

**Appendix 7**

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

## Markets Rules

### **(MKT)**

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## **1.1 Application**

- 1.1.1** (1) The Rules in this module (MKT) are made for the purposes of the Markets Law 2012 and apply to every Person to whom that legislation applies.
- (2) Without limiting the generality of (1), this module applies to:
- (a) a Person making an Offer of Securities to the Public except in relation to Units of a Fund;
  - (b) a Person applying to have Securities admitted to trading on an Authorised Market Institution;
  - (c) a Person specified in Rule 2.10.1 as liable for the content of a Prospectus;
  - (d) a Reporting Entity;
  - (e) a Person who is a Related Party;
  - (f) a Person who is a Restricted Person;
  - (f) a Person who is a Connected Person; and
  - (g) a Person appointed as a sponsor, compliance adviser or other expert adviser of a Reporting Entity.

### **Guidance**

See Article 49(1) of the Markets Law for appointment of sponsors, compliance advisers and other advisers for Reporting Entities upon a direction by the DFSA.

- 1.1.2** Where a Rule prescribes a requirement on a Reporting Entity or an Undertaking, each Director, Partner or other Person charged with the management of that Reporting Entity or Undertaking must take all reasonable steps within its control to secure compliance with the requirement by the Reporting Entity or Undertaking.
- 1.1.3** Where a Rule prescribes a requirement relating to a Director, Partner or Employee of a Reporting Entity or an Undertaking:
- (a) the Director, Partner or Employee, as the case may be, must take all reasonable steps within his control to secure compliance with the requirement; and
  - (b) the Reporting Entity or Undertaking must take all reasonable steps to ensure compliance with the requirement by the Director, Partner or Employee.

## Guidance

### Application to listed funds

1. Where Units of a Fund are admitted to trading on an Authorised Market Institution, such a Fund is a Listed Fund. Where Units of a Fund that are Security Tokens are admitted to trading on an Alternative Trading System, but are not admitted to trading on an Authorised Market Institution or a Regulated Exchange, such a Fund is defined as an ATS Traded Fund. A reference to a Reporting Entity in relation to a Listed Fund or an ATS Traded Fund is a reference to the Fund Manager of that Fund, unless another person has been declared by the DFSA as the Reporting Entity of the Fund.
2. Accordingly, any obligations of a Reporting Entity of a Listed Fund or an ATS Traded Fund are, unless the context requires otherwise, obligations imposed on the Reporting Entity in respect of the Listed Fund or the ATS Traded Fund, as the case may be (see Article 38(2) of the Law). Therefore, the obligations imposed by this Law and the Rules apply to the Governing Body of the Reporting Entity and to every member of the Governing Body in the manner specified in Rules 1.1.2 and 1.1.3.

### Application to Crypto Tokens

3. Most of this module is not relevant to Crypto Tokens, as large parts of the module apply to Securities and Reporting Entities. For example, a Prospectus is not required for a Public Offer of Crypto Tokens or for the admission of Crypto Tokens to trading on an Exchange or ATS. In addition, there is no Reporting Entity for a Crypto Token to whom corporate governance, market disclosure and financial reporting requirements will apply. Crypto Tokens also cannot be admitted to the Official List. Therefore, the only requirements in the module that apply to Crypto Tokens are chapter 6 (Listed Funds and ATS Traded Funds) but only indirectly to the extent that a Listed Fund or ATS Traded Fund may invest in Crypto Tokens, and chapter 9 (Market Abuse) as the Market Abuse provisions in the Markets Law apply to Crypto Tokens.
4. While most of this module does not apply to Crypto Tokens, it should be noted that GEN Rule 3A.2.1 prohibits an Offer to the Public of a Crypto Token unless it is an Accepted Crypto Token (i.e. a Crypto Token which the DFSA has approved as suitable for use in the DIFC). In addition, as GEN Rule 3A.2.1 prohibits a Financial Service from being carried on in relation to a Crypto Token unless it is an Accepted Crypto Token, an MTF Operator or Exchange will only be able to admit an Accepted Crypto Token to trading.

### Waivers and modifications

35. The DFSA may, pursuant to Article 9 of the Law, waive or modify the application of the provisions in the Law where it considers appropriate or desirable in the interests of the DIFC to do so and, in accordance with the procedures set out in Guidance 4 below.
46. Generally, the DFSA will exercise the Article 9 power sparingly and only in circumstances where there is a clearly demonstrated case for granting a waiver or modification of the Law, such as:
  - a. to alleviate any undue regulatory burden on a Person in complying with the requirements in the Law in circumstances where investor protection intended by the relevant provisions is not reduced; or
  - b. to apply to a Person upon request (i.e. on a consent basis) the provisions of the Law which, without a modification, will not apply to that Person. For example, an Exempt Offeror (i.e. a Person such as a government or government instrumentality included in the DFSA's Exempt Offeror List in App5) who is not subject to the Prospectus disclosure and the liability regime in the Law and the Rules may apply to the DFSA for a modification to Article 14 of the Law so that it can make a Prospectus Offer of

its Securities in accordance with the relevant Prospectus disclosure and liability regime in the Law and the Rules.

