

## **Appendix 5**

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.



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# The DFSA Rulebook

## Collective Investment Rules

(CIR)

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**3 SPECIALIST CLASSES OF FUNDS**

**3.1 Specialist Funds**

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**Investment Token Funds**

**3.1.14** A Fund is an Investment Token Fund if its main purpose is investing in Investment Tokens.

**Crypto Token Funds**

**3.1.15** A Fund is a Crypto Token Fund if its main purpose is investing in Crypto Tokens.

**Guidance**

A Fund in the DIFC is only permitted to invest in a Crypto Token that is an Accepted Crypto Token i.e. that the DFSA has approved as suitable for use in the DIFC – see GEN 3A.2.1.

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## 6 EXTERNAL FUND MANAGERS AND EXTERNAL FUNDS

### Guidance

This chapter sets out the detailed requirements that apply to External Fund Managers and External Funds. Article 20(5) of the Law contains the criteria to be classified as an External Fund Manager and Article 14(1) of the Law contains the criteria for an External Fund.

### 6.1 Requirements for External Fund Managers

#### Application

6.1.1 This section applies to an External Fund Manager.

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#### Use of a Fund Platform not permitted

6.1.4 An External Fund Manager must not use a Fund Platform.

#### External management of Fund investing in Crypto Tokens not permitted

6.1.5 An External Fund Manager must not manage a Domestic Fund that has any Fund Property that consists of Crypto Tokens.

### 6.2 Requirements for External Funds

#### Guidance

Article 14(1) of the Law provides that a Fund is an External Fund if that Fund:

- a. is established in a jurisdiction other than the DIFC; and
- b. is managed by a Fund Manager which is an Authorised Firm.

#### Application

6.2.1 This section applies to the Fund Manager of an External Fund.

6.2.2 The Fund Manager of an External Fund must:

- (a) have systems and controls which are adequate to ensure compliance with the requirements that apply to the External Fund in the jurisdiction in which it is established or domiciled; and
- (b) inform the DFSA of the jurisdiction in which the Fund is or is to be established or domiciled and the nature of regulatory requirements applicable to the Fund in the host jurisdiction.

#### Guidance

1. A Fund Manager of an External Fund is generally not subject to the requirements that otherwise apply to other Domestic Funds (see Article 14(2) of the Law). However, some limited requirements apply to External Funds. See for example the disclosure required under Rules 14.2.4 – 14.2.7. Should such a requirement conflict with any requirements that apply to an External Fund in the jurisdiction in which the Fund is domiciled, the Fund

Manager may apply to the DFSA for appropriate waivers or modifications of the DFSA requirements.

2. The DFSA may, upon receipt of the information referred to in Rule 6.2.2(b), assess the desirability of establishing an External Fund in the particular jurisdiction chosen by the Fund Manager. Relevant considerations include:
  - a. the Fund Manager's need to establish the Fund in the particular jurisdiction for reasons such as the physical location of the Fund assets or investor preference;
  - b. any regulatory risks arising from establishing the External Fund in the relevant jurisdiction, particularly if the Fund is to be open to retail investors; and
  - c. whether the relevant jurisdiction complies with the FATF or other relevant international standards or requirements.

**Management of External Fund investing in Crypto Tokens not permitted**

**6.2.3** A Fund Manager must not manage an External Fund that has any Fund Property that consists of Crypto Tokens.

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## PART 4: CORE RULES RELATING TO ESTABLISHMENT AND MANAGEMENT OF DOMESTIC FUNDS

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### 8 MANAGEMENT AND OPERATION OF A FUND

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#### 8.2 Duties in relation to Fund Property

