Appendix 3

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

Some text that is not being amended is included for information only.

The DFSA Rulebook

General Module

(GEN)

1 INTRODUCTION

1.1 Application

1.1.1 This module (GEN) applies to every Person to whom the Regulatory Law or Markets Law applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

Guidance

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive and sections 6.9, 6.10, 11.2, 11.3, 11.12 and 11.13 of GEN apply to a Representative Office.

Overview of the module

Guidance

1. Chapter 2 prescribes, pursuant to Article 41(2) of the Regulatory Law, the activities which constitute a Financial Service and, pursuant to Article 42(1) of the Regulatory Law, the kind of Financial Services that may be carried on by Authorised Firms and Authorised Market Institutions. It also specifies various exclusions in relation to the 'by way of business' requirement and, where applicable, in relation to each Financial Service. Further, the appendices contain detailed definitions of what constitutes a Deposit, Investment, Collective Investment Fund and Contract of Insurance.

1A . Chapter 2A defines a Financial Product for the purposes of the general prohibition against misconduct in Article 41B of the Regulatory Law.

2. Chapter 3 sets out the requirements for a Person making or intending to make a Financial Promotion in or from the DIFC.

2A. Chapter 3A specifies requirements that apply to Financial Services and other activities relating to Crypto Tokens.

3. Chapter 4 sets out the Principles for Authorised Firms and Authorised Individuals.

4. Chapter 5 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Authorised Firm to apportion material responsibility among its senior management.

5. Chapter 6 contains mainly guidance in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, close links, complaints against the DFSA and the public register.

6. Chapter 7 specifies the DFSA's authorisation requirements for any applicant intending to become an Authorised Firm or Authorised Individual.

7. Chapter 8 specifies, in relation to Authorised Persons, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and regulatory returns and the functions of an auditor. There are also requirements for auditors to register with the DFSA.

8. Chapter 9 prescribes the manner in which an Authorised Firm must handle Complaints made against it by Retail Clients or Professional Clients.

9. Chapter 10 contains three sets of transitional rules.

   a. Section 10.1 contains transitional rules relating to endorsements to hold Client Assets and Insurance Monies.

   b. Section 10.2 contains transitional rules relating to a Safe Custody Auditor's Report.

   c. Section 10.3 contains transitional rules relating to the reclassification of the Financial Services of 'Arranging Credit or Deals in Investments' and 'Advising on Financial Products or Credit'.

10. Chapter 11 specifies the DFSA's supervisory requirements for any Authorised Person being regulated by the DFSA.

11. Chapter 12 sets out Rules relating to business transfer schemes under Part 9 of the Regulatory Law.

12. Chapter 13 contains guidance on the DFSA's approach to facilitating the testing and development of innovative financial technology (Fintech) in the DIFC.

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2 FINANCIAL SERVICES

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2.2 Financial Service activities

2.2.1 An activity constitutes a Financial Service under the Regulatory Law and these Rules where:

(a) it is an activity specified in Rule 2.2.2; and

(b) such activity is carried on by way of business in the manner described in section 2.3.

2.2.2 The following activities are specified for the purposes of Rule 2.2.1:

(a) Accepting Deposits;

(b) Providing Credit;

(c) Providing Money Services;

(d) Dealing in Investments as Principal;

(e) Dealing in Investments as Agent;

(f) Arranging Deals in Investments;

(g) Managing Assets;

(h) Advising on Financial Products;

(i) Managing a Collective Investment Fund;

(j) Providing Custody;

(k) Arranging Custody;

(l) Effecting Contracts of Insurance;

(m) Carrying Out Contracts of Insurance;

(n) Operating an Exchange;

(o) Operating a Clearing House;

(p) Insurance Intermediation;

(q) Insurance Management;

(r) Managing a Profit Sharing Investment Account;

(s) Operating an Alternative Trading System;

(t) Providing Trust Services;

(u) Providing Fund Administration;

(v) Acting as the Trustee of a Fund;

(w) Operating a Representative Office;

(x) Operating a Credit Rating Agency;

(y) Arranging Credit and Advising on Credit;

(z) Operating a Crowdfunding Platform;

(aa) Operating an Employee Money Purchase Scheme;

(bb) Acting as the Administrator of an Employee Money Purchase Scheme; and

(cc) Arranging or Advising on Money Services.

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

2.2.3 Each activity specified in Rule 2.2.2:

(a) is to be construed in the manner provided under these Rules; and

(b) is subject to exclusions under these Rules which may apply to such an activity.

Permitted Financial Services for Authorised Firms

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2.2.10F A Crowdfunding Operator must not Operate a Crowdfunding Platform that facilitates a Person investing in the following kinds of Investments or Tokens through the platform:

(a) Warrants, Units or Structured Products; ~~or~~

(b) Derivatives~~.~~; or

(c) Crypto Tokens.

Permitted Financial Services for Authorised Market Institutions

2.2.11 Pursuant to Article 42(1)(b) of the Regulatory Law 2004 and subject to Rule 2.2.12, an Authorised Market Institution may carry on any one or more of the following Financial Services:

(a) Operating an Exchange;

(b) Operating a Clearing House; or

(c) Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility as defined in Rule 2.22.1(1)(a).

2.2.12 The Financial Service of Operating an Alternative Trading System, to the extent that such activities constitute operating a Multilateral Trading Facility, may be carried on by an Authorised Market Institution which is permitted to do so by an endorsement on its Licence.

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2.6 Providing money services

2.6.1 (1) In Rule 2.2.2, Providing Money Services means:

(a) providing currency exchange;

(b) providing Money Transmission;

(c) providing or operating a Payment Account;

(d) executing Payment Transactions on a Payment Account provided or operated by another Person;

(e) issuing Payment Instruments; or

(f) issuing Stored Value.

(2) In this Rule:

(a) "Money Transmission" means the transmission of money or monetary value, without a Payment Account being created in the name of the payer or the payee, where funds are:

(i) received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another Payment Service Provider acting on behalf of the payee; or

(ii) received on behalf of, and made available to, the payee.

(b) "Payment Account" means an account held in the name of one or more Users which is used to execute Payment Transactions;

(c) "Payment Instrument" means a:

(i) personalised device; or

(ii) personalised set of procedures agreed between the User and the provider,

that is used by the User to initiate a Payment Order;

(d) "Payment Order" means an instruction by a payer or payee to their respective Payment Service Provider requesting the execution of a Payment Transaction;

(e) "Payment Service" means an activity referred to in (1)(b),(c),(d) or (e);

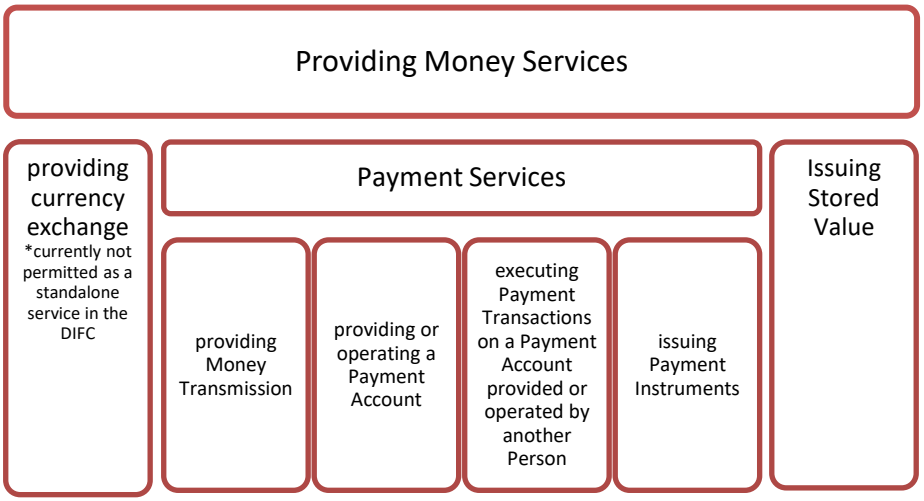
(f) "Payment Service Provider" means a Person providing a Payment Service;

(g) "Payment Transaction" means an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;

(h) "Stored Value" means any electronically (including magnetically) stored monetary value as represented by a claim on the issuer which is issued on receipt of funds or other assets for the purpose of making Payment Transactions, but does not include monetary value that can be used only to pay for goods or services referred to in Rule 2.6.4.

Guidance

1. The following diagram illustrates the different types of Money Services:



2. A particular service provided by an Authorised Firm may involve only one of the above activities e.g. Money Transmission, or a combination of activities e.g. issuing Stored Value, issuing Payment Instruments and operating a Payment Account.

3. The term "Payment Service" is used to describe all or any of the activities in Rule 2.6.1(1) other than providing currency exchange or issuing Stored Value.

4. A Payment Account is an account that is used to execute Payment Transactions. Funds are usually expected to remain in a Payment Account only for a short period. A provider of such an account is prohibited from paying any interest or other return on funds in the account (COB Rule A7.2.16). This is because paying interest or any other return on the account is likely to result in the account being a Deposit or a Profit Sharing Investment Account (PSIA).

5. A "User" means a user of a Money Service and, in relation to a Payment Service, includes a person acting in the capacity of payer, payee or both (see the definition in GLO).

6. The reference in the "Stored Value" definition in Rule 2.6.1(2)(h) to receipt of "other assets" includes, for example, the receipt of digital currencies or any other form of assets that may be accepted by an issuer of stored value. Stored Value does not, however, include a loyalty programme where a person earns points that can be redeemed directly for goods or services of the loyalty programme provider.

7. COB Rule A7.3.3 limits the total amount of Stored Value that may be issued to an individual User at any point in time to $5,000 and the total value of a single Payment Transaction to $1,000.

8. Rule 3A.2.5 prohibits a Money Services Provider from using Crypto Tokens in connection with its Money Services business, except in limited circumstances specified in that Rule, and from carrying on other Financial Services relating to Crypto Tokens.

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2.7 Dealing in investments as principal

2.7.1 In Rule 2.2.2, Dealing in Investments as Principal means buying, selling, subscribing for or underwriting any Investment or Crypto Token, as principal.

Exclusions

2.7.2 A Person does not Deal in Investments as Principal merely by accepting an instrument, creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which that person has made or provided.

2.7.3 A Person does not Deal in Investments as Principal by issuing or redeeming Securities or Crypto Tokens issued by that person.

2.7.4 (1) A Person who is not an Authorised Firm or an Authorised Market Institution does not Deal in Investments as Principal in relation to an Investment or Crypto Token by entering into a transaction with or through an Authorised Firm or a Regulated Financial Institution.

(2) The exclusion in (1) does not apply if the Person holds itself out as:

(a) willing to enter into transactions in Investments or Crypto Tokens of the kind to which the transaction relates; or

(b) engaging in the business of buying, selling, subscribing for or underwriting Investments or Crypto Tokens.

Guidance

1. The exclusion in Rule 2.7.4 is intended to apply, for example, to a Person who executes proprietary trades through a duly authorised broker, or to a Person who is carrying on a commercial business and enters into a transaction with a firm for a purpose related to that business, such as to hedge a risk. It does not apply to a Person that holds itself out as willing to enter into transactions relating to Investments or Crypto Tokens of that kind or as engaging in the business of dealing in Investments or Crypto Tokens, such as a market maker or an online trading platform operator (even if it enters into transactions only with Authorised Firms or Regulated Financial Institutions).

2. A Person may hold itself out as carrying on an activity by various means including, for example, on its webpage, in an advertisement or through representations made by its staff. However, merely placing orders with a broker or on a market will not amount to holding out.

2.7.5 A Person who is an Authorised Firm does not Deal in Investments as Principal if in the course of managing the assets of a Private Equity Fund:

(a) the Person makes an initial subscription for Units of that Fund; and

(b) the Units are held by that Person for a period of more than 12 months.

2.8 Dealing in investments as agent

2.8.1 In Rule 2.2.2, Dealing in Investments as Agent means buying, selling, subscribing for or underwriting any Investment or Crypto Token as agent.

Exclusions

2.8.2 A Person does not Deal in Investments as Agent if the activity:

(a) is carried on in the course of providing legal or accountancy services which do not otherwise consist of the carrying on of Financial Services;

(b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services; and

(c) is not remunerated separately from the other services.

