Appendix 1

The DFSA Rulebook

Authorised Market Institutions

(AMI)

PART 1: INTRODUCTION

1. APPLICATION, INTERPRETATION AND OVERVIEW

1.1 Application

1.1.1 (1) This module applies to:

(a) every Person who carries on, or intends to carry on, either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC;

(b) a Key Individual, or a Person intending to be a Key Individual, of a Person referred to in (a); and

(c) a Controller, or a Person intending to be a Controller, of a Person referred to in (a).

(2) This module also applies to an Authorised Market Institution where it:

(a) carries on, or intends to carry on, the Financial Service of Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility; or

(b) acts as a Trade Repository.

(3) This module does not apply to a Recognised Body.

Guidance

This module will also apply to an Authorised Market Institution that is Operating a Facility for Investment Tokens, unless otherwise specified. Operating a Facility for Investment Tokens is defined in GLO in relation to an Authorised Market Institution to mean Operating an Exchange on which Investment Tokens are traded, Operating a Clearing House on which Investment Tokens are cleared, or Operating a Multilateral Trading Facility on which Investment Tokens are traded.

1.2 Overview of the module

Guidance

The regulatory framework

1. The Regulatory Law 2004 ("the Regulatory Law") and the Markets Law 2012 ("the Markets Law ") provide the framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions.

2. In particular, while Article 41 of the Regulatory Law prohibits a Person from carrying on Financial Services in or from the DIFC, Article 42 of that Law permits Persons duly authorised and Licensed to conduct Financial Services in providing their services.

3. The Markets Law establishes a framework in relation to how an Official List of Securities is maintained and administered by the Listing Authority. Either the DFSA, or an Authorised Market Institution where it has been granted an endorsement on its Licence to do so, may maintain an Official List of Securities.

4. The GEN module prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution and the detailed requirements that must be met by such firms. In addition, the GEN module also sets out the circumstances under which an Authorised Market Institution may be authorised to carry out certain functions by way of an endorsement on its Licence.

5. The RPP Sourcebook contains, amongst other things, the detailed policies and procedures relating to how the DFSA exercises its licensing and supervisory functions relating to Authorised Market Institutions.

The AMI module

6. The AMI Module is comprised of four Parts containing 12 chapters and three Appendices.

7. Part 1 contains chapter 1, which sets out the application provisions and the overview of the AMI module.

8. Part 2 contains chapters 2 and 3. Chapter 2 sets out the requirements relating to application for a Licence to Operate an Exchange or Clearing House (or both) and an endorsement to operate a Multilateral Trading Facility or to maintain an Official List of Securities. Chapter 3 sets out the assessment of application related requirements, including application to obtain Key Individual status of an Authorised Market Institution.

9. Part 3 contains chapters 4, 5, 5A, 6 and 7. These chapters set out the substantive requirements (called the "Licensing Requirements") that must be met by a Person at the point of grant of a Licence to be an Authorised Market Institution and thereafter on an on-going basis. Chapter 4 contains the provisions which prescribe what the Licensing Requirements are, and the procedures an Authorised Market Institution must follow in order to make any material changes to the arrangements it has in place to meet the Licensing Requirements. Chapter 5 contains the Licensing Requirements that are common to both Exchanges and Clearing Houses. Chapter 5A contains the additional requirements that apply to an Authorised Market Institution that is Operating a Facility for Investment Tokens, whether that facility is an Exchange, a Clearing House or a Multilateral Trading Facility. Chapter 6 contains the additional Licensing Requirements that are specific to Exchanges and chapter 7 contains the additional Licensing Requirements that are specific to Clearing Houses.

10. Part 4 contains chapters 8, 9, 10, 11 and 12. These chapters set out a range of miscellaneous provisions covering the requirements relating to the approval of Controllers of Authorised Market Institutions (chapter 8), the provisions governing the supervision of Authorised Market Institutions (chapter 9), the procedures for withdrawal of a Licence or endorsement (chapter 10), appeal procedures from the decisions of the DFSA (chapter 11) and the transitional provisions (chapter 12).

11. There are three Appendices, Appendix 1 contains the requirements relevant to testing of technology systems, Appendix 2 contains the requirements relating to the use of price information providers and Appendix 3 contains the contract delivery specifications applicable to Derivative contracts which require physical delivery.

PART 2: APPLICATION AND AUTHORISATION

2. APPLICATION FOR A LICENCE OR ENDORSEMENT

2.1 Application

2.1.1 (1) This chapter applies to a Person who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC.

(2) This chapter also applies to a Person referred to in (1), who intends to obtain an endorsement on its Licence to:

(a) carry on the Financial Service of Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility; or

(b) act as a Trade Repository.

(3) A Person who intends to carry on the Financial Services and activities referred to in (1) and (2) is referred to in this chapter as an "applicant" unless the context otherwise provides.

(4) This chapter also applies to an Authorised Market Institution applying to change the scope of its Licence, or where a condition or restriction has previously been imposed on its Licence, to have such a condition or restriction varied or withdrawn. Such an Authorised Market Institution may be referred to as an "applicant" in this chapter.

Guidance

1. The activity of operating a Multilateral Trading Facility ("MTF") is an activity that falls within the definition of the Financial Service of Operating an Alternative Trading System (see GEN Rule 2.22.1). A Person needs to be Licensed as an Authorised Firm to carry on that Financial Service. However, pursuant to GEN Rule 2.2.12, a holder of a Licence to Operate an Exchange may also operate an MTF if it has obtained an endorsement on its Licence permitting it to do so.

2. Acting as a Trade Repository is not a Financial Service, and may be carried on by an Authorised Firm or Authorised Market Institution with an endorsement on its Licence permitting it to do so (see GEN Rule 2.2.13).

3. A new applicant for a Licence or an existing holder of a Licence may apply to have an endorsement on its Licence to operate a Multilateral Trading Facility or to maintain a Trade Repository.

2.2 Application for a Licence

2.2.1 An applicant who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House must apply to the DFSA for a Licence in accordance with the Rules in this section and chapter 3.

2.2.2 The DFSA will only consider an application for a Licence to Operate an Exchange or Operate a Clearing House from a Person:

(a) who is a Body Corporate; and

(b) who is not an Authorised Firm or an applicant to be an Authorised Firm.

2.2.3 A Person applying for a Licence must submit a written application to the DFSA:

(a) demonstrating how the applicant intends to satisfy the Licensing Requirements specified in Part 3 and any other applicable requirements; and

(b) with copies of any relevant agreements or other information in relation to the application.

2.3 Application for an endorsement

2.3.1 The following requirements must be met by an applicant for the grant of an endorsement to operate a Multilateral Trading Facility:

(a) it must hold a Licence with an authorisation to Operate an Exchange; and

(b) it must be able to demonstrate that it can satisfy the requirement in Rule 4.2.1(3).

Guidance

1. Under GEN Rule 2.2.11(c) and Rule 2.2.12, an Authorised Market Institution Licensed to Operate an Exchange may obtain an endorsement to carry on the activity of operating a Multilateral Trading Facility.

2. An Exchange with an endorsement to operate an MTF needs to meet, on an on-going basis, the applicable Licensing Requirements under Rule 4.2.1(3). Accordingly, when an Exchange wishes to obtain such an endorsement, it needs to be able to demonstrate to the DFSA that it can meet each of the Licensing Requirements with respect to the proposed MTF. For example, it should demonstrate how the IT systems and human resources available to it would be utilised for the purposes of operating the MTF.

2.3.2 The requirements in App 5 to GEN must be met by an Authorised Market Institution for the grant of an endorsement to act as a Trade Repository.

2.4 Application for a change of scope of a Licence

2.4.1 An Authorised Market Institution applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA with written details of the proposed changes including an assessment of how it intends to satisfy the Licensing Requirements in relation to the new Licence scope.

Guidance

1. Where an Authorised Market Institution applies to change the scope of its Licence, it should provide at least the following information:

   a. particulars of the new activities requiring a variation to the scope of Licence, and the date of the proposed commencement of such activities;

   b. a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;

   c. details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the Authorised Market Institution will be able to comply with any additional regulatory requirements including the applicable Licensing Requirements; and

   d. if the Authorised Market Institution is reducing its activities and it has existing Members who may be affected by the cessation of a Financial Service, details of any transitional arrangements.

2. If an application for a change of scope of Licence involves carrying on a new Financial Service, the application will be assessed against all the requirements applicable to the relevant Financial Service.

3. AUTHORISATION

3.1 Application

3.1.1 This chapter applies to every Person who is an applicant for:

(a) a Licence to be an Authorised Market Institution;

(b) an endorsement to:

(i) maintain an Official List of Securities;

(ii) operate a Multilateral Trading Facility; or

(iii) act as a Trade Repository; or

(c) Key Individual status.

Guidance

1. This chapter outlines the DFSA's authorisation requirements for an Authorised Market Institution and its Key Individuals, as well as the process for an Authorised Market Institution to obtain an endorsement on its Licence to maintain an Official List of Securities, operate a Multilateral Trading Facility or act as a Trade Repository.

2. This chapter should be read in conjunction with the RPP Sourcebook, which sets out the DFSA's general regulatory policy and processes. See chapter 2 of the RPP sourcebook.

3.2 Assessment

3.2.1 (1) In order to become authorised to carry on one or both of the Financial Services of Operating an Exchange or Operating a Clearing House, the applicant must demonstrate to the satisfaction of the DFSA that it can meet the relevant Licensing Requirements specified in chapters 5, 6 and 7, as appropriate to the Financial Services it proposes to carry on, both at the point of the grant of the Licence and thereafter on an on-going basis.

(2) In order to obtain an endorsement on its Licence to:

(a) maintain an Official List of Securities;

(b) operate a Multilateral Trading Facility; or

(c) act as a Trade Repository,

the applicant must demonstrate to the satisfaction of the DFSA that it can meet the requirements applicable to Persons undertaking the relevant activities, both at the point of the grant of the endorsement and thereafter on an on-going basis.

Guidance

1. The Licensing Requirements are specified in chapters 5, 5A, 6 and 7 of Part 3 of this module. These include the general requirements applicable to all Authorised Market Institutions (chapter 5), and the additional requirements applicable to specific types of activities of Authorised Market Institutions (chapters 5A, 6 and 7).

2. Where an Authorised Market Institution (or an applicant for a Licence) seeks to obtain an endorsement on its Licence, additional requirements relevant to the type of endorsement need to be satisfied (see, for example, App 5 of GEN for the requirements relating to Trade Repositories).

3. Currently, the function of maintaining an Official List of Securities is performed by the DFSA. However, the DFSA has the power, pursuant to Article 29 of the Markets Law, to grant an Authorised Market Institution an endorsement on its Licence permitting it to maintain an Official List of Securities.

4. Section 3.6 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when making an assessment under Rule 3.2.1.

Inquiries and information

3.2.2 In assessing an application for a Licence or an endorsement on a Licence, the DFSA may:

(a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;

(b) require the applicant to provide additional information;

(c) require the applicant to have information on how it intends to ensure compliance with a particular requirement;

(d) require any information provided by the applicant to be verified in any way that the DFSA specifies; and

(e) take into account any information which it considers relevant.

3.2.3 (1) In assessing an application for a Licence, the DFSA may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.

(2) Where the DFSA thinks it appropriate, it may treat an application made by one legal form or Person as having been made by the new legal form or Person.

3.3 Obtaining Key Individual status

Guidance

Under Article 43 of the Regulatory Law, every Authorised Market Institution must have Key Individuals appointed to perform Licensed Functions. Key Individuals appointed by an Authorised Market Institution to perform Licensed Functions must be approved by the DFSA before they are permitted to carry on such functions. This section sets out the matters that will be considered by the DFSA in approving such Key Individuals. The list of Licensed Functions for an Authorised Market Institution is in section 5.3 of this module.

3.3.1 (1) In regard to an application for approval for an individual to be granted Key Individual status, both the Authorised Market Institution and the individual must complete the appropriate form in AFN.

(2) An Authorised Market Institution must be satisfied that the individual with respect to whom an application is submitted:

(a) is competent in his proposed role;

(b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and

(c) is able to apply his knowledge.

Guidance

See paragraph 2.2.16(j) and section 2-3 of the RPP sourcebook for the details of the assessment which an Authorised Market Institution is expected to undertake.

Requirements for Key Individuals

3.3.2 (1) To be authorised as a Key Individual an individual must demonstrate that he is fit and proper to perform the Licensed Function.

(2) In assessing whether an individual is fit and proper to perform a Licensed Function under (1) the DFSA will consider:

(a) the individual's integrity;

(b) the individual's competence and capability;

(c) the individual's financial soundness;

(d) the individual's proposed role within the Authorised Market Institution; and

(e) any other relevant matters.

3.3.3 Without limiting Rule 3.3.2, an individual shall not be considered fit and proper for the the purposes of that Rule if he:

(a) is bankrupt;

(b) has been convicted of a serious criminal offence; or

(c) is incapable, through mental or physical incapacity, of managing his affairs.

3.3.4 In assessing whether an individual is fit and proper to be granted Key Individual Status to carry out a Licensed Function, the DFSA may:

(a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;

(b) require the Authorised Market Institution or the individual to provide additional information;

(c) require any information provided by the Authorised Market Institution or the individual to be verified in any way specified by the DFSA; and

(d) take into account any information which it considers appropriate.

Guidance

Section 2.3 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when making an assessment referred to in this section.

PART 3: LICENSING REQUIREMENTS

4. GENERAL

4.1 Application

4.1.1 This chapter applies to a Person who is an Authorised Market Institution or an applicant for such a Licence.

4.2 Licensing Requirements

4.2.1 (1) An Authorised Market Institution must have adequate arrangements both at the time a Licence is granted and at all times thereafter to meet the applicable Licensing Requirements as specified in (2).

(2) The Licensing Requirements are:

(a) the general requirements specified in chapter 5, which are applicable to all Authorised Market Institutions;

(b) the additional requirements specified in chapter 6, which are applicable to an Authorised Market Institution Operating an Exchange; and

(c) the additional requirements specified in chapter 7, which are applicable to an Authorised Market Institution Operating a Clearing House.

(3) Where an Authorised Market Institution operates a Multilateral Trading Facility pursuant to an endorsement on its Licence, the Licensing Requirements specified in (2)(a) and (b) apply with respect to the operation of such a facility as if that facility is an Exchange.

4.3 Approval of material changes

4.3.1 (1) An Authorised Market Institution may, subject to (2), only make material changes to its existing arrangements to meet the Licensing Requirements where it has obtained the DFSA's prior approval to do so in accordance with the requirements in this section.

(2) In the case of any changes to the Business Rules of an Authorised Market Institution, such changes must be made in accordance with the requirements in section 5.6.

Guidance

1. Existing arrangements to meet the Licensing Requirements are those arrangements which an Authorised Market Institution has in place at the time it is initially granted a Licence, and includes any subsequent changes made to such arrangements in accordance with the requirements in this Rule.

2. If an Authorised Market Institution is unsure, it may seek the DFSA views on whether a proposed change to its existing arrangements constitutes a material change. Such clarification should be sought as soon as possible when it becomes reasonably apparent

to the Authorised Market Institution that some changes to its existing arrangements are needed.

4.3.2 (1) An Authorised Market Institution proposing to make material changes to its existing arrangements to meet the Licensing Requirements must provide to the DFSA a notice setting out:

(a) the proposed change;

(b) the reasons for the proposed change; and

(c) what impact the proposed change might have on its ability to discharge its Regulatory Functions.

(2) The notice referred to in (1) must, subject to (3), be submitted to the DFSA at least 30 days before the proposed change is expected to come into effect.

(3) The DFSA may, in circumstances where a material change to existing arrangements is shown on reasonable grounds to be urgently needed, accept an application for approval of such a change on shorter notice than the 30 days referred to in (2).

4.3.3 The DFSA must, upon receipt of a notice referred to in Rule 4.3.2, approve or reject the proposed change as soon as practicable and in any event within 30 days of the receipt of the notice, unless that period has been extended by notification to the applicant.

4.3.4 (1) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under Rule 4.3.3 to reject a proposed change.

(2) If the DFSA decides to exercise its power under Rule 4.3.3 to reject a proposed change, the Authorised Market Institution may refer the matter to the FMT for review.

Guidance

1. The period of 30 days will commence from the time the DFSA has received all the relevant information to assess the application.

2. An Authorised Market Institution should consider submitting its application for DFSA approval well in advance of the date on which the proposed change is expected to come into effect, especially in the case of significant material changes to its existing arrangements, to allow the DFSA sufficient time to consider the application. Such timely submission would generally tend to avoid any extension of time being sought by the DFSA to assess properly the impact of a proposed change, due to its nature, scale and complexity. Such an extension would be made in consultation with the applicant.

3. If a proposed material change is not approved by the DFSA within the 30 day period and the DFSA has not expressly extended the period beyond 30 days, an Authorised Market Institution may treat the proposed change as being rejected by the DFSA, and on that basis, may refer the decision to the FMT.

4. An Authorised Market Institution may use the results of consultation with its user committees to identify the impact the proposed change would have on its ability to meet the Licensing Requirements, including any impact such a change would have on its

Members and other stakeholders. See GEN App 3 – Guidance No. 9 – 12 for best practice relating to user committees.

4.4 Definition of Regulatory Functions

4.4.1. Pursuant to Article 23(2)(f)(ii) and (iii) of the Regulatory Law, the DFSA prescribes the Regulatory Functions of an Authorised Market Institution as those functions which directly contribute to the satisfaction by the Authorised Market Institution of its Licensing Requirements.

5. GENERAL LICENSING REQUIREMENTS APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

5.1 Application

5.1.1 This chapter applies to an Authorised Market Institution and its Key Individuals.

5.2 Organisational Requirements

Guidance

Every Authorised Market Institution must comply with the requirements in GEN chapter 5, which relate to the management and systems and controls, which form an essential part of the organisational requirements of an Authorised Market Institution. The requirements set out below augment the organisational requirements applicable to an Authorised Market Institution set out in GEN chapter 5.

Fitness and propriety

5.2.1 An Authorised Market Institution must:

(a) be fit and proper;

(b) be appropriately constituted; and

(c) take appropriate measures to:

(i) satisfy the Licensing Requirements; and

(ii) perform its Regulatory Functions.

Guidance

See Chapter 5 of GEN and paragraphs 2-2-16 to 2-2-18 of the RPP Sourcebook which set out matters which the DFSA takes into consideration when making an assessment under Rule 5.2.1.

Human resources

5.2.2 (1) An Authorised Market Institution must have and maintain sufficient human resources to operate and supervise its facilities.

(2) An Authorised Market Institution must ensure, as far as reasonably practicable, that its Employees are:

(a) fit and proper;

(b) appropriately trained for the duties they perform; and

(c) trained in the requirements of the legislation applicable in the DIFC.

(3) An Authorised Market Institution must:

(a) have appropriate arrangements in place to ensure that its Employees maintain their fitness and propriety; and

(b) keep records of the assessment process undertaken for each Employee for a minimum of six years from the date on which an individual ceases to be an Employee.

Guidance

1. In assessing whether an Authorised Market Institution's systems and controls are adequate to ensure the on-going maintenance of fitness and propriety of its Employees, the DFSA will take into account:

   a. the distribution of duties and responsibilities among its Key Individuals and the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;

   b. the staffing and resources of the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;

   c. the arrangements made to enable Key Individuals to supervise the departments for which they are responsible;

   d. the arrangements for supervising the performance of Key Individuals and their departments; and

   e. the arrangements by which the Governing Body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of, Key Individuals under review.

2. See also GEN Rule 5.3.18 which sets out the requirements relating to the suitability of Employees and section 2.3 of the RPP Sourcebook which sets out in more detail the matters which the DFSA takes into consideration when making its assessment under GEN Rule 5.3.18 and Rule 5.2.2 above.

Governance

5.2.3 (1) An Authorised Market Institution must have:

(a) a corporate governance framework appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Authorised Market Institution's business and to protect the interests of its stakeholders; and

(b) a remuneration structure and strategies which are well aligned with the long term interests of the Authorised Market Institution, and appropriate to the nature, scale and complexity of its business.

(2) Without limiting the generality of the requirements in GEN chapter 5, an Authorised Market Institution must ensure that its Governing Body has a sufficient number of independent members at all times.

