Appendix 4

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

Conduct of Business Module

(COB)

1 INTRODUCTION

1.1 Application

1.1.1 This module (COB) applies to every Authorised Firm with respect to the carrying on, in or from the DIFC, of any:

(a) Financial Service; or

(b) activity which is carried on, or held out as being carried on, in connection with or for the purposes of such a Financial Service;

except to the extent that a provision of COB provides for a narrower application.

1.1.2 COB does not apply to a Representative Office.

Guidance

An Authorised Firm may be able to rely on the Transitional Rules in section 2.6 for the purposes of meeting the client classification requirements in chapter 2.

1.2 Interpretation

1.2.1 A reference in this module to a "financial product" includes, without limiting the generality of that term, a Crypto Token.

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2 CLIENT CLASSIFICATION

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2.3 Types of Clients

2.3.1 (1) An Authorised Firm must, before carrying on a Financial Service with or for a Person, classify that Person as a:

(a) Retail Client;

(b) Professional Client; or

(c) Market Counterparty,

in accordance with the requirements in this chapter.

(2) An Authorised Firm may classify a Person as a different type of a Client for different Financial Services or financial products that are to be provided to such a Client.

(3) If an Authorised Firm is aware that a Person ('the agent'), with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person ('the principal') in relation to the service then, unless the agent is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat the principal as its Client in relation to that service.

(4) If an Authorised Firm intends to provide any Financial Service to a trust, it must, unless otherwise provided in the Rules, treat the trustee of the trust, and not the beneficiaries of the trust, as its Client.

Guidance

1. When a Person becomes a Client of an Authorised Firm is a question of fact that needs to be addressed by the firm in light of the nature of the relevant Financial Service (or financial product) involved, and the relations and interactions which the firm has with that Person. For instance, in certain types of Financial Services (such as corporate advisory services), a number of conversations (such as marketing and promotional activities) may occur between an Authorised Firm and a potential client before it may appear to the firm on a reasonable basis that the Person is likely to obtain a Financial Service from the firm, at which point a client classification is required.

2. Given the many different circumstances in which interactions between a potential client and an Authorised Firm take place, it is not possible to include a more specific requirement than the current provision which requires the client classification to occur "before" a firm provides a Financial Service to a Person – see Rule 2.3.1(1). This provides an Authorised Firm flexibility to determine when exactly it would be appropriate for the firm to undertake client classification.

3. The DFSA expects Authorised Firms to adopt practices which are consistent with the underlying intent of the client classification provisions, which is to provide Clients an appropriate level of regulatory protection in light of the resources and expertise available to such Clients. Therefore, as soon as it is reasonably apparent that a potential customer is likely to obtain a Financial Service from the firm, it would need to undertake the client classification process relating to that customer (unless such a customer is classified as a Retail Client for the purposes of the Rules – see Rule 2.3.2).

4. For example, an Authorised Firm is not expected to undertake advising or arranging activities relating to a Financial Service or financial product which is suited to Professional Clients (such as complex derivatives) with a potential customer without having a reasonable basis to consider that such a customer has sufficient knowledge and experience relating to the relevant service or product. While a formal client classification may not be needed at the early stages of interaction with a potential customer, a firm is expected to form a reasonable view about the professional status of a potential customer when exposing such a customer to Financial Services or financial products (such as investments in a Qualified Investor Fund) which are intended for Professional Clients.

5. Rule 2.3.1(2) allows an Authorised Firm to classify a Client as a Retail Client in respect of some Financial Services and a Professional Client in respect of other Financial Services. For example, a Client classified as a 'service-based' Professional Client under Rule 2.3.5 for the Financial Service of Providing Credit may not necessarily meet the criteria to be classified as an 'assessed' Professional Client under Rule 2.3.7 or Rule 2.3.8 in respect of any other Financial Service to be provided to that Client. Therefore, such a Client would need to be classified as a Retail Client with respect to Financial Services other than Providing Credit.

Retail Clients

2.3.2 An Authorised Firm must classify as a Retail Client any Person who is not classified as a Professional Client or a Market Counterparty.

Professional Clients

2.3.3 (1) An Authorised Firm may classify a Person as a Professional Client if that Person:

(a) meets the requirements to be:

(i) a "deemed" Professional Client pursuant to Rule 2.3.4;

(ii) a "service-based" Professional Client pursuant to Rule 2.3.5, Rule 2.3.6 or Rule 2.3.6A; or

(iii) an "assessed" Professional Client pursuant to either Rule 2.3.7 or Rule 2.3.8; and

(b) has not opted-in to be classified as a Retail Client in accordance with the requirements in Rule 2.4.1.

(2) If an Authorised Firm becomes aware that a Professional Client no longer fulfils the requirements to remain classified as a Professional Client, the Authorised Firm must, as soon as possible, inform the Client that this is the case and the measures that are available to the firm and the Client to address that situation.

Guidance

The measures referred to in Rule 2.3.3(2) may include classifying the Client as a Retail Client with respect to any future Financial Services to be provided to that Client or, if the firm does not have a Retail Endorsement, discontinuing the provision of Financial Services to that Client.

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'Assessed' Professional Clients

Individuals

2.3.7 (1) For the purposes of Rule 2.3.3(1)(a)(iii), an individual is an 'assessed' Professional Client if:

(a) the individual has net assets of at least $1 million calculated in accordance with Rule 2.4.2; and

(b) either:

(i) the individual is, or has been, in the previous two years, an Employee in a relevant professional position of an Authorised Firm or a Regulated Financial Institution; or

(ii) the individual appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks, following the analysis set out in Rule 2.4.3.

(2) An Authorised Firm may classify any legal structure or vehicle, such as an Undertaking, trust or foundation, which is set up solely for the purpose of facilitating the management of an investment portfolio of an individual assessed as meeting the requirements in (1) as a Professional Client.

(3) An Authorised Firm may also classify as a Professional Client another individual (the "joint account holder") who has a joint account with an individual assessed as meeting the requirements in (1) (the "primary account holder") if:

(a) the joint account holder is a family member of the primary account holder;

(b) the account is used for the purposes of managing investments for the primary account holder and the joint account holder; and

(c) the joint account holder has confirmed in writing that investment decisions relating to the joint account are generally made for, or on behalf of, him by the primary account holder.

(4) In (3), a 'family member' of the primary account holder is:

(a) his spouse;

(b) his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and

(c) the spouse of any individual within (b).

Guidance

1. Under Rule 2.6.3, the net asset test referred to in Rule 2.3.7(1)(a) remains $500,000 until 1 April 2016.

2. An individual can generally only be classified as a Professional Client if he meets the requirements in Rule 2.3.7(1) or (3). This is because all the other criteria relevant to Professional Clients in this chapter apply to Undertakings and not to individuals, with the possible exception of a trustee of a trust under Rule 2.3.4(j).

3. An individual classified as a Professional Client may operate a joint account with more than one family member. Under the general principle of interpretation that the singular includes the plural, provided each such family member meets the requirements set out in Rule 2.3.7(3), they can all be classified as Professional Clients.

4. A legal structure or vehicle of a Professional Client, which is itself classified as a Professional Client under Rule 2.3.7(2), does not have a right to opt-in as a Retail Client, as that right belongs to the Professional Client for whose purposes the vehicle is set up.

5. A family member of a Professional Client classified as a Professional Client under Rule 2.3.7(3) also does not per se have a right to opt-in to be classified as a Retail Client with regard to the operation of the joint account. However, such an individual has the right to withdraw his confirmation given under Rule 2.3.7(3)(c) to have decisions on behalf of him made by the Professional Client who is the primary account holder of the joint account. An Authorised Firm must ensure that once such a withdrawal is made, the withdrawing individual is no longer classified as a Professional Client. The joint account arrangements would also need to be reviewed as the primary account holder would no longer have the power to make decisions on behalf of the withdrawing individual.

6. In the case of a joint account operated by a primary account holder who is a parent or legal guardian of a minor, the procedures for obtaining the formal consent referred to in Rule 2.3.7(3)(c) would generally not be required, as such parent or guardian would have the authority to act for the minor where he is the joint account holder.

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2.4 Procedures relating to client classification

Option for a Professional Client to be classified as a Retail Client

2.4.1 (1) For the purpose of Rule 2.3.3(1)(b), an Authorised Firm must, subject to (4), when first establishing a relationship with a Person as a Professional Client, inform that Person in writing of:

(a) that Person's right to be classified as a Retail Client;

(b) the higher level of protection available to Retail Clients; and

(c) the time within which the Person may elect to be classified as a Retail Client.

(2) If the Person does not expressly elect to be classified as a Retail Client within the time specified by the Authorised Firm, the Authorised Firm may classify that Person as a Professional Client.

(3) If a Person already classified as a Professional Client by an Authorised Firm expressly requests the Authorised Firm to be re-classified as a Retail Client, the Authorised Firm must, subject to (4), re-classify such a Person as a Retail Client.

(4) If an Authorised Firm does not provide Financial Services to Retail Clients, it must inform the Person of this fact and any relevant consequences.

Guidance

1. The obligation in Rule 2.4.1(1) applies to an Authorised Firm when it first provides, or intends to provide, a Financial Service to a Professional Client.

2. Once an Authorised Firm has first classified a Person as a Professional Client, under the procedures in Rule 2.3.3(1), that Professional Client has a right at any subsequent time to ask, under Rule 2.4.1(3), to be re-classified as a Retail Client to obtain a higher level of protection. Although the right to ask the firm to be re-classified as a Retail Client is available to the Professional Client, as a matter of good practice:

   a. the firm should also periodically review whether the circumstances relating to the particular Client remain the same; and

   b. if the firm becomes aware of any circumstances which would warrant a re-classification of the Client, initiate the process with the Client to give that Client a more appropriate classification.

3. Where an existing Professional Client is offered a new Financial Service or new financial product, a re-classification might be appropriate if:

   a. the new Financial Service or financial product is substantially different to those previously offered to that Client; and

   b. the Client's experience and understanding appears not to extend to the new Financial Service or financial product.

4. An Authorised Firm cannot provide Financial Services to a Retail Client unless it has a Retail Endorsement on its Licence. However, such a firm may refer to another appropriately licensed firm any Person who elects to opt-in as a Retail Client.

Assessment of net assets

2.4.2 An Authorised Firm, when calculating net assets of an individual for the purposes of the requirement under Rule 2.3.7(1)(a):

(a) must exclude the value of the primary residence of that Person; ~~and~~

(b) must, in the case of Crypto Tokens belonging to that Person, include only 20% of the market value of the Crypto Tokens; and

(~~b~~c) may include any other assets held directly or indirectly by that Person.

Guidance

1. The reference to "assets held directly or indirectly" is designed to include assets held by direct legal ownership, by beneficial ownership (for example, as a beneficiary in a trust), or by both legal and beneficial ownership. Such assets may be held, for instance, through a special purpose or personal investment vehicle, a foundation, or the like. Similarly, any real property held subject to an Islamic mortgage, where the lender has the legal title to the property, may be counted as indirectly held property of a Client, less the amount owing on the mortgage, where it is not a primary residence.

2. As the test is to determine the net assets (not gross assets) of an individual, any mortgages or other charges held over the property to secure any indebtedness of the individual should be deducted from the value of the assets.

3. An individual's primary residence is excluded from the calculation of their net assets. If an individual who is an expatriate has a primary residence in his home country, such a residence should not generally be counted for the purposes of meeting the net asset test, particularly if the current residence in their host country is rented. However, if the current residence in the host country is owned by the individual, then that may be treated as their primary residence and the value of the residence in the home country of the individual may be counted for the purposes of meeting the net asset test, provided there is sufficient evidence of ownership and an objective valuation of the relevant premises.

4. An Authorised Firm should be able to demonstrate that it has objective evidence of the ownership and valuation of any assets taken into account for the purposes of meeting the net asset test.

Assessment of knowledge and experience

2.4.3 (1) For the purpose of the analysis required under Rules 2.3.7(1)(b)(ii) and 2.3.8(1)(b), an Authorised Firm must include, where applicable, consideration of the following matters:

(a) the Person's knowledge and understanding of the relevant financial markets, types of financial products or arrangements and the risks involved either generally or in relation to a proposed Transaction;

(b) the length of time the Person has participated in relevant financial markets, the frequency of dealings and the extent to which the Person has relied on professional financial advice;

(c) the size and nature of transactions that have been undertaken by, or on behalf of, the Person in relevant financial markets;

(d) the Person's relevant qualifications relating to financial markets;

(e) the composition and size of the Person's existing financial investment portfolio;

(f) in the case of credit or insurance transactions, relevant experience in relation to similar transactions to be able to understand the risks associated with such transactions; and

(g) any other matters which the Authorised Firm considers relevant.

(2) Where the analysis is being carried out in respect of an Undertaking, the analysis must be applied, as appropriate, to those individuals who are authorised to undertake transactions on behalf of the Undertaking.

Guidance

Generally, an Authorised Firm may consider a Person to have relevant experience and understanding where such a Person:

a. has been involved in similar transactions in a professional or personal capacity sufficiently frequently to give the Authorised Firm reasonable assurance that the Person is able to make decisions of the relevant kind, understanding the type of risks involved; or

b. is found to be acting, in relation to the particular transaction involved, in reliance on a recommendation made by an Authorised Firm or Regulated Financial Institution.

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3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, PROVIDING TRUST SERVICES, OPERATING A CROWDFUNDING PLATFORM, OPERATING AN EMPLOYEE MONEY PURCHASE SCHEME, ACTING AS THE ADMINISTRATOR OF AN EMPLOYEE MONEY PURCHASE SCHEME, PROVIDING MONEY SERVICES, ~~AND~~ ARRANGING OR ADVISING ON MONEY SERVICES AND CRYPTO BUSINESS

Guidance

1. The Rules in this chapter give support to the Principles in GEN section 4.2 and in particular Principles 1, 2, 6 and 7.

2. There are additional Rules that apply to Authorised Firms in other chapters of this module, which are more specific to the nature of the Financial Service conducted by the Authorised Firm.

3.1 Application

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

(a) Investment Business;

(b) Accepting Deposits;

(c) Providing Credit;

(d) Providing Trust Services;

(e) Operating a Crowdfunding Platform;

(f) Operating an Employee Money Purchase Scheme;

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

(h) Providing Money Services; ~~or~~

(i) Arranging or Advising on Money Services~~,~~; or

(j) Crypto Business,

except where it is expressly provided otherwise.

3.2 Communication of information and marketing material

General

3.2.1 When communicating information to a Person in relation to a financial product or financial service, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.

3.2.2 An Authorised Firm must not, in any form of communication with a Person, including an agreement, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under legislation administered by the DFSA.

3.2.3 Where a Rule in COB requires information to be sent to a Client, the Authorised Firm must provide that information directly to the Client and not to another Person, unless it is on the written instructions of the Client.

Guidance

In Rule 3.2.2, a communication would include a financial promotion, a client agreement, terms of business, financial product terms and conditions, a mandate, power of attorney entered into for the purposes of a financial service or product and any other communication which relates in whole or in part to the provision of a financial service or product.

Marketing material

3.2.4 (1) An Authorised Firm must ensure that any marketing material communicated to a Person contains the following information:

(a) the name of the Authorised Firm communicating the marketing material or, on whose behalf the marketing material is being communicated;

(b) the Authorised Firm's regulatory status as required under GEN section 6.4; and

(c) if the marketing material is intended only for Professional Clients or Market Counterparties, a clear statement to that effect and that no other Person should act upon it.

(2) In (1), marketing material includes any invitation or inducement to enter into an agreement:

(a) in relation to a financial product or to engage in a Financial Service with the Authorised Firm; or

(b) in relation to a financial product or financial service offered by a Person other than the Authorised Firm.

(3) An Authorised Firm which communicates marketing material in (2)(b) must:

(a) ensure that the marketing material complies with the applicable Rules and any legislation administered by the DFSA; and

(b) not distribute such marketing material if it becomes aware that the Person offering the financial product or financial service to which the material relates is in breach of the regulatory requirements that apply to that Person in relation to that product or service.

3.2.5 An Authorised Firm must take reasonable steps to ensure that:

(a) any marketing material intended for Professional Clients is not sent or directed to any Persons who are not Professional Clients; and

(b) no Person communicates or otherwise uses the marketing material on behalf of the Authorised Firm in a manner that amounts to a breach of the requirements in this section.

Past performance and forecasts

3.2.6 An Authorised Firm must ensure that any information or representation relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to or targeted at Retail Clients:

(a) presents a fair and balanced view of the financial products or financial services to which the information or representation relates;

(b) identifies, in an easy to understand manner, the source of information from which the past performance is derived and any key facts and assumptions used in that context are drawn; and

(c) contains a prominent warning that past performance is not necessarily a reliable indicator of future results.

Guidance

In presenting information relating to past performance of a financial product or financial service, the Authorised Firm should follow, to the extent relevant, the Global Investment Performance Standards (GIPS) issued by Institute of Chartered Financial Analysts of the USA or a reputable independent actuarial, financial or statistical reporting service provider.

3.3 Key information and Client Agreement

Application

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

(a) carrying on a Financial Service with or for a Market Counterparty;

(b) Accepting Deposits;

(c) Providing Credit;

(d) carrying on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing;

(e) a Fund Manager of a Fund Offering the Units of a Fund it manages;

(f) Operating an Employee Money Purchase Scheme;

(g) Acting as the Administrator of an Employee Money Purchase Scheme; or

(h) an ATS Operator.

3.3.2 (1) Subject to (2), an Authorised Firm must not carry on a Financial Service with or for a Person unless:

(a) there is a Client Agreement containing the key information specified in App2 which is either entered into:

(i) between the Authorised Firm and that Person; or

(ii) in accordance with the requirements in Rule 3.3.4; and

(b) before entering into the Client Agreement with the Person, the Authorised Firm has provided to that Person the key information referred to in (a) in good time to enable him to make an informed decision relating to the relevant Financial Service.

(2) An Authorised Firm may provide a Financial Service to a Client without having to comply with the requirement in (1);

(a) subject to (3), where it is, on reasonable grounds, impracticable to comply; or

(b) where the Client has expressly agreed to dispense with the requirement in regard to a personal investment vehicle.

(3) When (2)(a) applies, an Authorised Firm providing the Financial Service must:

(a) first explain to the Person why it is impracticable to comply; and

(b) enter into a Client Agreement as soon as practicable thereafter.

Guidance

1. App 2 sets out the core information that must be included in every Client Agreement and additional disclosure for certain types of activities to which this chapter applies. The information content for Client Agreements with Retail Clients is more detailed than for Professional Clients.

2. For the purposes of Rule 3.3.2(1)(b), an Authorised Firm may either provide a Person with a copy of the proposed Client Agreement, or give that information in a separate form. If there are any changes to the terms and conditions of the proposed agreement, the Authorised Firm should ensure that the Client Agreement to be signed with the Person accurately incorporates those changes.

3. For the purposes of Rule 3.3.2(2)(a), an Authorised Firm may consider it is reasonably impracticable to provide the key information to a Person if that Person requests the Authorised Firm to execute a Transaction on a time critical basis. Where an Authorised Firm has given the explanation referred to in Rule 3.3.2(3)(a) verbally, it should maintain records to demonstrate to the DFSA that it has provided that information to the Client.

