



The DFSA Rulebook

Authorisation Module

(AUT)

Contents

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

PART 1 - OVERVIEW	1
1 INTRODUCTION	1
1.1 Application.....	1
1.2 Scope of authorisation module.....	1
2 PROVISION OF INFORMATION	3
2.1 Information provided to the DFSA.....	3
PART 2 - AUTHORISED FIRMS	4
3 APPLICATION FOR A LICENCE	4
3.1 Application.....	4
3.2 Licence application.....	4
3.3 Consideration and assessment of applications.....	5
4 APPLICATION TO CHANGE THE SCOPE OF A LICENCE	8
4.1 Application.....	8
4.2 Applications by Authorised Firms.....	8
5 DETERMINATION OF APPLICATIONS.....	10
6 WITHDRAWAL OF A LICENCE.....	11
6.1 Application.....	11
6.2 Withdrawal of a licence at an Authorised Firm's request	11
6.3 Withdrawal of a licence on the DFSA's initiative	12
7 APPEALS	13

PART 3 – AUTHORISED INDIVIDUALS AND LICENSED FUNCTIONS 14**8 AUTHORISED INDIVIDUALS..... 14**

8.1	Application.....	14
8.2	General provisions	14

9 APPLICATION FOR AUTHORISED INDIVIDUAL STATUS 16

9.1	Application.....	16
9.2	Submitting an application	16
9.3	Reviewing an application.....	17
9.4	Temporary cover	17
9.5	Fitness and propriety of Authorised Individuals.....	18

10 LICENSED FUNCTIONS 19

10.1	Application.....	19
10.2	Functions.....	19
10.3	Mandatory appointments.....	21

11 COMPETENCE 24

11.1	Application.....	24
11.2	Assessing competence	24
11.3	Qualifications DELETED	25
11.4	Systems and controls	25

12 CHANGES TO AN AUTHORISED INDIVIDUAL STATUS 26

12.1	Application.....	26
12.2	Submitting an application or request	26
12.3	Dismissal or resignation of an Authorised Individual.....	27

13 DETERMINATION OF APPLICATIONS..... 28**14 APPEALS 29****PART 4 - CONTROLLERS 30**

15	CHANGE IN CONTROL	30
15.1	Application.....	30
15.2	Applications and notifications concerning a change in control	31
15.3	Annual reporting of controllers	34
 PART 5 – ENDORSEMENT.....		35
16	ENDORSEMENT FOR RETAIL CLIENTS	35
16.1	Application.....	35
16.2	Application for an endorsement.....	35
 App1 GUIDANCE ON FITNESS AND PROPRIETY		36
A1.1	Introduction.....	36
A1.2	An Authorised Firm.....	36
A1.3	An Authorised Individual.....	40

PART 1 - OVERVIEW

1 INTRODUCTION

1.1 Application

- 1.1.1** (1) This module (AUT) applies to every Person who carries on, or intends to carry on, one or more Financial Services in or from the DIFC, other than:
- (a) Operating an Exchange;
 - (b) Operating a Clearing House; or
 - (c) Operating a Representative Office.
- (2) AUT also applies to every Authorised Firm in respect of the carrying out of a Licensed Function by individuals on its behalf.
- (3) Part 3 also applies to an individual who carries out, or intends to carry out, one or more Licensed Functions.
- (4) Part 4 also applies to a Person who is or proposes to become a Controller.

[Amended][RM68][VER12/01-10]

1.2 Scope of authorisation module

Guidance

Financial Services

1. Article 41(1) of the Regulatory Law 2004 prohibits a Financial Service from being carried on in or from the DIFC unless it is carried on by an Authorised Firm or an Authorised Market Institution whose Licence authorises it to do so.
2. GEN prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution.

Authorised Market Institutions and Representative Offices

3. The AMI module covers the DFSA's requirements for authorisation in respect of Authorised Market Institutions. The REP module covers the DFSA's requirements for authorisation in respect of Representative Offices. [Amended][RM68][VER12/01-10]

Authorised Firms

4. This module covers authorisation matters related to Authorised Firms. Part 2 covers applications relating to the initial Licence application and extensions or reductions to the scope of a Licence, including the withdrawal of a Licence at the request of an Authorised Firm.

Licensed functions

5. The DFSA has prescribed Licensed Functions in part 3 of this module pursuant to Article 43(1). In accordance with Article 43(2) the Licensed Functions of an Authorised Firm may only be carried out by its Authorised Individuals.

Authorised Individuals

6. Part 3 of this module covers applications relating to Authorised Individual status and extensions or withdrawals of such status at the request of the Authorised Individual or Authorised Firm.

Ancillary Services

7. Article 44(1) prohibits an Ancillary Service from being carried on in or from the DIFC unless it is carried on by a Person registered as an Ancillary Service Provider.
8. The ASP module specifies the activities which constitute Ancillary Services. ASP contains the DFSA's requirements in respect of Ancillary Service Providers including authorisation matters.

Change in control

9. Part 4 of this module covers the requirements in regard to changes and proposed changes to an Authorised Firm's Controllers.

The regulatory processes of the DFSA

10. The Authorisation module (AUT), the Supervision module (SUP) and the Enforcement module (ENF) collectively outline the regulatory processes of the DFSA.
11. AUT sets out the requirements for Licence applications and applications for Authorised Individual status including applications by existing Authorised Firms and Authorised Individuals to change the scope of or withdraw Financial Services or Licensed Functions.
12. SUP's primary focus is on the supervisory approach of the DFSA and the ongoing relationship between an Authorised Firm and the DFSA and it contains detail on specific tools used by the DFSA under its supervisory powers.
13. ENF describes the DFSA's enforcement powers under the Regulatory Law 2004 and outlines its policy for using these powers. ENF also establishes the framework for the DFSA's decision making process and the giving of notices in relation to enforcement powers.

2 PROVISION OF INFORMATION

2.1 Information provided to the DFSA

Guidance

1. Article 66 states that a Person shall not provide false, misleading or deceptive information to the DFSA or conceal information from the DFSA.
2. The DFSA may take action if an applicant conceals information or provides information that is false, misleading or deceptive.

PART 2 - AUTHORISED FIRMS

3 APPLICATION FOR A LICENCE

3.1 Application

3.1.1 This chapter applies to a Person who intends to carry on one or more Financial Services in or from the DIFC.

3.2 Licence application

3.2.1 A Person, referred to in this chapter as an applicant, who intends to carry on one or more Financial Services in or from the DIFC must apply to the DFSA for a Licence, in accordance with the Rules in this chapter.

Guidance

If the applicant in this Rule intends to either:

- a. Operate an Exchange; or
- b. Operate a Clearing House;

it should apply to the DFSA for a Licence in accordance with the Rules in AMI.

3.2.2 (1) The DFSA will only consider an application for a Licence from an applicant who, subject to (2) and (3), is:

- (a) a Body Corporate;
- (b) a Partnership; or
- (c) an unincorporated association;

and who is not an Authorised Market Institution.

