The DFSA Rulebook

Conduct of Business Module

(COB)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

1 INTRODUCTION

1.1 Application

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

(a) Financial Service; or

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

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

1.1.2 COB does not apply to a Representative Office.

[Added][RM68][VER17/01-10]

Guidance

An Authorised Firm may be able to rely on the Transitional Rules in chapter 10 of GEN for the purposes of complying with some of the provisions in this module. The Rules enable Authorised Firms to make a smooth transition to the new regime that came into force 1 July 2008 under rule-making instrument No. 56, following the DFSA's "Key Policy Review" outlined in Consultation Paper 52. Examples of the provisions to which the Transitional Rules apply are the Client classification (Rule 2.3.3(1)), consent and notifications to be treated as a Market Counterparty (Rule 2.3.4), statements required to be included in marketing material (Rule 3.2.4(1)(c)) and requirements for Client Agreement and key information (Rule 3.2.2(1)(b)).

[Added][RM58][VER14/07-08]

2 CLIENT CLASSIFICATION

2.1 Application

2.1.1 (1) This chapter applies, subject to (3) and (4), to an Authorised Firm, carrying on or intending to carry on any Financial Service with or for a Person.

(2) For the purposes of this chapter, a Person includes a Fund or trust, even if it does not have a separate legal personality.

(3) This chapter applies to a Credit Rating Agency only if and to the extent that it intends to carry on, or carries on, a Financial Service other than Operating a Credit Rating Agency.

(4) This chapter does not apply to an Authorised ISPV.

2.2 Overview

Guidance

1. This chapter describes the manner in which an Authorised Firm classifies and treats its Clients. The modules of the Rulebook may apply to an Authorised Firm differently depending on whether the Person with or for whom it is carrying on Financial Services is, or is to be treated as, a Retail Client, Professional Client, or Market Counterparty.

2. An Authorised Firm may choose to provide Financial Services and products to both Retail Clients and Professional Clients. In these circumstances, the Authorised Firm must determine the appropriate classification of its Clients. As a consequence of the analysis under Rule 2.3.2, it may be that a Client is:

   a. a Retail Client;

   b. a Professional Client; or

   c. a Professional Client in relation to certain services and products and a Retail Client in relation to other services and products.

3. An Authorised Firm may choose to treat all Persons with whom it deals as Retail Clients. In these circumstances, Rule 2.3.1(2)(a) provides that the Authorised Firm is not required to undertake the determination in Rule 2.3.1(1).

4. An Authorised Firm may choose to deal only with Professional Clients provided the Authorised Firm is able to classify those Persons as such. See Rule 2.3.2. In such case a Person who is classified as a Professional Client in relation to any Financial Service or product offered by the Authorised Firm cannot be a Client of the Authorised Firm in relation to other Financial Services or products, in relation to which he does not have the necessary expertise.

5. A firm may treat as a Market Counterparty a Professional Client referred to in Rule 2.3.2(2), provided that in respect of some of those Persons, the firm must obtain their prior written consent before treating them as a Market counterparty. The others only require notification by the firm of the classification as a Market Counterparty. See Rule 2.3.4. Treatment as a Market Counterparty means that, for example, Rules relating to Client Agreements, suitability, inducements, best execution, aggregation and allocation do not apply to such Clients.

2.3 Types of Client

2.3.1 (1) Subject to (2), before carrying on a Financial Service with or for a Person, an Authorised Firm must determine whether such a Person is a Professional Client in accordance with Rule 2.3.2, in respect of all or particular Financial Services or products offered by the Authorised Firm.

(2) An Authorised Firm is not required to comply with (1) in relation to a particular Person where it:

(a) treats that Person as a Retail Client; or

(b) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing with that Person and provides no other Financial Service to that Person.

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

[Amended][RM68][VER17/01-10]

Guidance

Pursuant to GEN Rule 3.2.7, an Authorised Firm which is not a Representative Office may carry on activities which constitute marketing financial services and financial products offered in a jurisdiction other than the DIFC. The effect of Rule 2.3.1(2)(b) is to provide a carve out for an Authorised Firm from the requirements under Rule 2.3.1(1) when the firm is carrying on such marketing activities. Under other provisions in this module, an Authorised Firm is also exempt from other specific requirements when carrying on such marketing activities under Rules 3.3.1(d) and 3.4.1(d).

[Amended][RM68][VER17/01-10]

Professional Client

2.3.2 (1) An Authorised Firm may classify a Person as a Professional Client only if such a Person:

(a) either:

(i) has net assets of at least $500,000 calculated in accordance with Rule 2.4.1; or

(ii) is, or has been in the previous 2 years:

(A) an Employee of the Authorised Firm; or

(B) an Employee in a professional position in another Authorised Firm;

(b) subject to (2), appears, on reasonable grounds, to the Authorised Firm, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks following the analysis specified in Rule 2.5.1; and

(c) has not elected to be treated as a Retail Client in accordance with Rule 2.3.3.

(2) An Authorised Firm may consider the following Persons as possessing the necessary degree of experience and understanding of relevant financial markets, products or transactions without having to undertake the analysis referred to in (1)(b):

(a) a Collective Investment Fund or a regulated pension fund;

(b) an Authorised Firm, a Regulated Financial Institution or the management company of a regulated pension fund;

(c) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;

(d) a public authority or state investment body;

(e) a supranational organisation whose members are either countries, central banks or national monetary authorities;

(f) an Authorised Market Institution, regulated exchange or regulated clearing house;

(g) a Body Corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country;

(h) a Body Corporate which has called up share capital of at least $10,000,000; or

(i) any other institutional investor whose main activity is to invest in financial instruments, including an entity dedicated to the securitisation of assets or other financial transactions.

(3) A personal investment vehicle may be classified as a Professional Client without having to meet the requirements in (1)(a)(i) if it is established and operated for the sole purpose of facilitating the management of the investment portfolio of an existing Professional Client.

Guidance

1. A Professional Client is responsible for keeping an Authorised Firm informed about any changes that could affect his current classification. Should the Authorised Firm become aware that a Professional Client no longer fulfils the conditions which made him eligible to be classified as a Professional Client, the Authorised Firm should take appropriate action.

2. A personal investment vehicle may be a Body Corporate, Partnership, trust or foundation.

Option of a Professional Client to be treated as a Retail Client

2.3.3 (1) Subject to (4), the purpose of Rule 2.3.2(1)(c), an Authorised Firm must, when first establishing a relationship with a Person as a Professional Client for the purposes of carrying on a Financial Service, inform that Person of his option to be treated as a Retail Client, the higher level of protection available to Retail Clients, and the time within which the Person may elect to be treated as a Retail Client.

(2) If the Person does not expressly elect to be treated as a Retail Client within the time specified by the Authorised Firm, the Authorised Firm may, pursuant to Rule 2.3.2, classify that Person as a Professional Client.

(3) Subject to (4), an Authorised Firm must, during the course of its dealings with a Professional Client, treat such a Client as a Retail Client if he expressly requests the Authorised Firm to do so.

(4) In the event that an Authorised Firm only carries on Financial Services with or for Professional Clients, it must inform the Person of this fact and any relevant consequences.

Guidance

1. The obligation in Rule 2.3.3(1) applies to an Authorised Firm when it deals for the first time with a Professional Client.

2. For the purposes of Rule 2.3.3 (3), it is the responsibility of a Professional Client to ask for a higher level of protection as a Retail Client.

Market Counterparty

2.3.4 (1) An Authorised Firm may treat a Professional Client referred to in Rule 2.3.2(2) as a Market Counterparty provided that the firm:

(a) in the case of a Professional Client referred to in Rule 2.3.2(2)(a) to (f), has given to that Client a prior written notification of the classification as a Market Counterparty and that Client has not requested to be treated otherwise; and

(b) in the case of a Professional Client referred to in Rule 2.3.2(2)(g), (h), or (i), has obtained the prior written consent of that Client to be treated as a Market Counterparty.

(2) The notification and consent referred to in (1) may be given in respect of all services or in respect of each individual Transaction.

(3) The notification in (1)(a) need only be given to one of:

(a) a Fund or its Fund Manager; or

(b) a pension fund or its management company.

[Amended][RM72][VER19/07-10]

Retail Client

2.3.5 A Client is a Retail Client to the extent he is not a Professional Client.

2.4 Net assets

2.4.1 An Authorised Firm, when calculating net assets of a Person who is an individual for the purposes of the requirement under Rule 2.3.2(1)(a)(i):

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

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

Guidance

The reference to "assets held directly or indirectly" is designed to include assets held by direct legal ownership, by beneficial ownership (for example, as a beneficiary in a trust), or by both legal and

beneficial ownership. Such assets may be held, for instance, through a special purpose or personal investment vehicle, a foundation, or the like.

2.5 Analysis

2.5.1 (1) For the purpose of Rule 2.3.2(1)(b), the analysis undertaken by an Authorised Firm must include, where applicable, consideration of the following matters:

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

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

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

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

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

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

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

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

Guidance

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

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

b. in the case of an Employee, has worked in the financial services industry for at least one year in a professional capacity which requires knowledge of the transactions or services involved; or

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

2.6 Record keeping

2.6.1 An Authorised Firm must keep records of:

(a) the process undertaken under the Rules in this chapter including any documents which evidence the Client's classification; and

(b) any notice sent to the Client under the Rules in this chapter and evidence of despatch.

2.6.2 These records must be kept for at least six years from the date on which the business relationship with a Client has ended. If the date on which the business relationship ended remains unclear, it may be taken to have ended on the date of the completion of the last Transaction.

3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT AND PROVIDING TRUST SERVICES

Guidance

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

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

3.1 Application

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

(a) Investment Business;

(b) Accepting Deposits;

(c) Providing Credit; or

(d) Providing Trust Services,

except where it is expressly provided otherwise.

3.2 Communication of information and marketing material

General

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

3.2.2 An Authorised Firm must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the Regulatory Law 2004 or Rules.

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

Marketing material

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

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

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

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

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

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

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

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

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

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

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

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

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

Past performance and forecasts

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

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

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

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

Guidance

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

3.3 Key information and Client Agreement

Application

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

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

(b) Accepting Deposits;

(c) Providing Credit;

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

[Amended][RM68][VER17/01-10]

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

[Amended][RM72][VER19/07-10]

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

(a) there is a Client Agreement entered into between the Authorised Firm and that Person containing the key information specified in App2; and

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

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

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

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

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

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

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

Guidance

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

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

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

Changes to the client agreement

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

3.4 Suitability

Application

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

(a) undertakes a Transaction with a Market Counterparty;

(b) undertakes an Execution-Only Transaction;

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

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

[Amended][RM68][VER17/01-10]

Suitability assessment

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

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

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

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

(a) has given a written warning to the Professional Client in the form of a notice clearly stating either that the Authorised Firm will not consider suitability, or will consider suitability only to the extent specified in the notice; and

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

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

Guidance

1. An Authorised Firm Providing Trust Services does not have to undertake an assessment of the factors such as risk tolerance, knowledge and experience of a Client when assessing the suitability of the service to a particular Client. This is because those considerations are not relevant to the activity of Providing Trust Services.

2. The extent to which an Authorised Firm needs to carry out a suitability assessment for a Professional Client depends on its agreement with such a Client. The agreement may limit the suitability assessment to a specified extent, or may dispense with the suitability assessment completely. To the extent a limited suitability assessment is agreed upon, the firm must carry out the suitability assessment as agreed. Limitations may, for example, relate to the objectives of the Client or the product range in respect of which the recommendations are to be made.

3.4.3 An Authorised Firm must take reasonable steps to ensure the information it holds about a Client is accurate, complete and up to date.

3.5 Conflicts of interest

Fair treatment

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

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

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

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

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

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

Attribution of knowledge

3.5.2 When a COB Rule applies to an Authorised Firm that acts with knowledge, the Authorised Firm will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved for on behalf of the Authorised Firm acts with that knowledge as a result of a Chinese Wall arrangement established under Rule 3.5.1(2)(a).

Inducements

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

(2) Subject to (3), an Authorised Firm must, before recommending a financial product as defined in GEN Rule 2.11.1(5) to, or Executing a Transaction for, a Retail Client, disclose to that Client any commission or other direct or indirect benefit which it, or any Associate or Employee of it, has received or may or will receive, in connection with or as a result of the firm making the recommendation or executing the Transaction.

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

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

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

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

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

Guidance

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

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

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

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

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

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

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

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

(d) provide market price services.

Guidance

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

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

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

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

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

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

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

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

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

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

3.5.7 (1) If an Authorised Firm or member of its Group has a Soft Dollar Agreement under which either the Authorised Firm or member of its Group Deals for a Client, the Authorised Firm must provide that Client with the following information:

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

(i) the Authorised Firm; and

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

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

(i) the Authorised Firm; or

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

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

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

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

3.6 Record Keeping

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

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

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

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

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

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

(f) any other disclosures made to Clients.

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

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

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

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

4 ADDITIONAL RULES - ACCEPTING DEPOSITS AND PROVIDING CREDIT

4.1 Application

4.1.1 The Rules in this chapter apply to an Authorised Firm with respect to Accepting Deposits or Providing Credit through an establishment maintained by it in the DIFC.

4.2 Accepting Deposits

4.2.1 A Bank, in the course of Accepting Deposits, must not:

(a) Accept Deposits from the State's markets;

(b) Accept Deposits in the U.A.E. Dirham;

(c) undertake currency or foreign exchange transactions involving the U.A.E. Dirham; or

(d) Accept Deposits from Retail Clients.

4.3 Providing Credit

4.3.1 (1) An Authorised Firm may, subject to (2), Provide Credit to a:

(a) Professional Client; and

(b) Retail Client, but only where:

(i) the Retail Client is an Undertaking; and

(ii) the Credit Facility is provided to the Retail Client for a business purpose.

(2) An Authorised Firm, in the course of Providing Credit, must not:

(a) Provide Credit in the U.A.E. Dirham; or

(b) undertake currency or foreign exchange transactions involving the U.A.E. Dirham.