Changes to the client agreement

3.3.3 If the Client Agreement provided to a Retail Client allows an Authorised Firm to amend the Client Agreement without the Client's prior written consent, the Authorised Firm must give at least 14 days notice to the Client before providing a Financial Service to that Client on any amended terms, unless it is impracticable to do so.

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3.4 Suitability

Application

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

(a) carries on a Financial Service with or for a Market Counterparty;

(b) undertakes an Execution-Only Transaction;

(c) undertakes the activities of Accepting Deposits or Providing Credit;

(d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing,

(e) carries on the activity of operating an MTF;

(f) carries on the activity of Operating an Employee Money Purchase Scheme; or

(g) carries on the activity of Acting as the Administrator of an Employee Money Purchase Scheme.

Suitability assessment

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

(a) undertake an appropriate assessment of the particular Client's needs and objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and

(b) take into account any other relevant requirements and circumstances of the Client of which the Authorised Firm is, or ought reasonably to be aware.

(2) An Authorised Firm may, subject to (3) and (4), limit the extent to which it will consider suitability when making a recommendation to, or undertaking a Transaction on a discretionary basis for or on behalf of, a Professional Client if, prior to carrying on that activity, the Authorised Firm:

(a) has given a written warning to the Professional Client in the form of a notice clearly stating that the Authorised Firm will consider suitability only to the extent specified in the notice; and

(b) the Professional Client has given his express consent, after a proper opportunity to consider the warning, by signing that notice.

(3) Where an Authorised Firm manages a Discretionary Portfolio Management Account for a Professional Client, it must ensure that the account remains suitable for the Professional Client, having regard to the matters specified in (1) (a) and (b).

(4) If an Authorised Firm has, before the Commencement Date, given a written warning to a Professional Client in the form of a notice stating that it will not consider suitability, the firm must, no later than 6 months after the Commencement Date, either:

(a) issue a new warning that meets the requirements in (2); or

(b) carry out a full suitability assessment in accordance with (1).

(5) In (4), Commencement Date means the day on which Rule-Making Instrument No. 259 of 2019 comes into force.

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3.5 Conflicts of interest

Fair treatment

3.5.1 (1) An Authorised Firm must take reasonable steps to ensure that conflicts and potential conflicts of interest between itself and its Clients and between one Client and another are identified and then prevented or managed in such a way that the interests of a Client are not adversely affected and to ensure that all its Clients are fairly treated and not prejudiced by any such conflicts of interest.

(2) Where an Authorised Firm is aware of a conflict or potential conflict of interest, it must prevent or manage that conflict of interest by using one or more of the following arrangements as appropriate:

(a) establishing and maintaining effective Chinese Walls to restrict the communication of the relevant information;

(b) disclosing the conflict of interest to the Client in writing either generally or in relation to a specific Transaction; or

(c) relying on a written policy of independence, which requires an Employee to disregard any conflict of interest when advising a Client or exercising a discretion.

(3) If an Authorised Firm is unable to prevent or manage a conflict or potential conflict of interest as provided in (2), it must decline to act for that Client.

Attribution of knowledge

3.5.2 When a COB Rule applies to an Authorised Firm that acts with knowledge, the Authorised Firm will not be taken to act with knowledge for the purposes of that

Rule as long as none of the relevant individuals involved for on behalf of the Authorised Firm acts with that knowledge as a result of a Chinese Wall arrangement established under Rule 3.5.1(2)(a).

Inducements

3.5.3 (1) An Authorised Firm must have systems and controls including policies and procedures to ensure that neither it, nor an Employee or Associate of it, offers, gives, solicits or accepts inducements such as commissions or other direct or indirect benefits where such inducements are reasonably likely to conflict with any duty that it owes to its Clients.

(2) Subject to (3), an Authorised Firm must, before recommending a financial product as defined in GEN Rule 2.11.1(4) to, or Executing a Transaction for, a Retail Client, disclose to that Client any commission or other direct or indirect benefit which it, or any Associate or Employee of it, has received or may or will receive, in connection with or as a result of the firm making the recommendation or executing the Transaction.

(3) An Authorised Firm need not disclose to a Retail Client under (2) any details about inducements where it:

(a) believes on reasonable grounds that the Retail Client is already aware of the relevant inducements;

(b) is undertaking an Execution-Only Transaction for that Retail Client; or

(c) is executing a Transaction pursuant to the terms of a Discretionary Portfolio Management Agreement for that Retail Client.

(4) An Authorised Firm may provide the information required under (2) in summary form, provided it informs the Client that more detailed information will be provided to the Client upon request and complies with such a request.

Guidance

In relation to Rule 3.5.3 (1), in circumstances where an Authorised Firm believes on reasonable grounds that the Client's interests are better served by a Person to whom the referral is to be made, any commission or other benefit which the firm or any of its Employees or Associates receives in respect of such a referral would not be a prohibited inducement under that Rule.

3.5.4 An Authorised Firm may only accept goods and services under a Soft Dollar Agreement if the goods and services are reasonably expected to:

(a) assist in the provision of Investment Business or Crypto Business services to the Authorised Firm's Clients by means of:

(i) specific advice on dealing in, or on the value of, any Investment or Crypto Token;

(ii) research or analysis relevant to (i) or about Investments or Crypto Tokens generally; or

(iii) use of computer or other information facilities to the extent that they are associated with specialist computer software or research services, or dedicated telephone lines;

(b) provide custody services relating to Investments or Crypto Tokens belonging to, or managed for, Clients;

(c) provide services relating to portfolio valuation or performance measurement services; or

(d) provide market price services.

Guidance

An Authorised Firm should undertake a thorough assessment of the nature of the goods and services and the terms upon which they are to be provided under a Soft Dollar Agreement to ensure that the receipt of such goods and services provide commensurate value. This is particularly the case if any costs of such goods and services are to be passed through to Clients. Where the Client bears the cost of the goods and services, the disclosure obligation relating to costs and charges under Rule 3.3.2 (see App 2) will apply to such costs.

3.5.5 An Authorised Firm must not Deal in Investments as Agent for a Client, either directly or indirectly, through any broker under a Soft Dollar Agreement, unless:

(a) the agreement is a written agreement for the supply of goods or services described in Rule 3.5.4, which do not take the form of, or include, cash or any other direct financial benefit;

(b) Transaction execution by the broker is consistent with any best execution obligations owed to the Client;

(c) the Authorised Firm has taken reasonable steps to ensure that the services provided by the broker are competitive, with no comparative price disadvantage, and take into account the interests of the Client;

(d) for Transactions in which the broker acts as principal, the Authorised Firm has taken reasonable steps to ensure that Commission paid under the agreement will be sufficient to cover the value of the goods or services to be received and the costs of execution; and

(e) the Authorised Firm makes adequate disclosure in accordance with Rules 3.5.6 and 3.5.7.

3.5.6 Before an Authorised Firm enters into a Transaction for or on behalf of a Retail Client or Professional Client, either directly or indirectly, with or through the agency of another Person, in relation to which there is a Soft Dollar Agreement which the Authorised Firm has, or knows that another member of its Group has, with that other Person, it must disclose to its Client:

(a) the existence of a Soft Dollar Agreement; and

(b) the Authorised Firm's or its Group's policy relating to Soft Dollar Agreements.

3.5.7 (1) If an Authorised Firm or member of its Group has a Soft Dollar Agreement under which either the Authorised Firm or member of its Group Deals for a

Client, the Authorised Firm must provide that Client with the following information:

(a) the percentage paid under Soft Dollar Agreements of the total Commission paid by or at the direction of:

(i) the Authorised Firm; and

(ii) any other member of the Authorised Firm's Group which is a party to those agreements;

(b) the value, on a cost price basis, of the goods and services received by the Authorised Firm under Soft Dollar Agreements, expressed as a percentage of the total Commission paid by or at the direction of:

(i) the Authorised Firm; or

(ii) other members of the Authorised Firm's Group;

(c) a summary of the nature of the goods and services received by the Authorised Firm under the Soft Dollar Agreements; and

(d) the total Commission paid from the portfolio of that Client.

(2) The information in (1) must be provided to that Client at least once a year, covering the period since the Authorised Firm last reported to that Client.

3.6 Record Keeping

3.6.1 An Authorised Firm must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Authorised Firm. These must include, where applicable, the following:

(a) any marketing material issued by, or on behalf of, the Authorised Firm;

(b) any financial products or Financial Services provided to a Client and each advice or recommendation made to a Client,

(c) a record of each Client Agreement including any subsequent amendments to it as agreed with the Client;

(d) records relating to the suitability assessment undertaken by the Authorised Firm to demonstrate compliance with Rule 3.4.2;

(e) records to demonstrate compliance with the requirements relating to inducements under section 3.5, including any disclosure made to Clients under that section and if any goods and services are received by the Authorised Firm under a Soft Dollar Agreement, the details relating to those agreements; and

(f) any other disclosures made to Clients.

3.6.2 For the purposes of Rule 3.6.1, the six year period commences:

(a) in the case of the requirement in Rule 3.6.1(a), from the date on which the marketing material was last provided to a Person;

(b) in the case of the requirement in Rule 3.6.1(b) to (d), from the date the Client ceases to be a Client of the Authorised Firm; and

(c) in the case of the requirement in Rule 3.6.1(e), from the date on which the relevant inducements were last received.

….

6 ADDITIONAL RULES - INVESTMENT BUSINESS OR CRYPTO BUSINESS

6.1 Application

6.1.1 (1) The Rules in this chapter apply to an Authorised Firm when conducting Investment Business or Crypto Business.

(2) Sections 6.11, 6.12, 6.13 and 6.14 also apply to an Authorised Firm in respect of Client Assets that it holds or controls (within the meaning of Rule 6.11.4) in the course of, or in connection with, Operating a Crowdfunding Platform or Providing Money Services.

(3) Sections 6.2 and 6.3 also apply to an Authorised Firm when:

(a) Operating an Employee Money Purchase Scheme; or

(b) Acting as the Administrator of an Employee Money Purchase Scheme.

(4) The requirements in this chapter apply to an Authorised Firm regardless of the classification of the Client, unless expressly provided otherwise.

Guidance

The requirements in chapter 3 also apply to the conduct of Investment Business and Crypto Business.

6.2 Personal account transactions

Conditions for personal account transactions

6.2.1 An Authorised Firm must establish and maintain adequate policies and procedures so as to ensure that:

(a) an Employee does not undertake a Personal Account Transaction unless:

(i) the Authorised Firm has, in a written notice, drawn to the attention of the Employee the conditions upon which the Employee may undertake Personal Account Transactions and that the contents of such a notice are made a term of his contract of employment or services;

(ii) the Authorised Firm has given its written permission to that Employee for that transaction or to transactions generally in Investments or Crypto Tokens of that kind; and

(iii) the transaction will not conflict with the Authorised Firm's duties to its Clients;

(b) it receives prompt notification or is otherwise aware of each Employee's Personal Account Transactions; and

(c) if an Employee's Personal Account Transactions are conducted with the Authorised Firm, each Employee's account must be clearly identified and distinguishable from other Clients' accounts.

6.2.2 The written notice in Rule 6.2.1(a)(i) must make it explicit that, if an Employee is prohibited from undertaking a Personal Account Transaction, he must not, except in the proper course of his employment:

(a) procure another Person to enter into such a Transaction; or

(b) communicate any information or opinion to another Person if he knows, or ought to know, that the Person will as a result, enter into such a Transaction or procure some other Person to do so.

6.2.3 Where an Authorised Firm has taken reasonable steps to ensure that an Employee will not be involved to any material extent in, or have access to information about, the Authorised Firm's Investment Business or Crypto Business, then the Authorised Firm need not comply with the requirements in Rule 6.2.1 in respect of that Employee.

6.2.4 An Authorised Firm must establish and maintain procedures and controls so as to ensure that an Investment Analyst does not undertake a Personal Account Transaction in an Investment or Crypto Token if the Investment Analyst is preparing Investment Research:

(a) on that Investment, Crypto Token or its Issuer; or

(b) on a related investment or Crypto Token, or its Issuer;

until the Investment Research is published or made available to the Authorised Firm's Clients.

Record Keeping

6.2.5 (1) An Authorised Firm must maintain and keep a record of:

(a) the written notice setting out the conditions for Personal Account Transactions under Rule 6.2.1(a)(i);

(b) each permission given or denied by the Authorised Firm under Rule 6.2.1(a)(ii);

(c) each notification made to it under Rule 6.2.1(b); and

(d) the basis upon which the Authorised Firm has ascertained that an Employee will not be involved in to any material extent, or have access to information about, the Authorised Firm's Investment Business or Crypto Business for the purposes of Rule 6.2.3.

(2) The records in (1) must be retained for a minimum of six years from the date of:

(a) in (1)(a) and (1)(d), termination of the employment contract of each Employee;

(b) in (1)(b), each permission given or denied by the Authorised Firm; and

(c) in (1)(c), each notification made to the Authorised Firm.

6.3 Investment research and offers of securities

Application

6.3.1 This section applies to an Authorised Firm preparing or publishing Investment Research.

Guidance

Investment Research is seen as a significant potential source of conflicts of interest within an Authorised Firm and therefore an Authorised Firm preparing or publishing investment research is expected to have adequate procedures, systems and controls to manage effectively any conflicts that arise.

6.3.2 An Authorised Firm that prepares and publishes Investment Research must have adequate procedures and controls to ensure:

(a) the effective supervision and management of Investment Analysts;

(b) that the actual or potential conflicts of interest are proactively managed in accordance with section 3.5 ;

(c) that the Investment Research issued to Clients is impartial; and

(d) that the Investment Research contains the disclosures described under Rules 6.3.3 and 6.3.4.

Guidance

An Authorised Firm's procedures, controls and internal arrangements, which may include Chinese Walls, should limit the extent of Investment Analysts participation in corporate finance business and sales and trading activities, and ensure remuneration structures do not affect their independence.

Disclosures in investment research

6.3.3 When an Authorised Firm publishes Investment Research, it must take reasonable steps to ensure that the Investment Research:

(a) clearly identifies the types of Clients for whom it is principally intended;

(b) distinguishes fact from opinion or estimates, and includes references to sources of data and any assumptions used;

(c) specifies the date when it was first published;

(d) specifies the period the ratings or recommendations are intended to cover;

(e) contains a clear and unambiguous explanation of the rating or recommendation system used;

(f) includes a distribution of the different ratings or recommendations, in percentage terms:

(i) for all Investments or Crypto Tokens;

(ii) for Investments in each sector covered; and

(iii) for Investments or Crypto Tokens, if any, where the Authorised Firm has undertaken corporate finance business with or for the Issuer over the past 12 months; and

(g) if intended for use only by a Professional Client or Market Counterparty, contains a clear warning that it should not be relied upon by or distributed to Retail Clients.

Guidance

An Authorised Firm may consider including a price chart or line graph depicting the performance of the Investment or Crypto Token for the period that the Authorised Firm has assigned a rating or recommendation for that investment, including the dates on which the ratings were revised for the purposes of the requirements such as in (d) and (e) of Rule 6.3.3.

6.3.4 For the purposes of this section, an Authorised Firm must take reasonable steps to ensure that when it publishes Investment Research, and in the case where a representative of the Authorised Firm makes a Public Appearance, disclosure is made of the following matters:

(a) any financial interest or material interest that the Investment Analyst or a Close Relative of the analyst has, which relates to the Investment or Crypto Token;

(b) the reporting lines for Investment Analysts and their remuneration arrangements where such matters give rise to any conflicts of interest which may reasonably be likely to impair the impartiality of the Investment Research;

(c) any shareholding by the Authorised Firm or its Associate of 1% or more of the total issued share capital of the Issuer;

(ca) in the case of a Crypto Token, any holding of 1% or more of the total number of issued Crypto Tokens of that type;

(d) if the Authorised Firm or its Associate acts as corporate broker for the Issuer;

(e) any material shareholding by the Issuer in the Authorised Firm;

(f) any corporate finance business undertaken by the Authorised Firm with or for the Issuer over the past 12 months, and any future relevant corporate finance business initiatives; and

(g) that the Authorised Firm is a Market Maker in the Investment or Crypto Token, if that is the case.

Guidance

The requirements in Rule 6.3.4(a) and (b) apply to an Authorised Firm in addition to other requirements in the DFSA Rulebook. For example, an Authorised Firm is required to take reasonable steps to identify actual or potential conflicts of interest and then prevent or manage them under GEN Rule 4.2.7 (Principle 7 – Conflicts of Interest). Further, COB Rule 6.3.2 requires an Authorised Firm to have adequate procedures and controls when it prepares or publishes Investment Research.

Restrictions on publication

6.3.5 If an Authorised Firm acts as a manager or co-manager of an initial public offering or a secondary offering, it must take reasonable steps to ensure that:

(a) it does not publish Investment Research relating to the Investment during a Quiet Period; and

(b) an Investment Analyst from the Authorised Firm does not make a Public Appearance relating to that Investment during a Quiet Period.

Guidance

The DFSA does not consider the same conflicts of interest mentioned in this section arise if an Investment Analyst prepares Investment Research solely for an Authorised Firm's own use and not for publication. For example, if the research material is prepared solely for the purposes of the Authorised Firm's proprietary trading then the use of this information would fall outside the restrictions placed on publications.

Restriction on own account transactions

6.3.6 (1) Unless (2) applies, an Authorised Firm or its Associate must not knowingly execute an Own Account Transaction in an Investment, Crypto Token or related Investments, which is the subject of Investment Research, prepared either by the Authorised Firm or its Associate, until the Clients for whom the Investment Research was principally intended have had a reasonable opportunity to act upon it.

(2) The restriction in (1) does not apply if:

(a) the Authorised Firm or its Associate is a Market Maker in the relevant Investment or Crypto Token;

(b) the Authorised Firm or its Associate undertakes an Execution-Only Transaction for a Client; or

(c) it is not expected to materially affect the price of the Investment or Crypto Token.

Guidance

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

Offers of securities

6.3.7 When an Authorised Firm carries out a mandate to manage an Offer of Securities, it must implement adequate internal arrangements, in accordance with section 3.5, to manage any conflicts of interest that may arise as a result of the Authorised Firm's duty to two distinct sets of Clients namely the corporate finance Client and the investment Client.

Disclosure

6.3.8 For the purposes of Rule 6.3.7, when an Authorised Firm accepts a mandate to manage an Offer, it must take reasonable steps to disclose to its corporate finance Client:

(a) the process the Authorised Firm proposes to adopt in order to determine what recommendations it will make about allocations for the Offer;

(b) details of how the target investor group, to whom it is planned to Offer the Securities, will be identified;

(c) the process through which recommendations are prepared and by whom; and

(d) (if relevant) that it may recommend placing Securities with a Client of the Authorised Firm for whom the Authorised Firm provides other services, with the Authorised Firm's own proprietary book, or with an Associate, and that this represents a potential conflict of interest.

Guidance

It is the DFSA's expectation that an Authorised Firm's procedures to identify and manage conflicts of interest should extend to the allocation process for an offering of Securities.

6.4 Best execution

Application

6.4.1 (1) The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which:

(a) it undertakes with a Market Counterparty;

(b) it carries out for the purposes of managing a Fund of which it is the Fund Manager;

(c) is an Execution-Only Transaction; or

(d) it undertakes on an MTF which it operates.

