

Appendix 10

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

Text in COB sections 6.11 to 6.14 and section 7.12 is not being amended but is included as it is referred to in GEN 7.3.3 and 7.3.4 in Appendix 1



The DFSA Rulebook

Conduct of Business Module

(COB)

6 ADDITIONAL RULES - INVESTMENT BUSINESS

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6.11 Client Assets

Application

6.11.1 This section applies to an Authorised Firm which:

- (a) holds or controls Client Assets; or
- (b) Provides Custody or Arranges Custody.

Guidance

1. Client Assets is defined in the GLO Module as “Client Money and Client Investments”.
2. Principle 9 of the Principles for Authorised Firms (Customer assets and money) requires an Authorised Firm to arrange proper protection for Clients' Assets when the firm is responsible for them. An essential part of that protection is that an Authorised Firm must properly safeguard Client Money and Client Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the DIFC.
3. Rule 6.11.3 requires an Authorised Firm to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets, or of rights in connection with Client Assets, as a result of, for example, the Authorised Firm's or a third party's insolvency, fraud, poor administration, inadequate record-keeping or negligence.

General requirements

6.11.2 (1) An Authorised Firm which holds or controls Client Money must comply with sections 6.12 and 6.14.

(2) An Authorised Firm which holds or controls Client Investments or Provides Custody or Arranges Custody must comply with sections 6.13 and 6.14.

6.11.3 (1) An Authorised Firm must have systems and controls to ensure that Client Assets are identifiable and secure at all times.

(2) Where the Authorised Firm holds a mandate, or similar authority over an account with a third party, in the Client's own name, its systems and controls must:

- (a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Firm on the use of the mandate;
- (b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and

- (c) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Firm entering into such Transactions.

Guidance

Authorised Firms are reminded that they must ensure that their auditor produces a Client Money Auditor's Report and a Safe Custody Auditor's Report as applicable, in accordance with GEN 8.6.

Holding or controlling client assets

6.11.4 Client Assets are held or controlled by an Authorised Firm if they are:

- (a) directly held by the Authorised Firm;
- (b) held in an account in the name of the Authorised Firm; or
- (c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Firm.

Guidance

- 1 For the purposes of Rule 6.11.4, the DFSA would consider a Person to be controlled by an Authorised Firm if that Person is inclined to act in accordance with the instructions of the Authorised Firm.
2. The DFSA would consider an account to be controlled by an Authorised Firm if that account is operated in accordance with the instructions of the Authorised Firm.

6.12 Client money

6.12.1 All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the DIFC is Client Money, except Money which is:

- (a) held by the Authorised Firm as a Bank in an account with itself, provided the Authorised Firm notifies the Client in writing that the Client Money is held by it as a Bank and not in accordance with this chapter;
- (b) immediately due and payable by the Client to the Authorised Firm;
- (c) belonging to another Person within the Authorised Firm's Group unless that Person is an Authorised Firm or Regulated Financial Institution and that Person has confirmed to the Authorised Firm, in writing, that the beneficial owner of the Money is a Person who is not part of the Authorised Firm's Group;
- (d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and who is in compliance with Rule 6.11.3 (2);
- (e) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised

Firm, provided the cheque or other payable order is intended to be forwarded to the third party within 1 business day of receipt; or

- (f) Fund Property of a Fund.

Guidance

1. Authorised Firms are reminded that the exemption in Rule 6.12.1(a) would not apply to Money which is passed to a third party i.e. not held in an account with the Authorised Firm itself.
2. Pursuant to Rule 6.12.1(b), examples of Money which is immediately due and payable to an Authorised Firm includes Money which is:
 - a. paid by the way of brokerage, fees and other charges to the Authorised Firm or where it is entitled to deduct such remuneration from the Client Money held or controlled;
 - b. paid by the Authorised Firm in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or
 - c. owed by the Client to the Authorised Firm in respect of unpaid purchases by or for the Client if delivery of Investments has been made to the Client or credited to his account.
3. The CIR module contains specific provisions relating to the handing of Fund Property and also provisions relating to a Fund Administrator holding or controlling monies or assets belonging to third parties.

Client money provisions

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

Guidance

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

Client disclosure

- 6.12.3** (1) If an Authorised Firm holds or controls Client Money which is not subject to the Client Money Provisions pursuant to Rule 6.12.2 (2), it must disclose to that Market Counterparty in writing that:
- (a) the protections conferred by the Client Money Provisions do not apply to such Client Money;
 - (b) as a consequence of (a), such Client Money may be mixed with Money belonging to the Authorised Firm, and may be used by the Authorised Firm in the course of the Authorised Firm's business; and

- (c) in the event of insolvency, winding up or other Distribution Event stipulated by the DFSA:
 - (i) in the case of a Domestic Firm, such Client Money will be subject to and distributed in accordance with the DFSA Client Money Distribution Rules; and
 - (ii) in the case of a non-Domestic Firm, such Client Money will be subject to a regime which may differ from the regime applicable in the DIFC.
- (2) The Authorised Firm must obtain that Market Counterparty's written acknowledgement of the disclosures made in (1) prior to holding or controlling Client Money for that Market Counterparty.

