

Appendix 2

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



The DFSA Rulebook

Conduct of Business Module

(COB)

2 CLIENT CLASSIFICATION

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2.2 Overview

Guidance

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Professional Clients

5. There are three routes through which a Person may be classified as a Professional Client:
 - a. 'deemed' Professional Clients under Rule 2.3.4. As these Persons have significant assets under their control, and, therefore, either possess, or have the resources to obtain, the necessary expertise to manage such assets, they can be classified as 'deemed' Professional Clients without having to meet any additional net asset and expertise criteria;
 - b. 'service-based' Professional Clients under Rule 2.3.5, ~~or~~ Rule 2.3.6 or Rule 2.3.6A. Due to their inherent nature, certain Financial Services activities such as credit provided to an Undertaking for business purposes ('commercial credit'), ~~and~~ advisory and arranging activities relating to corporate structuring and financing and crowdfunding services provided to a Body Corporate that is a borrower or an Issuer, are generally provided to Persons with sufficient expertise to obtain such services or are of relatively low risk to the Client. Therefore, a Person to whom such a Financial Service is provided can be classified as a 'service-based' Professional Client; and
 - c. 'assessed' Professional Clients under Rules 2.3.7 and 2.3.8. These Persons are either individuals or Undertakings which can be classified as a Professional Client only if they meet the specified net assets and expertise requirements set out in Rules 2.4.2 and 2.4.3.

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2.3 Types of Clients

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Professional Clients

- 2.3.3** (1) An Authorised Firm may classify a Person as a Professional Client if that Person:
- (a) meets the requirements to be:
 - (i) a “deemed” Professional Client pursuant to Rule 2.3.4;
 - (ii) a “service-based” Professional Client pursuant to either Rule 2.3.5, ~~or~~ Rule 2.3.6 or Rule 2.3.6A; or
 - (iii) an “assessed” Professional Client pursuant to either Rule 2.3.7 or Rule 2.3.8; and
 - (b) has not opted-in to be classified as a Retail Client in accordance with the requirements in Rule 2.4.1.
- (2) If an Authorised Firm becomes aware that a Professional Client no longer fulfils the requirements to remain classified as a Professional Client, the Authorised Firm must, as soon as possible, inform the Client that this is the case and the measures that are available to the firm and the Client to address that situation.

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‘Service-based’ Professional Clients

Guidance

Rule 2.3.5, ~~and~~ Rule 2.3.6 and Rule 2.3.6A each set out different circumstances in which a Person can be classified as a ‘service-based’ Professional Client. The professional status allowed under these ~~two~~ three ‘service-based’ Professional Client categories can only be used for those ~~two~~ three Financial Services and not for any other Financial Service provided to the same Client. If such a Client also obtains other Financial Services from the same firm, unless

the Client can qualify either as a 'deemed' or 'assessed' Professional Client, that Client will need to be classified as a Retail Client for those other Financial Services.

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2.3.6A For the purposes of the reference in Rule 2.3.3(1)(a)(ii) to this Rule, a Person is a 'service-based' Professional Client if:

- (a) the Financial Service being provided to the Person is Loan Crowdfunding or Investment Crowdfunding; and
- (b) the Person is a Body Corporate and is using the service to borrow funds from lenders or to obtain funds from investors.

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3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, AND PROVIDING TRUST SERVICES AND OPERATING A CROWDFUNDING PLATFORM

3.1.1 This chapter applies to an Authorised Firm which carries on or intends to carry on:

- (a) Investment Business;
- (b) Accepting Deposits;
- (c) Providing Credit; ~~or~~
- (d) Providing Trust Services; or
- (e) Operating a Crowdfunding Platform.

except where it is expressly provided otherwise.

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6 ADDITIONAL RULES - INVESTMENT BUSINESS

6.1 Application

- 6.1.1 (1) The Rules in this chapter apply to an Authorised Firm when conducting Investment Business.
- (2) Sections 6.11, 6.12, 6.13 and 6.14 also apply to an Authorised Firm in respect of Client Assets that it holds or controls (within the meaning of Rule 6.11.4) in the course of, or in connection with, Operating a Crowdfunding Platform.
- (3) The requirements in this chapter apply to an Authorised Firm regardless of the classification of the Client, unless expressly provided otherwise.