(2) If the application is in respect of either or both of the following Financial Services:

- (a) Effecting Contracts of Insurance; or
- (b) Carrying Out Contracts of Insurance,

the applicant must be a Body Corporate.

(3) If the application is in respect of the Financial Service of Accepting Deposits, the applicant must be a Body Corporate or a Partnership.

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- (4) If the application is in respect of the Financial Service of Operating a Collective Investment Fund or Acting as the Trustee of a Fund, the applicant must be a Body Corporate.

[Amended][VER4/04-06] [Amended][VER6/08-06]

3.2.3 A Person licensed by the Emirates Stocks and Commodities Authority to trade on an U.A.E. exchange will not be granted a Licence by the DFSA unless that Person has the prior approval of the Emirates Stocks and Commodities Authority.

3.2.4 A Person applying for a Licence must complete and submit the appropriate form or forms in AFN.

Guidance

A Person submitting an application under Rule 3.2.4 is required to pay the appropriate application fee as set out in FER. [Amended][RM65][VER11/08-09]

3.3 Consideration and assessment of applications

3.3.1 An applicant will only be authorised to carry on one or more Financial Services if the DFSA is satisfied that the applicant is fit and proper to hold a Licence. In making this assessment the DFSA will consider:

- (a) the applicants' connection with its Controllers or any other Person;
- (b) the Financial Services concerned;
- (c) whether the applicant's affairs will be conducted and managed in a sound and prudent manner; and
- (d) other relevant matters.

Guidance

In Rule 3.3.1(d), other relevant matters may include the matters set out in App1.

3.3.2 In order to become authorised to carry on one or more Financial Services, the applicant must satisfy the DFSA that it has adequate resources including financial resources. In making this assessment, the DFSA will consider:

- (a) how the applicant will comply with the applicable provisions of PIB or PIN;
- (b) the provision the applicant makes in respect of any liabilities, including contingent and future liabilities;
- (c) the means by which the applicant and members of its Group manage risk in connection with its business; and
- (d) the rationale for, and basis of, the applicant's business plan.

[Amended][VER2/08-05]

3.3.3 When the DFSA is considering an application for a Licence, then in respect of the fitness and propriety of the applicant:

- (a) the applicant must demonstrate to the DFSA's satisfaction that it is fit and proper;
- (b) the DFSA will consider any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC;
- (c) the DFSA will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the DFSA's objectives described under Article 8; and
- (d) the DFSA will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

3.3.4 An applicant must be able to demonstrate that it has compliance arrangements, including process and procedures that will enable it to comply with all applicable Rules.

3.3.5 In assessing an application for a Licence, the DFSA may:

- (a) make any enquiries which it considers appropriate including enquiries independent of the applicant;
- (b) require the applicant to provide additional information;
- (c) require the applicant to have information on how it intends to ensure compliance with a particular Rule;
- (d) require any information provided by the applicant to be verified in any way that the DFSA specifies; and
- (e) take into account any information which the DFSA considers relevant.

Guidance

1. If an applicant becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application which is under consideration by the DFSA, it should inform the DFSA of the change, in writing, without delay.
2. Article 51 enables the DFSA to withdraw an Authorised Firm's Licence where it is no longer considered fit and proper to hold such a Licence.
3. In considering whether an applicant is fit and proper, the DFSA may take into account those matters contained in App1.2, which provides Guidance on fitness and propriety for Authorised Firms.
4. The information required by the DFSA will vary in proportion to the risk posed by the applicant to the DFSA's objectives.

- 3.3.6** (1) In assessing an application for a Licence the DFSA may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.
- (2) Where the DFSA thinks it appropriate it may treat an application made by one legal form or Person as having been made by the new legal form or Person.
- 3.3.7** In assessing an application for a Licence authorising the applicant to Operate an Alternative Trading System, the DFSA will have regard to, but is not limited to, considering the following matters:
- (a) whether the establishment of an ATS is, or is likely to be, in the interests of the Financial Services and Markets industry;
 - (b) whether the ATS will or is likely to lead to more efficient price discovery of, or deepen liquidity in, an Investment; and
 - (c) whether there is any risk of market fragmentation, loss of liquidity or inefficiency in price discovery as a result of the proposed ATS operation.

[Added][VER2/08-05]

4 APPLICATION TO CHANGE THE SCOPE OF A LICENCE

4.1 Application

4.1.1 This chapter applies to an Authorised Firm applying to change the scope of its Licence or, where a condition or restriction has previously been imposed, to have the condition or restriction varied or withdrawn.

4.1.2 The provisions relating to permitted legal forms, fitness and propriety, adequate resources, compliance arrangements, enquiries and the provision of additional information set out in Rule 3.2.2(2) and Rules 3.3.1 - 3.3.7 also apply to an Authorised Firm making an application under this chapter, and are to be construed accordingly. [Added][VER2/08-05]

4.2 Applications by Authorised Firms

4.2.1 An Authorised Firm applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA, with written details of the proposed changes.

Guidance

1. Where an Authorised Firm applies to change the scope of its Licence, it should provide the following information:
 - a. a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;
 - b. details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the Authorised Firm will be able to comply with any additional regulatory requirements;
 - c. descriptions of the Authorised Firm's senior management responsibilities (see GEN chapter 5) where these have changed from those previously disclosed, including any up-dated staff organisation charts and internal and external reporting lines;
 - d. where the Authorised Firm is reducing its activities and where it has existing customers who may be affected by the cessation of a Financial Service, details of any transitional arrangements should be provided;
 - e. if the variation may result in a change to the Authorised Firm's prudential category or the application of additional or different financial rules, the Authorised Firm should submit the appropriate financial reporting statement. If a capital increase is required in order to demonstrate compliance with additional financial rules but such capital is not paid up or available at the time of application, proposed or forecast figures may be used; and

- f. an explanation of the effect of the proposed variation on the Authorised Firm's Authorised Individuals. Where applicable, the Authorised Firm must submit any application forms for individuals to perform additional or new Licensed Functions, or to remove existing Licensed Functions.
2. An Insurer which wishes to vary its Licence to remove the Financial Service of Effecting Contracts of Insurance or reducing the classes of insurance should refer to the run-off provisions in PIN chapter 9.
3. In considering whether an Authorised Firm is fit and proper with respect to a change in the scope of its Licence, the DFSA may take into account those matters contained in App1 section A1.2, which provides Guidance on fitness and propriety for Authorised Firms.
4. When considering the withdrawal or change to the scope of a Licence, the DFSA may also consider one or more of the matters outlined under the Guidance in chapter 6.

5 DETERMINATION OF APPLICATIONS

Guidance

1. Article 47(1) states that the DFSA may refuse to grant a Licence or a change to the scope of an existing Licence.
2. Article 48 states that the DFSA may grant an application for a Licence or a change to a Licence, with or without conditions and restrictions either with an applicant's agreement or by imposition.
3. Under Article 50(3)(e), the DFSA may withdraw authorisation in relation to one or more Financial Services at the request of an Authorised Firm.
4. Upon determination of an application under Articles 47(1), 48(1) or 50(3)(e), as referred to above, the DFSA will without undue delay notify the applicant or Authorised Firm in writing of the decision.

