

Appendix 2

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

Note: some text is not being amended but is included for reference only.



The DFSA Rulebook

Collective Investment Rules

(CIR)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

PART 1: INTRODUCTION

1. Application and Interpretation

1.1 Application

1.1.1 The Rules in this module (CIR):

- (a) are made for the purposes of the Collective Investment Law 2010 and the Investment Trust Law 2006; and
- (b) apply to every Person to whom the legislation in (a) applies except as otherwise provided.

Guidance

1. Article 1 of the Collective Investment Law 2010 provides as follows:

- “(a) This Collective Investment Law 2010 repeals and replaces the Collective Investment Law 2006 (“the Previous Law”) and may be cited as the “Collective Investment Law of 2010” (“this Law”).
- (b) Except where otherwise provided in the Rules, anything done or omitted to be done pursuant to or for the purposes of the Previous Law is deemed to be done or omitted to be done pursuant to or for the purposes this Law.
- (c) Without limiting the generality of Article 1(b), such repeal shall not affect:
 - (i) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or
 - (ii) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, remedy, privilege, obligation or liability,

under the Previous Law and, any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this Law.
- (d) The DFSA may, by Rules, prescribe any transitional or saving provisions as are or are deemed necessary to give effect to, or to facilitate, the transition from the Collective Investment Law 2006 to this Law.”

1.1.2 CIR applies to every Person who carries on, or intends to carry on, in or from the DIFC the Financial Services of:

- (a) Managing a Collective Investment Fund;
- (b) Providing Fund Administration to a Fund;
- (c) Providing Custody to a Fund; or
- (d) Acting as the Trustee of a Fund.

1.1.3 CIR applies to every Person who is, or intends to be:

- (a) a Fund Manager;
- (b) an External Fund Manager;
- (c) a member of the Governing Body;
- (d) an Eligible Custodian;
- (e) a Trustee; and
- (f) an oversight provider.

1.1.4 (1) CIR also applies to an Authorised Firm other than a Representative Office that:

- (a) provides a Financial Service; or
- (b) undertakes a Transaction in or from the DIFC;

in relation to a Domestic Fund or Foreign Fund.

(2) In the case of a Representative Office, only the Rules in chapter 15 apply.

Guidance

In regard to Rule 1.1.4(2), a Representative Office is authorised under its Licence to market, among other financial products, the Units of Foreign Funds, however, the scope of such marketing is limited to marketing the Units of the Foreign Funds that fulfil the criteria set out under REP section 4.7 as appropriate.

1.1.5 (1) CIR also applies to a Fund whether or not it has a separate legal personality.

(2) Where a Rule imposes an obligation on a Fund, each Director, Partner or other Person charged with the management of that Fund must take reasonable steps to ensure compliance with the requirement by the Fund.

Guidance

1. The Rules in this module (CIR) establish a regime to regulate Domestic Funds, which may be Public Funds, Exempt Funds or Qualified Investor Funds. Domestic Funds include External Funds as defined in Article 14(1) of the Law. In addition, this module also regulates Fund Managers, which include External Fund Managers as defined in Article 20(5) of the Law.
2. CIR also applies to marketing and selling of Units of Foreign Funds in or from the DIFC and to the provision of a Financial Service to a Foreign Fund where any such activity is undertaken by an Authorised Firm. In that regard, the COB Rules also apply to the provision of Financial Services by an Authorised Firm.
3. If a Domestic Fund or Foreign Fund intends to list its Units on an Authorised Market Institution (AMI), it will need to comply with the relevant Rules in the MKT module and the AMI's listing Rules in respect of Domestic Funds. Exempt Funds and Qualified Investor Funds cannot be listed.

4. A Public Property Fund is required to be a Closed-ended and Listed Fund and to be structured as an Investment Company or an Investment Trust. A Property Fund that is an Exempt Fund or QIF can be either Open-ended or Closed-ended.

1.2 Interpretation

- 1.2.1 Any references to “the Law” or to “Articles” are to be construed as references to the Collective Investment Law 2010 and to Articles in that law.

1.3 Client Classification

- 1.3.1 For the purposes of Article 16(7)(a) of the Law:
- (a) the criteria to be classified as a Professional Client are specified in COB Rule 2.3.3, and
 - (b) the criteria to be classified as a Retail Client are specified in COB Rule 2.3.2.

1.4 The different types of Domestic Funds

Guidance

Article 13 of the Law defines Funds as either Domestic Funds or Foreign Funds. Article 15 of the Law then further divides Domestic Funds into three categories which are listed below in terms of the level of regulation (from most intensively regulated to least intensively regulated):

- (a) Public Funds;
- (b) Exempt Funds; and
- (c) Qualified Investor Funds.

This table illustrates the different Rules applicable to the three categories of Domestic Fund.

CIR chapters	Public Fund	Exempt Fund	QIF
Chapter 1: Application & Interpretation	✓	✓	✓
Chapter 2: Arrangements not constituting a CIF	✓	✓	✓
Chapter 3: Specialist Classes of Fund	✓	✓	✓
Chapter 4: Excluded Offers	✓	✓	✓
Chapter 5: Fund Administrator	✓	✓	✓ Rule 5.1.4 does not apply
Chapter 6: External Fund Managers and External Funds	✓	✓	✓

Chapter 7: Constitution	✓	✓	Only Rules 7.1.1; 7.1.2(1)(b); 7.1.2(2) & 7.1.4 apply
Chapter 8: Management and Operation of a Fund	✓	✓	Only Rules 8.1.1, 8.1A.1, 8.1A.2, 8.4.1(1)(a), 8.6A.1 and 8.10.1 apply
Chapter 9: Accounting, Audit & Periodic Reporting of a Fund	✓	✓ A comparative table for the annual report is not required	✓ Rules on interim reports do not apply unless there has been a material change during the interim accounting period. A comparative table for the annual report is not required
Chapter 10: Requirements specific to Public Funds	✓	X	X
Chapter 12: Requirements specific to Exempt Funds	X	✓	X
Chapter 12A: Requirements specific to Qualified Investor Funds	X	X	✓
Chapter 13: Additional Requirements for Specialist Funds	✓	✓	Only Rules 13.1.1, 13.4.1, 13.5.1, 13.6.3 and 13.7 apply
Chapter 14: Marketing of Domestic Funds and Prospectus Disclosure	✓	✓	Only Rules 14.1.1, 14.2.1, 14.2.4-14.2.7, 14.4.6, 14.5.1, 14.5.2 & section 14.6 apply
Chapter 15: Marketing of Foreign Funds	X	X	X
Chapter 16: Transfer Schemes relating to Domestic Funds	✓	✓	✓
Chapter 17: Winding up of Domestic Funds	✓	✓	✓
APP 1: Delegation & Outsourcing	✓	✓	X
APP 2: Meeting Procedures	✓	X	X
APP 3: Approvals and Notifications	✓	X	X
APP 4: Guidance of Asset Valuation and Pricing	✓	✓	X
APP 5: Constitution of a Domestic Fund	✓	✓	X
APP 6: Guidance of Fitness and Propriety for Oversight Functions	✓	X	X
APP 7: Public Fund Prospectus Disclosure	✓	X	X
APP 8: Guidance for Hedge Fund Managers	✓	✓	✓

PART 2: DEFINITIONAL PROVISIONS

Guidance

A Collective Investment Fund is defined in Article 11 of the Law. The definition under Article 11 is very wide, however, Article 12 enables the DFSA to make Rules excluding certain arrangements or types of arrangements from constituting a Fund. These excluded arrangements are set out below in section 2.1.

2 ARRANGEMENTS NOT CONSTITUTING A COLLECTIVE INVESTMENT FUND

2.1 Exclusions

2.1.1 Pursuant to Article 12 of the Law, the DFSA prescribes that an arrangement which otherwise amounts to a Collective Investment Fund as defined in Article 11 of the Law does not constitute a Collective Investment Fund if it falls within one or more of the exclusions specified in this chapter.

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Commercial activities unrelated to Financial Services

2.1.4 An arrangement does not constitute a Collective Investment Fund if each of the participants in the arrangement:

- (a) carries on a business which does not involve the carrying on of any of the activities specified under GEN Rule 2.2.2(d) to (k) or (n) to (q) or an activity which would be such an activity were it not for any applicable exclusion; and
- (b) enters into the arrangement for commercial purposes related to that business where that participant carries on that business by virtue of being a participant in the arrangement.

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~~Bodies corporate not undertaking investment management~~

2.1.10 ~~An arrangement does not constitute a Collective Investment Fund if the arrangement comprises a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such an arrangement appears to be the investment management, in the exercise of discretion for a collective purpose of Investments or Real Property for the benefit of the shareholders or partners.~~

Commercial arrangements

2.1.10 An arrangement that consists of a company, partnership or trust does not constitute a Collective Investment Fund if the main purpose and effect of the arrangement is

the carrying on of a commercial or other business unrelated to financial or investment activities.