(2) Where an Authorised Firm undertakes an Execution-Only Transaction with or for a Client, the Authorised Firm is not relieved from providing best execution in respect of any aspect of that Transaction which lies outside the Client's specific instructions.

Providing best execution

6.4.2 (1) When an Authorised Firm agrees, or decides in the exercise of its discretion, to Execute any Transaction with or for a Client in an Investment~~,~~ or Crypto Token, it must provide best execution.

(2) An Authorised Firm provides best execution if it takes reasonable care to determine the best overall price available for that Investment or Crypto Token under the prevailing market conditions and deals at a price which is no less advantageous to that Client.

(3) An Authorised Firm which is an ATS Operator is not required to provide best execution for Persons who are its Clients in circumstances where such Persons are dealing with each other on the Authorised Firm's ATS and the Authorised Firm is not acting for or on behalf of any such Persons in relation to a deal on that ATS.

Requirements

6.4.3 In determining whether an Authorised Firm has taken reasonable care to provide the best overall price for a Client in accordance with Rule 6.4.2, the DFSA will have regard to whether an Authorised Firm has:

(a) discounted any fees and charges previously disclosed to the Client;

(b) not taken a Mark-up or Mark-down from the price at which it Executed the Transaction, unless this is disclosed to the Client; and

(c) had regard to price competition or the availability of a range of price sources for the execution of its Clients' Transactions. In the case where the Authorised Firm has access to prices of different Authorised Market Institutions, other regulated financial markets or alternative trading systems, it must Execute the Transaction at the best overall price available having considered other relevant factors.

6.4.4 If another Person is responsible for the execution of a Transaction an Authorised Firm may rely on that Person to provide best execution where that Person has undertaken to provide best execution in accordance with this section.

Guidance

When determining best execution, an Authorised Firm should consider the direct costs and indirect costs and the relevant order type and size, settlement arrangements and timing of a Client's order that could affect decisions on when, where and how to trade.

6.5 Non-market price transactions

Application

6.5.1 (1) Subject to (2), this section applies to an Authorised Firm conducting Investment Business or Crypto Business regardless of the classification of the Client.

(2) This section does not apply to a Client to whom a Person operating an MTF provides its MTF services.

General prohibition

6.5.2 (1) An Authorised Firm must not enter into a non-market price Transaction in any capacity, with or for a Client, unless it has taken reasonable steps to ensure that the Transaction is not being entered into by the Client for an improper purpose.

(2) The requirement in (1) does not apply in relation to a non-market price Transaction subject to the Rules of an Authorised Market Institution or regulated exchange.

Record keeping

6.5.3 An Authorised Firm must make and retain, for a minimum of six years, a record of the steps it has taken in relation to each Transaction under this section.

Guidance

1. A non-market price Transaction is a Transaction where the dealing rate or price paid by the Authorised Firm or its Client differs from the prevailing market rate or price to a material extent or the Authorised Firm or its Client gives materially more or less in value than it receives in return.

2. In general, Authorised Firms should undertake transactions at the prevailing market price. Failure to do this may result in an Authorised Firm participating, whether deliberately or unknowingly, in the concealment of a profit or loss, or in the perpetration of a fraud.

6.6 Aggregation and allocation

Application

6.6.1 The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which:

(a) it undertakes with a Market Counterparty;

(b) it carries out for the purposes of managing a Fund of which it is the Fund Manager; or

(c) is undertaken on an MTF which it operates.

Aggregation of orders

6.6.2 An Authorised Firm may aggregate an order for a Client with an order for other Clients or with an order for its own account only where:

(a) it is unlikely that the aggregation will operate to the disadvantage of any of the Clients whose Transactions have been aggregated;

(b) the Authorised Firm has disclosed in writing to the Client that his order may be aggregated and that the effect of the aggregation may operate on some occasions to his disadvantage;

(c) the Authorised Firm has made a record of the intended basis of allocation and the identity of each Client before the order is effected; and

(d) the Authorised Firm has in place written standards and policies on aggregation and allocation which are consistently applied and should include the policy that will be adopted when only part of the aggregated order has been filled.

Allocation of investments

6.6.3 Where an Authorised Firm has aggregated a Client order with an order for other Clients or with an order for its own account, and part or all of the aggregated order has been filled, it must:

(a) promptly allocate the Investments or Crypto Tokens concerned;

(b) allocate the Investments or Crypto Tokens in accordance with the stated intention;

(c) ensure the allocation is done fairly and uniformly by not giving undue preference to itself or to any of those for whom it dealt; and

(d) make and maintain a record of:

(i) the date and time of the allocation;

(ii) the relevant Investments or Crypto Tokens;

(iii) the identify of each Client concerned; and

(iv) the amount allocated to each Client and to the Authorised Firm recorded against the intended allocation as required in (b).

Record keeping

6.6.4 An Authorised Firm must retain the records required in Rules 6.6.2 (d) and 6.6.3 for six years from the date on which the order is allocated.

6.7 Record keeping – voice and electronic communications

6.7.1 (1) An Authorised Firm must, subject to (2), take reasonable steps to ensure that it makes and retains recordings of its voice and electronic communications when such communications are with a Client or with another Person in relation to a Transaction, including the receiving or passing of related instructions.

(2) The obligation in (1) does not apply in relation to voice and electronic communications which are not intended to lead to the conclusion of a specific Transaction and are general conversations or communications about market conditions.

Guidance

The effect of Rule 6.7.1 is that an Authorised Firm may conduct the kind of business contemplated in (1) over a mobile phone or other handheld electronic communication device but only if the Authorised Firm is able to record such communications. Further, mere transmission of instructions by front office personnel to back office personnel within an Authorised Firm would not ordinarily be subject to this Rule.

6.7.2 (1) An Authorised Firm must be able to demonstrate prompt accessibility of all records.

(2) Records must be maintained in comprehensible form or must be capable of being promptly so reproduced.

(3) The Authorised Firm must make and implement appropriate procedures to prevent unauthorised alteration of its records.

6.7.3 Voice and electronic communication recordings must be retained for a minimum of six months.

Records of orders and transactions

6.7.4 (1) When an Authorised Firm receives a Client order or in the exercise of its discretion decides upon a Transaction, it must promptly make a record of the information set out in App1 under Rule A1.1.1.

(2) When an Authorised Firm Executes a Transaction, it must promptly make a record of the information set out in App1 under Rule A1.1.2.

(3) When an Authorised Firm passes a Client order to another Person for Execution, it must promptly make a record of the information set out in App 1 under Rule A1.1.3.

6.7.5 The records referred to in Rule 6.7.4 must be retained by an Authorised Firm for a minimum of six years.

6.8 Other dealing rules

Application

6.8.1 (1) Subject to (2), the Rules in this section, other than Rule 6.8.7, do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

(b) carries out for the purposes of managing a Fund of which it is the Fund Manager.

(2) The Rules in this section do not apply to an Authorised Firm in respect of any Transactions which it undertakes on an MTF which it operates.

Churning

6.8.2 (1) An Authorised Firm must not Execute a Transaction for a Client in its discretion or advise any Client to transact with a frequency or in amounts to the extent that those Transactions might be deemed to be excessive.

(2) The onus will be on the Authorised Firm to ensure that such Transactions were fair and reasonable at the time they were entered into.

Timely execution

6.8.3 (1) Once an Authorised Firm has agreed or decided to enter into a Transaction for a Client, it must do so as soon as reasonably practical.

(2) An Authorised Firm may postpone the execution of a Transaction in (1) if it has taken reasonable steps to ensure that it is in the best interests of the Client.

Fairly and in due turn

6.8.4 An Authorised Firm must deal with Own Account Transactions and Client Transactions fairly and in due turn.

Averaging of prices

6.8.5 (1) An Authorised Firm may execute a series of Transactions on behalf of a Client within the same trading day or within such other period as may be agreed in writing by the Client, to achieve one investment decision or objective, or to meet Transactions which it has aggregated.

(2) If the Authorised Firm does so, it may determine a uniform price for the Transactions executed during the period, calculated as the weighted average of the various prices of the Transactions in the series.

Timely allocation

6.8.6 (1) An Authorised Firm must ensure that a Transaction it Executes is promptly allocated.

(2) The allocation must be:

(a) to the account of the Client on whose instructions the Transaction was executed;

(b) in respect of a discretionary Transaction, to the account of the Client or Clients with or for whom the Authorised Firm has made and recorded, prior to the Transaction, a decision in principle to execute that Transaction; or

(c) in all other cases, to the account of the Authorised Firm.

Direct Electronic Access

6.8.7 Where an Authorised Firm provides a Client (including a Market Counterparty) with direct electronic access to an Authorised Market Institution, Alternative Trading System, Regulated Exchange or regulated multilateral trading facility, the Authorised Firm must:

(a) establish and maintain policies, procedures, systems and controls to limit or prevent a Client from placing an order that would result in the Authorised Firm exceeding its existing position limits or credit limits; and

(b) ensure that such policies, procedures, systems and controls remain appropriate and effective on an on-going basis.

Guidance

An Authorised Firm should undertake on-going monitoring of its systems and controls to ensure that they are operating effectively and as intended and remain appropriate.

6.9 Confirmation notes

Application

6.9.1 The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

(b) carries out for the purposes of managing a Fund of which it is the Fund Manager.

Sending confirmation notes

6.9.2 (1) When an Authorised Firm Executes a Transaction in an Investment or Crypto Token for a Client, it must ensure a confirmation note is sent to the Client as soon as possible and in any case no later than 2 business days following the date of Execution of the Transaction.

(2) Where an Authorised Firm has executed a Transaction or series of Transactions in accordance with Rule 6.8.5, the Authorised Firm must send a confirmation note relating to those Transactions as soon as possible, but no later than 2 business days following the last Transaction.

(3) The confirmation note must include the details of the Transaction in accordance with App3 section A3.1.

(4) An Authorised Firm is not required to issue a confirmation note where a Professional Client has advised in writing that he does not wish to receive such confirmation notes.

Record keeping

6.9.3 An Authorised Firm must retain a copy of each confirmation note sent to a Client and retain it for a minimum of six years from the date of despatch.

6.10 Periodic statements

Application

6.10.1 The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

(b) carries out for the purposes of managing a Collective Investment Fund of which it is the Fund Manager.

Investment management and contingent liability investments

6.10.2 (1) When an Authorised Firm:

(a) acts as an Investment Manager for a Client; or

(b) operates a Client's account containing uncovered open positions in a Contingent Liability Investment;

it must promptly and at suitable intervals in accordance with (2) provide the Client with a written statement ("a periodic statement") containing the matters referred to in App4 section A4.1.

(2) For the purposes of (1), a "suitable interval" is:

(a) six-monthly;

(b) monthly, if the Client's portfolio includes an uncovered open position in Contingent Liability Investments; or

(c) at any alternative interval that a Client has on his own initiative agreed with the Authorised Firm but in any case at least annually.

Record keeping

6.10.4 An Authorised Firm must make a copy of any periodic statement provided to a Client and retain it for a minimum of six years from the date on which it was provided.

6.11 Client Assets

Application

6.11.1 (1) This section applies to an Authorised Firm which:

(a) holds or controls Client Assets; or

(b) Provides Custody.

(2) This section applies to an Authorised Firm Arranging Custody only to the extent specified in Rule 6.11.2(3).

Guidance

1. Client Assets is defined in the GLO Module as "Client Money, ~~and~~ Client Investments and Client Crypto Tokens".

2. Principle 9 of the Principles for Authorised Firms (Customer assets and money) requires an Authorised Firm to arrange proper protection for Clients' Assets when the firm is responsible for them. An essential part of that protection is that an Authorised Firm must properly safeguard Client Money, ~~and~~ Client Investments and Client Crypto Tokens held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business or Crypto Business in or from the DIFC.

3. Rule 6.11.3 requires an Authorised Firm to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets, or of rights in connection with Client Assets, as a result of, for example, the Authorised Firm's or a third party's insolvency, fraud, poor administration, inadequate record-keeping or negligence.

4. For information about the difference between Providing Custody and Arranging Custody, see Guidance under GEN Rule 2.13.1.

5. The Client Asset provisions apply only to a limited extent to an Authorised Firm that Arranges Custody, as such a firm does not hold or control Client Assets (see Rule 6.11.2(3)).

6. If an Authorised Firm is Providing Money Services, the Client Asset provisions apply to funds or other assets it receives from a User (i.e. a payer or payee), or that are for the benefit of a User.

General requirements

6.11.2 (1) An Authorised Firm which holds or controls Client Money must comply with sections 6.12 and 6.14.

(2) An Authorised Firm which holds or controls Client Investments or Client Crypto Tokens or Provides Custody must comply with sections 6.13 and 6.14.

(3) An Authorised Firm which Arranges Custody must comply with the requirements in Rule A6.5.1A (on suitability of non-DIFC custodians) and A6.7.1(1) (on disclosure) in APP 6 and in section 6.14 (Record keeping).

Guidance

1. An Authorised Firm subject to Rule 6.11.2(1) will include an ATS Operator, where it holds or controls Client Money.

2. Where an Authorised Firm holds or controls Client Investments which are Investment Tokens, or Provides Custody in relation to Investment Tokens, it must comply with the requirements in section 14.3 (in addition to those in sections 6.13 and 6.14).

3. Where an Authorised Firm Provides Custody of Crypto Tokens, it must comply with the requirements in section 15.5 (in addition to those in sections 6.13 and 6.14).

6.11.3 (1) An Authorised Firm must have systems and controls to ensure that Client Assets are identifiable and secure at all times.

(2) Where the Authorised Firm holds a mandate, or similar authority over an account with a third party, in the Client's own name, its systems and controls must:

(a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Firm on the use of the mandate;

(b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and

(c) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Firm entering into such Transactions.

Guidance

Authorised Firms are reminded that they must ensure that their auditor produces a Client Money Auditor's Report, a Safe Custody Auditor's Report and a Money Services Auditor's Report, as applicable, in accordance with GEN 8.6.

Holding or controlling client assets

6.11.4 Client Assets are held or controlled by an Authorised Firm if they are:

(a) directly held by the Authorised Firm;

(b) held in an account in the name of the Authorised Firm;

(c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Firm; or

(d) held in the Client's own name, but the Authorised Firm has a mandate from the Client to manage those assets on a discretionary basis.

Guidance

1 For the purposes of Rule 6.11.4, the DFSA would consider a Person to be controlled by an Authorised Firm if that Person is inclined to act in accordance with the instructions of the Authorised Firm.

2. The DFSA would consider an account to be controlled by an Authorised Firm if that account is operated in accordance with the instructions of the Authorised Firm.

3. If an Authorised Firm has a discretionary portfolio mandate from a Client, even though the assets are to be held in the name of the Client (for example, under a power of attorney arrangement), the firm controls those assets as it can execute transactions relating to those assets, within the parameters set out in the mandate.

4. In relation to assets referred to in Guidance item 3 that are held in the Client's name, only specific Rules in App 5 (Client Money Provisions) and App 6 (Safe Custody Provisions) are likely to be relevant, as the assets are already held in the Client's own name and the firm will control rather than hold the assets. A firm with such a discretionary mandate will also need to

comply with other relevant requirements in the Rulebook, such as GEN Rule 2.2.10A requiring an endorsement to hold or control Client Assets, and GEN 8.6 section requiring an audit report relating to Client Assets.

5. If an Authorised Firm is Providing Money Services, funds or assets that it receives from, or that are for the benefit of, a User will be Client Assets held or controlled by the firm.

6.12 Client money

6.12.1 All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business, the Operation of a Crowdfunding Platform, ~~or~~ Providing Money Services or Crypto Business, in or from the DIFC is Client Money, except Money which is:

(a) held by the Authorised Firm as a Bank in an account with itself, provided the Authorised Firm notifies the Client in writing that the Client Money is held by it as a Bank and not in accordance with this chapter;

(b) immediately due and payable by the Client to the Authorised Firm;

(c) belonging to another Person within the Authorised Firm's Group unless that Person is an Authorised Firm or Regulated Financial Institution and that Person has confirmed to the Authorised Firm, in writing, that the beneficial owner of the Money is a Person who is not part of the Authorised Firm's Group;

(d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and where the Authorised Firm is in compliance with Rule 6.11.3 (2), provided it is not a mandate to manage the Money on a discretionary basis;

(e) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Firm, provided the cheque or other payable order is intended to be forwarded to the third party within 1 business day of receipt; or

(f) Fund Property of a Fund.

Guidance

1. Authorised Firms are reminded that the exemption in Rule 6.12.1(a) would not apply to Money which is passed to a third party i.e. not held in an account with the Authorised Firm itself.

2. Pursuant to Rule 6.12.1(b), examples of Money which is immediately due and payable to an Authorised Firm includes Money which is:

   a. paid by the way of brokerage, fees and other charges to the Authorised Firm or where it is entitled to deduct such remuneration from the Client Money held or controlled;

   b. paid by the Authorised Firm in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or

c. owed by the Client to the Authorised Firm in respect of unpaid purchases by or for the Client if delivery of Investments or Crypto Tokens has been made to the Client or credited to his account.

3. The CIR module contains specific provisions relating to the handing of Fund Property and also provisions relating to a Fund Administrator holding or controlling monies or assets belonging to third parties.

6.12.1A (1) All Money received from, or for the benefit of, a User in connection with Providing Money Services is Client Money, including Stored Value and Money received from another Money Services Provider for the execution of a Payment Instruction on behalf of a User.

(2) Where:

(a) only a portion of the Money referred to in (1) is to be used for Money Services; and

(b) the precise portion attributable to Money Services is variable or unknown in advance,

the Client Money is such amount as the Authorised Firm reasonably estimates, based on historical data, to be representative of the portion attributed to Money Services.

Client money provisions

6.12.2 (1) An Authorised Firm in Category 4 must not hold Client Money, except if it does so in connection with it Operating an Alternative Trading System, Operating a Crowdfunding Platform or providing Money Transmission.

(2) An Authorised Firm which holds or controls Client Money for a Client must, subject to (3), comply with the Client Money Provisions in App5.

(3) Where the Client is a Market Counterparty, an Authorised Firm may exclude the application of the Client Money Provisions but only where it has obtained the prior written consent of the Market Counterparty to do so.

Guidance

1. Providing Money Transmission is an activity that is included in the Financial Service of Providing Money Services – see the definition in GEN Rule 2.6.1(2).

2. In accordance with GEN chapter 8, an Authorised Firm which holds or controls Client Money must arrange for a Client Money Auditor's Report and, if it is Providing Money Services, a Money Services Auditor's Report to be submitted to the DFSA on an annual basis.

Client disclosure

6.12.3 (1) If an Authorised Firm holds or controls Client Money which is not subject to the Client Money Provisions pursuant to Rule 6.12.2 (2), it must disclose to that Market Counterparty in writing that:

(a) the protections conferred by the Client Money Provisions do not apply to such Client Money;

(b) as a consequence of (a), such Client Money may be mixed with Money belonging to the Authorised Firm, and may be used by the Authorised Firm in the course of the Authorised Firm's business; and

(c) in the event of insolvency, winding up or other Distribution Event stipulated by the DFSA:

(i) in the case of a Domestic Firm, such Client Money will be subject to and distributed in accordance with the DFSA Client Money Distribution Rules; and

(ii) in the case of a non-Domestic Firm, such Client Money will be subject to a regime which may differ from the regime applicable in the DIFC.