6 WITHDRAWAL OF A LICENCE

6.1 Application

6.1.1 This chapter applies to an Authorised Firm applying to have its Licence withdrawn.

6.2 Withdrawal of a licence at an Authorised Firm's request

6.2.1 An Authorised Firm seeking to have its Licence withdrawn must submit a request in writing stating:

- (a) the reasons for the request;
- (b) that it has ceased or will cease to carry on Financial Services in or from the DIFC;
- (c) the date on which it ceased or will cease to carry on Financial Services in or from the DIFC;
- (d) that it has discharged, or will discharge, all obligations owed to its customers in respect of whom the Authorised Firm has carried on, or will cease to carry on, Financial Services in or from the DIFC; and
- (e) if it is providing Trust Services, that it has made appropriate arrangements for the transfer of business to a new Trust Service Provider and the appointment, where necessary, of new trustees.

[Added] [VER3/01/06]

Guidance

1. In considering requests under Rule 6.2.1, an Authorised Firm will need to satisfy the DFSA that it has made appropriate arrangements with respect to its existing customers, including the receipt of any customers' consent where required and, in particular:
 - a. whether there may be a long period in which the business will be run-off or transferred;
 - b. whether deposits must be returned to customers;
 - c. whether money and other assets belonging to customers must be returned to them; and
 - d. whether there is any other matter which the DFSA would reasonably expect to be resolved before granting a request for the withdrawal of a Licence.
2. In determining a request for the withdrawal of a Licence, the DFSA may require additional procedures or information as appropriate including evidence that the Authorised Firm has ceased to carry on Financial Services.

3. Detailed plans should be submitted where there may be an extensive period of wind-down. It may not be appropriate for an Authorised Firm to immediately request a withdrawal of its Licence in all circumstances, although it may wish to consider reducing the scope of its Licence during this period. Authorised Firms should discuss these arrangements with the DFSA.
4. The DFSA may refuse a request for the withdrawal of a Licence where it appears that customers may be exposed to adverse effect.
5. The DFSA may also refuse a request for the withdrawal of a Licence where:
 - a. the Authorised Firm has failed to settle its debts to the DFSA; or
 - b. it is in the interests of a current or pending investigation by the DFSA, or by another regulatory body or Financial Services Regulator.
6. Under Article 63 where the DFSA grants a request for the withdrawal of a Licence, the DFSA may continue to exercise any power under the Regulatory Law 2004 or Rules in relation to an Authorised Firm for two years from the date on which the Licence was withdrawn.
7. Article 43(2) states that Licensed Functions of an Authorised Firm shall be carried out by its Authorised Individuals. Accordingly, where an Authorised Firm's Licence is withdrawn, the authorised status of its Authorised Individuals will also be withdrawn from the same date. However, this does not remove the obligation on an Authorised Firm to provide a statement under Rule 12.3.3 where an Authorised Individual has been dismissed or requested to resign.
8. Where an Operator or the Trustee makes a request under Rule 6.2.1, the Operator or the Trustee will need to satisfy the DFSA that it has made appropriate arrangements in accordance with the requirements under the Collective Investment Law 2006 and the Rules in CIR with respect to the continuing operation of the Fund for which it is the Operator or the Trustee, as the case may be. [Added][VER4/04-06]
[Amended][VER6/08-06]

6.3 Withdrawal of a licence on the DFSA's initiative

Guidance

In section 6.2, an application to withdraw a Licence will be at the Authorised Firm's request. Under Article 51, the DFSA may act on its own initiative to withdraw an Authorised Firm's Licence in cases when the Authorised Firm no longer has authority to carry on any Financial Service, is no longer a fit and proper person, or has failed to remove a Controller in the circumstances described in Article 64.

7 APPEALS

Guidance

1. Under Article 27, an applicant or an Authorised Firm may appeal against any determination by the DFSA in relation to:
 - a. an application for a Licence or for an extension of a Licence;
 - b. the imposition, variation or withdrawal of a condition or restriction to a Licence; and
 - c. the exercise of the DFSA's power to withdraw a Licence or to withdraw an authorisation in relation to a Financial Service.
2. Under Article 28, an applicant or Authorised Firm wishing to appeal must submit a written notice of appeal within 30 days of the notification of the relevant decision, or within a further period not exceeding 30 days as approved by the Regulatory Appeals Committee.
3. The form of submission that an appeal must take is specified in the rules of procedure of the Regulatory Appeals Committee.

PART 3 – AUTHORISED INDIVIDUALS AND LICENSED FUNCTIONS

8 AUTHORISED INDIVIDUALS

8.1 Application

8.1.1 This chapter applies to:

- (a) an Authorised Firm;
- (b) an applicant for a Licence to be an Authorised Firm;
- (c) an Authorised Individual; and
- (d) an applicant for Authorised Individual status.

8.2 General provisions

8.2.1 (1) Subject to Rule 8.2.5, an individual intending to carry out one or more Licensed Functions must be authorised by the DFSA as an Authorised Individual.

- (2) The DFSA will only grant Authorised Individual status to a natural person.

8.2.2 An applicant for Authorised Individual status must submit the appropriate form in AFN.

8.2.3 An Authorised Individual who intends to carry out one or more additional Licensed Functions must complete and submit the appropriate form in AFN.

8.2.4 The Authorised Firm is responsible for the conduct of its Authorised Individuals and for ensuring that they remain fit and proper to carry out their role.

Guidance

1. In considering whether an Authorised Individual remains fit and proper, the Authorised Firm should consider those matters contained in App1.3 and the notification requirements in SUP Rule 7.2.1.
2. Under Article 43(2) the DFSA, the Licensed Functions of an Authorised Firm shall be carried out by its Authorised Individuals.
3. Article 43(3) further requires that an Authorised Firm shall take all reasonable steps to ensure that:

- a. none of its officers, employees or agents performs a Licensed Function unless such officer, employee or agent is authorised by the DFSA as an Authorised Individual in relation to such Licensed Function; and
 - b. none of its officers, employees or agents performs a Licensed Function in breach of a written notice or suspension or withdrawal of authority issued by the DFSA.
4. Article 43(4) states that an Authorised Individual shall:
- a. act within the scope of his authority granted under his Authorised Individual status; and
 - b. comply with any condition or restriction applicable to such status.
5. Article 43(5) states that a person who is not an Authorised Individual shall not represent that he is such a person.

Exceptions

- 8.2.5** (1) Rule 8.2.1 does not apply to a function performed by a registered insolvency practitioner, subject to the restrictions defined within Article 88 of the Insolvency Law 2004:
- (a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2004;
 - (b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2004;
 - (c) acting as a liquidator in relation to a members' voluntary winding up within the meaning of Article 33 of the Insolvency Law, 2004;
 - (d) appointed as a liquidator by a liquidation committee in relation to a creditors' voluntary winding up within the meaning of Article 40 of the Insolvency Law 2004; or
 - (e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article 58 and 59 of the Insolvency Law 2004.
- (2) Rule 8.2.1 does not apply to individuals appointed to act as managers of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under the enforcement powers outlined under Article 88 of the Regulatory Law 2004.