5 ADDITIONAL RULES – PROVIDING TRUST SERVICES

5.1 Application

5.1.1 This chapter applies to a Trust Service Provider with respect to the conduct of Providing Trust Services.

Guidance

The requirements in chapter 3 also apply to Trust Service Providers.

5.2 General

5.2.1 For the purposes of this chapter, a settlor, a trustee or a named beneficiary of a trust in respect of which the Trust Service Provider is engaged in Providing Trust Services may be treated as a Client of the Authorised Firm.

5.2.2 A Trust Service Provider must maintain adequate knowledge of, and comply with, all applicable DIFC laws, Rules and Regulations relevant to Providing Trust Services.

5.2.3 A Trust Service Provider must be able to demonstrate that it is in compliance with appropriate standards of corporate governance.

5.2.4 A Trust Service Provider must transact its business (including the establishing, transferring or closing of business relationships with its Clients) in an expeditious manner where appropriate unless there are reasonable grounds to do otherwise.

Exercise of Discretion

5.2.5 Where a Trust Service Provider is responsible for exercising discretion for, or in relation to, its Clients, it must take all reasonable steps to obtain sufficient information in order to exercise, subject to Rule 5.2.6, its discretion or other powers in a proper manner.

5.2.6 A Trust Service Provider must only exercise its power or discretion for a proper purpose.

5.2.7 The Trust Service Provider must ensure that its understanding of a Client's business is refreshed by means of regular reviews.

5.2.8 The Trust Service Provider must ensure that any trustee exercises his discretion in accordance with his fiduciary and other duties under the laws governing the trust of which he is a trustee.

Delegation of duties or powers

5.2.9 Any delegation of duties or powers by a Trust Service Provider, whether by Power of Attorney or otherwise, must only be entered into for a proper purpose, permissible by law and limited and monitored as appropriate.

5.3 Reviews

5.3.1 A Trust Service Provider must ensure that adequate procedures are implemented to ensure that regular reviews at appropriate intervals are conducted in respect of Providing Trust Services to its Clients.

5.4 Professional indemnity insurance cover

5.4.1 A Trust Service Provider must maintain professional indemnity insurance cover appropriate to the nature and size of the Trust Service Provider's business.

5.4.2 A Trust Service Provider must:

(a) provide the DFSA with a copy of its professional indemnity insurance cover; and

(b) notify the DFSA of any changes to the cover including termination and renewal.

5.4.3 A Trust Service Provider must provide the DFSA on a yearly basis, with the details of the arrangements in force together with evidence of the cover. Any claims in excess of $10,000 or changes to the arrangements previously notified to the DFSA under this Rule must be notified to the DFSA as they arise.

5.5 Dual control

5.5.1 The Trust Service Provider must have adequate internal controls, including having two Persons with appropriate skills and experience managing the business.

5.5.2 While a Trust Service Provider may have a single Person with overall responsibility, at least another Person must have the skills and experience to be able to run the business of the Trust Service Provider in the absence of the senior Person and must be in a position to challenge the actions of the senior Person where they consider that those actions may be contrary to the provisions of DIFC Laws, Rules or Regulations or any other applicable legislation, may not be in the interests of the Client, or may be contrary to sound business principles.

5.6 Internal reporting

5.6.1 A Trust Service Provider must have arrangements for internal reporting to ensure that the directors or the partners can satisfy themselves that:

(a) the requirements of the relevant legislation are being met on an on going basis;

(b) the Trust Service Provider's business is being managed according to sound business principles and, in particular, that it can meet its financial commitments as they fall due;

(c) the affairs of its Clients are being managed in accordance with the service agreements;

(d) the trustees are acting in accordance with their fiduciary and other duties;

(e) the affairs of its Clients are being properly monitored and in particular that the Client is not using the trust structure to hide assets from legitimate enquiry, to avoid proper obligations in other jurisdictions or to engage in illegal activities in other jurisdictions;

(f) the assets of its Clients are properly managed and safeguarded; and

(g) the recruitment, training and motivation of staff is sufficient to meet the obligations of the business.

5.7 Recording of Selection Criteria

5.7.1 Where the Trust Service Provider seeks the advice of a third party in connection with a Client's affairs, for example to advise on or manage investments, the Trust Service Provider must record the criteria for selection of the adviser and the reasons for the selection made.

5.7.2 The Trust Service Provider must monitor the performance of the adviser and ensure that it is in a position to change advisers if it is in the interests of the Client.

5.8 Qualification and experience of Trust Service Provider staff

5.8.1 Staff employed or Persons recommended by the Trust Service Provider must have appropriate qualifications and experience.

5.8.2 A Trust Service Provider must ensure that all transactions or decisions entered into, taken by or on behalf of Clients are properly authorised and handled by Persons with an appropriate level of knowledge, experience, qualifications and status according to the nature and status of the transactions or decisions involved (this applies also to decisions taken by trustees who are recommended by, but not employed by, a Trust Service Provider).

5.8.3 A Trust Service Provider must ensure that, each of its officers and employees, agents, Persons acting with its instructions and Persons it recommends to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.

5.8.4 A Trust Service Provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.

5.8.5 A Trust Service Provider must ensure that staff receive appropriate training on the defences against money laundering and terrorist financing.

5.9 Books and records

5.9.1 The books and records of a Trust Service Provider must be sufficient to demonstrate adequate and orderly management of Clients' affairs. A Trust Service Provider must prepare proper accounts, at appropriately regular intervals on the trusts and underlying companies administered for its Clients. Where trusts and underlying companies are governed by the laws of a jurisdiction that require accounts to be kept in a particular form, the Trust Service Provider must meet those requirements. In any case, the Trust Service Provider's books and records must be sufficient to allow the recreation of the transactions of the business and its Clients and to demonstrate what assets are due to each Client and what liabilities are attributable to each Client.

5.10 Due diligence

5.10.1 A Trust Service Provider must, at all times, have verified documentary evidence of the settlors, trustees (in addition to the Trust Service Provider itself) and principal named beneficiaries of trusts for which it Provides Trust Services. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, a Trust Service Provider must also have verified, where reasonably possible, documentary evidence of any Person who receives a distribution from the trust and any other Person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust.

5.10.2 A Trust Service Provider must demonstrate that it has knowledge of the source of funds that have been settled into trusts or have been used to provide capital to companies, or have been used in transactions with which the Trust Service Provider has an involvement.

5.11 Fitness and Propriety of Persons acting as trustees

5.11.1 Where a Trust Service Provider arranges for a Person who is not an employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.

5.11.2 A Trust Service Provider must notify the DFSA of the appointment of a Person under Rule 5.11.1, including the name and business address if applicable and the date of commencement of the appointment.

5.11.3 Prior to the appointment of such a Person to act as a trustee, the Trust Service Provider must take reasonable steps to ensure that the Person has the required skills, experience and resources to act as a trustee for a Client of the Trust Service Provider.

5.11.4 A Trust Service Provider must notify the DFSA immediately if the appointment of such a Person is or is about to be terminated, or on the resignation of such Person, giving the reasons for the resignation and the measures which have been taken to ensure that a new trustee has been appointed.

5.11.5 A Person appointed to act as trustee for a Client of a Trust Service Provider who is not an Employee of the Trust Service Provider, must agree in writing to be bound by and comply with the same legal and regulatory requirements as if he were an Employee of the Trust Service Provider.

6 ADDITIONAL RULES - INVESTMENT BUSINESS

6.1 Application

6.1.1 The Rules in this chapter apply to an Authorised Firm when conducting Investment Business. The requirements in this chapter apply to an Authorised Firm regardless of the classification of the Client, unless expressly provided otherwise.

Guidance

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

6.2 Personal account transactions

Conditions for personal account transactions

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

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

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

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

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

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

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

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

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

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

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

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

(a) on that Investment or its Issuer; or

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

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

Record Keeping

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

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

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

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

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

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

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

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

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

6.3 Investment research and offers of securities

Application

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

Guidance

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

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

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

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

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

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

Guidance

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

Disclosures in investment research

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

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

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

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

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

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

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

(i) for all Investments;

(ii) for Investments in each sector covered; and

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

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

Guidance

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

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

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

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

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

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

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

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

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

Guidance

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

Restrictions on publication

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

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

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

Guidance

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

Restriction on own account transactions

6.3.6 (1) Unless Rule 6.2.2 applies, an Authorised Firm or its Associate must not knowingly execute an Own Account Transaction in an Investment or related Investments, which is the subject of Investment Research, prepared either by the Authorised Firm or its Associate, until the Clients for whom the Investment Research was principally intended have had a reasonable opportunity to act upon it.

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

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

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

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

Guidance

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

Offers of securities

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

Disclosure

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

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

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

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

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

Guidance

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

6.4 Best execution

Application

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

(a) it undertakes with a Market Counterparty;

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

(c) is an Execution-Only Transaction.

[Amended][RM72][VER19/07-10]

Providing best execution

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

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

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

Requirements

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

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

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

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

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

Guidance

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

6.5 Non-market price transactions

Application

6.5.1 This section applies to an Authorised Firm conducting Investment Business regardless of the classification of the Client.

General prohibition

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

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

Record keeping

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

Guidance

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

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

6.6 Aggregation and allocation

Application

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

(a) undertakes with a Market Counterparty; or

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

[Amended][RM72][VER19/07-10]

Aggregation of orders

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

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

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

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

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

Allocation of investments

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

(a) promptly allocate the Investments concerned;

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

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

(d) make and maintain a record of:

(i) the date and time of the allocation;

(ii) the relevant Investments;

(iii) the identify of each Client concerned; and

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

Record keeping

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

6.7 Record keeping – voice and electronic communications [Amended][RM61][VER15/01-09]

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

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

[Deleted and Replaced][RM61][VER15/01-09]

Guidance

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

[Added][RM61][VER15/01-09]

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

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

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

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

[Amended][RM61][VER15/01-09]

Records of orders and transactions

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

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

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

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

6.8 Other dealing rules

Application

6.8.1 The Rules in this section, other than Rule 6.8.7, do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

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

[Amended][RM72][VER19/07-10]

Churning

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

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

Timely execution

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

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

Fairly and in due turn

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

Averaging of prices

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

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

Timely allocation

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

(2) The allocation must be:

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

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

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

Direct Electronic Access

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

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

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

Guidance

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

6.9 Confirmation notes

Application

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

(a) undertakes with a Market Counterparty; or

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

[Amended][RM72][VER19/07-10]

Sending confirmation notes

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

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

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

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

Record keeping

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

6.10 Periodic statements

Application

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

(a) undertakes with a Market Counterparty; or

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

[Amended][RM72][VER19/07-10]

Investment management and contingent liability investments

6.10.2 (1) When an Authorised Firm:

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

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

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

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

(a) six-monthly;

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

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

Record keeping

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

6.11 Client Assets

Application

6.11.1 This section applies to an Authorised Firm which:

(a) holds or controls Client Assets; or

(b) Provides Custody or Arranges Custody.

Guidance

1. Client Assets is defined in the GLO Module as "Client Money and Client Investments".

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

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

[Added][RM66][VER16/08-09]

General requirements

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

(2) An Authorised Firm which holds or controls Client Investments or Provides Custody or Arranges Custody must comply with sections 6.13 and 6.14. [Amended][RM66][VER16/08-09]

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

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

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

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

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

Guidance

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

[Added][RM66][VER16/08-09]

Holding or controlling client assets

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

(a) directly held by the Authorised Firm;

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

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

Guidance

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

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

6.12 Client money

6.12.1 All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the DIFC is Client Money, except Money which is:

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

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

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

(d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and who is in compliance with Rule 6.11.3 (2);

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

(f) Fund Property of a Fund.

Guidance

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

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

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

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

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

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

Client money provisions

6.12.2 (1) Subject to (2), an Authorised Firm which holds or controls Client Money for a Client must comply with the Client Money Provisions in App5.

(2) Where the Client is a Market Counterparty, an Authorised Firm may exclude the application of the Client Money Provisions but only where it has obtained the prior written consent of the Market Counterparty to do so. [Amended][RM66][VER16/08-09]

Guidance

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

Client disclosure

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

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

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

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

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

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

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

[Amended][RM66][VER16/08-09]

Distribution event

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

Record keeping

6.12.5 (1) An Authorised Firm must maintain records:

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

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

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

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

Guidance

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

6.13 Client investments

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

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

Guidance

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

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

(a) holding or controlling Client Investments;

(b) Providing Custody; or

(c) Arranging Custody

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

[Amended][RM66][VER16/08-09]

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

Holding collateral

6.13.4 Before an Authorised Firm holds Collateral from a Client it must disclose to that Client:

(a) the basis and any terms governing the way in which the Collateral will be held, including any rights which the Authorised Firm may have to realise the Collateral;

(b) if applicable, that the Collateral will not be registered in that Client's own name;

(c) if applicable, that the Authorised Firm proposes to return to the Client Collateral other than the original Collateral, or original type of Collateral; and

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

(i) of a Domestic Firm, any excess Collateral will be sold and the resulting Client Money shall be distributed in accordance with the DFSA Client Money Distribution Rules; or

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

6.13.5 Before an Authorised Firm deposits Client's Collateral with a third party it must notify the third party that:

(a) the Collateral does not belong to the Authorised Firm and must therefore be held by the third party in a segregated Client Account in a name that clearly identifies it as belonging to the Authorised Firm's Clients; and

[Amended][RM66][VER16/08-09]

(b) the third party is not entitled to claim any lien or right of retention or sale over the Collateral except to cover the obligations owed to the third party which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the Collateral.

6.13.6 (1) An Authorised Firm may only permit Client's Collateral to be held by a third party where it has reasonable grounds to believe that the third party is, and remains, suitable to hold that Collateral.

(2) An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which it considers the third party to be suitable to hold Client's Collateral.

6.13.7 (1) An Authorised Firm must take reasonable steps to ensure that the Collateral is properly safeguarded.

(2) An Authorised Firm must withdraw the Collateral from the third party where the Collateral is not being properly safeguarded unless the Client has indicated otherwise in writing.

6.13.8 An Authorised Firm holding Client's Collateral must send a statement every six months to the Client in accordance with section A6.8.