(2) The Authorised Firm must obtain that Market Counterparty's written acknowledgement of the disclosures made in (1) prior to holding or controlling Client Money for that Market Counterparty.

Distribution event

6.12.4 Following a Distribution Event, an Authorised Firm must comply with the Client Money Distribution Rules and all Client Money will be subject to such Rules.

Record keeping

6.12.5 (1) An Authorised Firm must maintain records:

(a) which enable the Authorised Firm to demonstrate compliance with Rule 6.11.2;

(b) which enable the Authorised Firm to demonstrate and explain all entries of Money held or controlled in accordance with this chapter; and

(c) of all cheques received and forwarded in accordance with Rule 6.12.1(e).

(2) Records must be kept for a minimum of six years.

Guidance

The DFSA expects an Authorised Firm to maintain proper books and accounts based on the double-entry booking principle. They should be legible, up to date and contain narratives with the entries which identify and provide adequate information about each transaction. Entries should be made in chronological order and the current balance should be shown on each of the Authorised Firm's ledgers.

6.13 Client investments and Client Crypto Tokens

6.13.1 An Authorised Firm must treat all Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business as Client Investments.

6.13.1A An Authorised Firm must treat all Crypto Tokens held or controlled on behalf of a Client in the course of, or in connection with, carrying on Crypto Business as Client Crypto Tokens.

6.13.2 An Authorised Firm which holds or controls Client Investments or Client Crypto Tokens must have systems and controls in place to ensure the proper safeguarding of Client Investments or Client Crypto Tokens.

Guidance

Instead of safeguarding Client Investments or Client Crypto Tokens, an Authorised Firm may choose to safeguard Client Money equal to the value of the Client Investments or Client Crypto Tokens.

6.13.3 (1) Subject to (2), an Authorised Firm:

(a) holding or controlling Client Investments or Client Crypto Tokens; or

(b) Providing Custody,

in or from the DIFC must do so in accordance with the Safe Custody Provisions in App6.

(2) The Safe Custody Provisions in App6 do not apply to Client Investments or Client Crypto Tokens held as Collateral unless stated otherwise.

Guidance

An Authorised Firm Arranging Custody must comply with the requirements specified in Rule 6.11.2(3).

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6.14 Record keeping

6.14.1 (1) An Authorised Firm must maintain records:

(a) which enable the Authorised Firm to demonstrate compliance with Rule 6.11.2; and

(b) which enable the Authorised Firm to demonstrate and explain all entries of Client Investments, Client Crypto Tokens and Collateral held or controlled in accordance with this chapter.

(2) Records must be kept for a minimum of six years.

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9 ADDITIONAL RULES: OPERATING AN ALTERNATIVE TRADING SYSTEM

9.1 Application and interpretation

9.1.1 This chapter applies to an Authorised Firm which Operates an Alternative Trading System (ATS Operator).

Guidance

1. The Financial Service of Operating an Alternative Trading System can, in relation to Investments, be either operating a Multilateral Trading Facility (MTF) or operating an Organised Trading Facility (OTF). However, in the case of Crypto Tokens, the system can only be an MTF. See GEN Rule 2.22.1.

2. An ATS Operator that is Operating a Facility for Investment Tokens is, in addition to the requirements in this chapter, subject to the applicable requirements in chapter 14.

3. An Authorised Firm that Operates a MTF for Crypto Tokens is, in addition to the requirements in this chapter, subject to the applicable requirements in chapter 15.

9.1.2 In this chapter:

(a) a reference to a "member" is a reference to a Client of the ATS Operator who has been granted access to its facilities in accordance with the requirements in this chapter and, unless otherwise specified, includes a Direct Access Member;

(b) a reference to a "facility" is a reference to a Multilateral Trading Facility (MTF) and an Organised Trading Facility (OTF), except where specific reference is made only to an MTF or OTF;

(c) a reference to an "ATS Operator" is a reference to a Person operating an MTF and a Person operating an OTF, except where specific reference is made only to a Person operating an MTF or a Person operating an OTF; and

(d) where a Rule in this chapter conflicts with any other provision in the DFSA Rulebook, the Rule in this chapter prevails over those other provisions.

Guidance

Under Rule 9.3.1(1)(e), an ATS Operator that is Operating a Facility for Investment Tokens or Crypto Tokens is permitted to admit certain additional Persons as members, where their access is only for trading or clearing of Investment Tokens or Crypto Tokens. Such Persons are defined in GLO and referred to in this module as Direct Access Members.

9.2 Main requirements relating to trading on the facility

9.2.1 (1) An ATS Operator must, at the time a Licence is granted and at all times thereafter, have:

(a) transparent and non-discriminatory rules and procedures to ensure fair and orderly trading of Investments or Crypto Tokens on its facility ("Operating Rules");

(b) objective criteria governing access to its facility ("Access Criteria");

(c) objective and transparent criteria for determining the Investments or Crypto Tokens that can be traded on its facility ("Investment Criteria");

(d) adequate technology resources ("Technology Resources"); and

(e) rules and procedures to ensure only Investments or Crypto Tokens in which there is a Proper Market are traded on its facilities ("Proper Markets").

(2) A breach of the Operating Rules of an ATS Operator is a prescribed matter for the purposes of Article 67(1)(b) of the Regulatory Law 2004.

Guidance

Pursuant to Article 67(1) of the Regulatory Law 2004, an Authorised Firm is required to disclose to the DFSA anything which reasonably tends to show breaches or likely breaches of requirements as prescribed in Rules. Rule 9.2.1(2) prescribes a breach of Operating Rules as a the matter which is reportable to the DFSA by an ATS Operator.

Operating Rules

9.2.2 (1) The Operating Rules of an ATS Operator must be:

(a) based on objective criteria;

(b) non-discriminatory;

(c) clear and fair;

(d) legally binding and enforceable against each member and where relevant, any other Person who has been allowed access to the facility through the member; and

(e) in the case of a Person operating an MTF, non-discretionary and made publicly available.

(2) The Operating Rules of an ATS Operator must place obligations upon Persons who are admitted to trading on its facility ("members"):

(i) when undertaking transactions on its facilities; and

(iii) relating to professional standards applicable to staff and other Persons allowed access to the facility through such a member.

(3) Without limiting the generality of (1) and (2), the Operating Rules of an ATS Operator must contain:

(a) criteria for admission of members to its facility, in accordance with Rule 9.3.1;

(b) criteria relating to Investments or Crypto Tokens traded on its facility, in accordance with Rule 9.4.1;

(c) the rules and procedures governing trading on the facility;

(d) default rules;

(e) the rules and procedures for the clearing and settlement of transactions executed on the facility; and

(f) any other matters necessary for the proper functioning of its facility.

Material changes to Current Arrangements

9.2.3 (1) An ATS Operator may only make material changes to its existing arrangements to meet the requirements in this chapter in accordance with the requirements in this Rule.

(2) The reference to "Existing Arrangements" in (1) is a reference to both the arrangements which were in place at the time of the initial grant of the Licence and any changes made to such arrangements in accordance with the requirements in this Rule.

(3) For the purposes of obtaining the DFSA approval, an ATS Operator must provide to the DFSA, at least 30 days before the proposed change is intended to come into effect, a notice setting out:

(a) the proposed change;

(b) the reasons for the proposed change; and

(c) what impact the proposed change would have on its members and its ability to operate the facility.

(4) The DFSA must, upon receipt of a notice referred to in (1), approve or disapprove the proposed change as soon as practicable and in any event within 30 days of the receipt of the notice, unless that period has been extended by notification to the applicant.

(5) The DFSA may, in circumstances where a material change to Current Arrangements is shown on reasonable grounds to be urgently needed, accept an application for approval of such a change on shorter notice than 30 days.

(6) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to reject a proposed change under this Rule.

(7) Where the DFSA decides to reject a proposed change, the ATS Operator may refer the matter to the FMT for review.

Guidance

1. The period of 30 days will commence to run from the time the DFSA has received all the relevant information to assess the application.

2. An ATS Operator should consider submitting its application for the DFSA approval well in advance of the date on which a proposed amendment is intended to come into effect, especially in the case of significant material changes to its existing arrangements, to allow the DFSA sufficient time to consider the application. If additional time is reasonably required to properly assess the impact of a proposed change due to its nature, scale and complexity, the DFSA may make an appropriate extension of time beyond 30 days. Such an extension would be made in consultation with the applicant.

9.3 Member access criteria

9.3.1 (1) An ATS Operator may, subject to (2), (3) and (4), accept as a member:

(a) an Authorised Firm;

(b) a Recognised Member;

(c) a Person who meets the criteria in GEN Rule 2.3.2(2);

(d) a Person who is classified as a Professional Client pursuant to COB Rule 2.3.4(1)(g), (h) and (i); or

(e) a Person not referred to in (a) to (d), only if:

(i) the facility is one on which Investment Tokens or Crypto Tokens are traded; and

(ii) the Person's access is only for trading Investment Tokens or Crypto Tokens.

(2) An ATS Operator must not admit a Person referred to in (1)(c) or (d), unless such Person:

(a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facility;

(b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facility;

(c) agrees in writing to subject itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facility; and

(d) appoints and maintains at all times an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.

(3) Prior to admitting a Person referred to in (1)(c) or (d) as a member, an ATS Operator must undertake due diligence to ensure that such a Person:

(a) is of sufficiently good repute;

(b) has a sufficient level of competence and experience; and

(c) has adequate organisational arrangements, including financial and technological resources, which are no less than those required of an Authorised Firm appropriate to the nature of its operations.

(4) Prior to admitting a Person referred to in (1)(e), an ATS Operator must undertake due diligence to ensure that the Person:

(a) meets the criteria in (3)(a) and (b);

(b) has adequate financial and technological resources to meet the Operating Rules of the facility; and

(c) does not pose any operational risks to the orderly and efficient functioning of the facility's trading systems.

Guidance

1. See also the requirements relating to Direct Access Members in section 14.2 and section 15.3.
2. Members who are not Direct Access Members may also trade in Investment Tokens or Crypto Tokens.

Direct electronic access

9.3.2 An ATS Operator must have adequate rules and procedures to ensure that:

(a) a Direct Access Member does not allow any other Person to have Direct Electronic Access to the facility; and

(b) in any other case, its members do not allow any other Person to have Direct Electronic Access to the facility unless such other Person meets the requirements in Rule 9.3.1(1).

9.3.3 An ATS Operator must, where it permits any of its members to provide to another Person Direct Electronic Access to its facilities, have adequate systems and controls including:

(a) appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;

(b) mechanisms to identify and distinguish orders placed by those Persons who are allowed to place orders through Direct Electronic Access; and

(c) if necessary, the ability to stop orders of, or trading by, the Persons allowed Direct Electronic Access.

Monitoring of compliance

9.3.4 An ATS Operator must establish and maintain adequate and effective systems and controls, including policies and procedures, to ensure that its members and other Persons to whom access to its facility is provided through members comply with its Operational Rules and where any gaps or deficiencies are identified, they are promptly addressed.

9.4 Investment criteria

9.4.1 An ATS Operator must ensure in respect of every Investment or Crypto Token traded on its facility that:

(a) only Investments which meet the requirements in (i), (ii), ~~or (iii)~~ (iv) or (v) or Crypto Tokens which meet the requirements in (iii) are traded on its facility:

(i) in the case of Securities, the Securities are admitted to trading on an Authorised Market Institution or other Regulated Exchange;

(ii) in the case of Security Tokens that do not meet the criteria in (i):

(A) there is a current Approved Prospectus relating to the Security Tokens;

(B) the ATS Operator has taken adequate steps before admitting the Security Tokens to trading, to satisfy itself that both the Security Tokens and the relevant Reporting Entity meet the general eligibility requirements in MKT section 9.3; and

(C) the ATS Operator has adequate systems and controls in place to effectively monitor and enforce a Reporting Entity's compliance with the requirements in MKT Chapter 9B; ~~or~~

(iii) in the case of a Crypto Token, it is an Accepted Crypto Token;

(iv) in the case of a Crypto Token Derivative:

(A) it relates to an Accepted Crypto Token; and

(B) the Derivative contract meets the requirements in Rule 6.3.2; or

(~~iii~~v) in the case of Derivatives (other than Crypto Token Derivatives) , the instruments ~~that~~ meet the contract specification criteria set out in AMI Rule 6.3.2;

(b) there is sufficient information relating to the Investments or Crypto Tokens traded on the facility available to members and other Persons having access to the facility through such members to enable such Persons to make informed decisions relating to such Investments or Crypto Tokens; and

(c) if it is an Investment that references to an underlying benchmark or index provided by a Price Information Provider, the requirements in Rule 9.4.2 are met.

Guidance

1. A Reporting Entity of Security Tokens that are admitted to trading by an ATS Operator under Rule 9.4.1(a)(ii) will be subject to the requirements imposed on Reporting Entities in MKT. An ATS Operator should therefore assess whether a prospective Reporting Entity is capable of meeting those requirements before admitting its Security Tokens to trading.

2. In relation to a Crypto Token, there is no Reporting Entity and, as a Crypto Token cannot be admitted to the Official List, the MKT requirements for Listing do not apply. Instead, GEN Rule 3A.2.1 requires a Crypto Token to be an Accepted Crypto Token before it can be offered to the public, promoted or the subject of any Financial Service in the DIFC. To be an Accepted Crypto Token, the DFSA must approve the Crypto Token under GEN section 3A.3 as suitable for use in the DIFC.

Use of price information providers

9.4.2 (1) An ATS Operator may only trade Investments that reference to an underlying benchmark or index provided by a Price Information Provider where it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).

(2) A Price Information Provider is a price reporting agency or an index provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, rates, indices, commodities or figures, which are made available to users.

(3) For the purposes of (1), the Price Information Provider must:

(a) have fair and non-discriminatory procedures for establishing prices of Investments which are made public.

(b) demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations;

(c) where appropriate, give priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;

(d) be of good standing and repute as an independent and objective price reporting agency or index provider;

(e) have a sound corporate governance framework;

(f) have adequate arrangements to avoid its staff having any conflicts of interest where such conflicts have, or are likely to have, a material adverse impact on price establishment process; and

(g) adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

Guidance

An ATS Operator, when assessing the suitability of a Price Information Provider (the provider), should take into account factors such as:

a. the provider's standing and reliability in the relevant physical or derivatives markets as a credible price reporting agency;

b. the quality of corporate governance adopted, covering areas such as independent members of the board, independence of its internal audit and risk management function;

c. whether the methodologies and processes (including any material changes to such methodologies and processes) adopted by the provider for the purposes of pricing are made publicly available;

d. whether there are adequate procedures adopted to ensure that conflicts between the provider's commercial interests and those of users of its services, including those of its Employees involved in pricing process, are adequately addressed, including through codes of ethics;

e. whether there is a clear conveyance to its users of the economic realities of the underlying interest the Price Information Provider seeks to measure; and,

f. the degree to which the Price Information Provider has given consideration to the characteristics of the underlying interests measured, such as:

- **the size and liquidity:** Whether the size of the market informs the selection of an appropriate compilation mechanism and governance processes. For example, a benchmark or index that measures a smaller market may be impacted by single trades and therefore be more prone to potential manipulation, whereas a benchmark for a larger market may not be well represented by a small sample of participants;

- **the relative market size.** Where the size of a market referencing a benchmark is significantly larger than the volume of the underlying market, the potential incentive for benchmark manipulation to increase; and

- **Transparency:** Where there are varying levels of transparency regarding trading volumes and positions of market participants, particularly in non-regulated markets and instruments, whether the benchmark represents the full breadth of the market, the role of specialist participants who might be in a position to give an overview of the market, and the feasibility, costs and benefits of providing additional transparency in the underlying markets.

9.5 Technology resources

9.5.1 (1) An ATS Operator must:

(a) have sufficient technology resources to operate, maintain and supervise the facility it operates;

(b) be able to satisfy the DFSA that its technology resources are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain; and

(c) ensure that its members and other participants on its facility have sufficient technology resources which are compatible with its own.

(2) For the purposes of meeting the requirement in (1)(c), an ATS Operator must have adequate procedures and arrangements for the evaluation, selection

and on-going monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

(a) problem management and system change;

(b) adequate procedures for testing information technology systems before live operations, which are in conformity with the requirements that would apply to an Authorised Market Institution under App 1 of AMI;

(c) monitoring and reporting on system performance, availability and integrity; and

(d) adequate measures to ensure:

(i) the information technology systems are resilient and not prone to failure;

(ii) business continuity in the event that an information technology system fails;

(iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and

(iv) the integrity of data forming part of, or being processed through, information technology systems.

Guidance

1. In assessing the adequacy of an ATS Operator's systems and controls used to operate and carry on its functions, the DFSA will consider:

a. the organisation, management and resources of the information technology department of the firm;

b. the arrangements for controlling and documenting the design, development, implementation and use of technology systems; and

c. the performance, capacity and reliability of information technology systems.

2. The DFSA will also, during its assessment of technology systems, have regard to the:

a. procedure for the evaluation and selection of information technology systems;

b. procedures for problem management and system change;

c. arrangements for testing information technology systems before live operations;

d. arrangements to monitor and report system performance, availability and integrity;

e. arrangements made to ensure information technology systems are resilient and not prone to failure;

f. arrangements made to ensure business continuity in the event that an information technology system fails;

g arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access;

h. arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems; and

i. third party outsourcing arrangements.

3. In particular, when assessing whether an ATS Operator has adequate information technology resourcing, the DFSA will consider:

a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

Regular review of systems and controls

9.5.2 (1) An ATS Operator must undertake regular review and updates of its systems and controls as appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), an ATS Operator must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

Guidance

Through the use of such testing methodologies, the ATS Operator should be able to ensure, amongst other things, that:

a. its systems and controls are compatible with its operations and functions;

b. compliance and risk management controls embedded in its system operate as intended (for example by generating error reports automatically); and

c. it can continue to work effectively in stressed market conditions.

9.6 Proper Markets

9.6.1 (1) Without limiting the generality of the other requirements in this chapter, an ATS Operator must, for the purposes of meeting the requirement in Rule 9.2.1(e) relating to Proper Markets, ensure that:

(a) if Derivatives are traded on its facilities, such Derivatives meet the contract design specifications in AMI Rule 6.3.2;

(b) relevant market information is made available to Persons engaged in dealing on an equitable basis, including pre-trade and post-trade orders, in accordance with Rules 9.6.2 and 9.6.3;

(c) there are adequate mechanisms to discontinue, suspend or remove from trading on its facilities any Investments or Crypto Tokens in circumstances where the requirements in this chapter are not met;

(d) there are controls to prevent volatility in the markets that is not caused by market forces, in accordance with Rule 9.6.4;

(e) error trades are managed, in accordance with Rule 9.6.5;

(f) Short Selling and position concentration are monitored and managed, in accordance with Rule 9.6.5;

(g) there are fair and non-discretionary algorithm operating in respect of matching of orders on its facilities;

(h) there are adequate controls to monitor and manage any foreign ownership restrictions applying to Investments traded on its facilities, in accordance with Rule 9.6.7;

(i) liquidity incentive schemes are offered only in accordance with Rule 9.6.8; and

(j) there are adequate rules and procedures to address Market Abuse and financial crime, in accordance with Rules 9.6.9 and 9.6.10.

