) receiving preferential treatment over others in the sale of CIS interests with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 11 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, India, Jordan, Korea, Panama, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).

- 5 jurisdictions (**Cayman Islands, Dubai (DIFC), India, Korea, and Romania**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**) and imprisonment, civil and administrative actions (**Malaysia**).

2) Incoming clients may be offered inducement such as preferential benefits that are not available to existing clients



(a) Whether it is regulated

- 11 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), India, Jordan, Malaysia, Romania, and Thailand**) regulate incoming clients being offered of inducement such as preferential benefits that are not available to existing clients while 9 jurisdictions (**Bermuda, Colombia, El Salvador, Korea, Nigeria, Oman, Panama, South Africa, and Turkey**) do not.
- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

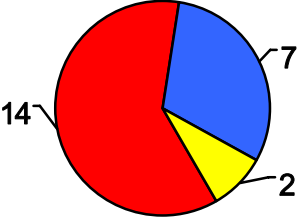
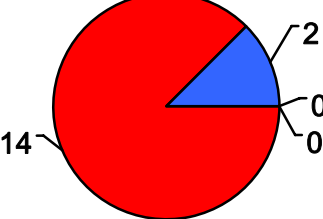
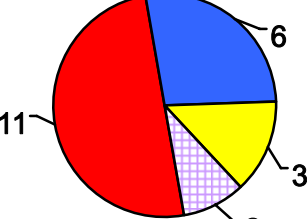
(b) Regulatory means

- 11 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman, Chinese Taipei, Dubai (DIFC), India, Jordan, Malaysia, Thailand, and Romania**) regulate incoming clients being offered of inducement such as preferential benefits that are not available to existing clients with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary’s internal control.

(c) Regulatory responses to noncompliance

- 9 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, India, Jordan, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 4 jurisdictions (**Cayman Islands, Dubai (DIFC), India, and Romania**) impose cancellation of registration or license
- 3 jurisdictions (**Cayman Islands, Dubai (DIFC), and Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**) and imprisonment, civil and administrative actions (**Malaysia**).

3) Directing CIS portfolio trades to the intermediary’s brokerage unit or affiliated brokers

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p> <span style="color: red;">■</span> Yes  <span style="color: blue;">■</span> No  <span style="color: yellow;">■</span> No response         </p>	 <p> <span style="color: red;">■</span> Laws and government rules  <span style="color: blue;">■</span> industry self regulation  <span style="color: yellow;">■</span> internal control regarding  <span style="color: purple;">■</span> Others         </p>	 <p> <span style="color: red;">■</span> General disciplinary sanctions  <span style="color: blue;">■</span> Cancellation of registration or license  <span style="color: yellow;">■</span> Remedy for damages  <span style="color: purple;">■</span> Others         </p>

(a) Whether it is regulated

- 14 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Island**

s, **Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Malaysia, Pakistan, Romania, and Thailand**) regulate directing CIS portfolio trades to the intermediary's brokerage unit or affiliated brokers while 7 jurisdictions (**Colombia, Korea, Nigeria, Oman, Panama, South Africa, and Turkey**) do not.

- 2 jurisdictions (**Montenegro, United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

