

Appendix 4

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



The DFSA Rulebook

Authorised Market Institutions

(AMI)

PART 1: INTRODUCTION

1. APPLICATION, INTERPRETATION AND OVERVIEW

1.1 Application

- 1.1.1** (1) This module applies to:
- (a) every Person who carries on, or intends to carry on, either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC;
 - (b) a Key Individual, or a Person intending to be a Key Individual, of a Person referred to in (a); and
 - (c) a Controller, or a Person intending to be a Controller, of a Person referred to in (a).
- (2) This module also applies to an Authorised Market Institution where it:
- (a) carries on, or intends to carry on, the Financial Service of Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility; or
 - (b) acts as a Trade Repository.
- (3) This module does not apply to a Recognised Body.

Guidance

This module will also apply to an Authorised Market Institution that is Operating a Facility for Security Tokens, unless otherwise specified. Operating a Facility for Security Tokens is defined in GLO in relation to an Authorised Market Institution to mean Operating an Exchange on which Security Tokens are traded, Operating a Clearing House on which Security Tokens are cleared, or Operating a Multilateral Trading Facility on which Security Tokens are traded. Where an Authorised Market Institution operates a Multilateral Trading Facility on which Security Tokens are traded, it must comply with the requirements in this module.

1.2 Overview of the module

Guidance

The regulatory framework

1. The Regulatory Law 2004 (“the Regulatory Law”) and the Markets Law 2012 (“the Markets Law”) provide the framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions.
2. In particular, while Article 41 of the Regulatory Law prohibits a Person from carrying on Financial Services in or from the DIFC, Article 42 of that Law permits Persons duly authorised and Licensed to conduct Financial Services in providing their services.
3. The Markets Law establishes a framework in relation to how an Official List of Securities is maintained and administered by the Listing Authority. Either the DFSA, or an Authorised Market Institution where it has been granted an endorsement on its Licence to do so, may maintain an Official List of Securities.

4. The GEN module prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution and the detailed requirements that must be met by such firms. In addition, the GEN module also sets out the circumstances under which an Authorised Market Institution may be authorised to carry out certain functions by way of an endorsement on its Licence.
5. The RPP Sourcebook contains, amongst other things, the detailed policies and procedures relating to how the DFSA exercises its licensing and supervisory functions relating to Authorised Market Institutions.

The AMI module

6. The AMI Module is comprised of four Parts containing 12 chapters and three Appendices.
7. Part 1 contains chapter 1, which sets out the application provisions and the overview of the AMI module.
8. Part 2 contains chapters 2 and 3. Chapter 2 sets out the requirements relating to application for a Licence to Operate an Exchange or Clearing House (or both) and an endorsement to operate a Multilateral Trading Facility or to maintain an Official List of Securities. Chapter 3 sets out the assessment of application related requirements, including application to obtain Key Individual status of an Authorised Market Institution.
9. Part 3 contains chapters 4, 5, 5A, 6 and 7. These chapters set out the substantive requirements (called the “Licensing Requirements”) that must be met by a Person at the point of grant of a Licence to be an Authorised Market Institution and thereafter on an on-going basis. Chapter 4 contains the provisions which prescribe what the Licensing Requirements are, and the procedures an Authorised Market Institution must follow in order to make any material changes to the arrangements it has in place to meet the Licensing Requirements. Chapter 5 contains the Licensing Requirements that are common to both Exchanges and Clearing Houses. Chapter 5A contains the additional Licensing Requirements that apply to an Authorised Market Institution that is Operating a Facility for Security Tokens, whether that facility is an Exchange, a Clearing House or a Multilateral Trading Facility. Chapter 6 contains the additional Licensing Requirements that are specific to Exchanges and chapter 7 contains the additional Licensing Requirements that are specific to Clearing Houses.
10. Part 4 contains chapters 8, 9, 10, 11 and 12. These chapters set out a range of miscellaneous provisions covering the requirements relating to the approval of Controllers of Authorised Market Institutions (chapter 8), the provisions governing the supervision of Authorised Market Institutions (chapter 9), the procedures for withdrawal of a Licence or endorsement (chapter 10), appeal procedures from the decisions of the DFSA (chapter 11) and the transitional provisions (chapter 12).
11. There are three Appendices, Appendix 1 contains the requirements relevant to testing of technology systems, Appendix 2 contains the requirements relating to the use of price information providers and Appendix 3 contains the contract delivery specifications applicable to Derivative contracts which require physical delivery.