Guidance

Common indicators and examples

1. The DFSA would generally not expect an ordinary company, partnership or trust (an undertaking) that carries on a general commercial business to be a Fund, and therefore regulated. An undertaking would be regarded as carrying on a general commercial business where it pursues a business strategy that involves activities such as:
 - a. running a business involving the purchase, sale or exchange of goods and commodities;
 - b. supplying services – such as maintenance, cleaning, electrical or plumbing, servicing appliances;
 - c. providing non-financial professional services – such as legal or accounting;
 - d. conducting media activities/business;
 - e. operating an industrial activity, such as the production of goods or construction of property; or
 - f. carrying on a combination of the above or similar activities.

Similarly, an arrangement that pursues a charitable purpose (such as a charitable trust) would not be regarded as a Fund.

2. Further indicators which can be used to identify if an undertaking is a commercial business include:
 - a. the particular structure of the undertaking – i.e. if it is open-ended, then the structure is generally regarded as more suited for collective investment, rather than a commercial operation (because a commercial business does not lend itself to having parts of it sold off to meet redemption rights of investors and, also, investors in commercial businesses do not expect the business to do so);
 - b. the distribution mechanism used by the undertaking – if it is closed-ended and has a specified period at the end of which it will be wound up and proceeds from realising assets will be distributed to investors, then generally such an undertaking is an investment vehicle, rather than a commercial undertaking;
 - c. how it conducts its business – for example:
 - i. if the business has a large number of employees engaging in its business activities, this is a possible indicator it is a commercial business. This is because many investment companies delegate or outsource their investment and administration activities to third party service providers, and have limited staff;
 - ii. if the undertaking merely holds the property to take advantage of changing market prices or the income stream, it is an indicator of conducting collective investment business, rather than undertaking any construction or development activities, which are commercial activities;
 - iii. if the business is designed to expand any existing commercial business of investors, this is a pointer that it is a commercial business, as opposed to an undertaking which would achieve gains or benefits by realisation of the underlying assets – which is a pointer that it is an investment business; and

3 SPECIALIST CLASSES OF FUNDS

3.1 Specialist Funds

- 3.1.1** (1) Pursuant to Article 17 of the Law, a Domestic Fund that falls within one or more of the criteria specified in Rules 3.1.2 to 3.1.40~~12~~12 is hereby prescribed to be a Domestic Fund of that specialist class or classes.
- (2) Pursuant to Article 18(1)(c) of the Law, a Foreign Fund that falls within one or more of the criteria specified in Rules 3.1.2 – 3.1.40~~12~~12 is hereby prescribed to be a Foreign Fund of that specialist class or classes for the purposes of:
- (a) marketing of the Units of that Fund in or from the DIFC; or
 - (b) determining whether a Domestic Fund investing in such a Fund continues to meet any criteria or other requirements applicable to that Domestic Fund.

Guidance

1. A Domestic Fund may attract more than one definition of a specialist class of Funds. For example, a Domestic Fund may be an Islamic Hedge Fund, Islamic Private Equity Fund or an Islamic REIT.
2. Article 50(1) of the Law contains the prohibition against the Offer of Units of Foreign Funds (i.e. marketing of Units of Foreign Funds) in or from the DIFC. Article 54(1) of the Law provides the limited circumstances in which an Authorised Firm may market Units of a Foreign Fund. Such marketing activities are also subject to additional requirements that are prescribed in this module – see chapter 15. An Authorised Firm marketing Units of a Foreign Fund should take reasonable steps to ensure that the Fund meets the applicable requirements including the relevant criteria for being a specialist class of Fund.

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Property Fund

- 3.1.7** A Fund is a Property Fund if its main purpose is ~~dedicated to~~ investment in Real Property and in Securities issued by Bodies Corporate whose main activities are investing in, dealing in, developing or redeveloping Real Property.

Guidance

1. Whether an arrangement, particularly if it is a closed-ended company, which invests in Real Property is a Fund or a commercial company is not always an easy question to answer. The following guidance is intended to help answer this question. The examples are indicative only and not exhaustive. If a property company is in doubt as to whether it is an investment company or a commercial company, it may seek further clarification from the DFSA.
2. Please also refer to the Guidance under Rule 2.1.10 for the general distinction between Collective Investment Funds and other commercial arrangements.

Practical examples

3. Applying the indicators under Rule 2.1.10, the DFSA considers the following type of closed-ended property companies to be commercial companies, rather than investment companies:
 - a. a property developer or a property construction company which is in the business of developing and constructing (i.e. creating) the property;
 - b. a real estate company which operates a business of selling or leasing real estate for its customers;
 - c. a property management or maintenance company – which generates profits through fees charged for those services; and
 - d. a property valuation service provider – which is a property related service provider.
4. In contrast, there are certain types of closed-ended property companies that are clearly investment companies. For example:
 - a. an investment company which raises capital from investors to invest in real estate, on the basis that the investments will be selected or bought and sold on the basis of specified criteria, and profits generated are distributed as specified; and
 - b. an investment company investing in shares or units of other real estate funds to generate profits through returns on such investments.

Real Estate Investment Trust (REIT)

3.1.8 A Fund is a Real Estate Investment Trust (REIT) only if it meets the criteria in Rule 13.5.1(2).

Guidance

REITs are a subset of Property Funds. A REIT can ~~only~~ be a Public Fund, Exempt Fund or a Qualified Investor Fund (see Rule 13.5.1). As REITs are a subset of ~~Public~~ Property Funds, they must comply with applicable Rules in section 13.4 for Property Funds, as well as Rules in section 13.5 for REITs.

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Exchange Traded Fund (“ETF”)

- 3.1.12** (1) A Fund is an Exchange Traded Fund (“ETF”) if it:
- (a) is constituted as an Open-ended Public Fund;
 - (b) has its Units available for trading throughout the day on an exchange that meets the criteria in (2); and
 - (c) has at least one market maker (Authorised Participant) who:
 - (i) purchases and redeems ‘creation Units’ of the Fund from the Fund Manager; and
 - (ii) is prepared to buy and sell Units of the Fund throughout the day on the relevant exchange.

- (2) An exchange meets the requirement in (1)(b) if it is:
- (a) operated by an Authorised Market Institution;
 - (b) regulated by a Financial Services Regulator in a jurisdiction that is a signatory to the IOSCO Multilateral Memorandum of Understanding for sharing information; or
 - (c) regulated by a Financial Services Regulator in a jurisdiction which has entered into a bilateral memorandum of understanding with the DFSA for sharing information.

Guidance

1. Rule 13.9.1 prohibits the use of the term Exchange Traded Fund or ETF unless a Fund meets the criteria in Rule 3.1.12. A similar prohibition applies to Foreign Funds that offer Units in or from the DIFC – see Rules 15.1.5(c) and 15.1.6(1)(c).
2. ETFs are different to other exchange traded Open-ended Funds. ETFs generally do not sell or redeem their Units to and from retail investors directly at net asset value (NAV). Instead, an Authorised Participant (“AP”) (i.e. a market maker appointed by the ETF Fund Manager) buys and redeems ETF Units, called creation Units, directly from the ETF Fund Manager. Generally, an AP that purchases a creation Unit of an ETF deposits with the ETF Fund Manager a ‘purchase basket’ of certain securities and cash and/or other assets identified by the ETF Manager that day, and then receives the creation Unit in return for those assets. The basket generally reflects a pro-rata portion of the ETF’s underlying holdings. After purchasing a creation Unit, the AP may hold or sell some or all of the Units in the basket on the relevant exchange.
3. The redemption process is the reverse of the purchase process. The AP redeems the creation Unit from the ETF, in exchange for a ‘redemption basket’ of securities and/or cash and other assets (or all cash) received from the Fund Manager. The AP also offers to buy and sell ETF Units on the relevant exchange, where retail investors can buy and sell ETF Units at a price close to NAV.
4. See further Guidance about ETFs under CIR 13.9.6.

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8 MANAGEMENT AND OPERATION OF A FUND

Guidance

While most of the provisions in this chapter are of general application to all Domestic Funds, in a few instances, some provisions which are specific to a certain type of Domestic Fund, for example a Public Fund, are retained in this Part. ~~The DFSA has We have~~, instead of removing such provisions to Part 5 which contains provisions applicable to specific types of Domestic Funds, retained them in this Part because those requirements are integral to the main provisions applying to all Domestic Funds and therefore need to be read together.

8.1 General mManagement dDuties

Application

- 8.1.1** (1) This chapter applies to a Fund Manager, and if appointed the Trustee, of a Domestic Fund, except as provided in (3) or where otherwise provided in this chapter.
- (2) This chapter also applies, where expressly provided, to a Fund Administrator or Eligible Custodian of a Domestic Fund.
- (3) Only this Rule and Rules 8.1A.1, 8.1A.2, 8.4.1(1)(a), 8.6A.1 and 8.10.1 in this chapter apply to, or in relation to, a Qualified Investor Fund.