##### Fund Manager

- 8.2.1** (1) A Fund Manager must make decisions as to the constituents of the Fund Property that are in accordance with the Constitution of the Fund and investment objectives and policy stated in the Prospectus.
- (2) A Fund Manager must take all steps and execute all documents to ensure that transactions relating to the Fund Property are properly entered into for the account of the relevant Fund or Sub-Fund.
- (3) A Fund Manager of an Investment Trust must ensure that instructions it gives to the Trustee in relation to the Fund Property are in accordance with the agreement creating the Investment Trust, the Fund's Constitution, and the Prospectus.
- 8.2.2** (1) In the case of an Investment Company or an Investment Partnership, the Fund Manager is responsible to the Unitholders for the safekeeping of the Fund Property.
- (2) Without removing the generality of the obligation under (1) and subject to (3), a Fund Manager must, in the case of a Fund which is an Investment Company or Investment Partnership:
- (a) delegate the activity of Providing Custody in relation to the Fund Property to a Service Provider who is an Eligible Custodian; and
- (b) comply with the delegation procedures set out in section 8.12 in relation to such a delegation.
- (3) The requirement in (2) does not apply to:
- (a) a Property Fund in respect of Real Property:
- (i) that is held by the Fund Manager or by an Incorporated Cell Company in accordance with Rule 13.4.2 or 13.4.2A; or
- (ii) for which the Fund Manager has made adequate alternative arrangements in accordance with Rule 13.4.2B;

- (b) a Private Equity Fund where the Fund Manager has made adequate alternative arrangements that are in accordance with Rule 13.3.1; or
  - (c) an Exempt Fund where the Fund Property:
    - (i) comprises of an interest in the operation of a Real Property asset (such as an investment in an infrastructure project); and
    - (ii) the Fund Manager makes alternative arrangements to ensure that the Fund Property is clearly distinguishable as belonging to the Fund, and is segregated from the assets of the Fund Manager and from the assets of any other Fund which the Fund Manager manages.
- (4) Nothing in (3) is to be taken as permitting Fund Property that consists of Crypto Tokens to be held by a Person other than an Eligible Custodian.

**Guidance**

1. Section 8.12 of this module governs the power of a Fund Manager to delegate certain of its Financial Service activities, and to outsource its functions.
2. Where a Fund invests in infrastructure projects (for example, the development of public facilities such as roads, railways or bridges), the interest acquired by the Fund may not necessarily be suited to the conventional forms of holding custody of Real Property. Where this is the case, a Fund Manager may use adequate alternative custody arrangements that meet the requirements in CIR 8.2.2(3)(c)(2)(ii).

**Trustee**

**8.2.3** In the case of an Investment Trust:

- (a) the Trustee of the Fund must hold the Fund Property in trust for the Unitholders and accordingly is responsible to the Unitholders for the safekeeping of the Fund Property;
- (b) the legal title of the Fund Property must be registered with the Trustee except in the case of a Property Fund investing in Real Property where the Trustee has made adequate alternative arrangements that are in accordance with Rule 13.4.2B; and
- (c) the Trustee must not act on instructions of the Fund Manager in relation to the Fund Property if such instructions are not in accordance with the agreement creating the Investment Trust, the Fund's Constitution, or the Prospectus.

**Guidance**

Section 8.12 of this module governs the power of a Trustee to delegate certain of its Financial Service activities, and to outsource its functions.

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**Eligible Custodian**

**8.2.4** For the purposes of the Rules in this module, except as provided in Rule 8.2.5, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria:

- (a) an Authorised Firm whose Licence authorises it to Provide Custody Services;
- (b) an Authorised Firm that is a Bank;
- (b) an Authorised Market Institution;
- (c) a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in the State;
- (e) a legal entity that is authorised to provide custody services, and is supervised, by a Financial Services Regulator in a Recognised Jurisdiction;
- (f) a legal entity where it, or its holding company, is authorised to provide custody services and is supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country;
- (g) a legal entity that is authorised or recognised by a Financial Services Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction; or
- (h) a legal entity that is:
  - (i) controlled and wholly owned by one or more of the national governments of the five member states of the Gulf Cooperation Council, other than the State; and
  - (ii) authorised to provide custody services, and supervised, by a Financial Services Regulator of at least one of the national governments specified in (i).