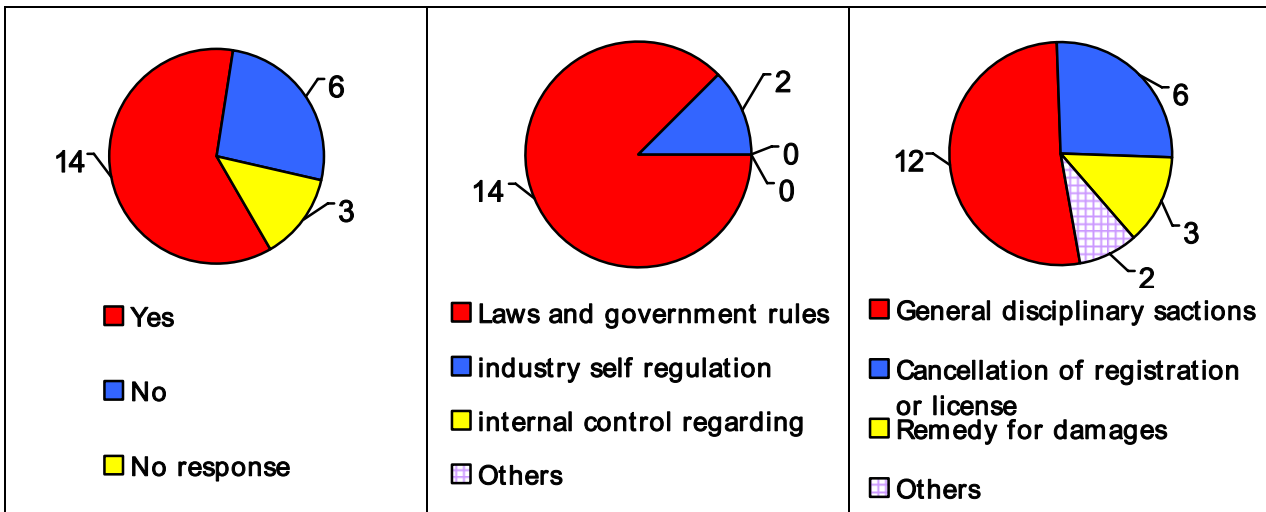
- 14 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Malaysia, Pakistan, Romania, and Thailand**) regulate directing CIS portfolio trades to the intermediary's brokerage unit or affiliated brokers with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 11 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, El Salvador, India, Jordan, Pakistan, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 6 jurisdictions (**Cayman Islands, Dubai (DIFC), El Salvador, India, Pakistan, and Romania**) impose cancellation of registration or license.
- 3 jurisdictions (**Cayman Islands, Dubai (DIFC), and Jordan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**) and imprisonment, civil and administrative actions (**Malaysia**).
- 1 jurisdiction (**Bermuda**) did not provide answers to this question.

4) **Leaking information obtained from CIS operation to premier brokerage clients**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
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(a) Whether it is regulated

- 14 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, Malaysia, Pakistan, Romania, and Thailand**) regulate leaking information obtained from CIS operation to premier brokerage clients while 6 jurisdictions (**Jordan, Korea, Nigeria, Oman, Panama, and Turkey**) do not.
- 3 jurisdictions (**Montenegro, South Africa, and United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

- 14 jurisdictions (**Argentina, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, Dubai (DIFC), El Salvador, India, Malaysia, Pakistan, Romania, and Thailand**) regulate leaking information obtained from CIS operation to premier brokerage clients with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 12 jurisdictions (**Argentina, Brazil, British Virgin Islands, Cayman Islands, Chinese Taipei, Colombia, El Salvador, India, Malaysia, Pakistan, Romania, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).

- 6 jurisdictions (**Cayman Islands, Colombia, Dubai (DIFC), India, Pakistan, and Romania**) impose cancellation of registration or license.
- 3 jurisdictions (**Cayman Islands, Dubai (DIFC), and Pakistan**) impose remedy for damages due to violation.
- 2 jurisdictions impose local measures such as requiring a licensee to appoint a qualified person to advise on the issue (**British Virgin Islands**) and imprisonment, civil and administrative actions (**Malaysia**).
- 1 jurisdiction (**Bermuda**) did not provide answers to this question.

#### 5) Others

- **Korea:** A CIS manager shall not directly or indirectly provide benefit which has a property value to a broker or dealer, including the officers, employees, and introducing brokers, who sells collective investment securities of a CIS managed by the CIS manager.