5. The DFSA also has the power, pursuant to Article 25 of the Regulatory Law 2004, to waive or modify the Rules. The Regulatory Policy and Process (RPP) module gives further information on how to seek a waiver or modification.

## 1.2 Overview of the module

### Guidance

#### Offers of securities – chapter 2

1. Chapter 2 contains:
  - a. the requirements applicable to a Person who:
    - i. makes an Offer of Securities to the Public (other than in respect of Units, which are covered by the Prospectus and other requirements in the Collective Investment Law 2010 and the CIR Rules); and
    - ii. applies to have Securities admitted to trading on an Authorised Market Institution, or to have Security Tokens admitted to trading on an Alternative Trading System (other than the admission to trading of Units, or Security Tokens that are Units, which is governed by the requirements in chapter 6);
  - b. the types of Exempt Offers (i.e. Securities which can be offered to the public without a Prospectus), Exempt Securities (i.e. Securities which can be admitted to trading on an Authorised Market Institution without a Prospectus) and Exempt Communications (i.e. communications relating to Securities which are not treated as a Prospectus);
  - c. the requirements and procedures relating to the approval of a Prospectus by the DFSA;
  - d. the requirements and procedures relating to the structure and content of a Prospectus including:
    - i. when material may be incorporated into a Prospectus by reference; and
    - ii. liability for the content of a Prospectus including the liability of Experts and other Persons whose reports or opinions are included in a Prospectus with their consent for such inclusion; and
  - e. the circumstances in which the DFSA may accept an offer document prepared in accordance with the legislation applicable in a jurisdiction other than the DIFC as sufficient for the purposes of meeting the Prospectus requirements in the Law and the Rules.

#### Governance of reporting entity – chapter 3

2. Chapter 3 covers a wide range of corporate governance requirements applicable to Reporting Entities including:
  - a. 7 high-level Corporate Governance Principles, with best practice standards relating to those principles which apply on a 'comply or explain' basis and which are set out in App4;
  - b. Directors' duties, including acting in good faith and applying due diligence and care in the discharge of their duties and functions;

- c. provisions to ensure fair treatment of shareholders in the conduct of affairs of the company, such as provisions relating to communication with shareholders, exercise of pre-emption rights, reduction of share capital and a list of matters that require approval by a majority of shareholders in voting; and
- d. provisions to address conflicts of interest. For example individuals involved in the senior management of the Reporting Entity (such as executive Directors and other senior executives, called “Restricted Persons”), are prohibited from dealing in the Securities of the Reporting Entity during “close periods”, unless prior clearance for those dealings is obtained. Similarly, Persons who qualify as Related Parties of the Reporting Entity are prohibited from entering into commercial transactions with the Reporting Entity unless certain requirements are followed.

#### **Market disclosure – chapter 4**

- 3. Every Reporting Entity is required to disclose to the market certain types of information either relating to the Securities of the Reporting Entity or the Reporting Entity itself. Such disclosure is designed to ensure that the markets are continually updated with information that is likely to have an impact on the price of the Securities so that investors can make an informed judgement about those Securities. For this purpose, Chapter 4 requires disclosure of Inside Information, with carve-outs for non-disclosure of commercially sensitive information for a limited period, as well as disclosures of interests held by Persons in positions of control or influence relating to a Reporting Entity (such as controllers and their associates, called “Connected Persons”), and the disclosure of Directors’ material interests in the Reporting Entity. The means by which disclosure of the information required to be provided to the markets are also specified in this chapter.

#### **Accounting periods, financial reports and auditing – chapter 5**

- 4. Every Reporting Entity is required to prepare and file certain annual, semi-annual and other periodic financial reports relating to the financial position of the Reporting Entity. Such reports are required to be prepared in accordance with the specified internationally accepted accounting standards and, in the case of annual financial reports, required to be audited. The requirements relating to the preparation and audit of the financial statements and the disclosure of such reports within specified periods are set out in Chapter 5.