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## **12A.3 Custody of Fund Property**

- 12A.3.1**
- (1) For the purposes of Article 27(1)(e) of the Law, the Fund Manager of a Qualified Investor Fund that is not an Investment Trust must ensure that the legal title to Fund Property is registered with an Eligible Custodian.
  - (2) The requirement in Article 27(1)(e) of the Law does not apply to the Fund Manager of a Qualified Investor Fund if it is:
    - (a) a Property Fund;
    - (b) a Private Equity Fund;
    - (c) a Venture Capital Fund; or

- (d) a Fund in so far as it is investing in an interest in the operation of a Real Property asset (such as investment in an infrastructure project).
- (3) If the Fund Manager of a Qualified Investor Fund referred to in (2) itself holds Fund Property of any kind or if it uses a Fund Platform and the Incorporated Cell Company holds Fund Property of any kind, it must have in place effective arrangements which ensure that the Fund Property is not available to creditors in the event of the insolvency of the Fund Manager or the Incorporated Cell Company (as the case may be).
- (4) Nothing in (2) is to be taken as permitting Fund Property that consists of Crypto Tokens to be held by a Person other than an Eligible Custodian.

**Guidance**

1. Article 27(1)(e) of the Law requires a Domestic Fund that is not an Investment Trust to have legal title to the Fund Property registered with an eligible person (unless the Rules provide otherwise). Rule 12A.3.1(1) specifies that the person must be an Eligible Custodian. Rule 12A.3.1(2) disapplies the requirement in relation to Fund Property of certain kinds of Qualified Investor Funds. Regardless of who holds title to Fund Property, the Fund Manager must always ensure that, in accordance with Article 22(2)(f) of the Law, Fund Property is clearly identified as such and held separately from property of the Fund Manager and any other Funds. Where Fund Property consists of cash or liquid assets, the assets must also be held under arrangements that clearly identify them as belonging to the Fund, and must be properly segregated from similar assets belonging to the Fund Manager and any other Funds.
2. Where a Fund invests in infrastructure projects (for example, the development of public facilities such as roads, railways or bridges), the Fund Manager may hold self-custody of the Fund Property which consists of the interest in the infrastructure project. However, where it does so, the Fund Manager is not exempt from the overarching obligation under CIR 8.2.2(1) to Unitholders of the QIF to ensure safe custody of the Fund Property. This envisages proper identification and segregation of the interest in the infrastructure project as Fund Property of the QIF.

## PART 6: RULES SPECIFIC TO SPECIALIST CLASSES OF DOMESTIC FUNDS

### Guidance

1. Article 17 of the Law confers on the DFSA the power to prescribe any type of Domestic Fund (i.e. a Public Fund, an Exempt Fund, or a Qualified Investor Fund) as a “specialist class” of a Domestic Fund and in so doing apply any requirements as are suitable for that specialist class of Funds. This Part sets out the requirements that apply to such a Fund by virtue of being a specialist class of Fund.
2. Most of the requirements that are set out in this part as applying to specialist classes of Domestic Funds are generally in addition to the core requirements that apply to every Domestic Fund (see Part 4). Further, depending on whether it is a Public Fund, an Exempt Fund or a Qualified Investor Fund, the additional requirements in Part 5 of this module would also apply to a specialist class of Fund.
3. A Qualified Investor Fund may be constituted as a specialist class of a Domestic Fund without being subject to most of the detailed requirements that would normally apply to such specialist classes of Funds. However, there are some requirements which need to be met as the obligation to do so arises under the general provisions applicable to certain specialist classes of Funds, regardless of whether such Funds are Public Funds, Exempt Funds or Qualified Investor Funds. An example is a Fund constituted as an Islamic Fund. While some of the detailed requirements such as the appointment of a Shari’a Supervisory Board do not apply to the Fund Manager of an Islamic Qualified Investor Fund (see IFR 6.2.1), the other general requirements such as ensuring compliance with Shari’a requirements continue to apply to such Funds and the Fund Manager.
4. The only specialist class requirements in this chapter that apply to a Qualified Investor Fund are those in Rule 13.6.3, section 13.7 (Umbrella Funds), ~~and~~ section 13.11 (Investment Token Funds) and section 13.12 (Funds investing in Crypto Tokens).
5. Generally, a Fund Manager using the Incorporated Cell Company structure can manage any specialist classes of Funds using the infrastructure of the Fund Platform. However, some types of specialist classes of Funds may not be easily established on a Fund Platform, such as a Fund of Funds, Master Fund or an Umbrella Fund because of their unique structures. If an applicant wishes to establish one of these specialist classes of Funds on a Fund Platform, the DFSA will consider what practical difficulties would arise in that context, including any additional clarification or Rule changes if needed.