Pre-trade transparency

9.6.2 (1) An ATS Operator must disclose the information specified in (2) relating to trading of Investments or Crypto Tokens on its facility in the manner prescribed in (3).

(2) The information required to be disclosed pursuant to (1) includes:

(a) the current bid and offer prices and volume;

(b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Investments or Crypto Tokens; and

(c) any other information relating to Investments or Crypto Tokens which would promote transparency relating to trading.

(3) The information referred to in (2) must be made available to members and the public as appropriate on a continuous basis during normal trading.

Guidance

1. When making disclosure, an ATS Operator should adopt a technical mechanism by which the public can differentiate between transactions that have been transacted in the central order book and transactions that have been reported to the facility as off-order book transactions. Any transactions that have been cancelled pursuant to its rules should also be identifiable.

2. An ATS Operator should use appropriate mechanisms to enable pre-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An ATS Operator may charge a reasonable fee for the information which it makes available to the public.

3. An ATS Operator may seek a waiver or modification from the disclosure requirement in Rule 9.6.1(1) in relation to certain transactions where the order size is pre-determined, exceeds a pre-set and published threshold level and the details of the exemption are made available to its members and the public.

4. In assessing whether an exemption from pre-trade disclosure should be allowed, the DFSA will take into account factors such as:

   a. the level of order threshold compared with normal market size for the Investment or Crypto Token;

   b. the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;

   c. whether there is sufficient transparency relating to trades executed without pre-trade disclosure as a result of dark orders, whether or not they are entered in transparent markets;

   d. whether the ATS Operator supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and

   e. whether there is adequate disclosure of details relating to dark orders available to members and other participants on the facility to enable them to understand the manner in which their orders will be handled and executed on the facility.

5. Dark orders are orders executed on execution platforms without pre-trade transparency.

Post-trade transparency requirements

9.6.3 (1) An ATS Operator must disclose the information specified in (2) in the manner prescribed in (3).

(2) The information required to be disclosed pursuant to (1) is the price, volume and time of the transactions executed in respect of Investments or Crypto Tokens.

(3) The information referred to in (2) must be made available to the public as close to real-time as is technically possible on reasonable commercial terms and on a non-discretionary basis.

Guidance

An ATS Operator should use adequate mechanism to enable post-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An ATS Operator may charge a reasonable fee for the information which it makes available to the public.

Volatility controls

9.6.4 (1) An ATS Operator's Operating Rules must include effective systems, controls and procedures to ensure that its trading systems:

(a) are resilient;

(b) have adequate capacity to deal with peak orders and message volumes; and

(c) are able to operate in an orderly manner under conditions of market stress.

(2) Without limiting the generality of its obligations arising under (1) or any other Rule, an ATS Operator must be able under its rules, systems, controls and procedures to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or are clearly erroneous;

(b) temporarily halt trading of Investments or Crypto Tokens traded on its facility if there is a significant price movement in relation to those Investments or Crypto Tokens on its market or a related market during a short period; and

(c) where appropriate, cancel, vary or correct any transaction.

Guidance

An ATS Operator should test its trading systems to ensure that they are resilient and capable of operating orderly trading under conditions of market stress and other contingencies.

Error Trade policy

9.6.5 (1) An ATS Operator must be able to cancel, amend or correct any error trades.

(2) An "Error Trade" is the execution of an order resulting from:

(a) an erroneous order entry;

(b) malfunctioning of the system of a member or of the ATS Operator; or

(c) a combination of (a) and (b).

(3) For the purposes of (1), an ATS Operator must include a comprehensive error trade policy in its Operating Rules, which sets out clearly the extent to which transactions can be cancelled by it at its sole discretion, at the request of a member or by mutual consent of members involved.

(4) An ATS Operator must have adequate systems and controls to:

(a) prevent or minimise error trades;

(b) promptly identify and rectify error trades where they occur; and

(c) identify whether error trades are related to disorderly market activity.

Guidance

When assessing whether an ATS Operator has an appropriate and adequate error trade policy, the DFSA will consider whether the rules and procedures included in its Operating Rules:

a. are adequate to minimise the impact of error trades where prevention of such trades is not possible;

b. are sufficiently flexible in the design to address varying scenarios;

c. establish a predictable and timely process for dealing with Error Trades, including measures specifically designed to detect and identify Error Trade messages to market users;

d. promote transparency to market users with regard to any cancellation decisions involving material transactions resulting from the invocation of the Error Trade policy;

e. include adequate surveillance conducted in the markets to detect Error Trades;

f. promote predictability, fairness and consistency of actions taken under the Error Trade policy; and

g. enable sharing of information with other markets when possible concerning the cancellation of trades.

Short Selling

9.6.6 (1) An ATS Operator must have in place effective systems, controls and procedures to monitor and manage:

(a) Short Selling in Securities or Crypto Tokens; and

(b) position concentrations.

(2) For the purposes of (1), an ATS Operator must have adequate powers over its members to address risks to an orderly functioning of its facility arising from unsettled positions in Investments or Crypto Tokens.

(3) Short Selling for the purposes of this Rule ~~constitutes~~ is the sale of a Security or Crypto Token by a Person who does not own the Security or Crypto Token at the point of entering into the contract to sell.

Guidance

1. An ATS Operator should, when developing its controls and procedures with regard to short selling and position management, have regard to:

a. its own settlement cycle, so that any short selling activities on its facilities do not result in any delay or prevent effective settlement within such cycle; and

b. orderly functioning of its facilities, so that any long or short position concentration on Investments or Crypto Tokens that remains unsettled does not interrupt such functioning;

2. Examples of circumstances that would not be treated as short selling in Rule 6.7.1(3) include where the seller:

   a. has entered into an unconditional contract to purchase the relevant Securities or Crypto Tokens but has not received their delivery at the time of the sale;

   b. has title to other securities or Crypto Tokens which are convertible or exchangeable for the Securities or Crypto Tokens to which the sale contract relates;

   c. has exercised an option to acquire the Securities or Crypto Tokens to which the sale contract relates;

   d. has rights or warrants to subscribe and receive Securities to which the sale contract relates; and

   e. is making a sale of Securities that trades on a "when issued" basis and has entered into a binding contract to purchase such Securities, subject only to the condition of issuance of the relevant Securities.

Foreign ownership restrictions

9.6.7 An ATS Operator must not permit its facility to be used for trading Investments which are subject to foreign ownership restrictions unless it has adequate and effective arrangements to:

(a) monitor applicable foreign ownership restrictions;

(b) promptly identify and take appropriate action where any breaches of such restrictions occur without any undue interruption or negative impact to its trading activities; and

(c) suspend trading in the relevant Investments where the ownership restrictions are, or are about to be, breached and reinstate trading when the breaches are remedied.

Guidance

The kind of arrangements an ATS Operator should implement to meet the requirements in Rule 9.6.7 are such as those specified in AMI Rule 6.8.1(2).

Liquidity providers

9.6.8 (1) An ATS Operator must not introduce a liquidity incentive scheme unless:

(a) participation of such a scheme is limited to:

(i) a member as defined in Rule 9.3.1(1); or

(ii) any other Person where:

(A) it has undertaken due diligence to ensure that the Person is of sufficient good repute and has adequate competencies and organisational arrangements; and

(B) the Person has agreed in writing to comply with its Operating Rules so far as those rules are applicable to that Person's activities; and

(b) it has obtained the prior approval of the DFSA.

(2) For the purposes of this section, a "liquidity incentive scheme" means an arrangement designed to provide liquidity to the market in relation to Investments or Crypto Tokens traded on the facility.

(3) Where an ATS Operator proposes to introduce or amend a liquidity incentive scheme, it must lodge with the DFSA, at least 10 days before the date by which it expects to obtain the DFSA approval, a statement setting out:

(a) the details of the relevant scheme, including benefits to the ATS and members arising from that scheme; and

(b) the date on which the scheme is intended to become operative.

(4) The DFSA must within 10 days of receiving the notification referred to in (3), approve a proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme would be detrimental to the facility or markets in general. Where the DFSA does not approve the proposed liquidity incentive scheme, it must notify the ATS Operator of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.

(5) An ATS Operator must, as soon practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.

(6) If the DFSA decides not to approve a liquidity incentive scheme, the ATS Operator may refer the decision to the FMT for review.

Prevention of Market Abuse

9.6.9 (1) An ATS Operator must:

(a) implement and maintain appropriate measures to identify, deter and prevent Market Abuse on and through its facility; and

(b) report promptly to the DFSA any Market Abuse.

(2) For the purposes of (1)(a), an ATS Operator must:

(a) include in its Operating Rules a regime to prevent Market Abuse, which is applicable to its members and their Clients; and

(b) implement and maintain adequate measures to ensure that its members comply with that regime.

(3) The regime to prevent Market Abuse referred to in (2)(a) must, at a minimum, include rules and procedures in relation to compliance with the applicable requirements in Part 6 of the Market Law, including adequate compliance

arrangements applicable to its members and staff and the clients of members, record keeping, transaction monitoring, risk assessment and appropriate training.

Guidance

1. An ATS Operator should have an effective surveillance system in place for:

   a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments or Crypto Tokens conducted elsewhere; and

   b. communicating information about Market Abuse or suspected abuse, to the DFSA or appropriate regulatory authorities.

2. In determining whether an ATS Operator is ensuring that business conducted on its facilities is conducted in an orderly manner, the DFSA will consider:

   a. arrangements for pre and post trade transparency taking into account the nature and liquidity of the Investments or Crypto Tokens traded; and

   b. the need to provide anonymity for trading participants.

3. An ATS Operator will also have appropriate procedures allowing it to influence trading conditions, suspend trading promptly when required, and to support or encourage liquidity when necessary to maintain an orderly market. The DFSA will consider the transparency of such procedures and the fairness of their application and potential application.

4. An ATS Operator that is Operating a Facility for Investment Tokens or Crypto Tokens should, where relevant, ensure measures under Rule 9.6.9(1) include effective measures to identify, deter and prevent Market Abuse by Persons permitted to access and update records held on any DLT or similar technology based application used in connection with the operation of its facility.

9.6.10 (1) An ATS Operator must:

(a) before accepting a prospective member, ensure that the applicant has in place adequate arrangements, including systems and controls to comply with its regime for preventing Market Abuse;

(b) monitor and regularly review compliance by its members with that regime; and

(c) take appropriate measures to ensure that its members rectify to the extent feasible any contraventions of its regime without delay.

(2) An ATS Operator must promptly notify the DFSA of any:

(a) material breach of its regime to prevent Market Abuse by a member, or by staff or clients of the member; and

(b) circumstances in which a member will not or cannot rectify a breach of its regime.

Guidance

1. An Authorised Firm is subject to the requirements in the DFSA's AML module. Members of an Authorised Firm which are themselves Authorised Firms are also subject, by virtue of being Authorised Firms, to the requirements in the DFSA's AML module.

2. In determining whether an ATS Operator's measures are adequate and appropriate to reduce the extent to which its facilities can be used for Market Abuse, the DFSA will consider:

   a. whether the ATS Operator has appropriate staff, surveillance systems, resources and procedures for this purpose;

   b. the monitoring conducted for possible patterns of normal, abnormal or improper use of those facilities;

   c. how promptly and accurately information is communicated about Market Abuse to the DFSA and other appropriate organisations; and

   d. how the ATS Operator co-operates with relevant bodies in the prevention, investigation and pursuit of Market Abuse.

3. An ATS Operator must have regard to Part 6 of the Markets Law in relation to forms of Market Abuse. Practices that amount to market manipulation (which is Market Abuse) in an automated trading environment which an ATS should be able to identify and prevent in order to promote proper markets include the following:

   a. entering small orders in order to ascertain the level of hidden orders, particularly used to assess what is resting on a dark platform, called Ping Orders;

   b. entering large numbers of orders and/or cancellations/updates to orders to create uncertainty for other market participants, to slow down their process and to camouflage the ATS Operator's own strategy, called Quote Stuffing;

   c. entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price, called Moment Ignition; and

   d. submitting multiple orders often away from one side of the order book with the intention of executing a trade on the other side of the order book, where once that trade has taken place, the manipulative orders will be removed, called Layering and Spoofing.

Clearing and settlement arrangements

9.6.11 (1) An ATS Operator must:

(a) ensure that there are satisfactory arrangements in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facility; and

(b) inform its members and other Persons having access to its facility through members of details relating to such arrangements.

(2) For the purposes of (1)(a), an ATS Operator must ensure that:

(a) the Person who provides clearing and settlement services to a member is either:

(i) an Authorised Person appropriately licensed to carry on clearing or settlement services; or

(ii) an entity which is authorised and supervised by a Financial Services Regulator acceptable to the DFSA for the activity of clearing and settlement services and is operating under broadly equivalent standards as defined under Chapter 7 of the AMI module; and

(b) notification of such arrangements (including any changes thereto) is provided to the DFSA at least 30 days before making the arrangements and the DFSA has not objected to such arrangements within that period.

Guidance

An ATS Operator is not authorised under its Licence to provide clearing and settlement services. Therefore, it must make suitable arrangements relating to clearing and settlement of transactions that are undertaken on its facility. For this purpose, it may arrange for its members to obtain such services from an appropriately licensed Person.

9.7 ~~Specific requirements applicable to Persons operating an OTF~~ ATS operator not to execute orders against its capital

9.7.1 A Person operating an MTF or OTF must not execute any orders made on the facility against its own proprietary capital.

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

9.8.1 An ATS Operator must not refer to a facility it operates as an 'investment token market', 'security token market', 'derivative token market', or using any other similar term, unless it is a facility on which only Investment Tokens are traded.

Guidance

1. An ATS Operator should not refer to a facility, where both Investment Tokens and conventional Investments are traded, using terms referred to in Rule 9.8.1.

2. An ATS Operator that trades both conventional Investments and Investment Tokens may operate a distinct facility on which only Investment Tokens are traded, provided it is able to effectively maintain and demonstrate a clear separation between that facility and its other facilities on which conventional Investments are traded or cleared.

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13 PROVIDING MONEY SERVICES AND ARRANGING OR ADVISING ON MONEY SERVICES

13.1 Application

13.1.1 This chapter applies to an Authorised Firm that:

(a) Provides Money Services; or

(b) Arranges or Advises on Money Services.

13.1.2 A requirement in this chapter (other than a restriction in section 13.2) does not apply in relation to a Market Counterparty, if the Market Counterparty has given prior notice in writing to the Authorised Firm that it has elected to waive the requirement.

Guidance

Key Terms

This chapter uses a number of key terms defined in GEN and GLO that are set out below for reference:

1. "Account Information Service" means an online service to provide consolidated information on one or more accounts held by the User with one or more providers, and includes such a service whether information is provided:

   (a) in its original form or after processing; and

   (b) to the User or to another person in accordance with the User's instructions.

2. "Payment Account" means an account held in the name of one or more Users which is used to execute Payment Transactions.

3. "Payment Account Provider" means a Person that provides or operates a Payment Account;

4. "Payment Initiation Services" means an online service to initiate a Payment Order at the request of the User with respect to a Payment Account held at another Payment Service Provider, but does not include:

   (a) a service that involves contact with any funds at any stage of the Payment Transaction; or

   (b) the issue of a Payment Instrument.

5. "Payment Instrument" means a:

   (a) personalised device; or

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

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

6. "Payment Order" means an instruction by a payer or payee to their respective Payment Service Provider requesting the execution of a Payment Transaction.

7. "Payment Service" means an activity referred to in the definition of "Providing Money Services" other than providing currency exchange or issuing Stored Value.

8. "Payment Service Provider" means a Person providing a Payment Service.

9. "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.

10. 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.

11. "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 excluded under GEN Rule 2.6.4.

12. "User" means a Client using the service of Providing Money Services or Arranging or Advising on Money Services and includes, in relation to a Payment Service, a Person acting in the capacity of payer, payee or both.

Restriction on use of Crypto Tokens

GEN Rule 3A.2.5 prohibits a Money Services Provider from using Crypto Tokens in connection with providing Money Services. The only exception under that Rule is that Fiat Crypto Tokens may be used for Money Transmission or executing Payment Transactions if certain conditions are met. GEN Rule 3A.2.5 also prohibits a Money Services Provider from carrying on other Financial Services relating to Crypto Tokens.

13.2 Requirements relating to use of currencies

13.2.1 An Authorised Firm must execute Payment Transactions, and carry out any other instructions for or on behalf of the User, in the specific currency agreed with the User.

13.2.2 An Authorised Firm must not, in connection with Providing Money Services, receive or provide physical notes or coins.

13.2.3 Where an Authorised Firm Provides Money Services involving the UAE Dirham, it must ensure that all Dirham transactions related to the provision of those services are settled through the accounts of a financial institution that is licensed by the Central Bank to accept deposits.

13.3 General requirements

13.3.1 Where there is a dispute between a User and an Authorised Firm about whether a requirement in this chapter has been complied with, it is for the Authorised Firm to prove that it complied with the relevant requirement.

13.3.2 Where an Authorised Firm relies on a third party to execute some parts of a Payment Transaction for a User, the Authorised Firm must take reasonable steps to ensure that the third party carries out those parts of the transaction (even if the firm is not responsible for those parts of the transaction).

13.3.3 An Authorised Firm must ensure any information it is required to provide to a User under this chapter is made available:

(a) in an easily accessible manner;

(b) in a durable medium that can be easily stored and retrieved by the User;

(c) in easily understandable language and in a clear and comprehensible form;

(d) in English or in the language agreed by the parties; and

(e) unless specified otherwise in these Rules, in good time before the service is provided.

13.4 Additional disclosure requirements

13.4.1 An Authorised Firm must comply with the additional disclosure requirements:

(a) in App 7 section A7.1, if it is Providing Money Services; or

(b) in Rules A7.1.1 to A7.1.4 of that section, if it is Arranging or Advising on Money Services.

13.4.2 An Authorised Firm Providing Money Services or Arranging or Advising on Money Services does not need to comply with the requirement in Rule 13.4.1, if it reasonably believes that another regulated entity, such as a Payment Account Provider, has provided that information to the User in a timely manner.

13.5 Rights and obligations of parties

13.5.1 An Authorised Firm Providing Money Services must comply with the requirements relating to the rights and obligations of parties specified in App7 section A7.2.

13.5.2 An Authorised Firm Arranging or Advising on Money Services must comply with:

(a) the requirements in App7 section A7.2, if it is providing Payment Initiation Services; and

(b) only Rules A7.2.2, A7.2.3, A7.2.14 and A7.2.15, if it is providing Account Information Services.

13.5.3 An Authorised Firm must ensure that Client Agreements do not contain any provisions that are inconsistent with the rights and obligations of parties specified in App7 section A7.2.

13.6 Specific requirements for issuers of Stored Value

13.6.1 An Authorised Firm that issues Stored Value must comply with the requirements relating to Stored Value in App7 section A7.3.