Distribution event

- 6.12.4** Following a Distribution Event, an Authorised Firm must comply with the Client Money Distribution Rules and all Client Money will be subject to such Rules.

Record keeping

- 6.12.5** (1) An Authorised Firm must maintain records:
- (a) which enable the Authorised Firm to demonstrate compliance with Rule 6.11.2;
 - (b) which enable the Authorised Firm to demonstrate and explain all entries of Money held or controlled in accordance with this chapter; and
 - (c) of all cheques received and forwarded in accordance with Rule 6.12.1(e).
- (2) Records must be kept for a minimum of six years.

Guidance

The DFSA expects an Authorised Firm to maintain proper books and accounts based on the double-entry booking principle. They should be legible, up to date and contain narratives with the entries which identify and provide adequate information about each transaction. Entries should be made in chronological order and the current balance should be shown on each of the Authorised Firm's ledgers.

6.13 Client investments

- 6.13.1** An Authorised Firm must treat all Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business as Client Investments.
- 6.13.2** An Authorised Firm which holds or controls Client Investments must have systems and controls in place to ensure the proper safeguarding of Client Investments.

Guidance

Instead of safeguarding Client Investments, an Authorised Firm may choose to safeguard Client Money equal to the value of the Client Investments.

- 6.13.3** (1) Subject to (2), an Authorised Firm:
- (a) holding or controlling Client Investments;
 - (b) Providing Custody; or
 - (c) Arranging Custody
- in or from the DIFC must do so in accordance with the Safe Custody Provisions in App6.
- (2) The Safe Custody Provisions in App6 do not apply to Client Investments held as Collateral unless stated otherwise.

Holding collateral

- 6.13.4** Before an Authorised Firm holds Collateral from a Client it must disclose to that Client:
- (a) the basis and any terms governing the way in which the Collateral will be held, including any rights which the Authorised Firm may have to realise the Collateral;
 - (b) if applicable, that the Collateral will not be registered in that Client's own name;
 - (c) if applicable, that the Authorised Firm proposes to return to the Client Collateral other than the original Collateral, or original type of Collateral; and
 - (d) that in the event of the insolvency, winding up or other Distribution Event stipulated by the DFSA:
 - (i) of a Domestic Firm, any excess Collateral will be sold and the resulting Client Money shall be distributed in accordance with the DFSA Client Money Distribution Rules; or
 - (ii) of a non-Domestic Firm, that Collateral will be subject to a regime which may differ from the regime applicable in the DIFC.
- 6.13.5** Before an Authorised Firm deposits Client's Collateral with a third party it must notify the third party that:
- (a) the Collateral does not belong to the Authorised Firm and must therefore be held by the third party in a segregated Client Account in a name that clearly identifies it as belonging to the Authorised Firm's Clients; and
 - (b) the third party is not entitled to claim any lien or right of retention or sale over the Collateral except to cover the obligations owed to the third party

which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the Collateral.

- 6.13.6** (1) An Authorised Firm may only permit Client's Collateral to be held by a third party where it has reasonable grounds to believe that the third party is, and remains, suitable to hold that Collateral.
- (2) An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which it considers the third party to be suitable to hold Client's Collateral.
- 6.13.7** (1) An Authorised Firm must take reasonable steps to ensure that the Collateral is properly safeguarded.
- (2) An Authorised Firm must withdraw the Collateral from the third party where the Collateral is not being properly safeguarded unless the Client has indicated otherwise in writing.
- 6.13.8** An Authorised Firm holding Client's Collateral must send a statement every six months to the Client in accordance with section A6.8.
- 6.13.9** An Authorised Firm must reconcile the Client's Collateral in accordance with section A6.9.

6.14 Record keeping

- 6.14.1** (1) An Authorised Firm must maintain records:
- (a) which enable the Authorised Firm to demonstrate compliance with Rule 6.11.2; and
- (b) which enable the Authorised Firm to demonstrate and explain all entries of Client Investments and Collateral held or controlled in accordance with this chapter.
- (2) Records must be kept for a minimum of six years.

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7 CORE RULES – INSURANCE

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7.12 Insurance monies

Application

- 7.12.1** This section applies to an Insurance Intermediary and an Insurance Manager, in respect of activities carried on in or from the DIFC.