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PART 2 APPLICATION AND AUTHORISATION

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3. Authorisation

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3.2 Assessment

- 3.2.1** (1) In order to become authorised to carry on one or both of the Financial Services of Operating an Exchange or Operating a Clearing House, the applicant must demonstrate to the satisfaction of the DFSA that it can meet the relevant Licensing Requirements specified in chapters 5, 5A, 6 and 7, as appropriate to the Financial Services it proposes to carry on, both at the point of the grant of the Licence and thereafter on an on-going basis.
- (2) In order to obtain an endorsement on its Licence to:
- (a) maintain an Official List of Securities;
 - (b) operate a Multilateral Trading Facility; or
 - (c) act as a Trade Repository,

the applicant must demonstrate to the satisfaction of the DFSA that it can meet the requirements applicable to Persons undertaking the relevant activities, both at the point of the grant of the endorsement and thereafter on an on-going basis.

Guidance

1. The Licensing Requirements are specified in chapters 5, 5A, 6 and 7 of Part 3 of this module. These include the general requirements applicable to all Authorised Market Institutions (chapter 5), and the additional requirements applicable to specific types of activities of Authorised Market Institutions (chapters 5A, 6 and 7).
2. Where an Authorised Market Institution (or an applicant for a Licence) seeks to obtain an endorsement on its Licence, additional requirements relevant to the type of endorsement need to be satisfied (see, for example, App 5 of GEN for the requirements relating to Trade Repositories).
3. Currently, the function of maintaining an Official List of Securities is performed by the DFSA. However, the DFSA has the power, pursuant to Article 29 of the Markets Law, to grant an Authorised Market Institution an endorsement on its Licence permitting it to maintain an Official List of Securities.
4. Section 3.6 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when making an assessment under Rule 3.2.1.

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5. GENERAL LICENSING REQUIREMENTS APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

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5.7 Access to facilities

Member criteria

- 5.7.1**
- (1) An Authorised Market Institution must not grant access to its facilities to a Person except in accordance with the requirements in this module and its Business Rules.
 - (2) A Person who has been granted access to the facilities of an Authorised Market Institution pursuant to its Business Rules is a Member of the Authorised Market Institution, except where otherwise provided.

Guidance

1. Generally only Persons admitted as Members in accordance with the Business Rules will have access to the facilities of an Authorised Market Institution.
 2. However, in certain circumstances, an Authorised Market Institution may permit access to its facilities to Persons other than Members (see Rules 5.7.3). Such access would generally be provided through a Member and subject to adequate controls put into place by the Member.
 3. Under Rule 5.7.2(1)(d), an Authorised Market Institution that is Operating a Facility for Security Tokens is permitted to admit certain additional Persons as a Member, where their access is only for trading or clearing of Security Tokens. Such Persons are defined in GLO and referred to in this module as Direct Access Members.
- 5.7.2**
- (1) An Authorised Market Institution may ~~only~~, subject to (2), ~~and (3) and (4)~~, admit as a Member ~~a Person which is:~~
 - (a) an Authorised Person;
 - (b) a Person who is admitted to the list of Recognised Persons pursuant to Article 37 of the Markets Law 2012; ~~or~~
 - (c) a Person who meets the criteria in GEN Rule 2.3.2(2); ~~or~~
 - (d) a Person not referred to in (a) to (c), only if:
 - (i) the facility is one on which Security Tokens are traded or cleared or both traded and cleared; and
 - (ii) the Person's access is only for trading or clearing of Security Tokens.
 - (2) An Authorised Market Institution must not admit as a Member a Person referred to in (1)(c) unless such Person:

- (a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution;
 - (b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;
 - (c) agrees in writing to subject itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facilities of the Authorised Market Institution; and
 - (d) appoints and maintains at all times, an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.
- (3) Prior to admitting a Person referred to in (1)(a), (b) or (c) as a Member, an Authorised Market Institution must undertake due diligence to ensure that such a Person:
- (a) is of sufficient good repute;
 - (b) has a sufficient level of competence and experience, including appropriate standards of conduct for its staff who will be permitted to use its order entry system; and
 - (c) has organisational arrangements, including financial and technological resources, which are no less than those of an Authorised Firm carrying out similar Financial Services.
- (4) Prior to admitting a Person referred to in (1)(d), an Authorised Market Institution must undertake due diligence to ensure that the Person:
- (a) meets the criteria in (3)(a) and (b);
 - (b) has adequate financial and technological resources to meet the Business Rules of the facility; and
 - (c) does not pose any operational risks to the orderly and efficient functioning of the facility's trading or clearing systems.

Guidance

1. A Person who can be admitted under the criterion in Rule 5.7.2(1)(c) (i.e. a Person referred to in GEN Rule 2.3.2(2)) is a Person undertaking Commodity Derivative transactions on the relevant Authorised Market Institution only on its own behalf or on behalf of a wholly owned holding company or subsidiary of such company.
2. In assessing the membership criteria used by an Authorised Market Institution to permit access to its facilities, the DFSA will consider:
 - a. whether the Business Rules can be enforced contractually against Members;
 - b. whether the criteria are objective and applied in a non-discriminatory manner; and

- c. the financial resource requirements for those not authorised by the DFSA.
3. Pursuant to Rule 5.7.2(3)(c), an Authorised Market Institution is required to assess the adequacy of the organisational arrangements of a candidate to become a Member, if it is not an Authorised Firm or Direct Access Member, against the organisational requirements that would apply to such a Person had it been an Authorised Firm undertaking similar activities. For example, a Person which is not an Authorised Firm or Direct Access Member should have organisational resources that are equivalent to a firm Licensed to carry on the Financial Service of Dealing as Agent and/or Dealing as Principal.
4. Additional requirements relating to Direct Access Members are set out in section 5A.3.
5. Members who are not Direct Access Members may also use a facility for trading or clearing of Security Tokens.

Direct electronic access

- 5.7.3**
- (1) An Authorised Market Institution may only permit a Member to provide its clients Direct Electronic Access to the Authorised Market Institution's trading facilities where:
 - (a) the clients meet the suitability criteria established by the Member in order to meet the requirements in (2);
 - (b) the Member retains responsibility for the orders and trades executed by the clients who are using Direct Electronic Access; ~~and~~
 - (c) the Member has adequate mechanisms to prevent the clients placing or executing orders using Direct Electronic Access in a manner that would result in the Member exceeding its position or margin limits; and
 - (d) the Member is not a Direct Access Member.
 - (2) An Authorised Market Institution which permits its Members to allow their clients to have Direct Electronic Access to its trading facilities must:
 - (a) set appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;
 - (b) be able to identify orders and trades made through Direct Electronic Access; and
 - (c) if necessary, be able to stop orders or trades made by a client using Direct Electronic Access provided by the Member without affecting the other orders or trades made or executed by that Member.
 - (3) For the purposes of this Rule and elsewhere in the Rulebook, Direct Electronic Access means any arrangement, such as the use of the Member's trading code, through which a Member or the clients of that Member are able to transmit orders relating to Investments directly to the facility provided by the Authorised Market Institution.