## 13. ADDITIONAL REQUIREMENTS FOR SPECIALIST FUNDS

### 13.1 Application to Qualified Investor Funds

**13.1.1** Only Rules 13.4.1, 13.5.1, 13.6.3 and sections 13.7, 13.10, ~~and~~ 13.11 and 13.12 of this chapter apply to, or in relation to, a Qualified Investor Fund.

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### 13.9 Exchange Traded Funds (ETFs)

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#### Criteria for underlying indices or other benchmarks

- 13.9.4** (1) A Fund Manager of an ETF may use an index or other benchmark for the purposes referred to in Rule 13.9.3 only if it is provided by a Price Information Provider that meets the requirements in App 9.
- (2) In (1), a Price Information Provider is a price reporting agency or an index or benchmark provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, Crypto Tokens, rates, indices, commodities or figures, which are made available to users, including a Fund Manager.

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## **13.11 Funds investing in Investment Tokens**

### **Restrictions on use of certain terms**

- 13.11.1** A Fund Manager of a Fund must ensure that its offer document or marketing material does not refer to it as an “investment token fund”, or otherwise hold it out as being a Fund which has as its main purpose investing in Investment Tokens, unless the Fund meets the criterion in Rule 3.1.14.

#### **Guidance**

Other descriptions of a Fund that are likely to fall within the scope of Rule 13.11.1 include the use of terms such as ‘security token fund’, ‘derivative token fund’, ‘share token fund’ and ‘bond token fund’.

- 13.11.2** A Fund Manager of a Fund must ensure that its offer document or marketing material does not hold out that any part of the Fund Property consists or will consist of Investment Tokens, unless the relevant property consists or will consist of Investment Tokens, as defined in GEN Rule A2.1.1(3).

#### **Guidance**

Other descriptions of Fund Property that are likely to constitute the property being held out as consisting of Investment Tokens, include the use of terms such as ‘security tokens’, ‘derivative tokens’, ‘share tokens’ and ‘bond tokens’.

## **13.12 Funds investing in Crypto Tokens**

### **Restrictions on use of certain terms**

- 13.12.1** A Fund Manager of a Fund must ensure that its offer document or marketing material does not refer to it as a “Crypto Token Fund” or “Crypto Fund”, or otherwise hold it out as being a Fund which has as its main purpose investing in Crypto Tokens, unless the Fund meets the criterion in Rule 3.1.15.

### **Use of benchmarks for valuations**

- 13.12.2** A Fund Manager of a Fund that has any Fund Property that consists of Crypto Tokens must ensure that it does not use an index or benchmark provided by a Price Information Provider to value the Crypto Tokens unless the Price Information Provider meets the requirements in App 9.

**Guidance**

1. A Fund in the DIFC is only permitted to invest in a Crypto Token that is an Accepted Crypto Token i.e. that the DFSA has approved as suitable for use in the DIFC – see GEN 3A.2.1.
2. A “Price Information Provider” is defined in Rule 13.9.4 as a price reporting agency or an index or benchmark provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, Crypto Tokens, rates, indices, commodities or figures, which are made available to users, including a Fund Manager.
3. The requirement in Rule 13.12.2 applies to a Fund that has any Fund Property that consists of Crypto Tokens. That is, it does not apply only to a Crypto Token Fund which has investing in Crypto Tokens as its main purpose.

