

Nasdaq Iceland hf.

Conflicts of Interest Policy for the Board of Directors



Revision 1.2

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Conflicts of Interest Policy for the Board of Directors

1. Objective

The purpose of the Conflicts of Interest Policy for the Board of Directors (“the Policy”) is to further explain and define the responsibilities, obligations and potential or real conflicts of interest (collectively referred to as “conflicts of interest” or “conflict(s)” in this Policy) of the Board of Directors of Nasdaq Iceland hf. (“the Board”).¹

According to the Icelandic Act on Markets in Financial Instruments (No. 115/2021), as well as Markets in Financial Instruments Directive (Directive 2014/65/EU, hereinafter referred to as “MiFID II”) an operator of a regulated market is responsible for ensuring that the market is operated in a safe and appropriate manner. The operator must, among other things, identify and manage potential conflicts of interest between on the one hand the operator and the operator's owners and on the other hand the well-functioning of the regulated market.

Furthermore, ESMA has issued Guidelines on the management body of market operators and data reporting services providers (hereinafter ESMA Guidelines), which also describe the management of conflict of interests for Board members². According to the ESMA Guidelines “the management body of market operators and DRSPs should have a formal written conflicts of interest policy and an objective compliance process for implementing the policy”³.

Additionally, Nasdaq Iceland hf. (hereinafter “the Exchange”) has adopted a general Conflicts of Interest Policy that applies to all Exchange’s employees. Finally, Conflicts of Interest issues are also governed by the Code of Ethics⁴.

This Policy on Conflicts of Interest on the Board of Directors (“the Policy”) describes circumstances that may give rise to conflicts of interest within the Board of Directors of the Exchange (the “Board”) and sets out how they should be prevented, managed and disclosed. The Policy also sets out how to deal with non-compliance with the Policy.

2. Scope

This Policy applies to all conflicts of interest that may arise within the Board, for instance between Board members and the Exchange’s clients or between a Board member’s duties and responsibilities towards the Exchange and their engagement outside the Exchange.

All Board members must adhere to this Policy.

¹ The Conflicts of Interest Policy may be used for reference also for the purposes of this Policy.

² ESMA Guidelines 70-154-271 sec. 35 states that “the management body of market operators and DRSPs should have a formal written conflicts of interest policy and an objective compliance process for implementing the policy”.

³ Cf. ESMA Guidelines 70-154-271, section 35.

⁴ The Nasdaq Code of Ethics is a group policy affirming Nasdaq, Inc.’s dedication and commitment to the highest ethical conduct in all dealings, and outlines the obligations as an employee to ensure we meet that commitment. The Code of Ethics is adopted by all the companies within the Nasdaq Group.

3. Definition of a Conflict of Interest

A conflict of interest can be defined as a situation in which at least two stakeholders have competing interests (whether professional and/or personal) which may (actually or potentially) be an improper influence on the relevant decision-making process and make it difficult to fulfil their duties fairly.

Usually, risks of conflicts of interest arise in connection with prioritizing and a potential conflict of interest often becomes real in the context of decision making. It may involve one party being able to make a decision affecting another party, or holding/accessing information about another party, and the decision or the information received can be beneficial or harmful to the deciding/receiving party, or to a person related to that party. Further, the decision or the information generally involves a risk of violating the rights of another party.

A conflict of interest arises when:

- Your own private interests, personal or financial, interfere in any way (or could be perceived as interfering in any way) with the interests of the Exchange or its clients;
- Your activities might raise questions as to whether you are acting for personal gain or for the benefit of a third party, rather than in the Exchange's or its clients' interests;
- You or others could reasonably perceive that you owe a duty of loyalty to an entity or person whose business interests are not aligned with the Exchange's or its clients'; or
- Your activities might raise questions as to whether you are acting in the Exchange's commercial interests when you are acting on behalf of the Exchange, including for the benefit of a third party, in a way that conflicts with the regulatory requirements applicable to the exchange.

Conflicts of interest can arise between a service provider (i.e. a Board member also having the role of a service provider) and its client, or between different clients of the service provider.

Section 4 below describes specific circumstances that may give rise to conflicts of interest within the Board.