Guidance

1. Detailed corporate governance and remuneration related requirements applicable to an Authorised Market Institution are contained in GEN Rules 5.3.30 and 5.3.31. See the best

practice standards relating to corporate governance and remuneration set out under those Rules and App 3 of GEN. These are designed to promote sound governance and remuneration practices whilst providing flexibility for application taking into account the nature, scale and complexity of operations of an Authorised Market Institution.

2. The independence criteria for the members of the Governing Body are set out in paragraphs 2.2.16 to 2.2.18 of the RPP sourcebook.

5.3 Licensed Functions and Key Individuals

Licensed Functions and Key Individuals

5.3.1 (1) An Authorised Market Institution must, for the purpose of proper discharge of its Regulatory Functions, have at all times individuals appointed to carry out the functions of the:

(a) Governing Body;

(b) Senior Executive Officer;

(c) Finance Officer;

(d) Compliance Officer;

(e) Risk Officer;

(f) Money Laundering Reporting Officer; and

(g) Internal Auditor.

(2) Each of the functions of an Authorised Market Institution specified in (1)(a) to (g) are Licensed Functions for the purposes of Article 43(1) of the Regulatory Law.

5.3.2 (1) An Authorised Market Institution must not permit a Key Individual to carry on any Licensed Function for or on behalf of the Authorised Market Institution unless the particular individual has been assessed by the Authorised Market Institution to be competent to perform the relevant Licensed Function.

(2) The Licensed Functions specified in Rule 5.3.1 do not include a function performed by a registered insolvency practitioner (subject to the restrictions in Article 88 of the Insolvency Law 2009) if the practitioner is:

(a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;

(b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;

(c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;

(d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or

(e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Articles 58 and 59 of the Insolvency Law 2009.

(3) The Licensed Functions specified in Rule 5.3.1 do not include a function performed by an insolvency practitioner in accordance with the applicable requirements equivalent to those specified in (2)(a) – (e) in another jurisdiction.

(4) The Licensed Functions specified in Rule 5.3.1 do not include a function of an individual appointed to act as a manager of the business of an Authorised Market Institution as directed by the DFSA under Article 77A of the Regulatory Law.

Guidance

1. See section 2.3 of the RPP sourcebook for details of the assessment that the Authorised Market Institution and the DFSA undertake to assess whether an individual is fit and proper to undertake Key Individual functions.

2. An Authorised Market Institution may apply for the DFSA's in-principle approval of an individual as soon as the individual is identified as a potential appointee to avoid any delays in formalising the appointment. However, an Authorised Market Institution should submit to the DFSA, as far as reasonably practicable, all the relevant information, including the results of its own assessment, when seeking such in-principle approval.

Members of the Governing Body

5.3.3 Every member of the Governing Body of an Authorised Market Institution carries on the function of a Key Individual.

Senior Executive Officer

5.3.4 The Senior Executive Officer function is carried out by an individual who:

(a) has, either alone or jointly with the other Key Individuals, the ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Market Institution's Financial Services carried on in or from the DIFC; and

(b) is either a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Finance Officer

5.3.5 The Finance Officer function is carried out by an individual who:

(a) has the overall responsibility for the Authorised Market Institution's compliance with the financial resources requirements in Rule 5.5.4; and

(b) is either a Member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Compliance Officer

5.3.6 The Compliance Officer function is carried out by an individual who:

(a) has the overall responsibility for the Authorised Market Institution's compliance with the Licensing Requirements and other applicable requirements in carrying out Financial Services; and

(b) is either a Member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Risk Officer

5.3.7 The Risk Officer function is carried out by an individual who:

(a) has the overall responsibility for the risk management function in relation to the Financial Services carried on by the Authorised Market Institution; and

(b) is a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Money Laundering Reporting Officer

5.3.8 The Money Laundering Reporting Officer function is carried out by an individual who:

(a) has the overall responsibility for the Authorised Market Institution's compliance with the requirements in Rule 5.11.2, AML and any other relevant anti money laundering legislation applicable in the DIFC; and

(b) is either a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Internal Auditor

5.3.9 The Internal Auditor function is carried out by an individual who is responsible for the internal audit matters in relation to the Financial Services carried on by the Authorised Market Institution.

Residency of Key Individuals

5.3.10 The Key Individual functions of a Senior Executive Officer, Compliance Officer and Money Laundering Reporting Officer must be carried out by an individual resident in the U.A.E.

Combining roles

5.3.11 (1) To the extent practicable, an Authorised Market Institution must not assign to its Key Individuals any commercial functions which conflict with their Key Individual functions or which impair, or are likely to impair, their ability to perform the relevant functions.

(2) Before an Authorised Market Institution assigns to a Key Individual any commercial functions, the Authorised Market Institution must:

(a) form a view on a reasonable basis that the commercial functions to be assigned to any Key Individual do not, as far as reasonably practicable, conflict with the relevant Key Individual functions or impair his ability to discharge those functions effectively; and

(b) to the extent there are such conflicts inherent in the relevant functions, there are adequate procedures and controls to mitigate such conflicts.

(3) The Authorised Market Institution must maintain records of its decisions and procedures as applicable under (2) above.

Guidance

The DFSA does not expect Key Individuals who are Persons undertaking control functions such as those relating to risk, compliance and audit to be assigned any functions or roles which are to further the Authorised Market Institution's commercial interests or objectives (such as business promotional activities) .

5.4 Conflicts of interests

5.4.1 Without limiting the generality of the obligations under section 5.2 of GEN, an Authorised Market Institution must take all reasonable steps to ensure that any conflicts of interest, including those:

(a) between itself and its shareholders, Members or other users of its facilities; and

(b) between its Members and other users of its facilities, and, among themselves,

are promptly identified and then prevented or managed, or disclosed, in a manner that does not adversely affect the sound functioning and operation of the Authorised Market Institution.

5.4.2 Without limiting the generality of the requirement in Rule 5.4.1, an Authorised Market Institution must establish and maintain adequate policies and procedures to ensure that its Employees do not undertake personal account transactions in Investments in a manner that creates or has the potential to create conflicts of interest.

5.4.3 An Authorised Market Institution must establish a code of conduct that sets out the expected standards of behaviour for its Employees, including clear procedures for addressing conflicts of interest. Such a code must be:

(a) binding on Employees; and

(b) to the extent appropriate and practicable, made publicly available.

Guidance

1. In assessing whether an Authorised Market Institution's policies and procedures are adequate to address conflicts of interests, the DFSA will consider whether those include:

    a. policies on the use of confidential information received in carrying out its Regulatory Functions to ensure it is only used for proper purposes;

    b. arrangements for transferring decisions or responsibilities to alternates in individual cases;

    c. arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters to which the conflict is relevant; and

    d. requirements and procedures included in contracts of employment, staff rules, letters of appointment for members of the Governing Body and other Key Individuals and other guidance given to individuals on handling conflicts of interest relating to:

        i. the need for prompt disclosure of a conflict of interest to enable others who are not affected by the conflict to assist in deciding how it may need to be addressed;

        ii. the circumstances in which a general disclosure of a conflict of interest in advance may be sufficient;

        iii. the circumstances in which a general advance disclosure may not be adequate;

        iv. the circumstances in which it would be appropriate for a conflicted individual to withdraw from any involvement in the matter concerned, without disclosing the interests; and

        v. the circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-making process or from access to relevant information.

2. See also the best practice standards relating to corporate governance and remuneration standards set out under in GEN Rules 5.3.30 and 5.3.31 and GEN App 3, which cover conflicts of interest issues that need to be addressed in order to promote sound governance and remuneration practices within an Authorised Market Institution.

Performance of Regulatory Functions

5.4.4 An Authorised Market Institution must take all reasonable steps to ensure that the performance of its Regulatory Functions is not adversely affected by its commercial interests.

5.4.5 For the purposes of the requirement in Rule 5.4.4, an Authorised Market Institution must have adequate systems and controls, including policies and procedures, to ensure that the pursuit of its commercial interests (including its profitability) does not adversely impact on the performance of its Regulatory Functions.

Guidance

An Authorised Market Institution should have systems for identifying, and drawing to the attention of its senior management, situations where its commercial interests conflict, or may potentially conflict, with the proper performance of its Regulatory Functions. This would enable its senior management to take appropriate steps to ensure that such conflicts do not adversely affect the proper performance by the Authorised Market Institution of its Regulatory Functions. In particular, senior management should ensure that adequate human, financial and other resources (both in quantity and quality) are provided for risk management, regulatory, compliance and other similar functions.

5.5 Operational efficiency and resilience

Systems and controls

5.5.1 (1) Without limiting the generality of the obligations relating to systems and controls in section 5.3 of GEN, an Authorised Market Institution must ensure that its systems and controls are:

(a) adequate to ensure that its operations are conducted at all times in accordance with the applicable requirements, including legislation;

(b) sufficiently flexible and robust to ensure continuity and regularity in the performance of its functions relating to the operation of its facilities; and

(c) appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), the systems and controls of an Authorised Market Institution must be adequate to enable it to meet the Licensing Requirements on an on-going basis. In particular, they must include adequate arrangements in relation to:

(a) the assessment and management of all risks;

(b) financial and technology resources;

(c) the fitness and propriety of its Employees;

(d) the operation of its functions;

(e) outsourcing;

(f) the safeguarding and administration of assets belonging to its Members and other participants on its facilities;

(g) the transmission of information to Members and other participants on its facilities; and

(h) the supervision and monitoring of transactions on its facilities.

(3) An Authorised Market Institution must undertake regular reviews of its systems and controls to ensure that they remain adequate and operate as intended.

Guidance

The systems and controls requirements in Rule 5.5.1 augment the systems and controls requirements in GEN chapter 5.

5.5.2 Risk management

Guidance

1. An Authorised Market Institution is subject to the risk management requirements in GEN Rules 5.3.5 – 5.3.7. Additional risk management requirements are prescribed for Authorised Market Institutions Operating a Clearing House in sections 7.2 and 7.3.

2. The individual appointed pursuant to GEN Rule 5.3.7(1) to advise the Governing Body and the senior management of the Authorised Market Institution relating to risks and management of such risks is the Key Individual performing the function of the Risk Officer pursuant to Rule 5.3.7; Key Individuals.

3. In assessing the adequacy of an Authorised Market Institution's systems and controls for identifying, assessing and managing risks, the DFSA may also have regard to the extent to which such systems and controls enable the Authorised Market Institution to:

    a. identify all the general, operational, legal and market risks wherever they arise in its activities;

    b. measure and control the different types of risk;

    c. allocate responsibility for risk management to persons with appropriate levels of knowledge and expertise; and

    d. provide sufficient and reliable information to Key Individuals and, where relevant, the Governing Body of the Authorised Market Institution.

4. As part of assessing the adequacy of risk controls, the DFSA will also consider how internal and external audits operate in the context of systems and controls. In doing so the following factors may be considered:

    a. the size, composition and terms of reference of any audit committee of the Authorised Market Institution;

    b. the frequency and scope of external audit;

    c. the provision and scope of internal audit;

    d. the staffing and resources of the Authorised Market Institution's internal audit department;

    e. the internal audit department's access to the Authorised Market Institution's records and other relevant information; and

    f. the position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the Authorised Market Institution.

5. In addition, the DFSA will also consider the adequacy of the risk management function, in particular:

    a. the access which the individuals performing risk management function have to the Authorised Market Institution's records and other relevant information; and

b. the position, responsibilities and reporting lines of the risk management department and its relationship with other departments of the Authorised Market Institution.

Outsourcing

5.5.3 (1) Without limiting the generality of the requirements in GEN Rules 5.3.21 and 5.3.22, an Authorised Market Institution must, before entering into any material outsourcing arrangements with a service provider, obtain the DFSA's prior approval to do so.

(2) For avoidance of doubt, the requirement in (1) applies to any outsourcing arrangements which were not in existence at the time the Authorised Market Institution was granted its Licence.

(3) In order to obtain the DFSA's prior approval for outsourcing arrangements referred to in (1), an Authorised Market Institution must follow those procedures for obtaining the DFSA's prior approval for material changes specified in Rule 4.3.1(1).

(4) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule to refuse to approve an outsourcing arrangement.

(5) If the DFSA decides to exercise its power under this Rule to refuse to approve an outsourcing arrangement, the Authorised Market Institution may refer the matter to the FMT for review.

Guidance

1. The requirements in GEN Rules 5.3.22 and 5.3.23 set out the requirements applicable when an Authorised Market Institution outsources its functions and activities.

2. In assessing the adequacy of an Authorised Market Institution's systems and controls for identifying, assessing, and managing risks arising from functions which are outsourced, the DFSA will have regard to:

   a. due diligence procedures for selecting service providers and monitoring the performance of the relevant functions by them;

   b. whether the Authorised Market Institution has in place legally binding contracts with its service providers;

   c. the business continuity and disaster recovery arrangements of the Authorised Market Institution's service provider;

   d. whether the security and confidentiality of information provided to the service provider of the Authorised Market Institution is guaranteed in accordance with the applicable legislation;

   e. the concentration of outsourcing functions with one or more service providers;

   f. the agreed procedures for terminating the outsourcing arrangements; and

   g. whether the access to books and records of the service providers is granted to the Authorised Market Institution and the DFSA, including rights of inspection.

3. If an Authorised Market Institution wishes to make any material changes to its outsourcing arrangements which were in existence at the time of the grant of its Licence, or any subsequent outsourcing arrangements made in accordance with the requirements in Rule 5.5.3, such changes require the DFSA's prior written approval pursuant to Rule 4.3.1(1).

Financial resources

5.5.4 (1) An Authorised Market Institution must, subject to (3) and (4), have and maintain at all times:

(a) the minimum financial resource requirement in (2); and

(b) additional financial resources of a type acceptable to the DFSA which are adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due.

(2) The minimum financial resource requirement referred to in (1)(a) is:

(a) an amount equal to one half of the estimated gross operating costs of the Authorised Market Institution for the next twelve-month period; or

(b) such other capital amount as may be specified by the DFSA.

(3) The assets held by an Authorised Market Institution for the purposes of meeting the financial resources requirements in (1):

(a) must be of high quality and sufficiently liquid in order to allow the Authorised Market Institution to meet its current and projected operating expenses under a range of adverse scenarios, including in adverse market conditions; and

(b) must be held, where it comprises cash, by an entity which is a Bank, or a financial institution authorised and supervised by a Financial Services Regulator acceptable to the DFSA with respect to the activity of deposit taking.

(4) An Authorised Market Institution must have systems and controls to enable it to determine and monitor whether its financial resources are sufficient for the purposes of the requirement in (1). For this purpose, the systems and controls of an Authorised Market Institution must address the following factors, with any other factors that are relevant and appropriate to its operations model:

(a) the nature, scale, and complexity of the activities and risks associated with its operations;

(b) the operational, counterparty, market and settlement risks to which it is exposed;

(c) the amount, composition and legal position of its available financial resources; and

(d) its ability to access additional financial resources if required.

(5) An Authorised Market Institution must monitor and manage the concentration of credit and liquidity exposures to commercial banks and clearing Members.

(6) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (2)(b) to specify a capital amount after a Licence has been granted.

(7) If the DFSA decides to exercise its power under (2)(b) to specify a capital amount after a Licence has been granted, the Authorised Market Institution may refer the matter to the FMT for review.

Guidance

1. The minimum financial resource requirement under Rule 5.5.4(1) is designed to ensure that an Authorised Market Institution not only has sufficient financial resources to meet its liabilities as they fall due, but also to allow, if circumstances require, for the orderly wind-down of the Authorised Market Institution's business, while still allowing the institution to meet the applicable requirements, including conditions on its Licence.

2. The systems and controls should enable the Authorised Market Institution to assess whether the financial resources required for it to conduct its affairs are in place at all times. Such assessments should be made periodically or after any significant change or event, whether internal or external, that would have an impact on the operations of the Authorised Market Institution. These assessments are necessary to demonstrate to the DFSA that the Licensing Requirements are being satisfied on an on-going basis.

3. In determining whether to set a minimum capital amount pursuant to Rule 5.5.4(2)(b), the DFSA will take into account the risks that the Authorised Market Institution poses to the DIFC market and the products which are, or are intended to be, traded, cleared or settled.

Technology resources

5.5.5 (1) An Authorised Market Institution must have sufficient technology resources to operate, maintain and supervise its facilities.

(2) The Authorised Market Institution must be able to satisfy the DFSA that its technology resources are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain.

(3) An Authorised Market Institution must ensure that its Members and other participants on its facilities have sufficient technology resources which are compatible with its own.

(4) For the purposes of meeting the requirement in (1), an Authorised Market Institution must have adequate procedures and arrangements for the evaluation, selection and on-going monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

(a) problem management and system change;

(b) testing information technology systems before live operations in accordance with the requirements in Rule 5.5.6;

(c) monitoring and reporting on system performance, availability and integrity; and

(d) adequate measures to ensure:

(i) the information technology systems are resilient and not prone to failure;

(ii). business continuity in the event that an information technology system fails;

(iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and

(iv) the integrity of data forming part of, or being processed through, information technology systems.

(5) An Authorised Market Institution must meet the applicable requirements in App 1 for the purposes of:

(a) testing the adequacy and effectiveness of its own information technology systems; and

(b) assessing the adequacy and effectiveness of information technology systems of its Members.

Guidance

1. In assessing an Authorised Market Institution's systems and controls used to operate and carry on its functions, the DFSA recognises that an Authorised Market Institution is likely to have significant reliance on its information technology systems. In assessing the adequacy of these systems, the DFSA will consider:

a. the organisation, management and resources of the information technology department of the Authorised Market Institution;

b. the arrangements for controlling and documenting the design, development, implementation and use of technology systems; and

c. the performance, capacity and reliability of information technology systems.

2. In particular, when assessing whether an Authorised Market Institution has adequate information technology resourcing, the DFSA will consider:

a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

Regular review of systems and controls

5.5.6 (1) An Authorised Market Institution must undertake regular review and updates of its information technology systems and controls as appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), an Authorised Market Institution must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

Guidance

Through the use of such testing methodologies, the Authorised Market Institution should be able to ensure, amongst other things, that:

a. its systems and controls are compatible with its operations and functions;

b. compliance and risk management controls embedded in its system operate as intended (for example, by generating error reports automatically); and

c. it can continue to work effectively in stressed market conditions.

5.6 Business Rules

Content of Business Rules

5.6.1 (1) An Authorised Market Institution must establish and maintain Business Rules in accordance with the requirements in this section. Such rules must include:

(a) criteria governing the admission of Members and any other Persons to whom access to its facilities is provided;

(b) criteria governing the admission of Investments to trading, or clearing and settlement, as appropriate to its facilities;

(c) Default Rules; and

(d) any other matters necessary for the proper functioning of the Authorised Market Institution and the facilities operated by it.

(2) An Authorised Market Institution's Business Rules must:

(a) be based on objective criteria and non-discriminatory;

(b) be clear and fair;

(c) set out the Members' and other participants' obligations:

(i) arising from the Authorised Market Institution's constitution and other administrative arrangements;

(ii) when undertaking transactions on its facilities; and

(iii) relating to professional standards that must be imposed on staff and agents of the Members and other participants when undertaking transactions on its facilities;

(d) be legally binding and enforceable against the Members and other participants;

(e) be made publicly available free of charge;

(f) contain provisions for the resolution of Members' and other participants' disputes and an appeal process from the decisions of the Authorised Market Institution; and

(g) contain disciplinary proceedings, including any sanctions that may be imposed by the Authorised Market Institution against its Members and other participants.

Guidance

1. The DFSA assesses, at the point of grant of a Licence to an Authorised Market Institution, the adequacy of its Business Rules and its systems and controls to ensure effective monitoring of compliance with such rules. Thereafter, any amendment to the Business Rules can only be made in accordance with the requirements set out in Rules 5.6.4 to 5.6.7 in this section.

2. Persons other than Members may have access to an Authorised Market Institution's facilities. See Rule 6.9.1(1)(a)(ii).

Default Rules

5.6.2 An Authorised Market Institution must have Default Rules which, in the event of a Member or other participant on its facilities being, or appearing to be, unable to meet its obligations in respect of one or more contracts, enable action to be taken in respect of unsettled market contracts to which the Member or that other participant is a party.

Guidance

The DFSA requires all Authorised Market Institutions to have Default Rules under Article 28 of the Markets Law. Default Rules allow an Authorised Market Institution to close-out open positions by discharging the appropriate rights and liabilities of transactions which a Member or any other Person granted access to its facilities cannot, or may not be able to, fulfil.