- (4) For avoidance of doubt, a Person who is permitted to have Direct Electronic Access to an Authorised Market Institution's facilities through a Member is not, by virtue of such permission, a Member of the Authorised Market Institution.

Guidance

In assessing the adequacy of the criteria used by an Authorised Market Institution to permit its Members to allow their clients to have Direct Electronic Access to Authorised Market Institution's facilities, the DFSA will consider:

- a. whether such criteria include contractually binding arrangements between the Member and the clients;
- b. whether such clients are subject to adequate training, competence and experience requirements and checks;
- c. how electronic access is approved and secured and the measures taken to prevent or resolve problems which would arise from the failure of such access;
- d. the rules and guidance governing the Person's, procedures, controls and security arrangements for inputting instructions into the system;
- e. the rules and guidance governing facilities offered to Person's permitted for inputting instructions into the system and restrictions placed on the use of those systems;
- f. the rules and practices to detect, identify and halt or remove instructions breaching any relevant instructions;
- g. the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and
- h. the procedures to determine whether to suspend trading by those systems or access to them by or through individual Members.

5.8 Admission of Investments to trading or clearing**Investment criteria**

- 5.8.1** (1) An Authorised Market Institution must have clear and objective criteria ("investment criteria") included in its Business Rules according to which Investments can be admitted to trading, or traded, on its facilities, or cleared and settled on its facilities, or both, as relevant to its operations. The investment criteria must include the requirements in (2) and (3) as relevant.
- (2) An Authorised Market Institution must ensure that Investments are admitted to trading or traded on an Exchange it operates only if:
- (a) in the case of Securities, the Securities are admitted to the Official List of Securities; and
 - (b) in the case of Derivative contracts, the contracts meet the contract design specifications in Rule 6.3.2.

- (3) An Authorised Market Institution must ensure that only Investments which meet the requirements in (a), (b) or (c) ~~Investments~~ are traded on an MTF it operates ~~only~~ if:
- (a) in the case of Securities, the Securities are admitted to trading on a Regulated Exchange in a jurisdiction acceptable to the DFSA;
 - (b) in the case of Securities that are Security Tokens that do not meet the criteria in (a):
 - (i) there is a current Approved Prospectus relating to the Security Tokens;
 - (ii) both the Security Tokens and the Reporting Entity of those Security Tokens meet the general eligibility requirements in MKT section 9.3;
 - (iii) the Authorised Market Institution has imposed requirements on the Reporting Entity of the Security Tokens, equivalent to those imposed on a Listed Entity under MKT sections 9.2 (the Listing Principles), 9.7 (continuing obligations, including disclosure) and 9.8 (provision of information to the DFSA); and
 - (iv) the Authorised Market Institution has adequate systems and controls in place to effectively monitor and enforce a Reporting Entity's compliance with the requirements imposed under (iii); or
 - (~~b~~c) in the case of Derivative contracts, the contracts meet the contract design specifications in Rule 6.3.2.
- (4) Where an Authorised Market Institution admits to trading or clearing or trades on its facilities Investments the value of which is determined by reference to an underlying benchmark or index provided by a Price Information Provider, it must only do so in accordance with the requirements in App 2.

Guidance

1. Investment criteria are only one aspect of requirements applicable to an Authorised Market Institution when trading or clearing and settling Investments on its facilities. There are other requirements applicable to such activities, which are contained in this module.
2. Any Securities that are admitted to the Official List of Securities maintained by the DFSA meet the requirement in Rule 5.8.1(2)(a).

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5.10 Safeguarding and administration of assets

5.10.1 An Authorised Market Institution must ensure that, where its obligations include making provision for the safeguarding and administration of assets belonging to Members and other participants on its facilities:

- (a) satisfactory arrangements (“safe custody arrangements”) are made for that purpose in accordance with Rules 5.10.2 and 5.10.3; and
- (b) are provided on clear terms of agreement between the Members and other participants on the facility and the Authorised Market Institution.