4. Potential Conflicts of Interest

Conflicts of interest may arise due to Board members:⁵

- Personal, professional or economic relationships with other persons or legal entities (such as shareholders of the Exchange or of a competing market operator);
- Past or present positions held;
- Personal, professional or economic relationships with other members of the Board of Directors or senior management (or with other entities within the Nasdaq Group);
- Other economic interests (e.g. loans to the member's or prospective member's company); or
- Other interests, including family interest, that may create actual conflicts of interest.

In particular, the following, non-exhaustive circumstances may give rise to (potential) conflicts of interest:⁶

⁵ See ESMA Guidelines 70-154-271, section 31.

⁶ See ESMA Guidelines 70-154-271, section 32.

- Involvement with a particular member firm to which the Board member has a connection (through participation (i.e. shareholdings reaching or exceeding 5% of voting rights), current or previous managerial positions, association or similar);
- Involvement in a decision taken at another Nasdaq Group Board meeting that is being decided upon at the Exchange's Board meeting;
- Involvement in a decision affecting another business unit where the Board member has a managerial position or a decision in regards to a licensed operation where the Board member is involved;
- A Board member not being able to commit sufficient time to execute his/her responsibilities within the Exchange⁷;
- A conflict with obligations towards another Nasdaq Group entity;
- Involvement with another market operator or an entity of a market operator's group (contractual, through participation, association, employment or similar) or association directly with a shareholder whose ownership reaches or exceeds 5% of voting rights of a market operator;
- A family member⁸ gains a role which causes a conflict of interest;
- A Board member gains a new position either within or outside the Nasdaq Group;
- A Board member has a connection to a service provider, including a service provider in an outsourcing arrangement;
- A Board member has a financial interest in a particular decision;
- A Board member has an Outside Business Activity that conflicts with the Exchange's interests,
- Any transaction that can constitute a conflict of interest, and
- Any other conflicts that may arise, including those pursuant to the provisions of the Icelandic Limited Liability Companies Act (No. 2/1995), Section 72.

5. Measures for Managing Conflicts of Interest

5.1 Group Activities

The Exchange is a subsidiary and affiliate of other entities within the Nasdaq Inc. ("Nasdaq Group").

The Exchange deems it acceptable for its executives to sit on more than one Board within the Nasdaq Group⁹. However, if a conflict of interest arises (see list below of Potential Conflicts of Interest in section 4 above), it must be managed in accordance with the procedure described in this Policy.

As mentioned above, the Exchange is a subsidiary and an affiliate of other entities within the Nasdaq Group. It is important that the Exchange has procedures in place to ensure that decisions made by other group entities, affecting the Exchange's operations and governance, cannot be made without the consent of the Board.

Therefore:

⁷ The number of contracts or mandates a Board member may have depends on the circumstances and is to be assessed individually.

⁸ Family members (relatives by blood, marriage) and cohabitants, and other equal person, who might be relevant in terms of conflict of interest for the Exchange.

⁹ More detailed overview and guidance on calculation of the number of directorships is provided in MiFID II art. 45 and chapter 5.2 of ESMA Guidelines 70-154-271.

- The Board can refrain from implementing a decision taken by another group entity where the decision could compromise the Exchange’s ability to comply with regulatory requirements and policies, or where the risks of the decision affecting the Exchange’s ability to operate appropriately would be too high.
- Where another Nasdaq Group Entity has prepared policies or plans, the board shall ensure that they are appropriate for the purpose before approving them.

5.2 Disclosure of circumstances

Each Board member/prospective Board member must promptly disclose circumstances described in sections 3-4 to the Chairman of the Board. Further, the Board member must refrain from participating in the decision-making in situations referred to in the Icelandic Public Limited Liability Companies Act (No. 2/1995), section 72. The Chairman of the Board shall decide on the measures to be taken in respect of the member, based on the particular facts and circumstances. Measures may include, but not limited to, the following:

- Requiring the Board member to leave the room for that discussion, or
- Requiring the Board member to abstain from voting on that agenda item.

If the Chairman of the Board is conflicted, he/she must notify the Board and appoint another Board member to deal with the matter in accordance with the above.

Any Board member’s refrainment from participating in the decision-making shall be documented in the Board meeting minutes.