2.8.3 A Person does not Deal in Investments as Agent if that Person:

(a) is merely receiving and transmitting a Client order in respect of an Investment or Crypto Token; and

(b) does not execute the Client order for and on behalf of the Client or otherwise commit the Client to the transaction relating to the relevant Investment or Crypto Token.

2.8.4 An Exchange does not Deal in Investments as Agent merely by taking action in accordance with its Default Rules.

2.9 Arranging deals in investments

2.9.1 (1) In Rule 2.2.2, Arranging Deals in Investments means making arrangements with a view to another Person buying, selling, subscribing for or underwriting an Investment or Crypto Token (whether that other Person is acting as principal or agent).

(2) The arrangements in (1) include:

(a) arrangements which do not bring about the transaction; and

(b) arrangements comprising or involving the receipt and transmission of Client orders in relation to Investments or Crypto Tokens.

(3) The arrangements in (1) do not include arrangements which amount to Operating an Alternative Trading System.

(4) In this Rule and in Rules 2.9.2 to 2.9.7, an "Investment" includes rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

Guidance

What constitutes 'Arranging deals in Investments'?

1. The activities which constitute making arrangements with a view to another Person buying, selling, underwriting or subscribing for an Investment or Crypto Token (whether that other Person is acting as principal or agent) generally involve the following elements:

   a. the purpose of such an arrangement is to 'facilitate' or 'bring about' transactions between other parties such as:

      i. buyers and sellers of Investments or Crypto Tokens;

      ii. issuers of and subscribers for Securities (note – subscription is generally an activity associated with an initial offer of Securities);

      iii. issuers of and buyers of Crypto Tokens;

~~iii~~iv issuers and underwriters of S~~s~~ecurities or Crypto Tokens (note – underwriting here is an activity associated with an initial offer of Securities or Crypto Tokens, as opposed to underwriting of risks, which is an activity of an insurer); and

~~iv~~v. insurers writing Long-Term Insurance and policyholders who wish to obtain such insurance.

b. such arrangements can be either of an on-going nature, for example, an arrangement which is available to potential buyers or sellers of Investments or Crypto Tokens, or an arrangement which is bespoke (i.e. available on a one-off basis for a particular client, such as an underwriter of Securities or Crypto Tokens).

2. The activities referred to in Guidance item 1 can include one or more of the following:

a. the introduction of:

i. potential buyers of Investments or Crypto Tokens to issuers or sellers of Investments or Crypto Tokens, or vice versa;

ii. potential subscribers for Securities to issuers;

iii. potential underwriters to issuers of Securities or Crypto Tokens, or vice–versa;

iv. potential parties to a derivatives transaction; and

v. policyholders or cedants to insurers or reinsurers underwriting Long-Term Insurance;

b. assisting any of the parties referred to in a. through activities, such as, completing the applications or other processes relevant to the transaction;

c. negotiating and settling terms of the contracts between the parties referred to in a.;

d. collecting and processing fees, commissions or other payments (such as premiums in the case of Long-Term Insurance); and

e. transmitting instructions or confirmations relating to transactions.

Do arrangements which form part of another facility constitute arranging?

3. An arrangement which is part of a wider arrangement for the purpose of bringing about transactions in Investments or Crypto Tokens still falls within the scope of the Financial Service of arranging. For example, an arranger may arrange (i.e. allow access) for potential investors to access a facility set up by an offeror of Securities. The arrangement to allow access constitutes arranging, although, for a transaction to be concluded, the investor will also need to use the offeror's facility.

How does 'arranging deals' differ from 'dealing as agent'?

4. 'Arranging Deals in Investments' differs from the Financial Service of 'Dealing in Investments as Agent' in Rule 2.8.1 because:

   a. a Person 'arranging deals' (i.e. the 'arranger') does not have the authority to bind the parties to an Investment or Crypto Token transaction resulting from its 'arranging' activities; and

   b. a Person 'dealing as agent' acts as the agent of a party to the Investment or Crypto Token transaction and has the authority to bind its principal.

5. For example, a Person acting as an agent either:

   a. executes the transaction for its principal (the Client); or

   b. if using another broker to execute the client order, commits the Client to the transaction by giving a binding order to the broker.

6. In contrast, a Person acting as an arranger may, for example, receive and transmit client orders to a broker, but does not have the power to execute or enter into the transaction for the client, or commit the client to a transaction. See the exclusion in GEN Rule 2.8.3 from 'Dealing in Investments as Agent', and GEN Rule 2.9.1(2)(b), both of which reflect the above position.

Do arrangements that do not bring about transactions constitute arranging?

7. An activity falls within the scope of the Financial Service of 'arranging' even if it does not necessarily lead to a completed transaction. For example, a prospective buyer or seller of Securities may change his mind and not sign a contract for the sale or purchase of Securities. Similarly, a potential buyer of Long-Term Insurance, after having completed an application form for Long-Term Insurance with the assistance of an arranger, may not go ahead with the purchase of the policy. In both examples, just because the transaction has not been concluded, the arranger's activities do not cease to be 'arranging' under Rule 2.9.1.

Which activities do not constitute 'arranging'?

8. A Person who performs for a financial service provider (in or outside the DIFC) delegated or outsourced functions, such as back office administration services, does not carry on 'arranging' activities under Rule 2.9.1. For example, a Person undertaking administrative tasks (such as processing applications, transmitting orders, or issuing confirmations of transactions for a brokerage firm or an insurer) is not arranging transactions.

9. A passive display of literature which advertises Investments or Crypto Tokens does not amount to arranging, unless something more is done to help potential investors or policyholders to buy such Investments, Crypto Tokens or policies. For example, a passive display of leaflets advertising Investments in property funds at the reception of an office, such as an accountant's office, or a display of leaflets advertising permanent health policies

of an Long-Term Insurance insurer at a doctor's or dentist's waiting rooms, would not constitute arranging, provided the relevant service providers or employees in their offices do not assist or facilitate transactions by potential investors/policyholders.

Arranging Long-Term Insurance

10. An 'Investment' is defined in Rule 2.9.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance). As a result, arranging activities relating to contracts of Long-Term Insurance fall within Arranging Deals in Investments. 'Long-Term Insurance' is defined in GLO, in summary, as a contract of the type described in Rule A4.1.2 (certain types of life insurance) that is expressed to be in force for more than one year and meets specified conditions.

Exclusions

2.9.2 A Person does not carry on the activity of Arranging Deals in Investments under Rule 2.9.1(1) in relation to a transaction if the Person becomes, or proposes to become, a party to the transaction (regardless of whether the transaction is effected). This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.9.1(1).

2.9.3 A Person does not Arrange Deals in Investments merely by providing means by which one party to a transaction is able to communicate with other such parties.

2.9.4 A Person does not Arrange Deals in Investments by making arrangements under which another Person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which he or his principal has made or provided.

2.9.5 A Person does not Arrange Deals in Investments merely by making arrangements having as their sole purpose the provision of finance to enable a Person to buy, sell, subscribe for or underwrite Investments or Crypto Tokens.

2.9.6 A Person does not Arrange Deals in Investments by making arrangements for the issue or redemption of Securities or Crypto Tokens issued by it.

2.9.7 A Person does not Arrange Deals in Investments if the activity:

(a) is carried on in the course of providing legal or accountancy services, which do not otherwise consist of the carrying on of Financial Services;

(b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services;

(c) is not remunerated separately from the other services; and

(d) in the case of a contract of Long-Term Insurance, does not assist in the conclusion or performance of the contract.

2.9.8 An Exchange does not make arrangements referred to in Rule 2.9.1(1), merely by making arrangements for, or taking steps that facilitate, another Person to act as Central Counterparty to transactions entered into on a facility operated by the Exchange.

2.9.9 A Crowdfunding Operator does not Arrange Deals in Investments to the extent that it Operates an Investment Crowdfunding Platform.

Guidance

1. Rule 2.9.2 excludes the activities of a party to a transaction from being 'arranging'. This is because a person cannot be both a party to a transaction, and its arranger.

2. Where a Person (an arranger) makes arrangements in the DIFC for another Person to obtain dealing services (e.g. broking services) from its head office, the arranger is not regarded as 'Dealing in Investments as Agent' in the DIFC merely because it is the same legal entity as its head office. However, to be able to do so without breaching the Financial Services Prohibition, the arranger would need to have an Authorisation for 'Arranging Deals in Investments'. It would also need to take care not to conduct activities that go beyond 'arranging' (see Guidance under Rule 2.9.1 for activities which constitute arranging).

3. Rule 2.9.3 excludes providers of means by which one party to a transaction (or potential transaction) communicates with the other contracting parties, from being arrangers. Communication channel providers, such as internet or telecommunication network providers, are excluded from being arrangers under this exclusion. However, if such a provider goes beyond being a 'mere' communication channel provider, for example, by

adding value to the service provided to those communicating with each other, with a view to facilitating a contract being concluded, this exclusion will not apply to them.

4. Rule 2.9.4 excludes from being arranging the activity of making arrangements for a lender (such as a bank) to accept an instrument acknowledging debt by a person who has obtained credit, a loan, a guarantee or any other form of financial facility. This mirrors the similar carve-out from regulation available to banks and other lenders where they are not considered to be 'dealing as principal' in Investments merely because they accept instruments acknowledging debt from those obtaining credit, loans, guarantees or any other form of financial facility from them.

5. Rule 2.9.6 excludes issuers of Securities or Crypto Tokens from being regarded as arrangers. For example, if an issuer of Securities or Crypto Tokens sets up a website which enables prospective buyers of Securities to read the offer document or prospective buyers of Crypto Tokens to read the white paper and apply for the relevant Securities or Crypto Tokens, the issuer is not required to have a Licence as an arranger due to this exclusion (but may have to comply with the disclosure requirements in MKT relating to the offer).

6. Rule 2.9.7 excludes from being 'arrangers' lawyers and accountants, who, in the course of conducting their legal and accounting business, arrange for their clients to buy or sell Securities. To have the benefit of this exclusion, certain conditions have to be met (such as the activity being reasonably regarded as a necessary part of services provided by legal and accounting practitioners and not being separately remunerated). For example, if a lawyer arranges as part of estate planning services for a portfolio of investments to be sold by a brokerage firm, this exclusion can be applied, provided the lawyer's fees do not include a separate charge for arranging the liquidation of the portfolio, and the lawyer does not assist or participate in the conclusion of the contracts.

2.10 Managing assets

2.10.1 In Rule 2.2.2, Managing Assets means managing on a discretionary basis assets belonging to another Person if the assets include any Investment, Crypto Token or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.

Exclusions

2.10.2 A Person who is not an Authorised Firm or an Authorised Market Institution does not Manage Assets if:

(a) he is a Person formally appointed in writing by the owner of the assets to manage the assets in question; and

(b) all day-to-day decisions relating to the Investments or Crypto Tokens which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.

Guidance

1. A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Managing Assets to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the proper management of the Fund in accordance with its Constitution and Prospectus.
2. If an Authorised Firm has a discretionary portfolio mandate from a Client to manage assets on behalf of the Client, the firm controls those Client Assets as it can execute transactions relating to those assets, within the parameters set in the mandate (see also COB Rule 6.11.4(d)).

2.11 Advising on financial products

2.11.1 (1) In Rule 2.2.2, Advising on Financial Products means giving advice to a Person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product (whether as principal or agent).

(2) Advice in (1) includes a statement, opinion or report:

(a) where the intention is to influence a Person, in making a decision, to select a particular financial product or an interest in a particular financial product; or

(b) which could reasonably be regarded as being intended to have such an influence.

(3) Giving advice to a Person under (1) includes operating an Insurance Aggregation Site relating to contracts of Long-Term Insurance, other than contracts of reinsurance.

(4) For the purposes of this Rule and Rule 2.11.2, a “financial product” is:

(a) an Investment;

(b) a Deposit;

(c) a Profit Sharing Investment Account;

(d) a right under a contract of Long-Term Insurance, that is not a contract of reinsurance;

(e) a right under an Employee Money Purchase Scheme; ~~or~~

(f) a right or interest in a pension, superannuation, retirement or gratuity scheme or arrangement, or a broadly similar scheme or arrangement~~.~~; or

(g) a Crypto Token.