Monitoring compliance with Business Rules

5.6.3 An Authorised Market Institution must have adequate compliance procedures in place to ensure that:

(a) its Business Rules are monitored and enforced;

(b) any complaints relating to its operations or regarding Members and other participants on its facilities are promptly investigated;

(c) where appropriate, disciplinary action resulting in financial and other types of penalties can be taken;

(d) appeal procedures are in place; and

(e) referrals can be made to the DFSA in appropriate circumstances.

Guidance

1. In determining whether an Authorised Market Institution can effectively monitor its Business Rules, the DFSA will consider:

   a. the oversight of activity conducted on its facilities;

   b. the range of powers it retains over Members and other Persons granted access to its facilities, which should include the ability to modify, revoke or suspend access; and

   c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

2. In determining whether an Authorised Market Institution can effectively oversee the activities conducted on its facilities, the DFSA will consider how non-compliance is identified and how the significance of any non-compliance is assessed.

Amendments to Business Rules

5.6.4 (1) An Authorised Market Institution may only adopt new Business Rules or make any amendments to existing Business Rules in accordance with the requirements in Rules 5.6.5, 5.6.6 and 5.6.7.

(2) A reference to an amendment in Rules 5.6.5, 5.6.6 and 5.6.7 includes the introduction of a new Business Rule or a change to an existing Business Rule or a proposal to do so.

Public consultation

5.6.5 (1) An Authorised Market Institution must, subject to Rule 5.6.6, before making any amendment to its Business Rules, undertake public consultation on the proposed amendment in accordance with the requirements in this Rule.

(2) For the purposes of (1), an Authorised Market Institution must:

(a) publish a consultation paper setting out:

(i) the text of both the proposed amendment and the Business Rules that are to be amended;

(ii) the reasons for proposing the amendment; and

(iii) a reasonable consultation period, which must not be less than 30 days from the date of publication, within which Members and other stakeholders may provide comments; and

(b) lodge with the DFSA the consultation paper referred to in (a) no later than the time at which it is released for public comment.

(3) The DFSA may, where it considers on reasonable grounds that it is appropriate to do so, require the Authorised Market Institution to extend its proposed period of public consultation specified in the consultation

paper. An Authorised Market Institution must comply with such a requirement.

(4) An Authorised Market Institution must:

(a) facilitate, as appropriate, informal discussions on the proposed amendment with Members and other stakeholders including any appropriate representative bodies of such Persons;

(b) consider the impact the proposed amendment has on the interests of its Members and other stakeholders;

(c) have proper regard to any public comments received.

(5) Following public consultation, an Authorised Market Institution must, before the date on which the proposed amendment comes into effect, lodge with the DFSA:

(a) a summary of any public comments received, and how any issues raised by those comments have been addressed; and

(b) any changes made to the initial proposals as a result of the public comments, and if no changes have been made, a statement to that effect.

Dispensation of public consultation

5.6.6 (1) The DFSA may, on written application by an Authorised Market Institution, dispense with the requirement in Rule 5.6.5 for public consultation where:

(a) any delay resulting from public consultation is likely to be detrimental to the interests of the DIFC markets; or

(b) either the proposed amendment:

(i) is purely administrative or immaterial; or

(ii) the Authorised Market Institution can demonstrate to the satisfaction of the DFSA that it had taken into account the views and interests of its Members and other stakeholders as appropriate in developing the proposed amendment; and

(c) the Authorised Market Institution complies with the requirements in (2) or (3) as applicable.

(2) An Authorised Market Institution which seeks to dispense with public consultation on the ground referred to in (1)(a) must lodge with the DFSA a statement setting out:

(a) the text of both the proposed amendment and the Business Rules that are to be amended:

(b) the reasons for proposing the amendment;

(c) the grounds on which it believes that a delay resulting from public consultation is likely to be detrimental to the DIFC markets; and

(d) whether any rights or obligations of any Members of the Authorised Market Institution or other participants on its facilities are to be materially adversely affected by the proposed amendment, and if so, what measures are proposed to address such concerns.

(3) An Authorised Market Institution which seeks to dispense with public consultation on the ground referred to in (1)(b) must lodge with the DFSA a statement setting out:

(a) the text of both the proposed amendment and the Business Rules that are to be amended; and

(b) either:

(i) the reasons it believes that the proposed amendment is purely administrative or immaterial; or.

(ii) that it had taken into account the views and interests of its Members and other stakeholders as appropriate in developing the proposed amendment.

Guidance

For the purposes of demonstrating to the DFSA that the Authorised Market Institution had taken into account the views and interests of its Members and other relevant stakeholders, an Authorised Market Institution may rely on the input provided by its user committees where the user committees meet best practice set out in GEN App3, Guidance No. 9 – 12.

DFSA approval

5.6.7 (1) An Authorised Market Institution must seek the DFSA's approval of any proposed amendment to the Business Rules before the rules are to come into effect.

(2) The DFSA will approve the proposed amendment to the Business Rules unless it has reasonable grounds to believe that the proposed amendment is reasonably likely to be detrimental to the interests of the DIFC markets.

(3) Where the DFSA has any concerns about the proposed amendment, it may:

(a) either reject the proposed amendment or request the Authorised Market Institution to withdraw the proposed amendments; or

(b) require the Authorised Market Institution to make appropriate changes to the proposed amendment, with or without public consultation.

(4) The DFSA must give to the Authorised Market Institution reasons for its decisions under (3)(a) or (b) as applicable.

(5) An Authorised Market Institution must, as soon as practicable after receiving the DFSA approval, notify the Members and the public of the

amendment to its Business Rules and the date on which the amendment becomes effective.

(6) If the DFSA decides to exercise its power under (3)(a) or (b), the Authorised Market Institution may refer the matter to the FMT for review.

Guidance

1. The DFSA does not formally approve the proposed amendments at the point of release of the proposed amendment for public consultation; instead that approval occurs at the end of the public consultation period because the DFSA can properly take into account any public comments and changes resulting from public comments only at the end of the public consultation period.

2. However, the DFSA may, upon receipt of the proposed amendment, request an extension of the public consultation period if it considers on reasonable grounds that such an extension is appropriate. The circumstances in which the DFSA may require an extended period of public consultation beyond 30 days include where the proposed amendment is likely to have a significant adverse impact on the Members' rights and obligations or the interests of other participants in the DIFC markets. An Authorised Market Institution may rely on the results of soft consultation with Members and other stakeholders, or with any user committees it has established, to demonstrate that the proposed amendment does not warrant public consultation.

3. Generally, the DFSA expects to have a quick turnaround time in granting formal approval where no public comments have been received on public consultation or the proposed amendment are not extensive.

5.7 Access to facilities

Member criteria

5.7.1 (1) An Authorised Market Institution must not grant access to its facilities to a Person except in accordance with the requirements in this module and its Business Rules.

(2) A Person who has been granted access to the facilities of an Authorised Market Institution pursuant to its Business Rules is a Member of the Authorised Market Institution, except where otherwise provided.

Guidance

1. Generally only Persons admitted as Members in accordance with the Business Rules will have access to the facilities of an Authorised Market Institution.

2. However, in certain circumstances, an Authorised Market Institution may permit access to its facilities to Persons other than Members (see Rules 5.7.3). Such access would generally be provided through a Member and subject to adequate controls put into place by the Member.

3. Under Rule 5.7.2(1)(d), an Authorised Market Institution Operating a Facility for Investment Tokens is permitted to admit certain additional Persons as Members, where their access is only for trading or clearing of Investment Tokens. Such Persons are defined in GLO and referred to in this module as Direct Access Members.

5.7.2 (1) An Authorised Market Institution may, subject to (2), (3) and (4), admit as a Member:

(a) an Authorised Person;

(b) a Person who is admitted to the list of Recognised Persons pursuant to Article 37 of the Markets Law 2012;

(c) a Person who meets the criteria in GEN Rule 2.3.2(2); or

(d) a Person not referred to in (a) to (c), only if:

(i) the facility is one on which Investment Tokens are traded or cleared or both traded and cleared; and

(ii) the Person's access is only for trading or clearing of Investment Tokens.

(2) An Authorised Market Institution must not admit as a Member a Person referred to in (1)(c) unless such Person:

(a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution;

(b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facilities of the Authorised Market Institution; and

(d) appoints and maintains at all times, an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.

(3) Prior to admitting a Person referred to in (1)(a), (b) or (c) as a Member, an Authorised Market Institution must undertake due diligence to ensure that such a Person:

(a) is of sufficient good repute;

(b) has a sufficient level of competence and experience, including appropriate standards of conduct for its staff who will be permitted to use its order entry system; and

(b) has organisational arrangements, including financial and technological resources, which are no less than those of an Authorised Firm carrying out similar Financial Services.

(4) Prior to admitting a Person referred to in (1)(d), an Authorised Market Institution must undertake due diligence to ensure that the Person:

(a) meets the criteria in (3)(a) and (b);

(b) has adequate financial and technological resources to meet the Business Rules of the facility; and

(c) does not pose any operational risks to the orderly and efficient functioning of the facility's trading or clearing systems.

Guidance

1. A Person who can be admitted under the criterion in Rule 5.7.2(1)(c) (i.e. a Person referred to in GEN Rule 2.3.2(2)) is a Person undertaking Commodity Derivative transactions on the relevant Authorised Market Institution only on its own behalf or on behalf of a wholly owned holding company or subsidiary of such company.

2. In assessing the membership criteria used by an Authorised Market Institution to permit access to its facilities, the DFSA will consider:

   a. whether the Business Rules can be enforced contractually against Members;

   b. whether the criteria are objective and applied in a non-discriminatory manner; and

   c. the financial resource requirements for those not authorised by the DFSA.

3. Pursuant to Rule 5.7.2(3)(c), an Authorised Market Institution is required to assess the adequacy of the organisational arrangements of a candidate to become a Member, if it is not an Authorised Firm or Direct Access Member, against the organisational requirements that would apply to such a Person had it been an Authorised Firm undertaking similar activities. For example, a Person which is not an Authorised Firm or Direct Access Member should have organisational resources that are equivalent to a firm Licensed to carry on the Financial Service of Dealing as Agent and/or Dealing as Principal.

4. Section 5A.3 sets out additional requirements relating to Direct Access Members.

5. Members who are not Direct Access Members may also use a facility for trading or clearing of Investment Tokens.

Direct electronic access

5.7.3 (1) An Authorised Market Institution may only permit a Member to provide its clients Direct Electronic Access to the Authorised Market Institution's trading facilities where:

(a) the clients meet the suitability criteria established by the Member in order to meet the requirements in (2):

(b) the Member retains responsibility for the orders and trades executed by the clients who are using Direct Electronic Access;

(c) the Member has adequate mechanisms to prevent the clients placing or executing orders using Direct Electronic Access in a manner that would result in the Member exceeding its position or margin limits; and

(d) the Member is not a Direct Access Member.

(2) An Authorised Market Institution which permits its Members to allow their clients to have Direct Electronic Access to its trading facilities must:

(a) set appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;

(b) be able to identify orders and trades made through Direct Electronic Access; and

(c) if necessary, be able to stop orders or trades made by a client using Direct Electronic Access provided by the Member without affecting the other orders or trades made or executed by that Member.

(3) For the purposes of this Rule and elsewhere in the Rulebook, Direct Electronic Access means any arrangement, such as the use of the Member's trading code, through which a Member or the clients of that Member are able to transmit orders relating to Investments directly to the facility provided by the Authorised Market Institution.

(4) For avoidance of doubt, a Person who is permitted to have Direct Electronic Access to an Authorised Market Institution's facilities through a Member is not, by virtue of such permission, a Member of the Authorised Market Institution.

Guidance

In assessing the adequacy of the criteria used by an Authorised Market Institution to permit its Members to allow their clients to have Direct Electronic Access to Authorised Market Institution's facilities, the DFSA will consider:

a. whether such criteria include contractually binding arrangements between the Member and the clients;

b. whether such clients are subject to adequate training, competence and experience requirements and checks;

c. how electronic access is approved and secured and the measures taken to prevent or resolve problems which would arise from the failure of such access;

d. the rules and guidance governing the Person's, procedures, controls and security arrangements for inputting instructions into the system;

e. the rules and guidance governing facilities offered to Person's permitted for inputting instructions into the system and restrictions placed on the use of those systems;

f. the rules and practices to detect, identify and halt or remove instructions breaching any relevant instructions;

g. the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and

h the procedures to determine whether to suspend trading by those systems or access to them by or through individual Members.

5.8 Admission of Investments to trading or clearing

Investment criteria

5.8.1 (1) An Authorised Market Institution must have clear and objective criteria ("investment criteria") included in its Business Rules according to which Investments can be admitted to trading, or traded, on its facilities, or cleared and settled on its facilities, or both, as relevant to its operations. The investment criteria must include the requirements in (2) and (3) as relevant.

(2) An Authorised Market Institution must ensure that Investments are admitted to trading or traded on an Exchange it operates only if:

(a) in the case of Securities, the Securities are admitted to the Official List of Securities; and

(b) in the case of Derivative contracts, the contracts meet the contract design specifications in Rule 6.3.2.

(3) An Authorised Market Institution must ensure that only Investments which meet the requirements in (a), (b) or (c) are traded on an MTF it operates:

(a) in the case of Securities, the Securities are admitted to trading on a Regulated Exchange in a jurisdiction acceptable to the DFSA; and

(b) in the case of Security Tokens that do not meet the criteria in (a):

(i) there is a current Approved Prospectus relating to the Security Tokens;

(ii) the Authorised Market Institution has taken adequate steps, before admitting the Security Tokens to trading, to satisfy itself that both the Security Tokens and the relevant Reporting Entity meet the general eligibility requirements in MKT section 9.3; and

(iii) the Authorised Market Institution has adequate systems and controls in place to effectively monitor and enforce a Reporting Entity's compliance with the requirements of MKT Chapter 9B; or

(c) in the case of Derivatives, the instruments meet the contract design specifications in Rule 6.3.2.

(4) Where an Authorised Market Institution admits to trading or clearing or trades on its facilities Investments the value of which is determined by reference to an underlying benchmark or index provided by a Price Information Provider, it must only do so in accordance with the requirements in App 2.

Guidance

1. Investment criteria are only one aspect of requirements applicable to an Authorised Market Institution when trading or clearing and settling Investments on its facilities. There are other requirements applicable to such activities, which are contained in this module.

2. Any Securities that are admitted to the Official List of Securities maintained by the DFSA meet the requirement in Rule 5.8.1(2)(a).

3. A Reporting Entity of Security Tokens that are admitted to trading by an Authorised Market Institution under Rule 5.8.1(3)(b)(iii) will be subject to the requirements imposed on Reporting Entities in MKT. An Authorised Market Institution should therefore assess whether a prospective Reporting Entity is capable of meeting those requirements before admitting its Security Tokens to trading.

5.9 Integrity and transparency

Integrity and fair dealing

5.9.1 An Authorised Market Institution must be able and willing to:

(a) promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities; and

(b) co-operate with the DFSA or other appropriate regulatory authorities with regard to regulatory matters when required.

Guidance

1. In determining whether an Authorised Market Institution is able and willing to promote high standards of integrity and fair dealing, the DFSA will consider:

   a. the extent to which an Authorised Market Institution seeks to promote and encourage such standards through its rules, policies, procedures and practices;

   b. the extent to which Members are required to, and do, adhere to such standards; and

   c. any other Rules and principles which apply to the carrying on of business on or through its facilities.

2. In assessing the ability and willingness of an Authorised Market Institution to co-operate with the DFSA and other regulatory authorities, the DFSA will consider:

   a. the agreements in place, including those between Members and other participants granted access to the facilities and the relevant Authorised Market Institution, for sharing information, such as information regarding large open positions; and

   b. how diligently the Authorised Market Institution responds to enquiries from the DFSA or other regulatory authorities.

Transparency

5.9.2 (1) An Authorised Market Institution must have clear and comprehensive policies and procedures for providing sufficient information to enable Members and other participants on its facilities to have an accurate understanding of the risks, fees, and other material costs of using its facilities.

(2) An Authorised Market Institution must make the policies and procedures referred to in (1) publicly available.

Guidance

In assessing whether an Authorised Market Institution has adequate policies and procedures for disclosing sufficient information to enable its Members and other participants to fully understand

the risks, fees and other material costs in using its facilities, the DFSA will consider whether such information:

a. includes explanatory material relating to the system's design and operations, to the rights and obligations of Members and other participants, and to any risks in participating in such facilities;

b. includes its fees at the level of individual services it offers as well as its policies on any available discounts;

c. is provided in a clear and easy to understand manner and is accurate, up-to-date, and readily available to all current and prospective Members and other participants on its facilities; and

d. is made public, through placing such information on its website and other appropriate means.

Transaction recording

5.9.3 Without limiting the requirements in GEN Rules 5.3.24 to 5.3.27, an Authorised Market Institution must ensure that satisfactory arrangements are made for:

(a) recording the activities and transactions, including orders and order audit trails, effected on or through its facilities;

(b) maintaining the activity and transaction records for at least 6 years from the date of the transaction or order entry;

(c) providing the DFSA with these records in a timely manner if required by the DFSA; and

(d) due observance of the applicable data protection and associated requirements.

Guidance

1. The type of information that requires recording will vary according to the activity and type of transactions conducted on or through the facilities of the Authorised Market Institution.

2. In general, for an Authorised Market Institution Licensed to Operate an Exchange, the type of information which should be recorded will include:

   a. the name of the relevant Investment and the price, quantity and date of the transaction, including the order audit trail (i.e. orders entered into the system and subsequently amended or cancelled);

   b. the order type, time of instruction and expiry date;

   c. the identities and, where appropriate, the roles of the counterparties to the transaction;

   d. the facilities on which the transaction was effected and is to be cleared and settled; and

   e. the date and manner of settlement of the transaction.

3. In general, for an Authorised Market Institution Licensed to Operate a Clearing House, the type of information which should be recorded will include:

a. the name of the relevant Investment and the price, quantity and date of the transaction;

b. the identities and, where appropriate, the roles of the counterparties to the transaction;

c. the facilities on which the transaction was effected and is to be cleared;

d. where applicable, the time novation takes place; and

e. the date and manner of settlement of the transaction.

4. In addition to the DFSA requirements in this module and in GEN, the requirements in the Data Protection Law 2007, DIFC Law No 1 of 2007, apply to an Authorised Market Institution. Therefore, in complying with the DFSA requirements relating to record keeping, an Authorised Market Institution should consider its obligations under the Data Protection Law 2007.

5.10 Safeguarding and administration of assets

5.10.1 An Authorised Market Institution must ensure that, where its obligations include making provision for the safeguarding and administration of assets belonging to Members and other participants on its facilities:

(a) satisfactory arrangements ("safe custody arrangements") are made for that purpose in accordance with Rules 5.10.2 and 5.10.3; and

(b) are provided on clear terms of agreement between the Members and other participants on the facility and the Authorised Market Institution.

Guidance

1. In determining whether an Authorised Market Institution has satisfactory arrangements for safeguarding and administering assets, the DFSA will consider:

a. the terms of the agreement under which safe custody arrangements are made and whether they adequately provide for the matters specified in Rule 5.10.2;

b. the level of protection provided to Members and other participants on its facilities against the risk of theft, fraud, defalcation or other types of loss through such arrangements; and

c. the degree of monitoring the Authorised Market Institution would be undertaking relating to custodians, and if relevant, sub-custodians.

2. At the point of granting a Licence to an Authorised Market Institution, the DFSA assesses the adequacy of an applicant's safe custody arrangements. Any subsequent changes to the safe custody arrangements that have been in place at the time of granting the Licence, where they are material changes, would require the DFSA's prior approval in accordance with the requirements in Rule 4.3.2.

3. In addition to meeting the requirements in Rule 5.10.1, safe custody arrangements for Investment Tokens must also meet the requirements in section 5A.4.

5.10.2 An Authorised Market Institution must ensure that the safe custody arrangements, at a minimum, provide for:

(a) the segregation of assets belonging to every Member and other participant on its facilities from the assets belonging to the Authorised Market Institution and the other Members and participants on its facilities;

(b) the prompt access by the Authorised Market Institution to the assets held under the safe custody arrangements;

(c) the use or transfer of asset belonging to the Members and other participants on its facilities to be made only in accordance with the instructions of the relevant owners of those assets or in accordance with the terms of the agreement referred to in Rule 5.10.1(b) and any applicable legislation;

(d) the reconciliation at appropriate intervals and frequency between the assets and accounts held under the safe custody arrangements; and

(e) accurate records relating to the assets held under the safe custody arrangements to be kept, including:

(i) the identity of the legal and beneficial owners of the relevant assets, and where appropriate, any Persons who have charges over, or other interests in, those assets;

(ii) records of any additions, reductions and transfers in each individual account of assets; and

(iii) the identity of the assets owned by (or where appropriate on behalf of) different Persons, including, where appropriate, the assets owned by Members and other participants on its facilities.