Guidance

1. Article 22 of the Law requires the Fund Manager of a Domestic Fund to manage the Fund in accordance with the Fund's Constitution and its most recent Prospectus and to perform the functions conferred on it by the Constitution and the Law. In doing so, the Fund Manager is required under that Article to comply with any conditions or restrictions on its Licence as well as any limitations or requirements imposed by or under the Law or Rules.
2. Article 38 of the Law requires the Fund Manager to establish and maintain systems and controls including but not limited to financial and risk controls to ensure sound management of the Fund in accordance with the Fund's Constitution and its most recent Prospectus, taking due account of the nature, scale and complexity of the Fund's investments and operations. There is an additional obligation on Fund Managers of all Open-ended Domestic Funds to have adequate systems and controls to address liquidity risks in such Fund – see Rule 8.6A.1.
3. The requirements in this chapter apply to External Fund Managers in the same manner as they apply to Fund Managers of Domestic Funds, unless otherwise provided. External Fund Managers and External Funds attract additional requirements, which are set out in chapter 6.
4. This chapter sets out more detailed obligations of the Fund Manager, and where appointed the Trustee, of a Domestic Fund with regard to:
 - a. Duties relating to Fund Property;
 - b. Conflicts of interests;
 - c. Valuation of Fund;

- d. Determination of single price;
- e. Issue and redemption of Units;
- f. Unitholder register;
- g. Meetings of Governing Body and Unitholders;
- h. Approvals and notifications;
- i. Maintenance of records;
- j. Capital;
- k. Delegations and outsourcing; and
- l. Charges and expenses.

8.1A Corporate Director

Application

8.1A.1 This chapter applies to:

- (a) an Investment Company which elects to have a Corporate Director as its Fund Manager; and
- (b) that Corporate Director.

Requirements relating to a Corporate Director

8.1A.2 (1) The Investment Company must:

- (a) not have any directors other than a Corporate Director; and
- (b) have Articles of Association that permit the company to appoint that Corporate Director as its Fund Manager.

(2) The Corporate Director must ensure that:

- (a) the requirements in (1) are met;
- (b) it is registered under the Companies Law of the DIFC;
- (c) it has at least two individuals appointed as its directors; and
- (d) it does not act as the fund manager of any Fund other than the Investment Company or Manage Assets for another Person.

Guidance

- 1. The Companies Regulations permit Investment Companies to have a sole corporate director. An Investment Company has the option to be internally managed, by having that Corporate Director act as its Fund Manager. Alternatively, an Investment Company has the option to

have an ‘external’ Fund Manager. In both cases, the Fund Manager must be licensed and is legally accountable to Unitholders in the Fund (i.e., to its shareholders) for the proper management of the Fund (i.e. the Fund Property).

2. A Corporate Director is required to meet all the other requirements that are applicable to an applicant for a Fund Manager’s Licence, including the capital requirements (in PIB), and the adequate systems and controls requirements (in GEN). However, as it may act as the Fund Manager of the Investment Company (and not of any other Funds), the systems and controls requirements would apply proportionately to the nature and scale of the activities of that company.
3. A Corporate Director that is a Fund Manager may delegate and outsource its functions and activities in the same manner and subject to the same requirements as other Fund Managers. A Corporate Director who outsources functions cannot thereby delegate responsibility for meeting the Fund Manager’s duties and obligations and its legal accountability to investors in the Fund. Please refer to GEN Rules 5.3.21 and 5.3.22 and CIR Rule 8.12.4 for outsourcing and delegation requirements applicable to Fund Managers.

8.2 Duties in relation to Fund Property

Fund Manager

- 8.2.1**
- (1) A Fund Manager must make decisions as to the constituents of the Fund Property that are in accordance with the Constitution of the Fund and investment objectives and policy stated in the Prospectus.
 - (2) A Fund Manager must take all steps and execute all documents to ensure that transactions relating to the Fund Property are properly entered into for the account of the relevant Fund or Sub-Fund.
 - (3) A Fund Manager of an Investment Trust must ensure that instructions it gives to the Trustee in relation to the Fund Property are in accordance with the agreement creating the Investment Trust, the Fund’s Constitution, and the Prospectus.
- 8.2.2**
- (1) In the case of an Investment Company or an Investment Partnership, the Fund Manager is responsible to the Unitholders for the safekeeping of the Fund Property.
 - (2) Without removing the generality of the obligation under (1) and subject to (3), a Fund Manager must, in the case of a Fund which is an Investment Company or Investment Partnership:
 - (a) delegate the activity of Providing Custody in relation to the Fund Property to a Service Provider who is an Eligible Custodian; and
 - (b) comply with the delegation procedures set out in section 8.12 in relation to such a delegation.
 - (3) The requirement in (2) does not apply to:
 - (a) a Property Fund in respect of Real Property:
 - (i) that is held by the Fund Manager in accordance with Rule 13.4.2 or 13.4.2A; or

- (ii) for which the Fund Manager has made adequate alternative arrangements in accordance with Rule 13.4.2B; or
- (b) a Private Equity Fund where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.3.1; or
- (c) an Exempt Fund where both the following conditions are met:
 - (i) the Fund Property is of a highly illiquid nature; and
 - (ii) the Fund Manager ensures that the Fund Property is clearly distinguishable as belonging to the Fund, and is segregated from the assets of the Fund Manager and from the assets of any other Fund which the Fund Manager manages.

Guidance

1. Section 8.12 of this module governs the power of a Fund Manager to delegate certain of its Financial Service activities, and to outsource its functions.
2. A Fund Manager may rely on Rule 8.2.2(3)(c) in cases such as where it invests in infrastructure projects (i.e. a Fund investing in facilities and systems, such as roads, railways and bridges). These Funds are generally not Property Funds as infrastructure does not constitute Real Property (i.e. freehold or leasehold property).

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8.3 Conflicts of interest

- ### 8.3.1
- (1) The Fund Manager and, if it is a Fund structured as an Investment Trust, the Trustee, must take reasonable steps to ensure that in any dealing in relation to the Fund Property such dealings do not give rise to a conflict of interest.
 - (2) Where a conflict of interest arises, whether in dealings with Related Parties or otherwise, the Fund Manager and, if appointed, the Trustee, must disclose to the Unitholders the nature of the conflict and how the conflict will be managed.
 - (3) The Fund Manager must take reasonable steps to establish and implement remuneration policies and practices which:
 - (a) are consistent with sound and effective risk management of the Funds it manages; and
 - (b) do not, to the extent practicable, encourage risk-taking inconsistent with the investment objectives and risk profile of such Funds.

Guidance

GEN Rule 4.2.12 (Principle 12) requires an Authorised Firm to have remuneration structures and strategies which are well aligned with the long term interests of the firm, and are appropriate to the

nature, scale and complexity of its business. That requirement is extended under Rule 8.3.1(3) to cover remuneration practices relating to Funds which a Fund Manager manages.

Related Party Transactions

- 8.3.2**
- (1) A Fund Manager must not enter into a Related Party Transaction unless it is in accordance with the requirements in this Rule.
 - (2) A Fund Manager must ensure that any Related Party Transaction is on terms at least as favourable to the Fund as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
 - (3) The Fund Manager must, before entering into a Related Party Transaction:
 - (a) issue to the Unitholders a circular containing the details of the proposed transaction; and
 - (b) obtain Unitholders' prior approval by Special Resolution, or by ordinary resolution in the case of a Property Fund, in respect of the proposed transaction if the total consideration or value of the transaction is 5% or more of the most recent net asset value of the Fund as disclosed in the latest published audited accounts of the Fund.
 - (4) The Fund Manager must:
 - (a) if Unitholders' prior approval is required pursuant to (3)(b), issue a notice to Unitholders providing details of the results of the Unitholders' voting at the general meeting as soon as practicable after the meeting;
 - (b) include, in the Fund's next published interim or annual report, a brief summary of the Related Party Transaction, and certification that the requirements in these Rules have been met for the transaction; and
 - (c) include, in the annual report of the Fund, the total value of any Related Party Transactions, their nature and the identities of the Related Parties with whom such transactions were made. Where there is no such transaction conducted during the financial year covered by the annual report, an appropriate negative statement to that effect must be made in the annual report.
 - (5) The requirements in (3) and (4)(a) do not apply in relation to an Exempt Property Fund.
 - (6) The requirements in (3) and (4)(a) do not apply to a Public Property Fund in respect of a Related Party Transaction if:
 - (a) the transaction is for the acquisition or sale of Real Property in the State; and
 - (b) all of the conditions in Rule 13.4.11A(1) are met.

Guidance

If a Fund Manager of an Exchange Traded Fund (ETF) has an arrangement with a Related Party, for that Related Party to provide an index or benchmark, then the Fund Manager is required to also treat that arrangement as a Related Party Transaction (see Rule 13.9.5) and comply with Rule 8.3.2 in relation to the transaction.

