

**Appendix 1**

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

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



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# The DFSA Rulebook

## Conduct of Business Module

### **(COB)**

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## 2 CLIENT CLASSIFICATION

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### 2.3 Types of Clients

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#### Market Counterparties

- 2.3.9** (1) An Authorised Firm may classify a Person as a Market Counterparty if:
- (a) that Person is:
    - (i) a 'deemed' Professional Client pursuant to Rule 2.3.4;
    - (ii) an 'assessed' Professional Client pursuant to Rule 2.3.8(2)(b) which is wholly owned by a Holding Company that is a 'deemed' Professional Client pursuant to Rule 2.3.4(1)(g) or (h); or
    - (iii) a 'deemed' Market Counterparty pursuant to Rule (1A); and
  - (b) in the case of Persons referred to in (a)(i) and (ii), the requirements in (2) have been met.
- (1A) An Insurer, Insurance Intermediary or Insurance Manager may 'deem' any one or more of the following Persons to be a Market Counterparty:
- (a) a ceding insurer; and
  - (b) in respect of the services provided to that ceding insurer, any reinsurer, insurance agent or insurance broker that facilitates the provision of the services to the ceding insurer.
- (2) For the purposes of (1)(b), an Authorised Firm must, before classifying a Person as a Market Counterparty, ensure that:
- (a) the Person has been given a prior written notification of the classification as a Market Counterparty; and

- (b) that Person has not requested to be classified otherwise within the period specified in the notice.
- (3) The notification in (2)(a) may be given in respect of particular Financial Services or Transactions or in respect of all Financial Services and Transactions.
- (4) The notification in (2)(a) need only be given:
  - (a) in the case of a Fund, either to the Fund or its Fund Manager; and
  - (b) in the case of a pension fund, either to such fund or its management company.

**Guidance**

When an Authorised Firm carries on, or provides or obtains, Financial Services with or from another Authorised Firm or a Regulated Financial Institution, as those entities are 'deemed' Professional Clients under Rule 2.3.4(1), they could be classified as Market Counterparties, provided the procedures set out in Rule 2.3.9(2) are complied with. For example, such services may include providing the Financial Services of custody, managing assets, or fund administration services to a Fund Manager of a Collective Investment Fund or a pension fund.

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### **3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, PROVIDING TRUST SERVICES AND OPERATING A CROWDFUNDING PLATFORM**

**Guidance**

1. The Rules in this chapter give support to the Principles in GEN section 4.2 and in particular Principles 1, 2, 6 and 7.
2. There are additional Rules that apply to Authorised Firms in other chapters of this module, which are more specific to the nature of the Financial Service conducted by the Authorised Firm.

### **3.1 Application**

**3.1.1** This chapter applies to an Authorised Firm which carries on or intends to carry on:

- (a) Investment Business;
  - (b) Accepting Deposits;
  - (c) Providing Credit;
  - (d) Providing Trust Services; or
  - (e) Operating a Crowdfunding Platform,
- except where it is expressly provided otherwise.

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### **3.3 Key information and Client Agreement**

#### **Application**

**3.3.1** The Rules in this section do not apply to an Authorised Firm when it is:

- (a) carrying on a Financial Service with or for a Market Counterparty;
- (b) Accepting Deposits;
- (c) Providing Credit;
- (d) carrying on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing; or
- (e) a Fund Manager of a Fund Offering the Units of a Fund it manages.

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## **3.4 Suitability**

### **Application**

**3.4.1** The Rules in this section do not apply where the Authorised Firm:

- (a) ~~undertakes a Transaction~~carries on a Financial Service with or for a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits or Providing Credit;
- (d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing, or
- (e) carries on the activity of operating an MTF.

### **Suitability assessment**

**3.4.2** (1) Subject to (2), an Authorised Firm must not recommend to a Client a financial product or financial service, or execute a Transaction on a discretionary basis for a Client, unless the Authorised Firm has a reasonable basis for considering the recommendation or Transaction to be suitable for that particular Client. For this purpose, the Authorised Firm must:

- (a) undertake an appropriate assessment of the particular Client's needs and objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and
- (b) take into account any other relevant requirements and circumstances of the Client of which the Authorised Firm is, or ought reasonably to be aware.

(2) An Authorised Firm may, subject to (3), limit the extent to which it will consider suitability when making a recommendation to, or undertaking a Transaction on a discretionary basis for or on behalf of, a Professional Client if, prior to carrying on that activity, the Authorised Firm:

- (a) has given a written warning to the Professional Client in the form of a notice clearly stating ~~either that the Authorised Firm will not consider suitability, or~~ will consider suitability only to the extent specified in the notice; and

- (b) the Professional Client has given his express consent, after a proper opportunity to consider the warning, by signing that notice.
- (3) Where an Authorised Firm manages a Discretionary Portfolio Management Account for a Professional Client, it must ensure that the account remains suitable for the Professional Client, having regard to the matters specified in (1) (a) and (b).