9 APPLICATION FOR AUTHORISED INDIVIDUAL STATUS

9.1 Application

9.1.1 This chapter applies to:

- (a) an Authorised Firm;
- (b) an applicant for a Licence to be an Authorised Firm;
- (c) an Authorised Individual; or
- (d) an applicant for Authorised Individual status.

9.1.2 In this chapter, the term 'Authorised Firm' includes an applicant for a Licence to be an Authorised Firm.

Guidance

Article 53(2) provides that applications for Authorised Individual status shall be made by both the individual seeking to be authorised and the Authorised Firm for which that individual is to perform services.

9.2 Submitting an application

9.2.1 In submitting applications for Authorised Individual status, both the individual and Authorised Firm must complete and submit the appropriate form in AFN.

9.2.2 When an individual and an Authorised Firm apply to the DFSA for that individual to be an Authorised Individual, the individual must satisfy the DFSA that he is a fit and proper person to carry out the role.

9.2.3 Before lodging an application with the DFSA, an Authorised Firm must make reasonable enquiries as to an individual's fitness and propriety to carry out a Licensed Function.

9.2.4 An Authorised Firm must not lodge an application if it has reasonable grounds to believe that the individual is not fit and proper to carry out the Licensed Function.

9.2.5 Subject to Rule 9.4.1 and Rule 9.4.2, an individual must not carry out a Licensed Function for an Authorised Firm until he is authorised by the DFSA to carry out that Licensed Function for that Authorised Firm.

9.3 Reviewing an application

9.3.1 When considering an application for Authorised Individual status, the DFSA may:

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

9.3.2 The application will be deemed to have been withdrawn, if the additional information requested under Rule 9.3.1(b) is not provided within 28 days unless otherwise agreed by the DFSA.

Guidance

1. Under Articles 55 and 56 respectively, the DFSA may reject an application for Authorised Individual status or extension to such status, or grant Authorised Individual status or extension to such status with or without conditions and restrictions.
2. If an applicant or the Authorised Firm becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application under consideration by the DFSA, it must inform the DFSA of the change, in writing, without delay.

9.4 Temporary cover

9.4.1 (1) An Authorised Firm may, subject to (2), appoint an individual, who is not an Authorised Individual, to carry out the functions of an Authorised Individual where the following conditions are met:

- (a) the absence of the Authorised Individual is temporary or reasonably unforeseen;
- (b) the functions are carried out for 12 weeks maximum in any consecutive 12 months; and
- (c) the Authorised Firm has assessed that the individual has the relevant skills and experience to carry out these functions.

(2) An Authorised Firm may not appoint under (1) an individual to carry out the Licensed Functions of a Licensed Director or Licensed Partner.
[Amended][VER5/06-06]

- (3) The Authorised Firm must take reasonable steps to ensure that the individual complies with all the Rules applicable to Authorised Individuals.

9.4.2 DELETED [Amended][VER5/06-06]

9.4.3 Where an individual is appointed under this section, the DFSA may exercise any powers as it would otherwise be entitled to do, as if the individual held Authorised Individual status.

9.5 Fitness and propriety of Authorised Individuals

9.5.1 In considering whether an individual is fit and proper to be an Authorised Individual in respect of one or more Licensed Functions, the DFSA will consider the individual's:

- (a) integrity;
- (b) competence and capability;
- (c) financial soundness;
- (d) proposed role within the Authorised Firm; and
- (e) any other matters set out in App1.3.

9.5.2 In Rule 9.5.1, an individual may not be considered as fit and proper where:

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

Guidance

Article 58 provides that the DFSA may suspend or withdraw an Authorised Individual's status where he is no longer considered fit and proper to hold such status. When suspending or withdrawing an Authorised Individual status of a Person acting as trustee, the Trust Service Provider shall ensure that a new trustee is appointed to replace the trustee in question and that proper arrangements for the transfer of legal ownership are made. [Added] [VER3/01-06]

10 LICENSED FUNCTIONS

10.1 Application

10.1.1 This chapter applies to every Authorised Firm and is relevant to an:

- (a) applicant for a Licence to be an Authorised Firm;
- (b) Authorised Individual; and
- (c) applicant for Authorised Individual status.

10.2 Functions

10.2.1 Pursuant to Article 43, the functions specified in Rule 10.2.2 are Licensed Functions.

10.2.2 Licensed Functions:

Senior executive officer

- (a) The Senior Executive Officer function is carried out by an individual who:
 - (i) has, either alone or jointly with other Authorised Individuals, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Firm's Financial Services carried on in or from the DIFC; and
 - (ii) is a Director, Partner or Senior Manager of the Authorised Firm.

Licensed director

- (b) Subject to Rule 10.3.4, the Licensed Director function is carried out by an individual who is a Director of an Authorised Firm which is either a Body Corporate or an unincorporated association. [Amended][VER9/10-07][RM50/07]

Licensed partner

- (c) Subject to Rule 10.3.5, the Licensed Partner function is carried out by an individual who is a Partner of an Authorised Firm which is either a Partnership or Limited Liability Partnership. [Amended][VER9/10-07][RM50/07]

Finance officer

- (d) The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for the Authorised Firm's compliance with the applicable Rules in PIN or PIB.

Compliance officer

- (e) The Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for compliance matters in relation to the Authorised Firm's Financial Services.

Senior manager

- (f) The Senior Manager function is carried out by an individual who is responsible either alone or jointly with other individuals for the management, supervision or control of one or more parts of an Authorised Firm's Financial Services who is:
- (i) an Employee of the Authorised Firm; and
 - (ii) not a Director or Partner of the Authorised Firm.

[Amended][VER9/10-07][RM50/07]

Money laundering reporting officer

- (g) The Money Laundering Reporting Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for the Authorised Firm's compliance with the Rules in AML and any relevant anti money laundering legislation applicable in the DIFC.

Licensed representative

DELETED

[Amended][VER5/06-06]

Responsible officer

- (i) The Responsible Officer function is carried out by an individual who:
- (i) has significant responsibility for the management of one or more aspects of an Authorised Firm's affairs;
 - (ii) exercises a significant influence on the firm as a result of (a); and
 - (iii) is not an Employee of the Authorised Firm.

Guidance

1. The Licensed Function of Responsible Officer applies to an individual employed by a Controller or other Group company who is not an Employee of the Authorised Firm, but who has significant responsibility for, or for exercising a significant influence on, the management of one or more aspects of the Authorised Firm's business.
2. Examples of a Responsible Officer might include an individual responsible for the overall strategic direction of an Authorised Firm or a regional manager to whom a Senior Executive Officer reports and from whom he takes direction.
3. The DFSA would expect the Operator of a Fund to appoint at least one individual other than the Senior Executive Officer to carry out Senior Manager functions in relation to the Fund such as managing operational risk and other internal controls. [Added][VER4/04-06]

10.2.3 An Authorised Individual may perform one or more Licensed Functions for one or more Authorised Firms.**Guidance**

1. In considering whether to grant an individual Authorised Individual status with respect to more than one Authorised Firm, the DFSA will consider each Licensed Function to be carried out and the allocation of responsibility for that individual between the Authorised Firms.
2. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

10.3 Mandatory appointments**10.3.1** An Authorised Firm must make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer;
- (c) Compliance Officer; and
- (d) Money Laundering Reporting Officer.