Guidance

The requirements in chapter 3 also apply to the conduct of Investment Business.

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6.12 Client money

- 6.12.1 All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business or the Operation of a Crowdfunding Platform in or from the DIFC is Client Money, except Money which is:
- (a) held by the Authorised Firm as a Bank in an account with itself, provided the Authorised Firm notifies the Client in writing that the Client Money is held by it as a Bank and not in accordance with this chapter;
 - (b) immediately due and payable by the Client to the Authorised Firm;
 - (c) belonging to another Person within the Authorised Firm's Group unless that Person is an Authorised Firm or Regulated Financial Institution and that Person has confirmed to the Authorised Firm, in writing, that the beneficial owner of the Money is a Person who is not part of the Authorised Firm's Group;
 - (d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and who is in compliance with Rule 6.11.3 (2);

- (e) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Firm, provided the cheque or other payable order is intended to be forwarded to the third party within 1 business day of receipt; or
- (f) Fund Property of a Fund.

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Client money provisions

6.12.2

- (1) An Authorised Firm in Category 4 must not hold Client Money, except if it does so in connection with it Operating a Crowdfunding Platform.
- (2) An Authorised Firm which holds or controls Client Money for a Client must, subject to (3), comply with the Client Money Provisions in App5.
- (3) Where the Client is a Market Counterparty, an Authorised Firm may exclude the application of the Client Money Provisions but only where it has obtained the prior written consent of the Market Counterparty to do so.

Guidance

In accordance with GEN chapter 8, an Authorised Firm which holds or controls Client Money must arrange for a Client Money Auditor's Report to be submitted to the DFSA on an annual basis.

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11 **CROWDFUNDING**

11.1 **Overview**

Guidance

1. This chapter applies to an Authorised Firm that Operates a Crowdfunding Platform (an ‘operator’).
2. A Crowdfunding Platform may be a Loan Crowdfunding Platform or an Investment Crowdfunding Platform. The key distinction is whether the Person providing funding on the platform enters into a loan agreement with the Person to whom it is providing funding or purchases an Investment (such as a Share, Debenture or Sukuk) issued by that Person.
3. The terminology used in this chapter varies according to the type of Crowdfunding:
 - (a) ‘borrower’, ‘lender’ and ‘loan’ for Loan Crowdfunding; and
 - (b) ‘Issuer’, ‘investor’ and ‘Investment’ for Investment Crowdfunding.
4. In this chapter, sections 1, 2 and 3 apply to all Crowdfunding Platforms (unless specified otherwise); section 4 sets out additional requirements for Loan Crowdfunding; and section 5 sets out additional requirements for Investment Crowdfunding.
5. In addition to the Rules in this section, an operator is required to comply with other parts of COB such as chapters 1, 2 and 3 and, if it holds or controls Client Assets, sections 6.11 to 6.14.
6. Both borrowers and lenders (in the case of Loan Crowdfunding) and Issuers and investors (in the case of Investment Crowdfunding) will be Clients of the operator. COB requirements will apply in relation to both types of Clients. Under section 3.3 and App 2, additional terms are required to be included in Client Agreements between a Crowdfunding Operator and its Clients (see Rules A2.1.5 and A2.1.6).
7. An operator will need to comply with relevant AML requirements, such as carrying out customer due diligence on Clients who are borrowers or lenders or Issuers or investors.
8. In the case of Investment Crowdfunding, the issue of Investments may result in the application of requirements under the Markets Law such as Market Abuse provisions or, if an offer is not an Exempt Offer, Prospectus requirements.

11.2 **Application and interpretation**

Application

- 11.2.1** This chapter applies to an Authorised Firm with respect to the Operation of a Crowdfunding Platform.