Guidance

1. As a 'financial product' is defined in Rule 2.11.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance), advice on contracts of Long-Term Insurance will fall within Advising on Financial Products.
2. An 'Insurance Aggregation Site' is defined in GLO. In summary, it is a website or other form of electronic media that provides a facility for a user to search for, and then to conclude, directly or indirectly, a Contract of Insurance. The site may, for example, enable the user to conclude a Contract of Insurance:

   a. directly, if the user can enter into the Contract of Insurance by clicking a button on the website itself; or

   b. indirectly, if it provides a link to the insurer, transmits the details of one party to the other party or otherwise facilitates contact between the parties.

3. Operating an Insurance Aggregation Site will fall under Advising on Financial Products to the extent that it relates to contracts of Long-Term Insurance, and under Insurance Intermediation to the extent that it relates to other types of Contracts of Insurance.

4. An operator of an Insurance Aggregation Site that can be used by Retail Clients will need an endorsement on its Licence to deal with Retail Clients (see Rule 2.2.8).
5. As a 'financial product' is defined in Rule 2.11.1(4) to include rights under an Employee Money Purchase Scheme, advice on rights under an Employee Money Purchase Scheme will

fall within Advising on Financial Products. It should be noted that an Operator of an Employee Money Purchase Scheme or an Administrator of an Employee Money Purchase Scheme are not licensed to provide such advice to Members of the Scheme.

Exclusions

2.11.2 A Person does not Advise on Financial Products by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

(a) that of giving advice of the kind mentioned in Rule 2.11.1; nor

(b) that of leading or enabling Persons to buy, sell, subscribe for or underwrite a particular financial product of the kind in Rule 2.11.1(4).

2.11.3 A Person does not Advise on Financial Products if the activity:

(a) is carried on in the course of providing legal or accountancy services, which do not otherwise consist of the carrying on of Financial Services;

(b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services; and

(c) is not remunerated separately from the other services.

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2.13 Providing custody

2.13.1 (1) In Rule 2.2.2, Providing Custody means one or more of the following activities:

(a) safeguarding and administering Investments belonging to another Person;

(aa) safeguarding and administering Crypto Tokens belonging to another Person;

(b) in the case of a Fund, safeguarding and administering Fund Property; or

(c) acting as a Central Securities Depository.

(2) In (1) (a) and (b), the following activities do not constitute administering Investments or Fund Property:

(a) providing information as to the number and value of any Investments, Crypto Tokens or Fund Property safeguarded;

(b) converting currency; or

(c) receiving documents relating to an Investment, Crypto Tokens or Fund Property for the purpose of onward transmission to, from or at the direction of the Person to whom the Investment, Crypto Tokens or Fund Property belongs.

(3) In (1)(c), "acting as a Central Securities Depository" means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions executed on a facility operated by an Authorised Market Institution or an Alternative Trading System or a similar facility regulated and supervised by a Financial Services Regulator.

Guidance

A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Providing Custody to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the safe custody and proper management of the Fund in accordance with its Constitution and Prospectus.

How does Providing Custody differ from Arranging Custody?

2. The Financial Service of Providing Custody differs from that of Arranging Custody because:

a. a Person Providing Custody is legally accountable to Clients for safeguarding and administering Client Investments or Crypto Tokens (which are defined as Client Assets – see the GLO definition), even if it appoints a Third Party Agent (see GLO) to hold Client Investments or Crypto Tokens; and

b. a Person arranging Custody does not become a party to the arrangement to Provide Custody and hence does not assume any duties or responsibilities to the Client for the

safe custody of the Client's Investments or Crypto Tokens – instead, such a Person merely facilitates a custodian to provide its services to a potential user of its services.

What is 'Safeguarding' and 'Administering' Investments?

3. As set out in Rule 2.13.1, both the elements (i.e. the activities) of safeguarding and administering, must be present before a Person is said to carry on the Financial Service of Providing Custody.

4. A Person:

   a. 'safeguards' a Client's Investments if that Person is the holder of the legal title to the Client's Investments (whether in certificated or uncertificated form); and

   b. 'administers' a Client's Investments if that Person carries out activities as the holder of legal title to the Investments, such as effecting transactions, reinvesting dividends or other income arising from the Investments, and carrying out corporate actions relating to the exercise of rights attaching to the Investments (e.g. voting or appointing proxies to vote and accepting a rights offer/issue of Investments).

What is 'Safeguarding' and 'Administering' Crypto Tokens?

5. A Person 'safeguards' a Client's Crypto Token if that Person is the holder of the legal title to the Crypto Token or of the means of access to that Token. For example, this may occur if the Person's name is registered on the blockchain as the holder of the relevant Token, cryptographic key or Digital Wallet or if the Person, through other means, holds legal title or any beneficial interest in the Crypto Token or controls the cryptographic keys or other instruments that provide access to the Client's Digital Wallet.

6. A Person 'administers' a Crypto Token if that Person carries out activities as the holder of the legal title to the Crypto Token or as the holder of the means of access to that Crypto Token. For example, administering can be done by effecting transactions such as exchanging or transferring the Token, participating in the consensus mechanism where applicable, reinvesting rewards or other income arising from the token, or exercising other rights, including rights of early access or discounts to products and services offered on the native blockchain of the Token.

Who is a Third Party Agent?

~~5~~7. A Third Party Agent is simply an agent of the firm which Provides Custody. A Person is regarded as Providing Custody even if it appoints a Third Party Agent (see GLO) to carry out either or both of the activities of safeguarding and administering its Clients' Investments or Crypto Tokens. The Person Providing Custody (and not the Third Party Agent) remains accountable to the Client for the safe custody of the Investments or Crypto Tokens of the Client.

~~6~~8. The DFSA requires a firm which Provides Custody, if it is outsourcing or delegating the safeguarding or administering of Client Investments or Crypto Tokens to a Third Party Agent, to undertake due diligence relating to the Third Party Agent (see COB Rule A6.5.1).

What is the relationship between 'Providing Custody' and 'holding or controlling' Client Assets for Investments?

~~7~~9. A firm Providing Custody, in order to safeguard and administer Client Investments, must hold and control those Investments. Therefore, a firm Providing Custody is subject to the Client Investments provisions in COB section 6.13 and the Safe Custody Provisions in COB App6. The firm may hold and control Client Investments directly (i.e. itself) or indirectly (i.e. through a Third Party Agent).

~~8~~10. Activities that constitute 'holding or controlling' Client Investments and 'safeguarding and administering' Client Investments can overlap. Guidance items 9 to 11 set out some examples to illustrate the interconnectivity and overlap of such activities.

~~9~~11. In the case of Investments the title to which is evidenced by a physical instrument (e.g. a share or debenture certificate), a Person who has physical possession of the certificate 'holds' it. It is possible that the Person who has physical possession is also the legal owner (i.e. the Person in whose name the title to the certificate is registered). If this is not the case, the Person who 'holds' the certificate is generally regarded as an agent of the legal owner whose name appears on the share or debenture certificate. An example would be a firm Providing Custody in whose name the certificates are registered, but the actual possession of the certificates is with a Third Party Agent (custodian) appointed by the firm. In this example, the firm Providing Custody continues to be subject to the Client Investments provisions in COB 6.13 and the Safe Custody Provisions in COB App6.

1012. In the case of Investments which are held in uncertificated or dematerialised form, the Person in whose name the rights to the relevant Investments are registered (by the central securities depository) is the holder and controller of the relevant Investments. Generally, the 'PIN' or other unique identifier of the owner of the Investments will be issued to the Person in whose name the dematerialised Investments are registered. Again, a firm that Provides Custody may appoint a Third Party Agent to hold and have access to them, in which case, the firm Providing Custody indirectly holds and controls those Investments, and remains accountable to the Client for the safe custody of those Investments. The firm must also comply with the Client Investments provisions in COB 6.13 and the Safe Custody Provisions in COB App6.

1113. A Person, who has the power and authority to give directions in relation to Investments, controls the relevant Investments. Generally, the Person who is the legal owner would have the power to give such directions. Examples are directions to effect transactions, to reinvest dividends or other income arising from the Investments, and to carry out corporate actions relating to the exercise of rights attaching to the Investments (e.g. to vote or appoint proxies to vote and to accept or renounce a rights offer/issue of Investments). A firm Providing Custody would carry out such tasks for the purposes of administering Client Investments, either directly (i.e. itself) or indirectly (i.e. through a Third Party Agent appointed by it).

What is the relationship between 'Providing Custody' and 'holding or controlling' Client Assets for Crypto Tokens?

14. Much of the above Guidance relating to Investments is equally applicable to Crypto Tokens. For example, a firm Providing Custody of Crypto Tokens, in safeguarding and administering those Tokens, must hold and control the Crypto Tokens. Therefore, the firm is subject to the Client Crypto Token provisions in COB section 6.13 and the Safe Custody Provisions in COB App6. The firm may hold and control Client Crypto Tokens directly (i.e. itself) or indirectly (i.e. through a Third Party Agent).

15. In the case of Crypto Tokens, the Person in whose name the Token, cryptographic key or the Digital Wallet is registered on the blockchain is the holder and controller of that Token. For example, a private key or another unique identifier, expressed in the form of a string of numbers or QR code, will be issued to the person in whose name the Tokens are registered. A firm that Provides Custody may appoint a Third Party Agent to hold and have access to them, in which case, the firm Providing Custody indirectly holds and controls those Tokens and remains accountable to the Client for the safe custody of the Tokens. The firm must also comply with the Client Asset provisions in COB 6.13 and the Safe Custody provisions in COB App6.

16. A Person, who has the power and authority to give directions in relation to Crypto Tokens, controls that Token. Generally, the Person who is the legal owner would have the power to give such directions. For example, directions to effect transactions in the form of exchanging or transferring the Token, participating in the consensus mechanism where applicable, reinvesting rewards or other income arising from the token, or exercising other rights, including rights of early access or discounts to products and services offered on the native blockchain of the Token. A firm Providing Custody would carry out such tasks for the purposes of administering the Client's Crypto Tokens, either directly itself or indirectly through a Third Party Agent.

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2.17 Operating an exchange

2.17.1 (1) In Rule 2.2.2, Operating an Exchange means operating a facility which functions regularly and brings together multiple third party buying and selling interests in Investments or Crypto Tokens, in accordance with its non-discretionary rules, in a way that can result in a contract in respect of Investments or Crypto Tokens admitted to trading or traded on the facility.

(2) The facility referred to in (1) may be organised on a temporary or permanent basis and can be an order driven system, a quote driven system or a hybrid of such systems that enables the market to operate electronic trading or trading by other means.

Guidance

1. An Authorised Market Institution authorised to Operate an Exchange may carry on the Financial Service of operating a Multilateral Trading Facility, as defined in Rule 2.22.1(1)(a), provided it has an endorsement on its Licence that permits it to do so (see Rule 2.2.12).

2. An Authorised Market Institution may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.13). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conduct requirements in App 5.

2.18 Operating a clearing house

2.18.1 (1) In Rule 2.2.2, operating a Clearing House means operating a facility where confirmation, clearance and settlement of transactions in Investments or Crypto Tokens are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:

(a) becomes a Central Counterparty ("CCP"); or

(b) provides a book-entry Securities Settlement System ("SSS"),

regardless of whether or not such a Person also operates a Central Securities Depository.

(2) In (1), confirmation, clearance and settlement means the process of:

(a) establishing settlement positions, including the calculation of net positions arising from any transactions in Investments or Crypto Tokens (the transactions);

(b) checking that Investments, Crypto Tokens, cash or ~~both~~ any combination of those assets, including margin, are available to secure the exposure arising from the transactions; and

(c) securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transactions.

(3) In (1)(a), a Person operates as a CCP where it:

(a) ensures the performance of open contracts relating to Investments or Crypto Tokens made on a facility for trading Investments or Crypto Tokens; and

(b) does so by interposing itself between counterparties to such contracts by becoming either the buyer to every seller, or the seller to every buyer.

(4) In (1)(b), a Person operates an SSS where it operates a system which enables Investments held in accounts to be transferred and settled by book entry according to a set of predetermined multilateral rules.

(5) Acting as a Central Securities Depository in (1) means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions on its own facility and on any other similar facility, including an Alternative Trading Facility or a facility supervised or regulated by another Financial Services Regulator.

