Appendix 2

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

The DFSA Rulebook

Conduct of Business Module

(COB)

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6.16 RESTRICTED SPECULATIVE INVESTMENTS

Application

6.16.1 The Rules in this section apply to an Authorised Firm which carries on or intends to carry on:

(a) Dealing in Investments as Principal;

(b) Dealing in Investments as Agent;

(c) Arranging Deals in Investments; or

(d) Advising on Financial Products;

in relation to a Restricted Speculative Investment.

Guidance

In addition to the requirements in this section that apply to an Authorised Firm carrying on certain activities in relation to Restricted Speculative Instruments:

(a) a person who makes a Financial Promotion in relation to a Restricted Speculative Investment is required to comply with the requirements in GEN Chapter 3 (Financial Promotions), including GEN Rule 3.5.3, which specifically relates to a Restricted Speculative Investment; and

(b) a Representative Office carrying on marketing activities relating to a Restricted Speculative Investment is required to comply with the requirements in the REP module, including REP Rule 4.10.1, which relates to the marketing of a Restricted Speculative Investment.

Interpretation

6.16.2 In this section:

(a) "contract for differences (CFD)" means an instrument that falls within paragraph (b)(ii) of the definition of a Future in GEN Rule A2.3.1, other than a rolling spot forex contract;

(b) “Deal in a Restricted Speculative Investment” means Deal in Investments as Principal in relation to a Restricted Speculative Investment;

(c) “Margin” means the pre-agreed amount a Retail Client is required to pay in the form of money to open a position in relation to a Restricted Speculative Investment;

(d) “over-the-counter Derivative” means an instrument that is not formed or traded on an Exchange or a Regulated Exchange;

(e) “Restricted Speculative Investment” means an over-the-counter Derivative which is a:

(i) leveraged contract for differences;

(ii) leveraged rolling spot forex contract;

(iii) an Option over a contract referred to in (i) or (ii); or

(iv) any other leveraged Investment that is similar in nature to an instrument referred to in (i), (ii) or (iii); and

(f) “rolling spot forex contract” means an instrument that falls within paragraph (b)(ii) of the definition of a Future in GEN Rule A2.3.1 where the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in an exchange rate or the value of a currency.

Guidance

1. A Margin cannot be paid by a Retail Client through arrangements such as set-off or using credit cards - see also Rule 6.16.10.

2. For the purposes of the definition of Restricted Speculative Investment, the term ‘leverage’ refers to a person’s exposure (potential gain or loss) being multiple times the gain or loss based on the actual value, price or level of an underlying reference factor referred to in the Derivative contract.

3. The types of Derivatives which fall within the definition of a Restricted Speculative Investment may have labels such as ‘turbo certificates’, ‘knock out options’ and ‘delta options’. Where a contract has similar features to the contracts listed in Rule 6.16.2(e), it will also be subject to

the requirements of this section (if offered or marketed to a Retail Client). In determining whether a contract is a Restricted Speculative Investment, the DFSA will look at the substance of an arrangement, as opposed to its mere form.

4. Restricted Speculative Investments include binary options and other derivatives that have similar characteristics. Before an Authorised Firm offers or deals in such products, it should take appropriate steps, such as obtaining professional advice, to ensure that such contracts do not contravene the prohibition against gambling in the U.A.E Penal Code.

Appropriateness Assessment

6.16.3 An Authorised Firm must not Deal in a Restricted Speculative Investment with or for a Retail Client, unless the Authorised Firm has carried out an appropriateness assessment of the person and formed a reasonable view that the person has:

(a) adequate skills and expertise to understand the risks involved in trading in the type of Restricted Speculative Investment; and

(b) the ability to absorb potential significant losses resulting from trading in the Restricted Speculative Investment due to leverage.

Guidance

1. For the purpose of forming the reasonable view referred to in Rule 6.16.3 in relation to a person, an Authorised Firm needs to consider at a minimum whether that person:

   (a) has sufficient knowledge and experience in relation to the Restricted Speculative Investment of the type offered, by considering factors such as:

      (i) how often and in what volumes that person has traded in the relevant type of Restricted Speculative Investment; and

      (ii) the person's relevant qualifications, profession or former profession;

   (b) understands the characteristics and risks, including those relating to the underlying reference and the degree of volatility of the markets or prices affecting that underlying reference;

   (c) understands the impact of leverage, due to which, there is potential to make significant losses in trading in a Restricted Speculative Investment; and

(d) has the ability, particularly in terms of net assets and liquidity available to the person, to absorb and manage any losses that may result from trading in the Restricted Speculative Investment offered.