Interpretation

11.2.2

In this chapter:

- (a) “borrower” means a Person that has borrowed or is seeking to borrow money using a Loan Crowdfunding Platform;
- (b) “commitment period” means the period specified by the operator during which lenders may commit to lending money to a particular borrower or investors may commit to investing with a particular Issuer;
- (c) “cooling-off period”, for Investment Crowdfunding, means the period referred to in Rule 11.5.2 when an investor may withdraw his commitment to invest with an Issuer;
- (d) “investor” means an investor or potential investor using an Investment Crowdfunding Platform;
- (e) “lender” means a Person who:
 - (i) lends money under a loan agreement; or
 - (ii) by assignment has assumed the rights and obligations of a Person who has lent money under a loan agreement;
- (f) “loan agreement” means a loan agreement between a borrower and lender referred to in Rule 11.4.1;
- (g) “operator” means a Crowdfunding Operator;
- (h) “platform” means the website or other electronic media used to provide the service;
- (i) “service” means Operating a Crowdfunding Platform; and
- (j) “transfer”, in relation to a loan agreement, means the assignment by the lender of his rights and obligations under the agreement to another Person.

11.3

Requirements for Crowdfunding Platforms

Crowdfunding risk disclosure

11.3.1

An operator must disclose prominently on its website the main risks to lenders or investors of using a Crowdfunding Platform, including that:

- (a) the lender or investor may lose all or part of their money or may experience delays in being paid;

- (b) borrowers or Issuers on the platform may include new businesses and, as many new businesses fail, a loan to such a borrower or an investment with such an Issuer may involve high risks;
- (c) the lender may not be able to transfer their loan, or the investor may not be able to sell their Investment, when they wish to, or at all; and
- (d) if for any reason the operator ceases to carry on its business, the lender or investor may lose their money, incur costs or experience delays in being paid.

Information about default or failure rates

11.3.2

- (1) An operator must disclose prominently on its website:
 - (a) for Loan Crowdfunding, the actual and expected default rates for loans entered into on the platform; and
 - (b) for Investment Crowdfunding, the actual and expected failure rate of Issuers who use the platform.
- (2) The information referred to in (1) must:
 - (a) for actual default or failure rates, cover the period since the operator began providing the service;
 - (b) for expected default or failure rates, set out a summary of the assumptions used in determining those expected rates; and
 - (c) be presented in a way that is fair, clear and not misleading.

Guidance

- 1. Rule 11.3.2 requires a Loan Crowdfunding Operator to disclose historical information about the default rates of loans entered into on the platform. It also requires the operator to set out expected default rates in the future for loans entered into on the platform.
- 2. An Investment Crowdfunding Operator is required to disclose similar information about the failure rates of Issuers on its platform. In this context, failure of an Issuer should include where an Issuer defaults on payments, becomes insolvent, is wound up or ceases to carry on business.
- 3. Information about default and failure rates is intended to assist potential lenders or investors to assess the risks of lending or investing using the platform.
- 4. If an operator is a start-up entity, it may base the information on crowdfunding services provided by other members of the Group, provided it states clearly the basis for the information it provides.

Information about the service

- 11.3.3** An operator must disclose prominently on its website key information about how its service operates, including:
- (a) details of how the platform functions;
 - (b) details of how and by whom the operator is remunerated for the service it provides, including fees and charges it imposes;
 - (c) any financial interest of the operator or a Related Person that may create a conflict of interest;
 - (d) the eligibility criteria for borrowers or Issuers that use the service;
 - (e) the minimum and maximum amounts, if any, of loans or Investments that may be sought by a borrower or an Issuer using the service;
 - (f) what, if any, security is usually sought from borrowers or Issuers, when it might be exercised and any limitations on its use;
 - (g) the eligibility criteria for lenders or investors that use the service;
 - (h) any limits on the amounts a lender may lend or an investor may invest using the service, including limits for individual loans or investments and limits that apply over any 12 month period;
 - (i) when a lender or an investor may withdraw a commitment to provide funding, and the procedure for exercising such a right;
 - (j) what will happen if loans sought by a borrower or funds sought by an Issuer either fail to meet, or exceed, the target level;
 - (k) steps the operator will take if there is a material change in a borrower's or an Issuer's circumstances and the rights of the lender and borrower or Issuer and investor in that situation;
 - (l) how the operator will deal with overdue payments or a default by a borrower or an Issuer;
 - (m) which jurisdiction's laws will govern the loan agreement between the lender and borrower;
 - (n) arrangements and safeguards for Client Assets held or controlled by the operator, including details of any legal arrangements (such as nominee companies) that may be used to hold Client Assets;
 - (o) any facility it provides to facilitate the transfer of loans or the sale of Investments, the conditions for using the facility and any risks relating to the use of that facility;