(6) To the extent that any activity under (1) constitutes Dealing In Investments as Principal, Dealing in Investments as Agent, Arranging Deals in Investments, Managing Assets, Arranging Custody or Arranging Credit, such Financial Services are taken to be incorporated within Operating a

Clearing House, provided such activities are carried out as an incidental and integral part of Operating a Clearing House.

Guidance

1. The activity of operating a Central Securities Depository may be carried on by an Authorised Market Institution licensed to Operate a Clearing House in conjunction with its regulated activities, particularly operating an SSS. An Authorised Firm which has a licence authorising it to carry on Providing Custody may also operate a CSD under its licence (see Rule 2.13.1(3)). If a Clearing House were to operate a CSD through a subsidiary, that subsidiary would need to be licensed separately as an Authorised Firm Providing Custody.

2. An Authorised Market Institution licensed to Operate a Clearing House may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.13). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conducts requirements in App 5.

3. In the case of Crypto Tokens, acting as a Central Counterparty is the only Clearing House activity relevant to Crypto Tokens, as providing a Securities Settlement System or acting as a Central Securities Depository are relevant only to Investments and Securities. For Crypto Tokens, transfers of the Crypto Tokens take place by means of Distributed Ledger Technology or other similar technology.

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2.22 Operating an alternative trading system

2.22.1 (1) In Rule 2.2.2, Operating an Alternative Trading System means:

(a) operating a Multilateral Trading Facility ("MTF"); or

(b) operating an Organised Trading Facility ("OTF").

(2) In (1)(a), a Person operates an MTF if that Person operates a system which brings together multiple third party buying and selling interests in Investments or Crypto Tokens, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such Investments or Crypto Tokens.

(3) In (1)(b), a Person operates an OTF if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its discretionary rules, in a way that results in a contract in respect of such Investments.

Guidance

The main distinction between operating an MTF and operating an OTF is that the former is operated in accordance with the non-discretionary rules adopted and implemented by the operator, whereas the latter is operated in accordance with the discretionary rules of the operator. Accordingly, a Person operating an OTF has more flexibility relating to how it applies its rules to participants on its facility, whereas a Person operating an MTF is required to apply its rules in a non-discretionary manner across all participants on its facility. Under the above definitions, a system relating to Crypto Tokens may be an MTF but not an OTF.

Exclusions

2.22.2 A Person does not carry on the activity of the kind specified in Rule 2.22.1 if it operates a facility which is merely an order routing system where buying and selling interests in, or orders for, Investments or Crypto Tokens are merely transmitted but do not interact.

2.22.3 A Crowdfunding Operator does not Operate an Alternative Trading System to the extent that it Operates a Crowdfunding Platform.

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2.26 Operating a Representative Office

2.26.1 (1) In Rule 2.2.2 Operating a Representative Office means the marketing of one or more financial services or financial products, provided such services or products are those offered:

(a) in a jurisdiction other than the DIFC; and

(b) by a related party of the Representative Office.

(2) For the purposes of (1) 'marketing' means:

(a) providing information on one or more financial products or financial services;

(b) engaging in Financial Promotions in relation to (a); or

(c) making introductions or referrals in connection with the offer of financial services or financial products;

provided that such activities do not constitute:

(d) Advising on Financial Products;

(e) Advising on Credit; or

(f) 'arranging' under Rules 2.9.1, 2.14.1, 2.19.1(1)(c) and 2.28.1(1)(a), including receiving and transmitting orders in relation to a financial product.

(3) For the purposes of this Rule:

(a) a 'financial product' means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account or a Contract of Insurance; and

(b) a 'related party' of a Representative Office means:

(i) the same Body Corporate as the Representative Office, including its head office or any other branch; and

(ii) a member of the same Group as the Body Corporate referred to in (i).

(4) For the purposes of this Rule, a 'financial service' does not include a financial service relating to a Crypto Token.

Exclusions

2.26.2 An Authorised Firm other than a Representative Office does not Operate a Representative Office if it undertakes any activities of the kind described in Rule 2.26.1 that constitute marketing.

2.26.3 Any communication which amounts to marketing in respect of a financial service or financial product, which is issued by or on behalf of a government or non-

commercial government entity, does not constitute marketing for the purposes of Rule 2.26.1.

Guidance

1. Refer to Guidance under REP section 1.3 for the scope of the activities which a Representative Office can conduct under its Licence.

2. As the relevant definitions of a 'financial product' and 'financial service' in Rule 2.26.1(3) and (4) do not include a Crypto Token or a Financial Service relating to a Crypto Token, a Representative Office in the DIFC cannot be used to market a Crypto Token or a Financial Service relating to a Crypto Token.

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2A. DEFINITION OF FINANCIAL PRODUCT IN THE GENERAL PROHIBITION AGAINST MISCONDUCT

Definition of Financial Product in the general prohibition against misconduct.

2A.1.1 For the purposes of Article 41B of the Regulatory Law, a "Financial Product" means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, ~~or~~ a Contract of Insurance, ~~or~~ a Crowdfunding Loan Agreement, Crypto Token or rights under an Employee Money Purchase Scheme.

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3. FINANCIAL PROMOTIONS

3.1 Application

3.1.1 This chapter applies to any Person who approves, makes or intends to make a Financial Promotion in or from the DIFC.

3.1.2 Rules 3.4.1 to 3.6.3 do not apply to a Person who makes an Offer which is in accordance with the requirements relating to:

(a) an Offer of Securities under the Markets Law and the MKT Rules; or

(b) an Offer of Units under the Collective Investment Law 2010 and CIR Rules.

Guidance

The purpose of the exclusion in Rule 3.1.2 is to ensure that a Person who makes an Offer referred to in that Rule is not subject to duplicative requirements under this chapter. The exclusion applies only to a communication by a Person making an Offer and if that communication is subject to requirements specified in the relevant laws or Rules.

3.2 Overview

3.2.1 The Rules in this chapter are made for the purposes of the Financial Promotions Prohibition in Article 41A of the Regulatory Law.

Guidance

1. Article 41A(3) of the Regulatory Law defines a Financial Promotion as:

"Any communication, however made, which invites or induces a Person to:

(a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or

(b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product."

2. The Guidance in this chapter is designed to help explain the scope of the Financial Promotions Prohibition.

3. The definition of a Financial Promotion is very broad and encompasses the definitions of a "financial promotion" in Article 19(3) of the Collective Investment Law 2010. A Financial Promotion also includes "marketing material" as defined elsewhere in the Rulebook.

4. The DFSA considers that a Financial Promotion may be made in any manner and by any form including, but not limited to, an oral, electronic or written communication and includes an advertisement, or any form of promotion or marketing. A disclaimer stating that a communication is not a Financial Promotion would not, on its own, prevent a communication from being a Financial Promotion.

5. A Person who is permitted to make a Financial Promotion in the DIFC pursuant to these Rules should ensure that in making such a Financial Promotion he does not breach the Financial Services Prohibition in Article 41 of the Regulatory Law.

6. Depending on the nature and scale of the activities, if a Person makes Financial Promotions on a regular basis or for a prolonged period while physically located in the DIFC, for example by way of a booth, meetings or conferences, the DFSA may consider such activities as constituting the carrying on of a Financial Service, such as Operating a Representative Office. The DFSA considers that in the context of Financial Promotions, "a regular basis" would be anything more than occasional and "a prolonged period" would usually be anything more than 3 consecutive days.

7. GEN Chapter 3A (Crypto Token requirements) contains several prohibitions that apply to making or approving Financial Promotions relating to particular Crypto Tokens. This includes Financial Promotion prohibitions relating to Crypto Tokens that are not Accepted Crypto Tokens, Algorithmic Tokens and Privacy Tokens.

3.3 Definition of a Financial Product

3.3.1 Pursuant to Article 41A(4) of the Regulatory Law, "financial product" in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean:

(a) an Investment;

(b) a Credit Facility;

(c) a Deposit;

(d) a Profit Sharing Investment Account;

(e) a Contract of Insurance;

(f) a Crowdfunding Loan Agreement;

(g) a right under an Employee Money Purchase Scheme;

(h) a right or interest in a pension, superannuation, retirement or gratuity scheme or arrangement, or a broadly similar scheme or arrangement; ~~or~~

(i) a Token, whether or not it is an Investment, which is held out or referred to in a relevant communication as an 'investment token', 'security token', 'derivative token' or using any other name that suggests or implies that it is an Investment or a particular type of Investment~~.~~; or

(j) a Crypto Token.

Guidance

Examples of other names that, when used in any marketing material or other Financial Promotion, might suggest or imply that a Token is an Investment under Rule 3.3.1(b), include terms such as 'share token', 'bond token', 'futures token' or 'option token'.

3.4 Scope of the Financial Promotions Prohibition

3.4.1 (1) A Person shall not, subject to (2) and (3), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.

(2) A Representative Office may make a Financial Promotion in or from the DIFC only in relation to a financial service or financial product offered:

(a) in a jurisdiction other than the DIFC; and

(b) by a related party (as defined in Rule 2.26.1(3)) of the Representative Office.

(3) A Person other than an Authorised Person may make a Financial Promotion in or from the DIFC if, and only to the extent that, the Person:

(a) is licensed and supervised by a Financial Services Regulator in the UAE;

(b) is a Recognised Body or External Fund Manager;

(c) is a Reporting Entity and makes a Financial Promotion in or from the DIFC exclusively for the purpose of discharging its mandatory disclosure requirements; or

(d) makes an exempt Financial Promotion as specified in (4).

(4) For the purposes of (3)(d), a communication is an "exempt Financial Promotion" if it is:

(a) approved by an Authorised Firm other than a Representative Office;

(b) approved by a Representative Office and it is a communication relating to a financial service or financial product offered by a related party (as defined in Rule 2.26.1(3)) of the Representative Office;

(c) directed at and capable of acceptance exclusively by a Person who appears on reasonable grounds to be a Professional Client of the type specified in COB Rule 2.3.4;

(d) made to a Person in the DIFC (the "recipient") as a result of an unsolicited request by the recipient to receive the Financial Promotion;

(e) made or issued by or on behalf of a government or non-commercial government entity; or

(f) made in the DIFC by a Person in the course of providing legal or accountancy services and may reasonably be regarded as incidental to and a necessary part of the provision of such services.

Guidance

If a Person proposes to conduct Financial Promotions in or from the DIFC other than as permitted under (3) and (4), that Person should consider obtaining an appropriate Licence.

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3A. CRYPTO TOKEN REQUIREMENTS

Guidance

1. A Crypto Token is defined in section A2.5 of Appendix 2 of these Rules.
2. Under chapter 2 only certain Financial Services directly apply to Crypto Tokens: Dealing in Investments as Principal; Dealing in Investments as Agent; Arranging Deals in Investments; Managing Assets; Advising on Financial Products; Providing Custody; Arranging Custody; Operating an Exchange; Operating a Clearing House and Operating a Multilateral Trading Facility. However, other Financial Services may indirectly relate to a Crypto Token. For example, a Fund Manager may manage a Collective Investment Fund that invests in a Crypto Token, or a Money Services Provider may use a Crypto Token in limited circumstances (see Rule 3A.2.5).
3. Under chapter 2A a Crypto Token is a Financial Product to which the general prohibitions against misconduct in Article 41B of the Regulatory Law apply.
4. Chapter 3 relating to Financial Promotions applies to Crypto Tokens.
5. Other parts of GEN will also apply to Financial Services related to Crypto Tokens.
6. This chapter sets out several requirements relating to Crypto Tokens that apply across different Financial Services and activities (e.g. Financial Promotions and Offers to the Public).

3A.1 Definitions

3A.1.1 In this chapter:

(a) "Accepted Crypto Token" means a Crypto Token which the DFSA has approved under section 3A.3;

(b) "Algorithmic Token" means a Crypto Token which uses, or purports to use, an algorithm to increase or decrease the supply of Crypto Tokens in order to stabilise its price or reduce volatility in its price;

(c) "Privacy Device" means any technology, Digital Wallet or other mechanism or device that is used, or is intended to be used, to hide, anonymise, obscure or prevent the tracing of any of the following information:

(i) a Crypto Token transaction;
(ii) the identity of the holder of a Crypto Token;

(iii) the cryptographic key associated with a person;
(iv) the identity of parties to a Crypto Token transaction;
(v) the value of a Crypto Token transaction; or
(vi) the beneficial owner of a Crypto Token;

(d) "Privacy Token" means a Crypto Token that is used, or is intended to be used, to hide, anonymise, obscure or prevent the tracing of any of the information referred to in (c)(i) to (vi).

