

**Appendix 6**

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



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# The DFSA Rulebook

## Authorised Market Institutions

### (AMI)

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## PART 2: APPLICATION AND AUTHORISATION

### 2. APPLICATION FOR A LICENCE OR ENDORSEMENT

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#### 2.3 Application Requirements for an endorsement

~~2.3.1~~ The DFSA will only consider an application for an endorsement to operate a Multilateral Trading Facility from a Person who holds a Licence to Operate an Exchange or an applicant for such a Licence.

~~2.3.2~~ An applicant for an endorsement to operate a Multilateral Trading Facility must submit an application to the DFSA:

- ~~(a)~~ demonstrating how it intends to satisfy the requirements specified in Rule 4.2.1(3); and
- ~~(b)~~ with copies of any relevant agreements or other information in relation to the application.

**2.3.1** The following requirements must be met by an Authorised Market Institution for the grant of an endorsement to operate a Multilateral Trading Facility:

- (a) the applicant must hold a Licence to Operate an Exchange; and
- (b) the applicant must be able to demonstrate that it can satisfy the requirement in Rule 4.2.1(3).

#### **Guidance**

1. Under GEN Rule 2.2.11(c) and Rule 2.2.12, an Authorised Market Institution Licensed to Operate an Exchange may ~~apply to~~ obtain an endorsement to carry on the activity of operating a Multilateral Trading Facility.
2. An Exchange with an endorsement to operate an MTF needs to meet, on an on-going basis, the applicable Licensing Requirements under Rule 4.2.1(3). Accordingly, when an Exchange wishes to obtain such an endorsement, it needs to be able to demonstrate to the DFSA that it can meet each of the Licensing Requirements with respect to the proposed MTF. For example, it should demonstrate how the IT systems and human resources available to it would be utilised for the purposes of operating the MTF.
3. Requirements for an Authorised Person to obtain an endorsement to act as a Trade Repository can be found in GEN 7.3.

~~2.3.3~~ The DFSA will consider an application for an endorsement to act as a Trade Repository from an Authorised Market Institution or an applicant for such a Licence.

~~2.3.4~~ An applicant for an endorsement to act as a Trade Repository must submit an application to the DFSA:

- ~~(a)~~ demonstrating how it intends to satisfy the requirements specified in App 5 in GEN; and
- ~~(b)~~ including copies of any relevant agreements or other information in relation to the application.<sup>1</sup>

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### **3.3 Obtaining Key Individual status**

#### **Guidance**

~~Pursuant to Rule 5.3.1, Under Article 43 of the Regulatory Law 2004, every Authorised Market Institution must have Key Individuals appointed to perform certain Regulatory Licensed Functions. Key Individuals appointed by an Authorised Market Institution to perform Regulatory Licensed Functions have to~~ must be approved by the DFSA before they are permitted to carry on such functions. This section sets out the matters that will be considered by the DFSA in approving such Key Individuals. The list of Licenced Functions for an Authorised Market Institution is in section 5.3 of this module.

- 3.3.1**
- (1) In regard to an application for approval for an individual to be granted Key Individual status, both the Authorised Market Institution and the individual must complete the appropriate form in AFN.
  - (2) An Authorised Market Institution must be satisfied that the individual with respect to whom an application is submitted:
    - (a) is competent in his proposed role;
    - (b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
    - (c) is able to apply his knowledge.

#### **Guidance**

See paragraph 2.2.16(j) and section 2-3 of the RPP sourcebook for the details of the assessment which an Authorised Market Institution is expected to undertake.

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<sup>1</sup> The requirements for an endorsement to act as a Trade Repository can now be found in GEN. The requirements have been moved as an endorsement to act as a Trade Repository may be granted to either an Authorised Firm or an AMI.

### Requirements for Key Individuals

**3.3.2** To be authorised as a Key Individual an individual must demonstrate that he is fit and proper to perform the Licensed Function. In assessing whether a person is fit and proper to perform the Licensed Function the DFSA will consider:

- (a) the individual's integrity;
- (b) the individual's competence and capability;
- (c) the individual's financial soundness;
- (d) the individual's proposed role within the Authorised Market Institution;  
and
- (e) any other relevant matters.

