



July 1, 2013

CBCS POLICY RULE FOR SOUND BUSINESS OPERATIONS IN CASES OF CONFLICT OF INTEREST, INCIDENTS, AND INTEGRITY-SENSITIVE POSITIONS

This renewed CBCS¹ Policy Rule for Sound Business Operations in Cases of Conflict of Interest, Incidents, and Integrity-sensitive Positions² replaces the January 2011 version.

1. Integrity in business operations within the context of CBCS integrity supervision

In addition to providing stability, integrity constitutes an essential condition for a sound financial system. To promote **the integrity of the financial sector**, it is important for the institutions supervised by the Bank (hereinafter referred to as *the institutions*) to control their integrity risks. Controlling these risks constitutes part of *sound business operations* and is an essential requirement within the framework of *integrity supervision*.

1.1 Integrity of the financial sector

By integrity of the financial sector, the Bank means that the institutions and affiliated (legal) persons clearly adhere to the standards based on:

- a. formal and/or substantive law, including policy rules and guidelines issued by the Bank;
- b. codes of conduct drawn up by the financial institutions and/or the financial sector itself; and
- c. socially accepted unwritten rules of conduct.

1.2 Integrity supervision

Integrity supervision is focused on the integrity policy of the institution, *casu quo*, the manner in which an institution adheres in practice to the standards referred to and, more particularly, to the measures that an institution has adopted to promote and maintain integrity within its institution. Infringements of standards in this regard, may not merely harm the confidence in the institution itself, but can also influence the other participants of the financial sector and the financial sector itself.

¹ Centrale Bank van Curaçao en Sint Maarten

² This Policy Rule is based on the following articles in the Supervisory Acts:

- Article 2, paragraph 2, Article 4, paragraph 1, subparagraphs e en f, and Article 21 of the National Ordinance on the Supervision of the Banking and Credit Institutions 1994 (NOSBCI);
- Article 4, paragraph 1, Article 9, paragraph 1, Article 15, paragraph 1, and Article 18, paragraph 1 of the National Ordinance on the Supervision of Investment Institutions and Administration (NOSIIA);
- Article 3, paragraphs 2, 4 and 11 of the National Ordinance on the Supervision of Trust Service Providers (NOSTSP);
- Article 17 of the National Ordinance on the Supervision of the Insurance Sector 1990 (NOSIS);
- Article 4 of the National Decree on Special Licenses (NDSL);
- Article 19 of the National Ordinance on the Supervision of Corporate Pension Funds (NOSCPF);
- Article 6, paragraph 1, sub b of the National Ordinance on the Supervision of Insurance Brokerage (NOSIB); and
- Article 2 of the National Ordinance on the Supervision of Stock Exchanges (NOSSE).

In light of the foregoing, the sanctions for non-compliance with the abovementioned Policy Rule are, those sanctions referred to in the current Supervisory Acts. Examples include the issuing of an order/instruction, the appointment of a trustee/administrator, imposing of an administrative penalty and/of the withdrawal of the license.



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1.3 Lines of approach of the integrity supervision

Integrity supervision has the following lines of approach:

- a. personal integrity of the directors and staff members;
- b. organizational integrity of the financial institution;
- c. relational integrity; and
- d. integrity with regard to market conduct.

Item a: The institutions have a duty with regard to the *personal integrity of their directors and staff members*.

- Areas of attention related to this aspect of supervision are fraud, corruption and conflict of interest of directors in a broad sense (including Members of Boards of Supervisory Directors and Members of Supervisory Boards).
- Apart from sideline positions with business relations, personal integrity also may concern (unlawful) withdrawals with a view to giving preferential treatment, and the concealment of such withdrawals by means of manipulation (of data).
- Personal integrity of directors is evident from certain characteristics of conduct, including truthfulness, a sense of responsibility, law-abidingness, honesty and uprightness. Reference is made to the CBCS Policy Rule on Integrity Testing (*see website: <http://www.centralbank.cw/integrity-financial-sector>*).

Item b: *Organizational integrity of the institution*

- This aspect of integrity supervision concerns the supervision of internal procedures and measures in the areas of Administrative Organization and Internal Controls for combating infringement of integrity.

Item c: *Relational Integrity*

- This item relates to the institution's conduct in its dealings with third parties, as well as to the conduct of third parties that affects the institution's integrity, as for example in the case of insurance fraud.
- With respect to integrity supervision viewed from the relational perspective, we may think of the reporting of unusual transactions and the further application of the "know-your-customer principle" (KYC and "enhanced customer due diligence").
- Other areas of attention for relational integrity are the acquisition of objects illicitly obtained by financial institutions and cooperating in/or failure to take sufficient measures against the access of third parties to/and the use by third parties of financial markets for illicitly acquired objects (laundering).