2. To be able to demonstrate to the DFSA that it has undertaken a proper appropriateness assessment, an Authorised Firm should have in place systems and controls that include:

(a) pre-determined and clear criteria against which a Retail Client's ability to trade in a Restricted Speculative Investment can be assessed;

(b) adequate records to demonstrate that the Authorised Firm has undertaken the appropriateness assessment in respect of each Retail Client (see Rule 6.16.14); and

(c) in the case of an existing Retail Client with whom the Authorised Firm has previously traded in a different type of Restricted Speculative Investment, procedures to undertake a fresh appropriateness assessment if a new type of Restricted Speculative Investment is offered to that Retail Client, or there has been a material change in the Retail Client's circumstances.

3. Where an Authorised Firm forms the view that it is not appropriate for a person to trade in a Restricted Speculative Investment, the Authorised Firm needs to refrain from offering that service. As a matter of good practice, the Authorised Firm should inform the person of its decision.

Risk Warning

6.16.4 (1) An Authorised Firm that Deals in a Restricted Speculative Investment must, before entering into an agreement with or for a Retail Client to provide that service, provide to that Retail Client a risk warning which states that:

(a) the types of contracts which the Authorised Firm will be entering into with the person are complex financial instruments where the loss or profit of the person is determined by reference to the movement of the value or price of the underlying reference;

(b) this type of trading in complex financial instruments has a high probability of the person losing money rapidly, particularly due to the gain or loss being leveraged, based on the fluctuation of the price of the underlying reference; and

(c) before deciding to trade in a Restricted Speculative Investment, the person needs to consider carefully whether they understand how

the Restricted Speculative Investments offered work, and whether they can afford to take the high risk of losing money.

(2) The risk warning in (1) must be given in writing and in good time before the Authorised Firm Deals in a Restricted Speculative Investment with or for the Retail Client.

(3) The warning:

(a) in (1)(a) must include the type of Restricted Speculative Investment to which the warning relates (e.g. the type of leveraged contracts for difference offered by the Authorised Firm) and the relevant underlying reference factor (e.g. the type of commodity, index, interest rate or exchange rate); and

(b) in (1)(b) must, except as provided in (4) and (5), include the ratio of profit, as against losses, made during the relevant period by Retail Clients who have accounts with the Authorised Firm to trade in Restricted Speculative Investments.

(4) An Authorised Firm that is a start-up and is a member of a Group where one or more Group Members conduct trading in Restricted Speculative Investments for Retail Clients must, during the first 12 months of its business, include, for the purposes of its warning in (1)(b):

(a) the ratio of profit, as against losses, made during the relevant period by Retail Clients who have accounts with Group Members to trade in Restricted Speculative Investments; and

(b) the ratios relating to profits and losses of its Retail Clients for the period it has been in business.

(5) An Authorised Firm that is a start-up and does not fall within (4) must, during the first 12 months of its business, include, for the purposes of its warning in (1)(b):

(a) the general industry ratios, derived from a verifiable independent source, relating to profits and losses made during the relevant period by Retail Clients trading in Restricted Speculative Investments; and

(b) the ratios relating to profits and losses of its Retail Clients for the period it has been in business.

(6) For the purposes of (3)(b), (4)(a) and (5)(a), the "relevant period" is the period of twelve months before the date of the issue of the risk warning.

(7) An Authorised Firm must provide to a Retail Client an update of the information relating to the ratio of profits and losses referred to in (3)(b), (4) and (5) at least on a quarterly basis.

Guidance

1. The provision of a risk warning in good time before trading under Rule 6.16.4 (2) is intended to give a Retail Client sufficient time to consider the information in the risk warning and to be able to make an informed decision before agreeing to obtain the relevant service from the Authorised Firm. The risk warning cannot be part of the Client Agreement or any other documents provided to the Retail Client, it should be a stand-alone warning.

2. The ratio of profit and loss making by Retail Clients referred to in Rule 6.16.4 (3)(b), (4) and (5)(b) should present a fair and balanced view of the profits and losses made by all the relevant retail accounts operated by the Authorised Firm or, where relevant, its Group members. The data should not be used on a selective basis to create a misleading impression (i.e. not cherry picked).