14 ADDITIONAL REQUIREMENTS FOR FIRMS PROVIDING FINANCIAL SERVICES RELATING TO INVESTMENT TOKENS

14.1 Technology and governance requirements for Operating a Facility for Investment Tokens

14.1.1 Without limiting the generality of the technology resources requirements in section 9.5, an Authorised Firm Operating a Facility for Investment Tokens must:

(a) ensure that any DLT application used by the facility operates on the basis of 'permissioned' access, so that it allows the operator to have and maintain adequate control over the Persons who are permitted to access and update records held on that DLT application;

(b) establish and maintain adequate measures to ensure that the DLT application used by the facility, and the associated rules and protocols, contain:

(i) clear criteria governing Persons who are permitted to access and update records for the purposes of trading or clearing Investment Tokens on the facility, including criteria about the integrity, credentials and competencies appropriate to the roles played by such persons;

(ii) measures to address risks, including to network security and network compatibility, that may arise through systems used by Persons permitted to update the records on the DLT application; and

(iii) processes to ensure that the Authorised Firm undertakes sufficient due diligence and adequate monitoring of ongoing compliance, relating to the matters referred to in (i) and (ii);

(c) ensure any DLT application used by its facility is fit for purpose; and

(d) have regard to industry best practices in developing its technology design and technology governance relating to DLT that is used by the facility.

Guidance

1. To be fit for purpose, the technology design of the DLT application used by an Authorised Firm Operating a Facility for Investment Tokens should be able to address how the rights and obligations relating to the Investment Tokens traded on that facility are properly managed and are capable of being exercised or performed. For example, where a Security Token confers rights and obligations substantially similar to those conferred by a Share in a company, the DLT application would generally need to enable the management and exercise of the shareholder's rights. This may, for example, include the right to receive notice of, and vote in, shareholder meetings, receive any declared dividends and participate in the assets of the company in a winding up.

2. To ensure the technology governance of any DLT application used by its facility is fit for purpose, an Authorised Firm should, as a minimum, have regard to the following:

a. careful maintenance and development of the relevant systems and architecture in terms of its code version control, implementation of updates, issue resolution, and regular internal and third party testing;

b. security measures and procedures for the safe storage and transmission of data in accordance with agreed protocols;

c. procedures to address changes in the protocol which result in the splitting of the underlying distributed ledger into two or more separate ledgers (often referred to as a 'fork'). These procedures should be effective whether or not the new protocol is backwards compatible with the previous version (soft fork), or not (hard fork), and should address access to information where such a fork is created;

d. procedures to deal with system outages, whether planned or not;

e. decision-making protocols and accountability for decisions;

f. procedures for establishing and managing interfaces with providers of Digital Wallets; and

g. whether the protocols, smart contracts and other inbuilt features of the DLT application meet at least a minimum acceptable level of reliability and safety requirements, including to deal with a cyber or hacking attack, and determine how any resulting disruptions would be resolved.

3. Some parts of trading Investment Tokens, for example, order matching, may take place 'off-chain' (i.e. not using DLT). In those circumstances, the operator should still maintain adequate control over Persons who are undertaking those activities, as they are agents or delegates of the operator.

14.2 Operating a Facility for Investment Tokens which permits direct access

Application

14.2.1 This section applies to an ATS Operator that has Direct Access Members.

Guidance

1. A Direct Access Member is defined in GLO as a Person that an ATS Operator has admitted as a member under COB Rule 9.3.1(1)(e).

2. A Person will only be admitted as a Direct Access Member where that Person does not meet any of the criteria at 9.3.1(1)(a)-(d), although a Person admitted as a member under any of those criteria may also trade Investment Tokens. A Direct Access Member may be an individual or a Body Corporate, but will not, for example, be an Authorised Firm or an institutional investor whose main activity is to invest in financial instruments.

3. See also the requirements relating to Direct Access Members in Rule 9.3.1(4).

Requirements

14.2.2 An ATS Operator must ensure that:

(a) it treats each Direct Access Member as its Client;

(b) its Operating Rules clearly set out:

(i) the duties owed by the ATS Operator to the Direct Access Member and how the ATS Operator is held accountable for any failure to fulfil those duties; and

(ii) the duties owed by the Direct Access Member to the ATS Operator and how the member is held accountable for any failure to fulfil those duties;

(c) appropriate investor redress mechanisms are available, in accordance with GEN chapter 9, and disclosed to each member permitted to trade Investment Tokens on its facility; and

(d) its facility contains a prominent disclosure of the risks associated with the use of DLT for trading and clearing Investments, particularly those relating to Digital Wallets and the susceptibility of private cryptographic keys to misappropriation.

14.2.3 (1) Without limiting the generality of the systems and controls obligations of the ATS Operator, an ATS Operator must have in place adequate systems and controls to address market integrity, AML, CTF or investor protection risks in permitting a Direct Access Member to trade on its facility, including procedures to:

(a) identify the ultimate beneficial owner of a Direct Access Member, where such a member is a body corporate;

(b) ensure that appropriate customer due diligence sufficient to address AML and CTF risks has been conducted on each Direct Access Member, prior to permitting that member to trade on its facility;

(c) detect and address market manipulation and abuse;

(d) ensure that there is adequate disclosure relating to the Investment Tokens that are traded on the facility, including through prospectus and on-going disclosure under MKT chapters 2, 4 and 6.

(2) An ATS Operator must have adequate controls and procedures to ensure that trading in Investment Tokens by Direct Access Members does not pose any risks to the orderly and efficient functioning of the facility's trading system, including controls and procedures to:

(a) mitigate counterparty risks that may arise from defaults by Direct Access Members through adequate collateral management measures, such as margin requirements, based on the settlement cycle adopted by the ATS Operator;

(b) identify and distinguish orders that are placed by Direct Access Members, and, if necessary, enable the ATS Operator to stop orders of, or trading by, such members;

(c) prevent Direct Access Members from allowing access to other persons to trade on the trading facility; and

(d) ensure that Direct Access Members fully comply with the Operating Rules of the facility and promptly address any gaps and deficiencies that are identified.

(3) An ATS Operator must have adequate resources and systems to carry out front-line monitoring of the trading activities of Direct Access Members.

(4) An ATS Operator must ensure that, to the extent that any of the systems and controls referred to in (1) are embedded within, or otherwise facilitated through DLT, they are included within the scope of the annual audit and the written report required under Rule 14.5.1.

Guidance

To satisfy the DFSA of the matters referred to in Rule 14.2.3(1), an ATS Operator should, as a minimum, be able to demonstrate that it has effective procedures built into its DLT or similar technology application being used that enable:

(a) the clear identification of each Direct Access Member accessing its facility to trade; and

(b) the monitoring of bid and offer prices and volatility for any indications of market manipulation or abuse.

14.3 Requirements for Providing Custody of Investment Tokens

Interpretation

14.3.1 In this section:

(a) "Digital Wallet Service Provider" means an Authorised Firm Providing Custody of Investment Tokens by holding and controlling the public and private cryptographic keys relating to the Investment Tokens;

(b) "Third Party Digital Wallet Service Provider" means:

(i) a Digital Wallet Service Provider other than an ATS Operator Providing Custody of Investment Tokens traded on its facility; or

(ii) a Person in another jurisdiction Providing Custody of Investment Tokens by holding and controlling the public and private cryptographic keys relating to the Investment Tokens, who is authorised and supervised for that activity by a Financial Services Regulator; and

(c) "Self-Custody of Investment Tokens" means the holding and controlling of Investment Tokens by their owner, through the owner holding and controlling the public and private cryptographic keys relating to the Investment Tokens.

Application

14.3.2 This section applies to an Authorised Firm that is a Digital Wallet Service Provider.

Guidance

1. An Investment Token is an Investment, as defined in GEN Rule A2.1.1. The Financial Service of Providing Custody, as defined in GEN Rule 2.13.1, therefore includes Providing Custody of an Investment Token, and a Person carrying on that Financial Service will require a Licence to do so.

2. An Authorised Firm which is Providing Custody of Investment Tokens is, in addition to the requirements in this section, subject to other relevant requirements that apply to a firm Providing Custody of Investments. Other requirements include the Client Asset requirements in section 6.11, the Client Investment and Client Crypto Token requirements in section 6.13 and the Safe Custody Provisions in App 6.

3. The Rules in this section will not apply to a Person providing a Digital Wallet to a Person who uses it for Self Custody of Investment Tokens, as the Security Tokens in that Digital Wallet are then held and controlled by that Person at their own risk.

4. Private and public keys, which correspond to an electronic address, provide the mechanism to own and control Investment Tokens, (and other crypto assets). A private key is generated first, with the public key derived from the private key using a known one-way algorithm which varies across protocols. The corresponding electronic address, which is used to send and receive crypto assets, is a cryptographic hash (i.e. a shorter representation created through a processing algorithm) of the public key (which is a longer string of characters). It is the private key that grants the user the right to dispose of the crypto asset at a given address. Losing the private key often results in the loss of ability to transfer the crypto asset.

Requirements

14.3.3 (1) A Digital Wallet Service Provider must ensure that:

(a) any DLT application it uses in Providing Custody of Investment Tokens is resilient, reliable and compatible with any relevant facility on which the Investment Tokens are traded or cleared;

(b) it is able to clearly identify and segregate Investment Tokens belonging to different Clients; and

(c) it has in place appropriate procedures to enable it to confirm Client instructions and transactions, maintain appropriate records and data relating to those instructions and transactions and to conduct a reconciliation of those transactions at appropriate intervals.

(2) A Digital Wallet Service Provider must ensure that, in developing and using DLT applications and other technology to Provide Custody of Investment Tokens:

(a) the architecture of any Digital Wallet used adequately addresses compatibility issues and associated risks;

(b) the technology used and its associated procedures have adequate security measures (including cyber security) to enable the safe storage and transmission of data relating to the Investment Tokens;

(c) the security and integrity of cryptographic keys are maintained through the use of that technology, taking into account the password protection and methods of encryption used;

(d) there are adequate measures to address any risks specific to the methods of usage and storage of cryptographic keys (or their equivalent) available under the DLT application used; and

(e) the technology is compatible with the procedures and protocols built into the Operating Rules, or equivalent procedures and protocols on any facility on which the Investment Tokens are traded or cleared or both traded and cleared.

Guidance

Where an Authorised Firm that is a Digital Wallet Service Provider delegates any function to a Third Party Digital Wallet Service Provider, it must ensure that the delegate fully complies with the requirements of Rule 14.3.3. The outsourcing and delegation requirements of GEN Rule 5.3.21 and 5.3.22 will also apply to the Authorised Firm in those circumstances.

14.3.4 An ATS Operator that appoints a Third Party Digital Wallet Service Provider to Provide Custody of Investment Tokens traded on its facility, must ensure that the person is either:

(a) an Authorised Firm appropriately authorised to be a Digital Wallet Service Provider; or

(b) an entity that is regulated by a Financial Services Regulator to an equivalent level of regulation to that provided for under the DFSA regime for Providing Digital Wallet Services.

Guidance

Where an ATS Operator appoints a non-DIFC firm regulated by a Financial Services Regulator, it must undertake sufficient due diligence to establish that the non-DIFC firm is subject to an equivalent level of regulation as under the DFSA regime in respect of that service.

14.3.5 A Digital Wallet Service Provider must ensure that the report required under Rule 14.5.1 includes confirmation as to whether it has complied with the requirements in Rule 14.3.3.

14.4 Provision of key features document for Investment Tokens

Application

14.4.1 This section applies to an Authorised Firm which carries on any one or more of the following Financial Services in respect of Investment Tokens:

(a) Dealing in Investments as Principal;

(b) Dealing in Investments as Agent;

(c) Arranging Deals in Investments;

(d) Managing Assets;

(e) Advising on Financial Products;

(f) Providing Custody; or

(g) Arranging Custody.

14.4.2 (1) An Authorised Firm must not provide a Financial Service to which this section applies to a Person unless it has provided the Person with a key features document containing the information in (2).

(2) The key features document must contain the following information relating to each Investment Token that is the subject of the Financial Services that the Authorised Firm will provide to the Person:

(a) the risks associated with and essential characteristics of the Issuer (or other Person responsible for discharging the obligations associated with the rights conferred), and guarantor if any, of the Investment Token, including their assets, liabilities and financial position;

(b) the risks associated with and essential characteristics of the Investment Token, including the rights and obligations conferred and the type or types of Investment which it constitutes;

(c) whether the Investment Token is or will be admitted to trading and if so, the details relating to the admission, including details of the facility and whether the facility is within the DIFC;

(d) whether the Client can directly access the trading facility, or whether access is only through an intermediary, and the process for accessing the facility;

(e) risks associated with the use of DLT, particularly those relating to Digital Wallets and the susceptibility of private cryptographic keys to misappropriation;

(f) whether the Client, the Authorised Firm or a third party is responsible for providing a Digital Wallet service in respect of the Investment

Token, and any related risks (including at whose risk the Client's Investment Tokens are held in the Digital Wallet, whether it is accessible online or stored offline, what happens if keys to the Digital Wallet are lost and what procedures can be followed in such an event);

(g) how the Client may exercise any rights conferred by the Investment Tokens such as voting or participation in shareholder actions; and

(h) any other information relevant to the particular Investment Token that would reasonably assist the Client to understand the product and technology better and to make informed decisions in respect of it.

(3) The key features document must be provided in good time before the relevant Financial Service is provided to the Person, to enable that Person to make an informed decision about whether to use the relevant Financial Service.

(4) The key features document does not need to be provided to a Person to whom the Authorised Firm has previously provided that information, if there has been no significant change since the information was previously provided.

14.5 Technology audit reports

14.5.1 (1) This Rule applies to an Authorised Firm that:

(a) is Operating a Facility for Investment Tokens;

(b) holds or controls Client Investments that include Investment Tokens;

(c) relies on DLT or similar technology to carry on one or more of the Financial Services specified in Rule 14.4.1 relating to Investment Tokens; or

(d) is Managing a Collective Investment Fund where:

(i) Units of the Fund are Security Tokens; or

(ii) 10% or more of the gross asset value of the Fund Property of the Fund consists of Investment Tokens.

(2) The Authorised Firm must:

(a) appoint a suitably qualified independent third party professional to:

(i) carry out an annual audit of the Authorised Firm's compliance with the technology resources and governance requirements that apply to it, including those specified in this chapter; and

(ii) produce a written report which sets out the methodology and results of that annual audit, confirms whether the requirements

referred to in (i) have been met and lists any recommendations or areas of concern;

(b) submit to the DFSA a copy of the report referred to in (a)(ii) within 4 months of the Authorised Firm's financial year end; and

(c) be able to satisfy the DFSA that the independent third party professional appointed to carry out the annual audit has the relevant expertise to do so, and that the Authorised Firm has done proper due diligence to satisfy itself of that fact.

Guidance

1. An Authorised Firm may appoint an Auditor to carry out the functions specified in Rule 14.5.1(2)(a), provided it is satisfied that the Auditor has the relevant expertise.

2. Credentials that may indicate an independent third party professional is suitably qualified under Rule 14.5.1(2)(a):

   a. designation as a Certified Information Systems Auditor (CISA) or Certified Information Security Manager (CISM) by the Information Systems Audit and Control Association (ISACA);

   b. designation as a Certified Information Systems Security Professional (CISSP) by the International Information System Security Certification Consortium (ISC); or

   c. accreditation by a recognised and reputable body to certify compliance with relevant ISO/IEC 27000 series standards.

15 ADDITIONAL REQUIREMENTS FOR FIRMS PROVIDING FINANCIAL SERVICES RELATING TO CRYPTO TOKENS

15.1 Application

15.1.1 (1) Sections 15.2, 15.3 and 15.4 apply to an Authorised Firm that Operates a MTF that trades Crypto Tokens.

(2) Section 15.5 applies to an Authorised Firm that:

(a) Provides Custody of Crypto Tokens; or

(b) Operates a MTF and appoints a third party to Provide Custody of Crypto Tokens.

(3) Unless expressly stated otherwise, sections 15.6 and 15.7 apply to an Authorised Firm that carries on Crypto Business.

(4) Section 15.8 applies to an Authorised Firm that

(a) Operates a MTF that trades Crypto Tokens;

(b) holds or controls Client Crypto Tokens; or

(c) relies on DLT or other similar technology to carry on a Financial Service relating to Crypto Tokens.

Guidance

The term "Crypto Business" is defined in GLO to mean any one or more of the following Financial Services relating to Crypto Tokens:

(a) Dealing in Investments as Principal;

(b) Dealing in Investment as Agent;

(c) Arranging Deals in Investments;

(d) Managing Assets;

(e) Advising on Financial Products;

(f) Providing Custody;

(g) Arranging Custody; or

(h) Operating a Multilateral Trading Facility.

15.2 Technology and Governance Requirements for Operating an MTF for Crypto Tokens

15.2.1 Without limiting the generality of the requirements in section 9.5, an MTF Operator must comply with the requirements that would apply to an Authorised Firm Operating a Facility for Investment Tokens under COB section 14.1.

15.3 Operating an MTF for Crypto Tokens which permits direct access

15.3.1 An MTF Operator that has Direct Access Members must comply with the requirements that would apply to an ATS Operator under section 14.2 (other than Rule 14.2.3(1)(d)).

Guidance

Rule 14.2.3(1)(d) does not apply as it refers to prospectus and ongoing disclosure requirements in MKT that are not applicable to Crypto Tokens. Section 15.4 sets out the information disclosure requirements that apply to a MTF that trades Crypto Tokens.

15.4 Disclosure of information about Crypto Tokens on an MTF

Publication of key features document

15.4.1 (1) An MTF Operator must ensure that a Crypto Token is not traded on the MTF unless the MTF Operator has published a key features document on its website for the Crypto Token.

(2) The key features document must contain the information set out in Rule 15.6.1.

Requirements if a white paper is published

15.4.2 If an MTF Operator publishes a white paper relating to a Crypto Token or disseminates or makes the white paper available to Members, it must:

(a) take reasonable steps to ensure that the version of the white paper is the latest version;

(b) identify the authors of the white paper, if known, and when it was published; and

(c) disclose prominently that:

(i) it has not prepared the white paper or verified the accuracy of information in the white paper; and

(ii) investors should take care in relying on information in the white paper as it may be inaccurate or out of date.

Guidance

1. A 'white paper' is a concept paper prepared by the developers of a Crypto Token. It sets out the idea and the overall value proposition for users of the Crypto Token. It also commonly outlines a development roadmap for the Crypto Token and the key milestones the developers expect to meet.

2. An MTF Operator is not required to publish or make available a white paper for a Crypto Token, however if it decides to do so it must ensure that the requirements in Rule 15.4.2 are met.

Ongoing information

15.4.3 (1) An MTF Operator must take reasonable steps to ensure that there is accurate and up-to-date information available about a Crypto Token traded on the MTF so that users of the MTF are able to make informed decisions about trading in the Crypto Tokens.

(2) Without limiting the generality of (1), the MTF Operator must as a minimum ensure the following information is readily available:

(a) the total number, and market capitalisation, of Crypto Tokens traded globally;

(b) whether the supply of Crypto Tokens is set to increase or decrease according to a pre-defined path;

(c) details of any inflationary or deflationary mechanisms that are to be used, such as the issuing or burning of Crypto Tokens (other than through the normal mining process);

(d) the total number of Crypto Tokens held by the developers or issuer of the Crypto Token, held in reserve for rewards or other promotional purposes or otherwise locked away from the total supply of Crypto Tokens; and

(e) a breakdown of the largest holders of the Crypto Tokens, in particular holders of 10% or more of the total supply of the Crypto Tokens.

(3) Under (2)(e), an MTF Operator is not required to disclose the identity of the holder if it has taken reasonable steps but has not been able to establish the holder's identity.