**3.3.3** Without limiting the generality of Rule 3.3.2, an individual shall not be considered fit and proper for the the purposes of that Rule if:

- (a) he is bankrupt;
- (b) he has been convicted of a serious criminal offence; or
- (c) he is incapable, through mental or physical incapacity, of managing his affairs.<sup>2</sup>

**3.3.24** In assessing whether an individual is fit and proper to be granted Key Individual Status to carry out Licensed Regulatory Functions, the DFSA may:

- (a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (b) require the Authorised Market Institution or the individual to provide additional information;
- (c) require any information provided by the Authorised Market Institution or the individual to be verified in any way specified by the DFSA; and
- (d) take into account any information which it considers appropriate.

#### **Guidance**

Section 2.3 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when making an assessment referred to in this section ~~Rule 3.3.2~~.

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<sup>2</sup> As part of the harmonisation of the requirements for Authorised Individuals and Key Individuals, it is proposed to specify in more detail the requirements for Key Individuals. These two rules are based on the GEN provisions for Authorised Individuals to ensure consistency of approach.

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## PART 3: LICENSING REQUIREMENTS

### 4. GENERAL

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#### 4.3 Approval of material changes

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**4.3.3** The DFSA ~~will~~ must, upon receipt of a notice referred to in Rule 4.3.2, approve or ~~reject not approve~~ 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.

**4.3.4** ~~Where the DFSA does not approve a proposed change, it must give to the Authorised Market Institution reasons for its decision. Such a decision may be referred~~ appealed to the FMT Regulatory Appeals Committee.

**4.3.4** (1) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under Rule 4.3.3 to reject a proposed change.

(2) If the DFSA decides to exercise its power under Rule 4.3.3 to reject a proposed change, the Authorised Market Institution may refer the matter to the FMT for review.

#### Guidance

1. The period of 30 days will commence from the time the DFSA has received all the relevant information to assess the application.
2. An Authorised Market Institution should consider submitting its application for DFSA approval well in advance of the date on which the proposed change is expected 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. Such timely submission would generally tend to avoid any extension of time being sought by the DFSA to assess properly the impact of a proposed change, due to its nature, scale and complexity. Such an extension would be made in consultation with the applicant.
3. If a proposed material change ~~is remains~~ not approved by the DFSA within the 30 day period and the DFSA has not expressly extended the period beyond 30 days, an Authorised Market Institution may treat the proposed change as ~~not being rejected~~ approved by the DFSA, and on that basis, may refer the decision to the FMT ~~appeal such a decision to the Regulatory Appeals Committee~~.
4. An Authorised Market Institution may use the results of consultation with its user committees to identify the impact the proposed change would have on its ability to meet the Licensing Requirements, including any impact such a change would have on its Members and other stakeholders. See GEN App 3 – Guidance No. 9 – 12 for best practice relating to user committees.

#### **4.4      Definition of Regulatory Functions**

**4.4.1.**      Pursuant to Article 23(2)(f)(ii) and (iii) of the Regulatory Law 2004, the DFSA prescribes the Regulatory Functions of an Authorised Market Institution as those functions which directly contribute to the satisfaction by the Authorised Market Institution of its Licensing Requirements.

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### **5.            GENERAL LICENSING REQUIREMENTS APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS**

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#### **5.3          Regulatory Licensed Functions and Key Individuals**

**5.3.1**      ~~(1) — Pursuant to Article 23(2)(f)(ii) and (iii) of the Regulatory Law, the DFSA prescribes the Regulatory Functions of an Authorised Market Institution as those functions which directly contribute to the satisfaction by the Authorised Market Institution of its Licensing Requirements.<sup>3</sup>~~

~~(12) Without limiting the generality of the Regulatory Functions prescribed in (1), An Authorised Market Institution must, for the purpose of proper discharge of its Regulatory Functions, have at all times individuals appointed to carry out the functions of the:~~

- ~~(a)          Governing Body;~~
- ~~(b)          Senior Executive Officer;~~
- ~~(c)          Finance Officer;~~
- ~~(d)          Compliance Officer;~~
- ~~(e)          Risk Officer;~~
- ~~(f)          Money Laundering Reporting Officer; and~~
- ~~(g)          Internal Auditor.~~

~~(3) — An individual appointed by an Authorised Market Institution to carry on any one or more functions specified in (2)(a) to (g) is a Key Individual of the Authorised Market Institution.~~

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<sup>3</sup> The definition of “Regulatory Function” has been moved from Rule 5.3.1 to this rule as it a concept that is used in various contexts (i.e. some unrelated to Licensed Functions and Key Individuals)

- (2) The functions specified in (1)(a) to (g) when carried out for an Authorised Market Institution are Licensed Functions for the purposes of Article 43(1) of the Regulatory Law 2004.