Guidance

1. This Guidance addresses a range of circumstances:
 - a. one individual performing more than one function in a single firm, as contemplated in Rule 10.3.1;
 - b. more than one individual performing one function in a single firm, not addressed by that Rule;

- c. one individual performing a single function in more than one firm, also not addressed by that Rule.
2. The DFSA will only authorise an individual to perform more than one Licensed Function or combine Licensed Functions with other functions where it is satisfied that the individual is fit and proper to perform each Licensed Function or combination of Licensed Functions concerned. [Amended][VER5/06-06]
3. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.
4. Notwithstanding this Rule, an Authorised Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not be expected to be combined with any other functions unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Authorised Firm. This may be possible in the case of a Branch, where monitoring and controlling of the individual (carrying out more than one role in the Branch) is conducted from the firm's home state by an appropriate individual for each of the relevant Licenced Functions. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible. [Amended][VER5/06-06]
5. In what it considers to be exceptional circumstances, the DFSA may register more than one individual to perform the Licensed Function of Compliance Officer in respect of different internal business divisions within a large Authorised Firm. In this regard the DFSA may consider, amongst other things, the nature, scale and complexity of the activities of the firm, the clarity of demarcation between areas of responsibility, the potential for gaps in responsibility, and processes of communication with the DFSA.
6. The DFSA may also register an individual as the Compliance Officer for more than one Authorised Firm. The DFSA will only do this where it is satisfied that the individual is able to carry out his functions effectively in each firm taking into consideration factors such as the amount and nature of business conducted by the firms. Each Authorised Firm has a duty under GEN 5 to monitor its compliance arrangements to ensure, as far as reasonably practicable, that it complies with all legislation applicable in the DIFC.

[Amended][RM65][VER11/08-09]

10.3.2 The Authorised Individuals referred to in Rule 10.3.1(a), (c) and (d) must be resident in the U.A.E.

Guidance

1. In appropriate circumstances, the DFSA may waive the requirement for a Compliance Officer or MLRO to be resident in the UAE. In determining whether to grant a waiver, the DFSA will consider a range of factors on a case by case basis focused on whether the firm can demonstrate that it has appropriate compliance arrangements (see GEN 5.3). These factors may include, but are not limited to: the nature, scale and complexity of the activities of the firm; the ability of a remote officer to carry out his functions in differing time zones and a differing working week; the size, resourcing and capabilities of a remote compliance function; the ability of a remote officer to liaise and communicate readily with the DFSA; and the ability of a remote officer and whether the remote officer is able effectively to undertake or supervise regular compliance monitoring and keep up to date with applicable Rules.

2. The DFSA will also take into account factors such as the relevant regulatory experience of the proposed Authorised Individual and whether the applicant firm has previously been subject to financial services regulation.

[Amended][RM65][VER11/08-09]

10.3.3 The Authorised Individuals referred to in Rule 10.3.1 (c) and (d) must not act also as trustees on behalf of the Trust Service Provider. [Added] [VER3/01-06]

10.3.4 An Authorised Firm which is a Body Corporate, other than a Limited Liability Partnership whose head office and registered office is located in the DIFC, must register with the DFSA all of its Directors as Licensed Directors.[Amended][VER7/02-07][RM41/07]

10.3.5 An Authorised Firm which is a Partnership, including a Limited Liability Partnership whose head office is located in the DIFC must register each Partner as a Licensed Partner. [Amended][VER7/02-07][RM41/07]

11 COMPETENCE

11.1 Application

11.1.1 This chapter applies to:

- (a) an Authorised Firm;
- (b) an applicant for a Licence to be an Authorised Firm;
- (c) an Authorised Individual; or
- (d) an applicant for Authorised Individual status.

11.1.2 In this chapter, the term 'Authorised Firm' includes an applicant for a Licence to be an Authorised Firm.

11.2 Assessing competence

11.2.1 An Authorised Firm must not permit an individual to perform a Licensed Function on its behalf, except as permitted by section 9.4, unless that individual is an Authorised Individual who has been assessed by the Authorised Firm as competent to perform that Licensed Function in accordance with Rule 11.2.2. [Amended][VER5/06-06]

11.2.2 In assessing the competence of an individual, an Authorised Firm must:

- (a) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
- (b) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
- (c) determine whether the individual holds any relevant qualifications with respect to the Licensed Function or Licensed Functions performed, or proposed to be to performed, within the Authorised Firm;
- (d) determine the individual's relevant experience; and
- (e) determine the individual's knowledge of the Authorised Firm's relevant systems and procedures with respect to the type of business that is to be, or is being, conducted by the individual on behalf of the Authorised Firm.

11.2.3 An Authorised Firm must be satisfied that an Authorised Individual:

- (a) continues to be competent in his proposed role;
- (b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
- (c) is able to apply his knowledge.

11.3 Qualifications DELETED

[Amended][VER5/06-06]

11.4 Systems and controls

11.4.1 An Authorised Firm must have appropriate arrangements in place to ensure that an individual assessed as being competent under Rule 11.2.1 maintains his competence.

11.4.2 An Authorised Firm must ensure, in the case of individuals seeking to perform the Licensed Functions of Money Laundering Reporting Officer, Compliance Officer or Senior Executive Officer, that such individuals are able to demonstrate sufficient knowledge of relevant anti money laundering requirements.

Guidance

In considering whether individuals have sufficient knowledge of relevant anti money laundering requirements, the DFSA may be satisfied where the individual can demonstrate receipt of appropriate training specifically relevant to such requirements. See AML section 3.9.

11.4.3 An Authorised Firm must establish and maintain systems and controls which will enable it to comply with chapter 11.

- 11.4.4** (1) An Authorised Firm must keep records of the assessment process undertaken for each individual under this chapter.
- (2) These records must be kept for a minimum of six years from the date of the assessment.

12 CHANGES TO AN AUTHORISED INDIVIDUAL STATUS

12.1 Application

12.1.1 This chapter applies to a Person who is:

- (a) an Authorised Firm; or
- (b) an Authorised Individual.

Guidance

This chapter addresses applications or requests to:

- a. extend the scope of an Authorised Individual status to additional Licensed Functions under Article 53(3);
- b. impose conditions or restrictions or additional conditions or restrictions on the grant of Authorised Individual status under Article 57(2);
- c. vary or withdraw conditions or restrictions applicable to Authorised Individual status under Article 57(2);
- d. withdraw Authorised Individual status under Article 58(3); and
- e. withdraw authorisation in relation to one or more Licensed Functions of an Authorised Individual under Article 58(4).