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8.6 Issue and redemption of ~~Public~~ Fund Units

- 8.6.1**
- (1) A Fund Manager of an Open-ended Public Fund must, within any conditions in its constitution and offer documents ~~Constitution and Prospectus~~:
 - (a) at all times during the dealing day, be willing to issue or sell Units in the Fund to any eligible Client; and
 - (b) do so in a manner that is fair and reasonable as between all Unitholders and prospective Unitholders for whom the Fund Manager does not have reasonable grounds to refuse such issue or sale.
 - (2) A Fund Manager of an Open-ended Public Fund must, within any conditions in its constitution and offer documents ~~Constitution and Prospectus~~:
 - (a) at all times during the dealing day, be willing to effect a redemption of the Units on the request of any Unitholder; and
 - (b) do so in a manner fair and reasonable as between redeeming Unitholders and continuing Unitholders.
 - (3) On agreeing to a redemption of Units within (2), the Fund Manager must pay the full proceeds of the redemption to the Unitholder within any reasonable period specified in the constitution and offer documents ~~Constitution or the Prospectus~~, unless it has reasonable grounds for withholding payment.

Guidance

1. Refer to Article 18A(2) of the Law for the definition of an Open-ended Fund.
2. The Prospectus of a Public Fund is required to set out, among other things, the ‘dealing days and times in the dealing day on which the Fund Manager will receive requests for the sale and redemption of Units and also, redemption procedures...’. The constitution or offer documents (i.e. the Information Memorandum) of an open-ended Exempt Fund or QIF may specify the Fund’s dealing days, but where it does not do so, ~~they do not~~ ~~Where not specified in the Prospectus,~~ the maximum period between dealing days for a Public Fund will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the Fund.

23. Capital reductions or share buy-backs that occur in a Closed-ended Fund are not treated as redemptions and resales of Units of Funds based on NAV in the same manner as occurs in the case of an Open-ended Fund as provided in these Rules. See Article 18A(3) of the Law for the definition of a Closed-ended Fund.
34. The circumstances in which a Fund Manager may withhold redemption proceeds under (3) include where there are any dues from the redeeming Unitholder, such as under any margin lending arrangements.
45. See Article 37 of the Law for provisions dealing with suspension of dealings of Open-ended Funds.
5. ~~Although no redemption provisions are prescribed for Exempt Funds, it does not mean that an Exempt Fund cannot be structured as an open ended. If structured as an open ended Exempt Fund, the applicable redemption procedures (such as the manner and frequency of redemptions) would generally be set out in the Fund's offer document (i.e. the Information Memorandum). The Fund Manager would need to comply with such redemption procedures.~~
6. If an Open-ended Domestic Fund is listed and traded, the redemption and reissue of its Units in the primary market does not generally take place concurrently, unless it is an Exchange Traded Fund (ETF). However, the exchange on which an Open-ended Fund is listed and traded may permit the Fund Manager to offer periodic windows for redemption and reissue of Units of the Fund (which would have to be based on NAV). The DFSA regime allows such windows, subject to disclosure in the Fund's Prospectus and to the relevant exchange as to when such windows would be offered.

8.6A Systems and controls for liquidity risk management in Open-ended Funds

- 8.6A.1** (1) A Fund Manager of an Open-ended Domestic Fund must ensure that the Fund has sufficient liquidity to meet redemption requests as stated in the Fund's Constitution and its most recent Prospectus, as appropriate to the nature and risk profile of the relevant Fund.
- (2) For the purposes of meeting the requirement in (1), the Fund Manager's systems and controls must, at a minimum, contain well-documented and detailed policies and strategies, which:
- (a) include appropriate liquidity buffers and limits on illiquid assets, and the availability of other resources, such as lines of credit;
 - (b) take into account:
 - (i) the underlying classes of assets of the Fund;
 - (ii) if such assets are traded on-exchange, the liquidity in those markets;
 - (iii) investors' redemption patterns and behaviour; and
 - (iv) any other factors that affect or potentially affect the liquidity of the relevant classes of assets;

- (c) include appropriate mechanisms to measure, monitor, stress test and manage the controls referred to in (a) to assess whether they are adequate, and are operating as intended in both normal and stressed conditions and the procedures available to the Fund Manager to address any gaps and failures identified; and
- (d) include powers available to the Fund Manager to address liquidity stresses which pose, or have the potential to pose, risks to its ability to effect redemptions (such as the power to impose anti-dilution levies, create side pockets to ring-fence illiquid assets and create redemption gates or suspend redemptions), and clear triggers and procedures for exercising such powers.

Guidance

1. The DFSA expects Fund Managers to take into account the IOSCO Principles for liquidity risk management in Open-ended Funds 2015 (which are currently under review and can be found at [Recommendations of Liquidity Risk Management for Collective Investment Schemes](#)). The DFSA believes that the measures identified in the IOSCO Principles, if implemented, would enable Fund Managers of Open-ended Funds to meet their overarching obligations in Rule 8.6A.1.
2. In the DFSA's view, there are certain specialist classes of Funds which generally do not lend themselves to be Open-ended, such as Private Equity Funds (because of the long-term nature of their investments), and Fund of Funds or Feeder Funds (unless the Funds in which they invest themselves are Open-ended). Conversely, there are Funds which may lend themselves better to being structured as Open-ended Funds offering redemptions, such as Funds investing in transferable securities (e.g. UCITS style Funds), or ETFs – due to the liquidity of the underlying classes of their assets, provided they meet the liquidity risk management controls referred to in Rule 8.6A.1. However, it is a matter for the Fund Manager to objectively assess the liquidity profile of the Fund and associated risks.

8.6AB Confirmation notes

8.6BA.1 ...

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PART 5: RULES SPECIFIC TO DIFFERENT TYPES OF DOMESTIC FUNDS

Guidance

Article 13 of the Law defines Funds as either Domestic Funds or Foreign Funds. Article 15 of the Law further defines Domestic Funds as falling into three categories, i.e. Public Funds, Exempt Funds and Qualified Investor Funds. While the core requirements in Part 4 of this module are of common application to most types of Domestic Funds, the requirements in this Part apply only to certain types of Domestic Funds, depending on whether they are Public Funds, Exempt Funds or Qualified Investor Funds. Where a certain type of Fund is also a specialist class of Funds, there are additional requirements that are prescribed in Part 6.

10 REQUIREMENTS SPECIFIC TO PUBLIC FUNDS

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10.3 Oversight arrangements for Public Funds

Guidance

Chapter 2 of the Law (see Articles 39 – 42) sets out the general requirements relating to the oversight arrangements which a Public Fund must have, including the powers and duties of the Persons appointed to a Public Fund to provide the oversight function. The Rules in this section provide further detailed requirements relating to that function.

Permitted oversight arrangements

10.3.1 The following oversight arrangements are hereby prescribed by the DFSA for the purposes of Article 39(1)(a) of the Law:

- (a) an Oversight Committee comprising at least three individuals each of whom meets the suitability criteria prescribed in Rule 10.3.2; or
- (b) the Eligible Custodian or Trustee of the Fund, where the individuals undertaking the primary responsibility for the oversight function meet the suitability criteria prescribed in Rule 10.3.2.

Guidance

1. Article 39(1)(a) of the Law requires the Fund Manager of a Domestic Fund which is a Public Fund to establish and maintain one of the permitted oversight arrangements prescribed by the DFSA. Accordingly, such a Fund Manager must appoint one of the oversight arrangements specified in Rule 10.3.1 to every Public Fund which it manages.
2. The membership of the Oversight Committee may comprise individuals including but not limited to members of the board of directors of the Fund Manager or that of the Fund, or the individual directors of the Corporate Director, or the members of the General Partner of an Investment Partnership, or external experts, provided such individuals can meet the suitability criteria prescribed in Rule 10.3.2(1). The criteria include a test of independence.
3. For example, for an individual such as a member of the board of directors of the Fund Manager to be able to meet the independence test, the starting point is that such an

individual would need to be a non-executive member of the Fund Manager’s board. But that alone may not be sufficient, as the independence requirement has a range of other elements against which such an individual’s ability to be independent of the Fund Manager is assessed. See Article 42 of the Law and Rule 10.3.2. The other elements of the suitability test encompass a fit and proper test and relevant expertise. These too need to be satisfied by such individuals.

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10.5 Investment and borrowing requirements for Public Funds

Application

10.5.1 This section applies to the Fund Manager of a Domestic Fund which is a Public Fund, an Eligible Custodian and, where appropriate, a Trustee, and, to Persons appointed to perform the oversight function for such a Fund, to the extent specified in Rule 10.3.4.