#### **Listed Funds and ATS Traded Funds – chapter 6**

- 5. Chapter 6 contains, with the exception of the requirements in chapters 7 (sponsors) and 8 (systems and controls), all the requirements applicable to a Reporting Entity of a Listed Fund or an ATS Traded Fund. These requirements, while mirroring the requirements applicable to other Reporting Entities, have been tailored to take account of the characteristics of Funds. These include:
  - a. general requirements applicable to Listed Funds and ATS Traded Funds;
  - b. Prospectus requirements for the purposes of having Units of a Fund admitted to trading on an Authorised Market Institution, or Security Tokens that are Units of a Fund admitted to trading on an Alternative Trading System;
  - c. governance requirements applicable to Listed Funds and ATS Traded Funds;
  - d. market disclosure of information relating to Listed Funds and ATS Traded Funds; and
  - e. financial reporting requirements applicable to Listed Funds and ATS Traded Funds.

#### **Sponsors and compliance advisers – chapter 7**

6. The DFSA has the discretion to require the appointment of a sponsor, compliance adviser or other expert adviser by a Reporting Entity, including that of a Listed Fund or an ATS Traded Fund. Chapter 7 contains the requirements relating to the appointment of such sponsors, compliance advisers and other expert advisers, and the obligations that apply to such Persons and the Reporting Entity where such sponsors or compliance advisers are appointed.

**Systems and controls – chapter 8**

7. Chapter 8 sets out the systems and controls a Reporting Entity, including a Reporting Entity of a Listed Fund or an ATS Traded Fund, must have in order to be able to comply with the requirements applicable to that Person.

**Listing Rule – chapter 9**

8. Chapter 9 sets out the DFSA's Listing Rules.

**Transitional provisions – chapter 10**

9. Chapter 10 sets out the transitional provisions necessary to facilitate the transition from the Markets Law 2004 to the Law for certain debt Securities, as the new requirements are different from those under which such debt Securities were admitted to an Official List of Securities but were not traded on an Authorised Market Institution.

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## **9A MARKET ABUSE**

### **Application of the Code of Market Conduct**

- 9A.1.1** (1) Article 8(2)(f) of the Markets Law provides for the making of a code of market conduct. The Code of Market Conduct (CMC) is issued under Article 20(2)(c) of the Regulatory Law and has the status of Guidance as defined in Article 2(f)(ii) of Schedule 1 to the Regulatory Law.
- (2) The CMC applies to Persons in respect of conduct that occurs in the DIFC or elsewhere, however, it only applies to conduct that occurs outside the DIFC if the conduct affects DIFC markets or users of DIFC markets.

#### **Guidance**

1. The CMC is intended to prevent Market Abuse by providing further clarity about what activities the DFSA might regard as constituting Market Abuse under the Markets Law.
2. The CMC applies to persons to whom Part 6 of the Markets Law applies, that is, it applies to persons generally whether individuals or bodies corporate and whether or not regulated.
3. Examples in the CMC are not intended to be exhaustive. There may be other circumstances in which conduct may contravene the Market Abuse provisions.
4. The defences under Article 64(1) of the Markets Law apply if a Person establishes that a permitted price stabilisation or purchase of the Person's own shares was carried out in accordance with the Rules. The relevant Rules relating to carrying on a permitted price stabilisation can be found in the PRS Module. The relevant Rules relating to purchase of the Person's own shares can be found in MKT (e.g. Rules 9.7.4 and 9.7.6). Further information about these and other Market Abuse defences can be found in the CMC.

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## **APP 7 ADDITIONAL CONTENT OF A PROSPECTUS FOR SECURITY TOKENS AND FUNDS THAT INVEST IN CRYPTO TOKENS**

### **A7.1 Additional content of a Prospectus for Security Tokens and Funds that invest in Crypto Tokens**

**A7.1.1** For the purposes of Rules 2.5.1(3)(d), 2.7.1(3) and 6.3.3(3) and CIR Rule 14.3.1(1)(h) the Person producing a Prospectus in relation to a Security Token or a Fund that invests in a Crypto Token must ensure that:

- (a) the Prospectus contains:
  - (i) the additional information specified in Rule A7.1.2; and

- (ii) a statement confirming the matters specified in Rule A7.1.3 made by a suitably qualified independent third party professional, who has given consent under Rule 2.10.2(1) for that statement to be included in the Prospectus; and
- (b) in the case of a Security Token which will be admitted to trading on an Authorised Market Institution, Regulated Exchange, Alternative Trading System or other facility, the Prospectus contains the information specified in Rule A7.1.4.

**Guidance**

The information in this Appendix relating to Crypto Tokens is only relevant for the purposes of CIR Rule 14.3.1(h) (which requires a Prospectus of a Fund that invests in a Crypto Token to include equivalent information about the Crypto Token to that specified in this Appendix).