12.2 Submitting an application or request

12.2.1 An application to extend the scope of an Authorised Individual status to other Licensed Functions may be made by the Authorised Individual and Authorised Firm by the completion and submission of the appropriate form in AFN.

12.2.2 An Authorised Firm or Authorised Individual requesting:

- (a) the imposition, variation or withdrawal of a condition or restriction;
- (b) withdrawal of Authorised Individual status; or
- (c) withdrawal of authorisation in relation to one or more Licensed Functions;

must, subject to Rule 12.2.3, for (a) submit such request in writing to the DFSA, and submit a request for (b) and (c) by completing the appropriate form in AFN.

12.2.3 A request made for the variation or withdrawal of a condition or restriction may only be made after the expiry of any period within which an appeal to the Regulatory Appeals Committee relating to the relevant condition or restriction may commence under Article 28.

12.2.4 In making an application under Rule 12.2.1, the Authorised Individual or Authorised Firm must have due regard to the relevant matters contained in chapter 9 as if a reference to an application for Authorised Individual status in that chapter is a reference to an application to extend the scope of an Authorised Individual status to other Licensed Functions.

Guidance

1. Notification of the determination of an application under Rule 12.2.1 or request under Rule 12.2.2 will be made in accordance with Articles 55 and 57, further described in chapter 13.
2. In considering the suitability of such an application or request the DFSA may take into account any matter referred to in App1.3, Guidance on fitness and propriety for Authorised Individuals.

12.3 Dismissal or resignation of an Authorised Individual

12.3.1 An Authorised Firm must request the withdrawal of an Authorised Individual status within seven days of the Authorised Individual ceasing to be employed by the Authorised Firm to perform a Licensed Function.

12.3.2 In requesting the withdrawal of an Authorised Individual status, the Authorised Firm must submit the appropriate form in AFN, including details of any circumstances where the Authorised Firm may consider that the individual is no longer fit and proper.

12.3.3 If an Authorised Individual is dismissed or requested to resign, a statement of the reason, or reasons, for the dismissal or resignation must be given to the DFSA by the Authorised Firm.

12.3.3 If the Authorised Individual was acting as trustee, the Trust Service Provider must confirm to the DFSA in writing that a new trustee has been appointed in place of the trustee in question. [Added] [VER3/01-06]

13 DETERMINATION OF APPLICATIONS

Guidance

1. Under Article 57, the DFSA may impose, vary or withdraw conditions or restrictions on the granting of Authorised Individual status or an extension of such status.
2. Article 55 provides that the DFSA may in its absolute discretion reject an application for Authorised Individual status, or an extension of such status, and shall accordingly notify the individual and the Authorised Firm in writing without undue delay, together with the reasons where requested.
3. Upon determining to grant Authorised Individual status, the DFSA shall notify in writing, without undue delay, the Authorised Firm and the individual of such decision, setting out:
 - a. the date on which the authorisation shall be deemed to take effect;
 - b. the Licensed Function to which the authorisation relates; and
 - c. any conditions and restrictions applicable to the Authorised Individual's status.
4. The date in 3a. above may not be confirmed immediately where certain pre-conditions have been specified that the applicant must fulfil, for example, the passing of a specified examination or attendance on a specified course, or where confirmation is awaited of the acceptance of any imposed conditions or restrictions.

14 APPEALS

Guidance

1. Under Article 27, an officer, employee or agent may appeal against any determination by the DFSA in relation to:
 - a. his application for Authorised Individual status or for extension of his status;
 - b. the imposition, variation or withdrawal of a condition or restriction to the grant of Authorised Individual status.
2. Under Article 28, an Authorised Firm or individual wishing to appeal must submit a written notice within 30 days of the notification of the relevant decision, or within such further period not exceeding 30 days as may be approved by the Regulatory Appeals Committee where it is satisfied that such an appeal is appropriate in the circumstances.
3. The form of submission that an appeal must take is specified in the rules of procedure of the Regulatory Appeals Committee.

PART 4 - CONTROLLERS

15 CHANGE IN CONTROL

15.1 Application

15.1.1 This chapter applies to:

- (a) an Authorised Firm; or
- (b) a Person who is, or is proposing to become, a Controller specified in Rule 15.1.2.

15.1.2 (1) A Controller is a Person who, either alone or with any Associate:

- (a) holds 10% or more of an Authorised Firm's shares;
- (b) is entitled to exercise, or control the exercise, of 10% or more of the voting rights in respect of an Authorised Firm;
- (c) holds shares or voting rights of an Authorised Firm which enables the Person to exercise significant influence over the management of the Authorised Firm; or
- (d) meets one or more of the conditions of (a), (b), or (c) in respect of a Holding Company of an Authorised Firm.

[Amended][RM65][VER11/08-09]

(2) In (1), a share means:

- (a) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with share capital, allotted shares;
- (b) in relation to an Authorised Firm or a Holding Company of an Authorised Firm with capital but no share capital, rights to a share in the capital of the Authorised Firm or a Holding Company of an Authorised Firm; or
- (c) in relation to an Authorised Firm or a Holding Company of an Authorised Firm without capital:
 - (i) interests conferring any right to share in the profits, or liability to contribute to the losses, of the Authorised Firm or a Holding Company of an Authorised Firm; or
 - (ii) giving rise to any obligation to contribute to the debt or expenses of an Authorised Firm or a Holding Company of an Authorised Firm in the event of a winding up of the Authorised Firm or a Holding Company of the Authorised Firm.

15.2 Applications and notifications concerning a change in control

Guidance

1. In considering an application for approval, or a notification, of a change in control, the DFSA must be satisfied that an Authorised Firm remains fit and proper in light of any changes in control.
2. Where the DFSA deems a Controller to be unacceptable and the Authorised Firm fails to ensure the Controller is removed or take other specified action to the DFSA's satisfaction, the DFSA may withdraw the Authorised Firm's Licence under Article 64.

15.2.1 (1) Subject to (2) and (3), a Person specified in Rule 15.1.1(b) must not act as a Controller of an Authorised Firm unless he, or the Authorised Firm, has:

- (a) obtained prior approval pursuant to Rule 15.2.3; or
- (b) made a prior notification pursuant to Rule 15.2.3 or Rule 15.2.5, as may be applicable.

(2) The requirement in (1) does not apply to a Person who becomes a Controller by virtue of:

- (a) having acquired Shares for the sole purpose of clearing and settling within a short settlement cycle; or
- (b) holding Shares in a custodian capacity, provided that the Person can only exercise the voting rights attached to the Shares under instructions given in writing.

(3) The requirement in (1) does not apply to an Authorised Firm or a Regulated Financial Institution, that becomes a Controller by virtue of holding Shares or holding or exercising voting rights as a result of:

- (a) providing the underwriting of financial instruments; or
- (b) placing financial instruments on a firm commitment basis,

provided that voting rights are not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

[Amended][RM65][VER11/08-09]

15.2.2 An Authorised Firm must take reasonable steps to monitor changes or proposed changes concerning:

- (a) its Controllers;
- (b) the level of control of existing Controllers; and

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- (c) significant changes in the circumstances of existing Controllers which might reasonably be considered to affect the fitness and propriety of the Authorised Firm.