3A.2 Specific Prohibitions relating to Crypto Tokens

Only Accepted Crypto Tokens to be used in the DIFC

3A.2.1 A Person must not carry on any of the following activities in or from the DIFC in relation to a Crypto Token unless it is an Accepted Crypto Token:

(a) carry on a Financial Service relating to the Crypto Token;
(b) make or approve a Financial Promotion relating to the Crypto Token;
(c) Offer to the Public the Crypto Token;
(d) carry on an activity referred to in (a), (b) or (c) in relation to a Fund that invests in the Crypto Token; or
(e) carry on an activity referred to in (a), (b) or (c) in respect of a Derivative or instrument relating to the Crypto Token.

Guidance

Rule 3A.2.1 prohibits activities from being carried on in relation to a Crypto Token unless the Crypto Token is an Accepted Crypto Token i.e. a Crypto Token the DFSA has approved as being suitable for use in the DIFC. Section 3A.3 sets out the procedures for applying for a Crypto Token to be an Accepted Crypto Token and the criteria that must be met for the DFSA to approve a Crypto Token.

Use of Privacy Tokens and Devices prohibited

3A.2.2 A Person must not in or from the DIFC;

(a) carry on a Financial Service relating to a Privacy Token or that involves the use of a Privacy Device;
(b) make or approve a Financial Promotion relating to a Privacy Token; or
(c) Offer to the Public a Privacy Token.

Guidance

Privacy Tokens and Privacy Devices are typically used for two main purposes: to facilitate anonymity and to prevent the tracing of transactions. Anonymity hides the identity of a holder of a Crypto Token or the identity of two parties to a transaction on the blockchain, while non-traceability makes it difficult or impossible for third parties to follow the trail of a series of transactions. The use of Privacy Tokens or Privacy Devices is prohibited as they can facilitate money laundering, market abuse, fraud or other financial crime.

Use of Algorithmic Tokens prohibited

3A.2.3 A Person must not in or from the DIFC:

(a) carry on a Financial Service relating to an Algorithmic Token;
(b) make or approve a Financial Promotion relating to an Algorithmic Token; or
(c) Offer to the Public an Algorithmic Token.

Guidance

Rule 3A.2.3 prohibits activities in the DIFC relating to Algorithmic Tokens i.e. Crypto Tokens that use an algorithm to increase or decrease the supply of the Crypto Token in order to stabilise their price or reduce volatility. This is because the functioning of these algorithms is often not transparent to users, markets or regulators. The lack of transparency makes it difficult for investors to make informed decisions about the Crypto Token. In addition, attempts to stabilise the price of a Crypto Token (or other Investment) by this means will generally be contrary to the market manipulation provisions in the Markets Law, subject to limited exceptions.

Regulated and unregulated business not to be carried on together

3A.2.4 An Authorised Person must not provide any service or carry on any activity related to an Excluded Token, except safeguarding and administering an Excluded Token for another person.

Guidance

Rule 3A.2.4 generally prohibits Authorised Persons (i.e. Persons that are authorised under a Licence to provide Financial Services) from also carrying on unregulated business relating to Excluded Tokens. The only exception is that an Authorised Person may act as a custodian of an Excluded Token. The prohibition is intended to avoid any misconception by users of a service that regulatory requirements for Financial Services apply to the unregulated part of the business.

Money Service Providers restricted from carrying on crypto activities

3A.2.5 (1) A Money Services Provider must not:

(a) except as provided in (2), use a Crypto Token in connection with providing Money Services; or
(b) carry on any other Financial Service relating to a Crypto Token.

(2) A Money Service Provider may use a Fiat Crypto Token in connection with providing Money Services if the Fiat Crypto Token is:

(a) an Accepted Crypto Token;

(b) used only for the purposes of Money Transmission or executing a Payment Transaction; and

(c) sent, held or received in the name of the Money Services Provider and not in the Client's name.

(3) In (2), a "Fiat Crypto Token" means an Asset Referenced Token the value of which is determined by reference to a fiat currency.

Guidance

1. Under Rule 3A.2.5, a Money Services Provider is generally prohibited from using Crypto Tokens in connection with its Money Services business. The only exception is that a Money Services Provider may use a Fiat Crypto Token (i.e. a fiat stablecoin) for specified purposes. A Money Services provider is also prohibited from carrying on other Financial Services relating to Crypto Tokens, for example, it cannot deal as principal or agent or arrange transactions relating to Crypto Tokens.

2. A Money Services Provider is not however prohibited from using Distributed Ledger Technology or other similar technology as the technological platform for its Money Service operations. For example, an Authorised firm may use a private blockchain offered by a reputable technology provider to facilitate payment transactions and money transmission initiated by their clients. In that case, the use of blockchain and any tokens, where applicable, must serve the sole purpose of facilitating the technology side of the business and supporting the back-office operations.

3. Firms should take due care that their clients are not exposed to the risks arising from the use of blockchain. For example, that Clients are not sending, holding, or receiving any Tokens under their name, and that the client agreement is limited to using fiat currency. Depending on the arrangement, the use of blockchain may be an outsourcing of technology to a third-party service provider. The Authorised Firm will then be required to inform the DFSA of the material outsourcing arrangement and comply with the relevant provisions in GEN 5.3.21 and 5.3.22.

3A.3 Applying for a Crypto Token to be an Accepted Crypto Token

3A.3.1 Any of the following Persons may apply to the DFSA for a Crypto Token to be approved for use in the DIFC:

(a) an Authorised Person or an applicant for a Licence to be an Authorised Person; or

(b) the issuer or developer of the Crypto Token.

3A.3.2 An applicant must apply using the appropriate form specified by the DFSA.

3A.3.3 (1) The DFSA may approve a Crypto Token if it satisfied that the Crypto Token is suitable for use in the DIFC.

(2) In satisfying itself that a Crypto Token is suitable for use in the DIFC, the DFSA may consider factors including the following:

(a) the regulatory status of the Crypto Token in other jurisdictions;

(b) the adequacy of governance arrangements, including the experience and reputation of key persons behind the Crypto Token;

(c) the size, liquidity and volatility of the market for the Crypto Token;

(d) whether there is sufficient transparency relating to the Crypto Token, including its technology, protocols, key persons and significant holders;

(e) the adequacy and suitability of the technology used in connection with the Crypto Token;

(f) whether adequate systems and controls are in place to ensure the Crypto Token is not used for money laundering or other financial crime;

(g) whether risks associated with the Crypto Token will be adequately managed; and

(h) in the case of an Asset Referenced Token, in addition to the above factors, that:

(i) sufficient assets back the Token and there are adequate arrangements to protect the assets;

(ii) a person is clearly responsible and liable to investors for the Token; and

(iii) the Token will principally be used in the DIFC in connection with Financial Services.

Guidance

1. Matters the DFSA may consider under Rule 3A.3.3(2)(a) and (b) include:

   (a) the jurisdiction in which the Token was established, where its issuer, founder, developer and other key persons are located and where the technology is located;

   (b) the regulatory status of the Token in the jurisdiction where it was established;

   (c) any history of regulatory examination of the Token in other jurisdictions and its status as a green listed or regulated token in other jurisdictions; and

   (d) whether there are adequate governance arrangements and systems and controls to manage governance risks and conflicts of interest.

2. Matters the DFSA may consider under Rule 3A.3.3(2)(c) include:

   (a) the maturity of the market for the Token, the number of years it has been traded and its trading history across different service providers, markets and jurisdictions;

   (b) the total supply of Tokens issued, the market capitalisation of Tokens traded, pre-determined schedules for issuing or burning Tokens and any inflationary or deflationary mechanisms used; and

   (c) factors affecting supply and demand for the Token and transparency about significant events affecting price, volatility levels and returns; and

   (d) the market liquidity of the Token, daily and weekly trading volumes and changes in the liquidity profile in response to market stress.

3. Matters the DFSA may consider under Rule 3A.3.3(2)(d) include:

   (a) the adequacy of public information about the issuer, founders, developers and other key persons behind the project;

   (b) the adequacy of public information about persons who have significant holdings of the Crypto Token;

(c) whether whitepapers set out clearly the purpose, use case and development path for the Crypto Token and how funds raised by offerings have been or will be used;

(d) whether there is public access to the blockchain protocol and the consensus mechanism, publication of smart contract or technology audit reports and records of live updates to the blockchain; and

(e) whether persons associated with private and public keys can be identified, Token balances and transactions can be traced and devices to create anonymity are not used.

4. Matters the DFSA may consider under Rule 3A.3.3(2)(e) include:

(a) the type of blockchain, access permissions and rights to amend the protocol and consensus mechanisms used and the associated environmental costs;

(b) smart contract availability, endogenous computational capacity, native token features and the ability to host piggyback tokens on the blockchain;

(c) interoperability of the Crypto Token across various blockchains, limitations of transaction validation times and costs on the native blockchain; and

(d) technological solutions to collect user information and monitor and maintain records of transactions and to protect privacy of user information.

5. Matters the DFSA may consider under Rule 3A.3.3(2)(f) include whether there is a demonstrated record of compliance with anti-money laundering, counter-terrorist finance and sanctions requirements or alternatively evidence of use of the Crypto Token for the purposes of money laundering, terrorist financing, sanctions non-compliance or other financial crime.

6. Matters the DFSA may consider under Rule 3A.3.3(2)(g) include:

(a) cybersecurity risks and mitigation controls, any history of hacks and thefts involving the token, near miss events and losses from cyber security failures;

(b) custody risks, systems and controls relating to wallet management and the track record of users being compensated for any operational failures in custody management;

(c) settlement risk and mitigation measures; and

(d) operational risk and defence mechanisms, systems and controls to prevent detect and address faulty codes, quality assurance process and risk reaction systems.

7. Matters the DFSA may consider under Rule 3A.3.3(2)(h) include:

(a) the ability of the Crypto Token to maintain a stable price by reference to a fiat currency or other assets, whether price volatility can generally be maintained within ten basis points from the peg and the absence of any market risk associated with the Crypto Token;

(b) reserves are held in segregated accounts with properly regulated banks or custodians in jurisdictions that meet FATF standards;

(c) reserves consisting of cash, include not more than 10% in high quality liquid assets other than cash, and the reserves are denominated in the reference currency;

(d) reserves are greater than the volume of Tokens in circulation and this is confirmed by a reputable external auditor through detailed reports published at a reasonable frequency;

(e) the issuer or persons behind the Token are clearly responsible to honour a user's claim against the issuer; and

(f) the Token cannot be used in any way to suggest it becoming an alternative to a currency or to pay for goods or services other than financial services provided to the user.

3A.3.4 (1) The DFSA may refuse an application to approve a Crypto Token if it is not satisfied that the Crypto Token is suitable for use in the DIFC.

(2) The procedures in Schedule 3 apply to a decision of the DFSA under (1) and the DFSA must give the applicant an opportunity to make representations under those procedures.

Guidance

The procedures in Schedule 3 of the Regulatory Law (providing for an affected person to be given an opportunity to make representations) apply to a DFSA decision to refuse an application for a Crypto Token to be an Accepted Crypto Token. However, no right is given under the Rules for an applicant to refer the final decision to the Financial Markets Tribunal.

3A.3.5 (1) The DFSA may revoke the Accepted Crypto Token status of a Crypto Token if it is no longer satisfied that the Crypto Token is suitable for use in the DIFC.

(2) The procedures in Schedule 3 apply to a decision of the DFSA under (1) and in such a case the DFSA must give the following Persons an opportunity to make representations under those procedures:

(a) the Person who applied for the Crypto Token to be an Accepted Crypto Token; and

(b) each Authorised Person that Operates an Exchange, Clearing House or MTF relating to the Crypto Token.

Guidance

The procedures in Schedule 3 of the Regulatory Law apply to a DFSA decision to revoke the Accepted Crypto Token status of a Crypto Token. Rule 3A.3.5 specifies the Persons to whom an opportunity to make representations is to be given in such a case. However, there is no right under the Rules for the Person to refer the final decision to the Financial Markets Tribunal.