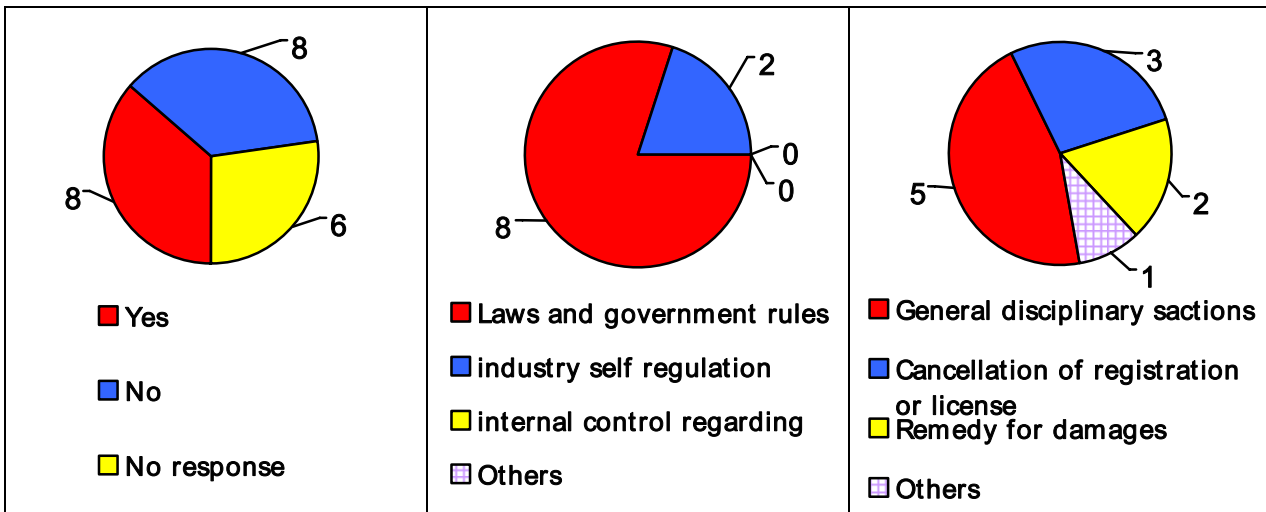
### (3) CIS operation vs. corporate finance services

*\* The following two jurisdictions have no risk of conflicts of interests with respect to this issue due to local laws or financial market conditions:*

- **Pakistan:** Market intermediaries are not allowed to concurrently perform CIS operation and brokerage services.
- **Sri Lanka:** None of the Unit Trust Managing Companies (CIS) has been granted with the license to operate as market intermediaries.

#### 1) Preferential allocation of IPO securities to CIS funds under management by the intermediary or its affiliates

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
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(a) Whether it is regulated

- 8 jurisdictions (**Brazil, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, and Malaysia**) regulate preferential allocation of IPO securities to CIS funds under management by the intermediary or its affiliates while 8 jurisdictions (**Bermuda, Colombia, Nigeria, Oman, Panama, Romania, Thailand, and Turkey**) do not.
- 6 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Montenegro, South Africa, and United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

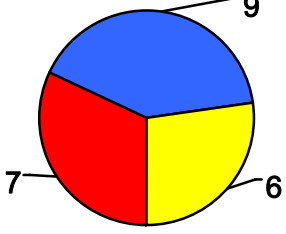
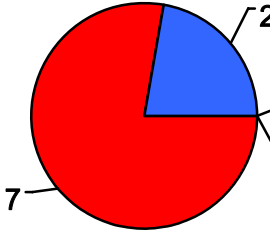
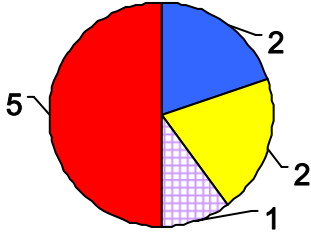
- 8 jurisdictions (**Brazil, Chinese Taipei, Dubai (DIFC), El Salvador, India, Jordan, Korea, and Malaysia**) regulate preferential allocation of IPO securities to CIS funds under management by the intermediary or its affiliates with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.