Item d: *Integrity with regard to market conduct*

- This item relates to the soundness of the institution's market conduct.



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- An example is the prevention of price manipulation or price stabilization relating to the issue of shares and the "adjusting" of prices aimed at influencing other related transactions (including the index prices on the expiration date).
- Another example is the providing of insufficient information to customers, as for instance on product information leaflets, or the concealment of effective savings interest in the newspapers and manipulation through small print in insurance policies and mortgage advertisements.

2. **Integrity policy: sound business operations**

The institutions must organize their business operations in a way that ensures sound business operations. Foremost is the minimization of risks of infringement of sound business operations, including guaranteeing an integrity-conscious corporate culture, integrated in the conduct of business and based on a systematic analysis of the integrity risks.

To this end, the institution shall make sure that independent testing of the functioning of the institution's policy and its procedures are carried out at least once a year by an adequately staffed audit department or by an external independent party such as the institution's external auditor. The extent of the tests and the test results must be recorded in writing and shortcomings, if any must be reported to the senior management and/or the Board of Supervisory Directors and the person (s) appointed for that purpose, with the request to adopt immediate corrective measures within a specified period of time.

2.1 **Risk areas and areas of concern with respect to the integrity of sound business operations**

The integrity supervision exercised by the Bank is focused on the *integrity policy pursued* to ensure sound business operations within the institutions and on the structure and operation of their systems of risk analysis and risk control with respect *to the following risk areas or areas of concern:*

- a. Conflict of interest and harming the interests of third parties;
- b. Incidents constituting a serious risk for the sound business operations of the institution;
- c. Persons holding an integrity-sensitive position;
- d. Money laundering and terrorist financing, as well as the rules established by or by virtue of the Sanctions Ordinance (Off. Gaz. 1997, no. 336) with regard to financial transactions;
- e. Criminal acts or other violations of the law committed by the institution or its directors or employees, which may undermine the trust in the institution or the financial sector;
- f. Relations with consumers, customers or other third parties, which may undermine the trust in the institution or in the financial sector; and



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- g. Other acts committed by the institution or its employees, which, according to unwritten law are so contrary to generally accepted standards that they can seriously undermine the trust in the institution or the financial sector.

2.2 Tasks and competencies of the Compliance Function for Sound Business Operations^{3 4}

The supervision of compliance with the norms or obligations to which the institutions are subject with regard to the areas of concern or risk areas within the context of sound business operations is a ***function at management level*** which must be carried out independently and is entrusted to the appointed Compliance Officer (s) with, broadly, the following tasks and competencies:

- a. Formulating, developing, and implementing the integrity policy for sound business operations and creating a system of risk analysis and risk control in respect to the identified areas of concern.
- b. Reporting, out of the institution, identified shortcomings or deficiencies, and periodic review of the internal control systems with regard to their effectiveness and actuality and taking care of any necessary updating.
- c. Safeguarding an integrity-conscious corporate culture, among other things, formulated in an integrity code designed for that purpose and taking care of the availability of knowledge gained within the institution related to compliance in the exercise of the compliance officer's duties and powers⁵.
- d. Taking care of the availability of the information required herewith in the context of integrity supervision and examination by the Central Bank.

3. Further rules regarding conflict of interest, incidents, and integrity-sensitive positions at institutions supervised by the Bank

This policy rule is intended to reinforce the integrity of the financial sector by supplying a number of organizational measures for adoption by the institutions. These measures are aimed at minimizing the integrity risks inherent to the business operations and that, among other things, manifest themselves by conflict of interest, by incidents and when recruiting and selecting officers in integrity-sensitive positions.

Specifically, this rule concerns the following:

³ With respect to the Compliance Function for Sound Business Operations, specifically in the area of money laundering and terrorist financing, reference is made to the respective Provisions and Guidelines, Chapter II.2.A.2:

The appointment of one or more compliance officer(s).

⁴ With respect to the Compliance Function for Sound Business Operations, specifically in the area of conflict of interest, incidents, and integrity-sensitive positions, reference is made to Chapter 3.6 in this policy rule.

⁵ As regards "*the single entrepreneur*", for example, among the insurance brokers and persons with a personal exemption for the providing of administrative services, the Bank, acting in joint consultation with the institutions concerned, will endeavor to arrive at a shared practical plan regarding the performance of the *compliance function* in this regard.