Guidance

In assessing whether an Authorised Market Institution's safe custody arrangements meet the requirements in Rule 5.10.2, the DFSA would particularly look at:

a. the frequency with which statements of the holdings are provided to the Members and other participants on its facilities whose assets are held under the safe custody arrangements;

b. the records of the assets held and the identity of the beneficial and legal owners and any other persons with rights over such assets, and whether the Authorised Market Institution maintains a register of charges over Investments traded or cleared on its facility;

c. the records of any instructions given in relation to those assets;

d. the records of the carrying out of those instructions;

e. the records of any movements in those assets (or any corporate actions or other events in relation to those assets); and

f. how the Authorised Market Institution reconciles its records of assets held with the records of any custodian or sub-custodian used to hold those assets, and with the record of beneficial or legal ownership of those assets.

5.10.3 An Authorised Market Institution must not appoint any Person as a third party custodian unless that Person:

(a) is appropriately authorised under its Licence or subject to regulation and supervision by a Financial Services Regulator acceptable to the DFSA for the activity of deposit taking or providing custody and depository services; and

(b) is prohibited from appointing sub-custodians except where the sub-custodians meet the requirements in (a).

Guidance

1. An Authorised Market Institution should undertake due diligence to ensure, in the case of any custodians or sub-custodians which are not regulated by the DFSA, that they are appropriately licensed and supervised for the activity of deposit taking or custody and depository services by a Financial Services Regulator in their home jurisdiction.

2. In order to meet the requirements relating to sub-custody arrangements, an Authorised Market Institution should include clear provisions in the contract with its appointed custodians whether or not sub-custodians may be appointed and if so, the procedures for appointing the sub-custodians, in accordance with the requirements in Rule 5.10.3(b). There should also be contractual requirements for advance notification to the Authorised Market Institution of any changes to the sub-custodians.

3. If an Authorised Market Institution proposes to make new custody arrangements or make any material changes to its existing custody arrangements, such changes trigger the prior DFSA approval requirements in Rule 4.3.2. This requirement would be triggered, for example, if the appointed custodians at the time of the grant of the Licence had not used sub-custodians but subsequently propose to do so.

5.11 Promotion and maintenance of standards

Orderly conduct on facilities

5.11.1 An Authorised Market Institution must have an effective market surveillance program to:

(a) ensure that business conducted on or through its facilities is conducted in an orderly manner and in accordance with the applicable Business Rules and other applicable requirements so as to afford proper protection to investors; and

(b) monitor for conduct which may amount to Market Abuse, financial crime or money laundering.

Guidance

1. To satisfy the DFSA that Rule 5.11.1(a) is met, an Authorised Market Institution should have rules and procedures in place for:

   a. preventing and detecting the use of its facilities for abusive, improper or fraudulent purposes; and

   b. preventing the improper, reckless or negligent use of its facilities.

2. In determining whether an Authorised Market Institution is ensuring that business conducted on its facilities is conducted in an orderly manner, the DFSA will consider:

a. arrangements for pre and post trade transparency, taking into account the nature and liquidity of the Investments traded; and

b. the need to provide anonymity for trading participants.

3. An Authorised Market Institution Operating an Exchange will also have appropriate procedures allowing it to influence trading conditions, impose a trading halt promptly when required, and to support or encourage liquidity when necessary to maintain an orderly market. The DFSA will consider the transparency of such procedures and the fairness of their application and potential application.

4. In addition, Members who are Authorised Firms should be able to satisfy any other legal obligations they may have, including those to Clients that may exist under COB.

5. AML module contains AML obligations of an Authorised Market Institution.

Prevention of Market Abuse, money laundering and financial crime

5.11.2 (1) Without limiting the generality of Rule 5.11.1, an Authorised Market Institution must:

(a) operate appropriate measures to identify, deter and prevent Market Abuse, money laundering and financial crime on and through the Authorised Market Institution's facilities; and

(b) report promptly to the DFSA any Market Abuse, money laundering and financial crime, as required.

(2) For the purposes of (1)(a), an Authorised Market Institution must:

(a) include in its Business Rules a regime to prevent Market Abuse, money laundering and financial crime that meets the requirements in (3), which is applicable to its Members; and

(b) implement adequate measures to ensure that its Members comply with that regime.

(3) The regime referred to in (2)(a) must, at a minimum, include rules and procedures in relation to:

(a) compliance arrangements to prevent Market Abuse, money laundering and financial crime;

(b) transaction monitoring;

(c) risk assessment; and

(d) training.

Guidance

1. Abusive, improper and fraudulent purposes include:

a. trades intended to create a false appearance of trading activity;

b trades which one party does not intend to close out or settle;

c. conduct which is likely to result in disorderly trading in the market; and

d. any contravention of the provisions in Part 6: Prevention of Market Abuse in the Markets Law.

2. An Authorised Market Institution must have an effective surveillance system in place for:

a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments conducted elsewhere; and

b. communicating information about Market Abuse and financial crime to the DFSA or appropriate regulatory authorities.

3. An Authorised Market Institution Operating a Facility for Investment Tokens should, where relevant, ensure measures under Rule 5.11.2(1)(a) include effective measures to identify, deter and prevent Market Abuse by Persons permitted to access and update records held on any DLT or similar technology based application used in connection with the operation of the facility.

5.11.3 (1) An Authorised Market Institution must:

(a) before accepting a prospective Member, ensure that the applicant has in place adequate arrangements including systems and controls to comply with the Authorised Market Institution's regime for preventing Market Abuse, money laundering and financial crime referred to in Rule 5.11.2(2)(a);

(b) monitor and regularly review compliance by its Members with that regime; and

(c) take appropriate measures to ensure that its Members rectify any contraventions without delay.

(2) An Authorised Market Institution must promptly notify the DFSA of any:

(a) material breach of its regime by a Member; and

(b) circumstances in which a Member will not or cannot rectify a breach of its regime.

Guidance

1. An Authorised Market Institution is subject to the requirements in the DFSA's AML module. Members of an Authorised Market Institution which are Authorised Firms are also subject, by virtue of being Authorised Firms, to the requirements in the DFSA's AML module.

2. In determining whether an Authorised Market Institution's measures are adequate and appropriate to reduce the extent to which its facilities can be used for Market Abuse, money laundering and financial crime, the DFSA will consider:

a. whether the Authorised Market Institution has appropriate staff, surveillance systems, resources and procedures for this purpose;

b. the monitoring conducted for possible patterns of normal, abnormal or improper use of those facilities;

c. how promptly and accurately information is communicated about Market Abuse, financial crime and money laundering to the DFSA and other appropriate organisations; and

d. how the Authorised Market Institution co-operates with relevant bodies in the prevention, investigation and pursuit of Market Abuse, money laundering and financial crime.

3. An Authorised Market Institution shall have regard to Part 8 of the Markets Law in relation to Market Abuse and the relevant provisions of the Regulatory Law. Examples of practices that amount to market manipulation (which is one form of Market Abuse) in an automated trading environment that should be identified and prevented by an Authorised Market Institution to promote Proper Markets include the following:

a. entering small orders in order to ascertain the level of hidden orders, particularly used to assess what is resting on a dark platform, known as Ping Orders;

b. entering large numbers of orders and/or cancellations/updates to orders to create uncertainty for other market participants, slowing down their process and to camouflage its own strategy, known as Quote Stuffing;

c. entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price, known as Moment Ignition; and

d. submitting multiple orders often away from one side of the order book with the intention of executing a trade on the other side of the order book, where once that trade has taken place, the manipulative orders will be removed, known as Layering and Spoofing.

5.12 Miscellaneous requirements

Whistleblowing

Guidance

An Authorised Market Institution is required to comply with the whistleblowing requirements set out in GEN section 5.4.

Handling of complaints

5.12.2 (1) An Authorised Market Institution must have effective arrangements in place for the investigation and resolution of complaints made against it.

(2) An Authorised Market Institution must establish and maintain a register of complaints made against it and their resolution. Records of the complaints must be maintained for a minimum of six years.

Guidance

1. Procedures should be in place to acknowledge a complaint promptly, for making an objective consideration of the complaint and for a timely response to be sent to the complainant. The response should inform the complainant that, if he is not satisfied with the response, he should contact the DFSA.

2. Complaints should be fairly and impartially investigated by a person not involved in the conduct about which the complaint has been made. At the conclusion of the investigation, a report should be prepared and provided to the relevant Key Individuals.

Use of 'investment token market' and similar terms to refer to a facility

5.12.3 An Authorised Market Institution must not refer to a facility it operates as an 'investment token market', 'investment token clearing house', 'security token market', 'security token clearing house', 'derivative token market', 'derivative token clearing house', or using any other similar term, unless it is a facility on which only Investment Tokens are traded or cleared.

Guidance

1. An Authorised Market Institution should not refer to a facility where both Security Tokens and conventional Investments are traded and cleared using terms referred to in Rule 5.12.3.

2. An Authorised Market Institution that trades and/or clears both conventional Investments and Investment Tokens may refer to the facility that trades or clears Investment Tokens as an Investment Token, Security Token or Derivative Token market or clearing house, provided it is able to effectively maintain and demonstrate that there is a clear separation of Investment Token trading or clearing from conventional Investment trading or clearing.

5A. ADDITIONAL REQUIREMENTS FOR OPERATING A FACILITY FOR INVESTMENT TOKENS

5A.1 Application

5A.1.1 This chapter applies to an Authorised Market Institution Operating a Facility for Investment Tokens.

Guidance

Operating a Facility for Investment Tokens is defined in GLO as Operating an Exchange, Operating a Clearing House or Operating an Alternative Trading System on which Investment Tokens are traded, cleared, or both traded and cleared.

5A.2 Technology and governance requirements

5A.2.1 Without limiting the generality of the technology resources requirements in Rule 5.5.5, an Authorised Market Institution must ensure that it meets the requirements that would apply to an Authorised Firm Operating a Facility for Investment Tokens under COB section 14.1.

5A.3 Operating a Facility for Investment Tokens that permits direct access

5A.3.1 An Authorised Market Institution must ensure that:

(1) it treats each Direct Access Member as its Client;

(2) its Business Rules clearly set out:

(a) the duties owed by the Authorised Market Institution to the Direct Access Member and how the Authorised Market Institution is held accountable for any failure to fulfil those duties; and

(b) the duties owed by the Direct Access Member to the Authorised Market Institution and how the Direct Access Member is held accountable for any failure to fulfil those duties;

(3) appropriate investor redress mechanisms are available, and disclosed, to each Member permitted to trade or clear Investment Tokens on its facility, as required under Rule 5.12.2; and

(4) its facility contains a prominent disclosure of the risks associated with the use of DLT for trading and clearing Investments, particularly those relating to Digital Wallets and the susceptibility of private cryptographic keys to misappropriation.

5A.3.2 (1) Without limiting the generality of the systems and controls obligations of the Authorised Market Institution, an Authorised Market Institution must have in place adequate systems and controls to address market integrity, AML, CTF and investor protection risks in permitting a Direct Access Member to access its facility, including procedures to:

(a) identify the ultimate beneficial owner of a Direct Access Member, where the Member is a Body Corporate;

(b) ensure that appropriate customer due diligence sufficient to address AML and CTF risks has been conducted on each Direct Access Member, before permitting that Member to access its facility;

(c) detect and address market manipulation and abuse; and

(d) ensure that there is adequate disclosure relating to the Investment Tokens that are traded on the facility, through prospectus and on-going disclosure under MKT chapters 2, 4 and 6.

(2) An Authorised Market Institution must have adequate controls and procedures to ensure that trading in Investment Tokens by Direct Access Members does not pose any risks to the orderly and efficient functioning of the facility's trading system, including controls and procedures to:

(a) mitigate counterparty risks that may arise from defaults by Direct Access Members, through adequate collateral management measures, such as margin requirements, based on the settlement cycle adopted by the Authorised Market Institution;

(b) identify and distinguish orders that are placed by Direct Access Members, and, if necessary, enable the Authorised Market Institution to stop orders of, or trading by, such Members;

(c) prevent Direct Access Members from allowing any other Persons to access the facility through that Member's access; and

(d) ensure that Direct Access Members fully comply with the Business Rules of the facility and promptly address any gaps and deficiencies that are identified.

(3) An Authorised Market Institution must have adequate resources and mechanisms to carry out front-line monitoring of the trading activities of Direct Access Members.

(4) An Authorised Market Institution must ensure that, to the extent that any of the systems and controls referred to in (1) are embedded within, or otherwise facilitated through DLT, they must be included within the scope of the annual audit and written report required under Rule 5A.5.

Guidance

To satisfy the DFSA of the matters referred to in Rule 5A.3.2, an Authorised Market Institution should, as a minimum, be able to demonstrate that it has effective procedures built into its DLT or similar technology application being used that enable:

a. the clear identification of each Direct Access Member accessing its facility to trade; and

b. the monitoring of bid and offer prices and volatility for any indications of market manipulation or abuse.

5A.3.3 When an Authorised Market Institution Executes a Transaction in Investment Tokens for a Direct Access Member, the Authorised Market Institution must

comply with the requirements relating to confirmation notes that would apply to an Authorised Firm under COB section 6.9 and COB App 3 section A3.1.

5A.4 Safe custody of Investment Tokens

5A.4.1 Without limiting the generality of section 5.10, where an Authorised Market Institution's obligations include making provision for the safeguarding and administration of Security Tokens belonging to Members and other participants on its facility, it must ensure that:

(1) where its safe custody arrangements involve acting as a Digital Wallet Service Provider, it complies with the same requirements that would apply to an Authorised Firm carrying on such activities under COB section 14.3 and the Client Asset provisions in COB sections 6.11, 6.12 and 6.13;

(2) where it appoints a Third Party Digital Wallet Service Provider to Provide Custody for Investment Tokens traded or cleared on its facility, that person is either:

(a) an Authorised Firm permitted to be a Digital Wallet Service Provider; or

(b) a firm that is regulated by a Financial Services Regulator to an equivalent level as that provided for under the DFSA regime for Providing Digital Wallet Services.

5A.5 Technology audit reports

5A.5.1 An Authorised Market Institution must ensure that it meets the requirements relating to technology audit reports that would apply to an Authorised Firm Operating a Facility for Investment Tokens under COB section 14.5.

6. ADDITIONAL LICENSING REQUIREMENTS FOR OPERATING AN EXCHANGE

6.1 Application

6.1.1 (1) This chapter applies to an Authorised Market Institution Operating an Exchange or an applicant for such a Licence.

(2) In this chapter, a reference to an "Exchange" is a reference to a Person referred to in (1).

6.2 Proper Markets

6.2.1 (1) An Exchange must have rules and procedures for fair, orderly and efficient operation of trading of Investments on its facilities. For this purpose, an Exchange must ensure that only Investments in which there is a Proper Market are traded on its facilities.

(2) For a Proper Market to exist in Investments:

(a) Derivatives traded on its facilities must meet the contract design specifications in Rule 6.3.2;

(b) relevant market information must be made available to Persons engaged in dealing on an equitable basis, including pre-trade and post-trade disclosure of orders, in accordance with the requirements in section 6.4.

(c) there must be adequate mechanisms to discontinue, suspend or remove from trading on its facilities any Investments in circumstances where the requirements relating to Proper Markets are not met;

(d) there must be in place controls to prevent volatility in the markets that is not the result of market forces, in accordance with the requirements in section 6.5;

(e) error trades must be managed, in accordance with the requirements in section 6.6;

(f) short selling and position concentration must be monitored and managed, in accordance with the requirements in section 6.7;

(g) there must be a fair and non-discretionary algorithm operating in respect of the matching of orders on its facilities;

(h) there must be in place adequate controls, to monitor and manage any foreign ownership restrictions applying to Investments traded on its facilities, in accordance with the requirements in section 6.8; and

(i) any liquidity incentive schemes must be offered only in accordance with the requirements in section 6.9.

Guidance

Rules and procedures referred to in Rule 6.2.1(2) should generally form part of the Business Rules of an Authorised Market Institution (see the content of Business Rules in Rule 5.6.1).

6.3 Specifications relating to design and trading of Derivatives

6.3.1 (1) An Exchange which trades Derivative contracts on its facilities must:

(a) have clear and transparent rules and procedures for the trading of Derivative contracts, which are made publicly available; and

(b) ensure that the trading in Derivative contracts on its facilities is undertaken in a fair, orderly and efficient manner.

(2) The rules and procedures must promote transparency by ensuring that there is sufficient information made available to the markets relating to the terms and conditions of the Derivative contracts traded on its facilities. Such information must include, where relevant, information relating to delivery and pricing of Derivative contracts.

Contract design specifications

6.3.2 (1) An Exchange must ensure that the Derivative contracts traded on its facilities:

(a) have a design that enables the orderly pricing and effective settlement of the obligations arising under the contract; and

(b) where they are Commodity Derivative contracts which require physical delivery, have terms and conditions which:

(i) promote price discovery of the underlying commodity;

(ii) ensure, to the extent possible, that there is a correlation to the operation of the physical market in the underlying commodity;

(iii) include contract delivery specifications which address matters specified in App 3; and

(iv) provide for legally enforceable settlement and delivery procedures.

(2) For the purposes of meeting the requirement in (1)(a), an Exchange must include in its Business Rules contract design specifications relating to Derivative contracts traded on its facilities which, at a minimum, include:

(a) minimum price fluctuations (price ticks);

(b) maximum price fluctuations (daily price limits), if any;

(c) last trading day;

(d) settlement or delivery procedures as applicable;

(e) trading months;

(f) position limits, if any;

(g) reportable levels; and

(h) trading hours.

On-going review

6.3.3 An Exchange must:

(a) establish and implement clear procedures relating to the development and review of contract design for Derivative contracts traded on its facilities;

(b) have adequate process through which the views of potential users of Derivative contracts can be taken into account when developing and reviewing contract design for Derivative contracts;

(c) have adequate powers which enable it to eliminate contractual terms which produce, or are likely to produce, manipulative or disorderly conditions in the markets generally, or in relation to the particular class or type of Derivative contracts; and

(d) have adequate mechanisms to monitor and evaluate whether the settlement and delivery procedures reflect the underlying physical market and promote reliable pricing relationship between the two markets.

Guidance

1. When assessing whether an Exchange's rules and procedures are adequate, the DFSA will consider, among other things:

   a. the criteria adopted by the Exchange for Derivative contracts to be traded on its facilities;

   b. what powers the Exchange has in order to eliminate manipulative or disorderly conduct, including powers to vary, remove or rescind conditions of any Derivative contracts already traded where these are found to cause manipulative or disorderly conditions; and

   c. what mechanisms are established by the Exchange to monitor and review market activities relating to Derivative contracts traded on its facilities.

2. When designing and reviewing the design of Commodity Derivative contracts, an Exchange should consider the following physical market characteristics, including differences within a commodity market with regard to the commodity in question:

   a. size and structure of the physical market;

   b. commodity characteristics (such as grade, quality, weight, class, growth, origin, source etc.);

c. historical patterns of production, consumption and supply, including seasonality, growth, market concentration in the production chain, domestic or international export focus and logistics;

d. extent of distribution or dispersal of production and consumption of the underlying physical commodity among producers, merchants and consumers;

e. accepted market practice at the physical commodity market in question, including loading tolerances and delivery of alternative supply under the contract terms;

f. adequacy, nature and availability of supply of the underlying physical commodity, including an estimate of the deliverable supplies for the delivery month specified in the relevant commodity contract;

g. movement or flow of the underlying physical commodity;

h. the liquidity of the underlying physical market;

i. the spot market pricing system including transparency, availability, reliability and frequency of cash pricing;

j. price volatility; and

k. the existence of price controls, embargoes, export restrictions or other regulation or controls affecting the price or supply of the underlying physical commodity.

6.4 Transparency and disclosure

6.4.1 An Exchange must have adequate arrangements for providing to the markets adequate information about Investments traded on its facilities, and its trading activities, for the purposes of promoting:

(a) pre-trade transparency; and

(b) post-trade transparency.