General

- 7.12.2** (1) Insurance Monies are, subject to (2), any monies arising from Insurance Intermediation or the Insurance Management business which are any of the following:
- (a) premiums, additional premiums and return premiums of all kinds;
 - (b) claims and other payments due under Contracts of Insurance;
 - (c) refunds and salvages;
 - (d) fees, charges, taxes and similar fiscal levies relating to Contracts of Insurance;
 - (e) discounts, commissions and brokerage; or
 - (f) monies received from or on behalf of a Client of an Insurance Manager, in relation to his Insurance Management business.
- (2) Monies are not Insurance Monies where there is a written agreement in place between the Insurance Intermediary or Insurance Manager and the insurer to whom the relevant monies are to be paid (or from whom they have been received) under which the insurer agrees that:
- (a) the Insurance Intermediary or Insurance Manager, as the case may be, holds as agent for the insurer all monies received by it in connection with Contracts of Insurance effected or to be effected by the insurer;
 - (b) insurance cover is maintained for the Client once the monies are received by the Insurance Intermediary or the Insurance Manager, as the case may be; and
 - (c) the insurer's obligation to make a payment to the Client is not discharged until actual receipt of the relevant monies by the Client.

7.12.3 In this section, a Client of an Insurance Manager means:

- (a) any insurer for which the Insurance Manager provides Insurance Management;
- (b) any shareholder of an insurer mentioned in (a); or
- (c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.

7.12.4 For the purposes of Rule 7.12.3:

- (a) an Insurer includes a Cell of a Protected Cell Company which is an Insurer; and
- (b) a shareholder includes a holder of Cell Shares.

Insurance money segregation

7.12.5 An Insurance Intermediary or Insurance Manager when dealing with Insurance Monies must:

- (a) maintain one or more separate Insurance Bank Accounts with an Eligible Bank in the U.A.E.;
- (b) ensure that each Insurance Bank Account contains in its title the name of the Authorised Firm, together with the designation Insurance Bank Account (or IBA);
- (c) prior to operating an Insurance Bank Account, give written notice to, and receive written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the Authorised Firm, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;
- (d) pay all Insurance Monies directly and without delay into an Insurance Bank Account;
- (e) use an Insurance Bank Account only for the following purposes:
 - (i) the receipt of Insurance Monies;
 - (ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Firm with any conditions or requirements prescribed by the DFSA;
 - (iii) the payment to Clients or to insurers of monies due under Insurance Intermediation Business transactions;
 - (iv) the payment of all monies payable by the Authorised Firm in respect of the acquisition of or otherwise in connection with Approved Assets;
 - (v) the withdrawal of brokerage, management fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;
 - (vi) the withdrawal of monies paid into the Insurance Bank Account in error; and
 - (vii) the withdrawal of any monies credited to the Insurance Bank Account in excess of those required by any conditions and requirements prescribed by the DFSA;

- (f) ensure that any amount held in the Insurance Bank Account or other Approved Assets, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and
 - (g) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.
- 7.12.6** An Insurance Intermediary or Insurance Manager may not obtain a loan or overdraft for any purpose relating to an Insurance Bank Account unless that advance:
- (a) is on a bank account which is designated as an Insurance Bank Account, and the loan or overdraft is used for payment to Clients or to insurers of monies due under Insurance Intermediation transactions;
 - (b) does not give rise to a breach of the requirements of Rule 7.12.5(e); and
 - (c) is of a temporary nature and is repaid as soon as reasonably practicable.
- 7.12.7** An Insurance Intermediary or Insurance Manager must hold Insurance Monies either in an Insurance Bank Account or in Approved Assets.
- 7.12.8** An Insurance Intermediary must ensure that Approved Assets are:
- (a) registered in the name of the Insurance Intermediary or Insurance Manager and designated 'Insurance Bank Account'; or
 - (b) held for the Insurance Bank Account of the Insurance Intermediary or Insurance Manager at the bank at which such Insurance Bank Account is held.
- 7.12.9** An Insurance Intermediary or Insurance Manager must ensure that monies, other than interest, arising from Approved Assets or their realisation, sale or disposal are paid into an Insurance Bank Account.
- 7.12.10** An Insurance Intermediary or Insurance Manager may not hold Insurance Monies in Approved Assets until it has given written notice to and received written notice from the bank referred to in Rule 7.12.8(b) that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against Approved Assets held for the Insurance Intermediary's or Insurance Manager's Insurance Bank Account.
- 7.12.11** An Insurance Intermediary or Insurance Manager may only use Approved Assets as security for a loan or overdraft where that loan or overdraft is for a purpose relating to an Insurance Bank Account as permitted by Rule 7.12.6.
- 7.12.12** Where Insurance Monies are held in Approved Assets whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an Approved Asset and the Insurance Intermediary or Insurance Manager must dispose of the investment or asset as soon as possible and no later than within 30 days of the rating change.