- (p) measures it has in place to ensure the platform is not used for money-laundering or other unlawful activities;
- (q) measures it has in place for the security of information technology systems and data protection; and
- (r) contingency arrangements it has in place to ensure the orderly administration of loans or Investments if it ceases to carry on business.

Operator not to provide both regulated and unregulated crowdfunding services

11.3.4 An operator must ensure that it does not provide both regulated and unregulated crowdfunding services.

Guidance

Some crowdfunding services may not need to be authorised e.g. reward or donation crowdfunding that do not involve an Investment or loan or other services carried on with Persons in certain jurisdictions. An operator needs to ensure that it does not provide both regulated and unregulated crowdfunding services from the same legal entity. If it wishes to provide unregulated crowdfunding services, it should do so using a separate legal entity. This removes any risk that Clients of the Authorised Firm will not understand that parts of the service are unregulated.

Due diligence on borrowers or Issuers

11.3.5 An operator must not permit a borrower or an Issuer to use its service unless the borrower or Issuer is a Body Corporate.

- 11.3.6**
- (1) An operator must conduct due diligence on each borrower or Issuer before allowing it to use its service.
 - (2) The due diligence under (1) must include, as a minimum, taking reasonable steps to verify in relation to the borrower or Issuer:
 - (a) its identity, including details of its incorporation and business registration;
 - (b) the identity and place of domicile of each of its directors, officers and controllers;
 - (c) its fitness and propriety and that of each of the Persons referred to in (b);
 - (d) its financial strength, including checking financial statements;
 - (e) its financial history and past performance and its credit history, including checking with external credit agencies;
 - (f) any credentials or expertise it claims to have;

- (g) the valuation of its business, current borrowing or funding levels (if any) and the source of any existing borrowing or funding;
- (h) its business proposal;
- (i) its commitment and that of its directors, officers and controllers to the business, including how much capital they have provided and any potential flight risk; and
- (j) that its business is being carried on in accordance with applicable laws in the jurisdiction where it is based.

Guidance

1. The type of background checks the DFSA expects an operator to conduct under Rule 11.3.6(2)(c) include, for example, whether the Person has been:
 - a. found guilty of a criminal offence;
 - b. the subject of any finding in a civil proceeding of fraud, misfeasance or other misconduct;
 - c. the subject of a judgment or agreed settlement in a civil proceeding exceeding \$10,000;
 - d. disqualified from acting as a director or taking part in the management of a company; or
 - e. bankrupt or the director, or a person concerned in the management, of a company which has gone into liquidation or administration.
2. The purpose of the due diligence under Rule 11.3.6(2)(j) is to check that the business itself is lawful in the place in which it is being carried on i.e. that the owner has the necessary permits and that the activity is lawful. The borrower or Issuer should certify these matters and provide relevant documents where appropriate.

