

Tab 24

THE LONDON METAL EXCHANGE LIMITED AND LME HOLDINGS LIMITED

GUIDANCE FOR DIRECTORS – CONFLICTS OF INTEREST

1 Introduction

- 1.1 The LME is a Recognised Investment Exchange and has regulatory responsibilities for its market. In exercising those responsibilities, it is itself subject to regulation and supervision by the Financial Services Authority (FSA).
- 1.2 Being a practitioner-based body, it is vital that the LME has, and is seen to have, suitable procedures in place for dealing with conflicts of interest that can arise, principally between the interests of the LME as regulator and interests a Director may have in his private or business capacity.
- 1.3 This guidance relates to the handling of actual and potential conflicts of interest by Directors in the taking by the LME of regulatory decisions. Procedures for the handling of actual and potential conflicts of interest by Directors in the taking of commercial decisions by the LME are set out in Articles 86 to 88 (inclusive) of the Articles of Association for LME Holdings Limited and in Articles 43, 44 and 54 to 62 (inclusive) of the Articles of Association for The London Metal Exchange Limited.
- 1.4 The FSA, under its former name the Securities and Investments Board (SIB), issued a Code of Conduct for Regulatory Authorities dealing with this issue. This Code is no longer published by the FSA; however, it remains relevant to the LME. A copy of the Code is attached at Annex 1. The SIB also issued a Note on the Personal Responsibility of Board Members and a copy of this Note is attached at Annex 2. It is a condition of an LME Board Member's appointment that he agrees to comply with the requirements of the Code and Note as applied to the LME by this guidance which is issued under the authority of the Board. Accordingly all Directors are required carefully to read this guidance, the Code and Note and comply with their requirements.

2 Identification and Assessment of Conflicts

- 2.1 As noted at paragraph 11 of the Code, the responsibility for identifying and handling a conflict lies with the individual concerned.

It is therefore for each LME Director to be sensitive at all times to actual or potential conflicts of interest.

- 2.2 Examples of conflicts are set out at paragraph 15 of the Code.
- 2.3 It is impossible to prescribe for or even describe all potential conflicts that may arise. However, for the purpose of this note, two types can be distinguished: minor and/or indirect conflicts, where simple disclosure will be sufficient, and other conflicts, where disclosure followed by withdrawal from a meeting of the relevant Board or Committee will be necessary.
- 2.4 Where a Director is unsure whether a conflict exists, or whether or not it is minor or indirect, he should seek advice from the Chairman or, in the case of his non-availability, the Vice Chairman. As a general rule it will be preferable to err on the safe side.

3 Board Meetings

3.1 Disclosure

- 3.1.1 On receipt of Board papers, Directors must consider whether any items on the agenda give rise to a conflict of interest. If they do, they should come prepared to disclose that fact, and the nature of the conflict, **at the start of the meeting.**
- 3.1.2 Exceptionally, the nature or fact of the conflict may be so confidential that a Board Member may feel unable to make any disclosure of it – for example the fact of an expected takeover. In those instances, the Director should ensure he simply takes no part in that part of the meeting, and makes arrangements with the Chairman or, in the case of his non-availability, the Vice Chairman not to receive relevant Board papers in future.
- 3.1.3 Where his conflict relates to a project or other matter likely to involve regular Board consideration, a Director should for good order make a general written disclosure to the Chairman or, in the case of his non-availability, the Vice Chairman of his interest, in addition to a specific disclosure at each meeting at which the matter is to be discussed.

3.2 Withdrawal from Meetings

- 3.2.1 Where a Director's conflict is minor or indirect, such that it can reasonably be said that it would be unlikely to affect an ordinary person in the taking of a decision on the matter, disclosure will be sufficient. Similarly, where the matter

does not relate in any way to the LME's regulatory responsibilities, disclosure will be sufficient.

3.2.2 In all other cases, a Director, having declared his interest, should withdraw from the meeting of the Board.

3.2.3 On any occasion when a Director, his firm, or a connected firm, is subject to serious disciplinary proceedings, or is the subject of an investigation which may lead to serious disciplinary procedures being taken against him or it, any identified conflict should be regarded as non-minor and therefore result in his withdrawal from the meeting when regulatory issues are being considered.

3.2.4 Where a Board Member attracts personal responsibility, either directly or indirectly, it may be appropriate to resign from the Board or to stand down, temporarily, until the issues are properly and fairly determined. Guidance on these circumstances is contained in Annex 2.

4 Committee Meetings

4.1 Exactly the same principles apply to the involvement of Directors in meetings of Committees of the Board – when they are taking formal decisions on behalf of the LME rather than making recommendations to the Board - as apply to meetings of the Board. For the specialist Committees interpretation of what constitutes a conflict of interest should take full account of their detailed work and their need for expert and practical knowledge and experience. Normal day to day business involvement with the metal, trading, warehousing, product etc will not constitute a conflict of interest.