7.12.13 An Insurance Intermediary or Insurance Manager may not use derivatives in the management of Insurance Monies except for the prudent management of foreign exchange risks.

7.12.14 An Insurance Intermediary who has a credit balance for a Client who cannot be traced should not take credit for such an amount except where:

- (a) he has taken reasonable steps to trace the Client and to inform him that he is entitled to the money;
- (b) at least six years from the date the credit was initially notified to the Client; and
- (c) Rule 7.12.5(f) will continue to be satisfied after the withdrawal of such money.

7.12.15 An Insurance Intermediary must keep records of all sums withdrawn from the Insurance Bank Account or realised Approved Assets as a result of credit taken under Rule 7.12.14 for at least six years from the date of withdrawal or realisation.

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9 ADDITIONAL RULES: OPERATING AN ALTERNATIVE TRADING SYSTEM

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9.2 Main requirements relating to trading on the facility

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Material changes to Current Arrangements

- 9.2.3** (1) An ATS Operator may only make material changes to its existing arrangements to meet the requirements in this chapter in accordance with the requirements in this Rule.
- (2) The reference to “Existing Arrangements” in (1) is a reference to both the arrangements which were in place at the time of the initial grant of the Licence and any changes made to such arrangements in accordance with the requirements in this Rule.
- (3) For the purposes of obtaining the DFSA approval, an ATS Operator must provide to the DFSA, at least 30 days before the proposed change is intended to come into effect, a notice setting out:
- (a) the proposed change;
 - (b) the reasons for the proposed change; and
 - (c) what impact the proposed change would have on its members and its ability to operate the facility.
- (4) The DFSA will, upon receipt of a notice referred to in (1), approve or disapprove 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.
- (5) The DFSA may, in circumstances where a material change to Current Arrangements is shown on reasonable grounds to be urgently needed, accept an application for approval of such a change on shorter notice than 30 days.
- (6) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to reject a proposed change under this Rule.
- ~~(6) Where the DFSA does not approve~~ decides to reject a proposed change, the ATS Operator may refer the matter to the FMT for review. it must give to the ATS Operator reasons for its decision. Such a decision is appealable to the Regulatory Appeals Committee.

Guidance

1. The period of 30 days will commence to run from the time the DFSA has received all the relevant information to assess the application.
2. An ATS Operator should consider submitting its application for the DFSA approval well in advance of the date on which a proposed amendment is intended 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. If additional time is reasonably required to properly assess the impact of a proposed change due to its nature, scale and complexity, the DFSA may make an appropriate extension of time beyond 30 days. Such an extension would be made in consultation with the applicant.
3. ~~If a proposed material change remains not approved by the DFSA within the 30 day period and the DFSA has not expressly extended the period beyond 30 days, the ATS Operator may treat the proposed change as not being approved by the DFSA, and on that basis, appeal such a decision to the Regulatory Appeals Committee.~~

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9.6 Proper Markets

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Liquidity providers

- 9.6.8** (1) An ATS Operator must not introduce a liquidity incentive scheme unless:
- (a) participation of such a scheme is limited to:
 - (i) a member as defined in Rule 9.3.1(1); or
 - (ii) any other Person where:
 - (A) it 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 its Operating Rules so far as those rules are applicable to that Person's activities; and
 - (b) it has obtained the prior approval of the DFSA.
- (2) For the purposes of this section, a "liquidity incentive scheme" means an arrangement designed to provide liquidity to the market in relation to Investments traded on the facility.
- (3) Where an ATS Operator proposes to introduce or amend a liquidity incentive scheme, it must lodge with the DFSA, at least 10 days before the date by which it expects to obtain the DFSA approval, a statement setting out:

- (a) the details of the relevant scheme, including benefits to the ATS and members arising from that scheme; and
 - (b) the date on which the scheme is intended to become operative.
- (4) The DFSA must within 10 days of receiving the notification referred to in (3), approve a proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme would be detrimental to the facility or markets in general. Where the DFSA does not approve the proposed liquidity incentive scheme, it must notify the ATS Operator of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.
- (5) An ATS Operator must, as soon practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.
- (6) If the DFSA decides~~An ATS Operator may appeal a decision of the DFSA not to approve a liquidity incentive scheme, the ATS Operator may refer the decision to the FMT for review~~to the Regulatory Appeals Committee.

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