Guidance

1. Steps taken by an Authorised Firm to comply with Rule 15.2.2 must have regard to the approval and notification requirements set out in this chapter.
2. Reasonable steps in Rule 15.2.2 should include, but are not limited to, the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

15.2.3 (1) Where the Authorised Firm is:

- (a) a Body Corporate incorporated under the Companies Law 2004 or the Limited Liability Partnership Law 2004;
- (b) a Partnership established under the General Partnership Law 2004; or
- (c) an unincorporated association formed within the jurisdiction of the DIFC;

and a Person becomes a Controller or the level of control changes as set out in Rule 15.1.2(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 15.1.1(b) must submit a notification or application to the DFSA as applicable.

- (2) The events mentioned in (1) which trigger a written application for prior approval are as follows:
 - (a) when a holding is increased from below 10% to 10% or more;
 - (b) when a holding is increased from below 30% to 30% or more;
 - (c) when a holding is increased from below 50% to 50% or more; or
 - (d) when any significant management influence as identified under Rule 15.1.2(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.
- (3) The event mentioned in (1) which triggers a written notification is when a holding is decreased from more than 50% to 50% or less.
- (4) An application for prior approval or notification must be submitted to the DFSA using the appropriate form in AFN.

[Amended][RM65][VER11/08-09]

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- 15.2.4** (1) An Authorised Firm must submit the notification or application required in Rule 15.2.3(1) not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.
- (2) Where an Authorised Firm is not reasonably able to comply with (1), the Person identified in Rule 15.1.1(b) must submit the required notification or application for approval.
- (3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in (2) of their obligations under this chapter.

- 15.2.5** (1) Where the Authorised Firm does not fall within Rule 15.2.3(1)(a), (b) or (c) and a Person becomes a Controller, or the level of control changes as set out in Rule 15.1.2(1), as a result of the events described in (2) below, the Authorised Firm or the Person specified in Rule 15.1.1(b) must submit a notification to the DFSA.
- (2) The events mentioned in (1) which trigger a notification are as follows:
- (a) when a holding is increased from below 10% to 10% or more;
 - (b) when a holding is increased from below 30% to 30% or more;
 - (c) when a holding is increased from below 50% to 50% or more;
 - (d) when a holding is decreased from more than 50% to 50% or less; or
 - (e) when any significant management influence as identified under Rule 15.1.2(1)(c) or (d) occurs which has not previously been disclosed to the DFSA.
- (3) A notification must be submitted to the DFSA using the appropriate form in AFN.

[Amended][RM65][VER11/08-09]

- 15.2.6** (1) An Authorised Firm must submit the notification required in Rule 15.2.5 not less than 28 days in advance of a proposed change or, where this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.
- (2) Where an Authorised Firm has not complied with (1), the Person identified in Rule 15.1.1(b) must submit the required notification.
- (3) In the event of (2), an Authorised Firm must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in Rule 15.1.1(b) of his obligations under this chapter.

Guidance

1. In determining an application for approval made in accordance with Rule 15.2.3 the DFSA will consider all relevant information.
2. The DFSA will endeavour to determine applications made in accordance with Rule 15.2.3 within 28 days of receipt of all the required information being submitted, or such shorter time as may be agreed in exceptional circumstances.
3. The DFSA will only respond to a notification made in accordance with Rule 15.2.5 if it requires further information to determine the fitness and propriety of the Authorised Firm in light of the changes referred to in the notification.
4. Where the DFSA requires further information in relation to a notification made in accordance with Rule 15.2.5, it will seek to request such information within 28 days of receipt of the original notification.
5. Rules 15.2.3 and 15.2.5 also apply in certain circumstances where a change in control has occurred, without a Controller having taking any action. This may arise, for example, after a capital reorganisation. [Amended][RM65][VER11/08-09]

15.3 Annual reporting of controllers

15.3.1 An Authorised Firm must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

15.3.2 The Authorised Firm's annual report on its Controllers must include:

- (a) the name of each Controller;
- (b) the current holding of each Controller, expressed as a percentage; and
- (c) any other Controller specified in Rule 15.1.2(1)(c) or (d).

Guidance

1. An Authorised Firm may satisfy the requirements of Rule 15.3.2 by submitting a corporate structure diagram containing the relevant information.
2. Where the DFSA deems that a Controller is unacceptable, it will notify the Authorised Firm in writing to remove the Controller without undue delay, or take other specified action to the satisfaction of the DFSA.

PART 5 – ENDORSEMENT [ADDED][RM58][VER10/07-08]**16 ENDORSEMENT FOR RETAIL CLIENTS****16.1 Application**

16.1.1 This chapter applies to an Authorised Firm, including an applicant, carrying on or intending to carry on a Financial Service with or for a Retail Client.

16.2 Application for an endorsement

- 16.2.1**
- (1) An Authorised Firm may apply to the DFSA for an endorsement on its Licence, including variation of such an endorsement, to carry on a Financial Service with or for a Retail Client.
 - (2) The DFSA may in its absolute discretion refuse to grant an endorsement or a variation of an endorsement pursuant to an application under (1).
 - (3) Upon refusing to grant an endorsement or a variation to an endorsement the DFSA must without undue delay inform the applicant in writing of such refusal and, if requested by the applicant, the reasons for such refusal.
 - (4) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to refuse an application for an endorsement or a variation to an endorsement made under this Part.

APP1 GUIDANCE ON FITNESS AND PROPRIETY

A1.1 Introduction

Guidance

1. This appendix provides guidance on the matters which the DFSA may take into account when assessing, for the purpose of AUT, the fitness and propriety of:
 - a. an applicant for a Licence to be an Authorised Firm;
 - b. an Authorised Firm;
 - c. an applicant for Authorised Individual status; and
 - d. an Authorised Individual.
2. In every case, the Person must satisfy the DFSA that he is fit and proper. The DFSA will have regard to current, past and anticipated future factors.
3. In this appendix:
 - a. an Authorised Firm includes an applicant for a Licence to be an Authorised Firm; and
 - b. an Authorised Individual includes an applicant for Authorised Individual status.

A1.2 An Authorised Firm

Guidance

Locations of offices and close links

1. An Authorised Firm will need to satisfy the DFSA that it is in compliance with GEN chapter 6. In particular:
 - a. GEN section 6.5 requires that if an Authorised Firm is a Body Corporate constituted under the laws of the DIFC it must maintain its head office and registered office in the DIFC. If the Authorised Firm is a Partnership with its head office in the DIFC, it must carry on business in the DIFC. In considering the location of an Authorised Firm's head office, the DFSA shall have regard to the location of its directors, partners, and senior management with respect to its strategic, operational and administrative arrangements.
 - b. GEN section 6.6 concerns Close Links. The DFSA must be satisfied that the existence of Close Links do not prevent the effective supervision of the Authorised Firm by the DFSA. Where the DFSA is not satisfied concerning an Authorised Firm's Close Links, an application for a Licence or an extension of the scope of a Licence will not be granted, and an existing Licence may be revoked.