In the event of any uncertainty as to the existence or materiality of a conflict with regard to the specialist Committees, the matter should be referred to the Deputy Chief Executive, who is also Executive Director: Regulation and Compliance, or if he is not available, to the General Counsel & Head of Enforcement. If an issue arises during a Committee meeting, the matter should be referred to a “non-conflicted” Director (as that term is defined at 4.2 below) sitting on the Committee or, if none, the relevant part of the meeting should be adjourned whilst the matter is referred to such a person.

4.2 The most common serious conflicts arise in relation to the exercise of the LME's emergency intervention powers in respect of “undesirable situations” in the market. To deal with that, the Board has established a Committee comprised of the people set out below and has delegated its powers of intervention to that Committee, so conflicts at Board level should not arise in relation to the exercise of those powers.

The persons currently on the Committee, including the “non-conflicted” Directors are: Sir Brian Bender, Ms Catherine Claydon, Mr Phillip Crowson, Ms Barbara Dohmann QC, Mr John Foyle and Mr Paul Richardson.

5 Records and Sanctions

- 5.1 Records of matters disclosed will be kept by the LME.
- 5.2 Failure to comply with the legal requirements in relation to conflicts of interests could have serious consequences, including disciplinary action against staff and loss of office for Directors.

Please sign below to signify your acceptance of the terms of this note.

I hereby agree to comply with the above guidance which I have read, together with the Code of Conduct and the Note on Personal Responsibility of Board Members referred to in it.

Name

Signature

Date

Board Member for (select relevant LME entity):

- The London Metal Exchange Limited
- LME Holdings Limited



Securities and
Investments Board

Conflicts of Interest in Regulatory Authorities

A Code of Conduct

August 1993

LME-003316

Conflicts of Interest in Regulatory Authorities

A Code of Conduct

Introduction

1. Decision-takers in any organisation have a range of activities and associations. Although breadth of experience is generally an asset in decision-taking, it will also often give rise to situations of conflict of interest.
2. The regulatory system established under the Financial Services Act is practitioner-based. Practitioners play a major part in the governance of all the regulatory authorities - in SIB itself, in recognised self-regulating organisations, professional bodies and investment exchanges, and in the recognised clearing house. The Act accordingly imposes requirements which build in checks and balances, such as the requirement for the governing bodies of SIB and SROs to have non-practitioner members, and the responsibility of recognised bodies to SIB. In some cases, particularly where exchanges are concerned, some conflicts are avoided by limiting practitioner involvement to a strategic, rather than an operational, role.
3. However, these provisions do not diminish the need for each body to have its own arrangements to deal adequately with conflicts of interest. Indeed, it must be an essential element in enabling the regulators to command public confidence that practitioner-based regulation is not capable of criticism as self-interested regulation.
4. Regulatory decisions cannot command confidence, and therefore cannot be effectively supported and enforced, unless they are taken, and can be seen to be taken, with full information and free from any suggestion of improper influence.
5. The regulators are entrusted with far reaching powers. These need to be exercised in the interests of good regulation, rather than for any personal purposes of the individuals concerned. In addition, regulatory authorities have access to confidential information. This must similarly be used only in the interests of good regulation, rather than for the personal purposes of those aware of it.
6. It is therefore important from the viewpoint of the regulatory authorities, of the individuals involved, and of those affected by their decisions, that conflicts of interest which do arise should be identified and effectively dealt with.
7. From the outset, the various regulatory authorities needed to have in place well-considered arrangements to deal with conflicts of interest. This has needed to be accompanied by a sound understanding of the need for vigilance in dealing with conflicts.
8. This Code of Conduct now codifies the standards applicable within SIB and within bodies recognised by SIB in the areas in which they are responsible to SIB. It has been prepared after consultation with self-regulating organisations, professional bodies and investment exchanges recognised by SIB, and builds on the existing arrangements.
9. The Code is designed to maintain justified confidence in the regulatory system, by ensuring that:
 - those providing information can be confident that it will be properly handled; and
 - regulatory decisions are not improperly influenced by conflicts of interest.

In setting out these overall standards, the Code of Conduct is designed to encapsulate the standards which would apply under the ordinary law, which sets rigorous standards for dealing with conflicts both for fiduciaries, and for those exercising public functions. It is also designed to reflect the high standards of integrity expected of professionals. However, the Code leaves room for more detailed rules and procedures to apply in particular areas.