6.13.9 An Authorised Firm must reconcile the Client's Collateral in accordance with section A6.9.

6.14 Record keeping

6.14.1 (1) An Authorised Firm must maintain records:

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

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

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

6.15 ATS Operators

Application

6.15.1 This section applies to an Authorised Firm which is an ATS Operator.

Access to an ATS

6.15.2 An ATS Operator must not allow any Person to access an ATS operated by it, unless that Person is a Professional Client.

Client Disclosures

6.15.3 Before granting a Client access to an ATS an ATS Operator must ensure that the Client is provided in writing with the following details:

(a) sufficient information about how the ATS operates to enable the Client to use the system efficiently and to understand any material risks involved in using the system. Such information should include any dealing processes and rules of the system;

(b) the arrangements for clearing and settlement of transactions and the responsibilities of the ATS Operator in relation to this;

(c) a statement as to whether transactions executed using the ATS are reported to an Authorised Market Institution or any other regulated exchange. If transactions are to be reported then the ATS Operator must provide details as to the identity of the Authorised Market Institution or other regulated exchange and the arrangements for providing such information;

(d) the trading procedures that may be adopted in the event of system disruption; and

(e) the circumstances in which the ATS Operator may revise the terms of, or terminate, a Client's access to the ATS.

Systems and controls

6.15.4 An ATS Operator must establish and maintain systems and controls to ensure:

(a) fair and orderly trading;

(b) the equitable treatment of Clients;

(c) fair pricing of the Investments having regard to the time, quantity and other specifications of the quote or order; and

(d) that sufficient information about quotes, orders and completed transactions is made available to Clients of the system in a timely manner.

Guidance

1. The appropriateness of different arrangements for particular systems and controls depends upon a number of factors including the nature of the Investments being traded, the nature and characteristics of the ATS and the significance of the ATS to the overall market.

2. For the purposes of Rule 6.15.4(d), information should be available to Clients of the system close to the time when the quote or order is given or the transaction is executed.

Information

6.15.5 An ATS Operator must provide, or be reasonably satisfied that there is publicly available, sufficient information to enable Clients of the system to make a reasonably informed judgement about the value of each Investment traded on the ATS and the risks associated with that Investment.

6.15.6 Where Investments traded on the ATS are also traded on the facilities of an AMI or other regulated exchange, or are substantially the same as Investments traded on such facilities, an ATS Operator must establish and maintain systems and controls to ensure details of:

(a) quotes and orders that the ATS displays to Clients of the system; and

(b) prices, volumes and times of completed transactions,

are made publicly available in a timely manner and on reasonable commercial terms.

Guidance

1. For the purposes of Rule 6.15.6, information should be made publicly available within a reasonable period.

2. An Authorised Firm may make information publicly available by publishing the information itself, for example, by posting data on a web-site, or by arranging with a third party to publish the information.

Monitoring and Disclosure

6.15.7 An ATS Operator must monitor transactions undertaken on the ATS to identify suspected or actual breaches of any rules, procedures or agreements relating to fair and orderly trading and Market Misconduct.

6.15.8 A breach of an ATS Operator's rules relating to fair and orderly trading on the ATS is a prescribed matter for the purposes of Article 67(1)(e) of the Regulatory Law 2004.

Record Keeping

6.15.9 An ATS Operator must keep records of transactions conducted through its facilities for a period of not less than six years.

7 CORE RULES - INSURANCE

7.1 Application

7.1.1 (1) The Rules in this chapter apply to an Authorised Firm with respect to the conduct in or from the DIFC of Insurance Business, Insurance Intermediation or Insurance Management to the extent specified in any Rule.

(2) The Rules in this chapter do not apply to an Insurer that is an Authorised ISPV with the exception of the Rules in section 7.2.

7.2 Insurance business and intermediation restrictions

7.2.1 An Authorised Firm may only conduct Insurance Business or Insurance Intermediation with or for a Client to the extent specified in this section.

7.2.2 An Authorised Firm must ensure that it does not:

(a) if it is an Insurer, Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC; or

(b) if it is an Insurance Intermediary, act in relation to a Contract of Insurance;

where the contract is in relation to a risk situated within the U.A.E, unless the risk is situated in the DIFC, or the contract is one of re-insurance.

[Amended][RM61][VER15/01-09]

Guidance

The classes of insurance are set out in GEN App4.

7.2.3 An Insurer must ensure that it does not carry on, through an establishment maintained by it in the DIFC, both Long-Term Insurance Business and General Insurance Business unless the General Insurance Business is restricted to Class 1 or Class 2 or both.

7.2.4 An Insurer which is a Protected Cell Company must ensure that all Insurance Business is attributable to a particular Cell of that Insurer.

7.2.5 An Insurer must not carry on any activity other than Insurance Business unless it is an activity in direct connection with or for the purposes of such business. For the purposes of this Rule, Managing Assets is not an activity in connection with or for the purposes of Insurance Business.

Guidance

1. The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:

   a. investing, reinvesting or trading, as investor or rabb ul maal and for the Insurer's own account, that of its Subsidiary, its Holding Company or any Subsidiary of its Holding Company but not any other party, in Securities, loans, investment accounts, units or shares in collective investment funds, certificates of mudaraba, certificates of musharaka or other forms of investments that are intended to earn profit or return for the investor;

   b. rendering other services related to Insurance Business operations including, but not limited to, actuarial, risk assessment, loss prevention, safety engineering, data processing, accounting, claims handling, loss assessment, appraisal and collection services;

   c. acting as agent for another insurer in respect of contracts of insurance in which both insurers participate; and

   d. establishing Subsidiaries or Associates engaged or organised to engage exclusively in one or more of the businesses specified above.

2. The DFSA may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.

7.3 Communication of information and marketing material

General obligation

7.3.1 (1) When communicating any information in relation to Insurance Business, Insurance Intermediation or Insurance Management to a Person, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.

(2) An Insurer, Insurance Intermediary or Insurance Manager must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under the Regulatory Law 2004 or Rules.

(3) An Insurer or Insurance Intermediary must, when providing or directing marketing material to a Retail Client, comply with the requirements in section 3.2, if the marketing material relates to a Direct Long-Term Insurance Contract.

7.4 Client's duty of disclosure

7.4.1 An Insurer or Insurance Intermediary must explain to a Client:

(a) the Client's duty to disclose all circumstances material to the insurance both before the insurance commences and during the continuance of the policy; and

(b) the consequence of any failure by the Client to make such disclosures.

7.4.2 An Insurance Intermediary must explain to a Client that all answers or statements given on a proposal form, claim form or any other relevant document are the Client's own responsibility and that the Client is responsible for checking the accuracy of such information.

7.4.3 If an Insurance Intermediary believes that any disclosure of material facts by a Client is not true, fair or complete, it must request the Client to make the necessary true, fair or complete disclosure, and if this is not forthcoming must consider declining to continue acting on that Client's behalf.

7.5 Authorised Firm's duty of disclosure

7.5.1 (1) An Insurer or Insurance Intermediary must disclose to a Client:

(a) the name and address of the insurer or insurers effecting the Contract of Insurance;

(b) its own name and address where different; and

(c) contact details of the Person to whom a claim is to be notified.

(2) The disclosures in (1) must be made before effecting or placing the Contract of Insurance, or as soon as reasonably practicable thereafter.

7.5.2 (1) An Insurance Intermediary must, before providing any Insurance Intermediation service to a Person as a Retail Client, disclose whether any advice or information is or will:

(a) be provided on the basis of a fair analysis of the market;

(b) not be provided on the basis of a fair analysis of the market because of any contractual agreement it has with any particular insurer or insurers to deal with only their products; or

(c) even if there are no contractual agreements of the type referred to in (b), not be provided on the basis of a fair analysis of the market.

(2) If (1) (b) or (c) applies, the Insurance Intermediary must, if requested by the Retail Client, provide to that Client a list of insurers with whom it deals or may deal in relation to the relevant Contracts of Insurance.

(3) An Insurance Intermediary must, before providing any Insurance Intermediation service to a Client, disclose to that Client whether it acts on behalf of an insurer or any other Person or acts independently on behalf of Clients.

Guidance

An Insurance Intermediary should not represent itself as providing advice or information on the basis of a fair analysis of the market unless it has considered a sufficiently broad range of Contracts of Insurance and based its decision on an adequate analysis of those contracts.

7.6 Disclosure of costs and remuneration

7.6.1 An Insurer, Insurance Intermediary or Insurance Manager must provide details of the costs of each Contract of Insurance or Insurance Intermediation service or Insurance Management service offered to a Client.

Guidance

1 The disclosure required by this Rule should include any premiums, fees, charges or taxes payable by the Client, whether or not these are payable to the Authorised Firm.

2 The disclosure should be made in terms readily understandable by the Client, taking into account the knowledge held by that Client in relation to the type of insurance in question.

7.6.2 An Insurer or Insurance Intermediary must, where any premium is payable through a Credit Facility made available to a Retail Client, disclose any interest, profit rate or charges payable by the Client for using that facility.

7.6.3 An Insurer, Insurance Intermediary or Insurance Manager must ensure that it does not impose any new costs, fees or charges without first disclosing the amount and the purpose of those charges to the Client.

7.6.4 (1) An Insurer, Insurance Intermediary or Insurance Manager must, on the request of any Client, disclose to that Client all commissions and other economic benefits accruing to the Authorised Firm or any member of the same Group from:

(a) any Insurance Intermediation business;

(b) any Insurance Management business; or

(c) any other business connected to or related to the provision of such business;

transacted by the Authorised Firm on behalf of that Client.

(2) The requirement to disclose the information under (1) does not apply where an Insurance Intermediary acts solely on behalf of a single insurer, and this fact has been disclosed to the Client.

7.7 Information about the proposed insurance

7.7.1 An Insurer or Insurance Intermediary must provide adequate information in a comprehensive and timely manner to enable a Client to make an informed decision about the Contract of Insurance that is being proposed.

7.7.2 Without limiting the generality of the disclosure obligation under section 7.5, an Insurer or Insurance Intermediary must, for the purpose of complying with the obligation under that section:

(a) provide to a Client information about the key features of any insurance proposed including the essential cover and benefits, any significant or unusual restrictions, exclusions, conditions or obligations, and the applicable period of cover; and

(b) explain, except where the insurance cover is sourced from a single insurer, the differences in and the relative costs of similar types of insurance as proposed.

Guidance

When deciding to what extent it is appropriate to explain the terms and conditions of a particular insurance the Insurer or Insurance Intermediary should take into consideration the knowledge held by the Client in relation to the type of insurance in question.

Specific disclosure for Long-Term Insurance

7.7.3 Where an Insurer or an Insurance Intermediary proposes Direct Long-Term Insurance to a Retail Client, the disclosure for the purposes of this section must include:

(a) the method of calculation of any bonuses;

(b) an indication of surrender values and paid-up values, and the extent to which any such values are guaranteed;

(c) for unit-linked insurance contracts, definition of the units to which they are linked, and a description of the underlying assets;

(d) the basis of any projections included in the information; and

(e) any facts that are material to the decision to invest, including risks associated with the investment and factors that may adversely affect the performance of the investments.

7.7.4 [Deleted][RM69][VER18/03-10]

7.8 Suitability

7.8.1 An Insurer or an Insurance Intermediary must comply with the suitability requirement set out in section 3.4 when conducting any Insurance or Insurance Intermediation Business with or for a Retail Client in respect of Direct Long-Term Insurance.

7.8.2 (1) Subject to Rule 7.8.3, an Insurer or Insurance Intermediary must only make a recommendation to a Retail Client to enter into a Contract of Insurance that is General Insurance where it has taken reasonable steps to ensure that the recommended Contract of Insurance is suitable in light of the Client's demands and needs.

(2) The Insurer or Insurance Intermediary must obtain from a Retail Client such information as is necessary to identify the Client's circumstances and objectives, and consider whether the terms of the particular contract of General Insurance meet the requirements identified.

7.8.3 An Insurer and an Insurance Intermediary may only recommend to a Client a contract of General Insurance that does not meet all the Client's requirements if it clearly explains to the Client, at the point of making the recommendation, that the contract does not fully meet the Client's requirements and the differences in the insurance recommended.

Guidance

When deciding what level of explanation is appropriate for a Client to whom a contract of insurance that does not fully meet that Client's requirements is recommended, the Insurer or Insurance Intermediary should take into consideration the knowledge held by the Client in relation to the type of insurance in question.

7.8.4 Where an Insurance Intermediary is instructed to obtain insurance which is contrary to the advice that it has given to a Client, the Insurance Intermediary must obtain from the Client written confirmation of the Client's instructions before arranging or buying the relevant insurance.

7.9 Managing conflicts of interest

7.9.1 (1) An Insurance Intermediary or Insurance Manager must manage any conflict of interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.

(2) An Insurance Intermediary or Insurance Manager must manage the conflict of interest by disclosing such conflict to the Clients in writing either generally or in relation to a specific Transaction.

(3) If an Insurance Intermediary or Insurance Manager is unable to manage a conflict of interest, it must decline to act for the Client.

7.10 Placement of Insurance

Instructions

7.10.1 An Insurance Intermediary must not place a Contract of Insurance with or on behalf of an insurer unless it has satisfied itself on reasonable grounds that the insurer may lawfully effect that contract under the laws of the jurisdictions in which the insurer and the risk are located.

Quotations

7.10.2 When giving a quotation, an Insurance Intermediary must take due care to ensure the accuracy of the quotation and its ability to obtain the insurance at the quoted terms.

Confirmation of cover

7.10.3 (1) An Insurer, in Effecting Contracts of Insurance, must promptly document the principal economic and coverage terms and conditions agreed upon under any Contract of Insurance and finalise such contract in a timely manner.

(2) An Insurer or Insurance Intermediary must, as soon as reasonably practicable, provide a Client with written confirmation and details of the insurance which it has effected for the Client or has obtained on behalf of the Client, including any changes to an existing Contract of Insurance.

(3) An Insurer or Insurance Intermediary must, as soon reasonably practicable, provide the Client with the full policy documentation where this was not included with the confirmation of cover.