Spread of risk and protection of Fund Property

10.5.2 A Fund Manager must take reasonable steps to ensure that the Fund Property of a Public Fund provides a spread of risk that is consistent with the investment objectives and policy of the Fund as stated in its most recently published Prospectus, and in particular, any investment objectives as regards return to the Unitholders whether through capital appreciation or income or both.

Guidance

1. Rule 10.5.2 provides flexibility for a Public Fund to be established with detailed restrictions relating to the type and limits of Investments it will make, as stated in its Prospectus, to provide liquidity and spread of investment risk – for example, a Fund may provide a prudent spread of investment risk:
 - a. by adopting investment restrictions such as required under the Undertaking in Collective Investment in Transferable Securities (UCITS) Directive, which aim to provide diversification and liquidity through restrictions on types of investments and limits on investments; or
 - b. through holdings in a company which has a diversified portfolio of assets.
2. A Property Fund can be constituted as a single property Fund. However, if it is a Public Fund, its Prospectus is required to include the disclosure specified in Rules 14.4.3 and 14.4.4. Such disclosure should include the risks arising from investing in a single property.

- 10.5.3**
- (1) A Fund Manager must avoid the Fund Property being used or invested contrary to any provision in this section.
 - (2) On becoming aware of any breach of a Rule in this section, a Fund Manager must take action, at its own expense, to rectify that breach.
 - (3) A Fund Manager must take the action in (2) immediately, except in circumstances where it decides doing so would not be in the best interests

of Unitholders, in which case the action must be taken as soon as such circumstances cease to apply.

- (4) A Fund Manager must not postpone taking action in accordance with (2) unless the Persons providing oversight functions have given their consent.

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Transactions in derivatives

- 10.5.5**
- (1) The total exposure of a Public Fund to Derivatives may not exceed the net asset value of the Fund Property.
 - (2) The Fund Manager’s systems and controls must include adequate risk management processes which enable it to monitor and measure as frequently as appropriate the risk of a Fund’s Derivative positions and their contribution to the overall risk profile of the Fund.

Guidance

- 1. There are additional requirements relating to liquidity risk management, including liquidity risks resulting from the use of certain classes of assets (such as Derivatives) giving rise to credit or counterparty exposure in Open-ended Domestic Funds (see Rule 8.6A.1(2)).
- 2. An Exchange Traded Fund (ETF) which is a ‘synthetic ETF’ (see Guidance items 11 – 14 under Rule 13.9.6 for descriptions of different types of synthetic ETFs) would use Derivatives, such as a total return swap, to replicate the performance of the specified index or other benchmark it tracks. The Prospectus of a synthetic ETF is required to include details relating to counterparty and collateral-related risks associated with the use of synthetic replication of the performance of the relevant underlying index or benchmark through the use of Derivatives (see Rule 14.4.8(i)).

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12 REQUIREMENTS SPECIFIC TO EXEMPT FUNDS

12.1 Meeting the conditions to be classified as an Exempt Fund

Guidance

1. Article 16(2) of the Law provides that a Domestic Fund may be constituted as an Exempt Fund only if it satisfies all of the conditions in Article 16(4). Article 16(4) provides that an Exempt Fund must:
 - ~~a.~~ have 100 or fewer Unitholders;
 - ~~a~~b. have its Units offered to persons only by way of a Private Placement;
 - ~~b~~e. have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
 - ~~c~~d. have a minimum subscription of at least US\$50,000 for a person to become a Unitholder in the Fund,

and not satisfy the conditions in Article 16(5) to be a Qualified Investor Fund.
2. Under Article 26(1) of the Law, an Exempt Fund is required to have one of the permitted forms, i.e. an Investment Company, Investment Partnership or an Investment Trust. However, certain types of Exempt Funds which belong to a specialist class of Funds may be permitted to use only some and not all the permitted forms. See Part 6 for those variations.
3. If an Exempt Fund can no longer meet the relevant conditions to be classified as an Exempt Fund, the Fund Manager of that Fund is required, under Article 34(3), to apply for the winding up of that Fund. Alternatively, the Fund Manager may have that Fund moved to the classification of a Public Fund, which requires the satisfaction of the requirements and formalities specific to that type of Fund. An Exempt Fund may also, if it wishes to, convert to a Qualified Investor Fund provided it meets the conditions applicable to a Qualified Investor Fund in Article 16(5) of the Law.
4. In addition to the requirements specific to Exempt Funds, such a Fund must also meet, except where otherwise provided, the other requirements that are common to all Domestic Funds, which are set out in Part 4 of this module.
5. Units of Exempt Funds can only be Offered by way of Private Placement and to Professional Clients, but must meet the additional criterion of a minimum subscription test of US\$50,000. The definition of Professional Client is set out in Rule 1.3.1.
6. Generally a firm will not be able to undertake mass marketing activities relating to Units of Exempt Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.
7. A Fund Manager of an Exempt Fund, which is structured as an Open-ended Fund, is required to comply with the requirements relating to adequate systems and controls to manage, among others, the liquidity risk. See Rule 8.6A.1.

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12A REQUIREMENTS SPECIFIC TO QUALIFIED INVESTOR FUNDS

12A.1 Meeting the conditions to be classified as a Qualified Investor Fund

Guidance

1. Article 16(2) of the Law provides that a Domestic Fund may be constituted as a Qualified Investor Fund only if it satisfies all of the conditions in Article 16(5). Article 16(5) provides that a Qualified Investor Fund must:
 - ~~(a)~~ have 50 or fewer Unitholders;
 - ~~(b)~~a. have its Units offered to persons only by way of Private Placement;
 - ~~(c)~~b. have only Unitholders each of whom meets the criteria to be classified as a Professional Client; and
 - ~~(d)~~c. have an initial subscription to be paid by a person to become a Unitholder in the Fund of at least US\$500,000.
2. The definition of “Professional Client” is set out in Rule 1.3.1.
3. Generally a firm will not be able to undertake mass marketing activities relating to Units of Qualified Investor Funds because such marketing would not meet the Private Placement requirement, and would be likely to amount to a public offer, which can only be made in respect of a Unit of a Public Fund.

...

12A.2 Responsibilities of a Fund Manager of a Qualified Investor Fund

Guidance

1. While a Fund Manager of a Qualified Investor Fund is exempt from many of the detailed requirements applicable to Public Funds and Exempt Funds, it will continue to be subject to most of the main obligations of Fund Managers. Therefore, such a Fund Manager should be mindful that when managing a Qualified Investor Fund, it is subject to some of the overarching obligations applicable to Fund Managers, particularly:
 - (a) Article 22 of the Law (Fund Manager’s general duties and functions);
 - (b) Article 38 of the Law and GEN chapter 5 (Systems and controls requirements); and
 - (c) GEN section 4.2 (The Principles for Authorised Firms).
2. For example, a Fund Manager of a Qualified Investor Fund needs to observe high standards of integrity and fair dealing, and apply due skill, care and diligence, in managing the Fund. Similarly, it must have adequate systems and controls to ensure that the affairs of the Fund are effectively managed, taking into account the nature, scale and complexity of the Fund’s operations and the investment objectives and needs of its investors.
3. A Fund Manager of a Qualified Investor Fund, which is structured as an Open-ended Fund, is required to comply with the requirements relating to adequate systems and controls to manage, among others, the liquidity risk. See Rule 8.6A.1.

...

12A.3 Custody of Fund Property

- 12A.3.1**
- (1) For the purposes of Article 27(1)(e) of the Law, the Fund Manager of a Qualified Investor Fund that is not an Investment Trust must ensure that the legal title to Fund Property is registered with an Eligible Custodian.
 - (2) The requirement in Article 27(1)(e) of the Law does not apply in relation to Fund Property of a Qualified Investor Fund that is:
 - (a) a Property Fund; ~~or~~
 - (b) a Private Equity Fund; or
 - (c) a Fund which has highly illiquid Fund Property.
 - (3) If the Fund Manager of a Qualified Investor Fund itself holds Fund Property of a kind referred to in (2), it must have in place effective arrangements which ensure that the Fund Property is not available to creditors in the event of the insolvency of the Fund Manager.

Guidance

1. Article 27(1)(e) of the Law requires a Domestic Fund that is not an Investment Trust to have legal title to the Fund Property registered with an eligible person (unless the Rules provide otherwise). Rule 12A.3.1(1) specifies that the person must be an Eligible Custodian. Rule 12A.3.1(2) disapplies the requirement in relation to Fund Property of certain kinds of Qualified Investor Funds. Regardless of who holds title to Fund Property, the Fund Manager must always ensure that, in accordance with Article 22(2)(f) of the Law, Fund Property is clearly identified as such and held separately from property of the Fund Manager and any other Funds.
2. A Fund Manager may rely on Rule 12A.3.1(2)(c) in cases such as where it invests in infrastructure projects (i.e. a Fund investing in facilities and systems, such as roads, railways and bridges). These Funds are generally not Property Funds as infrastructure does not constitute Real Property (i.e. freehold or leasehold property).