## 14      **MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE**

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### 14.2    **General Requirements relating to Prospectuses**

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#### **Prospectus of an External Fund**

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**14.2.6**    (1)    The Prospectus of an External Fund made available by the Fund Manager or other Authorised Firm making the Offer of the Units of that Fund in or from the DIFC must be in the English language.

(2)    The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:

(a)    describes the jurisdiction in which the Fund is established and the legislation in that jurisdiction that applies to the Fund;

(b)    states the name of the relevant Financial Services Regulator in that jurisdiction;

(c)    describes the regulatory status accorded to the Fund by that Regulator;

(d)    includes the following warning:

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

and

(e)    if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).

- (3) If Units of an External Fund are Security Tokens, the Prospectus must contain information equivalent to that specified in MKT App 7 in respect of those Units.
- (4) If 10% or more of the gross asset value of the Fund Property of an External Fund consists, or will consist, of Investment Tokens, the Prospectus must include information equivalent to that specified at MKT App 7 in respect of the Investment Tokens.

#### **Guidance**

~~Where a material part of the Fund Property of an External Fund consists of Tokens other than Investment Tokens, the DFSA considers that the Prospectus of that Fund should contain information relating to those Tokens that is equivalent to the information specified in MKT App 7. Such information is likely to be relevant under Article 52(2) of the Law, which requires disclosure of all the information a person and his professional advisers would reasonably require and expect to find in the Prospectus to make an informed decision to become a Unitholder of the Fund.~~

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## **14.3 Prospectus content**

### **Public Fund Prospectus**

- 14.3.1** (1) Without limiting the generality of the Prospectus disclosure required under Article 52 of the Law, the Fund Manager must, in the case of a Public Fund, include in the Fund's Prospectus:
  - (a) the information in App 7, unless the Public Fund is a Passported Fund;
  - (b) if the Public Fund is a Passported Fund, the information in App 1 of FPR, including a Key Investor Information Document (KIID);
  - (c) if it is a specialist class of a Public Fund, any information as is relevant to that specialist class of Fund as set out in section 14.4;
  - (d) a Summary Document containing:
    - (i) information to clearly identify the Fund and its classification;
    - (ii) a short description of the Fund's investment objectives and investment policy for achieving those objectives;
    - (iii) past-performance presentation or, where relevant, performance scenarios;
    - (iv) costs and associated charges; and
    - (v) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant Fund;

- (e) the mandatory statement required under Rule 14.3.3;
  - (f) if Units of the Fund are Security Tokens, information equivalent to that specified in MKT App 7 in respect of those Units;
  - (g) if 10% or more of the gross asset value of the Fund Property consists of Investment Tokens, information equivalent to that specified in MKT App 7 in respect of the Investment Tokens; and
  - (h) if any Fund Property consists, or is to consist, of Crypto Tokens, the Prospectus must include information equivalent to that specified at MKT Rule A7.1.2 (a), (c), (e), (h), (i) and (j) in respect of the Crypto Tokens; and
  - (hi) if it is an Open-ended Fund, the information relating to the powers available to the Fund Manager to address liquidity risks that may arise in the Fund, and procedures, including triggers, for the exercise of such powers, required under Rule 8.6A.1(2)(d).
- (2) A Prospectus may consist of a single document, or a multi-part Prospectus containing:
- (a) a Summary;
  - (b) information relating to the Fund Manager and Trustee; and
  - (c) information relating to the Fund.
- (3) If a Prospectus is a multi-part Prospectus, the Fund Manager must ensure that the Prospectus as a whole is up-to-date.