10. An important object of the Code of Conduct is to assist those involved in decision-taking to identify for themselves conflicts of interest which may arise and to be aware of the appropriate action which may need to be taken to deal with them.
11. The primary responsibility for ensuring the proper handling of a conflict of interest lies with the individual with the conflict. This Code is designed to reinforce, rather than replace personal integrity.
12. Understanding of conflicts, and of ways of dealing with them is, however, only one element in effectively minimising and managing conflicts of interest. It is also important that regulatory authorities have in place, and operate, procedures for giving effect to the standards set by the Code. The Code is not an end in itself, but a means to more effective handling of conflicts.
13. This means that regulatory authorities have to be ready not only to adopt the standards set by the Code and put in place supporting procedures, but also to review their operation and effectiveness from time to time and to make any necessary adjustments.

What is a Conflict of Interest?

Conflicts of interest

14. A conflict of interest arises in a situation where an individual with responsibility to act in the interests of others may be affected in his action by a personal interest or association of his own.

Examples of conflicts

15. Conflicts of interest may arise in various ways, for example, as a result of:
 - the individual's direct or indirect financial interest in the matter;
 - a direct or indirect financial interest held by a commercial undertaking with which the individual has connections;
 - a present or past business or personal association or relationship, whether of warmth or antipathy, with those affected or likely to be affected;
 - a responsibility, for example, as a trustee, to act in the interest of one or more other persons;
 - an expectation of a future interest (for example, future employment);
 - a previous association with the matter;
 - an interest arising from membership of a society or of a common interest grouping, such a trade association;
 - sectional interests of a sector with which the individual is connected, for example, of the stockbroking or life assurance sectors.

Impact of conflicts of interest

16. Not all of these will necessarily give rise to a significant conflict of interest in every case. This code of conduct applies to conflicts of interest only where an independent third party might reasonably take the view that there is a real risk that the impartiality of the individual's judgment or course of action might be affected by the conflicting interest.

Tackling Conflicts

Problems created by conflicts

17. In deciding how to deal with a conflict of interest, it is important to recognise that different conflicts can give rise to different problems.
18. The main risks are that:
- the quality, and indeed validity, of regulatory decisions may be adversely affected;
 - the efficiency and speed of regulatory decision-taking may be impeded;
 - regulatory information may be used for private or commercial gain, reducing the willingness of others to supply it.
19. In addressing these problems, three main principles should be followed.

Main Principles

Regulatory action

20. Individuals must take effective steps to ensure that regulatory action is, and is seen to be, unaffected by any conflict of interest, and must accordingly ensure that any conflict of interest to which they may personally be subject does not affect the impartiality of regulatory action or create a risk that that action could be called into question.

Organisational structure

21. Regulatory authorities must structure themselves, and particularly their governing bodies and committees, so that they can continue to take proper regulatory decisions notwithstanding any conflicts of interest which may arise, for example, by having, where necessary, fall-back arrangements for decision taking.

Use of information

22. Individuals in possession of information received in connection with their regulatory functions must not misuse this information and must do all they can to ensure that it is used for proper regulatory purposes.

Applying the Main Principles

Disclosure

23. In applying these principles in dealing with a conflict of interest, the starting point will generally be to disclose it. This enables others, who are not affected by the conflict, to assist in deciding how it should be managed. And if disclosure is timely, it enables action to be taken to deal with it without affecting the quality or promptness of regulatory action.
24. Sometimes, it will be desirable for potential conflicts of interest to be covered in a general advance disclosure. This may be the case, for example, where decisions which might be affected by the conflict may be expected to come up regularly, and continuing arrangements are needed to minimise the effect of the conflict.
25. However, except where an individual's connection with a particular area of business, such as stockbroking, is well-known, disclosure must also be made at any time that the conflict becomes relevant. A general advance disclosure is no substitute for a specific disclosure in such a case.
26. There may, exceptionally, be a case in which it is acceptable for an individual with a conflict simply to withdraw from involvement in the matter concerned, without disclosing the interest. This may be appropriate, for example, where disclosure of the conflict could itself involve breach of the individual's duties (for example, duties of confidentiality relating to a proposed takeover). However, the individual in such a case should ensure that his non-involvement is clearly established.

Safeguards following disclosure

27. Sometimes, the risk posed by a conflict of interest will mean that safeguards beyond disclosure need to be introduced. This will depend on the nature and directness of an individual's interest, and the nature and importance of the problem to which it gives rise.
28. Accordingly, where disclosure alone is insufficient, and the problem concerns the quality or validity of *regulatory decision-taking*, it will generally be right for the individual concerned not to take part in the decision-taking process. This will mean that he does not vote and takes no active part in discussions, for example, by contributing to them or chairing them. It may also mean that he is not physically present at them, for example, if his presence could inhibit free debate.
29. Likewise, where disclosure alone is insufficient and the problem concerns the *use of information*, it will generally be right for the individual concerned not to be given access to the information. This will mean excluding him from distribution of documents, or attendance at meetings, on the subject concerned.
30. In some cases, the application of these safeguards may have such a regular and significant impact on an individual's role that effective and prompt decision-taking means that he needs to stand down from a position he holds. As an obvious example, it would not be appropriate for a member of an admission committee also to be a member of a body which decides on appeals against refusal of admission.