Guidance

1. In determining whether an Authorised Market Institution has satisfactory arrangements for safeguarding and administering assets, the DFSA will consider:
 - a. the terms of the agreement under which safe custody arrangements are made and whether they adequately provide for the matters specified in Rule 5.10.2;
 - b. the level of protection provided to Members and other participants on its facilities against the risk of theft, fraud, defalcation or other types of loss through such arrangements; and
 - c. the degree of monitoring the Authorised Market Institution would be undertaking relating to custodians, and if relevant, sub-custodians.
2. At the point of granting a Licence to an Authorised Market Institution, the DFSA assesses the adequacy of an applicant’s safe custody arrangements. Any subsequent changes to the safe custody arrangements that have been in place at the time of granting the Licence, where they are material changes, would require the DFSA’s prior approval in accordance with the requirements in Rule 4.3.2.
3. In addition to the requirements in Rule 5.10.1, safe custody arrangements for Security Tokens must also meet the requirements in section 5A.4

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5.11 Promotion and maintenance of standards

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Prevention of Market Abuse, money laundering and financial crime

- 5.11.2** (1) Without limiting the generality of Rule 5.11.1, an Authorised Market Institution must:
- (a) operate appropriate measures to identify, deter and prevent Market Abuse, money laundering and financial crime on and through the Authorised Market Institution’s facilities; and
 - (b) report promptly to the DFSA any Market Abuse, money laundering and financial crime, as required.
- (2) For the purposes of (1)(a), an Authorised Market Institution must:
- (a) include in its Business Rules a regime to prevent Market Abuse, money laundering and financial crime that meets the requirements in (3), which is applicable to its Members; and

- (b) implement adequate measures to ensure that its Members comply with that regime.
- (3) The regime referred to in (2)(a) must, at a minimum, include rules and procedures in relation to:
 - (a) compliance arrangements to prevent Market Abuse, money laundering and financial crime;
 - (b) transaction monitoring;
 - (c) risk assessment; and
 - (d) training.

Guidance

1. Abusive, improper and fraudulent purposes include:
 - a. trades intended to create a false appearance of trading activity;
 - b. trades which one party does not intend to close out or settle;
 - c. conduct which is likely to result in disorderly trading in the market; and
 - d. any contravention of the provisions in Part 6: Prevention of Market Abuse in the Markets Law.
2. An Authorised Market Institution must have an effective surveillance system in place for:
 - a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments conducted elsewhere; and
 - b. communicating information about Market Abuse and financial crime to the DFSA or appropriate regulatory authorities.
3. An Authorised Market Institution that is Operating a Facility for Security Tokens must, where relevant, ensure measures under Rule 5.11.2(1)(a) include effective measures to identify, deter and prevent Market Abuse by Persons permitted to access and update records held on any DLT or similar technology based application used in connection with the operation of the facility.

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5.12 Miscellaneous requirements

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Use of 'security token market' and similar terms to refer to a facility

- 5.12.3** An Authorised Market Institution must not refer to a facility it operates as a 'security token market', 'security token clearing house', 'investment token market', 'investment token clearing house', 'derivative token market', 'derivative token clearing house', or using any other similar term, unless it is a facility on which only Security Tokens are traded or cleared.

Guidance

For example, an Authorised Market Institution must not refer to a facility where both Security Tokens and conventional Investments are traded and cleared using terms referred to in Rule 5.12.3.

5A. ADDITIONAL REQUIREMENTS FOR OPERATING A FACILITY FOR SECURITY TOKENS**5A.1 Application**

5A.1.1 This chapter applies to an Authorised Market Institution Operating a Facility for Security Tokens, referred to in this chapter as an “operator”.

Guidance

Operating a Facility for Security Tokens is defined in GLO as Operating an Exchange, Operating a Clearing House or Operating an Alternative Trading System on which Security Tokens are traded, cleared, or both traded and cleared.