**5.3.2**

- (1) ~~Subject to (2), (3) and (4), An Authorised Market Institution must not permit a Key Individual to carry on any Regulatory Licensed Function for or on behalf of the Authorised Market Institution, and a Key Individual must not carry out such a function, unless the particular individual:~~

(a) has been assessed by the Authorised Market Institution to be competent to perform the relevant Regulatory Licensed Function; and

~~(b) has been given the DFSA's approval to carry out that function.~~

- (2) ~~The prohibition in (1) The Licensed Functions specified in Rule 5.3.1 does not apply to include a function performed by a registered insolvency practitioner where such a practitioner performs any Regulatory Function and does so (subject to the restrictions in Article 88 of the Insolvency Law 2009) and if the practitioner is:~~

(a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;

(b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;

(c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;

(d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or

(e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Articles 58 and 59 of the Insolvency Law 2009.

- (3) ~~The prohibition in (1) The Licensed Functions specified in Rule 5.3.1 does not apply to include a function performed by an insolvency practitioner where such a practitioner performs any Regulatory Function and does so in accordance with the applicable requirements equivalent to those specified in (2)(a) – (e) in another jurisdiction.~~

- (4) ~~The prohibition in (1) does not apply to The Licensed Functions specified in Rule 5.3.1 do not include a function of an individual appointed to act as a manager of the business of an Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law.~~

**Guidance**

1. See section 2.3 of the RPP sourcebook for details of the assessment that the Authorised Market Institution and the DFSA undertake to assess whether an individual is fit and proper to undertake Key Individual functions.
2. An Authorised Market Institution may apply for the DFSA's in-principle approval of an individual as soon as the individual is identified as a potential appointee to avoid any delays in formalising the appointment. However, an Authorised Market Institution should submit to the DFSA, as far as reasonably practicable, all the relevant information, including the results of its own assessment, when seeking such in-principle approval.

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**Senior Executive Officer**

**5.3.4** The Senior Executive Officer function is carried out by an individual who:

- (a) has, either alone or jointly with the other Key Individuals, the ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Market Institution's Financial Services carried on in or from the DIFC; and
- (b) is either a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

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**5.5 Operational efficiency and resilience**

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**Outsourcing**

- 5.5.3**
- (1) Without limiting the generality of the requirements in GEN Rules 5.3.21 and 5.3.22, an Authorised Market Institution must, before entering into any material outsourcing arrangements with a service provider, obtain the DFSA's prior approval to do so.
  - (2) For avoidance of doubt, the requirement in (1) applies to any outsourcing arrangements which were not in existence at the time the Authorised Market Institution was granted its Licence.
  - (3) In order to obtain the DFSA's prior approval for outsourcing arrangements referred to in (1), an Authorised Market Institution must follow those procedures for obtaining the DFSA's prior approval for material changes specified in Rule 4.3.1(1).



- (4) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule to refuse to approve an outsourcing arrangement.
- (5) If the DFSA decides to exercise its power under this Rule to refuse to approve an outsourcing arrangement, the Authorised Market Institution may refer the matter to the FMT for review.

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### **Financial resources**

- 5.5.4**
- (1) An Authorised Market Institution must, subject to (3) and (4), have and maintain at all times:
    - (a) the minimum financial resource requirement in (2); and
    - (b) additional financial resources of a type acceptable to the DFSA which are adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due.
  - (2) The minimum financial resource requirement referred to in (1)(a) is:
    - (a) an amount equal to one half of the estimated gross operating costs of the Authorised Market Institution for the next twelve-month period; or
    - (b) such other capital amount as may be specified by the DFSA.
  - (3) The assets held by an Authorised Market Institution for the purposes of meeting the financial resources requirements in (1):
    - (a) must be of high quality and sufficiently liquid in order to allow the Authorised Market Institution to meet its current and projected operating expenses under a range of adverse scenarios, including in adverse market conditions; and
    - (b) must be held, where it comprises cash, by an entity which is a Bank, or a financial institution authorised and supervised by a Financial Services Regulator acceptable to the DFSA with respect to the activity of deposit taking.
  - (4) An Authorised Market Institution must have systems and controls to enable it to determine and monitor whether its financial resources are sufficient for the purposes of the requirement in (1). For this purpose, the systems and controls of an Authorised Market Institution must address the following factors, with any other factors that are relevant and appropriate to its operations model:
    - (a) the nature, scale, and complexity of the activities and risks associated with its operations;

- (b) the operational, counterparty, market and settlement risks to which it is exposed;
  - (c) the amount, composition and legal position of its available financial resources; and
  - (d) its ability to access additional financial resources if required.
- (5) An Authorised Market Institution must monitor and manage the concentration of credit and liquidity exposures to commercial banks and clearing Members.
- (6) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under (2)(b) to specify a capital amount.
- (7) If the DFSA decides to exercise its power under (2)(b) to specify a capital amount, the Authorised Market Institution may refer the matter to the FMT for review.