PART 6: RULES SPECIFIC TO SPECIALIST CLASSES OF DOMESTIC FUNDS

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13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS

13.1 Application to Qualified Investor Funds

13.1.1 Only Rules 13.4.1, 13.5.1, 13.6.3 and section 13.7 of this chapter apply to, or in relation to, a Qualified Investor Fund.

...

13.4 Property Funds

Guidance

See Rule 3.1.7 for the definition of a Property Fund.

Permitted form and listing

- 13.4.1**
- (1) A Fund Manager of a Domestic Fund which is a Property Fund must use only a Closed-ended legal structure for the investment vehicle, unless it is an Exempt Fund or a Qualified Investor Fund.
 - (2) In the case of a Property Fund which is or intends to be a Public Fund, the Fund Manager:
 - (a) may only use either an Investment Company or Investment Trust as the investment vehicle of the Fund;
 - (b) must ensure that it is listed and traded on an Authorised Market Institution or is listed and traded on an exchange in a Recognised Jurisdiction within 3 years ~~6 months~~ from the date on which the Units of the Fund are first Offered to the public or any other shorter period as specified in the Fund's Prospectus; and
 - (c) must ensure that the Constitution of the Fund includes provisions that deal with:
 - (i) the manner in which the issue and redemption of Units of the Fund will be made to ensure that the Fund is closed ended; and
 - (ii) if applicable, the circumstances in which any Private Placements may be made.

- (3) If the offer document or marketing material of a Property Fund which is an Exempt Fund or QIF states that it intends to be listed and traded on an Authorised Market Institution, or on an exchange in a Recognised Jurisdiction, it must:
- (a) be registered as a Public Company;
 - (b) list and trade its Units on the exchange specified in its offer document or marketing material within 3 years of its registration; and
 - (c) during the period pending its listing and trading, comply with all the requirements applicable to a Public Fund other than the requirements relating to:
 - (i) the independent oversight function; and
 - (ii) the issue of a Public Fund Prospectus.

Guidance

- ~~1. See Article 18A of the Law for the definitions of Open-ended Fund and Closed-ended Fund. A Closed-ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund. Therefore, Unitholders of such Funds do not have a redemption right. Instead, if the Fund is listed and traded, Unitholders are able to sell their Units or buy Units on exchange, however, a Fund using a Closed-ended structure can issue new Units to new Unitholders (or effect a buyback) subject to the applicable laws and where permitted under its own Constitution.~~

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13.5 Real Estate Investment Trusts (REITs)

Guidance

1. See Rule 3.1.8 for the definition of a Real Estate Investment Trust (REIT).
2. REITs are a subset of Property Funds. The Fund Manager of a Public Property Fund, which is, or is to be held out, as a REIT, is required, in addition to the general Rules applying to Public Property Funds (such as Rules on borrowing and Related Party Transactions), to also comply with the Rules in this section.
3. An Exempt Fund or Qualified Investor Fund may also be constituted as a REIT if it meets the criteria in Rule 13.5.1(2). Such a REIT also has 3 years to list and trade if its offer documents (e.g. the Information Memorandum) or its marketing material state that it intends to list and trade its Units.

Real Estate Investment Trusts (REITs)

- 13.5.1** (1) A Fund Manager, or any Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term “Real Estate Investment Trust” or “REIT” or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or a REIT unless it is a Public Property Fund which is constituted in accordance with (2).

- (2) A REIT is a Public Property Fund which:
 - (a) is constituted either as an Investment Company or as an Investment Trust;
 - (b) is primarily aimed at investments in income-generating Real Property; and
 - (c) distributes to the Unitholders at least 80% of its audited annual net income.
- (3) If at any time during the operation of the Fund the requirements in (2) are not met, the Fund Manager, and, if appointed the Trustee, must immediately notify the DFSA and the exchange of the failure to meet the requirements in these Rules and what measures have been or will be taken to remedy the breach.

- 13.5.2**
- (1) A Fund Manager of a REIT must ensure that it distributes to the Unitholders as dividends each year an amount not less than 80% of its audited annual net income.
 - (2) The Persons providing oversight functions in respect of a Public REIT ~~the Fund~~ must determine if any;
 - (a) revaluation surplus credited to income, or
 - (b) gains on disposal of Real Property,
 shall form part of net income for distribution to Unitholders.

13.5.3 Where a Public REIT holds any Real Property via one or more Special Purpose Vehicles, the Fund Manager must ensure that each Special Purpose Vehicle distributes to the Fund all of its income as permitted by the laws and regulations of the jurisdiction where the Special Purpose Vehicle is established.

- 13.5.4**
- (1) A Fund Manager of a Public REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.
 - (2) The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the Public REIT.

Guidance

For the purposes of Rule 13.5.4, the DFSA would not consider property development activities to include refurbishment, retrofitting and renovation.

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13.9 Exchange Traded Funds (ETFs)

Restriction on holding out to be an ETF

13.9.1 A Fund Manager, or any Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not describe the Fund in its offer document or marketing material as an “Exchange Traded Fund” (or “ETF”) or otherwise hold out the Fund as being an Exchange Traded Fund or ETF, unless the Fund meets the criteria in Rule 3.1.12.

Guidance

See also Guidance item 4 under Rule 13.9.6 for the difference between an Exchange Traded Fund or ETF and other exchange traded Open-ended Funds.

Systems and controls

13.9.2 A Fund Manager of an ETF must have adequate systems and controls to ensure that the Authorised Participant offers to trade the Units of the ETF at a price that does not significantly vary from the most recent Net Asset Value (NAV) of the ETF, or the indicative Net Asset Value (iNAV) of the ETF, if available.

Guidance

See also Guidance item 3 under Rule 13.9.6 for a description of iNAV and Rule 14.4.8(f) for information relating to iNAV that is required to be included in a Prospectus.

Investment objective and strategy of an ETF

13.9.3 A Fund Manager of an ETF must ensure that the investment objective and strategy of the Fund is to track the performance of an index or benchmark specified in its Prospectus.

Guidance

Rule 13.9.3 requires an ETF to track the performance of an index or benchmark. It therefore does not permit a Fund that is ‘actively managed’ to be established as an ETF. For more discussion about actively managed Funds – see the Guidance after Rule 13.9.6.

Criteria for underlying indices or other benchmarks

- 13.9.4** (1) A Fund Manager of an ETF may use an index or other benchmark for the purposes referred to in Rule 13.9.3 only if it is provided by a Price Information Provider that meets the requirements in App 9.
- (2) In (1), a Price Information Provider is a price reporting agency or an index or benchmark 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, including a Fund Manager.

Index or benchmark provided by a Related Party

13.9.5 The Fund Manager of an ETF must treat an arrangement between the Fund Manager and a Related Party to use an index or benchmark provided by the Related Party as a Related Party Transaction.

Guidance

1. An index or other benchmark referenced by an ETF is not the property of the ETF. If the index or benchmark is provided by a Related Party (for example, if it is custom made for the Fund Manager), it can give rise to conflict of interests that may pose the risk of distortion of information in favour of the Fund Manager, to the possible detriment of investors in the ETF. Therefore, Rule 13.9.5 also applies the Related Party Transaction provisions in Rule 8.3.2 to an arrangement under which a Fund Manager of an ETF uses or proposes to use an index or benchmark provided by a Price Information Provider which is a Related Party.
2. A Fund Manager of an ETF will also need to comply with Rule 13.9.4 in relation to a Related Party Price Information Provider which provides the index or the other benchmark it tracks.

Types of ETFs and their characteristics

13.9.6 A Fund Manager of an ETF must take reasonable steps to ensure that the Fund's Prospectus and marketing material describe the type of ETF in a way that is clear and not misleading to enable investors and potential investors to understand the type of ETF, and its characteristics.

Guidance

General

1. The terminology ETFs use are specific to ETFs. Depending on the type of ETF, their features could also be different. FSB, IOSCO and ESMA have issued guidance relating to types of ETFs, ETF terminology and ETF characteristics, to enable retail investors, in particular, to understand ETF terminology, different types of ETFs, and their associated characteristics better. The following Guidance is based on the material issued by those bodies, and is designed to assist Fund Managers of ETFs to meet their overarching obligation in Rule 13.9.6.

ETF terminology

(Annual) tracking difference

2. (Annual) tracking difference measures the actual performance of the ETF, compared to the annual return of the tracked index or other benchmark, generally over a 12 month period (but this could be over a shorter specified period).

Indicative Net Asset Value (iNAV)

3. iNAV is a measure of the intraday value of the net asset value (NAV) of an index-based ETF, based on the most up-to-date information. iNAV is not the value at which investors buy and sell ETF Units through the Authorised Participant. iNAV is calculated and made available by the operator of the exchange on which an ETF is traded – based on the information made available to the relevant exchange by the ETF manager and the AP relating to the underlying portfolio of ETF assets.