3. For the purposes of calculating the profits and losses of trading accounts under Rule 6.16.4(3)(b), (4)(b) and (5)(b), an Authorised Firm needs to take into account all realised and unrealised profits and losses arising from trading in Restricted Speculative Investments, less fees and charges levied to the relevant account. The calculation should not include any profits or losses from investments other than Restricted Speculative Investments. Any new investment of funds, as well as withdrawals from the relevant accounts, need to be excluded from the calculation of profits and losses.

4. An Authorised Firm that is required under Rule 6.16.4(5)(a) to provide general industry information needs to undertake sufficient due diligence to ensure that the source is an independent verifiable source and should maintain records of the due diligence it has undertaken.

5. An Authorised Firm would have to consider the need to give a new warning to an existing Retail Client where there is a change to the type of Restricted Speculative Investments offered to the Retail Client i.e. from those specified in a warning previously given to that Retail Client under Rule 16.6.4(1). The DFSA considers issuing a new warning as

appropriate, if the type of risks associated with the new Restricted Speculative Investment offered to the Retail Client is materially different to those previously offered, due to factors such as the volatility of the underlying reference or leverage.

6. For the purposes of Rule 16.6.4(7), if the Authorised Firm provides more frequent reporting to a Retail Client, for example, under Rule 6.10.2(2), the update may be included as part of that report.

Risk Warning on marketing and other communications

6.16.5 (1) Where an Authorised Firm presents any marketing or educational materials and other communications relating to a Restricted Speculative Investment on a website, in general media or as part of a distribution made to existing or potential new clients, it must place in a prominent place at or near the top of each page of the communication a risk warning.

(2) The risk warning referred to in (1) must set out the risks associated with trading in the Restricted Speculative Investment of the type referred to in the materials or communications, in a clear, concise and easy to understand manner.

(3) If the material referred to in (1) is provided on a website or an application that can be downloaded to a mobile device, the warning must be:

(a) statically fixed and visible at the top of the screen even when a person scrolls up or down the webpage; and

(b) included on each linked webpage on the website.

Guidance

1. The warning required under this Rule is different to the risk warning required under Rule 6.16.4. The latter applies only to an Authorised Firm that Deals in a Restricted Speculative Investment with or for a Retail Client.

2. The requirement in Rule 6.16.5 is more general and applies to all communications made by Authorised Firms which are:

(a) dealing in Restricted Speculative Investments whether as principal or as agent;

(b) advising on Restricted Speculative Investments; and

(c) arranging deals in Restricted Speculative Investments.

3. These requirements supplement the overarching obligations applicable to Authorised Firms under GEN Rules 3.2.1 and 4.2.6.

Margin Requirements for Retail Clients

6.16.6. (1) An Authorised Firm that Deals in a Restricted Speculative Investment must not open a position for a Retail Client unless the Retail Client has posted a Margin of at least:

(a) 3.3% of the value of the exposure that the trade provides when the underlying asset is a major currency pair;

(b) 5% of the value of the exposure that the trade provides when the underlying asset is a non-major currency pair, major equity index or gold;

(c) 10% of the value of the exposure that the trade provides when the underlying asset is a non-major equity index or a commodity other than gold;

(d) 50% of the value of the exposure that the trade provides when the underlying asset is a cryptocurrency; or

(e) 20% of the value of the exposure that the trade provides when the underlying asset is an asset not referred to in (a) to (d).

(2) In this Rule:

(a) "major currency pair" means a pairing of any two of the following major currencies:

(i) United States Dollar;

(ii) Euro;

(iii) Japanese Yen;

(iv) Pound Sterling;

(v) Swiss Franc;

(vi) Canadian Dollar;

(vii) Australian Dollar; or

(viii) New Zealand Dollar; and

(b) "major equity index" means an index specified in the following table:

Australia	All Ordinaries
Austria	Austrian Traded Index
Belgium	BEL 20
Canada	TSE 35, TSE 100, TSE 300
France	CAC 40, SBF 250
Germany	DAX
European	Dow Jones Stoxx 50 Index, FTSE Eurotop 300, MSCI Euro Index
Hong Kong	Hang Seng
Italy	MIB 30
Japan	Nikkei 225, Nikkei 300, TOPIX
Korea	Kospi
Netherlands	AEX
Singapore	Straits Times Index
Spain	IBEX 35
Sweden	OMX
Switzerland	SMI
UK	FTSE 100, FTSE Mid 250, FTSE All Share
US	S&P 500, Dow Jones Industrial Average, NASDAQ Composite, Russell 2000

Margin close out requirements for Retail Clients

6.16.7 (1) An Authorised Firm that Deals in a Restricted Speculative Investment must ensure that a Retail Client's net equity on each open position does not fall below 50% of the Margin deposited to maintain that open position.