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## **5.6 Business Rules**

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### **DFSA approval**

- 5.6.7**
- (1) An Authorised Market Institution must seek the DFSA's approval of any proposed amendment to the Business Rules before the rules are to come into effect.
  - (2) The DFSA will approve the proposed amendment to the Business Rules unless it has reasonable grounds to believe that the proposed amendment is reasonably likely to be detrimental to the interests of the DIFC markets.
  - (3) Where the DFSA has any concerns about the proposed amendment, it may:
    - (a) either reject the proposed amendment or request the Authorised Market Institution to withdraw the proposed amendments; or
    - (b) require the Authorised Market Institution to make appropriate changes to the proposed amendment, with or without public consultation.
  - (4) The DFSA must give to the Authorised Market Institution reasons for its decisions under (3)(a) or (b) as applicable.

- (5) An Authorised Market Institution must, as soon as practicable after receiving the DFSA approval, notify the Members and the public of the amendment to its Business Rules and the date on which the amendment becomes effective.
- (6) ~~An Authorised Market Institution may appeal a decision of the DFSA under (3)(a) or (b) to the Regulatory Appeals Committee. If the DFSA decides to exercise its power under (3)(a) or (b), the Authorised Market Institution may refer the matter to the FMT for review.~~<sup>4</sup>

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## **6. ADDITIONAL LICENSING REQUIREMENTS FOR OPERATING AN EXCHANGE**

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### **6.9 Liquidity incentive schemes**

- 6.9.1** (1) An Exchange must not introduce a liquidity incentive scheme unless:
- (a) participation in such a scheme is limited to:
    - (i) a Member of the Exchange; or
    - (ii) any other Person where:
      - (A) the Exchange 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 the Business Rules of the Exchange so far as those rules are applicable to that Person's activities; and
  - (b) it has obtained the DFSA's prior written approval for the scheme.
- (2) For the purposes of this section, a liquidity incentive scheme means an arrangement designed to provide liquidity in the market or in relation to a particular Investment or class of Investments.

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<sup>4</sup> It is proposed to maintain the current position under the Rules which is for the DFSA to give the AMI reasons for decision and the right to refer the matter to the FMT.

- (3) An Exchange must, at least 10 business days prior to the introduction of a liquidity incentive scheme referred to in (1), lodge with the DFSA a notification containing:
  - (a) the details of the relevant scheme;
  - (b) the benefits to the Exchange and its Members and other users resulting from the scheme;
  - (c) a certification by it that the requirements in (1)(a) have been fully met; and
  - (d) the date on which the scheme is intended to become operative.
- (4) The DFSA will, within 10 business days of receiving the notification referred to in (3), approve the proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme is reasonably likely to be detrimental to the existence of Proper Markets. Where the DFSA does not approve the proposed liquidity incentive scheme, it will notify the Exchange of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.
- (5) ~~An Exchange may appeal a decision of the DFSA not to approve a liquidity incentive scheme to the Regulatory Appeals Committee.~~  
If the DFSA decides to exercise its power under (4) not to approve a proposed liquidity incentive scheme, the Exchange may refer the matter to the FMT for review.
- (6) An Exchange must, as soon as practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.

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## **6.11 Listing Rules**

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- 6.11.2**
- (1) An Exchange wishing to admit Securities to its own Official List of Securities must:
    - (a) have listing rules which meet the requirements in Rule 6.11.3; and
    - (b) ensure that its listing rules are approved by the DFSA.
  - (2) Any amendment to an Exchange's listing rules must, prior to the amendment becoming effective, have been:

- (a) made available for a reasonable period of time to the market for consultation; and
  - (b) approved by the DFSA.
- (3) In urgent cases, the DFSA may, on written application by the Authorised Market Institution, dispense with requirement in (2)(a).
- (4) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA not to approve a proposed listing rule or an amendment to a listing rule.
- (5) If the DFSA decides to exercise the power not to approve a proposed listing rule or amendment to a listing rule, the Authorised Market Institution may refer the matter to the FMT for review.

