

Appendix 5

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

Note: text in AMI 5.10 is not being amended but is included as it is referred to in GEN 2.14.3 in Appendix 1



The DFSA Rulebook

Authorised Market Institutions

(AMI)

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PART 3: LICENSING REQUIREMENTS

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5. GENERAL LICENSING REQUIREMENTS APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

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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)(a) and (b) as relevant.
- (2) ~~An Authorised Market Institution must ensure that only Investments which meet either (a) or (b) are admitted to trading or traded or cleared and settled, on the facilities of, an Authorised Market Institution:~~
- ~~(a) in the case of Securities, such Securities are either:~~
- ~~(i) admitted to an Official List of Securities; or~~
- ~~(ii) admitted to trading on a Regulated Exchange in a jurisdiction acceptable to the DFSA; and~~
- ~~(b) in the case of Derivative Contracts, such contracts meet the contract design specifications in Rule 6.3.2.~~
- (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 Investments are traded on an MTF it operates only if:
- (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 Derivative contracts, the contracts meet the contract design specifications in Rule 6.3.2.
- (34) 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)(i).

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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.

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.

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