(2) For the purposes of (1), an Authorised Firm must close an open position in a Restricted Speculative Investment held in a Retail Client's account where the Retail Client's net equity falls below 50% of the Margin deposited for that position:

(a) as soon as the market conditions allow; and

(b) in accordance with the best execution requirement in Rule 6.4.2(2).

(3) In this Rule, "net equity" means the sum of the Retail Client's deposited Margin.

Negative Balance Protection

6.16.8 The liability of a Retail Client for all Restricted Speculative Investments connected to that Retail Client's trading account is limited to the funds in that trading account.

Guidance

1. The effect of the above Rule is to prevent a Retail Client from incurring losses exceeding the funds the Retail Client has specifically dedicated to trading in Restricted Speculative Investments. As a result, an Authorised Firm that has opened a trading account for a Retail Client to trade in Restricted Speculative Investments will not be able to recover any losses from the Retail Client that go beyond the funds in the Retail Client's trading account.

2. Funds in the Retail Client's trading account are generally cash in the account, and include unrealised net profits from open positions (i.e. the sum of unrealised gains and losses of all open positions recorded in the Retail Client's account) in respect of all Restricted Speculative Investments held in the Retail Client's trading account.

Offer of incentives prohibited

6.16.9 (1) An Authorised Firm must not, offer or provide to a Retail Client any incentive that influences, or is reasonably likely to influence, the Retail Client to trade in a Restricted Speculative Investment.

(2) An Authorised Firm's systems and controls must include adequate measures to ensure compliance with (1).

Guidance

1. The prohibition in Rule 6.16.9 applies to Authorised Firms who Deal in Restricted Speculative Investments either as principal or as agent with or for Retail Clients, as well as Authorised Firms that give advice on or arrange deals in Restricted Speculative Investments. An Authorised Firm's systems and controls need to have measures to prevent not only the Authorised Firm, but also any person acting for or on behalf of the Authorised Firm, from offering or providing incentives. See also Rule 3.5.3(1).

2. Offering incentives is also likely to conflict with the Authorised Firm's overarching duty to act in the best interest of the Retail Client. See also GEN Rules 4.2.1 and 4.2.7.

3. Incentives include bonus offers, gifts, rebates of fees (including volume-based rebates), trading credits or any form of reward in relation to the opening of a new account or trading in a new type of Restrictive Speculative Investment offered to an existing or potential new Retail Client.

4. Certain types of offers, such as lower fees that are not linked to volumes of trade or the provision of access to information services and research tools may not be prohibited forms of incentive. However an Authorised Firm needs to be able to demonstrate, on a reasonable basis, that such an offer does not constitute an incentive.

Prohibition on the use of credit to fund an account

6.16.10 An Authorised Firm that Deals in a Restricted Speculative Investment must take reasonable steps to ensure that a Retail Client does not use a credit card or third party credit facility to pay a Margin.

Guidance

1. An Authorised Firm trading in Restricted Speculative Investments may provide margin lending under GEN Rule 2.5.2 to a Retail Client to fund the Margin.

2. The above Rule does not prevent an Authorised Firm from allowing a Retail Client to use a debit card to fund a Margin, provided the Authorised Firm has adequate systems in place to distinguish between a debit and a credit card.

Restrictions relating to certain Restricted Speculative Investments

6.16.11 An Authorised Firm must not Deal in a Restricted Speculative Investment with or for a Retail Client unless:

(a) the Restricted Speculative Investment has a transparent pricing mechanism available for determining the price movement of the underlying reference, by reference to which the profit or loss of each party to the contract is determined; or

(b) the Authorised Firm provides a two way pricing mechanism that allows the Retail Client to trade at those quoted prices during the currency of the Restricted Speculative Investment.

Referrals from an unregulated Person prohibited

6.16.12 (1) An Authorised Firm must not accept a referral of a Retail Client made by an unregulated Person for reward.

(2) An Authorised Firm's systems and controls must include adequate measures to ensure compliance with (1).

(3) For the purposes of (1) an "unregulated Person" is a Person who is not an Authorised Person or a Regulated Financial Institution.

Guidance

1. An Authorised Firm is not prohibited from accepting referrals from sources where the referral is not made for reward.

2. A reward includes a monetary payment or any other type of incentive or gift from any source. An Authorised Firm's systems and controls need to have measures to prevent not only the Authorised Firm, but also any person acting for or on behalf of the Authorised Firm, from offering or providing rewards for referrals. See also Rule 3.5.3(1).