7.11 Providing an ongoing service

Amendments to and renewal of insurance

7.11.1 (1) An Insurer or Insurance Intermediary must deal promptly with a Client's request for an amendment to the insurance cover and provide the Client with full details of any premium or charges to be paid or returned.

(2) An Insurer or Insurance Intermediary must provide a Client with written confirmation when the amendment is made and remit any return premium or charges due to the Client without delay.

7.11.2 An Insurer or Insurance Intermediary must give adequate advance notification to a Client of the renewal or expiration date of an existing insurance policy so as to allow the Client sufficient time to consider whether continuing cover is required.

7.11.3 On expiry or cancellation of the insurance, at the request of the Client, an Insurer or Insurance Intermediary must promptly make available all documentation and information to which the Client is entitled.

Claims

7.11.4 Where an Insurance Intermediary handles insurance claims it must:

(a) on request, give the Client reasonable guidance in pursuing a claim under the relevant policy;

(b) handle claims fairly and promptly and keep the Client informed of progress;

(c) inform the Client in writing, with an explanation, if it is unable to deal with any part of a claim; and

(d) forward settlement of any claim, as soon as reasonably practicable, once it has been agreed.

7.11.5 An Insurer must:

(a) handle claims fairly and promptly;

(b) keep the Client informed of the progress of the claim;

(c) not reject a claim unreasonably;

(d) if only part of a claim is accepted:

(i) provide a clear statement about the part of the claim that is accepted; and

(ii) give clear reasons for rejecting that part of the claim that has not been accepted; and

(e) settle the claim promptly.

7.12 Insurance monies

Application

7.12.1 This section applies to an Insurance Intermediary and an Insurance Manager, in respect of activities carried on in or from the DIFC.

General

7.12.2 (1) Insurance Monies are, subject to (2), any monies arising from Insurance Intermediation or the Insurance Management business which are any of the following:

(a) premiums, additional premiums and return premiums of all kinds;

(b) claims and other payments due under Contracts of Insurance;

(c) refunds and salvages;

(d) fees, charges, taxes and similar fiscal levies relating to Contracts of Insurance;

(e) discounts, commissions and brokerage; or

(f) monies received from or on behalf of a Client of an Insurance Manager, in relation to his Insurance Management business.

(2) Monies are not Insurance Monies where there is a written agreement in place between the Insurance Intermediary or Insurance Manager and the insurer to whom the relevant monies are to be paid (or from whom they have been received) under which the insurer agrees that:

(a) the Insurance Intermediary or Insurance Manager, as the case may be, holds as agent for the insurer all monies received by it in connection with Contracts of Insurance effected or to be effected by the insurer;

(b) insurance cover is maintained for the Client once the monies are received by the Insurance Intermediary or the Insurance Manager, as the case may be; and

(c) the insurer's obligation to make a payment to the Client is not discharged until actual receipt of the relevant monies by the Client.

7.12.3 In this section, a Client of an Insurance Manager means:

(a) any insurer for which the Insurance Manager provides Insurance Management;

(b) any shareholder of an insurer mentioned in (a); or

(c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.

7.12.4 For the purposes of Rule 7.12.3:

(a) an Insurer includes a Cell of a Protected Cell Company which is an Insurer; and

(b) a shareholder includes a holder of Cell Shares.

Insurance money segregation

7.12.5 An Insurance Intermediary or Insurance Manager when dealing with Insurance Monies must:

(a) maintain one or more separate Insurance Bank Accounts with an Eligible Bank in the U.A.E.;

(b) ensure that each Insurance Bank Account contains in its title the name of the Authorised Firm, together with the designation Insurance Bank Account (or IBA);

(c) prior to operating an Insurance Bank Account, give written notice to, and receive written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the Authorised Firm, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;

(d) pay all Insurance Monies directly and without delay into an Insurance Bank Account;

(e) use an Insurance Bank Account only for the following purposes:

(i) the receipt of Insurance Monies;

(ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Firm with any conditions or requirements prescribed by the DFSA;

(iii) the payment to Clients or to insurers of monies due under Insurance Intermediation Business transactions;

(iv) the payment of all monies payable by the Authorised Firm in respect of the acquisition of or otherwise in connection with Approved Assets;

(v) the withdrawal of brokerage, management fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;

(vi) the withdrawal of monies paid into the Insurance Bank Account in error; and

(vii) the withdrawal of any monies credited to the Insurance Bank Account in excess of those required by any conditions and requirements prescribed by the DFSA;

(f) ensure that any amount held in the Insurance Bank Account or other Approved Assets, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and

(g) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.

7.12.6 An Insurance Intermediary or Insurance Manager may not obtain a loan or overdraft for any purpose relating to an Insurance Bank Account unless that advance:

(a) is on a bank account which is designated as an Insurance Bank Account, and the loan or overdraft is used for payment to Clients or to insurers of monies due under Insurance Intermediation transactions;

(b) does not give rise to a breach of the requirements of Rule 7.12.5(e); and

(c) is of a temporary nature and is repaid as soon as reasonably practicable.

7.12.7 An Insurance Intermediary or Insurance Manager must hold Insurance Monies either in an Insurance Bank Account or in Approved Assets.

7.12.8 An Insurance Intermediary must ensure that Approved Assets are:

(a) registered in the name of the Insurance Intermediary or Insurance Manager and designated 'Insurance Bank Account'; or

(b) held for the Insurance Bank Account of the Insurance Intermediary or Insurance Manager at the bank at which such Insurance Bank Account is held.

7.12.9 An Insurance Intermediary or Insurance Manager must ensure that monies, other than interest, arising from Approved Assets or their realisation, sale or disposal are paid into an Insurance Bank Account.

7.12.10 An Insurance Intermediary or Insurance Manager may not hold Insurance Monies in Approved Assets until it has given written notice to and received written notice from the bank referred to in Rule 7.12.8(b) that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against Approved Assets held for the Insurance Intermediary's or Insurance Manager's Insurance Bank Account.

7.12.11 An Insurance Intermediary or Insurance Manager may only use Approved Assets as security for a loan or overdraft where that loan or overdraft is for a purpose relating to an Insurance Bank Account as permitted by Rule 7.12.6.

7.12.12 Where Insurance Monies are held in Approved Assets whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an Approved Asset and the Insurance Intermediary or Insurance Manager must dispose of the investment or asset as soon as possible and no later than within 30 days of the rating change.

7.12.13 An Insurance Intermediary or Insurance Manager may not use derivatives in the management of Insurance Monies except for the prudent management of foreign exchange risks.

7.12.14 An Insurance Intermediary who has a credit balance for a Client who cannot be traced should not take credit for such an amount except where:

(a) he has taken reasonable steps to trace the Client and to inform him that he is entitled to the money;

(b) at least six years from the date the credit was initially notified to the Client; and

(c) Rule 7.12.5(f) will continue to be satisfied after the withdrawal of such money.

7.12.15 An Insurance Intermediary must keep records of all sums withdrawn from the Insurance Bank Account or realised Approved Assets as a result of credit taken under Rule 7.12.14 for at least six years from the date of withdrawal or realisation.

8 SPECIFIC RULES – OPERATING A CREDIT RATING AGENCY

8.1 Application

8.1.1 (1) This chapter applies to every Person who carries on, or intends to carry on, the Financial Service of Operating a Credit Rating Agency in or from the DIFC.

(2) In this chapter, where a reference is made to a Rating Subject which is a credit commitment, a debt or a debt-like Investment referred to in GEN Rule 2.27.1(3)(b) or (c), that reference is to be read, where the context requires, as a reference to the Person responsible for obtaining the Credit Rating.

Guidance

1. The Financial Service of Operating a Credit Rating Agency is defined in GEN Rule 2.27.1. This chapter contains the specific conduct requirements that apply to Persons carrying on the Financial Service of Operating a Credit Rating Agency.

Code of conduct/ethics

2. The outcome intended by some of the specific conduct requirements in this chapter can be achieved by adopting a code of conduct/ethics. Whilst not proposing to prescribe that a Credit Rating Agency must have a code of conduct/ethics, a Credit Rating Agency should consider, particularly where noted in relation to specific Rules, adopting such a code as a means of

achieving the outcome intended by the relevant requirements. However, where a Credit Rating Agency does not adopt such a code, the onus is on the Credit Rating Agency to demonstrate how it achieves compliance with the relevant requirements through other means.

Persons responsible for obtaining a Credit Rating

3. Not all Rating Subjects are bodies corporate. For example, Credit Ratings can be provided in respect of a credit commitment given by a Person, or a debt or debt-like Investment. In such instances, where a Rule in this chapter requires the Rating Subject to carry out some activity, such a reference is to be read, pursuant to Rule 8.1.1(2), as a reference to the Person who is responsible for obtaining the Credit Rating. Such a Person would generally be the originator, arranger or sponsor of the relevant financial product which is being rated. The Credit Rating Agency should clearly identify the Person responsible for a Rating Subject before proceeding with its Credit Rating Activities relating to that Rating Subject.

4. However, there is no restriction against more than one Person being identified as Persons responsible for obtaining a Credit Rating relating to a Rating Subject. In such cases, a Credit Rating Agency should clearly identify those Persons as responsible Persons relating to the relevant Rating Subject.

8.2 Additional Principles for Credit Rating Agencies

Guidance

Credit Rating Agencies are required to comply with, in addition to the Principles in GEN sections 4.1 and 4.2, three further Principles set out in this section.

Principle 1 – Quality and integrity

8.2.1 A Credit Rating Agency must take all reasonable steps to ensure that its Credit Ratings are well founded and are based on a fair and thorough analysis of all relevant information which is reasonably known or available to the Credit Rating Agency.

Principle 2 – Independence and conflicts of interest

8.2.2 A Credit Rating Agency must take all reasonable steps to ensure that its decisions relating to Credit Ratings are independent and free from political or economic pressures and not affected by conflicts of interest arising due to its ownership structure or business or other activities or conflicts of interest of its Employees.

Principle 3 – Transparency and disclosure

8.2.3 A Credit Rating Agency must take all reasonable steps to ensure that it conducts its Credit Rating Activities in a transparent and responsible manner.

Guidance

Acting in a responsible manner means that a Credit Rating Agency undertakes the level of due diligence and care expected of an entity undertaking similar business in conducting its Credit Rating Activities. What is reasonable would depend on the nature, scale and complexity of its operations, including models and methodologies it has adopted in order to formulate Credit Ratings.

8.3 Quality of the rating process

Policies and procedures

8.3.1 (1) A Credit Rating Agency must adopt, implement and enforce policies, procedures and controls that are adequate to ensure that:

(a) its Credit Ratings are based on a thorough and fair analysis of all the Relevant Information;

(b) it has clearly defined methodologies and models for the purposes of preparing and reviewing Credit Ratings; and

(c) its Rating Analysts, in preparing and reviewing Credit Ratings, adhere to the relevant methodologies and models adopted by the Credit Rating Agency, including any updates of such methodologies and models.

(2) For the purposes of (1)(a), Relevant Information is information which is:

(a) reasonably known or available to the Credit Rating Agency; and

(b) required, pursuant to the established rating methodologies and models adopted by the Credit Rating Agency.

(3) For the purposes of (1)(c), a Rating Analyst means an Employee of a Credit Rating Agency who performs analytical functions in relation to the preparation or review of a Credit Rating.

(4) A Credit Rating Agency must have adequate mechanisms to monitor whether its policies, procedures and controls are implemented in such a way so as to ensure that they operate, on an on-going basis, effectively and as intended.

Guidance

Application to Groups and Branches

1. Where a Credit Rating Agency is a member of a Group, the Credit Rating Agency may rely on the policies, procedures and controls adopted at the group-wide level. Where this is the case, the Credit Rating Agency should ensure that the group-wide policies, procedures and controls are consistent with the requirements applicable to it and do not constrain its ability to comply with the applicable requirements in the DIFC.

2. In the case of Branch operations, the DFSA will only grant an authorisation to conduct the Financial Service of Operating a Credit Rating Agency where it is satisfied with the adequacy of the home jurisdiction regulation of the relevant legal entity.

3. Considerations set out in Guidance No 1 and 2 are equally relevant to the other requirements applicable to CRAs which are set out in this chapter.

Periodic review

4. A Credit Rating Agency should ensure that there is a formal and rigorous periodic review (at least annually) of the effectiveness of its systems and controls, including the methodologies

and models it uses, to ensure that they remain effective and adequate in light of factors such as changing market conditions and practices and matters that have a material impact on the users of Credit Ratings.

5. Such a review should be carried out by individuals who are not involved in the day-to-day management or operations of the Credit Rating Agency. Taking into account the nature, scale and complexity of its business, a Credit Rating Agency may undertake such a review through a designated function at the group-wide level, or using external consultants. The DFSA expects the findings of such a review to be made available to the Governing Body and the senior management of the Credit Rating Agency, and that any inadequacies identified are promptly and effectively addressed.

Analysts

6. By definition, the Employees of a Credit Rating Agency include Rating Analysts who are either employed by the Credit Rating Agency or appointed under a contract for services to perform analytical functions in relation to the preparation of Credit Ratings. Such appointed Rating Analysts may, in the case of a Credit Rating Agency which is part of a Group, be employed by another entity within the Group. In that case, the Credit Rating Agency should ensure that such Rating Analysts comply with the applicable DFSA Rules when conducting Credit Rating Activities on its behalf.

Relevant Information

7. See Guidance under Rule 8.3.4.

Methodologies and models

8.3.2 For the purposes of producing and reviewing Credit Ratings, a Credit Rating Agency must adopt and use rating methodologies and models, including any key rating assumptions, which:

(a) are rigorous and systematic;

(b) to the extent possible, result in Credit Ratings that can be subjected to some form of objective validation based on historical experience;

(c) are subject to periodic review as appropriate; and

(d) are made public, including any changes made to such methodologies and models.

Guidance

1. A Credit Rating Agency will need to establish proper procedures for the regular review of its methodologies and models, including any key rating assumptions used in such methodologies and models, in order to be able to properly assess the Relevant Information and prepare credible and high quality Credit Ratings. Any changes to the methodologies and models should incorporate cumulative experience gained through on-going market surveillance.