5A.2 Technology and governance requirements

5A.2.1 Without limiting the generality of the technology resources requirements in Rule 5.5.5, an operator must ensure that it meets the requirements that would apply to an Authorised Firm Operating a Facility for Security Tokens under COB section 14.1.

5A.3 Operating a Facility for Security Tokens that permits direct access

5A.3.1 An operator must ensure that:

- (1) it treats each member as its Client;
- (2) its Business Rules clearly set out:
 - (a) the duties owed by the operator to the member and how the operator is held accountable for any failure to fulfil those duties;
 - (b) the duties owed by the member to the operator and how the member is held accountable for any failure to fulfil those duties;
and
- (3) appropriate investor redress mechanisms are available, and disclosed, to each Member permitted to trade or clear Security Tokens on its facility, as required under Rule 5.12.2.

- 5A.3.2** (1) Without limiting the generality of the systems and controls obligations of the operator, an operator must have in place adequate systems and controls to address market integrity, AML, CTF and investor protection risks in permitting a member to access its facility, including procedures to:
- (a) identify the ultimate beneficial owner of a member, where the member is a Body Corporate;

- (b) ensure that appropriate customer due diligence sufficient to address AML and CTF risks has been conducted on each member, before permitting that member to access its facility;
 - (c) detect and address market manipulation and abuse; and
 - (d) ensure that there is adequate disclosure relating to the Security Tokens that are traded on the facility, through prospectus and on-going disclosure under MKT chapters 2, 4 and 6.
- (2) An operator must have adequate controls and procedures to ensure that trading in Security Tokens by members does not pose any operational risks to the orderly and efficient functioning of the facility's trading system, including controls and procedures that:
- (a) mitigate counterparty risks that may arise from defaults by members, through adequate collateral management measures, such as margin requirements, based on the settlement cycle adopted by the operator;
 - (b) identify and distinguish orders that are placed by members, and, if necessary, give the operator the ability to stop orders of, or trading by, such members;
 - (c) prevent members allowing any other Persons to access the facility through that member's access; and
 - (d) ensure that members fully comply with the Business Rules of the facility and that where gaps and deficiencies are identified, they are promptly addressed.
- (3) An operator must have adequate resources and mechanisms to carry out front-line monitoring of trading activities by members.
- (4) To the extent that any of the systems and controls referred to in (1) are embedded within, or otherwise facilitated through DLT, they must be included within the scope of the annual audit and associated report required under Rule 5A.5.

Guidance

To satisfy the DFSA of the matters referred to in Rule 5A.3.2, an operator should, at a minimum, be able to demonstrate that it has built into its DLT or similar technology application being used, or otherwise implemented, effective procedures that enable:

- (a) the clear identification of each member accessing its facility to trade; and
- (b) the monitoring of bid and offer prices and volatility for any indications of market manipulation or abuse.

5A.4 Safe custody of Security Tokens

5A.4.1 Without limiting the generality of section 5.10, where an operator's obligations include making provision for the safeguarding and administration of Security Tokens belonging to Members and other participants on its facility, it must ensure that:

- (1) where its safe custody arrangements involve acting as a Digital Wallet Service Provider, it complies with the same requirements that would apply to an Authorised Firm carrying on such activities under COB section 14.3 and the Client Asset provisions in COB sections 6.11 and 6.13;
- (2) where it appoints a Third Party Digital Wallet Service Provider to Provide Custody for Security Tokens traded or cleared on its facility, that person is either:
 - (a) an Authorised Firm permitted to be a Digital Wallet Service Provider; or
 - (b) a firm that is regulated by a Financial Services Regulator to an equivalent level as that provided for under the DFSA regime for Providing Digital Wallet Services.

5A.5 **Technology audit reports**

5A.5.1 An operator must ensure that it meets the requirements relating to technology audit reports that would apply to an Authorised Firm Operating a Facility for Security Tokens under COB section 14.5.

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