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7 AUTHORISATION

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7.2 Application for a Licence

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7.2.2 (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2), (4), (5), ~~and~~ (6) and (7), is:

(a) a Body Corporate; or

(b) a Partnership;

and who is not an Authorised Market Institution.

(2) If the application is in respect of either or both of the following Financial Services:

(a) Effecting Contracts of Insurance; or

(b) Carrying Out Contracts of Insurance,

the applicant must be a Body Corporate.

(3) Deleted.

(4) If the application is in respect of the Financial Service of Managing a Collective Investment Fund or Acting as the Trustee of a Fund, the applicant must be a Body Corporate.

(5) If the application is for the Financial Service of Operating or Acting as the Administrator of an Employee Money Purchase Scheme, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.

(6) If the application is for Managing a Venture Capital Fund, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.

(7) If the application is for a Financial Service relating to a Crypto Token, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.

Guidance

(1) Section 2.2.8 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment under Rule 7.2.2.

(2) A Body Corporate incorporated under the DIFC Companies Law can be a Private Company or a Public Company.

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11 SUPERVISION

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11.10 Notifications

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Significant events affecting Crypto Tokens

11.10.21 (1) This Rule applies to an Authorised Person that carries on a Financial Service relating to a Crypto Token.

(2) The Authorised Person must notify the DFSA immediately if it becomes aware of any significant event or development that reasonably suggests that the Crypto Token no longer meets the criteria referred to in Rule 3A.3.3 for it to be an Accepted Crypto Token.

(3) A notification is not required under (2) if the Authorised Person reasonably believes that the information is already generally available to the public.

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11.13 Imposing Restrictions on an Authorised Person's business or on an Authorised Person dealing with property

11.13.1 The DFSA has the power to impose a prohibition or requirement on an Authorised Person in relation to the Authorised Person's business or in relation to the Authorised Person's dealing with property under Article 75 or Article 76 in circumstances where:

(a) there is a reasonable likelihood that the Authorised Person will contravene a requirement of any legislation applicable in the DIFC;

(b) the Authorised Person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated;

(c) there is loss, risk of loss, or other adverse effect on the Authorised Person's customers;

(d) an investigation is being carried out in relation to an act or omission by the Authorised Person that constitutes or may constitute a contravention of any applicable law or Rule;

(e) an enforcement action has commenced against the Authorised Person for a contravention of any applicable law or Rule;

(f) civil proceedings have commenced against the Authorised Person;

(g) the Authorised Person or any Employee of the Authorised Person may be or has been engaged in market abuse;

(h) the Authorised Person is subject to a merger;

(i) a meeting has been called to consider a resolution for the winding up of the Authorised Person;

(j) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country for the Authorised Person;

(k) there is a notification to dissolve the Authorised Person or strike it from the DIFC register of Companies or the comparable register in another jurisdiction;

(l) there is information to suggest that the Authorised Person is involved in financial crime;

(m) the DFSA considers there are reasonable grounds to require the suspension or removal from trading of an Investment or Crypto Token traded on any facility operated by an Authorised Person; or

(n) the DFSA considers that this prohibition or requirement is necessary to ensure customers, Authorised Persons or the financial system are not adversely affected.

APP2 INVESTMENTS AND CRYPTO TOKENS

A2.1 General definition of investments

Investments

A2.1.1 (1) An Investment is, subject to (3), either:

(a) a Security; or

(b) a Derivative,

as defined in Rule A2.1.2 or Rule A2.1.3.

(2) Such a Security or Derivative includes:

(a) a right or interest in the relevant Security or Derivative;

(b) the Security or Derivative in the form of a cryptographically secured digital representation of rights and obligations that is issued, transferred and stored using DLT or other similar technology;

(c) a cryptographically secured digital representation of rights and obligations that is issued, transferred and stored using DLT or other similar technology and:

(i) confers rights and obligations that are substantially similar in nature to those conferred by a Security or Derivative; or

(ii) has a substantially similar purpose or effect to a Security or Derivative; and

(d) any instrument declared as a Security or Derivative pursuant to Rule A2.4.1(1).

(3) In these Rules, an Investment Token means an instrument specified in (2)(b) or (c).

(4) Where a Rule provides that a Security or Derivative has a different classification for a specified purpose, it shall have that effect for that specified purpose and no other purpose.

Guidance

1. A Token is defined in GLO as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using DLT or other similar technology.

2. Rules A2.1.1(2)(b) and (c) specify when a Token will be an Investment. A Token that is an Investment may be either a Security or a Derivative and will be treated under the Rules as being the particular type or particular types of Security or Derivative to which it is substantially similar in nature. A Token that is an Investment is defined in these Rules as an Investment Token.

3. An Investment Token that is the same as, or substantially similar in nature, purpose or effect to, a Share, Debenture, Warrant, Certificate, Unit or Structured Product is defined in GLO as a "Security Token". An Investment Token that is the same as, or substantially similar in nature, purpose or effect to, an Option or a Future is defined in GLO as a "Derivative Token".

4. GEN App 6 sets out further Guidance relating to whether a particular Token is an Investment Token.

5. An example of the application of Rule A2.1.1(4) is Rule A2.1.2(2), where a Derivative is treated as a Security for the purposes of the requirements in PIB.

Security

A2.1.2 (1) For the purposes of Rule A2.1.1(1)(a), a Security is:

(a) a Share;

(b) a Debenture;

(c) a Warrant;

(d) a Certificate;

(e) a Unit; or

(f) a Structured Product.

(2) For the purposes of the requirements in PIB, each Derivative specified in Rule A2.1.3 is to be treated as a Security.

Derivative

A2.1.3 For the purposes of Rule A2.1.1(1)(b), a Derivative is:

(a) an Option; or

(b) a Future.

A2.2 Definitions of specific securities

A2.2.1 For the purposes of Rule A2.1.2:

Shares

(a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

Debentures

(b) a Debenture is an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:

(i) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(ii) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);

(iii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; and

(iv) a Contract of Insurance;

a Crowdfunding Loan Agreement;

Guidance

1. A Debenture may include a bond, debenture stock, loan stock or note. Certain Islamic products ("Sukuk") structured as a debt instrument can also fall within this definition.

2. If the interest or financial return component on a debt instrument is to be calculated by reference to fluctuations of an external factor such as an index,

exchange rate or interest rate, that does not prevent such an instrument being characterised as a Debenture.

Warrants

(c) a Warrant is an instrument that confers on the holder a right entitling the holder to acquire an unissued Share, Debenture or Unit;

Guidance

A Warrant confers on the holder an entitlement (but not an obligation) to acquire an unissued Share, Debenture or Unit, thereby distinguishing it from a call Option which entitles the holder, upon exercise, to acquire an already issued (i.e. existing) Security.

Certificates

(d) a Certificate is an instrument:

(i) which confers on the holder contractual or property rights to or in respect of a Share, Debenture, Unit or Warrant held by a Person; and

(ii) the transfer of which may be effected by the holder without the consent of that other Person;

but excludes rights under an Option;

Guidance

Certificates confer rights over existing Shares, Debentures, Units or Warrants held by a Person and include receipts, such as Global Depository Receipts (i.e. GDRs).

Units

(e) a Unit is a unit in or a share representing the rights or interests of a Unitholder in a Fund; and

Structured Products

(f) a Structured Product is an instrument comprising rights under a contract where:

(i) the gain or loss of each party to the contract is ultimately determined by reference to the fluctuations in the value or price of property of any description, an index, interest rate, exchange rate or a combination of any of these as specified for that purpose in the contract ("the underlying factor") and is not leveraged upon such fluctuations;

(ii) the gain or loss of each party is wholly settled by cash or set-off between the parties;

(iii) each party is not exposed to any contingent liabilities to any other counterparty; and

(iv) there is readily available public information in relation to the underlying factor;

but excludes any rights under an instrument:

(v) where one or more of the parties takes delivery of any property to which the contract relates;

(vi) which is a Debenture; or

(vii) which is a Contract of Insurance.

Guidance

1. Instruments previously known as Designated Investments are now included within the definition of Structured Products.
2. The reference in Rule A2.2.1(f)(i) to "property of any description" covers tangible or intangible property, including Securities.

A2.3 Definitions of specific derivatives

A2.3.1 For the purposes of Rule A2.1.3:

Options

(a) An Option is an instrument that confers on the holder, upon exercise, rights of the kind referred to in any of the following:

(i) a right to acquire or dispose of:

(A) a Security (other than a Warrant), Crypto Token or contractually based investment;

(B) currency of any country or territory;

(C) a commodity of any kind;

(ii) a right to receive a cash settlement, the value of which is determined by reference to:

(A) the value or price of an index, interest rate or exchange rate; or

(B) any other rate or variable; or

(iii) a right to acquire or dispose of another Option under (i) or (ii).

Guidance

1. For example, a call Option confers on the holder, upon exercise, a right but not an obligation to acquire an issued (i.e. existing) Security, thereby distinguishing it from a Warrant which entitles the holder, upon exercise, to acquire an unissued Share, Debenture or Unit.
2. Options over a 'contractually based investment' referred to in Rule A2.3.1(a)(i)(A) covers Options over Futures.
3. Cash settled Options such as Index Options are covered under Rule A2.3.1(a)(ii). Other cash settled Options that are covered under this Rule include instruments which confer rights determined by reference to climatic variables, inflation or other official economic statistics, freight rates or emission allowances.
4. Options over Options are covered under A2.3.1(a)(iii).

Futures

(b) a Future is an instrument comprising rights under a contract:

(i) for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made, and that contract:

(A) is made or traded on a regulated exchange;

(B) is made or traded on terms that are similar to those made or traded on a regulated exchange; or

(C) would, on reasonable grounds, be regarded as made for investment and not for commercial purposes; or

(ii) where the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in:

(A) the value or price of property of any description; or

(B) an index, interest rate, any combination of these, exchange rate or other factor designated for that purpose in the contract; and

which is wholly settled by cash or set-off between the parties but excludes:

(C) rights under a contract where one or more of the parties takes delivery of any property to which the contract relates;

(D) a contract under which money is received by way of deposit or an acknowledgement of a debt on terms that any return to be paid on the sum deposited or received will be calculated by reference to an index, interest rate, exchange rate or any combination of these or other factors; or

(E) a Contract of Insurance.

Guidance

1. An over the counter (OTC) contract may qualify as a Future under Rule A2.3.1(b)(i)(C) if it can reasonably be regarded as being made for investment and not for commercial purposes. Some of the indicative factors that such a contract is reasonably likely to be made for commercial rather than investment purposes include the following:

   a. a party to the contract is the producer or a user of the underlying commodity;

   b. the delivery of the underlying commodity is intended to take place within 7 days of the date of the contract;

   c. there is no provision made in the contract for margin arrangements; and

   d. the terms of the contract are not standardised terms.

2. A contract under Rule A2.3.1(b)(i) can provide for the physical delivery of the underlying commodity or property. Further, the price agreed under such a contract can be by reference to an underlying factor, such as by reference to an index or a spot price on a given date.

3. Contracts for differences (CFDs) fall under the definition in A2.3.1(b)(ii) and may include credit default swaps (CDSs) and forward rate agreements (FRAs). More exotic types of Derivative contracts may also fall within the definition in A2.3.1(b)(ii). These can include weather or electricity derivatives where the underlying factor by reference to which the parties' entitlements are calculated can be the number of days in a period in which the temperature would reach below or above a specified level.

4. The reference to "property" in Rule A2.3.1(b) will include a Crypto Token, therefore the definition covers a Future relating to a Crypto Token.

A2.4 Financial instrument declared as an investment

A2.4.1 (1) The DFSA may, subject to (5), declare by written notice any financial instrument or class of financial instruments to be a particular type of an existing Security or Derivative as defined in these Rules or a new type of a Security or Derivative. It may do so on such terms and conditions as it considers appropriate.

(2) The DFSA may exercise the power under (1) either upon written application made by a Person or on its own initiative.

(3) Without limiting the generality of the matters that the DFSA may consider when exercising its power under (1), it must consider the following factors:

(a) the economic effect of the financial instrument or class of financial instruments;

(b) the class of potential investors to whom the financial instrument is intended to be marketed;

(c) the treatment of similar financial instruments for regulatory purposes in other jurisdictions; and

(d) the possible impact of such a declaration on any person issuing or marketing such a financial instrument.