2. Where any material modifications are made to the methodologies or models used by the Credit Rating Agency, it should make prior disclosure to the public of such modifications before applying the modified methodologies and models, especially to existing Credit Ratings.

3. A Credit Rating Agency should assess whether existing methodologies and models for providing a Credit Rating in respect of structured financial products remain appropriate where the risk characteristics of the assets underlying a structured product change materially.

Rating Analysts

8.3.3 A Credit Rating Agency must ensure that its Rating Analysts:

(a) have adequate and appropriate knowledge and experience to carry out Credit Rating Activities assigned to them;

(b) have access to, and use, all the Relevant Information;

(c) apply the relevant methodologies and models in a transparent and consistent manner;

(d) act without bias in carrying out their functions; and

(e) observe high standards of integrity.

Guidance

1. See GEN Rules 5.3.18 and 5.3.19 with regard to the assessment that a Credit Rating Agency, as an Authorised Firm, needs to undertake to ensure that its Employees (including Rating Analysts) are fit and proper and have adequate competencies in order to carry out their functions.

2. A Credit Rating Agency should structure its rating teams in such a way so as to promote continuity of adequate skills and expertise within a relevant team, and avoidance of bias in the preparation or review of a Credit Rating. For the purpose of promoting objectivity and lack of bias in preparing or reviewing Credit Ratings, measures such as periodic rotation of Rating Analysts, as appropriate, should be considered.

Credit Ratings

8.3.4 A Credit Rating Agency must ensure that:

(a) the role and responsibility of assigning a Credit Rating rests clearly on the Credit Rating Agency and not on any of its Rating Analysts;

(b) the information it uses for the purposes of preparing or reviewing a Credit Rating is of sufficient quality to support a credible Credit Rating;

(c) its Credit Ratings:

(i) reflect all the Relevant Information;

(ii) do not contain any misrepresentations, and are not misleading in respect of the creditworthiness of the Rating Subject; and

(iii) contain clear and prominent statements if they are premised on limited historical data, are not subject to on-going surveillance or are subject to any other limitation which has or may have a material impact on the relevant Credit Rating; and

(d) it does not produce a Credit Rating where it has reasonable doubts as to whether a credible Credit Rating can be produced due to the complexity of, or the lack of adequate information relating to, a potential Rating Subject.

Guidance

Relevant Information is defined in Rule 8.3.1(2). A Credit Rating Agency should adopt adequate measures to ensure that the quality of information it uses is reliable to support a credible Credit Rating. Such measures may include:

a. relying on independently audited financial statements and public disclosures where available;

b. conducting random sampling examination of the information received; and

c. having contractual arrangements with Persons who request a Credit Rating, or any third party source from whom information is obtained, that render such Persons liable if they knowingly provide materially false or misleading information, or fail to conduct due diligence they are reasonably expected to carry out to verify the accuracy of the Relevant Information.

On-going monitoring and review of the Credit Ratings

8.3.5 (1) Unless a Credit Rating clearly states that it will not be subject to on-going review, a Credit Rating Agency must:

(a) have adequate personnel and financial resources committed for the on-going surveillance of the creditworthiness of the Rating Subject;

(b) ensure a review of a Credit Rating is undertaken regularly, and in any case, promptly upon becoming aware of information reasonably likely to result in a Rating Action; and

(c) take any appropriate Rating Action promptly.

(2) For the purposes of (1), a Rating Action is an upward or downward move of a Credit Rating, a confirmation of an existing Credit Rating or a withdrawal of a Credit Rating.

(3) Following the review in (1)(b), a Credit Rating Agency must issue a notice of its Rating Action. Such a notice must:

(a) be promptly disseminated to the public or distributed by subscription, as applicable; and

(b) contain a clear and prominent statement specifying:

(i) the date on which the Credit Rating was last updated; and

(ii) the date on which the new Credit Rating is effective; or

(iii) if the Credit Rating is withdrawn, the effective date from which it is withdrawn and the reasons for such withdrawal.

(4) Without prejudice to the obligation to conduct on-going surveillance and review of a Credit Rating, where a Credit Rating Agency forms an opinion on reasonable grounds that it does not have adequate or credible Relevant Information, it must not support an existing Credit Rating, and must withdraw such a Credit Rating immediately. Where it does so, it must issue a notice of withdrawal of the Credit Rating in accordance with (3).

Guidance

1. A Credit Rating Agency may use separate teams of Rating Analysts for determining initial Credit Ratings and subsequent review of such ratings. It should ensure that each team has the requisite level of expertise and resources to perform its functions effectively.

2. A Credit Rating Agency should undertake both periodic and ad hoc reviews of its Credit Ratings as appropriate to the nature of the Rating Subject, the market conditions and reasonable expectations of users of such Credit Ratings. Such reviews should apply any changes in its rating methodologies and models, including rating assumptions.

3. A Credit Rating Agency should have clear and published parameters relating to the review of Credit Ratings, including, to the extent possible, when it will undertake any ad hoc reviews. Such parameters should include any material change in the risk characteristics of the Rating Subject or significant changes in the markets which relate to, or affect, the Rating Subject.

4. A Credit Rating Agency may place under surveillance a Rating Subject upon becoming aware of any material changes relating to, or affecting, it. A Credit Rating Agency should consider whether, in such circumstances, it is appropriate to give any prior notice that the relevant Rating Subject is under surveillance.

8.4 Integrity of the credit rating process

Policies and procedures

8.4.1 To promote integrity of its credit rating process, a Credit Rating Agency must implement adequate policies, procedures and controls to ensure that it and its Employees:

(a) comply with all the applicable legal and other requirements, including those relating to its Credit Rating Activities, regardless of where such activities are carried on;

(b) deal fairly and honestly with Rating Subjects and Persons using or relying on its Credit Ratings, such as investors and other market participants, including the public; and

(c) do not, either expressly or implicitly, give any assurances or guarantees of a particular rating outcome before undertaking a full analysis of the Relevant Information in accordance with the applicable methodologies and models.

Guidance

1. Where a Credit Rating Agency undertakes activities in a number of jurisdictions, the effect of Rule 8.4.1 is that it will need to ensure that respective obligations arising in all those jurisdictions are effectively met as appropriate. In doing so, it will need to take account of the application of the DFSA regime to Group and Branch operations (see Guidance 1 and 2 under Rule 8.3.1).

2. A Credit Rating Agency is required, under GEN Rule 7.5.1(2), to have an Authorised Individual as its Compliance Officer. It is the responsibility of the Compliance Officer to ensure proper observance by the Credit Rating Agency and its Employees, particularly Rating Analysts, of the applicable legal and other obligations, including any code of conduct/ethics adopted by the Credit Rating Agency. Such a code should generally set out matters relating to

unacceptable and unethical behaviour which should be avoided by its Employees. See also Guidance 2 under section 8.1.1.

8.5 Conflicts of interest and independence

Guidance

1. There is a significant overlap between conflicts of interest and lack of independence of Employees (who include Rating Analysts). Therefore, some of the requirements set out in this section, while promoting independence of Credit Rating Agencies, are equally relevant for the purpose of addressing conflicts of interest. For convenience, they are set out under distinct headings.

2. The more detailed requirements set out in this section are designed to enable a Credit Rating Agency to meet the requirements set out under COB Rule 8.2.2 (Principle 2 – Independence and transparency). For this purpose, a Credit Rating Agency should have a detailed code of conduct/ethics that sets out its policies and procedures for meeting the requirements including those in this module covering aspects relating to conflicts of interest, as well as independence, of its Employees. See also Guidance 2 under section 8.1.1.

Policies and procedures

8.5.1 A Credit Rating Agency must have adequate, clear and well documented policies, procedures and controls to:

(a) promote high standards of care, independence and objectivity in decision making by its Employees;

(b) ensure that its Credit Ratings are not influenced by any considerations other than those which are relevant in accordance with its published methodologies and models as applicable to the particular Rating Subject; and

(c) identify, and eliminate or manage, as appropriate, including through disclosure, any conflicts of interest that may influence its Credit Ratings, including those conflicts of interest which may influence its Employees who are involved in producing or reviewing Credit Ratings.

Guidance

1. A Credit Rating Agency should neither take, nor forbear or refrain from taking, any Rating Action based on its potential effect (economic, political or otherwise) on the Credit Rating Agency, its Rating Subjects, investors or any other market participants (for example, the existence or non-existence of business relationship between the Credit Rating Agency or a member of its Group and the Rating Subject).

2. The determination of a Credit Rating should be influenced only by factors relevant to the credit assessment in accordance with its published methodologies and models as applicable to the particular Rating Subject.

3. A Credit Rating Agency should, at a minimum, set out clearly when conflicts of interest arise and, in relation to what type of business or commercial dealings or transactions, and between whom, such conflicts of interest can arise.

4. Where the Rating Subject (such as a government) has, or is simultaneously pursuing, any oversight function relating to the Credit Rating Agency, the Credit Rating Agency should avoid assigning Employees involved in the Credit Rating of the Rating Subject for also discharging any function relating to the Credit Rating Agency's oversight.

Provision of consultancy and ancillary services

8.5.2 (1) A Credit Rating Agency must not provide to a Rating Subject or a Related Party of a Rating Subject consultancy or advisory services relating to the corporate or legal structure, assets, liabilities or activities of such Rating Subject or Related Party.

(2) For the purposes of (1), a Related Party of a Rating Subject is:

(a) an undertaking which is in the same Group as the Rating Subject;

(b) any Person who interacts with the Credit Rating Agency in respect of the Credit Rating; or

(c) any Person who has a significant business or other relationship with the Rating Subject or any Person referred to in (a) or (b).

(3) Without prejudice to (1), a Credit Rating Agency may provide services which are ancillary to its Credit Rating Activities to a Rating Subject or a Related Party of the Rating Subject where it:

(a) has a clear definition of what services it considers as ancillary services;

(b) documents why such services are considered not to raise any conflicts of interest with its Credit Rating Activities; and

(c) has in place adequate mechanisms to minimise the potential for any conflicts of interest arising.

(4) If a member of the Group in which the Credit Rating Agency is also a member provides services of the kind referred to in (1) to a Rating Subject of the Credit Rating Agency or a Related Party of such a Rating Subject, such services must be operationally and functionally separated from the business of the Credit Rating Agency.

Guidance

1. The prohibition in Rule 8.5.2(1) includes, for example, making proposals or recommendations regarding the design or structure of Rating Subjects, including suggestions as to how a desired rating could be achieved. Therefore, such services cannot be provided.

2. Some of the activities which are prohibited under Rule 8.5.2(1) may constitute a Financial Service other than Operating a Credit Rating Agency. Even if a Credit Rating Agency has an authorisation to provide such a Financial Service, it is prevented from providing such services to a Rating Subject or a Related Party because of the prohibition in Rule 8.5.2(1).

3. Ancillary services referred to in Rule 8.5.2(3) include, for example, market forecasts, estimates of economic trends, pricing analysis and other general data analysis as well as related distribution services. These services can be provided to Rating Subjects and their

Related Parties where the requirements in Rule 8.5.2(3) are met. These services are also unlikely to constitute other Financial Services.

4. A Credit Rating Agency should separate operationally its Credit Rating Activities from any ancillary services it provides in accordance with Rule 8.5.2(3). For example, Rating Analysts and other key individuals involved in Credit Rating Activities should not also be involved in the provision of such services.

5. Where a Group member provides to a Rating Subject of a Credit Rating Agency any ancillary services, the Credit Rating Agency and the Group member should not share Employees or premises to ensure operational separation.

Credit Rating Agency fees

8.5.3 A Credit Rating Agency must not enter into fee arrangements for providing Credit Ratings where the fee depends on the rating outcome or on any other result or outcome of the Credit Rating Activities.

Other conflicts of interest

8.5.4 A Credit Rating Agency must not engage in any securities or derivatives transactions with, relating to, or in respect of, a Rating Subject or its Related Party in circumstances where such a transaction would amount to, or pose a risk of, a conflict of interest with respect to its Credit Rating Activities.

Guidance

Examples of investments which would not present conflicts of interest include investments in collective investment funds which might contain investments in a Rating Subject or its Related Party.

8.6 Independence of Rating Analysts and other Employees

Policies and procedures

8.6.1 A Credit Rating Agency must have adequate policies, procedures and controls to ensure that its Employees, as far as practicable, avoid relationships which compromise or are reasonably likely to compromise the independence and objectivity of its Credit Rating Activities.

8.6.2 (1) A Credit Rating Agency must ensure that its Employees who are directly involved in preparing or reviewing a Credit Rating of a Rating Subject do not initiate, or participate in, discussions regarding fees or payments with the Rating Subject or a Related Party of the Rating Subject.

(2) A Credit Rating Agency must ensure that its Employees who are directly involved in preparing or reviewing a Credit Rating of a Rating Subject, and their Close Relatives, do not engage in any securities or derivative transactions with, relating to, or in respect of, the Rating Subject or a Related Party of the Rating Subject in circumstances where such a transaction would amount to, or pose a risk of, a conflict of interest with respect to the activities of the relevant Employee.

Guidance

This Rule should be read in conjunction with Rule 8.2.2, pursuant to which, Employees of a Credit Rating Agency need to be independent and free from conflicts of interest. Such conflicts of interest include the appearance of being compromised as result of a personal relationship which he or his Close Relatives have with a Rating Subject or a Related Party of a Rating Subject. The Credit Rating Agency's policies and procedures should clearly set out where a personal relationship should be considered to create the potential for any real or apparent conflicts of interest and therefore be subject to the conflicts of interest provisions.

8.6.3 (1) A Credit Rating Agency must ensure that its Employees who have a relevant material interest in a Rating Subject or its Related Party are not involved in the preparation or review of the relevant Credit Rating or able to influence that process.

(2) For the purposes of Rule 8.6.3(1), an Employee of a Credit Rating Agency has a material interest in a Rating Subject if the Employee:

(a) owns a security or a derivative relating to a Rating Subject or its Related Party, other than holdings in diversified collective investment funds;

(b) has had a recent employment or other significant business relationship with a Rating Subject or its Related Party which may cause, or may be perceived as causing, conflicts of interest; or

(c) has a Close Relative who is currently employed by a Rating Subject or its Related Party.