**Guidance**

~~Where a material part of the Fund Property of a Public Fund consists of Tokens other than Investment Tokens, the DFSA considers that the Prospectus of that Fund should contain information relating to those Tokens that is equivalent to the information specified in MKT App 7. Such information is likely to be relevant under Article 52(2) of the Law, which requires disclosure of all the information a person and his professional advisers would reasonably require and expect to find in the Prospectus to make an informed decision to become a Unitholder of the Fund~~

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**14.3.2 Information Memorandum of an Exempt Fund or a Qualified Investor Fund**

**Guidance**

1. Under Article 50(3)(a) of the Law, an Information Memorandum of an Exempt Fund or a Qualified Investor Fund is a Prospectus for the purposes of the Law and the Rules unless otherwise provided. In limited circumstances, the Rules prescribe additional disclosure to be included in a Prospectus of an Exempt Fund (for example Rule 13.6.3 where an Exempt Fund appoints a prime broker with certain additional powers).
2. There is no detailed prescribed disclosure content for the Information Memorandum of an Exempt Fund or a Qualified Investor Fund. However, as an Information Memorandum is a Prospectus, it is subject to the disclosure obligation in Article 50(2) of the Law. As a

result, a Fund Manager of such a Fund must include all the information which Professional Clients to whom it intends to Offer Units of the Fund would reasonably require and expect to find in such a Prospectus. This is to enable such Clients to make an informed decision relating to investing in the Fund.

3. In the case of an Information Memorandum for an Exempt Fund or Qualified Investor Fund with Units that are Security Tokens, or where a material part of the Fund Property consists of Investment Tokens or Crypto Tokens, the DFSA considers that Professional Clients would reasonably require and expect to find in such a Prospectus the information specified in MKT App 7. ~~Where a material part of the Fund Property consists of Tokens other than Investment Tokens, the DFSA considers that Professional Clients would reasonably require and expect to find in such a Prospectus the equivalent of any information specified in MKT App 7 that is relevant to those Tokens.~~

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## 15 MARKETING OF FOREIGN FUNDS

### 15.1 Access to Foreign Funds and availability of Prospectus

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#### Prospectus disclosure relating to Foreign Funds

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- 15.1.3** (1) The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.
- (2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:
- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
  - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
  - (c) describes the regulatory status accorded to the Fund by that Regulator;
  - (d) includes the following warning:
 

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”;
  - (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d);
  - (f) in the case of an Offer of a Unit in a Money Market Fund, contains the risk warning referred to in Rule 14.4.7; and
  - (g) in the case of an Offer of a Unit in a Venture Capital Fund, contains the risk warning referred to in Rule 14.4.11 and the additional disclosure required under Rule 14.4.12.

- (3) If Units of the Fund are Security Tokens, the Prospectus must contain, or have attached to it, information equivalent to that specified in MKT App 7 in respect of those Units.
- (4) If 10% or more of the gross asset value of the Fund Property consists of Investment Tokens, the Prospectus must contain, or have attached to it, information equivalent to that specified in MKT App 7 in respect of those Investment Tokens.

**Guidance**

~~Where a material part of the Fund Property of a Foreign Fund consists of Tokens other than Investment Tokens, the DFSA considers that the Prospectus of that Fund should contain information relating to those Tokens that is equivalent to the information specified in MKT App 7. Such information is likely to be relevant under Article 52(2) of the Law, which requires disclosure of all the information a person and his professional advisers would reasonably require and expect to find in the Prospectus to make an informed decision to become a Unitholder of the Fund.~~

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**Designated Foreign Fund criteria**

**15.1.5** The criteria prescribed for the purposes of Article 54(1)(a)(i) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

- (a) the Fund is both established and operated in a Recognised Jurisdiction specified in the DFSA’s Recognised Jurisdictions Notice and the Fund is a Designated Fund included in that Notice;
- (b) if it is a Property Fund, the requirements in Rule 15.1.7 are satisfied;
- (c) if it is an Exchange Traded Fund, the requirements in Rule 13.9.1 are satisfied; and
- (d) if it is a Venture Capital Fund, it is a Closed-ended Fund;
- (e) the Fund does not invest in Crypto Tokens.