Disclosure of information about the borrower or Issuer

11.3.7

An operator must disclose prominently on its website relevant information about each borrower or Issuer, including as a minimum:

- (a) the name of the borrower or Issuer, the full name and position of each of its directors and officers and the full name of each controller;
- (b) the place of incorporation of the borrower or Issuer and the place of domicile of each director, officer and controller;
- (c) a description of the borrower's or Issuer's business;
- (d) the most recent financial statements, if any, of the borrower or Issuer and a warning that the operator gives no assurances about their accuracy;

- (e) the valuation of the borrower's or Issuer's business, its current borrowing levels and the source of its borrowing and its liquidity;
- (f) a detailed description of the proposal for which it is seeking funding including:
 - (i) the total funding sought;
 - (ii) how the funds will be used; and
 - (iii) the target level of funding sought and what will happen if that level is not met or is exceeded;
- (g) the results of the due diligence carried out by the operator on the borrower or Issuer and any limits on the due diligence that could be carried out;
- (h) any grading or rating by the operator of the borrower's or Issuer's creditworthiness, including:
 - (i) how the grading or rating has been assessed;
 - (ii) an explanation of what the different grading or rating levels mean; and
 - (iii) a clear statement that this should not be taken as advice about whether money should be lent to the borrower or invested with the Issuer;
- (i) for a loan or Debenture, the duration of the loan or Debenture, details of interest payable and any other rights attaching to the loan or Debenture;
- (j) for a Share issue, any rights attaching to the Share, such as dividend, voting or pre-emption rights;
- (k) whether any security is being provided and, if so, the circumstances in which it might be exercised and any limitations on its use;
- (l) if applicable, any other reward or benefit attaching to the loan or Investment and the terms on which it is available;
- (m) for a Share issue, whether investors have any protection from their shareholding being diluted by the issue of further Shares; and
- (n) that the borrower or Issuer, and information provided about the borrower or Issuer, are not checked or approved by the DFSA.

Proposals not to be advertised outside platform

11.3.8 An operator must:

- (a) not advertise a specific lending or Investment proposal that is available on its platform; and
- (b) take reasonable steps to ensure that borrowers and Issuers that use its platform do not advertise the lending or Investment proposal.

unless the advertisement is made on the platform and is accessible only to existing Clients who use the platform.

Guidance

- 1. Rule 11.3.8 does not prevent a Person such as a borrower or an Issuer from referring other Persons to the operator or providing a link to the operator’s website homepage. However, a link to a specific lending or investment proposal should not be displayed outside the platform if it is accessible to Persons who are not Clients of the operator.
- 2. If an Investment proposal is advertised to Persons who are not Clients of the operator, in addition to breaching Rule 11.3.8, this may constitute an Offer of Securities to the Public that requires a Prospectus, as the offer may no longer meet the conditions of the Exempt Offer exclusion for Crowdfunding Platforms in MKT Rule 2.3.1(m).
- 3. Rule 11.3.8 does not prevent an operator from generally promoting its crowdfunding service to potential Clients, provided it does not advertise a specific proposal.

Material changes affecting a borrower or Issuer

- 11.3.9**
- (1) This Rule applies if a material change occurs relating to a borrower or Issuer, its business, its proposal or the carrying out of its proposal.
 - (2) In this Rule, a “material change” means any change or new matter that may significantly affect the borrower’s ability to meet its payment obligations under the loan agreement or that may significantly affect an Issuer’s business or its ability to carry out its proposal.
 - (3) If the material change occurs during the commitment period, the operator must:
 - (a) disclose prominently on its website details of the material change;
 - (b) notify committed lenders or investors of the material change and require them to reconfirm their commitment within 5 business days; and
 - (c) if reconfirmation is not provided within the period specified in (b), cancel the commitment.

- (4) If the material change occurs after the commitment period, the operator must disclose prominently on its website:
 - (a) details of the material change;
 - (b) any change in the rights of the lenders and the borrower, or the investors and the Issuer, arising from the material change; and
 - (c) what steps, if any, the operator is proposing to take as a result of the change.
- (5) A disclosure or notification under (3) or (4) must be made as soon as practicable after the operator becomes aware of the material change.