Guidance

A Credit Rating Agency should, where it has a code of conduct/ethics, set out unacceptable conduct for Employees, such as soliciting money, gifts, or favours from anyone with whom the Credit Rating Agency does business, or accepting gifts offered in the form of cash or any gifts which are reasonably capable of influencing their opinions or decisions relating to Credit Ratings. There should also be guidance relating to minimal value of gifts or benefits that may be accepted, and clearance and disclosure procedures relating to such gifts and benefits. See also Guidance 2 under Rule 8.1.1.

8.6.4 A Credit Rating Agency must establish policies and procedures for reviewing the past work of a Rating Analyst who leaves the employment of the firm to join a Rating Subject or its Related Party where the Rating Analyst had been involved in producing or reviewing the Credit Rating assigned to such Rating Subject or Related Party.

Remuneration and reporting lines

Guidance

A Credit Rating Agency is required, pursuant to GEN Rule 5.3.31, to have remuneration structures and strategies which, amongst other things, are consistent with the business objectives and identified risk parameters within which the firm operates, and provide for effective alignment of risk outcomes and the roles and functions of the relevant Employees. The requirements set out in this section are designed to augment those remuneration requirements set out in GEN.

8.6.5 A Credit Rating Agency must ensure that Employees involved in the provision of Credit Ratings have reporting lines and remuneration arrangements that are

designed to eliminate, or effectively manage, actual and potential conflicts of interest.

8.6.6 A Credit Rating Agency must ensure that its Employees are not remunerated, or their performance evaluated, based on the amount of revenue generated or expected from the Credit Ratings in which the Employee was involved.

Guidance

The Employees intended to be covered by this Rule are Rating Analysts and other Employees who are directly involved in producing or reviewing a Credit Rating, or who are able to influence the credit rating process (such as the senior management).

8.6.7 A Credit Rating Agency must conduct formal and periodic reviews of its remuneration policies and practices relating to Employees who participate in, or who might otherwise have an effect on, the rating process to ensure that those policies and practices do not compromise the objectivity of the Credit Rating Activities.

8.7 Transparency and disclosure

Policies and procedures

8.7.1 (1) A Credit Rating Agency must, subject to (2), have adequate policies, procedures and controls to ensure that it discloses in a timely manner:

(a) its Credit Ratings and any updates thereof;

(b) its policies for distributing Credit Ratings and updates thereof;

(c) the methodologies and models used and key assumptions made in preparing its Credit Ratings and any updates thereof; and

(d) any other significant element relating to (a), (b) or (c) above.

(2) A Credit Rating Agency is not required to disclose information where the information is subject to confidentiality requirements.

Guidance

1. The level of detail required in the disclosure of information concerning methodologies, models and key assumptions should be such as to give adequate information to the users of Credit Ratings to enable them to perform their own due diligence when assessing whether, or to what extent, reliance can be placed on those Credit Ratings (see Rule 8.8.1). Disclosure of information must not, however, reveal confidential information of, or relating to, the Rating Subject or its Group pursuant to Rule 8.9.1.

2. The information referred to in Guidance No. 1 should generally include the meaning of each rating category and the definition of default or recovery, and the time horizon the Credit Rating Agency used when making a Credit Rating.

3. A Credit Rating Agency should adequately and clearly disclose applicable risks which may affect a Credit Rating, including a sensitivity analysis of the relevant assumptions and an explanation of how various market developments affect the parameters built into the

methodologies and models and may influence or impinge on the Credit Rating (for example volatility).

4. If the nature of a Credit Rating or other circumstances make a historical default rate inappropriate or otherwise likely to mislead investors, the Credit Rating Agency should provide appropriate clarifications.

5. A Credit Rating Agency should provide information to assist users of its Credit Ratings to develop a greater understanding of what a Credit Rating is, and the limitations on the use of Credit Ratings with respect to the particular type of financial product that the Credit Rating Agency rates. A Credit Rating Agency should clearly indicate the attributes and limitations of each Credit Rating, and the limits to which the firm verifies information provided to it by the Rating Subject, its Related Party or any external source.

Communication of information

8.7.2 A Credit Rating Agency must ensure that its communications relating to its Credit Ratings, Credit Rating Activities and its other business are clear, fair and not misleading.

Guidance

1. A Credit Rating Agency should, taking into account the nature, scale and complexity of its operations, have a function within its organisation charged with the responsibility for communicating with market participants and the public on questions, concerns or complaints it receives.

2. The objective of this function should be to help ensure that the Credit Rating Agency's officers and management are informed of those issues that such officers and management would reasonably need to be informed about when setting and implementing the Credit Rating Agency's systems and controls.

8.8 Disclosure and presentation of Credit Ratings

General Disclosure

8.8.1 (1) Subject to the confidentiality requirements applicable to a Credit Rating Agency, it must ensure that its Credit Ratings:

(a) are published promptly, and as far as practicable, on a non-selective basis and free of charge;

(b) contain sufficient information to enable users of such Credit Ratings to understand how the Credit Rating was reached, including information relating to the methodologies, models and key underlying assumptions used;

(c) contain a clear statement if the Credit Rating is initiated by the Credit Rating Agency on its own initiative (unsolicited), and information relating to the Credit Rating Agency's policy relating to providing unsolicited Credit Ratings;

(d) contain sufficient information about the historical default rates of its Credit Ratings which are of the same category as the Credit Rating

being published so that interested parties can understand the historical performance of its Credit Ratings; and

(e) include any other information relevant to the particular Credit Rating, as specified in this module.

(2) A Credit Rating Agency must ensure that any press release which accompanies a Credit Rating contains key elements underlying the Credit Rating.

(3) Before publishing a new or an updated Credit Rating or withdrawing a Credit Rating, the Credit Rating Agency must, to the extent practicable and appropriate, give to the Rating Subject sufficient advance notice to enable that Person to draw to the attention of the Credit Rating Agency any factual errors on which the Credit Rating Agency may have based the relevant Credit Rating.

(4) Subject to the confidentiality requirements applicable to a Credit Rating Agency, any information which the Credit Rating Agency is required to publish pursuant to any Rules must also be made available on the website of the relevant Credit Rating Agency.

Guidance

In relation to Rule 8.8.1(3), a Credit Rating Agency should inform the Rating Subject at least 12 hours before publication of a new Credit Rating or an update or withdrawal of an existing Credit Rating of the principal grounds on which such Credit Rating is based in order to give the Rating Subject an opportunity to draw to the attention of the Credit Rating Agency any factual errors. The Rating Subject has the meaning given to it in GEN Rule 2.27.1(3) and should be read in conjunction with Rule 8.1.1(2).

Specific Disclosure - Fees and Charges

8.8.2 (1) A Credit Rating Agency must include in its announcements relating to Credit Ratings and its annual report the general nature of its arrangements relating to fees and charges with, or relating to, the Rating Subject including:

(a) whether the Credit Rating Agency or any member of its Group receives any fees, charges or other monetary benefits which are unrelated to the provision by the Credit Rating Agency of its Credit Ratings, and if so, the proportion of such benefits relating to the aggregate fees and charges in respect of the provision of Credit Ratings; and

(b) if the Credit Rating Agency receives 10% or more of its aggregate annual revenue from a single Rating Subject or its Related Party, information about that source.

(2) Where a Credit Rating Agency is a member of a Group, the 10% aggregate annual income referred to in (1)(b) may be calculated by aggregating the net revenue of all Credit Rating Agencies within the Group.

Specific Disclosure – Structured financial products

8.8.3 A Credit Rating Agency must, where the Rating Subject is a structured financial product disclose in its Credit Ratings whether the Relevant Information is made publicly available by the Rating Subject, or whether all, or some of, such information remains non–public.

Guidance

1. The information which a Credit Rating Agency provides relating to structured financial products should include sufficient information such as information relating to the profit and loss statement and cash flow analysis to enable users of the Credit Ratings to understand the basis of the Credit Rating. Such information should also include the degree to which, in accordance with its analysis, the Credit Rating is sensitive to changes in market conditions.

2. A Credit Rating Agency should differentiate ratings of structured finance products from traditional corporate bond ratings, preferably through a different rating symbology. A Credit Rating Agency must also disclose how this differentiation operates.

3. A Credit Rating Agency should use reasonable efforts to encourage the Rating Subject to disclose to the public all Relevant Information to enable investors and users of the Credit Ratings to conduct their own due diligence relating to that product.

8.9 Confidential information

8.9.1 A Credit Rating Agency must have policies, procedures and controls to ensure that it and its Employees do not:

(a) use any information given to or obtained by the Credit Rating Agency on a confidential basis ("Confidential Information") for a purpose other than that for which it was given or obtained;

(b) disclose the Confidential Information to any other Person, except:

(i) in accordance with (a);

(ii) with the prior written consent of the Person to whom a duty of confidentiality in respect of such Confidential Information is owed; or

(iii) where obliged to do so by any legislation applicable to the Credit Rating Agency; and

(c) disclose any pending Rating Action except to the Rating Subject or as agreed with the Rating Subject.

8.9.2 Subject to Rule 8.9.1(b), a Credit Rating Agency and its Employees must not disclose Confidential Information in any manner, including in press releases, through research conferences, to future employers, or in conversations with investors, other issuers, other persons, or by other means.

8.9.3 A Credit Rating Agency must have adequate measures to ensure that it and its Employees:

(a) take all reasonable steps to protect all property and records belonging to or in possession of the Credit Rating Agency against fraud, theft or misuse; and

(b) do not share Confidential Information entrusted to the Credit Rating Agency with any third parties except where permitted under Rule 8.9.1(b).

8.10 Record keeping

8.10.1 (1) A Credit Rating Agency must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Credit Rating Agency and, where appropriate, audit trails of its Credit Rating Activities. These must include, where applicable, the following:

(a) for each Credit Rating:

(i) the identity of the Rating Analysts participating in the determination of the Credit Rating;

(ii) the identity of the individuals who have approved the Credit Rating;

(iii) information as to whether the Credit Rating was solicited or unsolicited;

(iv) information to support the Credit Rating;

(v) the accounting records relating to fees and charges received from or in respect of the Rating Subject;

(vi) the internal records and files, including non-public information and working papers, used to form the basis of any Credit Rating; and

(vii) credit analysis and credit assessment reports including any internal records and non-public information and working papers used to form the basis of the opinions expressed in such reports;

(b) the accounting records relating to fees received from any person in relation to services provided by the Credit Rating Agency;

(c) the accounting records for each subscriber to the Credit Rating Agency's services;

(d) the records documenting the established procedures, methodologies, models and assumptions used by the Credit Rating Agency to determine Credit Ratings; and

(e) copies of internal and external communications, including electronic communications, received and sent by the Credit Rating Agency and its Employees that relate to Credit Rating Activities.

(2) For the purposes of (1), the six year period commences from the date the Credit Rating is disclosed to the public or distributed by subscription.

Guidance

1. Information to support a Credit Rating includes information received from the Rating Subject or information obtained through publicly available sources or third parties and verification procedures adopted in relation to information such as those obtained from public sources or third parties. In accordance with GEN Rule 5.3.24, records should be kept in such a manner as to be readily accessible.

2. Where a Credit Rating is subject to on-going surveillance and review, the Credit Rating Agency should retain records required under Rule 8.10.1 in relation to the initial Credit Rating as well as subsequent updates where such records are required to support the latest Credit Rating.

APP1 RECORDS OF ORDERS AND TRANSACTIONS

A1.1 Minimum contents of transaction records

Receipt of client order or discretionary decision to transact

A1.1.1 An Authorised Firm must, pursuant to Rule 6.7.4(1), make a record of the following:

(a) the identity and account number of the Client;

(b) the date and time in the jurisdiction in which the instructions were received or the decision was taken by the Authorised Firm to deal;

(c) the identity of the Employee who received the instructions or made the decision to deal;

(d) the Investment, including the number of or its value and any price limit; and

(e) whether the instruction relates to a purchase or sale.

Executing a transaction

A1.1.2 An Authorised Firm must, pursuant to Rule 6.7.4(2), make a record of the following:

(a) the identity and account number of the Client for whom the Transaction was Executed, or an indication that the Transaction was an Own Account Transaction;

(b) the name of the counterparty;

(c) the date and time in the jurisdiction in which the Transaction was Executed;

(d) the identity of the Employee executing the Transaction;

(e) the Investment, including the number of or its value and price; and

(f) whether the Transaction was a purchase or a sale.

Passing a client order to another person for execution

A1.1.3 An Authorised Firm must, pursuant to Rule 6.7.4(3), make a record of the following:

(a) the identity of the Person instructed;

(b) the terms of the instruction; and

(c) the date and time that the instruction was given.

APP2 KEY INFORMATION AND CLIENT AGREEMENT

A2.1 Key Information and content of the Client Agreement

General

A2.1.1 The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

(a) the core information set out in:

(i) Rule A2.1.2 (1) if it is a Retail Client; and

(ii) Rule A2.1.2(2) if it is a Professional Client; and

(b) where relevant, the additional information required under Rules A2.1.3 and A2.1.4.

Core information

A2.1.2 (1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:

(a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;

(b) the regulatory status of the Authorised Firm;

(c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;

(d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;

(e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;

(f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);

(g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and

(h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is

available free of charge upon request in accordance with GEN Rule 9.2.11.

(2) In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).

Additional information for Investment Business

A2.1.3 The additional information required under A2.1.1(b) for Investment Business is:

(a) the arrangements for giving instructions to the Authorised Firm and acknowledging those instructions;

(b) information about any agreed investment parameters;

(c) the arrangements for notifying the Client of any Transaction Executed on his behalf;

(d) if the Authorised Firm may act as principal in a Transaction, when it will do so;

(e) the frequency of any periodic statements and whether those statements will include some measure of performance, and if so, what the basis of that measurement will be;

(f) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty; and

(g) where applicable, the basis on which assets comprised in the portfolio are to be valued.