Examples

31. While it is recognised that there will not always be simple answers, it may help to give some illustrations of possible conflicts of interest and ways of dealing with them:

- the individual is an industry practitioner, known for his expertise in a particular sector in the industry, who is called on to take part in *rule-making* for that sector: his interest as a current practitioner need not disqualify him, but the organisation needs to remember that it is not responsible to practitioners alone;
- the individual has a close link with an applicant for a *waiver of rules*, but without any direct financial interest, for example, because he has been a consultant to its dominant shareholder: he should not take part in the decision;
- the individual has some form of financial interest in the grant of an *application for membership*, for example, because he has a shareholding in the applicant: he should not take part in the decision on its admission or be present at it;
- the individual has a financial interest in an organisation whose business may be affected significantly by competition from a firm: depending on the closeness of the conflict, it may be right for him not to take part in a decision to *discipline* the firm or be present at it;
- the individual has a financial interest in a firm, where *confidential information* is received about a significant competitor: depending on the nature and the extent of the interest, and the nature of the information, it may be right for him not to be given that information;
- there is a regulatory need for *transfer of information* to another regulator: the individual should not impede the transfer of the information on the ground that it shows him (or his organisation) in a bad light;
- the individual is aware that *intervention action* is about to be taken against a firm: he should not disclose that information to market practitioners to enable them to reduce their exposure to the firm, or use the information for such a purpose.

Guidance

32. Guidance on the handling of a conflict of interest should be sought when it is disclosed. Those responsible for guidance or decision-taking on the handling of conflicts of interest should always look at the issue from the viewpoint of an outsider. Decisions on handling conflicts of interest must be publicly defensible.

Supplementary

Record keeping

33. Records should be kept (by people other than those who have the conflict of interest) of disclosures of conflicts of interest and the steps taken to handle them.

Sanctions

34. It should be clear that breach of the code could lead to disciplinary action against staff, up to and including dismissal. It should be equally clear that a breach by a director could lead to his loss of office.

Application of the Code

35. The standards set by this code apply equally to directors and staff of regulatory authorities. Included in the expression, 'directors' are any members of the governing bodies or committees of the regulatory authority by whatever name they are called. Included in the expression 'staff' are temporary staff and consultants attached to the regulator from time to time. Although those standards may not be capable of direct application to those with close connections to directors and staff of regulatory authorities, conflicts may on occasion arise as a result of such connections in a way which brings these standards into play.

Availability of the Code

36. A copy of the standards set by this Code should be given to everyone to whom they apply and made available on request.

1. This note offers guidance to SIB Board members in cases where regulatory action or legal or disciplinary proceedings may raise a question about resignation from the Board.

General principles

2. SIB will expect any Member of its Board to resign if he or she personally is found to have broken the law in any way which brings his or her honesty or judgement materially into question.
3. Where, short of that, any finding in disciplinary or analogous proceedings by an FS or other regulatory agency (including any professional body) has resulted in criticism of the honesty or judgment of the Board member personally, then resignation from the Board of SIB is the only proper course.
4. Where any such finding results in criticism, not of the Board member personally, but of the Board member's company or group, then, if he is obliged to or decides to resign from his position in the company or group for reasons of personal accountability, he should also offer to resign from the SIB Board.
5. Resignation from the SIB Board may also be appropriate in other cases, for example where such criticism contains any 'sting' so far as the individual is concerned. 'Sting' means personal responsibility, that is where a reasonable person in the Board member's position would conclude that he bore any significant share of the blame for the problem in question. For instance, if the person were aware of the malpractice in his company or group, and under its normal management or governance arrangements were capable of or responsible for preventing or correcting it, there may well be a personal sting to the criticism. Personal responsibility will be more easily established in the case of executive than of non-executive appointments.

Further detail

6. No-one should be expected to accept personal responsibility in advance of formal decisions arrived at by a proper and fair process. Mere suggestions of malpractice, impropriety or carelessness (whether made publicly or otherwise) are not conclusive, if the Board member honestly and reasonably believes that he has nothing to answer for. Any Board member should keep the Chairman informed of any potential issue of this kind, and, to save the SIB Board any possible embarrassment, may find it appropriate, or be advised, to stand down temporarily until the issues are properly and fairly determined.
7. Criticism of honesty or conduct in respect of a long period or a pattern of failures will be more serious than if the incident leading to the criticism is an isolated one. But isolated incidents should not be considered on their own where the company or group has attracted material adverse criticism in the past.
8. In assessing the extent of real personal responsibility there will be value in the well informed and dispassionate judgement of colleagues on the SIB Board, or, indeed, on the relevant company or group Board. Their judgment should in turn be founded on what they would think the right course to be for them if they were in the same position.