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- a. setting up, working out, and implementing policy, procedures and measures aimed at preventing conflict of interest within the institutions;
- b. internal recording and addressing incidents that constitute a risk for sound business operations, including the reporting of certain incidents to the Bank, the nature and gravity of which are such that the Bank, for reasons of supervision, must be informed of them; and
- c. setting up, working out, and implementing policy procedures and measures aimed at ensuring integrity in the functioning of the staff members including, particularly, the screening of staff members occupying integrity-sensitive positions.

3.1 Providing a framework for the concepts of "conflict of interest", "incidents", and "integrity-sensitive positions"

In this policy rule, the following terms shall have the following meaning:

1. *Conflict of interest*: mingling private interests of persons employed by the institution or group who (co-)determine and control the policy, with the corporate interests of the institution or group and its customers.
2. *Incidents*: occurrences posing a serious risk for the institution's sound business operations. This concerns a course of action or occurrence of a (co-)policy-maker⁶ ⁷ or other staff member of the institution, of another (legal) person who carries out work for the institution or for a third party that entails a serious risk for the sound business operations or integrity of the institution concerned.
3. *Integrity-sensitive positions*: positions designated as such by the institution, including (a) executive officers who fall under the (co-)policymakers tested for integrity by the Bank as well as other (co)-policymakers, and (b) the so called *key positions to which an authority is attached that contains an actual risk for the sound business operations of the institution and that are related to*:
 - the disposition of or the business operations of equity or securities of the institution or third parties, or the entry into commitments on the institution's behalf (*positions of trust*, including the positions of 'legal counsel' and 'operations managers');

⁶ Pursuant to the CBCS Policy Rule on Integrity Testing, non-integrity courses of action include at least one course of action (an act or omission) that bears evidence of the absence of qualities such as: truthfulness, a sense of responsibility, law-abidingness, frankness, sincerity, prudence, punctuality, honesty, discretion, uprightness, and any other qualities yet to be determined.

⁷ '(Co-)policymaker' is understood by the Bank to mean also: managing director, board member, those in charge of the day-to-day management, member of the Board of Supervisory Directors or the Supervisory Boards, and holder of qualifying interest.



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- the access to person - or company-sensitive information about the institution or third parties (*high risk positions*, including the positions of ‘account manager’ and that of ‘operation manager’); and
- the performance of monitoring or supervisory duties with regard to the administrative organization and the institution's internal control system and the compliance with applicable rules and internal regulations (*other positions*, including the positions of ‘internal auditor’, ‘risk manager’, and ‘compliance officers’).

The positions defined above, that are performed by persons not employed-by the institution on the basis of an employment contract (for example, hired-in personnel, temporarily deployed staff) also are considered integrity-sensitive positions.

3.2 Provisions for dealing with conflicts of interest

1. The institution has procedures and measures in place with regard to the combating of the mingling of private interests with the corporate interests of the institution or group and its customers, of:
 - a. persons who are (co-)policymakers of the institution;
 - b. persons who are (co-)policymakers of the group to which the institution is affiliated;
 - c. members of the supervisory body within the institution charged with the supervision of the policy and the general course of affairs of the institution, i.e. the Board of Supervisory Directors or the Supervisory Board; and
 - d. other employees or other persons who perform work for the institution upon instructions of the institution on a structural basis.
2. With a view to preventing conflict of interest, the supervisory body can also establish rules for the providing of services on the basis of personnel conditions to persons who (co-)determine the institution's policy and to group directors.

3.3 Provisions for dealing with incidents

1. The institution shall work out and implement policy procedures and organizational measures for sound handling of incidents and an integrity-conscious corporate culture integrated in the operation processes.
2. The institution shall take care of a sound administrative system for the recording of incidents, featuring at least the following:
 - a. the characteristics of the incident;
 - b. data on those who caused the incident; and
 - c. the measures taken with regard to the incident.
3. The institution shall notify the Bank in writing, at its own initiative and without delay⁸, about incidents referred to in the second paragraph under 3.1, in the event of:

⁸ The phrases "in writing" and "without delay" as used by the Bank are understood to mean: in writing within 48 hours, or within 2 workdays after the incident is detected. An oral report on a detected incident must always be confirmed in