**A7.1.2** The following information is specified for the purposes of Rule A7.1.1(a)(i):

- (a) the essential characteristics of the Security Token or Crypto Token, including the rights and obligations conferred by it and details of the Person or Persons responsible for meeting the obligations and against whom the rights can be exercised;
- (b) the type or types of Investment which the Security Token constitutes and a clear analysis as to how the Security Token meets the definition of the relevant type or types of Investment under GEN App 2;
- (c) details of the Distributed Ledger Technology that is used to issue, store or transfer the Security Token or Crypto Token;
- (d) how the holder of a Security Token may exercise any rights conferred by it, such as voting or participation in shareholder actions;
- (e) whether the Security Token or Crypto Token will be admitted to trading on an Authorised Market Institution, Regulated Exchange, Alternative Trading System or other facility and, if not, details as to how the Security Token or Crypto Token can be transferred or redeemed, how that might impact its liquidity and any resulting risks;
- (f) if the capital to be raised from issuing the Security Token is to be used to fund the creation of a new Token, detailed information about:
  - (i) the project or venture to be funded;
  - (ii) whether it is the Issuer or a third party who will receive and apply the capital raised towards that project or venture (and if a third party, what rights and obligations a holder of the Security Token has in respect of that third party);
  - (iii) the features of that new Token and any rights and obligations attaching to it;

- (iv) the terms and conditions relevant to the delivery or establishment of the project or venture, including any right of a Security Token holder to have their contribution refunded if any funding requirement is not met, the expected timetable for completion, any milestones included in that timetable and an explanation of the consequences if the timetable is not met; and
- (v) the risks associated with the project or venture, including those associated with the technology used to deliver or facilitate its completion or the Token's ongoing use;
- (g) how title to the Security Tokens is established, certified or otherwise evidenced;
- (h) cybersecurity risks associated with the Security Token or Crypto Token or its underlying technology, including whether there is a risk of loss of the Security Token or Crypto Token in the event of a cyber attack, and details of steps that have been, or can be taken, to mitigate those risks;
- (i) details of other risks associated with the use of the DLT application, particularly those relating to Digital Wallets and the susceptibility of private cryptographic keys to misappropriation; and
- (j) any other information relevant to the Security Token or Crypto Token that would reasonably assist a prospective investor in making an informed decision about investing in the Security Token or Crypto Token.

**A7.1.3** The matters to be confirmed in the statement referred to in Rule A7.1.1(a)(ii) are that:

- (a) the DLT application, used to issue, store or transfer the Security Tokens offered under the Prospectus, complies with the requirements of these Rules and, is an authentic, valid and workable solution capable of meeting its intended purpose; and
- (b) the Prospectus accurately describes the architecture, functionality, effect, risks and vulnerabilities of the DLT application, including its compatibility with other technologies, applications and services with which it is intended to interact.

**A7.1.4** The following information is specified for the purposes of Rule A7.1.1(b):

- (a) details of each facility on which the Security Token is admitted to trading or cleared including:
  - (i) the Person responsible for operating that facility and whether it is an AMI, ATS Operator, Regulated Exchange or other Person;
  - (ii) details of each DLT application used by the operator to facilitate trading or clearing of the Security Token and the functionality provided by that DLT application;
  - (iii) details as to how the operator of the facility meets the technology and governance requirements set out in COB section 14.1;

- (b) details of the custody arrangements for the Security Token that are permitted or required by the operator of each facility, including, for each such arrangement:
  - (i) the Person who carries out the function of the Digital Wallet service provider;
  - (ii) the Person who is responsible for the safe custody of the Security Token when held in the Digital Wallet; and
  - (iii) risks associated with the Digital Wallet, such as the consequences of the loss of cryptographic keys (private and public), cyber security risks associated with Digital Wallets held online, loss, theft or destruction of Digital Wallets held offline, and whether and how such risks are addressed;
  
- (c) whether smart contracts are being used or executed on the facility and, if so:
  - (i) what form those smart contracts take;
  - (ii) how the legal rights and obligations arising under the smart contracts are performed, including when contract or settlement finality occurs (whether by the smart contract itself, an underlying natural language contract or a combination of both); and
  - (iii) details of the relationship between those smart contracts and any underlying natural language contract.

**Guidance**

1. The details provided under Rule A7.1.4(b)(ii) should make it clear for each custody arrangement permitted or required on a facility, whether the arrangement involves Self-Custody of Security Tokens, or whether either the operator of the facility is responsible or a Third Part Digital Wallet Service Provider is responsible for safe custody of the relevant Security Tokens (see COB section 14.3).
  
2. The details provided under Rule A7.1.4(b)(iii) should make clear whether a given Digital Wallet is web based, or otherwise connected to the internet (sometimes referred to as a ‘hot wallet’), or whether it is held on hardware that is not connected to the internet (sometimes referred to as a ‘cold wallet’). They should also explain the differing risks associated with hot wallets as opposed to cold wallets, such as those arising from increased risk of hacking attempts being made against hot wallets, and the risk of physical loss or theft associated with cold wallets.