

Appendix 3

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

*Please note that a limited number of Rules in this text are not being amended, but are included for reference.



The DFSA Rulebook

Conduct of Business Module

(COB)

1 INTRODUCTION

1.1 Application

1.1.1 This module (COB) applies to every Authorised Firm with respect to the carrying on, in or from the DIFC, of any:

- (a) Financial Service; or
- (b) activity which is carried on, or held out as being carried on, in connection with or for the purposes of such a Financial Service;

except to the extent that a provision of COB provides for a narrower application.

1.1.2 COB does not apply to a Representative Office.

Guidance

- ~~1. An Authorised Firm may be able to rely on the Transitional Rules in chapter 10 of GEN for the purposes of complying with some of the provisions in this module. The Rules enable Authorised Firms to make a smooth transition to the new regime that came into force 1 July 2008 under rule-making instrument No. 56, following the DFSA's "Key Policy Review" outlined in Consultation Paper 52.~~
- 2. An Authorised Firm may be able to rely on the Transitional Rules in section 2.6 for the purposes of meeting the client classification requirements in chapter 2.

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2 CLIENT CLASSIFICATION

2.1 Application

- 2.1.1** (1) This chapter applies, subject to Rule 2.1.2, to an Authorised Firm, which carries on, or intends to carry on, any Financial Service with or for a Person.
- (2) For the purposes of this chapter, a Person includes a Fund, pension fund or trust, even if it does not have a separate legal personality.

Exclusions

- 2.1.2** (1) This chapter does not apply to a Credit Rating Agency in so far as it carries on, or intends to carry on, the Financial Service of Operating a Credit Rating Agency.

- (2) This chapter does not apply to an Authorised Firm in so far as it carries on the activity described in GEN Rule 2.26.1, provided that no other Financial Service is carried on.
- (3) This chapter does not apply to an Authorised ISPV.

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2.3.6 (1) For the purposes of Rule 2.3.3(1)(a)(ii), a Person is a ‘service-based’ Professional Client if:

- (a) the Financial Service provided to that Person is “Advising on Financial Products or Credit”, or “Arranging Credit or Deals in Investments”, or “Arranging and Advising on Credit”; and
- (b) the service in (a) is provided for the purposes of ‘corporate structuring and financing’.

(2) In (1), ‘corporate structuring and financing’:

- (a) includes:
 - (i) providing advice relating to an acquisition, disposal, structuring, restructuring, financing or refinancing of a corporation or other legal entity; or
 - (ii) arranging credit for a purpose referred to in (i); and
- (b) excludes any Advising on Financial Products, Arranging Deals in Investments and Arranging and Advising on Credit, provided advice on financial products, or arranging of credit or in Investments given to an individual for the purposes of, or in connection with, the management of that individual’s investments.

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Inducements

3.5.3 ...

- (2) Subject to (3), an Authorised Firm must, before recommending a financial product as defined in GEN Rule 2.11.1(45) to, or Executing a Transaction for, a Retail Client, disclose to that Client any commission or other direct or indirect benefit which it, or any Associate or Employee of it, has received or may or will receive, in connection with or as a result of the firm making the recommendation or executing the Transaction.

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6 ADDITIONAL RULES - INVESTMENT BUSINESS

6.1 Application

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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
- (c) only to the extent specified in Rule 6.11.2(3), 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.
4. For information about the difference between Providing Custody and Arranging Custody, see Guidance under GEN Rule 2.13.1.
5. The Client Asset provisions apply only to a limited extent to an Authorised Firm that Arranges Custody. This is because such a firm does not hold or control Client Assets (see Rule 6.11.2(3)).

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.

- (3) An Authorised Firm which Arranges Custody must comply with the due diligence procedures in A6.5.1A, the client disclosure requirements in A6.7.1(1) and the record keeping requirements in section 6.14.

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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 (32), an Authorised Firm:
- (a) holding or controlling Client Investments; or
 - (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) An Authorised Firm Arranging Custody must comply with the requirements specified in Rule 6.11.2(3).
- (3) The Safe Custody Provisions in App6 do not apply to Client Investments held as Collateral unless stated otherwise.

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A6.5 Holding or arranging custody with third party agents

- A6.5.1** (1) Before an Authorised Firm holds a Safe Custody Investment with a Third Party Agent ~~or Arranges Custody through a Third Party Agent~~, it must undertake an assessment of that Third Party Agent and have concluded on

reasonable grounds that the Third Party Agent is suitable to hold those Safe Custody Investments.

- (2) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.
- (3) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred in this appendix.

A6.5.1A (1) Before an Authorised Firm arranges custody with a non-DIFC custodian authorised and supervised by a Financial Services Regulator, it must undertake an assessment of that custodian and have concluded, on reasonable grounds, that it is suitable to hold the Safe Custody Investments.

- (2) When assessing the suitability of a non-DIFC custodian, the Authorised Firm must ensure that the non-DIFC custodian will provide protections equivalent to the protections conferred in this appendix.

A6.5.2 An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent or a non-DIFC custodian to be suitable to hold Safe Custody Investments.