Pre-trade transparency

6.4.2 (1) An Exchange must disclose the information specified in (2) relating to trading of Investments on its facilities in the manner specified in (3).

(2) The information required to be disclosed pursuant to (1) is:

(a) the current bid and offer prices and volume;

(b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Investments; and

(c) any other information relating to Investments which would promote transparency relating to trading.

(3) The information referred to in (2) must be made available to the public on a continuous basis during normal trading.

Guidance

1. When making disclosure, an Exchange should adopt a technical mechanism by which the public can differentiate between transactions that have been transacted in the central order book and transactions that have been reported to the Exchange as off-order book transactions. Any transactions that have been cancelled pursuant to its rules should also be identifiable.

2. The reference to trading interest in Rule 6.4.2(2)(b) includes any actionable indications of interests. Actionable interests are messages from one Member to another in a trading system about available trading interest that contains all necessary information to agree on a trade.

3. An Exchange should use adequate mechanisms so that pre-trade information is available to the public in an easy to access and uninterrupted manner at least during business hours. An Exchange may charge a reasonable fee for the information which it makes available to the public.

4. An Exchange will be able to withhold pre-trade disclosure only if it has obtained a waiver or modification to Rule 6.4.2. An Exchange may seek a waiver or modification from the disclosure requirement in Rule 6.4.2(1) in relation to certain transaction orders where:

   a. the order size is pre-determined and exceeds a pre-set and published threshold level; and

   b. the details of the exemption are included in its Business Rules.

5. In assessing whether an exemption from pre-trade disclosure should be allowed, the DFSA will take into account factors such as:

   a. the level of order threshold compared with normal market size for the Investment;

   b. the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;

   c. whether there is sufficient transparency relating to trades executed without pre-trade disclosure as a result of dark orders whether or not they are entered in transparent markets;

   d. whether the Exchange supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and

   e. whether there is adequate disclosure of details relating to dark orders available to Members and other participants on the facilities of the Exchange to enable them to understand the manner in which their orders will be handled and executed on those facilities.

6. Dark orders are orders executed on execution platforms without pre-trade transparency.

Post-trade transparency

6.4.3 (1) An Exchange must disclose the post-trade information specified in (2) relating to trading of Investments on its facilities in the manner specified in (3).

(2) The post-trade information required to be disclosed pursuant to (1) is the price, volume and time of the transactions executed in respect of the Investments traded on its facilities.

(3) The information referred to in (2) must be:

(a) made available in real-time on reasonable commercial terms and on a non-discriminatory basis; and

(b) made available, as soon as practicable thereafter, to the public.

Guidance

An Exchange should use appropriate mechanisms to enable post-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An Exchange may charge a reasonable fee for the information which it makes available to the public.

6.5 Volatility controls

6.5.1 (1) An Exchange must have in place effective systems, controls and procedures to ensure that its trading systems:

(a) are resilient;

(b) have adequate capacity to deal with peak orders and message volumes; and

(c) are able to operate in an orderly manner under conditions of market stress.

(2) Without limiting the generality of its obligations arising under (1) or any other Rule, an Exchange's rules, systems, controls and procedures must enable it to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or that are clearly erroneous;

(b) temporarily halt trading of Investments traded on its facility if there is a significant price movement in relation to those Investments on its facility or a related market during a short period; and

(c) where appropriate, cancel, vary or correct any transaction.

Guidance

An Exchange should test its trading systems to ensure that they are resilient and capable of operating orderly trading under conditions of market stress and other contingencies.

6.5.2 (1) An Exchange must have adequate arrangements, including technology, which:

(a) are capable of preventing capacity limits relating to messaging being breached;

(b) require its Members to apply pre-trade controls to their clients; and

(c) permit only its Members to modify the parameters of any pre-trade controls.

(2) An Exchange must make publicly available the details of arrangements it has in place in order to meet the requirement in (1).

Guidance

1. In order to meet the requirements in Rule 6.5.2(1), an Exchange may, within its arrangements:

   a. include a mechanism for "throttling" orders to prevent breaches of its capacity;

   b. prohibit "naked" or "unfiltered" access to its facilities by Members' clients where the client orders do not pass through pre-trade controls; and

   c. include requirements for Members to have appropriate pre-trade controls on the orders of their clients, which include in-built and automatic rejection of orders outside of certain pre-set parameters.

2. Pre-trade controls which an Authorised Market Institution requires from its Members should contain:

   a. price or size parameters: Members should be able to automatically block or cancel orders that do not meet the set price or size parameters either or both on an order-by-order basis or over a specified period of time;

   b. controls around permission to trade: Members should be able to block or cancel orders immediately as soon as they are made aware that trade permissions of a trader have been breached;

   c. effective risk management: Members should be able to block or cancel orders automatically where the trades pose risks that compromise the Member's own risk management thresholds. Such controls should be applied as necessary and appropriate to exposures to individual clients or financial instruments or groups of clients or financial instruments, exposures of individual traders, trading desks or the Member as a whole;

   d. reporting obligations: Members should be obliged to notify the Exchange about significant risks that may affect fair and orderly trading and major incidents as soon as they become aware of such risks or incidents;

   e. overriding of pre-trade controls: Members should have procedures and arrangements for dealing with orders which have been automatically blocked by the Member's pre-trade controls but which the Member may re-submit. Such procedures and arrangements should serve to alert compliance and risk management staff of the Member that controls have been overridden and require their approval for the overriding of these controls;

   f. training on order entry procedures: Members should ensure that employees using the order entry system have adequate training on order entry procedures before they are allowed to use Members' order entry systems;

g. monitoring and accessibility of knowledgeable and mandated staff: Members should monitor their orders to the Exchange in as close to real time as possible, including from a cross-market perspective, for potential signs of disorderly trading. Such monitoring should be conducted by Member's staff who understand its trading flow. They should be accessible to the Exchange and have necessary authority to take necessary and appropriate remedial action. Members should ensure that compliance staff are able to follow closely the Member's electronic trading activity so that they can quickly respond to and correct any failures or regulatory infractions that may take place; and

h. control of messaging traffic: Members should have control of messaging traffic to the Exchange particularly to ensure any messaging limits imposed by the Exchange on the Members are not exceeded. Messaging limits are limits imposed by an Exchange on its Members for the transmission of orders such as buy or sell to ensure that the Exchange's capacity to deal with such orders is not exceeded.

6.6 Error Trade policy

6.6.1 (1) An Exchange must be able to cancel, amend or correct any Error Trades.

(2) An Error Trade is the execution of an order resulting from:

(a) an erroneous order entry;

(b) malfunctioning of the system of a Member or of the Authorised Market Institution; or

(c) a combination of (a) and (b).

(3) For the purposes of (1), an Exchange's Business Rules must include a comprehensive Error Trade policy which sets out clearly the extent to which transactions can be cancelled by the Exchange at its sole discretion, at the request of a Member or by mutual consent of the Members involved.

(4) An Exchange must have adequate systems and controls to:

(a) prevent or minimise Error Trades;

(b) promptly identify and rectify Error Trades where they occur; and

(c) identify whether Error Trades are related to disorderly market activity.

Guidance

When assessing whether an Exchange has an appropriate and adequate Error Trade policy, the DFSA will consider whether the rules and procedures included in the Business Rules:

a. are adequate and, where prevention is not possible, minimise the impact of Error Trades;

b. are sufficiently flexible in the design to address varying scenarios;

c. establish a predictable and timely process for dealing with Error Trades, including measures specifically designed to detect and identify Error Trade messages to market users;

d. promote transparency to market users with regard to any cancellation decisions involving material transactions resulting from the invocation of the Error Trade policy;

e. include adequate surveillance conducted in the markets to detect Error Trades;

f. promote predictability, fairness and consistency of actions taken under the Error Trade policy; and

g. enable sharing of information with other markets, when possible, concerning the cancellation of trades.

6.7 Short selling and position management

6.7.1 (1) An Exchange must have in place effective systems, controls and procedures to monitor and manage:

(a) Short Selling in Securities; and

(b) risks arising from position concentrations.

(2) For the purposes of (1), an Exchange must have adequate powers over its Members to address risks to an orderly functioning of its facilities arising from unsettled positions in Investments.

(3) Short Selling for the purposes of this Rule constitutes the sale of a Security by a Person who does not own the Security at the point of entering into the contract to sell.

Guidance

1. An Exchange should, when developing its controls and procedures with regard to Short Selling and position management, have regard to:

   a. its own settlement cycle, in order to ensure that any Short Selling activities on its facilities do not result in any delay or prevent effective settlement within such cycle; and

   b. orderly functioning of its facilities, to ensure that any long or short position concentration on Investments that remain unsettled does not interrupt such functioning.

2. Examples of circumstances that would not be treated as short selling in Rule 6.7.1(3) include where the seller:

   a. has entered into an unconditional contract to purchase the relevant Securities but has not received their delivery at the time of the sale;

   b. has title to other securities which are convertible or exchangeable for the Securities to which the sale contract relates;

   c. has exercised an option to acquire the Securities to which the sale contract relates;

   d. has rights or warrants to subscribe and receive Securities to which the sale contract relates; and

   e. is making a sale of Securities that trades on a "when issued" basis and has entered into a binding contract to purchase such Securities, subject only to the condition of issuance of the relevant Securities.

6.8 Foreign ownership restrictions

6.8.1 (1) An Exchange may admit to trading on its facilities Investments which are subject to foreign ownership restrictions where it has in place adequate and effective arrangements to:

(a) monitor applicable foreign ownership restrictions; and

(b) promptly identify and take appropriate action where any breaches, or likely breaches, of such restrictions occur or are about to occur, so as to ensure that there is no undue interruption or negative impact on its trading activities.

(2) For the purposes of (1), the arrangements of an Exchange must include:

(a) requirements applicable to issuers and other Persons responsible for the relevant Investments to:

(i) make available to the Exchange information relating to any ownership restrictions applicable to the Investments; and

(ii) take such action as appropriate to remedy any breaches as soon as practicable;

(b) mechanisms to access current information relating to ownership of the relevant Investments, including any beneficial owners;

(c) appropriate public disclosure of information where ownership restrictions are, or are about to be, breached;

(d) mechanisms to suspend trading in the relevant Investments where the ownership restrictions are, or are about to be, breached; and

(e) mechanisms to reinstate trading where ownership restrictions are no longer in breach.

Guidance

1. An Exchange is required, as part of information to be provided to the DFSA, to promptly inform the DFSA where breaches of the ownership restrictions occur. See section 9.8.

2. An Exchange should establish appropriate thresholds at which an early warning system and subsequent public disclosure is triggered relating to foreign ownership restrictions. Such thresholds should be set at intervals/levels, taking into account the patterns of trading in the relevant Investments and other factors which enable the Exchange to take preventative measures before the breaches occur.

6.9 Liquidity incentive schemes

6.9.1 (1) An Exchange must not introduce a liquidity incentive scheme unless:

(a) participation in such a scheme is limited to:

(i) a Member of the Exchange; or

(ii) any other Person where:

(A) the Exchange has undertaken due diligence to ensure that the Person is of sufficient good repute and has adequate competencies and organisational arrangements; and

(B) the Person has agreed in writing to comply with the Business Rules of the Exchange so far as those rules are applicable to that Person's activities; and

(b) it has obtained the DFSA's prior written approval for the scheme.

(2) For the purposes of this section, a liquidity incentive scheme means an arrangement designed to provide liquidity in the market or in relation to a particular Investment or class of Investments.

(3) An Exchange must, at least 10 business days prior to the introduction of a liquidity incentive scheme referred to in (1), lodge with the DFSA a notification containing:

(a) the details of the relevant scheme;

(b) the benefits to the Exchange and its Members and other users resulting from the scheme;

(c) a certification by it that the requirements in (1)(a) have been fully met; and

(d) the date on which the scheme is intended to become operative.

(4) The DFSA will, within 10 business days of receiving the notification referred to in (3), approve the proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme is reasonably likely to be detrimental to the existence of Proper Markets. Where the DFSA does not approve the proposed liquidity incentive

scheme, it will notify the Exchange of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.

(5) If the DFSA decides to exercise its power under (4) not to approve a proposed liquidity incentive scheme, the Exchange may refer the matter to the FMT for review.

(6) An Exchange must, as soon as practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.

Guidance

1. Examples of liquidity incentive schemes are arrangements under which an Exchange offers to market makers rebates, stipends, waivers of membership or transaction fees and other financial incentives, including payments for routing order flows or other forms of soft dollar benefits.

2. The period of 10 business days referred to in Rule 6.9.1(4) will commence to run from the date on which all the information relating to the liquidity incentive scheme as specified in Rule 6.9.1(3) has been provided to the DFSA.

3. For the purposes of certifying that a Person meets the criteria set out in Rule 6.9.1(a)(ii), an Exchange should undertake:

   a. a verification of the identity of the relevant Person and its beneficial owners and directors for the purposes of applicable AML requirements;

   b. an assessment of the character and good standing, as well as the knowledge, experience and skills, of the Person and its directors and relevant Employees; and

   c. the adequacy of the control framework created by the Person in respect of the liquidity incentive scheme to ensure that trading occurs in accordance with the Business Rules of the Exchange.

4. An Exchange is not required, pursuant to Rule 6.9.1(6), to make public disclosure of any details about the liquidity incentive scheme where such information is reasonably regarded as commercially sensitive information. However, is should make such disclosure as it deems appropriate to keep its market well informed about the introduction of the scheme.

6.10 Clearing and settlement arrangements

6.10.1 An Exchange must:

(a) ensure that there are satisfactory arrangements in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facilities; and

(b) inform its Members and other participants of the arrangements referred to in (a).

6.11 Listing Rules

Application

6.11.1 (1) The requirements in this section apply, subject to (2), to an Exchange which maintains or proposes to maintain its own Official List of Securities.

(2) The requirement in Rule 6.11.8(1) applies to a Person who wishes to have Securities included in an Official List of Securities.

General requirements relating to listing rules

6.11.2 (1) An Exchange wishing to admit Securities to its own Official List of Securities must:

(a) have listing rules which meet the requirements in Rule 6.11.3; and

(b) ensure that its listing rules are approved by the DFSA.

(2) Any amendment to an Exchange's listing rules must, prior to the amendment becoming effective, have been:

(a) made available for a reasonable period of time to the market for consultation; and

(b) approved by the DFSA.

(3) In urgent cases, the DFSA may, on written application by the Authorised Market Institution, dispense with requirement in (2)(a).

(4) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under this Rule not to approve a proposed listing rule or an amendment to a listing rule.

(5) If the DFSA decides to exercise the power under this Rule not to approve a proposed listing rule or an amendment to a listing rule, the Authorised Market Institution may refer the matter to the FMT for review.

Publication of listing rules

6.11.3 (1) An Exchange must publish, and make freely available, its listing rules.

(2) Where an Exchange has made any amendments to its listing rules, it must have adequate procedures for notifying users of such amendments.

Content of listing rules

6.11.4 (1) The listing rules of an Exchange must be clear, fair and legally enforceable and contain provisions dealing with:

(a) procedures for admission of Securities to its Official List of Securities including;

(i) requirements to be met before Securities may be granted admission to its Official List of Securities; and

(ii) agreements in connection with admitting Securities to its Official List of Securities;

(b) effective enforcement of the agreements referred to in (a)(ii);

(c) procedures for suspension and delisting of Securities from its Official List of Securities;

(d) the imposition on any Person of obligations to observe specific standards of conduct or to perform, or refrain from performing, specified acts, reasonably imposed in connection with the admission of Securities to its Official List of Securities or continued admission of Securities to its Official List of Securities;

(e) penalties or sanctions which may be imposed by an Exchange or the DFSA for a breach of the listing rules;

(f) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the listing rules;

(g) actual or potential conflicts of interest that have arisen or might arise when a Person seeks to have Securities admitted to its Official List of Securities; and

(h) such other matters as are necessary or desirable for the proper operation of the listing rules and process.

(2) Without prejudice to the requirements in (1), the listing rules of the Exchange must also include, where appropriate to the type the Securities being admitted to its Official List of Securities, requirements in respect of:

(a) an issuer's financial reporting and, in particular how regular reports are made and the international accounting standards to which they comply;

(b) auditing standards;

(c) an issuer's track record in terms of profit or operating history;

(d) the percentage of Securities in a class of Securities which can be considered as in free float;

(e) any restrictions that may exist on transferability; and

(f) any other matter deemed necessary by the DFSA.

6.11.5 An Exchange must have adequate systems and controls to comply with the requirements that are applicable to it in respect of an Official List of Securities maintained by itself or by the DFSA for the purposes of trading of Securities using its facilities.

Compliance with listing rules

6.11.6 (1) An Exchange which has an endorsement on its Licence authorising it to maintain an Official List of Securities must ensure the function is properly and independently operated.

(2) An Exchange must have procedures in place to ensure that:

(a) its listing rules are monitored and enforced; and

(b) complaints regarding Persons subject to the listing rules are investigated.

6.11.7 An Exchange must ensure that:

(a) where appropriate, disciplinary action can be carried out and financial and other types of penalties can be imposed on Persons subject to the listing rules; and

(b) adequate appeal procedures are in place.

Guidance

In determining whether an Exchange can effectively monitor its listing rules, the DFSA will consider amongst other things:

a. the oversight of the Official List of Securities;

b. the range of powers the Exchange retains over Persons with Securities admitted to its Official List of Securities which should include the ability to suspend, restore from suspension and de-list Securities from the Official List of Securities in accordance with this module; and

c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

Admission to an Official List of Securities

Guidance

1. The DFSA has powers under Article 34 of the Markets Law in relation to the admission of Securities to an Official List of Securities maintained by an Authorised Market Institution. Under that Article the DFSA may:

   a. object to an admission of Securities to an Official List of Securities; or

   b. impose conditions or restrictions on an admission of Securities to an Official List of Securities .

2. Where the DFSA objects to an application for an admission of Securities to an Official List of Securities, the Exchange is prohibited from admitting Securities to its Official List of Securities by virtue of Article 34 of the Markets Law.

3. Pursuant to Article 34(7) of the Markets Law, the FMT may hear and determine any reference in relation to a decision by the DFSA to object or impose conditions or restrictions upon an admittance of Securities to an Official List of Securities.

4. The DFSA expects to exercise these powers rarely. An Exchange is responsible for assessing applications to its Official List of Securities. This section sets out the process for dealing with applications for admission.

Application for admission of Securities to an Official List of Securities

6.11.8 (1) Applications for the admission of Securities to an Official List of Securities must be made by the issuer of the Securities, or by a third party on behalf of and with the consent of the issuer of the Securities.

(2) An Exchange must, before granting admission of any Securities to an Official List of Securities maintained by it:

(a) be satisfied that the applicable requirements, including those in its listing rules, have been or will be fully complied with in respect of those Securities; and

(b) comply with the requirements relating to notification to the DFSA in Rule 6.11.9(1).

(3) An Exchange must notify an applicant in writing of its decision in relation to the application for admission of Securities to its Official List of Securities.

6.11.9 (1) Subject to (2), at least 5 business days prior to an admission of Securities to its Official List of Securities, an Exchange must provide the DFSA with notice of the decision and include the following information in the notification:

(a) a copy of the listing application;

(b) a copy of the assessment of the listing application carried out by the Exchange; and

(c) any information requested by the DFSA.

(2) An Exchange must immediately notify the DFSA of any decision to suspend, restore from suspension or de-list any Securities from its Official List of Securities and the reasons for the decision.

7. ADDITIONAL LICENSING REQUIREMENTS FOR OPERATING A CLEARING HOUSE

7.1 Application

7.1.1 (1) This chapter applies, subject to (3), to an Authorised Market Institution Operating a Clearing House and an applicant for such a Licence.

(2) In this chapter, a reference to a "Clearing House" is a reference to a Person in (1), except where specific reference is made to:

(a) a Central Counterparty (CCP);

(b) a Securities Settlement System (SSS); or

(c) a Central Securities Depository (CSD).

(3) Specific references in this chapter to a Clearing House undertaking any of the functions specified in (2)(a) to (c) apply only in respect of that function.

Guidance

1. The Financial Service of Operating a Clearing House is defined in GEN Rule 2.18.1(1). This definition provides that Operating a Clearing House can be carried on by either the operator becoming a Central Counterparty (CCP) or by operating a Securities Settlement System (SSS) (i.e. a system that enables Investments to be transferred and settled by book entry), regardless of whether or not such a Person also acts as a Central Securities Depository (CSD) in respect of Securities cleared or settled on its facility and similar facilities.