Guidance

1. Rule 11.3.9 sets out the requirements that an operator must comply with if there is a material change affecting a borrower or Issuer, either during the commitment period or at a later time. A material change might include, for example, a change in the management, control or structure of the business, an event affecting its profitability, a change relating to its assets or a default in meeting another obligation.
2. A borrower or an Issuer is required, under its Client Agreement, to give reasonable advance notice to the operator of any material change in its circumstances (see Rule A2.1.6).
3. The DFSA expects that it would be only in limited circumstances that a material change would occur during the commitment period. This is because full information about the borrower or Issuer will only recently have been verified and published (see Rules 11.3.6 and 11.3.7). As a material change during the commitment period could significantly affect a lender or investor's decision, in addition to notifying investors or lenders, the operator must require anyone who has already committed to lend or invest to reconfirm their commitment. This reconfirmation is separate from the cooling-off period for investors under Rule 11.5.2 which starts when the commitment period ends.
4. If a material change occurs after the commitment period, in addition to notifying lenders or investors of the details, the operator is required to inform lenders or investors whether this affects their rights and whether the operator is proposing to take further steps e.g. to clarify the situation or to take action for a default.

Borrower or Issuer not to use other platforms

11.3.10

An operator must take reasonable steps to restrict a borrower or an Issuer from seeking funding on another crowdfunding platform during the commitment period.

Guidance

Allowing a borrower or an Issuer to use different platforms at the same time creates the risk that the borrower or Issuer might offer different terms and information about the proposal, causing potential confusion for lenders or investors and creating the potential for arbitrage by a borrower or an Issuer. This restriction only applies during the commitment period i.e. the

period during which lenders may commit to making loans to the borrower or investors may commit to investing with the Issuer.

Equal treatment of lenders and investors

11.3.11 An operator must ensure that lenders or investors who use its service are able to have access to the same information on its website about a borrower or an Issuer or a lending or investment proposal, and that access to the information is provided at the same time.

11.3.12 If an operator provides an auto-lending system or auto-investing system, or any other facility that provides some lenders or investors with the opportunity to lend or invest money ahead of other lenders or investors, it must disclose prominently on its website that some lenders or investors may have preferential access to better proposals.

Guidance

1. An 'auto-lending system' or 'auto-investing system' is a facility that automatically allocates certain loans or Investments to a lender or investor according to parameters chosen by the lender or investor. The availability of this type of facility creates the risk that other lenders may not be aware that the best lending or investment opportunities have already been allocated and that remaining lending or investment opportunities may be of lower quality.
2. Further, if an operator permits some lenders or investors using its service to lend or invest on terms that are better than those offered to other lenders or investors on the platform, a potential conflict of interest may arise between the interests of the different lenders or investors. The operator will need to consider under Rule 3.5.1 what steps it should take to ensure that other Clients are not prejudiced by the conflict of interest.

No suitability disclosure

11.3.13 If an operator provides an auto-lending system or auto-investing system, it must disclose prominently to lenders or investors who use the facility that no assessment is made that any loan or Investment selected by the system is suitable for the lender or investor.

Operator not to permit staff to use the platform

11.3.14 An operator must take reasonable steps to ensure that its officers and employees and their family members do not:

- (a) lend money or provide finance to a borrower or an Issuer;
- (b) borrow money from a lender or receive funding from an investor; or
- (c) hold any direct or indirect interest in the capital or voting rights of a borrower or lender or an Issuer or investor.

Guidance

1. Rule 11.3.14 is intended to ensure that staff of an operator do not enter into transactions with clients of the operator. This is because staff may have access to additional confidential information about a borrower or Issuer that is not available to clients. Such transactions may also create other conflicts of interest.
2. The Rule does not prohibit an operator itself from lending money to a borrower, or investing in an Issuer, that uses the platform. However, if it does so, it is likely to be carrying on a separate Financial Service of Providing Credit or Dealing in Investments as Principal and require an additional authorisation for that activity. As well as complying with additional Rules relating to capital and the conduct of that business, it would need to take reasonable steps to prevent or manage conflicts of interests that may arise between its interests and those of its Clients (see Rule 3.5.1). If the operator discloses conflicts of interests to Clients under Rule 3.5.1, it should disclose details of each specific transaction that creates a potential conflict of interest.