(4) A Person who makes an application for a declaration under (1) must address, as far as practicable, the factors specified in (3).

(5) The DFSA must publish any proposed declaration under (1) for public consultation for at least 30 days from the date of publication, except where:

(a) it declares a financial instrument to be a particular type of an existing Security or Derivative;

(b) it determines that any delay likely to result from public consultation is prejudicial to the interests of the DIFC; or

(c) it determines that there is a commercial exigency that warrants such a declaration being made without any, or shorter than 30 day, public consultation.

Guidance

1. The terms and conditions that may be imposed on a declaration made by the DFSA under Rule A2.4.1(1) can include who should be the Reporting Entity and the type of disclosure requirements that should apply to that Reporting Entity.

2. If any issuer of a new financial instrument has any doubt as to whether that instrument can be included in an Official List of Securities as a particular type of a Security, that Person should first raise those issues with the relevant Authorised Market Institution before making an application to the DFSA for the exercise of the declaration power under this Rule. The DFSA has a discrete power to object to any proposed inclusion of a Security in an Official List of Securities of an Authorised Market Institution (see Article 34(1) of the Markets Law 2012).

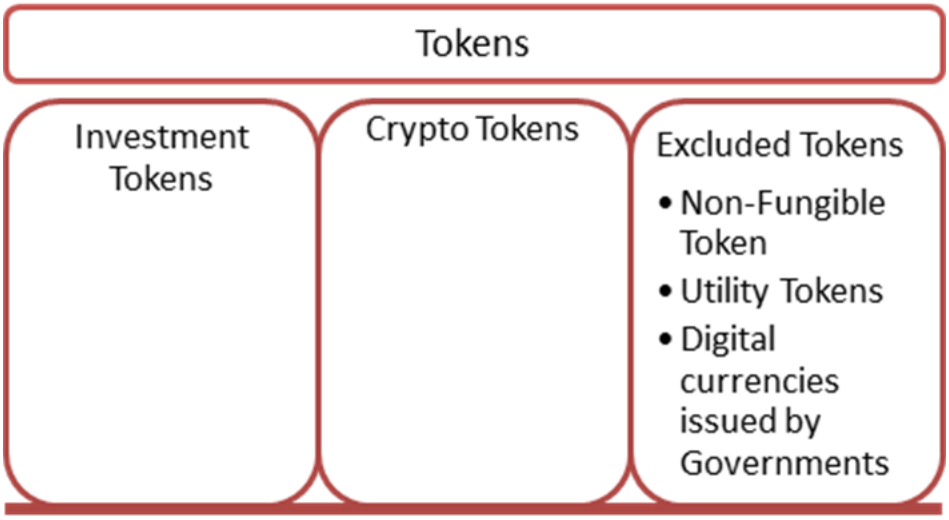
A2.5 Definitions relating to Crypto Tokens

Guidance

1. This section defines when a Token is a "Crypto Token" or an "Excluded Token". A Token is defined in GLO as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using DLT or other similar technology.

2. In summary, a Token is a Crypto Token if it is used, or intended to be used, as a medium of exchange or for payment or investment purposes and it is not an Investment Token or other Investment (see Rule A2.1.1) or an Excluded Token (see the definition in Rule 2.5.2 below).

3. The following diagram illustrates the different classification of Tokens:



Crypto Token

A2.5.1 (1) A Crypto Token is a Token that is used, or is intended to be used, as a medium of exchange or for payment or investment purposes but excludes:

(a) an Investment Token or any other type of Investment; or

(b) an Excluded Token.

(2) A Crypto Token under (1) includes a right or interest in the relevant Crypto Token.

Guidance

1. The most common types of a Crypto Token are cryptocurrencies and Asset Referenced Tokens (commonly referred to as 'stablecoins). Cryptocurrencies do not usually provide the holder with a bundle of rights as are commonly attached to Investments. More generally, cryptocurrencies serve as the virtual currency of their native blockchain, where transaction validation takes place through various forms of decentralised consensus mechanisms.

2. It is not uncommon for certain cryptocurrencies to provide the holder with rights of early access or discounts on the native blockchain (for example, where the cryptocurrency is the virtual currency on the native crypto exchange). However, these limited rights do not change the nature of the cryptocurrency as these rights have limited impact on the nature and value of the Token.

3. Stablecoins, as opposed to other cryptocurrencies, aim to maintain a stable price through a direct one-to-one peg against a fiat currency (usually, the US dollar) or by pegging their value to other assets, such as commodities or other cryptocurrencies. Stablecoins usually claim to have a reserve of assets to back their peg. These assets are purchased using the funds provided by purchasers of the stablecoins. Stablecoins are often used to enter and exit blockchain-based trading systems, where the use of fiat currency is limited, as well as to make payments and transfers between users.

4. Derivatives such as futures contracts or options may also be issued relating to cryptocurrencies. Such a futures contract or an option will be a Derivative as defined in GEN Rule A2.1.3 and therefore an Investment under GEN Rule A2.1.1, rather than a Crypto Token as defined in this section. Similarly, if the arrangements relating to a Token constitute a Collective Investment Fund, then the Token will be a Unit and therefore a Security, rather than a Crypto Token.

Excluded Token

A2.5.2 A Token is an Excluded Token if is:

(a) a Non-Fungible Token (NFT);

(b) a Utility Token; or

(c) a digital currency issued by any government, government agency, central bank or other monetary authority.

Non-Fungible Token (NFT)

A2.5.3 A Token is a Non-Fungible Token (NFT) if it:

(a) is unique and not fungible with any other Token.

(b) relates to an identified asset; and

(c) is used to prove the ownership or provenance of the asset.

Guidance

A Non-Fungible Token is a Token that relates to an identified asset such as art, music, a collectable item, or intellectual property relating to an object. To fall within the definition in Rule A2.5.3 the Token must be unique and not fungible with another Token. Therefore, if a particular type of Token is issued to multiple persons or relates to several different assets, it is unlikely to qualify as a Non-Fungible Token under Rule A2.5.3 and therefore will not be an Excluded Token under Rule 2.5.2. If it is not a Non-Fungible Token, as defined, it is likely to fall within the definition of a Crypto Token or may, depending on the arrangements, constitute a Collective Investment Fund (in which case the Token will be a Unit of that Fund).

Utility Token

A2.5.4 A Token is a Utility Token if:

(a) it can be used by the holder only to pay for, receive a discount on, or access a product or service (whether current or proposed); and

(b) the product or service referred to in (a) is provided by the issuer of the Token or of another entity in the issuer's Group.

Guidance

A Token will be a Utility Token only if it can be used by the holder to pay for, receive a discount on, or access a product or service (whether current or proposed), and the product or service is provided by the issuer of the Token or of another entity in the issuer's group. If the Token can also be used for other purposes e.g. making other types of payments, its hybrid nature is likely to result in it falling outside the scope of the above definition.

Asset Referenced Token

A2.5.5 A Crypto Token is an Asset Referenced Token if, to stabilise its price or reduce volatility in its price, the value of the Crypto Token purports to be determined, in whole or in part, by reference to a fiat currency, Crypto Token, commodity or other asset or any combination of assets.

Guidance

1. An Asset Referenced Token (also called a 'stablecoin') is a Crypto Token that purports to be backed by an asset or a collection of assets, the value of which is used to determine the value of the Crypto Token. The asset will typically be a fiat currency, although it may also be another cryptocurrency, a commodity or another asset or basket of assets. The use of assets to back the Crypto Token is intended to stabilise its price or reduce volatility in its price.

2. An alternative mechanism for stabilising the price of a Crypto Token is the use of an algorithm, which increases or decreases the supply of the of the Crypto Token in response to changes in demand for the Crypto Token. GEN Rule 3A.2.3 prohibits the use of such a Token in the DIFC i.e. a Crypto Token which uses, or purports to use, an algorithm to stabilise its price. This is because of the general lack of transparency about how such algorithms function.

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APP6 INVESTMENT TOKENS

Guidance

Purpose of this Guidance

1. A Person who carries on certain activities relating to Investment Tokens, in or from the DIFC, will require DFSA approval or authorisation, or will need to comply with applicable requirements in DFSA administered laws or Rules. Those activities may include:
   a. carrying on a Financial Service (as defined in GEN section 2.2.) which relates to an Investment Token (such as operating a facility on which Investment Tokens are traded or cleared, or giving advice on, or arranging deals in such Investment Tokens);
   b. making a Financial Promotion relating to an Investment Token;
   c. making an Offer to the Public of an Investment Token; or
   d. applying for a Security Token to be admitted to the Official List of Securities.

2. A Person proposing to carry out such activities relating to a Token, is responsible for analysing and determining whether a Token is an Investment Token and, if so, which type or types of Investment it constitutes. The Guidance in this Appendix is intended to assist a Person conducting such an analysis by indicating how the DFSA will approach that question.

3. A Person who wishes to obtain an approval or authorisation from the DFSA to conduct activities which relate to Investment Tokens, will need to include in its application sufficient information to demonstrate how those Investment Tokens meet the definition of one or more specific Investments, taking into account the Guidance in this Appendix.

What is a Token?

4. A Token is defined in GLO as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using DLT or other similar technology.

What is an Investment Token?

5. An Investment Token is a Token which falls within the definition of one or more types of Investment. An Investment is defined in Rule A2.1.1(1) as a Security or a Derivative. Such a Security or Derivative includes a Token which falls within paragraph (b) or (c) of Rule A2.1.1(2).

6. A Token will be an Investment Token under Rule A2.1.1(2)(b) where it falls within the definition of a specific type of Security in Rule A2.2.1, or the definition of a specific type of Derivative in Rule A2.3.1, or falls within more than one of those definitions.

7. A Token will also be an Investment Token under Rule A2.1.1(2)(c) if it does not fall within the definition of a specific Security or Derivative, but confers rights and obligations that are substantially similar in nature to those conferred by one or more specific Securities or Derivatives, or has a substantially similar purpose or effect to one or more specific Securities or Derivatives.

8. An Investment Token will therefore, depending on the nature of the rights and obligations it confers, fall into one or more existing categories of Security or Derivative. The differentiating feature between a conventional Security or Derivative, on the one hand, and an Investment Token on the other, is that the latter confers rights on holders that are issued, stored and transferred using cryptography and DLT.

9. An Investment Token which confers rights and obligations that are substantially similar in nature to those conferred by one or more Securities, or has a substantially similar purpose or effect to one or more Securities, is defined as a Security Token. An Investment Token which confers rights and obligations that are substantially similar in nature to those conferred by one or more Derivatives, or has a substantially similar purpose or effect to one or more Derivatives, is defined as a Derivative Token.

10. An Investment Token may confer rights and obligations that go beyond those conferred by one specific Security or Derivative and doing so will not prevent it from falling within the definition of an Investment Token, or from falling within the relevant category of Security or Derivative. Where an Investment Token confers rights and obligations that are substantially similar in nature to those conferred by more than one specific Security or Derivative, it may fall within more than one existing category of Security or Derivative

(sometimes referred to as hybrid Investment Tokens) and be subject to the requirements under these Rules applicable to each of those categories.

When does a Token confer rights and obligations that are substantially similar in nature to those conferred by a specific Investment?

11. For a Token to confer rights and obligations that are substantially similar in nature to those conferred by a specific Security or Derivative, it should confer rights and obligations that give it most of the main characteristics of the relevant type of Security or Derivative. That is, it is not enough to confer part only of the rights and obligations that are characteristic of the relevant Security or Derivative, or to confer hybrid rights or interests that are not typical of either one type of Security or Derivative or another. As noted in paragraph 10 above, it is possible for an Investment Token to confer additional rights and obligations that go beyond those conferred by one specific Security or Derivative.

12. The DFSA considers that key factors to take into account when determining whether a Token is an Investment Token and, if so, which particular type (or types) of Security or Derivative it constitutes include:

    a. in substance, what rights and interests are given to holders of such a Token;

    b. who is required to meet the corresponding duties and obligations arising from the rights and interests referred to in (a);

    c. how such a Token may reasonably be viewed by investors;

    d. how the offer documents or other marketing material describe the Token (although this is not a conclusive indicator); and

    e. how such Tokens are generally classified in other jurisdictions.

13. The remainder of the Guidance in this Appendix sets out key examples of Investments that a Token might constitute.

When is an Investment Token a Share?