Additional information for investment management activities

A2.1.4 The additional information required under A2.1.1(b) where an Authorised Firm acts as an Investment Manager is:

(a) the initial value of the managed portfolio;

(b) the initial composition of the managed portfolio;

(c) the period of account for which periodic statements of the portfolio are to be provided in accordance with section 6.10; and

(d) in the case of discretionary investment management activities:

(i) the extent of the discretion to be exercised by the Authorised Firm, including any restrictions on the value of any one Investment or the proportion of the portfolio which any one Investment or any particular kind of Investment may constitute; or that there are no such restrictions;

(ii) whether the Authorised Firm may commit the Client to supplement the funds in the portfolio, and if it may include borrowing on his behalf:

(A) the circumstances in which the Authorised Firm may do so;

(B) whether there are any limits on the extent to which the Authorised Firm may do so and, if so, what those limits are;

(C) any circumstances in which such limits may be exceeded; and

(D) any margin lending arrangements and terms of those arrangements;

(iii) that the Authorised Firm may enter into Transactions for the Client, either generally or subject to specified limitation; and

(iv) where the Authorised Firm may commit the Client to any obligation to underwrite or sub-underwrite any issue or offer for sale of Securities:

(A) whether there are any restrictions on the categories of Securities which may be underwritten and, if so, what these restrictions are; and

(B) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are.

APP3 CONFIRMATION OF TRANSACTIONS

A3.1 Content of confirmation notes

General information

A3.1.1 (1) For the purposes of Rule 6.9.2, an Authorised Firm must include the following general information:

(a) the Authorised Firm's name and address;

(b) whether the Authorised Firm Executed the Transaction as principal or agent;

(c) the Client's name, account number or other identifier;

(d) a description of the Investment or Fund, including the amount invested or number of units involved;

(e) whether the Transaction is a sale or purchase;

(f) the price or unit price at which the Transaction was Executed;

(g) if applicable, a statement that the Transaction was Executed on an Execution-Only basis;

(h) the date and time of the Transaction;

(i) the total amount payable and the date on which it is due;

(j) the amount of the Authorised Firms charges in connection with the Transaction, including Commission charges and the amount of any Mark-up or Mark-down, Fees, taxes or duties;

(k) the amount or basis of any charges shared with another Person or statement that this will be made available on request; and

(l) for Collective Investment Funds, at statement that the price at which the Transaction has been Executed is on a Historic Price or Forward Price basis, as the case may be.

(2) An Authorised Firm may combine items (f) and (j) in respect of a Transaction where the Client has requested a note showing a single price combining both of these items.

Additional information: derivatives

A3.1.2 For the purposes of Rule 6.9.2, and in relation to Transactions in Derivatives, an Authorised Firm must include the following additional information:

(a) the maturity, delivery or expiry date of the Derivative;

(b) in the case of an Option, the date of exercise or a reference to the last exercise date;

(c) whether the exercise creates a sale or purchase in the underlying asset;

(d) the strike price of the Option; and

(e) if the Transaction closes out an open Futures position, all essential details required in respect of each contract comprised in the open position and each contract by which it was closed out and the profit or loss to the Client arising out of closing out that position (a difference account).

APP4 PERIODIC STATEMENTS

A4.1 Content of periodic statements: investment management

General information

A4.1.1 Pursuant to section 6.10, a periodic statement, as at the end of the period covered, must contain the following general information:

(a) the number, description and value of each Investment;

(b) the amount of cash held;

(c) the total value of the portfolio; and

(d) a statement of the basis on which the value of each Investment has been calculated.

Additional information: discretionary investment management activities

A4.1.2 In addition to Rule A4.1.1, where an Authorised Firm acts as an Investment Manager on a discretionary basis, the periodic statement must also include the following additional information:

(a) a statement of which Investments, if any, were at the closing date loaned to any third party and which Investments, if any, were at that date charged to secure borrowings made on behalf of the portfolio;

(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period;

(c) details of each Transaction which have been entered into for the portfolio during the period;

(d) the aggregate of Money and details of all Investments transferred into and out of the portfolio during the period;

(e) the aggregate of any interest payments, including the dates of their application and dividends or other benefits received by the Authorised Firm for the portfolio during that period;

(f) a statement of the aggregate Charges of the Authorised Firm and its Associates; and

(g) a statement of the amount of any Remuneration received by the Authorised Firm or its Associates or both from a third party.

Additional information: contingent liability investments

A4.1.3 In addition to Rules A4.1.1 and A4.1.1.2, in the case where Contingent Liability Investments are involved, an Authorised Firm must include the following additional information:

(a) the aggregate of Money transferred into and out of the portfolio during the valuation period;

(b) in relation to each open position in the account at the end of the account period, the unrealised profit or loss to the Client (before deducting or adding any Commission which would be payable on closing out);

(c) in relation to each Transaction Executed during the account period to close out a Client's position, the resulting profit or loss to the Client after deducting or adding any Commission;

(d) the aggregate of each of the following in, or relating to, the Client's portfolio at the close of business on the valuation date:

(i) cash;

(ii) Collateral value;

(iii) management fees; and

(iv) commissions; and

(e) Option account valuations in respect of each open Option contained in the account on the valuation date stating:

(i) the Share, Future, index or other Investment involved;

(ii) the trade price and date for the opening Transaction, unless the valuation statement follows the statement for the period in which the Option was opened;

(iii) the market price of the contract; and

(iv) the exercise price of the contract.

APP5 CLIENT MONEY PROVISIONS

A5.1 Application

A5.1.1 This appendix applies to an Authorised Firm, in accordance with Rule 6.12.2

A5.2 General requirements

A5.2.1 (1) The provisions of this appendix are referred to as the Client Money Provisions.

(2) The types of Client described in Rule 6.12.2 are referred to in this appendix as Segregated Clients.

A5.2.2 An Authorised Firm which holds or controls Client Money for a Segregated Client must:

(a) comply with the Client Money Provisions in relation to that Client Money; and

(b) have systems and controls in place to be able to evidence compliance with the Client Money Provisions.

A5.3 Payment of client money into client accounts

A5.3.1 Where an Authorised Firm holds or controls Client Money it must ensure, except where otherwise provided in section A5.5 that the Client Money is paid into one or more Client Accounts within one day of receipt.

A5.3.2 Subject to Rule A5.3.3, an Authorised Firm must not deposit its own Money into a Client Account.

A5.3.3 (1) An Authorised Firm may deposit its own Money in a Client Account where:

(a) it is a minimum sum required to open the account, or to keep it open;

(b) the Money is received by way of mixed remittance provided the Authorised Firm transfers out that part of the payment which is not Client Money within one day of the day on which the Authorised Firm would normally expect the remittance to be cleared;

(c) interest credited to the account exceeds the amount payable to Segregated Clients, provided that the Money is removed within twenty five days; or

(d) it is to meet a shortfall in Client Money.

(2) Where an Authorised Firm deposits any Money into a Client Account such Money is Client Money until such time as the Money is withdrawn from the Client Account in accordance with the Client Money Provisions.

[Amended][RM66][VER16/08-09]

A5.3.4 An Authorised Firm must maintain systems and controls for identifying Money which must not be in a Client Account and for transferring it without delay.

A5.3.5 Where an Authorised Firm is aware that a Person may make a payment of Client Money to the Authorised Firm, it must take reasonable steps:

(a) to ensure that such payment of Client Money is directed to a Client Account; and

(b) to ensure that the Authorised Firm is notified by that Person of such payment as soon as reasonably practicable.

Guidance

An Authorised Firm should have procedures for identifying Client Money received by the Authorised Firm, and for promptly recording the receipt of the Money either in the books of account or a register for later posting to the Client cash book and ledger accounts. The procedures should cover Client Money received by the Authorised Firm through the mail, electronically or via agents of the Authorised Firm or through any other means.

A5.4 Client accounts

A5.4.1 A Client Account in relation to Client Money is an account which:

[Amended][RM66][VER16/08-09]

(a) is held with a Third Party Agent;

(b) is established to hold Client Assets;

(c) is maintained in the name of;

(i) if a Domestic Firm, the Authorised Firm; or

(ii) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Firm; and

(d) includes the words 'Client Account' in its title.

A5.4.2 (1) An Authorised Firm must maintain a master list of all Client Accounts.

(2) The master list must detail:

(a) the name of the account;

(b) the account number;

(c) the location of the account;

(d) whether the account is currently open or closed; and

(e) the date of opening or closure.

(3) The details of the master list must be documented and maintained for at least six years following the closure of an account.

Guidance

1. An Authorised Firm may hold or control Client Money belonging to a Segregated Client in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client Money in a Client Account containing Client Money of more than one Segregated Client.

2. The purpose of controlling or holding Client Money in a Client Account is to ensure that Money belonging to Segregated Clients is readily identifiable from Money belonging to the Authorised Firm such that, following a Distribution Event, Segregated Clients will rank highest in line in terms of any subsequent distribution of Client Money in proportion to each Client's valid claim over that that Money.

3. Following a Distribution Event, a Segregated Client may not have a valid claim over Client Money held or controlled in a Client Account if that Client Account was not established to hold or control Client Money for that Client or a pool of Clients of which that Client was a part. [Amended][RM66][VER16/08-09]

A5.5 Exceptions to holding client money in client accounts

A5.5.1 The requirement for an Authorised Firm to pay Client Money into a Client Account does not, subject to Rule A5.5.2, apply with respect to such Client Money:

(a) received in the form of cheque, or other payable order, until the Authorised Firm, or a Person or account controlled by the Authorised Firm, is in receipt of the proceeds of that cheque;

(b) temporarily held by an Authorised Firm before forwarding to a Person nominated by the Client; or

(c) in connection with a Delivery Versus Payment Transaction where:

(i) in respect of a Client purchase, Client Money from the Client will be due to the Authorised Firm within one day upon the fulfilment of a delivery obligation; or

(ii) in respect of a Client sale, Client Money will be due to the Client within one day following the Client's fulfilment of a delivery obligation.

A5.5.2 An Authorised Firm must pay Client Money of the type described in Rule A5.5.1(b) or (c) into a Client Account where it has not fulfilled its delivery or payment obligation within three days of receipt of the Money or Investments unless in the case of the type of Client Money referred to in Rule A5.5.1(c)(ii) it instead safeguards Client Investments at least equal to the value of such Client Money.

A5.5.3 (1) An Authorised Firm must maintain adequate records of all cheques and payment orders received in accordance with Rule A5.5.1(a) including, in respect of each payment, the:

(a) date of receipt;

(b) name of the Client for whom payment is to be credited; and

(c) date when the cheque or payment order was presented to the Authorised Firm's Third Party Agent.

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

A5.6 Appointment of a third party agent

A5.6.1 (1) An Authorised Firm may only pay, or permit to be paid, Client Money to a Third Party Agent in accordance with Rule A5.7.1 where it has undertaken a prior assessment of the suitability of that agent and concluded on reasonable grounds that the Third Party Agent is suitable to hold that Client Money in a Client Account.

(2) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred by this appendix.

(3) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

A5.6.2 An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent to be suitable to hold that Client Money.

Guidance

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

a. its credit rating;

b. its capital and financial resources in relation to the amount of Client Money held;

c. the insolvency regime of the jurisdiction in which it is located;

d. its regulatory status and history;

e. its Group structure; and

f. its use of agents and service providers.

A5.7 Payment of client money to a third party agent

A5.7.1 (1) Subject to Rule A5.7.3, an Authorised Firm may only pass, or permit to be passed, a Segregated Client's Money to a Third Party Agent if:

(a) the Client Money is to be used in respect of a Transaction or series or Transactions for that Client;

(b) the Client Money is to be used to meet an obligation of that Client; or

(c) the Third Party Agent is a bank or a Regulated Financial Institution which is authorised to accept or take Deposits.

[Amended][RM66][VER16/08-09]

(2) In respect of (1)(a) and (b), an Authorised Firm must not hold any excess Client Money with the Third Party Agent longer than necessary to effect a Transaction or satisfy the Client's obligation.

A5.7.2 When an Authorised Firm opens a Client Account with a Third Party Agent it must obtain, within a reasonable period, a written acknowledgement from the Third Party Agent stating that:

(a) all Money standing to the credit of the account is held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien,

right of set-off or counterclaim against Money in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

(b) the title of the account sufficiently distinguishes that account from any account containing Money that belongs to the Authorised Firm, and is in the form requested by the Authorised Firm.

Guidance

The DFSA would consider twenty days as being a reasonable period for an Authorised Firm to receive a written acknowledgement from the Third Party Agent.

A5.7.3 If the Third Party Agent does not provide the acknowledgement referred to in Rule A5.7.2 within a reasonable period, the Authorised Firm must refrain from making further deposits of Client Money with that Third Party Agent and withdraw any Client Money standing to the credit of that Client Account.

A5.8 Payment of client money from client accounts

A5.8.1 An Authorised Firm must have procedures for ensuring all withdrawals from a Client Account are authorised.

A5.8.2 Subject to Rule A5.8.3, a Segregated Client's Client Money must remain in a Client Account until it is:

(a) due and payable to the Authorised Firm;

(b) paid to the Client on whose behalf the Client Money is held;

(c) paid in accordance with a Client instruction on whose behalf the Client Money is held;

(d) required to meet the payment obligations of the Client on whose behalf the Client Money is held; or

(e) paid out in circumstances that are otherwise authorised by the DFSA.

A5.8.3 Money paid out by way of cheque or other payable order under Rule A5.8.2 must remain in a Client Account until the cheque or payable order is presented to the Client's bank and cleared by the paying agent.

A5.8.4 An Authorised Firm must not use Client Money belonging of one Client to satisfy an obligation of another Client.

Guidance

The effect of Rule A5.8.4 is that an Authorised Firm would be required to deposit its own Money into a Client Account to remedy a shortfall arising from a client debit balance.

A5.8.5 An Authorised Firm must have a system for ensuring no off-setting or debit balances occur on Client Accounts.