2. Where a Clearing House undertakes the function of acting as a CSD under its own Licence, the additional requirements in section 7.4 apply to it. The function of CSD may also be carried out by an Authorised Firm licensed to carry on the Financial Service of Providing Custody. See GEN definition in Rule 2.13.1(3). Such a firm is subject to similar requirements as in section 7.4, which are set out in COB section 10.2.

3. Where a Clearing House which did not at the time of licensing carry on CSD functions wishes to do so subsequently, it needs to apply to the DFSA for approval under Rule 4.3.1, as it is a material change to its current arrangements.

7.2 Risk management

Guidance

1. An Authorised Market Institution which operates a Clearing House is subject to the management, systems and controls requirements in GEN chapter 5. These provisions require such an Authorised Market Institution to establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor the risks to which it is exposed and to develop and implement policies and procedures to manage the risks to which it and the users of its facilities are exposed.

2. The requirements set out below augment the GEN obligations referred to in 1.

Risk management framework

7.2.1. (1) A Clearing House must have a comprehensive risk management framework (i.e. detailed policies, procedures and systems) capable of managing legal, credit, liquidity, operational and other risks to which it is exposed.

(2) The risk management framework in (1) must:

(a) encompass a regular review of material risks to which the Clearing House is exposed and the risks posed to other market participants resulting from its operations; and

(b) be subject to periodic review as appropriate to ensure that it is effective and operating as intended.

Guidance

1. The risk management framework should, for the purposes of Rule 7.2.1(2)(a), identify scenarios that may potentially prevent a Clearing House from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down.

2. A Clearing House should prepare appropriate plans for resumption of its operations in such scenarios and, where it is not possible to do so, for an orderly wind-down of the operations of the Clearing House premised on the results of such assessments.

3. Such procedures should also include appropriate early notification to the DFSA and other regulators as appropriate. See also the requirements in section 9.8 relating to disclosure to the DFSA.

4. A Clearing House should also, to the extent possible, provide incentives to Members and other market participants to manage and contain the risks they pose to the orderly and efficient operations of the Clearing House. Those may include financial penalties to Members and other participants that fail to settle Investments in a timely manner or to repay intraday credit by the end of the operating day.

Legal risk

7.2.2 (1) A Clearing House must have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

(2) A Clearing House must have adequate rules and procedures, including contractual arrangements, which are legally enforceable.

(3) A Clearing House that operates in multiple jurisdictions must:

(a) identify and mitigate the risks arising from doing business in the relevant jurisdictions, including those arising from conflicting laws applicable in such jurisdictions; and

(b) ensure the arrangements referred to in (2) provide a high degree of certainty that actions taken by the Clearing House under its rules and procedures will not be reversed, stayed or rendered void.

Guidance

1. This Rule is designed to address legal risks faced by a Clearing House, particularly where it operates in multiple jurisdictions. For example, an unexpected application of a law or regulation may render a contract between itself and a counterparty void or unenforceable, thereby leading to a loss.

2. A Clearing House should be able to demonstrate to the DFSA that the legal basis on which it operates, including in multiple jurisdictions, is well founded. A well founded legal basis would generally include well defined rights and obligations of the Clearing House, its Members and other users, including its service providers such as custodians and settlement banks, or would provide a mechanism by which such rights and obligations can be ascertained. This would enable the Clearing House to identify and address risks that arise from its operations involving such parties.

3. A Clearing House should, in order to form clear views about the legally binding nature of its contractual arrangements in the relevant jurisdictions, obtain independent legal opinions as appropriate to its activities. Such legal opinions should, to the extent practicable, confirm the enforceability of the rules and procedures of the Clearing House in the relevant jurisdictions and be made available to the DFSA upon request.

4. A Clearing House may be conducting its activities in multiple jurisdictions in circumstances such as:

   a. where it operates through linked CCPs, SSSs or CSDs;

   b. where its Members and other participants are incorporated, located, or otherwise conducting business in jurisdictions outside the DIFC; or

   c. where any collateral provided is located or held in a jurisdiction outside the DIFC.

Liquidity risk

7.2.3 (1) A Clearing House must:

(a) determine the amount of its minimum liquid resources;

(b) maintain sufficient liquid resources to be able to effect same-day, intra-day or multi-day settlement, as applicable, of its payment obligations with a high degree of confidence under a wide range of potential stress scenarios;

(c) ensure that all resources held for the purposes of meeting its minimum liquid resource requirement are available when needed;

(d) have a well-documented rationale to support the amount and form of total liquid resources it maintains for the purposes of (b) and (c); and

(e) have appropriate arrangements in order to be able to maintain, on an on-going basis, such amount and form of its total liquid resources.

(2) A Clearing House must have a robust framework for managing its liquidity risks. Such a framework must enable it to manage liquidity risks arising from its Members and other participants on its facilities, and any other involved parties, such as settlement banks, custodian banks, liquidity

providers ("Members and other involved parties"). For that purpose, the framework must, at a minimum, include:

(a) rules and procedures that:

(i) enable it to meet its payment obligations on time following any individual or combined default of its Members and other involved parties; and

(ii) address unforeseen and potentially uncovered liquidity shortfalls to avoid unwinding, revoking, or delaying the settlement of its payment obligations arising under the same-day, intraday or multiday settlement obligations, as applicable;

(b) effective operational and analytical tools to identify, measure and monitor its settlement and funding flows on an on-going and timely basis; and

(c) rigorous due diligence procedures relating to its liquidity providers to obtain a high degree of confidence that each provider (whether the provider is a Member or other participant using its facilities or an external party) has:

(i) sufficient information to assess, understand and manage its own liquidity risks; and

(ii) the capacity to perform as required under their commitment.

(3) A Clearing House must regularly:

(a) review the adequacy of the amount of its minimum liquid resources as determined in accordance with (1);

(b) test the sufficiency of its liquid resources maintained to meet the relevant amount through rigorous stress testing; and

(c) test its procedures for accessing its liquid resources at a liquidity provider.

Guidance

1. A Clearing House should be able to effectively measure, monitor, and manage its liquidity risk. Some of the systems, controls and procedures set out under Rule 7.2.3 above to address liquidity risk are also commonly used to address credit risks, and therefore, the same procedures, adjusted as appropriate, can be used for both purposes.

Acceptable types of liquid resources

2. For the purposes of meeting its minimum liquid resource requirement referred to above, a Clearing House's qualifying liquid assets/resources may include cash held in appropriate currencies at a central bank in its or other relevant jurisdiction, or at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps and repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions.

3. If a Clearing House has access to a routine line of credit made available by a central bank in its or other relevant jurisdiction, it may count such access as part of its liquid resources to the extent it has collateral that is eligible for pledging to (or for conducting other appropriate forms of transactions with) the relevant central bank. Even if it does not have access to a routine line of credit made available by a central bank, it should still take account of what collateral is typically accepted by the relevant central bank as such assets may be more likely to be liquid in stressed circumstances. However, a Clearing House should not assume the availability of emergency central bank credit as a part of its liquidity plan.

4. A Clearing House may supplement its qualifying liquid resources with other forms of liquid resources. If it does so, then such liquid resources should be in the form of assets that are likely to be saleable, or acceptable as collateral, for lines of credit, swaps, or repos on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions.

5. Where a Clearing House has access to a central bank lines of credit or accounts, payment services, or securities services, it should use those services as far as practicable, as such use is likely to enhance its ability to manage liquidity risk more effectively.

Review

6. A Clearing House should have clear procedures to report the results of its stress tests undertaken for the purposes of this Rule to its Governing Body and senior management as appropriate. It should use the results of stress testing to evaluate the adequacy of its liquidity risk-management framework and make any appropriate adjustments as needed.

7. In conducting stress testing, a Clearing House should consider a wide range of relevant scenarios. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios should also take into account the design and operation of the Clearing House, and include all entities that may pose material liquidity risks to the Clearing House (such as settlement banks, custodian banks, liquidity providers, and other involved entities), and where appropriate, cover a multi-day period.

8. A Clearing House should record the results of such stress testing and the rationale for any adjustments made to the amount and form of total liquid resources it maintains.

Participant default

9. A Clearing House's rules and procedures should also indicate any liquidity resources it may deploy, in the event of default by a Member or other involved parties, during a stress event to replenish the available liquid resources and the associated process, so that it can continue to operate in a safe and sound manner.

Custody and investment risk

7.2.4 (1) A Clearing House must have effective means to address risks relating to:

(a) custody of its own assets, in accordance with (2); and

(b) investments, in accordance with (3).

(2) For the purposes of (1)(a), a Clearing House must:

(a) hold its own assets with entities which are Licensed by the DFSA or a Financial Services Regulator for holding deposits or providing custody, as appropriate;

(b) be able to have prompt access to its assets when required; and

(c) regularly evaluate and understand its exposures to entities which hold its assets.

(3) For the purposes of (1)(b), a Clearing House must ensure that:

(i) it has an investment strategy which is consistent with its overall risk-management strategy and is fully disclosed to its Members and other participants using its facilities; and

(ii) its investments comprise instruments with minimal credit, market, and liquidity risks. For this purpose, the investments must be secured by, or be claims on, high-quality obligors, allowing for quick liquidation with little, if any, adverse price effect.

Guidance

A Clearing House which holds assets for its Members and other participants is subject to the "safe custody" requirements in section 5.10. In addition to those requirements, a Clearing House is required to manage risks associated with custody of its own assets (which may comprise cash) under Rule 7.2.4.

Money settlement

7.2.5 (1) Where a Clearing House conducts its money settlements using commercial bank money, it must adopt appropriate measures to minimise and strictly control the credit and liquidity risk arising from such use.

(2) For the purposes of (1), a Clearing House must:

(a) conduct its money settlements using only such settlement assets with little or no credit or liquidity risk;

(b) monitor, manage, and limit its credit and liquidity risks arising from commercial settlement banks. In particular, it must establish and monitor adherence to strict criteria for the use of settlement banks, which take into account, among other things, the regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability of the relevant settlement banks;

(c) monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks; and

(d) ensure that its legal agreements with any settlement banks, at a minimum:

(i) specify clearly when transfers on the books of individual settlement banks are expected to occur and when they are final; and

(ii) ensure that funds received are transferable as soon as possible, if not intra-day, at least by the end of the day to

enable it and its Members and other participants on its facilities to manage their credit and liquidity risks.

Physical delivery

7.2.6 (1) A Clearing House incurring obligations that require physical delivery of commodities must:

(a) provide adequate information to its Members and other participants using its facilities relating to its obligations with respect to physical delivery of commodities. Such information must also be made publicly available;

(b) identify, monitor, and manage the risks associated with such physical deliveries; and

(c) identify, monitor, and manage the risks and costs associated with the storage and delivery of commodities.

(2) A Clearing House must have adequate arrangements, including service agreements, which enable it to meet its physical delivery obligations.

Collateral

7.2.7 (1) A Clearing House which requires collateral to manage its own, its Members' or other participants' credit risks arising in the course of or for the purposes of its payment, clearing, and settlement processes must:

(a) only accept collateral with low credit, liquidity, and market risks; and

(b) set and enforce appropriately conservative haircuts and concentration limits.

(2) A Clearing House must, for the purposes of meeting the requirement in (1), establish and implement a collateral management system that is well designed and operationally flexible. Such a system must, at a minimum:

(a) limit the assets it accepts as collateral to those with low credit, liquidity, and market risks;

(b) establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions;

(c) to reduce the need for procyclical adjustments, establish, to the extent practicable and prudent, stable and conservative haircuts that are calibrated to include periods of stressed market conditions;

(d) avoid concentrated holdings of certain assets where that would significantly impair the ability to liquidate such assets quickly without significant adverse price effects; and

(e) mitigate, if it accepts cross-border collateral, the risks associated with such use. Such measures must ensure that the collateral can be used in a timely manner.

Settlement finality

7.2.8 (1) A Clearing House must have adequate arrangements to ensure clear and certain final settlement of payments, transfer instructions or other obligations of Members and other participants using its facilities and where relevant, its own obligations.

(2) For the purposes of (1), a Clearing House's arrangements for final settlement must:

(a) ensure that, if intra-day or real-time settlement is not feasible, settlement occurs at least by the end of the value date of the relevant transaction; and

(b) clearly define:

(i) the point at which the final settlement occurs; and

(ii) the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by the parties to the underlying contract.

(3) For the purposes of this Rule:

(a) "final settlement" is the irrevocable and unconditional transfer of an asset or financial instrument, or the discharge of obligations arising under the underlying contract by the parties to the contract; and

(b) "value date" is the day on which the payment, transfer instruction, or other obligation arising under the underlying contract is due and, accordingly, the associated funds or Investments are available to the respective parties under the contract.

Guidance

1. Final settlement is usually dependent on the legal environment of where the settlement occurs. Generally, in the case of certain assets, final settlement includes the transfer of title.

2. Completing final settlement by the end of the value date is important because deferring final settlement to the next-business day can create both credit and liquidity pressures for a Clearing House's Members and other participants on its facilities and stakeholders. This may also be a potential source of systemic risk. Therefore, where possible, a Clearing House should provide intra-day or real-time settlement finality to reduce settlement risk.

7.3 Additional requirements for a CCP

Credit Risk

7.3.1 (1) A Clearing House acting as a CCP must establish and implement a robust process to manage:

(a) its current and potential future credit and market risk exposures to market counterparties, including Members and other participants on its facilities; and

(b) credit risks arising from its payment, clearing, and settlement processes.

(2) For the purposes of (1), a CCP must, on a regular basis as appropriate to the nature, scale and complexity of its operations:

(a) perform stress tests using models containing standards and predetermined parameters and assumptions; and

(b) carry out comprehensive and thorough analysis of stress testing models, scenarios, and underlying parameters and assumptions used to ensure that they are appropriate for determining the required level of default protection in light of current and evolving market conditions.

(3) A CCP must:

(a) undertake the analysis referred to in (2)(b) at least on a two-month basis, unless more frequent analysis is warranted because the Investments cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increase significantly; and

(b) perform a full validation of its risk-management models at least annually.

Guidance

1. A robust assessment process should enable a CCP to effectively measure, monitor, and manage its risks and exposures effectively. In particular, it should be able to identify sources of credit risk and routinely measure and monitor its credit exposures. Generally, a CCP should have daily stress testing to measure and monitor its risk exposures, especially if its operations are complex or widely spread over multiple jurisdictions. It should use appropriate risk management tools to control the identified credit risks. A CCP should use margin and other prefunded financial resources in order to do so.

2. In particular, a CCP should establish explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its Members and other participants with respect to any of their obligations to the CCP. Such rules and procedures should address how any potentially uncovered credit losses would be allocated, including the repayment of any funds the CCP may borrow from its liquidity providers. They should also indicate the CCP's process to replenish any financial resources that it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

3. A CCP should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount of total financial resources it maintains.

It should also have clear procedures to report the results of its stress tests to its Governing Body and senior management as appropriate, and use those results to evaluate the adequacy of its total financial resources and make any adjustments as appropriate.

Margin requirements

7.3.2 (1) Without limiting the generality of Rule 7.3.1, a Clearing House operating as a CCP must, for the purposes of managing its credit and market risk:

(a) have a margin system which meets the requirements in (2) and (3);

(b) mark participant positions to market and collect variation margin at least daily to limit the build-up of current exposures;

(c) have necessary authority and operational capacity to make intra-day margin calls and payments, both scheduled and unscheduled, to participants; and

(d) regularly review and validate its margin system to ensure that it operates effectively and as intended.

(2) The margin system of a CCP must, at a minimum:

(a) establish margin levels which are commensurate with the risks and particular attributes of each product, portfolio, and market it serves;

(b) use a reliable source of timely price data for its margin system, and also procedures and sound valuation models for addressing circumstances in which pricing data is not readily available or reliable; and

(c) adopt initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to Members and other participants using its facilities in the interval between the last margin collection and the close-out of positions following a participant default.

(3) The initial margins established pursuant to (2)(c) must:

(a) if the CCP calculates margins:

(i) at the Member's portfolio level, be applied in respect of each portfolio's distribution of future exposure; and

(ii) at more granular levels, meet the corresponding distribution of future exposures; and

(b) use models which, among other things:

(i) rely on conservative estimates of the time horizons for the effective hedging or close out of the particular types of products cleared by the CCP, including in stressed market conditions; and

(ii) have an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and, to the extent practicable and prudent, limit the need for destabilising procyclical changes.

Guidance

1. A CCP should adopt comprehensive and stringent measures to ensure that it has adequate total financial resources to effectively manage its credit risk and exposures.

2. A CCP should determine the amount of the total financial resources available to it and regularly test the sufficiency of such amount, particularly in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing.

3. In conducting stress testing, a CCP should consider the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

4. A CCP which is involved in activities with a more-complex risk profile, or is systemically important in multiple jurisdictions, should maintain additional financial resources to cover a wide range of potential stress scenarios. These should include the default of the two of its market counterparties (including their affiliates) that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. In all other cases, a CCP should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios, which include the default of the market counterparty (including its affiliates) that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions.

5. An effective margining system is a key risk-management tool for an Authorised Market Institution operating as a CCP to manage the credit exposures posed by open positions of its Members or other participants using its facilities. Therefore, it should adopt and implement an effective margin system, which is risk-based and regularly reviewed, in order to cover its credit exposures to its Members and other participants in respect of all Investments and other products.

6. In calculating margin requirements, a CCP may allow offsets or reductions in required margin across products that it clears or between products that it and another CCP clear, if the risk of one product is significantly and reliably correlated with the risk of the other product. Where two or more CCPs are authorised to offer cross-margining, they must have appropriate safeguards and harmonised overall risk-management systems.

7. A CCP should analyse and monitor its model performance and overall margin coverage by conducting rigorous back testing regularly, and sensitivity analysis at least monthly and, where appropriate, more frequently. A CCP should regularly conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of the model's coverage, a CCP should take into account a wide range of parameters and assumptions that reflect possible market conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.

Segregation and portability

7.3.3 (1) A Clearing House acting as a CCP must have systems and procedures to enable segregation and portability of positions of the customers of its Members and other participants on its facilities, and any collateral provided to it with respect to those positions.

(2) For the purposes of (1), a CCP's systems and controls must, at a minimum, provide for the following:

(a) the segregation and portability arrangements that effectively protect the positions and related collateral of the customers of the Members or other participants on its facilities from the default or insolvency of the relevant Member or other participants;

(b) if the CCP offers additional protection of the customer positions and related collateral against the concurrent default of both the relevant Member or other participants or other customers, the adoption of necessary measures to ensure that the additional protection offered is effective; and

(c) the use of account structures that enable the CCP to readily identify positions of the customers of the relevant Member or other participant, and to segregate their related collateral.

(3) A CCP must make available to its Members and other participants using its facilities, its rules, policies and procedures relating to the segregation and portability of the positions and related collateral of the customers of its Members and other participants using its facilities.

Guidance

1. A CCP should:

   a. maintain the customer positions and any related collateral referred to in Rule 7.3.3 in individual customer accounts or in omnibus customer accounts; and

   b. structure its portability arrangements so that the positions and collateral of a defaulting Member's or other participant's customers can be transferred to one or more other Members or participants.

2. A CCP should also disclose whether the customers' collateral is protected on an individual or omnibus basis. In addition, it should disclose any constraints, such as legal or operational, that may impair its ability to segregate or transfer a Member's or other participant's customers' positions and related collateral.

7.4 Additional requirements for a CSD

7.4.1 (1) Where a Clearing House operates a Central Securities Depository (CSD), it must have rules and procedures, including robust accounting practices and controls to:

(a) ensure the integrity of securities issues; and

(b) minimise and manage risks associated with the safekeeping and transfer of securities.

(2) A CSD must ensure that securities referred to in (1)(a) are recorded in book-entry form prior to the trade date.

(3) For the purposes of (1)(a), a CSD's systems and controls must ensure that:

(a) the unauthorised creation or deletion of securities is prevented;

(b) appropriate intra-day reconciliation is conducted to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the Members and other participants of the CSD;

(c) where entities other than the CSD are involved in the reconciliation process for a securities issue, such as the issuer, registrars, issuance agents, transfer agents or other CSDs, the CSD has adequate arrangements for cooperation and information exchange between all involved parties so that the integrity of the issue is maintained; and

(d) there are no securities overdrafts or debit balances in securities accounts .