**Guidance****Information a firm needs to have for making a suitability assessment**

- 1. When carrying out a suitability assessment under Rule 3.4.2 (1), an Authorised Firm should have, or obtain, certain minimum information about the Client. For example, the information about:
  - a. the Client's needs and objectives should include, where relevant, information about the length of time the Client wishes to hold the financial product. The age of a Client that is an individual may also be relevant;
  - b. the Client' financial situation should include, where relevant, the assets, liabilities (including tax), income and expenses, and general capacity to withstand losses arising from investing in financial products; and
  - c. the knowledge and experience of the Client should include, where relevant, the nature, volume and frequency of previous investments made by the Client, and the Client's level of familiarity with relevant financial products and financial services. The Client's occupation or profession, former professional experience, and level of financial education may also be relevant.

**Overall suitability for the Client's portfolio**

- 2. When recommending a financial product to a Client, or executing a discretionary transaction for a Client, an Authorised Firm should consider the overall effect such a recommendation or discretionary transaction would have on the Client's investment portfolio. For example, for a Client with a low or medium risk profile, a proportion of high-risk financial products in the Client's portfolio may be suitable, provided this is consistent with the risk-return profile of the portfolio, and the firm is satisfied that any financial products that are recommended to the Client, or invested in, on behalf of the Client, are likely to meet the Client's investment objectives and financial circumstances.

**Written warnings about limited suitability assessments**

- 3. The DFSA expects a written warning given to a Professional Client ("Client") under Rule 3.4.2(2) to:
  - a. be in a stand-alone document (for example, not be included in the Client Agreement or other communication issued to a Professional Client);
  - b. be given in good time before providing the financial service;

- c. clearly state how the suitability assessment will be limited, for example what the firm would consider, or would not consider, as part of the limited assessment, such as any specified investment objectives, needs or circumstances of the Client, or a limited range of financial products from which the firm would be choosing; and
  - d. provide for a clear acknowledgement by the Client that they have received and understood the warning and consent to the limited suitability assessment that will be undertaken by the firm, as set out in that warning.
4. A firm should consider the need to provide a fresh warning to a Professional Client in some circumstances. For example, where the firm becomes aware of significant changes to:
- a. the financial needs or circumstances of a Professional Client; or
  - b. the types of financial products or financial services covered by an existing warning.

#### **Suitability assessment when Providing Trust Services**

5. ~~4. An Authorised Firm Providing Trust Services does not have to undertake an assessment of the factors such as risk tolerance, knowledge and experience of a Client when assessing the suitability of the service to a particular Client. This is because those considerations are not relevant to the activity of Providing Trust Services.~~
2. ~~The extent to which an Authorised Firm needs to carry out a suitability assessment for a Professional Client depends on its agreement with such a Client. The agreement may limit the suitability assessment to a specified extent, or may dispense with the suitability assessment completely. To the extent a limited suitability assessment is agreed upon, the firm must carry out the suitability assessment as agreed. Limitations may, for example, relate to the objectives of the Client or the product range in respect of which the recommendations are to be made.~~

**3.4.3** An Authorised Firm must take reasonable steps to ensure the information it holds about a Client is accurate, complete and up to date.

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## **7.8 Suitability**

**7.8.1** An Insurer or an Insurance Intermediary must comply with the suitability requirement set out in section 3.4 when conducting any Insurance or Insurance Intermediation Business with or for a Retail Client in respect of Direct Long-Term Insurance.

**7.8.2** (1) Subject to Rule 7.8.3, an Insurer or Insurance Intermediary must only make a recommendation to a Retail Client to enter into a Contract of Insurance that is General Insurance where it has taken reasonable steps to ensure that the recommended Contract of Insurance is suitable in light of the Client's demands and needs.

- (2) The Insurer or Insurance Intermediary must obtain from a Retail Client such information as is necessary to identify the Client's circumstances and objectives, and consider whether the terms of the particular contract of General Insurance meet the requirements identified.

**Guidance**

Simple and easy to understand general insurance products, such as motor insurance, do not require a detailed suitability assessment. However, in other cases, the information which an Insurer or Insurance Intermediary would generally need to have about the Client's needs and demands, before making a recommendation about a product, include:

- a. details relating to the purpose for which the Client is seeking to obtain insurance cover (e.g., what risks the Client wishes to cover);
- b. the Client's circumstances, including financial, to assess the type of exclusions and level of excess the Client wishes to accept, or is suitable for the particular Client; and
- c. any other matters relevant to the particular type of insurance product or market.

- 7.8.3** An Insurer and an Insurance Intermediary may only recommend to a Client a contract of General Insurance that does not meet all the Client's requirements if it clearly explains to the Client, at the point of making the recommendation, that the contract does not fully meet the Client's requirements and the differences in the insurance recommended.

**Guidance**

When deciding what level of explanation is appropriate for a Client to whom a contract of insurance that does not fully meet that Client's requirements is recommended, the Insurer or Insurance Intermediary should take into consideration the knowledge held by the Client in relation to the type of insurance in question. The explanation should include sufficient information so that the Client can understand easily the differences between what is recommended and the Client's requirements, and the advantages and disadvantages of the recommended insurance, including any financial or other risks the Client may face if the recommended policy does not fully meet the Client's requirements.

- 7.8.4** Where an Insurance Intermediary is instructed to obtain insurance which is contrary to the advice that it has given to a Client, the Insurance Intermediary must obtain from the Client written confirmation of the Client's instructions before arranging or buying the relevant insurance.