Guidance

1. To make an informed decision about whether to buy or sell a Crypto Token traded on an MTF, users of the MTF need accurate and up-to-date information about matters that may affect the price of the Crypto Token. As there is no Reporting Entity for a Crypto Token, the MTF Operator is responsible for ensuring that adequate ongoing information about the Crypto Token is available.

2. Ongoing information may be published by the MTF Operator on its website, or the MTF Operator may provide links on its website to the site where the information can be found. If the MTF Operator provides links to the information, the links should take a user directly to the relevant information and the site should contain reliable information.

3. Under Rule 15.4.3(2)(e) and (3), an MTF Operator is required to disclose that a person has a significant holding even if it not reasonably able to establish their identity.

Forums

15.4.4 If an MTF Operator provides a means of communication (a "forum") for users to discuss Crypto Tokens, it must:

(a) include a clear and prominent warning on the forum informing users that the MTF Operator does not conduct due diligence on information on the forum;

(b) restrict the posting of comments on the forum to MTF members;

(c) ensure that all persons using the forum have equal access to information posted on the forum;

(d) require a person posting a comment on the forum to disclose clearly if he is affiliated in any way with a Crypto Token or is being compensated, directly or indirectly, to promote a Crypto Token;

(e) take reasonable steps to monitor and prevent posts on the forum that are potentially misleading or fraudulent or may contravene the Market Abuse provisions;

(f) immediately take steps to remove a post, or to require a post to be deleted or amended, if the operator becomes aware that (d) or (e) have not been complied with; and

(g) not participate in discussions on the forum except to moderate posts or to take steps referred to in (f).

15.5 Requirements for Providing Custody of Crypto Tokens

Interpretation

15.5.1 In this section:

(a) "Digital Wallet Service Provider" means an Authorised Firm Providing Custody of Crypto Tokens by holding and controlling the public and private cryptographic keys relating to the Crypto Tokens;

(b) "Third Party Digital Wallet Service Provider" means:

(i) a Digital Wallet Service Provider other than an MTF Operator Providing Custody of Crypto Tokens traded on its facility; or

(ii) a Person in another jurisdiction Providing Custody of Crypto Tokens by holding and controlling the public and private cryptographic keys relating to the Crypto Tokens, who is authorised and supervised for that activity by a Financial Services Regulator; and

(c) "Self-Custody of Crypto Tokens" means the holding and controlling of Crypto Tokens by their owner, through the owner holding and controlling the public and private cryptographic keys relating to the Crypto Tokens.

15.5.2 An Authorised Firm that is a Digital Wallet Service Provider must comply with the requirements that would apply to a Digital Wallet Service Provider under COB section 14.3 and for that purpose a reference to an Investment Token is taken to be a reference to a Custody Token.

15.5.3 An MTF Operator that appoints a Third Party Digital Wallet Service Provider to Provide Custody of Crypto Tokens must comply with the requirements that apply to an ATS Operator under Rule 14.3.4 and for that purpose a reference to an Investment Token is taken to be a reference to a Custody Token.

15.5.4 An Authorised Firm that Provides Custody of Crypto Tokens must comply with the requirements set out in Appendix 8.

15.6 Provision of Key Features Document and Risk Warnings

Provision of Key Features Document

15.6.1 (1) An Authorised Firm must not provide a Financial Service relating to a Crypto Token to a Person unless it has provided the Person with a key features document containing the information in (2).

(2) The key features document must contain the following information relating to each Crypto Token that is the subject of the Financial Services that the Authorised Firm will provide to the Person:

(a) information about the issuer, if any, and the individuals responsible for designing the Crypto Token;

(b) the essential characteristics of the Crypto Token, including rights attaching to the Crypto Token and any project or venture to be funded (if relevant);

(c) details of Persons responsible for performing obligations associated with the Crypto Token and details of where and against whom rights conferred by the Crypto Token may be exercised;

(d) information on the underlying technology used for the Crypto Token, including details of the technology that is used to issue, store or transfer the Crypto Token;

(e) information on the underlying technology used by the Authorised Firm, including protocols and technical standards adhered to;

(f) details about how ownership of the Crypto Token is established, certified or otherwise evidenced;

(g) how the Crypto Tokens will be valued, and an explanation of how this is carried out and what benchmarks, indices or third parties are relied on;

(h) whether the Crypto Tokens are admitted to trading on any Authorised Market Institution, MTF, Regulated Exchange or other facility;

(i) the risks relating to the volatility and unpredictability of the price of the Crypto Token;

(j) cybersecurity risks associated with the Crypto Tokens or its underlying technology, including whether there is a risk of loss of the Crypto Token in the event of a cyberattack, and details of steps that have been, or can be taken to mitigate those risks;

(k) the risks relating to fraud, hacking and financial crime; and

(l) any other information relevant to the Crypto Tokens that would reasonably assist the Client to understand the Crypto Token and whether to invest in, or use the relevant service relating to, the Crypto Token.

(3) The key features document must be provided in good time before the relevant Financial Service is provided to the Person, to enable that Person to make an informed decision about whether to use the service.

(4) The key features document does not need to be provided to a Person to whom the Authorised Firm has previously provided that information, if there has been no significant change since the information was previously provided.

(5) This Rule does not apply to an Authorised Firm that Operates a MTF that trades Crypto Tokens.

Guidance

Rule 15.6.1 does not apply to an MTF Operator, as the MTF Operator is separately required under Rule 15.4.1 to publish a key features document before the relevant Crypto Token is traded on the MTF.

Risk Warnings relating to Crypto Tokens

15.6.2 (1) An Authorised Firm must display prominently on its website the following risk warnings relating to Crypto Tokens:

(a) that Crypto Tokens are subject to extreme volatility and the value of the Crypto Token can fall as quickly as it can rise;

(b) that an investor in Crypto Tokens may lose all, or part, of their money;

(c) that Crypto Tokens may not always be liquid or transferable;

(d) that investments in Crypto Tokens may be complex making it hard to understand the risks with buying, selling, holding or lending them;

(e) that Crypto Tokens can be stolen as a result of cyber attacks; and

(f) that investing in, and holding, Crypto Tokens is not comparable to investing in traditional investments such as Securities.

(2) Where an Authorised Firm presents any marketing or educational materials and other communications relating to a Crypto Token on a website, in general

media or as part of a distribution made to existing or potential new Clients, it must include the risk warning referred to in (1) in a prominent place at or near the top of each page of the materials or communication.

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

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

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

15.7 General requirements relating to Crypto Tokens and Crypto Token Derivatives

Interpretation

15.7.1 In this section, "Margin" means the pre-agreed amount a Client is required to pay to open and maintain a position relating to a Crypto Token Derivative.

Appropriateness Assessment

15.7.2 (1) This Rule applies to an Authorised Firm that carries on any of the following Financial Services relating to Crypto Tokens:

(a) Arranging Deals in Investments

(b) Dealing in Investments as Agent; or

(c) Dealing in Investment as Principal.

(2) An Authorised Firm must not carry on a Financial Service referred to in (1) with or for a Retail Client, unless the Authorised Firm has carried out an appropriateness assessment of the person and formed a reasonable view that the person has:

(a) adequate skills and expertise to understand the risks involved in trading in Crypto Tokens; and

(b) the ability to absorb potentially significant losses resulting from trading in Crypto Tokens.

Guidance

1. In addition to the appropriateness requirement in Rule 15.7.2, an Authorised Firm that recommends a Crypto Token or a financial service involving a Crypto Token to a Client or executes a Crypto Token transaction on a discretionary basis for a Client, will be required under Rule 3.4.2 to carry out a suitability assessment.

2. To form the reasonable view referred to in Rule 15.7.2 in relation to a person, an Authorised Firm should consider issues such as whether the person:

(a) has sufficient knowledge and experience in relation to the type of Crypto Token offered, having regard to factors such as:

(i) how often and in what volumes that person has traded in the relevant type of Crypto Token; and

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

(b) understands the characteristics and risks relating to Crypto Tokens, and the volatility of Crypto Token prices;

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

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

3. To enable it to demonstrate that it complies with this Rule, an Authorised Firm should have in place systems and controls that include:

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

(b) adequate records to demonstrate that the Authorised Firm has undertaken the appropriateness assessment for each Retail Client; and

(c) in the case of an existing Retail Client with whom the Authorised Firm has previously traded in a Crypto Token, procedures to undertake a fresh appropriateness assessment if:

(i) a new Crypto Token with a materially different risk profile is offered to that Retail Client; or

(ii) there has been a material change in the Retail Client's circumstances.

4. Where an Authorised Firm forms the view that it is not appropriate for a person to trade in a Crypto Token, the Authorised Firm should refrain from offering that service to the person. As a matter of good practice, the Authorised Firm should inform the person of the firm's decision.

Prohibition on provision or use of credit for trading in Crypto Tokens

15.7.3 An Authorised Firm must:

(a) not provide a Credit Facility to a Retail Client in connection with trading in Crypto Tokens; and

(b) take reasonable steps to ensure that a Retail Client does not use a credit card or third-party credit facility to buy a Crypto Token.

Guidance

1. Rule 15.7.3 does not prevent an Authorised Firm from allowing a Retail Client to use a debit card to buy a Crypto Token, provided the Authorised Firm has adequate systems in place to distinguish between a debit and credit card.

2. An Authorised Firm should have in place controls and measures to ensure that a Retail Client does not use third party credit to fund an account, such as procedures to:

   a. verify the source of funds;

   b. warn Retail Clients that third party credit should not be used to fund an account; and

   c. obtain written confirmation from the Retail Client that third party credit is not being used to fund an account.

Offer of incentives prohibited

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

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

Guidance

1. The prohibition in Rule 15.7.4 applies to any Authorised Firm that carries on a Financial Service relating to a Crypto Token including, for example, an Authorised Firm that advises on, arranges, or executes transactions relating to Crypto Tokens or Operates an MTF. An Authorised Firm's systems and controls need to have measures to prevent not only the Authorised Firm, but also any person acting for or on behalf of the Authorised Firm, from offering or providing incentives (see also Rule 3.5.3(1)).

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

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

4. While offers, such as lower fees that are not linked to volumes of trade, or access to information services or research tools relating to Crypto Tokens, will not generally be viewed as forms of prohibited incentives, an Authorised Firm would need to be able to demonstrate that these were not offered in a manner that was reasonably likely to influence the client to deal in Crypto Tokens.

Use of certain terms restricted

15.7.5 An Authorised Firm must not refer to a service or facility it provides in relation to Crypto Tokens as a "market", "marketplace", "platform", "venue" or any other similar term, unless it is authorised under its Licence to operate a MTF relating to Crypto Tokens.

Protections relating to Crypto Token Derivatives

15.7.6 (1) An Authorised Firm must not open a position with or for a Retail Client relating to a Crypto Token Derivative unless the Retail Client has posted a Margin of at least 50% of the value of the exposure that the trade provides.

(2) An Authorised Firm referred to in (1) must ensure that the net equity in a Retail Client's account does not fall below 50% of the overall Margin deposited in that account.

(3) Where a Retail Client's net equity falls below 50% of the overall Margin deposited in that account, the Authorised Firm must close all open positions in the Retail Client's account:

(a) as soon as market conditions allow; and

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

(4) In this Rule, "net equity" means the sum of the Retail Client's net profit and loss on their open position(s) and the Retail Client's deposited Margin.

15.7.7 The liability of a Retail Client for all Crypto Token Derivatives connected to that Retail Client's trading account with an Authorised Firm, is limited to the funds in that trading account.

Guidance

1. The effect of the above Rule is to prevent a Retail Client from incurring losses exceeding the funds the Retail Client has specifically dedicated to trading in Crypto Token Derivatives. Therefore, an Authorised Firm will not be able to recover any losses from the Retail Client that go beyond the funds in the Retail Client's trading account.

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

15.7.8 An Authorised Firm must:

(a) not provide a Credit Facility to a Retail Client in connection with trading in Crypto Token Derivatives; and

(b) take reasonable steps to ensure that a Retail Client does not use a credit card or third party credit facility to pay a Margin relating to a Crypto Token Derivative.

15.8 Technology audit reports

15.8.1 (1) This Rule applies to an Authorised Firm that:

(a) Operates an MTF that trades Crypto Tokens;

(b) holds or controls Client Crypto Tokens; or

(c) relies on DLT or similar technology to carry on one or more Financial Services relating to Crypto Tokens.

(2) The Authorised Firm must:

(a) appoint a suitably qualified independent third party professional to:

(i) carry out an annual audit of the Authorised Firm's compliance with the technology resources and governance requirements that apply to it, including those specified in this chapter; and

(ii) produce a written report which sets out the methodology and results of that annual audit, confirms whether the requirements referred to in (i) have been met and lists any recommendations or areas of concern;

(b) submit to the DFSA a copy of the report referred to in (a)(ii) within 4 months of the Authorised Firm's financial year end; and

(c) be able to satisfy the DFSA that the independent third party professional appointed to carry out the annual audit has the relevant expertise to do so, and that the Authorised Firm has done proper due diligence to satisfy itself of that fact.

Guidance

1. An Authorised Firm may appoint an Auditor to carry out the functions specified in Rule 15.8.1(2)(a), provided it is satisfied that the Auditor has the relevant expertise.

2. Credentials that may indicate an independent third party professional is suitably qualified under Rule 15.8.1(2)(a) include:

a. designation as a Certified Information Systems Auditor (CISA) or Certified Information Security Manager (CISM) by the Information Systems Audit and Control Association (ISACA);

b. designation as a Certified Information Systems Security Professional (CISSP) by the International Information System Security Certification Consortium (ISC); or

c. accreditation by a recognised and reputable body to certify compliance with relevant ISO/IEC 27000 series standards.

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APP1 RECORDS OF ORDERS AND TRANSACTIONS

A1.1 Minimum contents of transaction records

Receipt of client order or discretionary decision to transact

A1.1.1 An Authorised Firm must, pursuant to Rule 6.7.4(1), make a record of the following:

(a) the identity and account number of the Client;

(b) the date and time in the jurisdiction in which the instructions were received or the decision was taken by the Authorised Firm to deal;

(c) the identity of the Employee who received the instructions or made the decision to deal;

(d) the Investment or Crypto Token, including the number of or its value and any price limit; and

(e) whether the instruction relates to a purchase or sale.

Executing a transaction

A1.1.2 An Authorised Firm must, pursuant to Rule 6.7.4(2), make a record of the following:

(a) the identity and account number of the Client for whom the Transaction was Executed, or an indication that the Transaction was an Own Account Transaction;

(b) the name of the counterparty;

(c) the date and time in the jurisdiction in which the Transaction was Executed;

(d) the identity of the Employee executing the Transaction;

(e) the Investment or Crypto Token, including the number of or its value and price; and

(f) whether the Transaction was a purchase or a sale.

Passing a client order to another person for execution

A1.1.3 An Authorised Firm must, pursuant to Rule 6.7.4(3), make a record of the following:

(a) the identity of the Person instructed;

(b) the terms of the instruction; and

(c) the date and time that the instruction was given.

APP2 KEY INFORMATION AND CLIENT AGREEMENT

A2.1 Key Information and content of the Client Agreement

General

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

(a) the core information set out in:

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

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

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

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

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

(e) the additional terms and information set out in Rule 2.1.8 if the Client Agreement relates to Providing Custody of Crypto Tokens.

Core information

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

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

(b) the regulatory status of the Authorised Firm;

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

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

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

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

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

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

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

Guidance

Fee Disclosure for Retail Clients trading in Restricted Speculative Investments

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

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

   (b) if the Authorised Firm adds any mark-up to market prices it receives from an external source, thereby increasing the spread for the Retail Client, the amount of that mark-up or, if the amount cannot be pre-determined, a reasonable range specified as precisely as possible for the relevant class of Restricted Speculative Investments that are being offered;

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

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

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

2. If any material changes are proposed to fees and charges that have been previously disclosed in the Client Agreement, a new fee disclosure statement needs to be given to the Retail Client before making the changes to the fees and charges (see also Rule 3.3.3).

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

Additional information for Investment Business

A2.1.3 The additional information required under A2.1.1(b) for Investment Business is:

(a) the arrangements for giving instructions to the Authorised Firm and acknowledging those instructions;

(b) information about any agreed investment parameters;

(c) the arrangements for notifying the Client of any Transaction Executed on his behalf;

(d) if the Authorised Firm may act as principal in a Transaction, when it will do so;

(e) the frequency of any periodic statements and whether those statements will include some measure of performance, and if so, what the basis of that measurement will be;

(f) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty; and

(g) where applicable, the basis on which assets comprised in the portfolio are to be valued.

Additional information for investment management activities

A2.1.4 The additional information required under A2.1.1(b) where an Authorised Firm acts as an Investment Manager is:

(a) the initial value of the managed portfolio;

(b) the initial composition of the managed portfolio;

(c) the period of account for which periodic statements of the portfolio are to be provided in accordance with section 6.10; and

(d) in the case of discretionary investment management activities:

(i) the extent of the discretion to be exercised by the Authorised Firm, including any restrictions on the value of any one Investment or Crypto Token or the proportion of the portfolio which any one Investment or Crypto Token or any particular kind of Investment or Crypto Token may constitute; or that there are no such restrictions;

(ii) whether the Authorised Firm may commit the Client to supplement the funds in the portfolio, and if it may include borrowing on his behalf:

(A) the circumstances in which the Authorised Firm may do so;

(B) whether there are any limits on the extent to which the Authorised Firm may do so and, if so, what those limits are;

(C) any circumstances in which such limits may be exceeded; and

(D) any margin lending arrangements and terms of those arrangements;

(iii) that the Authorised Firm may enter into Transactions for the Client, either generally or subject to specified limitation; and

(iv) where the Authorised Firm may commit the Client to any obligation to underwrite or sub-underwrite any issue or offer for sale of Securities:

(A) whether there are any restrictions on the categories of Securities which may be underwritten and, if so, what these restrictions are; and

(B) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are.

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Additional information for Money Service activities

A2.1.7 An Authorised Firm Providing Money Services or Arranging or Advising on Money Services must include in the Client Agreement:

(a) if the Authorised Firm is entitled to unilaterally vary or terminate the Client Agreement, the terms and conditions under which it can do so;

(b) the applicable currency, the currency rate (actual or indicative) and all fees and charges relating to a Payment Transaction;

(c) if quoted currency rates are indicative, a clear statement that they are 'indicative rates'; and

(d) clear procedures relating to unauthorised or incorrectly executed Payment Transactions, which include that the Client is:

(i) not entitled to redress unless he notifies the Authorised Firm without delay and, in any case, no later than six months after the unauthorised or incorrectly executed Payment Transaction; and

(ii) liable in full, if he acted fraudulently or with gross negligence.

Additional information for Providing Custody of Crypto Tokens

A2.1.8 An Authorised Firm Providing Custody of Crypto Tokens must include in the Client Agreement:

(a) a breakdown of all fees and charges payable for a transfer of Crypto Tokens (a "transfer") and when they are charged;

(b) the information required to carry out a transfer;

(c) the form and procedures for giving consent to a transfer;

(d) an indication of the time it will normally take to carry out a transfer;

(e) details of when a transfer will be considered to be complete;

(f) how, and in what form. information and communications relating to transfer services will be provided to the Client, including the timing and frequency of communications and the language used and technical requirements for the Client's equipment and software to receive the communications;

(g) clear policies and procedures relating to unauthorised or incorrectly executed transfers, including when the Client is and is not entitled to redress;

(h) clear policies and procedures relating to situations where the holding or transfer of Crypto Tokens may have been compromised, such as if there has been hacking, theft or fraud; and

(i) details of the procedure the Authorised Firm will follow to contact the Client if there has been suspected or actual hacking, theft or fraud.

