

Appendix 1

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



The DFSA Rulebook

Conduct of Business Module

(COB)

2 CLIENT CLASSIFICATION

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2.3 Types of Clients

- 2.3.1** (1) An Authorised Firm must, before carrying on a Financial Service with or for a Person, classify that Person as a:
- (a) Retail Client;
 - (b) Professional Client; or
 - (c) Market Counterparty,
- in accordance with the requirements in this chapter.
- (2) An Authorised Firm may classify a Person as a different type of a Client for different Financial Services or financial products that are to be provided to such a Client.
- (3) If an Authorised Firm is aware that a Person ('the agent'), with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person ('the principal') in relation to the service then, unless the agent is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat the principal as its Client in relation to that service.
- (4) If an Authorised Firm intends to provide any Financial Service to a trust, it must, unless otherwise provided in the Rules, treat the trustee of the trust, and not the beneficiaries of the trust, as its Client.

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Professional Clients

- 2.3.3** (1) An Authorised Firm may classify a Person as a Professional Client if that Person:
- (a) meets the requirements to be:
 - (i) a "deemed" Professional Client pursuant to Rule 2.3.4;
 - (ii) a "service-based" Professional Client pursuant to Rule 2.3.5, Rule 2.3.6 or Rule 2.3.6A; or
 - (iii) an "assessed" Professional Client pursuant to either Rule 2.3.7 or Rule 2.3.8; and
 - (b) has not opted-in to be classified as a Retail Client in accordance with the requirements in Rule 2.4.1.
- (2) If an Authorised Firm becomes aware that a Professional Client no longer fulfils the requirements to remain classified as a Professional Client, the Authorised Firm must, as soon as possible, inform the Client that this is the case and the measures that are available to the firm and the Client to address that situation.

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‘Assessed’ Professional Clients

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Undertakings

2.3.8 (1) For the purposes of Rule 2.3.3(1)(a)(iii), an Undertaking is an ‘assessed’ Professional Client if the Undertaking:

- (a) has own funds or called up capital of at least \$1 million; and
- (b) appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks, following the analysis set out in Rule 2.4.3.

(2) An Authorised Firm may also classify an Undertaking as a Professional Client if the Undertaking has:

- (a) a controller;
- (b) a Holding Company;
- (c) a Subsidiary; or
- (d) a joint venture partner,

who meets the requirements to be classified as an ‘assessed’ Professional Client pursuant to either Rule 2.3.7(1)(a) and (b)(ii) or Rule 2.3.8(1) as applicable, or a ‘deemed’ Professional Client pursuant to Rule 2.3.4(1).

(3) For the purposes of classifying an Undertaking that is an industry or professional body or association as an ‘assessed’ Professional Client, an Authorised Firm may ignore the requirement in (1)(a).

(34) In this Rule:

- (a) the terms ‘own funds’ and ‘called up capital’ in (1)(a) have the meaning given under Rule 2.3.4(3)(b) or (c) as the case may be; and
- (b) the term ‘controller’ in (2)(a) means an individual who meets the criteria in Rule 2.3.5(2).

Guidance

1. Under Rule 2.6.3, the asset test referred to in Rule 2.3.8(1)(a) remains \$500,000 until 1 April 2016.
2. Where an Authorised Firm proposes to classify an Undertaking as a Professional Client under (2), the firm must assess whether the Person on whom reliance is placed, i.e. a Person referred to in (2)(a) to (d) as is relevant, meets the Professional Client criteria, unless that Person falls within a category of ‘deemed’ Professional Client.

3. Where an Undertaking is set up by partners in a joint venture for the purposes of their joint venture, the Undertaking itself can be treated as a Professional Client provided a joint venture partner meets the Professional Client criteria (see Guidance paragraph 3 under Rule 2.3.5 for a description of a joint venture). To be able to rely on a joint venture partner's Professional Client status, such a partner should generally be a key decision maker with respect to the business activities of the joint venture, and not just a silent partner.
4. Where an Undertaking is an industry or professional body or association, an Authorised Firm is not required to assess if it meets the asset test referred to in Rule 2.3.8(1)(a).

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4 ADDITIONAL RULES - ACCEPTING DEPOSITS AND PROVIDING CREDIT

4.1 Application

4.1.1 The Rules in this chapter apply to an Authorised Firm with respect to carrying on the following Financial Services ~~Accepting Deposits or Providing Credit~~ through an establishment maintained by it in the DIFC:

- (a) Accepting Deposits;
- (b) Providing Credit; or
- (c) Arranging Credit and Advising on Credit.

4.2 Accepting Deposits

4.2.1 A Bank, in the course of Accepting Deposits, must not:

- (a) Accept Deposits from the State's markets;
- (b) Accept Deposits in the U.A.E. Dirham;
- (c) undertake currency or foreign exchange transactions involving the U.A.E. Dirham; or
- (d) Accept Deposits from Retail Clients.

4.3 Providing Credit

4.3.1 (1) An Authorised Firm may, subject to (2), Provide Credit to a:

- (a) Professional Client; and
- (b) Retail Client, but only where:
 - (i) the Retail Client is an Undertaking; and
 - (ii) the Credit Facility is provided to the Retail Client for a business purpose.

(2) An Authorised Firm, in the course of Providing Credit, must not:

- (a) Provide Credit in the U.A.E. Dirham; or
- (b) undertake currency or foreign exchange transactions involving the U.A.E. Dirham.

4.3A Arranging Credit and Advising on Credit

4.3A.1 An Authorised Firm may provide the Financial Service of Arranging Credit and Advising on Credit to a:

- (a) Professional Client; and
- (b) Retail Client, but only where:
 - (i) the Retail Client is an Undertaking; and
 - (ii) the service is provided to the Retail Client for a business purpose.

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6 ADDITIONAL RULES - INVESTMENT BUSINESS

6.3 Investment research and offers of securities

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Restriction on own account transactions

- 6.3.6** (1) Unless ~~Rule 6.2.2 (2)~~ applies, an Authorised Firm or its Associate must not knowingly execute an Own Account Transaction in an Investment or related Investments, which is the subject of Investment Research, prepared either by the Authorised Firm or its Associate, until the Clients for whom the Investment Research was principally intended have had a reasonable opportunity to act upon it.
- (2) The restriction in (1) does not apply if:
- (a) the Authorised Firm or its Associate is a Market Maker in the relevant Investment;
 - (b) the Authorised Firm or its Associate undertakes an Execution-Only Transaction for a Client; or
 - (c) it is not expected to materially affect the price of the Investment.

Guidance

The exceptions in Rule 6.3.6(2) allow an Authorised Firm to continue to provide key services to the market and to its Clients even if the Authorised Firm would be considered to have knowledge of the timing and content of the Investment Research which is intended for publication to Clients, for example when it is impractical for an Authorised Firm to put in place a Chinese Wall because the Authorised Firm has few Employees or cannot otherwise separate its functions.

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