CSD links

7.4.2 (1) A CSD must not establish any link with another CSD (CSD link) unless:

(a) it has:

(i) prior to establishing the CSD link, identified and assessed potential risks, for itself and its Members and other participants using its facilities, arising from establishing such a link;

(ii) adequate systems and controls to effectively monitor and manage, on an on-going basis, risks identified under (a) above; and

(iii) complied with the requirement in (2); and

(b) it is satisfied, on reasonable grounds, that the contractual arrangement establishing the CSD link:

(i) provides to the CSD and its Members and other participants using its facilities adequate protection relating to possible risks arising from using the other CSDs to which it is linked (linked CSDs);

(ii) in the case of a provisional transfer of securities between the CSD and linked CSDs, ensure intra-day finality by prohibiting the retransfer of securities before the first transfer of securities becomes final;

(iii) sets out the respective rights and obligations of the CSD and linked CSDs and their respective Members and other participants using their facilities; and

(iv) in the case of a linked CSD outside the DIFC, sets out clearly the applicable laws that govern each aspect of the CSD's and the linked CSD's operations.

(2) The CSD must be able to demonstrate to the DFSA, prior to the establishment of any CSD link, that:

(a) the link arrangement between the CSD and all linked CSDs, contains adequate mitigants against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;

(b) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;

(c) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the additional risks arising from the use of the intermediary;

(d) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs, and where such settlement is not practicable or feasible, reasons for non-DVP settlement is notified to the DFSA; and

(e) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are:

(i) identical moments established for the entry of transfer orders into the system;

(ii) irrevocable transfer orders; and

(iii) finality of transfers of securities and cash.

Guidance

A CSD should include in its notification to the DFSA relating to the establishment of CSD links the results of due diligence undertaken in respect of the matters specified in Rule 7.4.2(2) to demonstrate that those requirements are met. Where a CSD changes any existing CSD arrangements, fresh notification relating to such changes, along with its due diligence relating to the new CSD link, should be provided to the DFSA in advance of the proposed change.

PART 4 OTHER REQUIREMENTS

8 CONTROLLERS

8.1 Application

8.1.1 This chapter applies to:

(a) an Authorised Market Institution; or

(b) a Person who is a Controller as defined in Rule 8.1.2.

Definition of a Controller

8.1.2 (1) A Controller is a Person who, either alone or with any Associate:

(a) holds 10% or more of the shares in either the Authorised Market Institution or a Holding Company of that institution;

(b) is entitled to exercise, or control the exercise of, 10% or more of the voting rights in either the Authorised Market Institution or a Holding Company of that institution; or

(c) is able to exercise significant influence over the management of the Authorised Market Institution as a result of holding shares or being able to exercise voting rights in the Authorised Market Institution or a Holding Company of that institution or having a current exercisable right to acquire such shares or voting rights.

(2) A reference in this chapter to:

(a) a share means:

(i) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution which has a share capital, its allotted shares;

(ii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution with capital but no share capital, rights to a share in its capital; and

(iii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up.

(b) “a holding” means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Market Institution or a Holding Company of that institution held by that Person either alone or with any Associate.

Guidance

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the DIFC Companies Law. That definition provides when one body corporate is considered to be a holding company or a subsidiary of another body corporate and extends that concept to the ultimate holding company of the body corporate.

2. Pursuant to Rule 8.1.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over an Authorised Market Institution. The ability to exert significant management influence can arise even where a Person, alone or with Associates, controls less than 10% of the shares or voting rights of the Authorised Market Institution or a Holding Company of that institution. Similarly, a Person may be able to exert significant management influence where such Person does not hold shares or voting rights but has exercisable rights to acquire shares or voting rights, such as under Options.

Disregarded holdings

8.1.3 For the purposes of determining whether a Person is a Controller, shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with an Associate, in an Authorised Market Institution or a Holding Company of that institution are disregarded if:

(a) the shares are held for the sole purpose of clearing and settling within a short settlement cycle;

(b) the shares are held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or

(c) the Person is an Authorised Firm or a Regulated Financial Institution and it:

(i) acquires a holding of shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;

(ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and

(iii) retains the holding for a period less than one year.

8.2 Changes relating to control

Requirement for prior approval of Controllers of an Authorised Market Institution incorporated under DIFC law

8.2.1 (1) In the case of an Authorised Market Institution which is incorporated under DIFC law, a Person must not:

(a) become a Controller of the Authorised Market Institution; or

(b) increase the level of control which that Person has in the Authorised Market Institution beyond a threshold specified in (2),

unless that Person has obtained the prior written approval of the DFSA to do so.

(2) For the purposes of (1)(b), the thresholds at which the prior written approval of the DFSA is required are when the relevant holding is increased:

(a) from below 30% to 30% or more; or

(b) from below 50% to 50% or more.

Guidance

See Rule 8.1.2 for the circumstances in which a Person becomes a Controller of an Authorised Market Institution.

Approval process

8.2.2 (1) A Person who is required to obtain the prior written approval of the DFSA pursuant to Rule 8.2.1(1) must make an application to the DFSA using the appropriate form in AFN.

(2) Where the DFSA receives an application under (1), it may:

(a) approve the proposed acquisition or increase in the level of control;

(b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or

(c) object to the proposed acquisition or increase in the level of control.

Guidance

1. A Person intending to acquire or increase control in an Authorised Market Institution should submit an application for approval in the appropriate form in AFN sufficiently in advance of the proposed acquisition to be able to obtain the DFSA approval in time for the proposed acquisition.

2. Paragraph 3.6.7 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when exercising its powers under Rule 8.2.2 to approve, object to or impose conditions of approval relating to a proposed Controller or an increase in the level of control of an existing Controller.

8.2.3 (1) Where the DFSA proposes to approve a proposed acquisition of or an increase in the level of control in an Authorised Market Institution pursuant to Rule 8.2.2(2)(a), it must:

(a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different period is considered appropriate by the DFSA and notified to the applicant in writing; and

(b) issue to the applicant, and where appropriate to the Authorised Market Institution, an approval notice as soon as practicable after making that decision.

(2) An approval, including a conditional approval granted by the DFSA pursuant to Rule 8.2.2(2)(a) or (b), is valid for a period of one year from the date of the approval, unless an extension is granted by the DFSA in writing.

Guidance

1. If the application for approval lodged with the DFSA does not contain all the required information, then the 90 day period runs from the date on which all the relevant information is provided to the DFSA.

2. If a Person who has obtained prior DFSA approval for an acquisition of or an increase in the control in an Authorised Market Institution is unable to effect the acquisition before the end of the period referred to in Rule 8.2.3(2), it will need to obtain fresh approval from the DFSA.

Objection or conditional approval process

8.2.4 (1) Where the DFSA proposes to exercise its objection or conditional approval power pursuant to Rule 8.2.4(2)(b) or (c) in respect of a proposed acquisition or an increase in the level of control in an Authorised Market Institution, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:

(a) a written notice stating;

(i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and

(ii) any proposed conditions subject to which that Person may be approved by the DFSA; and

(b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.

(2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:

(a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;

(b) the Person is approved as a Controller subject to conditions specified in the notice; or

(c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.

(3) If the DFSA decides to exercise its power under this Rule not to approve a Person as a Controller or to impose conditions on an approval, the Person may refer the matter to the FMT for review.

8.2.5 (1) A Person who has been approved by the DFSA as a Controller of an Authorised Market Institution subject to any conditions must comply with the relevant conditions of approval.

(2) A Person who has been notified by the DFSA pursuant to Rule 8.2.4(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Authorised Market Institution.

Guidance

A Person who acquires control of or increases the level of control in an Authorised Market Institution without the prior DFSA approval or breaches a condition of approval is in breach of the Rules. See Rule 8.2.10 for the actions that the DFSA may take in such circumstances.

Notification for decrease in the level of control of an AMI incorporated under DIFC law

8.2.6 A Controller of an Authorised Market Institution which is incorporated under DIFC law must submit, using the appropriate form in AFN, a written notification to the DFSA where that Person:

(a) proposes to cease being a Controller; or

(b) proposes to decrease the existing holding from more than 50% to 50% or less.

Notification for changes in control relating to an Authorised Market Institution incorporated under non-DIFC law

8.2.7 (1) In the case of an Authorised Market Institution which is incorporated other than under DIFC law, a written notification to the DFSA must be submitted by a Controller or a Person proposing to become a Controller in accordance with (3) in respect of any one of the events specified in (2).

(2) For the purposes of (1), a notification to the DFSA is required when:

(a) a Person becomes a Controller;

(b) an existing Controller proposes to cease being a Controller; or

(c) an existing Controller's holding is:

(i) increased from below 30% to 30% or more;

(ii) increased from below 50% to 50% or more; or

(iii) decreased from more than 50% to 50% or less.

(3) The notification required under (1) must be made using the appropriate form in AFN as soon as possible, and in any event, before making the relevant acquisition or disposition.

Obligations of an Authorised Market Institution relating to its Controllers

8.2.8 (1) An Authorised Market Institution must have adequate systems and controls to monitor:

(a) any change or proposed change of its Controllers; and

(b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact the fitness and propriety of the Authorised Market Institution or its ability to conduct business soundly and prudently.

(2) An Authorised Market Institution must, subject to (3), notify the DFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.

(3) An Authorised Market Institution need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the DFSA or notified the event to the DFSA as applicable.

Guidance

Steps which an Authorised Market Institution may take in order to monitor changes relating to its Controllers include the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

8.2.9 (1) An Authorised Market Institution must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

(2) The Authorised Market Institution's annual report on its Controllers must include:

(a) the name of each Controller; and

(b) the current holding of each Controller, expressed as a percentage.

Guidance

1. An Authorised Market Institution may satisfy the requirements of Rule 8.2.9 by submitting a corporate structure diagram containing the relevant information.

2. An Authorised Market Institution must take account of the holdings which the Controller, either alone or with an Associate, has in the Authorised Market Institution or any Holding Company of that institution (see the definition of a Controller in Rule 8.1.2).

Other powers relating to Controllers

8.2.10 (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Market Institution where such a Person:

(a) has acquired or increased the level of control that Person has in an Authorised Market Institution without the prior written approval of the DFSA as required under Rule 8.2.1;

(b) has breached the requirement in Rule 8.2.5 to comply with conditions of approval applicable to that Person; or

(c) is no longer acceptable to the DFSA as a Controller.

(2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Market Institution, the DFSA must provide such a Person with:

(a) a written notice stating:

(i) the DFSA's reasons for objecting to that Person as a Controller; and

(ii) any proposed conditions subject to which that Person may be approved by the DFSA; and

(b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.

(3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:

(a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller; or

(b) the Person is approved as a Controller subject to conditions specified in the notice; or

(c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.

(4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.

(5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller that Person must dispose of the relevant holdings within such period as specified in the final notice.

(6) If the DFSA decides to exercise its power under this Rule to object to a Person as a Controller, to impose conditions on an approval or to require a Person to dispose of their holdings, the Person may refer the matter to the FMT for review.

9 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

9.1 Application

9.1.1 This chapter applies to every Authorised Market Institution.

9.2 Relations with regulators and the risk based approach

9.2.1 An Authorised Market Institution must deal with regulatory authorities in an open and co-operative manner and keep the DFSA promptly informed of significant events or activities, wherever they are carried on, relating to the Authorised Market Institution, of which the DFSA would reasonably expect to be notified.

9.2.2 An Authorised Market Institution must advise the DFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach of a Rule or Licensing Requirement by the Authorised Market Institution or any of its Employees may have occurred or may be about to occur.

9.3 Notifications

9.3.1 Unless otherwise provided, notifications in this section may be made orally or in writing, whichever is more appropriate in the circumstances, but where the Authorised Market Institution gives notice or information orally, it must confirm that notice or information in writing without delay.

9.4 Key Individuals

Notifications

9.4.1 An Authorised Market Institution must, where an individual ceases or is reasonably likely to cease to be a Key Individual of the Authorised Market Institution, give written notice to the DFSA of that event and take prompt action to replace the Key Individual who has ceased to perform the relevant functions.

Guidance

1. An Authorised Market Institution must lodge with the DFSA the relevant applications for the approval of the proposed Key Individual in accordance with the requirements in section 3.3.

2. An Authorised Market Institution should ensure that functions that are assigned to Key Individuals as per the definitions of those functions are carried out by the relevant Key Individuals or other individuals subject to appropriate oversight and control of the relevant Key Individuals.

3. The DFSA does not need to be notified where minor changes are made to the responsibilities of a Key Individual, but where major changes in responsibilities are made, such as a significant re-alignment of responsibilities, then the DFSA should be

notified with the appropriate information. Such changes may also require the DFSA prior approval if they are material changes. See section 4.3.

Disciplinary action and events relating to Key Individuals

9.4.2 Where any Key Individual of an Authorised Market Institution:

(a) is the subject of any:

(i) disciplinary action arising out of alleged misconduct; or

(ii) criminal prosecution arising out of alleged misconduct involving fraud or dishonesty;

(b) resigns as a result of an investigation into alleged misconduct; or

(c) is dismissed for misconduct;

the Authorised Market Institution must immediately give the DFSA notice of that event and give the following information:

(d) the name of the Key Individual and his responsibilities within the Authorised Market Institution;

(e) details of the alleged acts of misconduct by that Key Individual; and

(f) details of any disciplinary action which has been imposed or is proposed to be taken by that body in relation to that Key Individual.

9.4.3 Where an Authorised Market Institution becomes aware that any of the following events have occurred in relation to a Key Individual, it must immediately give the DFSA notice of that event:

(a) a petition of bankruptcy is presented against a Key Individual;

(b) a bankruptcy order is made against a Key Individual; or

(c) a Key Individual entering into a voluntary arrangement with his creditors.

9.5 Constitution and governance

9.5.1 Where an Authorised Market Institution is to circulate any notice or other document proposing any amendment to its memorandum or articles of association, or other document relating to its constitution, to:

(a) its shareholders or any group or class of them;

(b) persons granted access to its facilities or any group or class of them; or

(c) any other group or class of persons which has the power to make that amendment or whole consent or approval is required before it may be made:

that Authorised Market Institution must give notice of that proposed amendment to the DFSA setting out the following information:

(d) the proposed amendment;

(e) the reasons for the proposal; and

(f) a description of the group or class of persons to whom the proposal is to be circulated.

9.5.2 Where an Authorised Market Institution makes an amendment to its memorandum or articles of association, or other document relating to its constitution, that Authorised Market Institution must immediately give the DFSA notice of that event, setting out written particulars of that amendment and of the date on which it is to become or became effective.

9.5.3 (1) Where any significant change is made to an agreement which relates to the constitution, or to the corporate governance framework or the remuneration structure or strategy, of an Authorised Market Institution, that Authorised Market Institution must give the DFSA a notice as provided in (2).

(2) Where any significant change is made to:

(a) an agreement which relates to the constitution of an Authorised Market Institution, the Authorised Market Institution must give the DFSA notice of that change as soon as it becomes aware of it, and the date on which it is to become or became effective; or

(b) the corporate governance framework or the remuneration structure or strategy of an Authorised Market Institution, the Authorised Market Institution must give the DFSA notice of that change as soon as practicable before making such a change.

Guidance

1. Key aspects of the corporate governance framework of an Authorised Market Institution encompass a range of matters. These include the composition of its Governing Body, any committees of the Governing Body, the senior management and the Persons Undertaking Key Control Functions, the reporting lines between the Governing Body, senior management and the Persons Undertaking Key Control Functions and any key policies and practices relating to the internal governance of the firm, such as codes of ethics or its remuneration practices. Significant changes relating to such arrangements and policies need to be notified to the DFSA pursuant to Rule 9.5.3(2)(b) before making any changes.

3. Notification relating to proposed changes to corporate governance and remuneration referred to in Rule 9.5.3(2)(b) must be given sufficiently in advance of effecting the proposed change. If there are any concerns that an Authorised Market Institution may not be able to meet the applicable requirements relating to corporate governance and remuneration set out in GEN Rules 5.3.30 and 5.3.31 as a result of a proposed change, the DFSA may require the Authorised Market Institution to address those concerns effectively before implementing such a change.

9.6 Financial and other information

9.6.1 An Authorised Market Institution must give the DFSA:

(a) a copy of its annual report and accounts; and

(b) a copy of any consolidated annual report and accounts of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

(c) three months after the end of the financial year to which the document relates;

(d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or

(e) the time when the document is sent to a Holding Company of the Authorised Market Institution.

9.6.2 Where an audit committee of an Authorised Market Institution has received a report in relation to any period or any matter relating to any Regulatory Functions of that Authorised Market Institution, the Authorised Market Institution must immediately give the DFSA a copy of that report.

9.6.3 An Authorised Market Institution must give the DFSA a copy of its quarterly management accounts within one month of the end of the period to which they relate.

9.6.4 An Authorised Market Institution must give the DFSA:

(a) a statement of its anticipated income, expenditure and cash flow for each financial year; and

(b) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

at least 15 days before the beginning of that financial year.

Guidance

An Authorised Market Institution is subject to GEN 8 and the requirements imposed by those Rules.

Fees and charges

9.6.5 An Authorised Market Institution must give the DFSA a summary of:

(a) any proposal for changes to the fees or charges levied on users of its facilities, or any group or class of them, at the same time as the proposal is communicated to the relevant users; and

(b) any such change, no later than the date when it is published and notified to relevant parties.

9.7 Complaints

9.7.1 Where an Authorised Market Institution has investigated a complaint arising in connection with the performance of, or failure to perform, any of its Regulatory Functions, and the conclusion is, that the Authorised Market Institution should:

(a) make a compensatory payment to any person; or

(b) remedy the matter which was the subject of that complaint,

the Authorised Market Institution must immediately notify the DFSA of that event and give the DFSA a copy of the report and particulars of the recommendation as soon as that report or those recommendations are available to it.

9.8 Notification

Notification in respect of trading

9.8.1 Where an Authorised Market Institution proposes to remove from trading or admit to trading, by means of its facilities, a class of Investment which it has not previously traded, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholders, with the following information;

(a) a description of the Investment to which the proposal relates;

(b) where that Investment is a derivative product, the proposed terms of that derivative; and

(c) the name of any clearing or settlement facility in respect of that Investment.

9.8.2 Where an Authorised Market Institution decides to suspend, restore from suspension or cease trading any Investment, it must immediately notify the DFSA and any person granted access to its facilities of the decision.

9.8.3 Where a Clearing House proposes to cease clearing or settling, or to commence clearing or settling, by means of its facilities, a class of Investment which it has not previously cleared or settled, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholders, with the following information;

(a) a description of the Investment to which the proposal relates;

(b) where that Investment is a derivative product, the proposed terms of that derivative; and

(c) the name of any trading facility in respect of that Investment.

Delisting or suspension of Securities from an Official List of Securities

Guidance

An Authorised Market Institution which maintains an Official List of Securities has the power under Article 35(1) of the Markets Law 2012 to delist or suspend Securities from its Official List of Securities.

9.8.4 Where an Authorised Market Institution suspends, restores or delists from suspension any Securities from an Official List of Securities it maintains under an endorsement on its Licence, it must immediately notify the DFSA of its decision and the reasons for the decision.

9.9 Information technology systems

9.9.1 Where an Authorised Market Institution changes any of its plans for action in response to a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately give the DFSA notice of that event, and a copy of the revised or new plan.

9.9.2 Where any reserve information technology system of an Authorised Market Institution fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that body must immediately give the DFSA notice of that event, and inform the DFSA of:

(a) what action that Authorised Market Institution is taking to restore the operation of the reserve information technology system; and

(b) when it is expected that the operation of that system will be restored.

Inability to discharge regulatory functions

9.9.3 Where, because of the occurrence of any event or circumstances, an Authorised Market Institution is unable to discharge any Regulatory Function, it must immediately give the DFSA written notice of its inability to discharge that function, and inform the DFSA of:

(a) what event or circumstance has caused it to become unable to do so;

(b) which of its Regulatory Functions it is unable to discharge; and

(c) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that Regulatory Function.

9.10 Investigations and disciplinary action

9.10.1 Where an Authorised Market Institution becomes aware that a person other than the DFSA has been appointed by any regulatory authority to investigate:

(a) any business transacted on or through its facilities; or

(b) any aspect of the clearing or settlement services which it provides,

it must immediately give the DFSA notice of that event.