Restriction relating to dealing as agent, arranging and advising on Restricted Speculative Investments

6.16.13 An Authorised Firm must not Deal in Investments as Agent, Advise on Financial Products, or Arrange Deals in Investments with or for a Retail Client in relation to a Restricted Speculative Investment, unless the Authorised Firm is reasonably satisfied that the issuer of the Restricted Speculative Investment is either:

(a) an Authorised Firm; or

(b) a Regulated Financial Institution outside the DIFC that is subject to substantially similar requirements to those set out in this section.

Guidance

An Authorised Firm should, before dealing as agent, giving advice on, or arranging deals in, Restricted Speculative Investments issued by a non-DIFC issuer, satisfy itself, on reasonable grounds, that the issuer is subject to substantially similar requirements to those that apply to a DIFC Authorised Firm under this section. The Authorised Firm should also be able to demonstrate to the DFSA the basis upon which it has reasonably concluded that the requirements are substantially similar, even if they are not identical.

Record Keeping

6.16.14 (1) An Authorised Firm must maintain records to demonstrate its compliance with the requirements in this section.

(2) Records referred to in (1) must be kept for a minimum of six years.

Transitional

6.16.15 (1) An Authorised Firm is not required to comply with the requirements in this section before the end of the transitional period in respect of a Financial Service relating to a particular type of Restricted Speculative Investment that:

(a) was provided to a particular Retail Client before the commencement date; and

(b) continues to be provided to the same Retail Client during the transitional period.

(2) In this Rule:

(a) "commencement date" means the day on which the Rule-Making Instrument No xx of 20xx comes into force; and

(b) "transitional period" means the period starting on the commencement date and ending six months after that day.

Guidance

An Authorised Firm will not be able to rely on the transitional period allowed under Rule 6.16.15 if it is providing a Financial Service relating to Restricted Speculative Investments to a new Retail Client, or if the type of Restricted Speculative Investment for which it is providing a service is different to the one previously provided to the Retail Client. In both cases, the Authorised Firm will need to comply with the applicable requirements in this section as soon as they come into force.

Fee Disclosure

Guidance

See the Guidance under Rule A2.1.2 for requirements relating to fee disclosure.

APP2 KEY INFORMATION AND CLIENT AGREEMENT

A2.1 Key Information and content of the Client Agreement

General

A2.1.1 The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

(a) the core information set out in:

(i) Rule A2.1.2 (1) if it is a Retail Client; and

(ii) Rule A2.1.2(2) if it is a Professional Client;

(b) where relevant, the additional information required under Rule A2.1.3 for Investment Business and Rule A2.1.4 for Investment Management;

(c) the additional terms set out in Rules A2.1.5 and A2.1.6 if the Client Agreement relates to the use of a Crowdfunding Platform; and

(d) the additional terms set out in Rule A2.1.7 if the Client Agreement relates to Providing Money Services or Arranging or Advising on Money Services.

Core information

A2.1.2 (1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:

(a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;

(b) the regulatory status of the Authorised Firm;

(c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;

(d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;

(e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;

(f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);

(g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and

(h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11.

(2) In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).

Guidance

Fee Disclosure for Retail Clients trading in Restricted Speculative Investments

1. An Authorised Firm is required, as part of the core information that is included in the Client Agreement under App A2.1.2, to disclose all of the detailed fees and charges which a Retail Client will or may incur. An Authorised Firm that Deals in a Restricted Speculative Investment would therefore be expected to disclose under that Rule:

   (a) any trading commissions charged, whether a general commission or a commission on each trade, e.g. on the opening and closing of a trading account;

   (b) if the Authorised Firm adds any mark-up to market prices it receives from an external source, thereby increasing the spread for the Retail Client, the amount of that mark-up;

   (c) any financing charges that are applicable, e.g. daily and overnight financing charges for Restricted Speculative Investments;

   (d) if the Authorised Firm adds a mark-up when calculating any financing charges, the amount of that mark-up; and

   (e) any applicable costs and charges to be applied if the Retail Client is seeking to sell or exit early.

2. If any material changes are proposed to fees and charges that have been previously disclosed in the Client Agreement, a new fee disclosure statement needs to be given to the Retail Client before making the changes to the fees and charges.

3. An Authorisd Firm providing other Financial Services relating to a Restricted Speculative Investment is also required to disclose their fees, charges and commissions relating to their services.