A5.9 Client disclosure

A5.9.1 Before, or as soon as reasonably practicable after, an Authorised Firm receives Client Money belonging to a Segregated Client, it must disclose to the Client on whose behalf the Client Money is held:

(a) the basis and any terms governing the way in which the Client Money will be held;

(b) that the Client is subject to the protection conferred by the DFSA's Client Money Provisions and as a consequence:

(i) this Money will be held separate from Money belonging to the Authorised Firm; and

(ii) in the event of the Authorised Firm's insolvency, winding up or other Distribution Event stipulated by the DFSA, the Client's Money will be subject to the DFSA's Client Money Distribution Rules;

(c) whether interest is payable to the Client and, if so, on what terms;

(d) if applicable, that the Client Money may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;

(e) if applicable, details about how any Client Money arising out of Islamic Financial Business are to be held;

(f) if applicable, that the Authorised Firm holds or intends to hold the Client Money in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

(g) details of any rights which the Authorised Firm may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise, and of any rights which the Authorised Firm may have to close out or liquidate contracts or positions in respect of any of the Client's Investments.

A5.10 Client reporting

A5.10.1 (1) In relation to a Client to whom the Client Money Provisions are applicable, an Authorised Firm must send a statement to a Retail Client at least monthly or in the case of a Professional Client, at other intervals as agreed in writing with the Professional Client.

(2) The statement must include:

(a) the Client's total Client Money balances held by the Authorised Firm reported in the currency in which the Client Money is held, or the relevant exchange rate if not reported in the currency in which the Money is held;

(b) the amount, date and value of each credit and debit paid into and out of the account since the previous statement; and

(c) any interest earned or charged on the Client Account since the previous statement.

(3) The statement sent to the Client must be prepared within 25 days of the statement date.

[Amended][RM66][VER16/08-09]

A5.11 Reconciliation

A5.11.1 (1) An Authorised Firm must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out at least every 25 days.

(2) The reconciliation must include:

(a) a full list of individual Segregated Client credit ledger balances, as recorded by the Authorised Firm;

(b) a full list of individual Segregated Client debit ledger balances, as recorded by the Authorised Firm;

(c) a full list of unpresented cheques and outstanding lodgements;

(d) a full list of Client Account cash book balances; and

(e) formal statements from Third Party Agents showing account balances as at the date of reconciliation.

(3) An Authorised Firm must:

(a) reconcile the individual credit ledger balances, Client Account cash book balances, and the Third Party Agent Client Account balances;

(b) check that the balance in the Client Accounts as at the close of business on the previous day was at least equal to the aggregate balance of individual credit ledger balances as at the close of business on the previous day; and

(c) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the Third Party Agent and the Authorised Firm, are investigated and, where applicable, corrective action taken as soon as possible.

(4) An Authorised Firm must perform the reconciliations in (3) within 10 days of the date to which the reconciliation relates.

Guidance

When performing the reconciliations, an Authorised Firm should:

a. include in the credit ledger balances:

   i. unallocated Client Money;

   ii. dividends received and interest earned and allocated;

   iii. sale proceeds which have been received by the Authorised Firm and the Client has delivered the Investments or the Authorised Firm holds or controls the Investment; and

   iv. Money paid by the Client in respect of a purchase where the Authorised Firm has not remitted the Money to the counterparty or delivered the Investment to the Client; and

b. deduct from the credit ledger balances:

   i. Money owed by the client in respect of unpaid purchases by or for the Client if delivery of those Investments has been made to the Client; and

   ii. Money remitted to the Client in respect of sales transactions by or for the Client if the Client has not delivered the Investments.

A5.11.2 An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

Guidance

When performing reconciliations, an Authorised Firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has the authority to make payments, does not perform the reconciliations under Rule A5.11.1

A5.11.3 (1) Reconciliation performed in accordance with Rule A5.11.1 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The individual referred to in (1) must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.

A5.11.4 The Authorised Firm must notify the DFSA where there has been a material discrepancy with the reconciliation which has not been rectified.

Guidance

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

A5.12 Auditor's reporting requirements

Guidance

In accordance with GEN chapter 8, an Authorised Firm which holds Client Money for Segregated Clients must arrange for a Client Money Auditor's Report to be submitted to the DFSA on an annual basis.

A5.13 Client money distribution rules

A5.13.1 This section is referred to as the Client Money Distribution Rules and to the extent that these Rules are inconsistent with part 4.13 of the Insolvency Regulations, these Rules will prevail.

A5.13.2 Following a Distribution Event, the Authorised Firm must distribute Money in the following order of priorities:

(a) firstly, in relation to Client Money held in a Client Account on behalf of Segregated Clients, claims relating to that Money must be paid to each Segregated Client in full or, where insufficient funds are held in a Client Account, proportionately, in accordance with each Segregated Client's valid claim over that Money;

(b) secondly, where the amount of Client Money in a Client Account is insufficient to satisfy the claims of Segregated Clients in respect of that Money, or not being immediately available to satisfy such claims, all other Money held by the Authorised Firm must be used to satisfy any outstanding amounts remaining payable to Segregated Clients but not satisfied from the application of (a) above;

(c) thirdly, upon resolution of claims in relation to Segregated Clients, any Money remaining with the Authorised Firm must be paid to each Client in full or, where insufficient funds are held by the Authorised Firm, proportionately, in accordance with each Client's valid claim over that Money; and

(d) fourthly, upon satisfaction of all claims in (a), (b) and (c) above, in the event of:

(i) the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy over the Authorised Firm, payment must be made accordance with the Insolvency Law 2004; or

(ii) all other Distribution Events, payment must be made in accordance with the direction of the DFSA.

Guidance

A Segregated Client would not have a valid claim over Client Money held in a Client Account if that Client Account was not established to hold Client Money for that Client.

A5.13.3 Following a Distribution Event, an Authorised Firm must sell all Collateral and use the proceeds of the sale to satisfy claims made in accordance with Rule A5.13.2

A5.14 Failure to comply with this appendix

A5.14.1 An Authorised Firm which becomes aware that it does not comply with any Rule in this appendix must, within one day, give notice of that fact to the DFSA.

[Amended][RM66][VER16/08-09]

APP6 SAFE CUSTODY PROVISIONS

A6.1 Application

A6.1.1 This appendix applies to an Authorised Firm in accordance with Rule 6.13.3.

[Amended][RM66][VER16/08-09]

A6.2 General requirements

A6.2.1 The provisions of this appendix are referred to as the Safe Custody Provisions.

A6.2.2 An Authorised Firm must:

(a) comply with the Safe Custody Provisions; and

(b) have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.

[Amended][RM66][VER16/08-09]

A6.3 Recording, registration and holding requirements

A6.3.1 An Authorised Firm which Provides Custody or holds or controls Client Investments must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property. [Amended][RM66][VER16/08-09]

A6.3.2 Subject to Rule A6.4.1, an Authorised Firm which Provides Custody or holds or controls Client Investments must record, register and hold Safe Custody Investments separately from its own Investments. [Amended][RM66][VER16/08-09]

A6.4 Client accounts in relation to Client Investments

A6.4.1 An Authorised Firm which Provides Custody or holds or controls Client Investments must register or record all Safe Custody Investments in the legal title of: [Amended][RM66][VER16/08-09]

(a) a Client Account; or

(b) the Authorised Firm where, due to the nature of the law or market practice, it is not feasible to do otherwise.

A6.4.2 A Client Account in relation to Client Investments is an account which:

(a) is held with a Third Party Agent or by an Authorised Firm which is authorised under its Licence to provide Custody;

(b) is established to hold Client Assets;

(c) when held by a Third Party Agent, is maintained in the name of;

(i) if a Domestic Firm, the Authorised Firm; or

(ii) if not a Domestic Firm, a Nominee Company controlled by the Authorised Firm; and

(d) includes the words 'Client Account' in its title.

[Amended][RM66][VER16/08-09]

A6.4.3 (1) An Authorised Firm must maintain a master list of all Client Accounts.

(2) The master list must detail:

(a) the name of the account;

(b) the account number;

(c) the location of the account;

(d) whether the account is currently open or closed; and

(e) the date of opening or closure.

(3) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.

Guidance

1. An Authorised Firm may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client's Investment in a Client Account containing Investments of more than one Client.

2. The purpose of recording, registering or holding Investments in a Client Account is to ensure that Investments belonging to Clients are readily identifiable from Investments belonging to the Authorised Firm such that, following a Distribution Event, any subsequent distribution of Investments may be made in proportion to each Client's valid claim over those Investments.

3. Following a Distribution Event, a Client may not have a valid claim over Investments registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments for that Client or a pool of Clients of which that Client was a part. [Amended][RM66][VER16/08-09]

A6.4.4 An Authorised Firm must not use a Client's Safe Custody Investment for its own purpose or that of another Person without that Client's prior written permission. [Amended][RM66][VER16/08-09]

A6.4.5 An Authorised Firm which intends to use a Client's Safe Custody Investments for its own purpose or that of another Person, must have systems and controls in place to ensure that:

(a) it obtains that Client's prior written permission;

(b) adequate records are maintained to protect Safe Custody Investments which are applied as collateral or used for stock lending activities;

(c) the equivalent assets are returned to the Client Account of the Client; and

(d) the Client is not disadvantaged by the use of his Safe Custody Investments.

A6.5 Holding or arranging custody with third party agents

A6.5.1 (1) Before an Authorised Firm holds a Safe Custody Investment with a Third Party Agent or Arranges Custody through a Third Party Agent, it must undertake an assessment of that Third Party Agent and have concluded on reasonable grounds that the Third Party Agent is suitable to hold those Safe Custody Investments.

(2) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

(3) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred in this appendix.

A6.5.2 An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent to be suitable to hold Safe Custody Investments.

Guidance

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

a. its credit rating;

b. its capital and financial resources in relation to the amount of Safe Custody Investments held;

c. the insolvency regime of the jurisdiction in which it is located;

d. its arrangements for holding the Investments;

e. its regulatory status, expertise, reputation and history;

f. its Group structure;

g. its use of agents and service providers; and

h. any other activities of the agent.

A6.6 Safe custody agreements with third party agents

A6.6.1 Before an Authorised Firm passes, or permits to be passed, Safe Custody Investments to a Third Party Agent it must have procured a written acknowledgement from the Third Party Agent stating:

(a) that the title of the account sufficiently distinguishes that account from any account containing Investments belonging to the Authorised Firm, and is in the form requested by the Authorised Firm;

(b) that the Client Investment will only be credited and withdrawn in accordance with the instructions of the Authorised Firm;

(c) that the Third Party Agent will hold Client Investments separately from assets belonging to the Third Party Agent;

(d) the arrangements for recording and registering Client Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;

(e) that the Third Party Agent will deliver a statement to the Authorised Firm (including the frequency of such statement), which details the Client Investments deposited to the account;

(f) that all Investments standing to the credit of the account are held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

(g) the extent of liability of the Third Party Agent in the event of default.

[Amended][RM66][VER16/08-09]

A6.6.2 (1) An Authorised Firm must maintain records of all Safe Custody Agreements and any instructions given by the Authorised Firm to the Third Party Agent under the terms of the agreement.

(2) The records must be maintained for at least of six years.

A6.7 Client disclosure

A6.7.1 (1) Before an Authorised Firm Arranges Custody for a Client it must disclose to that Client, if applicable, that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC.

(2) Before an Authorised Firm Provides Custody for a Client it must disclose to the Client on whose behalf the Safe Custody Investments will be held:

(a) a statement that the Client is subject to the protections conferred by the Safe Custody Provisions;

(b) the arrangements for recording and registering Safe Custody Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody Investments;

(c) the obligations the Authorised Firm will have to the Client in relation to exercising rights on behalf of the Client;

(d) the basis and any terms governing the way in which Safe Custody Investments will be held, including any rights which the Authorised Firm may have to realise Safe Custody Investments held on behalf of the Client in satisfaction of a default by the Client;

(e) the method and frequency upon which the Authorised Firm will report to the Client in relation to his Safe Custody Investments;

(f) if applicable, a statement that the Authorised Firm intends to mix Safe Custody Investments with those of other Clients;

(g) if applicable, a statement that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;

(h) if applicable, a statement that the Authorised Firm holds or intends to hold Safe Custody Investments in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

(i) the extent of the Authorised Firm's liability in the event of default by a Third Party Agent.

A6.8 Client reporting

A6.8.1 (1) An Authorised Firm which Provides Custody or which holds or controls Client Investments for a Client must send a statement to a Retail Client at least every six months or in the case of a Professional Client at other intervals as agreed in writing with the Professional Client. [Amended][RM66][VER16/08-09]

(2) The statement must include:

(a) a list of that Client's Safe Custody Investments as at the date of reporting;

(b) a list of that Client's Collateral and the market value of that Collateral as at the date of reporting; and

(c) details of any Client Money held by the Authorised Firm as at the date of reporting.

(3) The statement sent to the Client must be prepared within 25 business days of the statement date.

A6.9 Reconciliation

A6.9.1 An Authorised Firm must:

[Amended][RM66][VER16/08-09]

(a) at least every 25 business days, reconcile its records of Client Accounts held with Third Party Agents with monthly statements received from those Third Party Agents;

(b) at least every six months, count all Safe Custody Investments physically held by the Authorised Firm, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Firm; and

(c) at least every six months, reconcile individual Client ledger balances with the Authorised Firm's records of Safe Custody Investment balances held in Client Accounts.

A6.9.2 An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

Guidance

An Authorised firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has authority over Safe Custody Investments, should not perform the reconciliations under Rule A6.9.1.

A6.9.3 (1) Reconciliation performed in accordance with section A6.9 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The individual referred to in (1) must provide a written statement confirming that the reconciliation has been undertaken in accordance with the requirements of this section. [Amended][RM66][VER16/08-09]

A6.9.4 The Authorised Firm must notify the DFSA where there have been material discrepancies with the reconciliation which have not been rectified.

Guidance

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

A6.10 Auditor's reporting requirements

Guidance

In accordance with GEN chapter 8, an Authorised Firm to which this appendix applies must arrange for a Safe Custody Auditor's Report to be submitted to the DFSA on an annual basis. [Amended][RM66][VER16/08-09]