**Guidance**

For the purposes of the Rules including this Rule, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

**Other Foreign Fund criteria**

**15.1.6** (1) The criteria prescribed for the purposes of Article 54(1)(a)(ii) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

- (a) the Fund:

- (i) has both a custodian who meets one of the requirements in (2) and an investment manager who meets one of the requirements in (3); or
  - (ii) has both the custody and investment management activities of the Fund being performed by a Person who meets the requirements in (4); or
  - (iii) the Fund has been rated or graded as at least “investment grade” by Moody’s, Fitch or Standard & Poor’s or such other international rating agency acceptable to the DFSA;
- (b) if the Fund is a Property Fund, it meets the requirements in Rule 15.1.7; and
- (c) if it is an Exchange Traded Fund, the requirements in Rule 13.9.1 are satisfied.
- (d) the Fund does not invest in Crypto Tokens.
- (2) For the purposes of (1)(a)(i), the custodian is the Person who is responsible for providing safe custody of the Fund Property and such Person must be:
- (a) an Eligible Custodian;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;
  - (c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or
  - (d) a Person as to whom the Authorised Firm is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
    - (i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;
    - (ii) the extent of segregation of assets;
    - (iii) independence and management of conflicts of interests;
    - (iv) the terms of the safe custody agreement; and
    - (v) periodic reporting requirements.

- (3) For the purposes of (1)(a)(i), the investment manager is a Person who makes investment decisions for or on behalf of the Fund and must be a Person who is:
- (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of its activities in relation to investment management;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.
- (4) For the purposes of (1)(a)(ii), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
- (a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or
  - (c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.

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## APP9 USE OF PRICE INFORMATION PROVIDERS

### A9.1 Application

**A9.1.1** This Appendix applies to a Fund Manager of:

- (a) an Exchange Traded Fund; or
- (b) a Fund that has any Fund Property that consists of Crypto Tokens.

#### Use of price information providers

- A9.1.2** (1) A Fund Manager of an ETF may only use an index or other benchmark provided by a Price Information Provider for the purposes referred to in Rule 13.9.3 if it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (23).
- (2) A Fund Manager of a Fund that has any Fund Property that consists of Crypto Tokens may only use an index or other benchmark provided by a Price Information Provider to value the Crypto Tokens if 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).
- (23) The requirements relating to the Price Information Provider are that:
- (a) it has fair and non-discriminatory procedures for establishing prices of Investments or Crypto Tokens which are made public.
  - (b) it can 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 by:
    - (i) making publicly available all the rules that govern the methodology, composition, components and value, and relative weighting of securities in each index or benchmark within a reasonable time frame as appropriate to the nature of the index and its users; and
    - (ii) not making changes to the rules for index compilation without giving advance public notice before any changes are made;
  - (c) where appropriate, it gives priority to concluded transactions in making assessments and adopts measures to minimise selective reporting;
  - (d) it is of good standing and repute as an independent and objective price reporting agency or index provider;
  - (e) it has a sound corporate governance framework;
  - (f) it has 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 in particular, it does not employ ETF staff, for the purposes relating to the creation, development or modification of the index compilation rules and their review; and

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

**Guidance**

1. A Fund Manager of an ETF or a Fund that invests in Crypto Tokens, 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, and in the case of a Shari'a compliant index or benchmark, its Shari'a governance arrangements;
  - 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 of interests between the provider's commercial interests and the users of its services, including that 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 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.
  
2. If a Price Information Provider that an ETF Fund Manager uses for tracking or outperforming an index or benchmark for the purposes of the ETF it manages is a Related Party of the Fund

Manager, the Fund Manager has additional obligations relating to Related Party Transactions under Rule 13.9.5.