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**6.11.7** ....

**Admission to an Official List of Securities**

**Guidance**

1. The DFSA has the powers under Article 34 of the Markets Law in relation to the admission of Securities to an Official List of Securities maintained by an Authorised Market Institution. Under that Article the DFSA may:
  - a. object to an admission of Securities to an Official List of Securities; or
  - b. impose conditions or restrictions on an admission of Securities to an Official List of Securities .
2. Where the DFSA objects to an application for an admission of Securities to an Official List of Securities, the Exchange is prohibited from admitting Securities to its Official List of Securities by virtue of Article 34 of the Markets Law.
3. Where the DFSA does so, the applicant may make representations within fourteen days of the date of the notification. If representations are made, the DFSA shall provide a response and make any consequential variants or withdrawals without undue delay.
4. Pursuant to Article 36 of the Markets Law, the ~~FMT Regulatory Appeals Committee~~ has jurisdiction to hear and determine any ~~reference appeal~~ in relation to a decision by the DFSA to object or impose conditions or restrictions upon an admittance of Securities to an Official List of Securities.

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## PART 4 OTHER REQUIREMENTS

### 8 CONTROLLERS

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#### Objection or conditional approval process

- 8.2.4** (1) Where the DFSA proposes to exercise its objection or conditional approval power pursuant to Rule 8.2.4(2)(b) or (c) in respect of a proposed acquisition or an increase in the level of control in an Authorised Market Institution, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:
- (a) a written notice stating;
    - (i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and
    - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
  - (b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.
- (2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
  - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
  - (c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.
- (3) If the DFSA decides to exercise its power under this Rule not to approve a Person as a Controller or to impose conditions on an approval, the Person may refer the matter to the FMT for review.<sup>5</sup>

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<sup>5</sup> The DFSA proposes to keep the current tailored processes for controller decisions instead of applying the new procedures.

**Guidance**

~~A final decision made by the DFSA pursuant to Rule 8.2.5(4)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).~~

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**Other powers relating to Controllers**

- 8.2.10** (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Market Institution where such a Person:
- (a) has acquired or increased the level of control that Person has in an Authorised Market Institution without the prior written approval of the DFSA as required under Rule 8.2.1;
  - (b) has breached the requirement in Rule 8.2.5 to comply with conditions of approval applicable to that Person; or
  - (c) is no longer acceptable to the DFSA as a Controller.
- (2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Market Institution, the DFSA must provide such a Person with:
- (a) a written notice stating:
    - (i) the DFSA's reasons for objecting to that Person as a Controller; and
    - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
  - (b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.
- (3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller; or
  - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
  - (c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.

- (4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.
- (5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller that Person must dispose of the relevant holdings within such period as specified in the final notice.
- (6) If the DFSA decides to exercise its power under this Rule to object to a Person as a Controller, to impose conditions on an approval or to require a Person to dispose of their holdings, the Person may refer the matter to the FMT for review.<sup>6</sup>

**Guidance**

~~Refer to section 3.6 of the RPP Sourcebook for matters which the DFSA takes into consideration when exercising its powers under Rule 8.2.10. A final decision made by the DFSA pursuant to Rule 8.2.10(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).~~

## **9 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS**

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### **9.4 Key Individuals and Regulatory Licensed Functions**

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#### **9.11 Supervisory directions**

**Guidance**

1. Article 9 26 of the Markets Law provides as follows:
  - “(1) Without limiting the application of the Regulatory Law 2004, the DFSA may, ~~by written notice,~~ direct an Authorised Market Institution to do or not do specified things that the DFSA considers are necessary or desirable ~~to comply with the Regulatory Law~~ or ensure the integrity of the financial services industry in the DIFC, including but not limited to, directions:
    - (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution;

<sup>6</sup> Again, the DFSA proposes to keep the specific tailored processes for controllers rather than applying the new procedures.