Exchange traded products (ETPs)

4. ETPs include a wide variety of different investment products that are traded on an exchange, such as exchange-traded commodities (ETCs), exchange-traded notes (ETNs), exchange-traded instruments (ETIs), and exchange-traded vehicles (ETVs). Most of these are debt instruments, and not equity participation rights conferred by a Unit of an ETF.

ETF features

5. While an ETF is a Collective Investment Fund (Fund), as it has special features, it has been classified as a specialist class of Fund.
6. An ETF differs from other Funds because unlike other exchange traded Funds, ETF Units have concurrent primary market and secondary market trading, primary market trading occurring in 'creation Units' between the Fund Manager and its Authorised Participant (AP), and secondary market trading between the AP and investors. See also Guidance under Rule 3.1.12.
7. Investors in an ETF may incur additional costs and fees as they have to buy and sell ETF Units through an Authorised Participant (who directly buys and sells 'creation units' in the ETF from the ETF Fund Manager). These are different to the Units of the ETF which are traded on the relevant exchange, and are generally of a larger denomination than the Units available to investors on the relevant exchange.

Types of ETFs

Index tracking ETF (Index-tracker)

8. An Index-tracking (based) ETF typically seeks to replicate the performance of an underlying index or benchmark. It may do so either as a physical ETF or as a synthetic ETF.

Physical ETF

9. The investment strategy of a physical ETF is to hold physical securities and other assets to obtain returns that correspond typically to those of an underlying index or benchmark by replicating (and where appropriate, by sampling) the component securities of the relevant index or benchmark. Replication generally involves investing in the component securities of the underlying index or benchmark in the same approximate proportions as in the underlying index or benchmark.
10. In certain cases, it may not be possible for an ETF to own every stock of an index (for example, due to, transaction costs, the index being too large, its components being illiquid, or because its market capitalisation weighting would result in the ETF violating regulatory requirements for asset diversification). In such instances, a physical ETF may rely on sampling techniques. For example, by acquiring a subset of the component securities of the underlying index, and possibly some securities that are not included in the corresponding index designed to improve the ETF's index-tracking.

Synthetic ETF

11. The investment strategy of a Synthetic ETF is to meet its investment objective by entering into a derivative contract (typically through a total return swap) with a selected counterparty. The swap contracts can take one of two forms:
 - a. an unfunded structure; or
 - b. a funded (or prepaid swap) structure.

as described below.

12. In both models, the derivative exposure is collateralised or reduced through the use of collateral or a portfolio management process, that may involve the services of a third party as collateral agent (in the funded model) or is covered by the substitute basket as assets of the ETF (in the unfunded model).

Synthetic ETF (unfunded)

13. In a synthetic ETF adopting the unfunded structure, the ETF Fund Manager invests the cash proceeds from investors in a so-called substitute or reference basket of securities (typically bought from a bank). The basket's return is swapped via a derivative contract with an eligible counterparty (frequently, the derivatives desk of the same bank), in exchange for the return of the index referenced in the ETF's investment objective.

Synthetic ETF (funded)

14. In a synthetic ETF adopting the funded structure, the ETF Fund Manager enters into a swap in exchange for cash (or for the entire ETF portfolio) without the creation of a substitute basket.

A leveraged ETF

15. A leveraged ETF (which is often an index-tracking ETF) can have leverage exposure to an index, or exposure to a leveraged index.

Actively managed ETF

16. An ETF is actively managed if the Fund Manager exercises discretion over the composition of the invested portfolio in an attempt to outperform a chosen index or other benchmark. The key difference, compared to an index tracking ETF, is a Fund Manager's ability to adjust the portfolio without being subject to the set rules of the index or other benchmark referenced. An actively managed ETF could be a physical ETF or a synthetic ETF – with a portfolio selected at the discretion of the Fund Manager or derivatives designed at the discretion of the Fund Manager.
17. The DFSA regime does not permit the creation of actively managed ETFs (see Rule 13.9.3) as there is less transparency relating to the underlying portfolio of assets. This gives rise to potential difficulties in clearly identifying risks associated with exposures to counterparties and any collateral used in such ETFs, compared to ETFs that passively track the performance of a specified index or other benchmark.

PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS

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14 MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE

14.1 Prospectus disclosure for Domestic Funds

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Application

- 14.1.1** (1) This chapter applies, subject to (4), to:
- (a) a Fund Manager of a Domestic Fund;
 - (b) each Director or partner of the Fund Manager;
 - (c) if the Fund Manager is a Corporate Director, the individuals who are Directors of that Corporate Director; and,
 - (d) if the Fund ~~it~~ has a Governing Body, each member of that body.
- (2) This chapter also applies to an Authorised Firm, and each of its Directors or partners, where such a Firm is not the Fund Manager and undertakes the marketing of Units of a Domestic Fund.
- (3) This chapter also applies to other specified Persons to the extent so specified.
- (4) Only this Rule and the following requirements in this chapter apply to, or in relation to, a Qualified Investor Fund:
- (a) Rule 14.2.1;
 - (b) Rules 14.2.4 to 14.2.7;
 - (c) Rule 14.4.6;
 - (d) Rules 14.5.1 and 14.5.2; and
 - (e) Rules in section 14.6.

Guidance

An External Fund Manager must also comply with the requirements in this chapter, because it is managing a Domestic Fund (i.e. a Fund established or domiciled in the DIFC- See Article 13(2)(a) of the Law).

14.2 General Requirements relating to Prospectuses

- 14.2.1**
- (1) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.
 - (2) For the purposes of the information that must be included in a Prospectus pursuant to Article 52 of the Law:
 - (a) such information must be material information; and
 - (b) information is material if it is either:
 - (i) within the knowledge of the Directors or partners of the Fund Manager; or
 - (ii) which such Directors or partners ought reasonably have obtained by making reasonable enquiries.
 - (3) The Prospectus must be in the English language.
 - (4) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.
 - (5) A reference to a Director in this Rule includes the Corporate Director of an Investment Company, and the individual directors of that Corporate Director.

Guidance

In conducting inquiries relating to the obligations under (2), a Fund Manager must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed decision about the merits of investing and the extent and characteristics of risk.

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14.3 Prospectus content

Public Fund Prospectus

- 14.3.1** Without limiting the generality of the Prospectus disclosure required under Article 52 of the Law, the Fund Manager must, in the case of a Public Fund, include in the Fund's Prospectus:
- (a) the information in App 7;
 - (b) if it is a specialist class of a Public Fund, any information as is relevant to that specialist class of Fund as set out in section 14.4; ~~and~~
 - (c) the mandatory statement required under Rule 14.3.3;
 - (d) a Summary Document containing:
 - (a) information to clearly identify the Fund and its classification;

- (b) a short description of the Fund's investment objectives and investment policy for achieving those objectives;
 - (c) past-performance presentation or, where relevant, performance scenarios;
 - (d) costs and associated charges; and
 - (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant Fund; and
- (e) if it is an Open-ended Fund, the information relating to the powers available to the Fund Manager to address liquidity risks that may arise in the Fund, and procedures, including triggers, for the exercise of such powers, required under Rule 8.6A.1(2)(d).

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Disclosure about an Exchange Traded Fund (ETF) and associated risks

14.4.8

A Fund Manager of an Exchange Traded Fund (ETF) must include in its Prospectus details relating to:

- (a) the type of ETF and its characteristics;
- (b) the risks associated with the type of ETF;
- (c) the investment methodology and strategies the ETF proposes to adopt to track the referenced index or benchmark;
- (d) a clear description of the relevant indices or other benchmark the ETF is designed to track, and timely information about the underlying components (including their liquidity) of the relevant index or the benchmark;
- (e) clear sign-posts to guide investors to relevant websites or sources of information provided by Price Information Providers, including the methodology, composition, components and value, and relative weightings, relating to their indices or benchmarks;
- (f) information about whether iNAV is made available by the relevant exchange, and if so, how this information can be accessed by investors;
- (g) information on how the referenced index or benchmark will be tracked and the risks for investors in terms of exposure they have to the underlying index and any counterparty risk;
- (h) a description of the key elements which may affect the ETF's ability to track fully the relevant index or benchmark, including, but not limited to, transaction costs, illiquid segments, and dividend re-investment;
- (i) in the case of a synthetic ETF using Derivatives to replicate the performance of an index or other benchmark;

- (i) whether the ETF uses funded or unfunded model to replicate the performance of the specified index or benchmark;
- (ii) if not already disclosed, information relating to the counterparties to the Derivatives transactions, and where collateral is used, details relating to such collateral; and
- (iii) a description of the risks associated with counterparty default and use of any collateral, and their impact on the ETF's performance and investor returns, and how such risks are to be mitigated;
- (j) to the extent an ETF is required to have a diversified portfolio, how the ETF proposes to achieve diversification of investments through its investment strategy; and
- (k) if available, information about the past performance of the ETF, measured through its realised tracking difference and annual tracking error information, on the anticipated level of tracking error during normal market conditions, and how this will be effectively minimised.

