Appendix 1

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

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**[1]
Brokerage				
Dealing				
Corporate finance service				

1 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.

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?

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

3.1 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

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

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

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.

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.

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.

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**[2]	**Details of regulation**	**Regulatory responses to noncompliance (Sanctions/remedies)**
Churning				
Front-running				
Unfair practices in analysis report preparation and distribution[3]				
Conflict of interests between clients in order aggregation and allocation of securities				

2 E.g., laws / government rules, industry self-regulation, or intermediary's internal controls

3 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

Others				

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)
CIS operation vs. proprietary trading				
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				

Type of conflict of interests		Whether it is regulated (Yes / No)	Regulatory means	Details of regulation	Regulatory responses to non-compliance (Sanctions/remedies)
	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				
CIS operation / sales of CIS interests vs. brokerage					
	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				

Type of conflict of interests		Whether it is regulated (Yes / No)	Regulatory means	Details of regulation	Regulatory responses to non-compliance (Sanctions/remedies)
	Leaking information obtained from CIS operation to premier brokerage clients				
	Others				
CIS operation vs. corporate finance services					
	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 ~ lease 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) or by phone (82-2-3145-7140).

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