Forums

11.3.15

If an operator provides a means of communication (a “forum”) for lenders and borrowers or Issuers and investors to discuss funding proposals made using the service, it must:

- (a) refer lenders or investors to the forum as a place where they can find, or take part in, further discussion about proposals, while clearly stating that the operator does not conduct due diligence on information on the forum;
- (b) restrict posting of comments on the forum to Persons who are Clients using the service;
- (c) ensure that all Clients using the forum have equal access to information posted on the forum;
- (d) require a Person posting a comment on the forum to disclose clearly if he is affiliated in any way with a borrower or an Issuer or is being compensated, directly or indirectly, to promote a proposal by a borrower or an Issuer;
- (e) take reasonable steps to monitor and prevent posts on the forum that are potentially misleading or fraudulent;
- (f) immediately take steps to remove a post, or to require a post to be deleted or amended, if the operator becomes aware that (d) or (e) have not been complied with; and
- (g) not participate in discussions on the forum except to moderate posts or to take steps referred to in (f).

Facility for transfer of loans or Investments

- 11.3.16** If an operator provides a facility that assists the transfer of rights or obligations under a loan agreement or the sale of Investments, it must ensure that:
- (a) the facility relates only to loans or Investments originally facilitated using its service;
 - (b) transfers can take place only between lenders or investors who are already Clients using the service and have initially lent money under loan agreements or initially subscribed for Investments using the service;
 - (c) in the case of a loan agreement, the facility allows only a lender (and not the borrower) to transfer rights and obligations under the agreement;
 - (d) in the case of a loan agreement, a lender must transfer the rights and obligations relating to the whole of a loan made (and not just a part of the loan);
 - (e) potential transferees or buyers have access to all information on the website about the borrower or Issuer that was available to earlier lenders or investors; and
 - (f) fees it charges for the use of the facility are designed to recover its costs of providing the facility, rather than generating additional income.

Guidance

1. A facility for the transfer of rights and obligations under loan agreements or for the sale of Investments should exist mainly to provide an exit route for lenders or investors rather than being a facility for the active trading of loans or Investments. For example, the operator should ensure that transferees or buyers are Clients who already initially lent money to either the particular borrower or another borrower, or initially invested funds in the Issuer or another Issuer, using the platform. That is, the facility should not be used by persons who are only involved in secondary trading of loans or Investments.
2. The conditions in Rule 11.3.16 apply only to a transfer or sale using the facility provided by the operator. They do not affect transfers of rights and obligations or sales of Investments that may occur outside that facility, for example, by operation of law such as under a will or by a Court order.

Information technology

- 11.3.17** (1) An operator must have adequate measures in place to ensure:
- (a) its information technology systems are resilient and not prone to failure;
 - (b) business continuity in the event that an information technology system fails;
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- (c) protection of its information technology systems from damage, tampering, misuse or unauthorised access; and
 - (d) the integrity of data forming part of, or being processed through, its information technology systems.
- (2) An operator must review the measures referred to in (1) at least annually to ensure they are adequate.

Business cessation plan

11.3.18

The operator must:

- (a) maintain a business cessation plan that sets out appropriate contingency arrangements to ensure the orderly administration of loan agreements or Investments in the event that it ceases to carry on its business; and
- (b) ensure, as far as reasonably practicable, that the contingency arrangements can be implemented if necessary.

Guidance

The business cessation plan may, for example, set out arrangements for another appropriately regulated third party to take over the administration of existing loans or Investments. The operator should put in place measures that, as far as reasonably practicable, ensure that the contingency arrangements can be implemented if necessary e.g. by entering into an agreement with a third party to provide certain services. The operator will need to disclose the contingency arrangements it has in place (see Rule 11.3.3 (r)).

11.4 **Loan Crowdfunding – extra requirements**

Written loan agreement

11.4.1 A Loan Crowdfunding Operator must ensure that, when a loan is made using its service, there is a written loan agreement in place between the borrower and lender that is legally enforceable and sets out sufficient details of the loan, the terms of repayment and the rights and obligations of the borrower and lender.