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- a. notification or intended notification hereof to the judicial authorities;
- b. (potential) threats to the continued existence of the institution;
- c. discovery of serious shortcomings in the setup and functioning of the measures for sound business operations on the part of the institution including loss of reputation, financial loss and/or other forms of damage as a consequence of insufficient prevention or repressive action on the part of the competent authorities in response to the (unwitting) involvement in money laundering activities by customers, intermediaries or employees of the institution, the lack of AO/IC (Administrative Organization/Internal Control) procedures, lack of an IAD (Internal Audit Department) and a non-functioning or badly functioning Board of Supervisory Directors);
- d. expected serious degree of publicity, financial consequences, reputation damage to the institution or the financial sector (including harming interests of third parties through the fault of the institution resulting in loss of reputation and/or claims; misuse of inside information about developments or legal persons by (the employees or the Management) of the institution, including securities transactions carried out through insider trading; or the dealings of the institution with natural persons and/or legal persons involved in money laundering, terrorism or criminality, or the financing thereof); and
- e. all other cases, including those listed here, whereby the seriousness, the magnitude, or other circumstances of the incident, make it indisputably clear that the Bank must be notified:
 - internal or external fraud cases within the institution;
 - a raid on or search of the premises of the institution carried out by the Public Prosecutor or on-the-spot investigation by the Tax Office; and
 - legal proceedings which, according to the (co-)policymaker's judgment, may entail consequences for the financial standing or the reputation of the institution or of the financial sector.

The foregoing means, among other things, that the internal organization of the institution must be structured in such a way that incidents which can infringe, or have infringed on the integrity of the institution, are detected, recorded, reported to the (supervisory) authorities, and are given cause for adopting corrective measures. This process does not prejudice the institution, acting on the basis of a risk analysis, from taking preventive measures to control this integrity risk. In addition to taking measures against the person involved in the incident, appropriate measures also can consist of improving internal procedures or adjusting the policy. Hence, it is the duty of the institution to limit negative internal and external consequences (risk mitigation) and to prevent a recurrence of the incident.

writing within 48 hours or within 2 workdays. If the institution needs more time for internal processing of the incident, it must notify the Bank of this need.



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The administrative recording of incidents is an instrument used for the benefit of the institution itself. Pursuant to its information and inspection right the Bank may demand access to the administrative records within the context of an ongoing supervision or integrity audit. Said supervision is particularly intended to verify whether the institution is applying the existing rules in a proper manner.

3.4 Guidelines for the screening of employees in integrity-sensitive positions

1. The institution shall adopt and establish a policy with regard to the screening of employees in integrity-sensitive positions and work out and implement such policy via policy procedures and organizational measures. The objective must be: maintaining and promoting the integrity of employed officers and officers entering into the institution's employment, and creating an integrity-conscious corporate culture.
2. The institution shall keep a list of the integrity-sensitive positions as referred to under 3.1, paragraph 3, stating, per function, the duties, competences and responsibilities for each position.
3. In the event that an institution employs a staff member (in-employment screening) or is taking a staff member into its service (pre-employment screening) who will be assigned in an integrity-sensitive position, it must form an opinion about the integrity of the person in question. To this end, the institution may proceed to:
 - a. explicitly ask the person in question (by means of an application form) about prior incidents that may be significant for judging the integrity of the person concerned;
 - b. obtain written information about the integrity of the person in question, from the employer(s) of this person during the past five years, provided that the applicant's prior permission has been obtained;
 - c. ask the person in question to submit a certificate of good conduct within the meaning of the National Ordinance on Judicial Documentation and on the declarations concerning a person's conduct (Off. Gaz. 1968, no. 213).

3.5 Compliance Function for Sound Business Operations in cases of Conflict of Interest, Incidents, and Integrity-Sensitive Positions

The prevention of conflict of interest and the maintenance of recorded incidents and integrity-sensitive positions within the institutions concerns a management-level function that must be performed independently within the context of compliance with sound business operations. This function is therefore entrusted to the Compliance Officer(s) designated for that purpose.

In addition to the duties and competences mentioned under 2.2, subparagraphs **a** and **b**, the appointed Compliance Officer shall specifically take care of:

1. formulating, developing, and implementing policies, procedures, and measures related to the prevention of conflict of interest within the institution;
2. development and implementation of policy procedures and organizational measures for a sound handling of incidents and an integrity-conscious corporate culture, integrated into the operational processes; and



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3. development and implementation of a policy for the handling and screening of (prospective) staff in integrity-sensitive positions by means of policy procedures and organizational measures.

CENTRALE BANK VAN CURACAO EN SINT MAARTEN
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