14. A Share is defined as a 'a share or stock in the share capital of any Body Corporate or unincorporated body but excluding a Unit', in GEN Rule A2.2.1(a). We consider a Token to be a Share if the holder has rights associated with ownership and/or control that are characteristic of a Share, such as:

a. the ability to share in profits, revenue or other benefits generated by the Body Corporate or unincorporated body (legal entity), for example, a right to a declared dividend of the legal entity;

b. a right to participate in the assets of the legal entity in its winding up; and

c. a right of control, such as the right to vote on significant matters relating to the management and operation of the business of the legal entity, to appoint or remove directors or senior managers or determine their remuneration, or to agree to a merger, or reconstruction or arrangement to satisfy creditors of the legal entity.

15. For a Token to be a Share we would generally expect the holder of that Token, as a person having a 'share in the share capital' of the legal entity, to have rights to participate in profits and benefits, assets in a winding up or voting rights, which are proportionate to the value of the share capital, represented by the tokens held or owned by the person. For example, if the legal entity has a share capital of $10 million, divided into Tokens of $100 each, each holder will have *pro rata* rights to distributions and voting rights, based on the number of tokens held.

16. Whether a Token is a Share will also depend on the operation of company and corporate law. It may be that even if a Token is labelled or called a share by the Issuer, as a matter of law this might not be possible or accurate (e.g. if the company law governing the Issuer specifies requirements for a Share that have not been met). This may not, however, prevent the Token from constituting another type of specified Investment nonetheless (such as a Certificate or Unit in a Fund, if, in substance, the rights and obligations conferred by the Token are similar to those conferred by a Certificate or Unit in a Fund).

17. While generally a right to participate in profits, assets or rights of control (voting on significant matters) go hand-in-hand, it is possible for rights to participate in profits and assets, without control, or *vice versa* to be conferred by a Share, and similarly, by an Investment Token that is considered a Share. An Investment Token that is considered a Share will also be a Security Token.

Example 1

18. A Token holder, A, has a right to receive a share of profits or revenue of Company B (a legal entity), to be distributed annually. A can also vote on matters relating to the governance and business direction of Company B. These rights are proportionate to the share of the capital represented by the Token held by A. A can also transfer the Token to another person, who will have the same rights as A by being the holder of that Token. This is a Security Token that confers rights and obligations that are substantially similar in nature to those conferred by a Share and will be considered to be a Share.

Example 2

19. A holds a Token in Company B which gives A the right to vote on matters relating to the governance and business of Company B, but no right to participate in the profits, or assets in a winding up, of Company B. This is a Security Token that confers rights and obligations substantially similar in nature to those characteristic of a director's Share, and will be considered to be such a Share.

Example 3

20. Company B issues a Token that is described in its white paper as being a Token other than an Investment Token (e.g. a 'pure utility Token'). The Token allows the holder to (i) access a product or service Company B is still developing, and (ii) gives a right to share in the profits of the company, proportionate to the number of Tokens held, once the product is launched. Such a Token confers rights and obligations substantially similar in nature to those conferred by a Share in the capital of Company B and is a Security Token that is considered to be a Share.

When is an Investment Token a Debenture?

21. A Debenture is an instrument creating or acknowledging indebtedness, whether accrued or not, but does not include certain instruments specified in Rule A2.2.1(b) (such as a cheque or a letter of credit).

22. A Token that creates or acknowledges indebtedness by representing money owed to the Token holder, but does not fall within the exclusions mentioned above, is considered a Debenture and constitutes both an Investment Token and a Security Token.

Example 1

23. Company B issues a Token to A, creating or acknowledging that Company B owes money to A (other than to defray any costs of goods or services bought by Company B from A). This instrument confers on A the right to the return of the money owed by Company B, together with any interest (and the corresponding obligation on Company B to pay to A the money owed, together with any interest). This is a Security Token and is considered a Debenture as it confers rights substantially similar in nature to those conferred by a Debenture.

Example 2

24. Company B issues a Token to A, acknowledging that Company B owes money to A. In addition to conferring a right to receive interest payments, the Token gives A the right, following a triggering event at a future point in time, to participate in the profits and assets

of Company B, and to exercise control of the company through voting rights. This is a Token that gives A substantially similar rights to those conferred by convertible debt, with corresponding obligations imposed on Company B. This is a Security Token that is considered a Debenture, until such time it is converted to a Share in the capital of Company B, at which point it becomes a Security Token that is considered a Share.

When is an Investment Token a Warrant?

25. A Warrant is an instrument that confers, on the holder, a right to acquire an unissued Share, Debenture or Unit in a Fund.

26. A Token that confers on the holder a right to acquire an unissued Share, Debenture or Unit will be an Investment Token that is considered a Warrant and therefore also a Security Token. This will be the case regardless of whether the unissued Share, Debenture or Warrant to be acquired by exercising those rights is a Security in its conventional form, or is itself a Security Token.

Example

27. Company B issues a Token to investors, which gives the holder a right (but not an obligation) to acquire a new Share or Debenture to be issued by Company B at a future point in time. This confers on the holder a right to have the new Share or Debenture issued, and the obligation on Company B to issue that Share or Warrant, which are substantially similar in nature to those conferred by a Warrant. The Token is therefore a Security Token that is considered a Warrant.

When is an Investment Token a Certificate?

28. A Certificate is an instrument which confers on the holder contractual or property rights over Shares, Debentures, Units or Warrants held by a Person, where the holder of the instrument can effect the transfer those rights without the consent of that Person. For example, the following is a typical example of a Certificate:

    a. B holds Shares, Debentures, Units or Warrants;

    b. B issues an 'instrument' to A, giving A rights in respect of the Shares, Debentures, Units or Warrants held by B (such as dividends or distributions); and

    c. A does not need the consent of B to transfer the instrument, and with it the rights to the Shares, Debentures, Units or Warrants held by B).

Example

29. B issues a Token to A, conferring rights to Shares, Debentures, Units or Warrants held by B. A can sell that Token and so transfer the rights to those Shares, Debentures, Units or Warrants, without needing the consent of B. As the Token confers rights on A and obligations on B that are substantially similar in nature to those conferred by a Certificate, it is an Investment Token that is considered a Certificate and therefore also a Security Token.

When is an Investment Token a Unit in a Fund?

30. A Unit is a unit in or share representing the rights or interests of a Unitholder in a Fund. Under the Collective Investment Law, a Fund is an arrangement, where:

    a. the purpose or effect of the arrangement is to enable the persons taking part in that arrangement ('participants') to receive income or profit arising from the property of the arrangement;

    b. participants do not have the day-to-day control over the management of the property; and

    c. either the property of the arrangement is managed as a whole, or the investors' contributions and the profits or income thereof are pooled, or both.

31. Some arrangements, even though they meet the above criteria, are excluded from the definition of a Fund; see CIR chapter 2.

32. If a Token confers the rights to participate in an arrangement that is a Fund, and the rights conferred by the Token are the same as, or substantially similar in nature to, those conferred by a Unit in a Fund, it is an Investment Token that is a Security Token. Such a Security Token will be considered a Unit. Example

33. An arrangement is in place under which people contribute their money on the invitation of Firm B (the Fund Manager in this example), in exchange for Tokens. These people make their contributions in the expectation that Firm B will pool those contributions to buy fine art, manage a business of hiring the fine art for corporate events to generate income, and also sell some art to make capital gains. The further expectation is that Firm B will distribute such income and capital gains to the contributors, *pro rata* to the amounts they contributed. This arrangement is a Fund. If the Tokens issued by Firm B to participants confer on them the rights to participate as expected in the profits and income of the arrangement, such a Token confers on the participants rights that are substantially similar in nature to a Unit in a Fund and so it is a Security Token that is considered a Unit.

When is an Investment Token a Structured Product?

34. A Structured Product is an instrument comprising rights under a contract where:

    a. the gain or loss of each party to the contract is determined by reference to the fluctuations in the value or price of an underlying factor, (such as gold, an index, an interest or exchange rate, in relation to which there is readily available public information);

    b. the gain or loss of each party is settled by cash or set off between the parties; and

    c. each party is not exposed to any contingent liabilities to the other (i.e. there is no leverage).

35. If the rights and obligations of the parties to a contract that meets the above criteria are conferred by a Token, the Token confers rights and obligations that are substantially similar in nature to a Structured Product, and so the Token is considered an Investment Token that is a Structured Product.

36. Although a Structured Product is similar to a contract for difference, it can be distinguished from a Future due to the absence of leverage on the part of the investor and the availability of readily accessible public information relating to the underlying factor referenced by it. Structured Products are categorised as Securities and can be included in the Official List of Securities. An Investment Token that is a Structured Product is therefore also a Security Token.

Example

37. Firm B enters into a contract with its client, A. The contract provides that A will receive a profit or incur a liability to Firm B, based on whether the underlying price of gold has moved up or down between the opening day, and the closing day, of the contract. The contract does not contain any leverage (for example, where the profit or loss of A would be 50 times the amount of margin A posted with B to open the position). This is a Structured Product. The terms of the contract are embedded in a Token issued by Firm B, and the contract is created when A accepts those terms by accepting ownership of the Token. As the Token confers the rights and obligations of the contract, it confers rights and obligations substantially similar in nature to those conferred by a Structured Product. The Token is therefore a Security Token that is considered a Structured Product.

When is an Investment Token an Option?

38. An Option is an instrument that confers on the holder, upon exercise, a right to:

    a. acquire or dispose of:

i. a Security (other than a Warrant);

ii. a contractually based investment (e.g. a Future);

iii. currency of any country or territory; or

iv. a commodity of any kind; or

b. receive a cash settlement determined by reference to the value or price of an index, interest rate, exchange rate or any other rate or variable; or

c. a right to acquire or dispose of an Option under a) or b).

39. If a person issues a Token that confers on the holder rights that meet the criteria in paragraph 38 a), b) or c) which the holder may, but is not required to exercise, the Token is an Investment Token that is an Option and therefore also a Derivative Token.

Example

40. B owns an issued Share in a company. B issues a Token to A which confers on A the right to buy that Share from B at a set price on a certain date, should A choose to do so. The Token confers rights and obligations that are substantially similar in nature to those conferred by a call Option and is therefore a Derivative Token that is considered to be an Option.

When is an Investment Token a Future?

41. Futures are instruments comprising rights under a contract which meets the criteria in the definition in Rule A2.3.1(b). There are two types of Futures; those covered under Rule A2.3.1(b)(i), referred to in this Guidance as 'commodity Futures', and those covered under Rule A2.3.1(b)(ii), referred to in this Guidance as 'financial Futures'. A financial Future is sometimes referred to as a contract for difference, or CFD.

42. If a Token confers rights and obligations that are substantially similar in nature to those conferred by a contract meeting the definition of a Future, the Token is an Investment Token that is a Future and therefore a Derivative Token.

Example 1

43. This example relates to a commodity Future under Rule A2.3.2(b)(i). Firm B arranges for its client, A to purchase a Token on a regulated exchange. Embedded in that token are the terms of a contract between the holder of that Token and Company C, which A accepts by purchasing the Token. The contract is for Company C to deliver a specified type and

quantity of a commodity at a future date and at a specified price to be paid by A. A is entering the contract for investment purposes, as he has no use for the commodity but believes that its value will rise and he will be able to sell the rights under the contract (or settle them with Company C in cash) to make a profit on or before the delivery date. The Token confers rights and obligations substantially similar in nature to a contract falling within the definition of a Future at Rule A2.3.1(b)(ii). Therefore, the Token is a Derivative Token and is considered a Future.

Example 2

44. This example relates to a financial Future or CFD under Rule A2.3.1(b)(ii). Firm B enters into a contract with its client, A. The contract provides that A or B will receive a profit or incur a loss, based on the difference between the value of the FTSE 100 index on the opening day, and the closing day, of the contract. The contract is leveraged such that the profit or loss of A will be 5 times the amount of margin A posted with B to open the position. Under this contract, A's and B's right to a profit or loss will depend on whether the value of the FTSE 100 index moved up or down from the opening day to the closing day. If the rights conferred under that contract are represented by a Token issued by B, the Token confers rights and obligations substantially similar in nature to a contract falling within the definition of a Future at Rule A2.3.1(b)(ii). Therefore, the Token is a Derivative Token and is considered a Future.