Lending limits

11.4.2 A Loan Crowdfunding Operator must maintain effective systems and controls to ensure that a Retail Client does not lend more than:

- (a) US\$5,000 to any single borrower using its service; and
- (b) US\$50,000 in total in any calendar year using its service.

11.5 **Investment Crowdfunding – extra requirements**

Risk acknowledgement form

11.5.1 (1) An Investment Crowdfunding Operator must ensure that a Retail Client provides a signed risk acknowledgement form for each Investment that it makes using the platform.

(2) The risk acknowledgement form under (1) must:

- (a) set out clearly the risks referred to in Rule 11.3.1;
- (b) require the Retail Client to confirm that he understands those risks; and
- (c) be provided before, or at the same time as, the Retail Client commits to making the Investment.

Cooling-off period

11.5.2 (1) An Investment Crowdfunding Operator must ensure that investors who have committed to providing funding to a particular Issuer may withdraw that commitment, without any penalty and without giving a reason, during the cooling-off period.

- (2) In (1), “cooling-off period” means the period of at least 48 hours starting at the end of the commitment period.

Guidance

An operator may provide investors with a cooling-off period that is longer than the period specified in Rule 11.5.2(2).

Investment limit

- 11.5.3** An Investment Crowdfunding Operator must maintain effective systems and controls to ensure that a Retail Client does not invest more than US\$50,000 in total in any calendar year using its service.

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APP2 KEY INFORMATION AND CLIENT AGREEMENT

A2.1 Key Information and content of the Client Agreement

General

- A2.1.1** The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

- (a) the core information set out in:
 - (i) Rule A2.1.2 (1) if it is a Retail Client; and
 - (ii) Rule A2.1.2(2) if it is a Professional Client;
- (b) where relevant, the additional information required under Rules A2.1.3 for Investment Business and Rule A2.1.4 for Investment Management; and
- (c) the additional terms set out in Rules A2.1.5 and A2.1.6 if the Client Agreement relates to the use of a Crowdfunding Platform.

Core information

- A2.1.2** (1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:

- (a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;
 - (b) the regulatory status of the Authorised Firm;
 - (c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;
 - (d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;
 - (e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;
 - (f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);
 - (g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and
 - (h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11.
- (2) In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).

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Additional terms for Crowdfunding Platforms

A2.1.5

The following terms must be included in a Client Agreement between a Crowdfunding Operator and a Client that is a lender or an investor:

- (a) the operator's obligations to administer the loan or Investment, including:
 - (i) how payments made by the borrower or Issuer will be transferred to the lender or investor; and

- (ii) steps that will be taken if payments by a borrower or an Issuer are overdue or the borrower or Issuer is in default;
- (b) if the Client is a Retail Client, the steps that will be taken by the operator and lender or investor to ensure that the lender or investor complies with any applicable limits relating to the amounts of loans or investments that may be made using the platform;
- (c) for Investment Crowdfunding, if the Client is a Retail Client, that the Client agrees to sign a risk acknowledgement form each time before he makes an Investment using the platform; and
- (d) the contingency arrangements that the operator will put in place to deal with a platform failure or if the operator ceases to carry on its business.

A2.1.6

The following terms must be included in a Client Agreement between a Crowdfunding Operator and a Client that is a borrower or an Issuer:

- (a) a restriction on the borrower or Issuer using any other crowdfunding service to raise funds during the commitment period;
- (b) a restriction on the borrower or Issuer or any Person that is Connected to the borrower or Issuer, lending or financing, or arranging lending or finance for a lender or an investor using the service;
- (c) a restriction on the borrower or Issuer advertising its proposal, or soliciting potential lenders or investors, outside the platform during the commitment period;
- (d) a requirement on the borrower or Issuer to give reasonable advance notice to the operator of any material change affecting the borrower or Issuer, its business or the carrying out of its proposal;
- (e) the obligations of the borrower or Issuer if there is any material change after funds have been provided; and
- (f) an obligation on the borrower or Issuer to produce financial statements at least annually.