

Appendix 1

In this appendix underlining indicates new text and striking through indicates deleted text.

*This text includes amendments made following CP106: Regulation of Arranging, Representative Offices and Financial Promotions.



The DFSA Rulebook

General Module

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2. FINANCIAL SERVICES

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2.2 Financial Services activities

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2.2.2 The following activities are specified for the purposes of Rule 2.2.1:

- (a)
- (y) Arranging Credit and Advising on Credit; and
- (z) Operating a Loan-based Crowdfunding Platform.

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Permitted Financial Services for Authorised Firms

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2.2.10D A Loan-based Crowdfunding Operator must not carry on either of the following activities:

- (a) Managing Assets; or
- (b) Advising on Credit.

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2.5 Providing credit

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Exclusions

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2.5.3 A Loan-based Crowdfunding Operator does not Provide Credit to the extent that it carries on the activity of Operating a Loan-based Crowdfunding Platform.

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2.22 Operating an alternative trading system

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Exclusions

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2.22.3 A Loan-based Crowdfunding Operator does not Operate an Alternative Trading System to the extent that it carries on the activity of Operating a Loan-based Crowdfunding Platform.

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2.28 Arranging Credit and Advising on Credit

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Exclusions

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2.28.8 A Loan-based Crowdfunding Operator does not Arrange Credit to the extent that it carries on the activity of Operating a Loan-based Crowdfunding Platform.

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2.29 Operating a Loan-based Crowdfunding Platform

2.29.1 (1) In Rule 2.2.2, a Person carries on the activity of Operating a Loan-based Crowdfunding Platform if the Person either:

- (a) carries on both of the following activities:
 - (i) operates an electronic platform that facilitates the bringing together of potential lenders and borrowers; and
 - (ii) administers a loan agreement that results from operating the electronic platform; or
- (b) provides, in connection with it carrying on both of the activities in (a), a facility that assists a lender under a loan agreement referred to in (a) to transfer his rights and obligations under the loan agreement to another Person.

(2) In this Rule:

- (a) “administer” a loan agreement means:
 - (i) provide information or perform other duties under the loan agreement on behalf of the borrower or lender;
 - (ii) take steps to obtain the repayment of the loan; or
 - (iii) exercise rights or obligations under the loan agreement on behalf of the borrower or lender;
- (b) “electronic platform” means a website or other form of electronic media.

(3) A Person (A) administers a loan agreement for the purposes of this Rule if A performs a function referred to in (2)(a) itself or through another Person who has been appointed by A, acts under an arrangement with A or acts at A's direction.

Guidance

1. The activity in Rule 2.29.1(1)(a) requires a Person not only to operate an electronic platform that brings together lenders and borrowers, but also to administer loan agreements that result from the bringing together of lenders and borrowers. The

- administration may be carried out by the platform operator itself or by another person acting under an arrangement with, or at the direction of, the platform operator.
2. The activity in Rule 2.29.1(1)(a)(i) only covers electronic systems such as online portals and does not include, for example, meetings to facilitate a loan.
 3. The operator of an electronic platform may in some cases provide a facility that assists lenders using the platform to transfer their rights and obligations under a loan agreement to another lender. Providing such a facility will also fall within the definition of Operating a Loan-based Crowdfunding Platform (see Rule 2.29.1(b)).
 4. Operating a Loan-based Crowdfunding Platform will apply to a number of types of crowdfunding services such as ‘peer to peer’ lending, ‘peer to business’ lending and ‘business to business’ lending. However, it should be noted that COB Rule 11.1.8 requires a borrower to be a Body Corporate.
 5. Other types of crowdfunding such as ‘reward-based crowdfunding’ (i.e. where a financial contribution is made in anticipation of a benefit in existing or future goods or services), and ‘donation-based crowdfunding’ (i.e. where contributions are made in support of a social cause), will not constitute an activity referred to in Rule 2.29.1 as no loan is involved. Rule 2.29.1 also does not cover crowdfunding models where the investor receives Securities, which are likely to involve a different Financial Service.
 6. An Operator of a Loan-based Crowdfunding Platform will need an endorsement on its Licence to deal with Retail Clients (see Rule 2.2.8) if it carries on its activities with a borrower or lender that is a Retail Client. It will also need an endorsement on its Licence if it holds or controls Client Assets (see Rule 2.2.10A).

Exclusions

- 2.29.2** A Person does not carry on the activity referred to in Rule 2.29.1 if the Person who carries on those activities is itself the sole lender on the electronic platform.

Guidance

The activity in Rule 2.29.1 does not cover an electronic platform where the operator itself is the sole lender providing the loans e.g. if it is a credit provider and provides an electronic facility for use by its clients. However, in such a case the Person is likely to be carrying on the Financial Service of Providing Credit.

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2A. DEFINITION OF FINANCIAL PRODUCT IN THE GENERAL PROHIBITION AGAINST MISCONDUCT

Definition of Financial Product in the general prohibition against misconduct

2A.1.1 For the purposes of Article 41B of the Regulatory Law, a “Financial Product” means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, ~~or a Contract of Insurance~~ or a Crowdfunding Loan Agreement.

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3. FINANCIAL PROMOTIONS

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3.3 Definition of a Financial Product

- 3.3.1** Pursuant to Article 41A(4) of the Regulatory Law, “financial product” in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance or a Crowdfunding Loan Agreement.

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APP 1 DEPOSITS

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A1.1.3 A sum is not a Deposit if it is received:

- (a) by a lawyer acting in his professional capacity;
- (b) by an accountant acting in his professional capacity;
- (c) by an Authorised Firm or an Authorised Market Institution authorised under its Licence to carry on any one or more of the following Financial Services:
 - (i) Dealing in Investments as Principal;
 - (ii) Dealing in Investments as Agent;
 - (iii) Arranging Deals in Investments;
 - (iv) Managing Assets;
 - (v) Operating a Collective Investment Fund;
 - (vi) Effecting Contracts of Insurance;
 - (vii) Carrying Out Contracts of Insurance;
 - (viii) Operating an Exchange;
 - (ix) Operating a Clearing House;
 - (x) Insurance Intermediation;
 - (xi) Insurance Management;
 - (xii) Managing a Profit Sharing Investment Account;
 - (xiii) Providing Trust Services; or
 - (xiv) Arranging Credit and Advising on Credit; or
 - (xv) Operating a Loan-based Crowdfunding Platform.

in the course of or for the purpose of any such Financial Service disregarding any applicable exclusions in chapter 2; or

(d) by a Person as consideration for the issue by him of a Debenture.

APP2 INVESTMENTS

A2.2 Definitions of specific securities

A2.2.1 For the purposes of Rule A2.1.2:

Shares

- (a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

Debentures

- (b) a Debenture is an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:
- (i) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (ii) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
 - (iii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; ~~and~~
 - (iv) a Contract of Insurance; and
 - (v) a Crowdfunding Loan Agreement;

Guidance

1. A Debenture may include a bond, debenture stock, loan stock or note. Certain Islamic products ("Sukuk") structured as a debt instrument can also fall within this definition.
2. If the interest or financial return component on a debt instrument is to be calculated by reference to fluctuations of an external factor such as an index, exchange rate or interest rate, that does not prevent such an instrument being characterised as a Debenture.

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