- (b) requiring an Authorised Market Institution to act in a specified manner in relation to transactions conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or
  - (c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made.
- (2) Without limiting the application of Article 75 of the Regulatory Law 2004, the DFSA may, ~~by written notice,~~ direct an Authorised Market Institution to:
- (a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period;
  - (b) suspend transactions on the market or through the facilities operated by an Authorised Market Institution;
  - (c) suspend transactions in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;
  - (d) prohibit trading in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;
  - (e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by an Authorised Market Institution;
  - (f) prohibit a specified person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or
  - (g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the DFSA's objectives.”
- (3) ~~— The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under Article 26.”~~
2. The DFSA expects to use these powers only in exceptional circumstances. Factors the DFSA will consider in exercising these powers include:
- a. what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;
  - b. the impact on the DFSA's objectives if a direction were not issued; or
  - c. whether it is in the interests of the DIFC.
3. The ~~written notice~~ Decision Notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers. ~~Though the DFSA is not required to do so under the Markets Law, in most cases, the DFSA will contact the Authorised Market Institution prior to issuing such a direction.~~

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## 11 APPEALS OF AUTHORISED MARKET INSTITUTION DECISIONS

### 11.1 Application

**11.1.1** (1) Pursuant to Article ~~2968(2)(d)~~ of the Regulatory Law 2004 Markets Law, any Person who:

- (a) is aggrieved by a decision of the Authorised Market Institution;
- (b) has a right to a further appeal of the Authorised Market Institution decision to a tribunal under the Business Rules of that Authorised Market Institution; and
- (c) has exhausted the internal appeal process of that Authorised Market Institution;

may appeal the Authorised Market Institution decision by commencing a regulatory proceeding before ~~to the FMT Financial Markets Tribunal by a notice in writing sent to the Financial Markets Tribunal within 30 days after the date on which the Authorised Market Institution sent the notice of the decision to the Person.~~

(2) The grounds on which an appeal may lie under this Rule are limited to the following:

- (a) an error of law or jurisdiction;
- (b) a breach of the rules of natural justice; or
- (c) the decision is manifestly unreasonable.

(3) The FMT has jurisdiction to hear and determine a regulatory proceeding referred to in this Rule.

~~(3) The Financial Markets Tribunal has jurisdiction to hear and determine an appeal of an Authorised Market Institution decision filed under this Rule and may uphold, vary or reverse the Authorised Market Institution decision under appeal or refer the matter back to the Authorised Market Institution for further reconsideration.~~

~~(4) The powers of the Financial Markets Tribunal prescribed under Article 69 of the Markets Law 2012 apply to appeals brought under this Rule.~~

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## 12. TRANSITION AND SAVING

### 12.1 Application and interpretation

~~12.1.1~~ This chapter applies to every Person to whom a provision of the Previous Regime applied.

~~12.1.2~~ For the purposes of the provisions in this chapter:

~~“Commencement Date” means the date on which these Rules came into force;~~

~~“Current Regime” means the provisions in the AMI module, and any provisions associated with the AMI module in GEN, GLO and other modules of the DFSA Rulebook, in force on the Commencement Date; and~~

~~“Previous Regime” means the provisions in the AMI module, and any provisions associated with the AMI module in GEN, GLO and other modules of the DFSA Rulebook, in force immediately prior to the Commencement Date.~~

### 12.2 Transitional Rules

~~12.2.1 (1)~~ An Authorised Market Institution Licensed under the Previous Regime to carry on one or both the Financial Services of Operating an Exchange and Operating a Clearing House may, subject to (2) and (3), continue to carry on those Licensed activities subject to the Previous Regime for a period of not more than 6 months after the Commencement Date without breaching any of the requirements of the Current Regime.

~~(2)~~ An Authorised Market Institution referred to in (1) may, at any time during the 6 month period referred to in (1), move to the current Regime.

~~(3)~~ An Authorised Market Institution referred to in (1) is not required to obtain the DFSA’s approval in accordance with Rule 5.3.2(1)(b) for any individual who performs a Key Individual function where that individual performed the duties of the relevant Key Individual function immediately prior to the Commencement Date.

~~(4)~~ An individual referred to in (3) is deemed to be a Key Individual for the purposes of the Current Regime subject to continuing to meet the fitness and propriety criteria to perform the functions of the relevant role.<sup>7</sup>

<sup>7</sup> The DFSA propose to delete these transitional provisions on the assumption that they are now spent.

## **12.1 Transitional Rule for Key Individuals**

### **12.1.1** (1) In this Rule:

- (a) “Commencement Date” means the date on which the [DIFC Amendment Law 2014] comes into force;
- (b) “Current Regime” means the provisions in the Regulatory Law 2004 and AMI module as in force on the Commencement Date;
- (c) “Previous Regime” means the provisions in the Regulatory Law 2004 and AMI module as in force immediately before the Commencement Date.

- (2) A Person who was authorised as a Key Individual by the DFSA under the Previous Regime is deemed to be authorised as a Key Individual by the DFSA under the Current Regime.

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