(c) Regulatory responses to noncompliance

- 5 jurisdictions (**Brazil, Chinese Taipei, India, Jordan, and Korea**) regulate preferential allocation of IPO securities to CIS funds under management by the intermediary or its affiliates with general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 3 jurisdictions (**Dubai (DIFC), El Salvador, Korea**) regulate this issue with cancellation of registration or license.

- 2 jurisdictions (**Dubai (DIFC), Jordan**) regulate this issue with remedy for damages due to violation.
- 1 jurisdiction (**Malaysia**) regulates this issue with local measure such as imprisonment, civil and administrative actions.

2) **The CIS operated by the intermediary purchasing the unsubscribed securities underwritten by the intermediary**

1. Whether it is regulated	2. Regulatory means	3. Regulatory responses to noncompliance
 <p>7 9 6</p> <ul style="list-style-type: none"> <li>■ Yes</li> <li>■ No</li> <li>■ No response</li> </ul>	 <p>2 0 0 7</p> <ul style="list-style-type: none"> <li>■ Laws and government rules</li> <li>■ industry self regulation</li> <li>■ internal control regarding</li> <li>■ Others</li> </ul>	 <p>2 2 1 5</p> <ul style="list-style-type: none"> <li>■ General disciplinary actions</li> <li>■ Cancellation of registration or license</li> <li>■ Remedy for damages</li> <li>■ Others</li> </ul>

(a) Whether it is regulated

- 7 jurisdictions (**Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Malaysia, and Thailand**) regulate CIS operated by the intermediary purchasing the unsubscribed securities underwritten by the intermediary while 9 jurisdictions (**Bermuda, Colombia, El Salvador, Korea, Nigeria, Oman, Panama, Romania, and Turkey**) do not.
- 6 jurisdictions (**Argentina, British Virgin Islands, Cayman Islands, Montenegro, South Africa, and United Arab Emirates**) did not provide answers to this question.

(b) Regulatory means

- 7 jurisdictions (**Brazil, Chinese Taipei, Dubai (DIFC), India, Jordan, Malaysia, and Thailand**) regulate CIS operated by the intermediary purchasing the unsubscribed securities underwritten by the intermediary with laws and government rules.
- 2 jurisdictions (**Brazil, Chinese Taipei**) regulate this issue with industry self-regulation.
- None of the jurisdictions regulate this issue with intermediary's internal control.



(c) Regulatory responses to noncompliance

- 5 jurisdictions (**Brazil, Chinese Taipei, India, Jordan, and Thailand**) impose general disciplinary sanctions (e.g., monetary penalty, suspension of business, warning).
- 2 jurisdictions (**India, United Arab Emirates**) impose cancellation of registration or license.
- 2 jurisdictions (**Dubai (DIFC), Jordan**) impose remedy for damages due to violation.
- 1 jurisdiction (**Malaysia**) imposes local measures such as imprisonment, civil and administrative actions.

3) Others

- **Korea:** A CIS manager shall not purchase, using collective investment property, securities acquired by the collective investment manager itself or by a relevant underwriter (underwriter who is in the same business group with a CIS manager, or who has sold collective investment securities of all the CIS managed by a CIS manager more than 30%). CIS managers or relevant underwriters shall not form an artificial market price of securities for the corporation in charge of underwriting business by purchasing or selling specific securities with collective investment property.

21. Any other types of conflicts of interests that take place in your jurisdiction due to market intermediaries performing multiple functions (only if there is a conflicts of interests identified by a particular rule or regulation, rather than by the general principle on the conflicts of interests)

- **South Africa:** Rebate arrangements between intermediary and CIS operator where client is not getting benefit of rebate. All rebates must be disclosed upfront and if not possible to give the monetary value, the value must be given later.
- **Malaysia:** Even though there are provisions regarding the appointment of a related party as trustee to a fund, Securities Commission Malaysia has not approved such appointment as it may create possible conflicts of interests. A management company of a fund shall not delegate investment management function to an external fund manager who is a related party to the trustee of the said fund.