Guidance

An Authorised Market Institution need not give the DFSA notice of:

a. routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of theme visits;

b. routine requests for information; or

c. investigations into the conduct of Persons granted access to the facilities of an Authorised Market Institution where the use of its facilities is a small or incidental part of the subject matter of the investigation.

Disciplinary action relating to persons granted access to its facilities

9.10.2 Where an Authorised Market Institution has taken disciplinary action against a Member or any other Person granted access to its facilities, or any Employee of such Person, in respect of a breach of its Business Rules, trading rules or Listing Rules, the Authorised Market Institution must immediately notify the DFSA of that event, and give:

(a) the name of the Person concerned;

(b) details of the disciplinary action taken by the Authorised Market Institution; and

(c) the Authorised Market Institution's reasons for taking that disciplinary action.

9.10.3 Where an appeal is lodged against any disciplinary action referred to in Rule 9.10.2, the Authorised Market Institution must immediately give the DFSA notice of that event and:

(a) the name of the appellant and the grounds on which the appeal is based, immediately; and

(b) the outcome of the appeal, when known.

Criminal offences and civil prohibition

9.10.4 Where an Authorised Market Institution has information tending to suggest that any person has:

(a) been carrying on Financial Services in the DIFC in contravention of the general prohibition;

(b) engaged in Market Abuse; or

(c) engaged in financial crime or money laundering;

it must immediately give the DFSA notice of that event, along with full details of that information in writing. In regard to (c) the AMI must immediately inform the appropriate authorities in the U.A.E.

Directions by an Authorised Market Institution

9.10.5 Where an Authorised Market Institution:

(a) decides to limit the open position of any Person in Investments; or

(b) issues directions to any Person to close out his position in any Investment;

that Authorised Market Institution must immediately give the DFSA notice of that event, and the Person's name, the Investment and size of any position to be limited or closed-out and the reasons for the Authorised Market Institution's decision.

9.11 Supervisory directions

Guidance

1. Article 26 of the Markets Law provides as follows:

"(1) Without limiting the application of the Regulatory Law 2004, the DFSA may direct an Authorised Market Institution to do or not do specified things that the DFSA considers are necessary or desirable or ensure the integrity of the financial services industry in the DIFC, including but not limited to, directions:

(a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution;

(b) requiring an Authorised Market Institution to act in a specified manner in relation to transactions conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or

(c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made.

(2) Without limiting the application of Article 75 of the Regulatory Law 2004, the DFSA may direct an Authorised Market Institution to:

(a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period;

(b) suspend transactions on the market or through the facilities operated by an Authorised Market Institution;

(c) suspend transactions in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;

(d) prohibit trading in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;

(e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by an Authorised Market Institution;

(f) prohibit a specified person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or

(g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the DFSA's objectives."

2. The DFSA expects to use these powers only in exceptional circumstances. Factors the DFSA will consider in exercising these powers include:

a. what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;

b. the impact on the DFSA's objectives if a direction were not issued; or

c. whether it is in the interests of the DIFC.

3. The Decision Notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers.

9.12 Reports

9.12.1 For the purposes of Article 74(2) of the Regulatory Law 2004, an Authorised Market Institution must deliver to the DFSA a report in writing at such times as the DFSA may direct addressing those matters contained in Article 74(2)(a)-(d) of the Regulatory Law and such other matters as the DFSA may reasonably require.

9.13 Listing directions

Guidance

Article 35(2) of the Markets Law 2012 allows the DFSA to direct an Authorised Market Institution to suspend or restore from suspension or delist Securities from its Official List of Securities. Such directions may take immediate effect or from a date and time as may be specified in the directive.

9.14 Public disclosures of decisions in relation to an Official List of Securities of an Authorised Market Institution

9.14.1 (1) An Authorised Market Institution must make a market disclosure:

(a) on the website of the Authorised Market Institution; and

(b) to the DFSA,

of decisions in relation to the following events:

(c) an admission of Securities to its Official List of Securities;

(d) a suspension of Securities from its Official List of Securities;

(e) a restoration from suspension of Securities from its Official List of Securities;

(f) a delisting of Securities from its Official List of Securities; and

(g) a suspension, restoration from suspension or decision to cease trading of any Investment.

(2) The disclosure made in accordance with (1) should also indicate whether the event was made under a direction made to the Authorised Market Institution by the DFSA.

Guidance

Disclosures made in accordance with Rule 9.14.1 are designed to help ensure that an orderly market exists in relation to Securities admitted to an Official List of Securities of an Authorised Market Institution.

10 WITHDRAWAL OF A LICENCE

10.1 Application

10.1.1 This chapter applies to an Authorised Market Institution.

10.2 Withdrawal of a licence at an Authorised Market Institution's request

10.2.1 (1) An Authorised Market Institution must continue to carry on every Financial Service it is authorised to conduct under its Licence until its Licence is withdrawn or the DFSA consents in writing.

(2) An Authorised Market Institution seeking to have its Licence withdrawn must submit a request in writing stating:

(a) the reasons for the request;

(b) the date on which it will cease to carry on Financial Services in or from the DIFC;

(c) how Persons using facilities maintained by it for trading, clearing or settlement, as applicable, are affected and any alternative arrangements made for the trading, clearing or settlement;

(d) where applicable, how persons with Securities admitted to an Official List of Securities maintained by it are affected and any alternative arrangements made for the listing and trading of the relevant Securities; and

(e) that it has discharged, or will discharge, all obligations owed to its users in respect of whom the Authorised Market Institution has carried on Financial Services in or from the DIFC.

Guidance

1. The DFSA will need to be satisfied when considering requests under Rule 10.2.1, that an Authorised Market Institution has made appropriate arrangements with respect to its existing users (including the receipt of consent where required) and, in particular:

   a. whether there may be a long period in which the business will be wound down or transferred;

   b. whether money and other assets belonging to users must be returned to them; and

   c. whether there is any other matter which the DFSA would reasonably expect to be resolved before granting a request for the withdrawal of a Licence.

2. In determining a request for the withdrawal of a Licence, the DFSA may require additional procedures or information as appropriate including evidence that the Authorised Market Institution has ceased to carry on Financial Services.

3. Detailed plans should be submitted where there may be an extensive period of wind-down. It may not be appropriate for an Authorised Market Institution to immediately request a withdrawal of its Licence in all circumstances, although it may wish to consider reducing the scope of its Licence during this period. Authorised Market Institutions should discuss these arrangements with the DFSA.

4. The DFSA may refuse a request for the withdrawal of a Licence where it appears that users and customers may be adversely affected.

5. The DFSA may also refuse a request for the withdrawal of a Licence where:

   a. the Authorised Market Institution has failed to settle its debts to the DFSA; or

   b. it is in the interests of a current or pending investigation by the DFSA, or by another regulatory body or Financial Services Regulator.

6. Under Article 63 where the DFSA grants a request for the withdrawal of a Licence, the DFSA may continue to exercise any power under the Regulatory Law, the Markets Law or Rules in relation to an Authorised Market Institution for a period of three years from the date on which it became aware of the matter giving rise to the right to exercise the power.

10.3 Withdrawal of a licence on the DFSA's initiative

Guidance

In section 10.2 above, an application to withdraw a Licence will be at the Authorised Market Institution's request. Under Article 51 of the Regulatory Law, the DFSA may act on its own initiative to withdraw an Authorised Market Institution's Licence in cases when the Authorised Market Institution no longer has authority to carry on any Financial Service, is no longer meeting the conditions of its Licence or has failed to remove a Controller in the circumstances described in Article 64 of the Regulatory Law.

11 APPEALS FROM AUTHORISED MARKET INSTITUTION DECISIONS

11.1 Application

11.1.1 (1) Pursuant to Article 30 of the Regulatory Law, any Person who:

(a) is aggrieved by a decision of the Authorised Market Institution;

(b) has a right to a further appeal of the Authorised Market Institution decision to a tribunal under the Business Rules of that Authorised Market Institution; and

(c) has exhausted the internal appeal process of that Authorised Market Institution;

may appeal the Authorised Market Institution decision by commencing a regulatory proceeding before the FMT.

(2) The grounds on which an appeal may lie under this Rule are limited to the following:

(a) an error of law or jurisdiction;

(b) a breach of the rules of natural justice; or

(c) the decision is manifestly unreasonable.

12. TRANSITION AND SAVING

12.1 Transitional Rule for Key Individuals

12.1.1 (1) In this Rule:

(a) "Commencement Date" means the date on which the DIFC Law Amendment Law No. 1 of 2014 comes into force;

(b) "Current Regime" means the provisions in the Regulatory Law and AMI module as in force on the Commencement Date; and

(c) "Previous Regime" means the provisions in the Regulatory Law and AMI module as in force immediately before the Commencement Date.

(2) A Person who was authorised as a Key Individual by the DFSA under the Previous Regime is on the Commencement Date deemed to be authorised as a Key Individual by the DFSA under the Current Regime.

12.2 Deleted

12.3 Saving Rules

12.3.1 (1) Save as provided in Rule 12.2.1, anything done or omitted to be done pursuant to or for the purposes of the Previous Regime is deemed to be done or omitted to be done pursuant to or for the purposes of the Current Regime.

(2) Without prejudice to (1):

(a) any right, privilege, remedy, obligation or liability accrued to or incurred by any Person; and

(b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, privilege, remedy, obligation or liability,

under the Previous Regime continues and is enforceable under the Current Regime.

APP1 TESTING OF TECHNOLOGY SYSTEMS

A1.1 Application

A1.1.1 An Authorised Market Institution must, for the purposes of meeting the requirements in Rule 5.5.5 relating to the testing of its information technology systems, comply with the requirements in this Appendix.

A1.2 Testing of technology systems

A1.2.1 An Authorised Market Institution must, before commencing live operation of its information technology systems or any updates thereto, use development and testing methodologies in line with internationally accepted testing standards in order to test the viability and effectiveness of such systems. For this purpose, the testing must be adequate for the Authorised Market Institution to obtain reasonable assurances that the systems, among other things:

(a) enable it to comply with all the applicable requirements, including legislation, on an on-going basis;

(b) can continue to operate effectively in stressed market conditions; and

(c) any risk management controls embedded within the systems, such as generating automatic error reports, work as intended.

Guidance

In assessing whether an Authorised Market Institution has adequate information technology resourcing, the DFSA will consider:

a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

A1.3 Testing relating to Members' technology systems

A1.3.1 (1) An Authorised Market Institution must implement standardised conformance testing procedures to ensure that the systems which its Members are using to access facilities operated by it have a minimum level of functionality that is compatible with the Authorised Market Institution's information technology systems and will not pose any threat to fair and orderly conduct of its facilities.

(2) An Authorised Market Institution must also require its Members, before commencing live operation of any electronic trading system, user interface or a trading algorithm, including any updates to such arrangements, to use adequate development and testing methodologies to test the viability and effectiveness of their systems.

(3) For the purposes of (2), an Authorised Market Institution must require its Members:

(a) to adopt trading algorithm tests, including tests in a simulation environment which are commensurate with the risks that such a strategy may pose to itself and to the fair and orderly functioning of the facility operated by the Authorised Market Institution; and

(b) not to deploy trading algorithms in a live environment except in a controlled and cautious manner.

Guidance

When assessing whether the trading algorithm testing plan of its Members is adequate and appropriate and implemented effectively, an Authorised Market Institution should consider whether:

a. it includes testing where the markets in which the algorithm is to be used change in structure;

b. the Member has taken into account any limits that are being placed on the number of Investments to be traded on, and the value and number of orders to be sent to, the facility operated by the Authorised Market Institution;

c. the algorithm works effectively in stressed market conditions, including whether it can be switched off in appropriate circumstances; and

d. it includes adequate independent auditing of the Member's testing procedures.

APP2 USE OF PRICE INFORMATION PROVIDERS

A2.1 Application

A2.1.1 This Appendix applies to an Authorised Market Institution referred to in Rule 5.8.1(3).

Use of price information providers

A2.1.2 (1) An Authorised Market Institution may only admit to trading or clearing or trade on its facilities Investments that reference to an underlying benchmark or index provided by a Price Information Provider where it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).

(2) A Price Information Provider is a price reporting agency or an index provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, rates, indices, commodities or figures, which are made available to users.

(3) For the purposes of (1), the Price Information Provider must:

(a) have fair and non-discriminatory procedures for establishing prices of Investments which are made public.

(b) demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations;

(c) where appropriate, give priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;

(d) be of good standing and repute as an independent and objective price reporting agency or index provider;

(e) have a sound corporate governance framework;

(f) have adequate arrangements to avoid its staff having any conflicts of interest where such conflicts are, or are likely to have, a material adverse impact on price establishment process; and

(g) adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

Guidance

An Authorised Market Institution, when assessing the suitability of a Price Information Provider (the provider), should take into account factors such as:

a. the provider's standing and reliability in the relevant physical or derivatives markets as a credible price reporting agency;

b. the quality of corporate governance adopted, covering areas such as independent members of the board, independence of its internal audit and risk management function;

c. whether the methodologies and processes (including any material changes to such methodologies and processes) adopted by the provider for the purposes of pricing are made publicly available;

d. whether there are adequate procedures adopted to ensure that conflicts of interests between the provider's commercial interests and that of users of its services, including that of its Employees involved in pricing process, are adequately addressed, including through codes of ethics;

e. whether there is a clear conveyance to its users of the economic realities of the underlying interest the Price Information Provider seeks to measure; and,

f. the degree to which the Price Information Provider has given consideration to the characteristics of underlying interests measured, such as:

- **the size and liquidity**: Whether the size of the market informs the selection of an appropriate compilation mechanism and governance processes. For example, a benchmark or index that measures a smaller market may be impacted by single trades and therefore be more prone to potential manipulation, whereas a benchmark for a larger market may not be well represented by a small sample of participants;

- **the relative market size**. Where the size of a market referencing a benchmark is significantly larger than the volume of the underlying market, the potential incentive for benchmark manipulation to increase; and

- **Transparency**: Where there are varying levels of transparency regarding trading volumes and positions of market participants, particularly in non-regulated markets and instruments, whether the benchmark represents the full breadth of the market, the role of specialist participants who might be in a position to give an overview of the market, and the feasibility, costs and benefits of providing additional transparency in the underlying markets.

APP3 CONTRACT DELIVERY SPECIFICATIONS

A3.1 Application

A3.1.1 This Appendix applies to an Authorised Market Institution which trades, or clears or settles, on its facilities Commodity Derivative contracts which require physical delivery of the underlying commodity.

A3.2 Deliverability of the underlying commodity

A3.2.1 An Authorised Market Institution referred to in A3.1.1 must, for the purposes of meeting the requirement in Rule 6.3.2(1)(b), ensure that the terms and conditions of the Commodity Derivative contracts which are to be traded, or cleared or settled, on its facilities, are designed to include the matters specified in Rules A3.2.2 – A3.2.9.

Quality or deliverable grade

A3.2.2 A Commodity Derivative contract must include specifications of commodity characteristics for par delivery, including those relating to grade, class, and weight. The quality or grade specified must conform to the prevailing practices in the underlying physical market relating to the relevant commodity.

Guidance

1. Par delivery envisages delivery of commodities which are of a comparable quality or grade as specified in the contract. Contracts that call for delivery of a specific quality of commodity may provide commercial participants with a clearer, more efficient hedging and price-basing contracts than a contract that permits delivery of a broad range of commodity grades or classes.

2. However, as contracts that permit delivery of only a specific grade of commodity may be susceptible to manipulation if that grade of the commodity is in short supply or controlled by a limited number of sellers, an Authorised Market Institution should require appropriate measures to mitigate such risks.

Size of delivery unit

A3.2.3 A Commodity Derivative contract must contain provisions relating to size or composition of delivery units which conform to the prevailing market practice in the underlying physical market to ensure that it does not constitute a barrier to delivery or otherwise impede the performance of the contract.

Guidance

An Authorised Market Institution should, where the provisions relating to size and delivery units of the Commodity Derivatives contract deviate from the underlying physical market, examine the reasons for such deviation and ensure that the risks arising from such deviation can be effectively addressed by the contract parties.

Delivery instruments

A3.2.4 A Commodity Derivative contract must specify the acceptable form or type of delivery instruments, and whether such instruments are negotiable or assignable and, if so, on what conditions.

Guidance

Acceptable delivery instruments include warehouse receipts, bills of lading, shipping certificates, demand certificates, or collateralized depository receipts.

The delivery process and facilities

A3.2.5 A Commodity Derivative contract must specify:

(a) the delivery process, including timing, location, manner and form of delivery, and

(b) the delivery and/or storage facilities available,

which conform to the prevailing practices in the underlying physical market to permit effective monitoring and to reduce the likelihood of disruption.

Guidance

1. An Authorised Market Institution should consider issues associated with the delivery process, including those relating to acceptable delivery locations. Such issues include:

    a. the level of deliverable supplies normally available, including the seasonal distribution of such supplies;

    b. the nature of the physical market at the delivery point (e.g., auction market, buying station or export terminal);

    c. the number of major buyers and sellers; and

    d. normal commercial practices in establishing cash commodity values.

2. The delivery months specified in the Commodity Derivative contract should take into account cyclical production and demand and accord with when sufficient deliverable supplies are expected to exist in the underlying physical market. Seasonality of a commodity should also be taken into account in relation to transport and storage, as it may affect the availability of warehouse space and transportation facilities.

3. Consistent with the grade differentials noted above, Commodity Derivative contracts that permit delivery in more than one location should set delivery premiums or discounts consistent with those observed in the underlying physical market. The adequacy of transportation links to and from the delivery point should also be taken into account when setting delivery premiums.

4. The delivery facilities available can include oil or gas storage facilities, warehouses or elevators for agricultural commodities and bank or vault depositories for precious metals.

5. An Authorised Market Institution should consider issues relating to the selection of delivery facilities under the contract which include:

    a. the number and total capacity of facilities meeting contract requirements;

b. the proportion of such capacity expected to be available for short traders who may wish to make delivery against Commodity Derivative contracts and seasonal changes in such proportions;

c. the extent to which ownership and control of such facilities is dispersed or concentrated; and

d. its ability to access necessary information from such facility.

Inspection and certification procedures

A3.2.6 A Commodity Derivative contract must specify applicable inspection or certification procedures for verifying that the delivered commodity meets the quality or grade specified in the contract, which conform to the prevailing practices in the underlying physical market.

Guidance

If the commodity is perishable, the Commodity Derivative contract should specify if there are any limits on the duration of the inspection certificate and the existence of any discounts applicable to deliveries of a given age.

Payment for transportation or storage

A3.2.7 A Commodity Derivative contract must specify:

(a) the respective responsibilities of the parties to the contract regarding costs associated with transporting the commodity to and from the designated delivery point and any applicable storage costs; and

(b) how and when title to the commodity transfers, including from any short to long position holder.

Legal enforceability

A3.2.8 A Commodity Derivative contract must, where any one or more of the activities of trading, clearing or settlement under the contract take place in different jurisdictions, contain adequate arrangements to mitigate risks arising from any disparity between governing laws applicable in the relevant jurisdictions.

Guidance

An Authorised Market Institution should, when assessing whether the contractual terms adequately provide for addressing jurisdictional risks, take into account whether the contract:

a. clearly identifies the different legal requirements applicable in the relevant jurisdictions and any differences, including those relating to the manner in which standard clauses are interpreted; and

b. the impact such differences may have in dealing with matters such as delivery disputes, and determination of rights in insolvency proceedings; and

c. contains effective measures to address risk of unenforceability of the contractual terms, particularly those relating to cargos and storage where jurisdictional differences could have a significant impact on the deliverability.

Default provisions and force majeure

A3.2.9 A Commodity Derivative contract must specify:

(a) the rights and obligations of the parties to the contract in the event of default by the parties, or in the event of frustration of the contract due to force majeure or other specified event; and

(b) whether any Clearing House or Exchange guarantees the settlement of the transaction in an event specified in (a), and if so, the manner in which such settlement will occur.

Guidance

1. An Authorised Market Institution when considering whether a Commodities Derivative contract adequately provides for contract certainty in the event of default or force majeure, should take into account:

   a. whether any collateral provided by the contracting parties would be sufficient to address the replacement risk in the performance of the contract; and

   b. whether there are any monetary consequences attaching to defaulting parties that would act as a disincentive against default.

2. The contract terms should clearly specify which jurisdictional laws are applicable to the governing law, including where there are any significant variations in the rights and liabilities attaching to the contracting parties for the event that occur in the relevant jurisdiction.