Guidance

See also the Guidance under Rule 13.9.6 for types of ETFs, including synthetic ETFs, funded and unfunded, and the definitions of iNAV in GLO.

Disclosure relating to ETF's cost structure

14.4.9 A Fund Manager of an Exchange Traded Fund (ETF) must include in its Prospectus sufficient information to enable investors to clearly understand:

- (a) the ETF's cost structure, covering:
 - (i) any performance fees of the Fund Manager, if applicable;
 - (ii) its operational costs; and
 - (iii) if applicable, costs of underlying transactions (such as swaps, brokerage commissions and additional costs associated with leverage or use of collateral, and the rebalancing of the portfolio costs); and
- (b) any revenue derived by the Fund Manager through the use of the ETF's portfolio assets, and how that revenue is distributed between the ETF and the Fund Manager.

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14.5 Obligation relating to making a Prospectus available

14.5.1 (1) A Fund Manager of a Domestic Fund must make the Fund's most recent Prospectus available free of charge to any Unitholder and to any Person who is eligible to invest in the Fund when making an Offer to issue or sell

a Unit of the Fund to such a Person, and, in any case, must not enter into a Transaction relating to the issue or sale of a Unit of the Fund with a Person unless that Transaction results from an Excluded Offer as defined in section 4.1 of this module.

- (2) A Fund Manager of a Domestic Fund which is an Exempt Fund or a Qualified Investor Fund must not, and must not cause any other Person to, make an Offer of Units of such a Fund in a manner that would result in a breach of the requirements in Article 16(4) or (5) of the Law as is applicable to that Fund.

Guidance

1. Section 4.1 of this module contains the definitions of Excluded Offers, such as Execution-only Transactions and Transactions with market Counterparties.
2. A Fund Manager should note the requirements in Article 50(1) of the Law. Accordingly, a Prospectus drawn up pursuant to Rule 14.1.3 should be made available to prospective Unitholders for as long as the Offer is open and once the Offer is closed, the Fund Manager's obligation to make the Prospectus available would cease.
3. Articles 16(4) and (5) of the Law set out the conditions that must be satisfied for Exempt Funds and Qualified Investor Funds. In particular, these articles require that Units in an Exempt Fund or a Qualified Investor Fund may only be Offered for issue or sale by means of a Private Placement with Professional Clients, ~~and in a manner which does not result in the Fund having more than 100 Unitholders or 50 Unitholders, as is applicable.~~

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14.6 Responsibility for Prospectus

Prescribed persons

- 14.6.1** (1) For the purposes of Article 58(1) of the Law, the following Persons are prescribed as being responsible for a Prospectus:
- (a) the Fund Manager;
 - (b) where the Fund is a Body Corporate, which does not have a Corporate Director acting as its Fund Manager, each Person who is a Director of that Body Corporate at the time when the Prospectus is filed;
 - (c) where the Fund is an Investment Undertaking, each Person who is authorised to be named, and is named, in the Prospectus as a Director, General Partner or member of the Governing Body or as having agreed to become such a Person of that Fund either immediately or at a future time;
 - (d) each Person who accepts, and is stated in the Prospectus as accepting, responsibility for, or for any part of, the Prospectus;
 - (e) each Person who is deemed to accept responsibility for any part of a Prospectus under these Rules; and

- (f) each Person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the Prospectus.
- (2) A Person who has accepted responsibility for, or authorised, only part of the contents of any Prospectus, is responsible only for that part and only if it is included in, or substantially in, the form and context to which he has agreed.
- (3) Nothing in (1) makes a Person responsible for any part of a Prospectus by reason only of giving advice as to its contents in a professional capacity to a Person specified in (1)(a) to (f).

...

15 MARKETING OF FOREIGN FUNDS

15.1 Access to Foreign Funds and availability of Prospectus

Guidance

1. Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 50 of the Law and the requirements in both the Law and this module relating to the marketing of Units.
2. Article 54(1) of the Law prohibits the Offer of Units of a Foreign Fund unless one of three specified criteria in that Article are met, i.e.
 - a. the Foreign Fund meets either:
 - i. the criteria for a Designated Fund in a Recognised Jurisdiction; or
 - ii. other criteria prescribed in the Rules;
 - b. the Authorised Firm has a reasonable basis for recommending the Unit of the Foreign Fund as suitable for the particular Client to whom the Offer is made; or
 - c. the Foreign Fund, had it been a Domestic Fund, would meet the Exempt Fund criteria in Article 16(4) of this Law or Qualified Investor Fund criteria in Article 16(5) and the Offer is made in a manner that does not breach the requirements in that Article.
3. Under Article 54(2) of the Law, the DFSA has the power to prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of a Foreign Fund, including disclosure that must be included in a Prospectus and the legal form and structure of the Fund such as being ~~e~~Open-ended or ~~e~~Closed ended or listed or not. This section contains additional criteria and requirements prescribed pursuant to Article 54(2) of the Law.

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Designated Foreign Fund criteria

15.1.5 The criteria prescribed for the purposes of Article 54(1)(a)(i) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

- (a) the Fund is both established and operated in a Recognised Jurisdiction specified in the DFSA's Recognised Jurisdictions Notice and the Fund is a Designated Fund included in that Notice; ~~and~~
- (b) if it is a Property Fund, the requirements in Rule 15.1.7 are satisfied; and
- (c) if it is an Exchange Traded Fund, the requirements in Rules 13.9.1, 13.9.4 and 13.9.5 are satisfied.

Guidance

For the purposes of the Rules including this Rule, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

Other Foreign Fund criteria

- 15.1.6** (1) The criteria prescribed for the purposes of Article 54(1)(a)(ii) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:
- (a) the Fund:
 - (i) has both a custodian who meets one of the requirements in (2) and an investment manager who meets one of the requirements in (3); or
 - (ii) has both the custody and investment management activities of the Fund being performed by a Person who meets the requirements in (4); or
 - (iii) the Fund has been rated or graded as at least “investment grade” by Moody’s, Fitch or Standard & Poor’s or such other international rating agency acceptable to the DFSA.
- ~~and,~~
- (b) if the Fund is a Property Fund, it meets the requirements in Rule 15.1.7, and
 - (c) if it is an Exchange Traded Fund, the requirements in Rules 13.9.1, 13.9.4 and 13.9.5 are satisfied.
- (2) For the purposes of (1)(a)(i), the custodian is the Person who is responsible for providing safe custody of the Fund Property and such Person must be:
- (a) an Eligible Custodian;
 - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;
 - (c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or
 - (d) a Person as to whom the Authorised Firm is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:

- (i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;
 - (ii) the extent of segregation of assets;
 - (iii) independence and management of conflicts of interests;
 - (iv) the terms of the safe custody agreement; and
 - (v) periodic reporting requirements.
- (3) For the purposes of (1)(a)(i), the investment manager is a Person who makes investment decisions for or on behalf of the Fund and must be a Person who is:
- (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of its activities in relation to investment management;
 - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or
 - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.
- (4) For the purposes of (1)(a)(ii), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
- (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
 - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or
 - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.

APP9 **USE OF PRICE INFORMATION PROVIDERS**

A9.1 **Application**

A9.1.1 This Appendix applies to a Fund Manager of an Exchange Traded Fund.

Use of price information providers

A9.1.2 (1) A Fund Manager of an ETF may only use an index or other benchmark provided by a Price Information Provider for the purposes referred to in Rule 13.9.3 if it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (2).

(2) The requirements relating to the Price Information Provider are that:

- (a) it has fair and non-discriminatory procedures for establishing prices of Investments which are made public.
- (b) it can 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 by:
 - (i) making publicly available all the rules that govern the composition, inclusion and weighting of securities in each index or benchmark within a reasonable time frame as appropriate to the nature of the index and its users; and
 - (ii) not making changes to the rules for index compilation without giving advance public notice before any changes are made;
- (c) where appropriate, it gives priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;
- (d) it is of good standing and repute as an independent and objective price reporting agency or index provider;
- (e) it has a sound corporate governance framework;
- (f) it has adequate arrangements to avoid its staff having any conflicts of interest where such conflicts have, or are likely to have, a material adverse impact on price establishment process, and in particular, not employ ETF staff, for the purposes relating to the creation, development or modification of the index compilation rules and its review; and
- (g) it has adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

Guidance

1. A Fund Manager of an ETF, 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, and in the case of a Shari'a compliant index or benchmark, its Shari'a governance arrangements;
 - 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 those 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.
2. If a Price Information Provider that an ETF Fund Manager uses for tracking or outperforming an index or benchmark for the purposes of the ETF it manages is a Related Party of the Fund Manager, the Fund Manager has additional obligations relating to Related Party Transactions under Rule 13.9.5.