## SECTION IV. PRACTICAL CONSIDERATIONS AND ACTIONS FOR REGULATORY IMPROVEMENT

### 22. The list of the types of conflicts of interests that requires most attention in your jurisdiction.

13 jurisdictions (**Cayman Islands, Chinese Taipei, Dubai (DIFC), El Salvador, Jordan, Korea, Malaysia, Nigeria, Oman, Pakistan, Panama, South Africa, and Thailand**) provided responses reflecting local regulatory issues.

- **Cayman Islands** - Cayman Islands considered providing information to investors in a timely matter as a very important issue, and indicated that violations related to this occurred most frequently. This is regulated through the Mutual Funds Law, which requires funds to notify investors of material changes. However, there are no enforcement actions related to this. Preferential treatment to certain investors, side letters, and compulsory redemptions came next, and exaggerated investment solicitations was also one of the important issues of the jurisdiction. However, there were no specific laws or regulations existent as well as enforcement action on all of the violations.
- **Chinese Taipei** - Chinese Taipei rated churning and front running equally as the most important type of conflict of interests with cherry picking coming second. The level of sanctions imposed on these issues was rated at three on a scale of one to five (one being the most significant and five being the less significant).
- **Dubai (DIFC)** - Dubai considered all conflict of interests equally significant and had a set of general regulations regarding integrity, market conduct, and conflict of interests. The DFSA (Dubai Financial Services Authority) will take regulatory action through its supervisory powers or via a referral to enforcement in more serious cases.
- **El Salvador** - El Salvador considered operations of broker houses trading securities issued by corporations that are part of the same corporate group as the most significant type of conflicts of interests. In addition, issues arising from the use of insider information and preferential treatment to particular brokerage clients over others were also a source of conflict of interest. All violations mentioned above are regulated by the Securities Market Law.
- **Jordan** - Jordan rated cherry-picking, front-running, and churning as the three most significant types of conflict of interests. The level of violation was three on a scale from one to five. The average level of sanctions imposed on intermediaries or cherry picking and churning are withdrawal of license, fine, and imprisonment.
- **Korea** - Korea considered conduct of business, appropriate procedure of internal controls, and mandatory establishment of Chinese Walls as the areas of concern in terms of conflict of interests. All four of the conducts rated one on a scale of one to five and were regulated by the FSCMA (Financial Investment Services and Market Act).

- **Malaysia** - Malaysia considers conflict arising between companies seeking to present positive financial information to the market and the need for accurate information to be released to the public as one of the issues of concerns. Others included conflicts arising between companies wanting to raise funds through the capital market presenting positive information in the proposals/prospectus and the need for the information in the proposal/prospectus to be not misleading. In addition, conflict between persons intending to purchase securities of the company engaging in a scheme which operates as a fraud or deceit upon any other person was another issue of concern. Sanctions imposed on intermediaries releasing inaccurate and misleading information varied from a fine ranging from RM 300,000 to RM 3 million, and imprisonment.
- **Nigeria** - Nigeria considered broker/dealers not segregating clients' account and proprietary account as the most significant issue of conflict of interests. Others were related to business of fund managers and issues occurring between registrars and issuing houses. The sanctions imposed on these issues were recommendations to separate accounts and penalty/fine.
- **Oman** - Oman indicated insider trading, front-running, and infringement of the provisions regulating authorization to be the most significant type of conflict of interests. The sanctions imposed on firms conducting such practices include a fine ranging from \$51,948 to \$259,740 or a higher one in the case of the violator refusing to conciliate, and imprisonment.
- **Pakistan** - Pakistan considers insider trading the most significant type of conflict of interest along with market manipulative practices such as wash trades, circular trading, and pump and dump strategies. Next were churning and other issues such as unauthorized transfer/misuse of clients' securities, blank selling, not keeping client's assets segregated from brokers' assets, non-maintenance of proper record of transactions, failure to furnish net capital balance certificate. Front-running was also an issue of concern in this jurisdiction. Each type of conflict of interests are mostly regulated by the securities and Exchange Ordinance (SEO, 1969), Regulations for Proprietary Trading, Code of Conduct for Trading by Employees of Brokerage Houses, and Broker and Agents Registration Rules. Sanctions imposed on churning was the severest rating one on a scale of one to five, and other sanctions imposed on the rest of the activities were rated two.
- **Panama** - Panama replied brokers taking advantage of its position when engaging in trades for third parties as well as its own account as the most important issue. In addition, issues coming from brokerage firms engaging in the service of execution of functions inherent to payment, registration, and transfer agencies was also a source of conflict of interest. However, there were no sanctions that apply to these conducts.
- **South Africa** - South Africa considered cherry picking and interested party trading with managed clients as the most serious issue of concern, and churning came next. Sanctions imposed on the violations were fines and withdrawal of license. Especially, there is a specific prohibition against principal trades with managed account clients to regulate interested party trading with managed clients.