The existence of a circumstance, which may give rise to a conflict of interest, does not automatically preclude a member from being part of the Exchange’s Board.

5.3 Appointment of new Board members

Prior to the appointment of a prospective Board member, any circumstances which may give rise to a conflict of interest or actual conflicts of interest as described above under sections 3 and 4, are assessed. Where appropriate, mitigating measures as described in this section 5 are taken¹⁰.

After the appointment, any new circumstance, which may give rise to a conflict of interest or new actual conflict of interest, should be disclosed and the Board should approve the mitigating measures.¹¹

5.4 Permanent conflicts of interest

If a conflict of interest arises that may be of a permanent nature, the Board member should consider their resignation from the Board.

5.4 Repeated conflicts of interest

¹⁰ See ESMA Guidelines 70-154-271 section 34.

¹¹ See ESMA Guidelines 70-154-271 section 34.

If the Chairman of the Board finds that a Board member is frequently conflicted, he/she may ask the member to resign from their position. This is in order to benefit the Board and ensure there is an adequate challenge and discussion in all aspects of the governance of the Exchange.

5.5 Outside business activities¹²

A Board member shall to the extent possible avoid outside business activities that could create conflicts of interest or the appearance of conflicts of interest. Prior to the engagement in outside business activities, a Board member must apply for approval, and the engagement must be disclosed¹³. The applying Board member shall disclose any circumstances that may give rise to conflicts of interest or the appearance of conflicts of interest. Then the potential/existing conflict of interest should be assessed and mitigating measures decided on. Any material changes in the circumstances should be reported to the Board.

Notwithstanding the above, a Board member may hold a position in another Nasdaq Group Board without prior approval, provided that the Board member can commit enough time and independence of mind with respect of his/her engagement in the Exchange¹⁴. However, such intra-group Board membership shall be disclosed to the Board.¹⁵ If another type of conflict of interest is known, the Board member must apply for approval, and it will be assessed if such a Board membership is appropriate and/or tolerated.

5.6 Conflicts of interest assessment

Compliance Officer of the Exchange will facilitate an assessment of conflicts of interest of a Board member prior to the commencement of the tenure, and in connection to any changes disclosed by the Board member.

5.7 Procedures for dealing with non-compliance¹⁶

Any non-compliance with this Policy should be escalated to the next Board meeting or immediately if necessary and the Board shall decide on measures to be taken.

5.8 Transactions with related parties¹⁷

Transactions between Board members and their related parties¹⁸, which could constitute a conflict of interest or be perceived as a conflict of interest in relation to the Exchange, shall be carried out on arm's length basis.

¹² See the ESMA Guidelines 070-154-271, section 13 and 31.

¹³ This approval process is required for Nasdaq employees in accordance with the process set forth in the Code of Ethics. The disclosure of outside business activities will take place in connection with conflicts of interest assessment and annually in connection with the competence assessment process.

¹⁴ See further guidance on sufficient time commitment and the assessment of independence of mind in chapters 5.2 & 5.5 of ESMA Guidelines 70-154-271 respectively.

¹⁵ The disclosure of outside business activities will take place in connection with the annual competence assessment and Board work evaluation.

¹⁶ See ESMA Guidelines 70-154-271, section 35 (g).

¹⁷ See ESMA Guidelines 70-154-271, section 35 (f).

¹⁸ For the purpose of this section G, 'related parties' shall mean any of the following: a) a spouse, or a partner considered to be equivalent to a spouse in accordance with national law, b) a dependent child, in accordance with national law, c) a relative who has shared the same household for at least one year on the date of the transaction concerned, or d) a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (a), (b) or (c), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

A Board member shall disclose any such transaction with a related party in advance to the Board. The Board shall then assess whether the transaction may be approved.

5.9. Information to the national competent authority

National competent authority (the Financial Supervisory Authority of the Central Bank of Iceland) shall be notified about any material conflicts of interest identified and escalated to the Board, and the mitigating measures taken¹⁹.

6. Policy Administration

This Policy shall be made public²⁰.

7. Review

This Policy shall be reviewed annually and when required by the Compliance Officer and approved by the Board at least every second year.

¹⁹ See ESMA Guidelines 70-154-271 section 36.

²⁰ See ESMA Guidelines 70-154-271 section 36.