APP3 CONFIRMATION OF TRANSACTIONS

A3.1 Content of confirmation notes

General information

A3.1.1 (1) For the purposes of Rule 6.9.2, an Authorised Firm must include the following general information:

(a) the Authorised Firm's name and address;

(b) whether the Authorised Firm Executed the Transaction as principal or agent;

(c) the Client's name, account number or other identifier;

(d) a description of the Investment, Crypto Token or Fund, including the amount invested or number of units involved;

(e) whether the Transaction is a sale or purchase;

(f) the price or unit price at which the Transaction was Executed;

(g) if applicable, a statement that the Transaction was Executed on an Execution-Only basis;

(h) the date and time of the Transaction;

(i) the total amount payable and the date on which it is due;

(j) the amount of the Authorised Firms charges in connection with the Transaction, including Commission charges and the amount of any Mark-up or Mark-down, Fees, taxes or duties;

(k) the amount or basis of any charges shared with another Person or statement that this will be made available on request; and

(l) for Collective Investment Funds, at statement that the price at which the Transaction has been Executed is on a Historic Price or Forward Price basis, as the case may be.

(2) An Authorised Firm may combine items (f) and (j) in respect of a Transaction where the Client has requested a note showing a single price combining both of these items.

Additional information: derivatives

A3.1.2 For the purposes of Rule 6.9.2, and in relation to Transactions in Derivatives, an Authorised Firm must include the following additional information:

(a) the maturity, delivery or expiry date of the Derivative;

(b) in the case of an Option, the date of exercise or a reference to the last exercise date;

(c) whether the exercise creates a sale or purchase in the underlying asset;

(d) the strike price of the Option; and

(e) if the Transaction closes out an open Futures position, all essential details required in respect of each contract comprised in the open position and each contract by which it was closed out and the profit or loss to the Client arising out of closing out that position (a difference account).

APP4 PERIODIC STATEMENTS

A4.1 Content of periodic statements: investment management

General information

A4.1.1 Pursuant to section 6.10, a periodic statement, as at the end of the period covered, must contain the following general information:

(a) the number, description and value of each Investment or Crypto Token;

(b) the amount of cash held;

(c) the total value of the portfolio; and

(d) a statement of the basis on which the value of each Investment or Crypto Token has been calculated.

Additional information: discretionary investment management activities

A4.1.2 In addition to Rule A4.1.1, where an Authorised Firm acts as an Investment Manager on a discretionary basis, the periodic statement must also include the following additional information:

(a) a statement of which Investments or Crypto Tokens, if any, were at the closing date loaned to any third party and which Investments or Crypto Tokens, if any, were at that date charged to secure borrowings made on behalf of the portfolio;

(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period;

(c) details of each Transaction which have been entered into for the portfolio during the period;

(d) the aggregate of Money and details of all Investments or Crypto Tokens transferred into and out of the portfolio during the period;

(e) the aggregate of any interest payments, including the dates of their application and dividends or other benefits received by the Authorised Firm for the portfolio during that period;

(f) a statement of the aggregate Charges of the Authorised Firm and its Associates; and

(g) a statement of the amount of any Remuneration received by the Authorised Firm or its Associates or both from a third party.

Additional information: contingent liability investments

A4.1.3 In addition to Rules A4.1.1 and A4.1.1.2, in the case where Contingent Liability Investments are involved, an Authorised Firm must include the following additional information:

(a) the aggregate of Money transferred into and out of the portfolio during the valuation period;

(b) in relation to each open position in the account at the end of the account period, the unrealised profit or loss to the Client (before deducting or adding any Commission which would be payable on closing out);

(c) in relation to each Transaction Executed during the account period to close out a Client's position, the resulting profit or loss to the Client after deducting or adding any Commission;

(d) the aggregate of each of the following in, or relating to, the Client's portfolio at the close of business on the valuation date:

(i) cash;

(ii) Collateral value;

(iii) management fees; and

(iv) commissions; and

(e) Option account valuations in respect of each open Option contained in the account on the valuation date stating:

(i) the Share, Future, index or other Investment or Crypto Token involved;

(ii) the trade price and date for the opening Transaction, unless the valuation statement follows the statement for the period in which the Option was opened;

(iii) the market price of the contract; and

(iv) the exercise price of the contract.

APP5 CLIENT MONEY PROVISIONS

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A5.5 Exceptions to holding client money in client accounts

A5.5.1 The requirement for an Authorised Firm to pay Client Money into a Client Account does not, subject to Rule A5.5.2 and Rule A5.5.4, apply with respect to such Client Money:

(a) received in the form of cheque, or other payable order, until the Authorised Firm, or a Person or account controlled by the Authorised Firm, is in receipt of the proceeds of that cheque;

(b) temporarily held by an Authorised Firm before forwarding to a Person nominated by the Client;

(c) in connection with a Delivery Versus Payment Transaction where:

(i) in respect of a Client purchase, Client Money from the Client will be due to the Authorised Firm within one day upon the fulfilment of a delivery obligation; or

(ii) in respect of a Client sale, Client Money will be due to the Client within one day following the Client's fulfilment of a delivery obligation; or

(d) held in the Client's own name where the Authorised Firm has a mandate to manage the Money on a discretionary basis.

A5.5.2 An Authorised Firm must pay Client Money of the type described in Rule A5.5.1(b) or (c) into a Client Account where it has not fulfilled its delivery or payment obligation within three days of receipt of the Money, ~~or~~ Investments or Crypto Tokens unless in the case of the type of Client Money referred to in Rule A5.5.1(c)(ii) it instead safeguards Client Investments or Client Crypto Tokens at least equal to the value of such Client Money.

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A5.9 Client disclosure

A5.9.1 Before, or as soon as reasonably practicable after, an Authorised Firm receives Client Money belonging to a Segregated Client, it must disclose to the Client on whose behalf the Client Money is held:

(a) the basis and any terms governing the way in which the Client Money will be held;

(b) that the Client is subject to the protection conferred by the DFSA's Client Money Provisions and as a consequence:

(i) this Money will be held separate from Money belonging to the Authorised Firm; and

(ii) in the event of the Authorised Firm's insolvency, winding up or other Distribution Event stipulated by the DFSA, the Client's Money will be subject to the DFSA's Client Money Distribution Rules;

(c) whether interest is payable to the Client and, if so, on what terms;

(d) if applicable, that the Client Money may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;

(e) if applicable, details about how any Client Money arising out of Islamic Financial Business are to be held;

(f) if applicable, that the Authorised Firm holds or intends to hold the Client Money in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

(g) details of any rights which the Authorised Firm may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise, and of any rights which the Authorised Firm may have to close out or liquidate contracts or positions in respect of any of the Client's Investments or Crypto Tokens.

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A5.11 Reconciliation

A5.11.1 (1) An Authorised Firm must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out at least every 25 days.

(2) The reconciliation must include:

(a) a full list of individual Segregated Client credit ledger balances, as recorded by the Authorised Firm;

(b) a full list of individual Segregated Client debit ledger balances, as recorded by the Authorised Firm;

(c) a full list of unpresented cheques and outstanding lodgements;

(d) a full list of Client Account cash book balances; and

(e) formal statements from Third Party Agents showing account balances as at the date of reconciliation.

(3) An Authorised Firm must:

(a) reconcile the individual credit ledger balances, Client Account cash book balances, and the Third Party Agent Client Account balances;

(b) check that the balance in the Client Accounts as at the close of business on the previous day was at least equal to the aggregate balance of individual credit ledger balances as at the close of business on the previous day; and

(c) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the Third Party Agent and the Authorised Firm, are investigated and, where applicable, corrective action taken as soon as possible.

(4) An Authorised Firm must perform the reconciliations in (3) within 10 days of the date to which the reconciliation relates.

Guidance

When performing the reconciliations, an Authorised Firm should:

a. include in the credit ledger balances:

i. unallocated Client Money;

ii. dividends received and interest earned and allocated;

iii. sale proceeds which have been received by the Authorised Firm and the Client has delivered the Investments or Crypto Tokens or the Authorised Firm holds or controls the Investment or Crypto Token; and

iv. Money paid by the Client in respect of a purchase where the Authorised Firm has not remitted the Money to the counterparty or delivered the Investment or Crypto Token to the Client; and

b. deduct from the credit ledger balances:

i. Money owed by the client in respect of unpaid purchases by or for the Client if delivery of those Investments or Crypto Tokens has been made to the Client; and

ii. Money remitted to the Client in respect of sales transactions by or for the Client if the Client has not delivered the Investments or Crypto Tokens.

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APP6 SAFE CUSTODY PROVISIONS

A6.1 Application

A6.1.1 This appendix applies to an Authorised Firm in accordance with Rule 6.13.3.

A6.2 General requirements

A6.2.1 The provisions of this appendix are referred to as the Safe Custody Provisions.

A6.2.2 An Authorised Firm must:

(a) comply with the Safe Custody Provisions; and

(b) have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.

A6.3 Recording, registration and holding requirements

A6.3.1 An Authorised Firm which Provides Custody or holds or controls Client Investments or Client Crypto Tokens must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property.

A6.3.2 Subject to Rule A6.4.1, an Authorised Firm which Provides Custody or holds or controls Client Investments or Client Crypto Tokens must record, register and hold Safe Custody Investments separately from its own Investments.

A6.4 Client accounts in relation to Client Investments or Client Crypto Tokens

A6.4.1 An Authorised Firm which Provides Custody or holds or controls Client Investments or Client Crypto Tokens must register or record all Safe Custody Investments in the legal title of:

(a) a Client Account; or

(b) the Authorised Firm where, due to the nature of the law or market practice, it is not feasible to do otherwise.

A6.4.2 A Client Account in relation to Client Investments or Client Crypto Tokens is an account which:

(a) is held with a Third Party Agent or by an Authorised Firm which is authorised under its Licence to provide Custody;

(b) is established to hold Client Assets;

(c) when held by a Third Party Agent, is maintained in the name of;

(i) if a Domestic Firm, the Authorised Firm; or

(ii) if not a Domestic Firm, a Nominee Company controlled by the Authorised Firm; and

(d) includes the words 'Client Account' in its title.

A6.4.3 (1) An Authorised Firm must maintain a master list of all Client Accounts.

(2) The master list must detail:

(a) the name of the account;

(b) the account number;

(c) the location of the account;

(d) whether the account is currently open or closed; and

(e) the date of opening or closure.

(3) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.

Guidance

1. An Authorised Firm may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client's Investment in a Client Account containing Investments of more than one Client.

2. The purpose of recording, registering or holding Investments or Crypto Tokens in a Client Account is to ensure that Investments or Crypto Tokens belonging to Clients are readily identifiable from Investments or Crypto Tokens belonging to the Authorised Firm such that, following a Distribution Event, any subsequent distribution of Investments or Crypto Tokens may be made in proportion to each Client's valid claim over those Investments or Crypto Tokens.

3. Following a Distribution Event, a Client may not have a valid claim over Investments or Crypto Tokens registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments or Crypto Tokens for that Client or a pool of Clients of which that Client was a part.

A6.4.4 An Authorised Firm must not use a Client's Safe Custody Investment or Safe Custody Crypto Token for its own purpose or that of another Person without that Client's prior written permission.

A6.4.5 An Authorised Firm which intends to use a Client's Safe Custody Investments or Safe Custody Crypto Token for its own purpose or that of another Person, must have systems and controls in place to ensure that:

(a) it obtains that Client's prior written permission;

(b) adequate records are maintained to protect Safe Custody Investments or Safe Custody Crypto Tokens which are applied as collateral or used for stock lending activities;

(c) the equivalent assets are returned to the Client Account of the Client; and

(d) the Client is not disadvantaged by the use of his Safe Custody Investments.

A6.5 Holding or arranging custody with third party agents

A6.5.1 (1) Before an Authorised Firm holds a Safe Custody Investment or Safe Custody Crypto Token with a Third Party Agent, it must undertake an assessment of that Third Party Agent and have concluded on reasonable

grounds that the Third Party Agent is suitable to hold those Safe Custody Investments or Safe Custody Crypto Tokens.

(2) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

(3) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred in this appendix.

A6.5.1A (1) Before an Authorised Firm arranges custody with a non-DIFC custodian authorised and supervised by a Financial Services Regulator, it must undertake an assessment of that custodian and have concluded, on reasonable grounds, that it is suitable to hold the Safe Custody Investments or Safe Custody Crypto Tokens.

(2) When assessing the suitability of a non-DIFC custodian, the Authorised Firm must ensure that the non-DIFC custodian will provide protections equivalent to the protections conferred in this appendix.

A6.5.2 An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent or a non-DIFC custodian to be suitable to hold Safe Custody Investments or Safe Custody Crypto Tokens.

Guidance

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

a. its credit rating;

b. its capital and financial resources in relation to the amount of Safe Custody Investments or Safe Custody Crypto Tokens held;

c. the insolvency regime of the jurisdiction in which it is located;

d. its arrangements for holding the Investments or Crypto Tokens;

e. its regulatory status, expertise, reputation and history;

f. its Group structure;

g. its use of agents and service providers; and

h. any other activities of the agent.

A6.6 Safe custody agreements with third party agents

A6.6.1 Before an Authorised Firm passes, or permits to be passed, Safe Custody Investments or Safe Custody Crypto Tokens to a Third Party Agent it must have procured a written acknowledgement from the Third Party Agent stating:

(a) that the title of the account sufficiently distinguishes that account from any account containing Investments or Crypto Tokens belonging to the Authorised Firm, and is in the form requested by the Authorised Firm;

(b) that the Client Investment or Client Crypto Token will only be credited and withdrawn in accordance with the instructions of the Authorised Firm;

(c) that the Third Party Agent will hold Client Investments or Client Crypto Tokens separately from assets belonging to the Third Party Agent;

(d) the arrangements for recording and registering Client Investments or Client Crypto Tokens, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;

(e) that the Third Party Agent will deliver a statement to the Authorised Firm (including the frequency of such statement), which details the Client Investments or Client Crypto Tokens deposited to the account;

(f) that all Investments or Crypto Tokens standing to the credit of the account are held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments or Crypto Tokens in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

(g) the extent of liability of the Third Party Agent in the event of default.

A6.6.2 (1) An Authorised Firm must maintain records of all Safe Custody Agreements and any instructions given by the Authorised Firm to the Third Party Agent under the terms of the agreement.

(2) The records must be maintained for at least of six years.

A6.7 Client disclosure

A6.7.1 (1) Before an Authorised Firm Arranges Custody for a Client it must disclose to that Client, if applicable, that the Client's Safe Custody Investments or Safe Custody Crypto Tokens may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC.

(2) Before an Authorised Firm Provides Custody for a Client it must disclose to the Client on whose behalf the Safe Custody Investments or Safe Custody Crypto Tokens will be held:

(a) a statement that the Client is subject to the protections conferred by the Safe Custody Provisions;

(b) the arrangements for recording and registering Safe Custody Investments or Safe Custody Crypto Tokens, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody Investments or Safe Custody Crypto Tokens;

(c) the obligations the Authorised Firm will have to the Client in relation to exercising rights on behalf of the Client;

(d) the basis and any terms governing the way in which Safe Custody Investments will be held, including any rights which the Authorised Firm may have to realise Safe Custody Investments or Safe Custody Crypto Tokens held on behalf of the Client in satisfaction of a default by the Client;

(e) the method and frequency upon which the Authorised Firm will report to the Client in relation to his Safe Custody Investments or Safe Custody Crypto Tokens;

(f) if applicable, a statement that the Authorised Firm intends to mix Safe Custody Investments or Safe Custody Crypto Tokens with those of other Clients;

(g) if applicable, a statement that the Client's Safe Custody Investments or Safe Custody Crypto Tokens may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;

(h) if applicable, a statement that the Authorised Firm holds or intends to hold Safe Custody Investments or Safe Custody Crypto Tokens in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

(i) the extent of the Authorised Firm's liability in the event of default by a Third Party Agent.

A6.8 Client reporting

A6.8.1 (1) An Authorised Firm which Provides Custody or which holds or controls Client Investments or Client Crypto Tokens for a Client must send a statement to a Retail Client at least every six months or in the case of a Professional Client at other intervals as agreed in writing with the Professional Client.

(2) The statement must include:

(a) a list of that Client's Safe Custody Investments or Safe Custody Crypto Tokens as at the date of reporting;

(b) a list of that Client's Collateral and the market value of that Collateral as at the date of reporting; and

(c) details of any Client Money held by the Authorised Firm as at the date of reporting.

(3) The statement sent to the Client must be prepared within 25 business days of the statement date.

A6.9 Reconciliation

A6.9.1 An Authorised Firm must:

(a) at least every 25 business days, reconcile its records of Client Accounts held with Third Party Agents with monthly statements received from those Third Party Agents;

(b) at least every six months, count all Safe Custody Investments or Safe Custody Crypto Tokens physically held by the Authorised Firm, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Firm; and

(c) at least every six months, reconcile individual Client ledger balances with the Authorised Firm's records of Safe Custody Investment or Safe Custody Crypto Token balances held in Client Accounts.

A6.9.2 An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

Guidance

An Authorised firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has authority over Safe Custody Investments or Safe Custody Crypto Tokens, should not perform the reconciliations under Rule A6.9.1.

A6.9.3 (1) Reconciliation performed in accordance with section A6.9 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The individual referred to in (1) must provide a written statement confirming that the reconciliation has been undertaken in accordance with the requirements of this section.

A6.9.4 The Authorised Firm must notify the DFSA where there have been material discrepancies with the reconciliation which have not been rectified.

Guidance

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

A6.10 Auditor's reporting requirements

Guidance

In accordance with GEN chapter 8, an Authorised Firm to which this appendix applies must arrange for a Safe Custody Auditor's Report to be submitted to the DFSA on an annual basis.

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APP8 PROVIDING CUSTODY OF CRYPTO TOKENS – ADDITIONAL REQUIREMENTS

Guidance

This appendix sets out additional requirements referred to in COB Rule 15.5.4 for Authorised Firms Providing Custody of Crypto Tokens.

A8.1.1 An Authorised firm that transfers a Client Crypto Token must confirm promptly to the Client:

(a) that the transfer was successful;

(b) the date of the transfer; and

(c) the final charges that are payable by the Client for the transfer.

A8.1.2 If an Authorised Firm is responsible for an unauthorised or incorrectly executed transfer of Client Crypto Tokens, it must address the situation promptly and within three business days put the Client's account back in the position it would have been if the transfer had not taken place or had been executed correctly (as applicable).

A8.1.3 (1) An Authorised Firm may restrict or stop a Client's access to its service only:

(a) as explicitly set out in the Client Agreement; and

(b) on reasonable grounds, including for example for valid security reasons or suspected unauthorised or fraudulent use of the service.

(2) An Authorised Firm must restore access to the service, or offer another service, as soon as practicable after the reasons for restricting or stopping use of the service cease to be valid.

A8.1.4 If an Authorised Firm becomes aware of a major operational or security incident, it must inform Clients without delay of the incident and the measures it is taking to limit the adverse effects of the incident.