- **Thailand** - Thailand indicated brokerage and conflict of interests arising from brokerage and corporate finance, brokerage and underwriting, and brokerage and proprietary port. Firms are required to have an efficient system to prevent issues of conflict of interest. However, in the case of violation, a fine not exceeding 300,000 baht is imposed.

### 23. Legislative proposals or regulatory considerations under way to improve current regulations on conflicts of interests

8 jurisdictions (**Bermuda, British Virgin Islands, Cayman Islands, Nigeria, Pakistan, Panama, South Africa, and Sri Lanka**) are strengthening the regulatory system or amending current regulations to prevent conflicts of interests occurring from business conducted by market intermediaries.

- **Bermuda** - The monetary authority of Bermuda is in the process of improving the current General Business Conduct and Practice Code of Conduct. This code is currently applicable to all investment providers and requires them to disclose all conflict of interests to the public.
- **British Virgin Islands** - British Virgin Islands is amending the Regulatory Code to strengthen the provisions related to conflict of interests. The amended version will clearly set out what is required to each intermediary and ensure clients of appropriate, fair, and transparent treatment. The changes will take effect in May, 2010. Furthermore, the Securities and Investment Business Act has recently been brought into force and this will act as the primary piece of legislation for regulation and supervision of market intermediaries.
- **Cayman Islands** - The Cayman Islands Monetary Authority has set up a working group to review the laws and regulations that apply to, *inter alia*, brokers, dealers and asset managers.
- **Korea** - Korea has recently enacted the Financial Services and Capital Market Act (FSCMA) to address various issues of the finance sector. The Acts cover issues such as conflict of interest through regulations on conduct of businesses, requirement of appropriate procedure of internal controls, and establishment of Chinese Walls.
- **Pakistan** - A draft Securities Act, 2007 (“draft Act”) recently approved by the Pakistan Cabinet, is soon expected to be placed for promulgation before the Parliament. The draft Act includes various other provisions that extensively cover conflict of interest issues that may arise for such regulated persons when operating in the securities market/ conducting business with their clients, issuers and other market intermediaries. In addition, the demutualization of the stock exchanges is expected to improve the efficiency of the stock exchanges by segregating the commercial and regulatory functions and is thus expected to bring greater balance among interests of different stakeholders. Nevertheless, the Commission, in order to complement review of the overall financial regulatory architecture, is currently

undertaking a comprehensive review of the entire regulatory framework for the capital markets for ensuring greater harmony and consistency and addressing any gaps in investor protection.

- **Panama** - The Panama government has currently created a commission to review the laws of the financial sector (banking, securities, and insurance) to improve the overall regulations. A draft of a new financial law is expected to be produced at the end of this year.
- **South Africa** – The Financial Advisory and Intermediary Services Act has introduced a management system aimed at addressing conflict of interest issues. As a result, companies are required to disclose management policy addressing conflict of interest issues in public document. In addition, other types of conflict of interests created by remuneration structures are being prohibited.
- **Sri Lanka** - Sri Lanka has recently published a draft of “General Rules for all Market Intermediaries, which has important provisions related to conflict of interests, on the SEC website for public consultation.