Legal status

2. In respect of Effecting Contracts of Insurance, Carrying Out Contracts of Insurance, Acting as the Trustee of a Fund, or Operating a Collective Investment Fund, an Authorised Firm is required to be a Body Corporate in accordance with AUT Rules 3.2.2(2) and 3.2.2(4) respectively.

[Amended][VER4/04-06] [Amended][VER6/08-06]

3. In respect of Accepting Deposits or seeking to Accept Deposits, an Authorised Firm must be a Body Corporate or Partnership in accordance with AUT Rule 3.2.2(3).

General

4. An Authorised Firm not satisfying the DFSA with respect to the location of its offices, Close Links and legal status (as applicable), will not be considered fit and proper.
5. An Authorised Firm that satisfies the matters described under Guidance notes 1, 2 and 3 above will also need to satisfy the DFSA with respect to its compliance with all applicable Rules including, but not limited to, the remaining matters detailed in Guidance notes 6 to 14 below.
6. The DFSA will have regard to all relevant matters, whether arising in the DIFC or elsewhere. The DFSA will determine the materiality of any information for the purposes of considering whether an Authorised Firm has demonstrated, or continues to demonstrate, that it is fit and proper.
7. In considering any specific matters, the DFSA may request reviews by any appropriately skilled third party on any aspect of the Authorised Firm's proposed or actual activities or the environment in which the applicant predominantly operates. The DFSA must agree the scope of any reviews performed and review its output, although such reviews will, ordinarily, need to be agreed beforehand to be at the applicant's sole expense.
8. The DFSA may request or require any information which it considers relevant to its consideration of an application by an Authorised Firm.

Background and history

9. The DFSA will have regard to:
 - a. any matter affecting the propriety of the Authorised Firm's conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
 - b. whether an Authorised Firm has ever been the subject of disciplinary procedures by a government body or agency or any self regulating organisation or other professional body;
 - c. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self regulatory organisation, Financial Services Regulator, Authorised Market Institution or regulated exchange or clearing house;

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- d. whether an Authorised Firm has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
 - e. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by an Authorised Firm in excess of \$10,000 or awards that total more than \$10,000;
 - f. whether an Authorised Firm has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; or
 - g. whether an Authorised Firm has been open and truthful in all its dealings with the DFSA.

Ownership and group

- 10. The DFSA will have regard to:
 - a. the Authorised Firm's position within its Group, including any other relationships that may exist between the Authorised Firm's affiliates, Controllers, Associates or other Close Links;
 - b. any information provided by other regulators in relation to the Authorised Firm or any entity within its Group;
 - c. the background, history and principal activities of the Authorised Firm's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Group, and the degree of influence that they are, or may be, able to exert over the Authorised Firm and/or its activities; or
 - d. whether the Authorised Firm or its Group is subject to any adverse effect or considerations arising from its country of incorporation or the country (or countries) of incorporation of its Controllers. In considering such matters, the DFSA will also have regard to the type and level of regulatory oversight in the country or countries of incorporation referred to above, the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA has adopted in its Rules.

Resources

- 11. The DFSA will have regard to whether the Authorised Firm has sufficient resources of all types, including:
 - a. the Authorised Firm's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Firm appears in a position to be able to continue to comply with such rules;
 - b. the extent to which the Authorised Firm is or may be able to secure additional capital in a form acceptable to the DFSA where this appears likely to be necessary at any stage in the future;
 - c. the availability of sufficient competent human resources to conduct and manage the Authorised Firm's affairs, in addition to having a sufficient type and number of Authorised Individuals to conduct and manage the Authorised Firm's Financial Services;

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- d. whether the Authorised Firm has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;
 - e. whether the Authorised Firm has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering legislation, including arrangements to ensure all relevant staff are aware of their obligations; and
 - f. the impact of other members of the Authorised Firm's Group on the adequacy of the Authorised Firm's resources and in particular, though not exclusively, the extent to which the Authorised Firm is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator.

Collective suitability of individuals or other persons connected to the Authorised Firm

12. Notwithstanding that individuals performing Licensed Functions must be Authorised Individuals and that an Authorised Firm must appoint certain Authorised Individuals to certain functions as stated in chapter 10 of AUT, the DFSA will also consider:
 - a. the collective suitability of all of the Authorised Firm's staff taken together, and whether there is a sufficient range of individuals with appropriate skills and experience to understand, operate and manage the Authorised Firm's affairs in a sound and prudent manner;
 - b. the composition of the Governing Body of the Authorised Firm, including the presence of non-executive members taking into consideration the nature, size and complexity of the Authorised Firm's activities, the generally accepted standards of corporate governance applicable to the relevant industry, and the position of the Authorised Firm in any Group to which it belongs.
 - c. the individual or collective suitability of any Person or Persons connected with the Authorised Firm;
 - d. the extent to which the Authorised Firm has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities; and
 - e. whether the Authorised Firm has appointed auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the Authorised Firm's activities.

[Amended][VER8/06/07][RM43/07]

The DFSA's Rulebook

13. In assessing whether an Authorised Firm or an Authorised Individual is fit and proper, the DFSA will also consider the degree to which the Authorised Firm or Authorised Individual is ready, willing and able to conduct the relevant activities in accordance with the Rules and other legislation applicable in the DIFC.
14. An Authorised Firm or Authorised Individual which fails to comply with any one or more Rules of the DFSA may also be in breach of one or more of the Principles for Authorised Firms or the Principles for Authorised Individuals. Accordingly, the Authorised Firm or the Authorised Individual may then be liable for disciplinary or enforcement action. In certain circumstances a breach of a Rule or Principle may call into question whether that Person remains fit and proper.

A1.3 An Authorised Individual

Guidance

Integrity

1. In determining whether an Authorised Individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:
 - a. the propriety of an Authorised Individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
 - b. a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
 - c. whether the Authorised Individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self regulatory organisation or other professional body;
 - d. a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;
 - e. a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;
 - f. a dismissal or a request to resign from any office or employment;
 - g. whether an Authorised Individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;
 - h. an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;
 - i. an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against an Authorised Individual in excess of \$10,000 or awards that total more than \$10,000;
 - j. an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;
 - k. whether an Authorised Individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that person was connected with that body corporate or within one year of such a connection;

- l. whether an Authorised Individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that person was connected with that partnership or within a year of such a connection;
- m. whether an Authorised Individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;
- n. whether an Authorised Individual has been censured, disciplined, publicly criticised by or the subject of a court order at the instigation of any DFSA, or any officially appointed inquiry, or Financial Services Regulator; or
- o. whether an Authorised Individual has been candid and truthful in all his dealings with the DFSA.

Competence and capability

2. In determining the competence and capability of an Authorised Individual, the DFSA may have regard to any factors, whether in the U.A.E. or elsewhere including, but not limited to, the following:
 - a. the securing of appropriate examination passes and assessments where required by AUT chapter 11;
 - b. whether an Authorised Individual is capable of performing functions which his Authorised Firm or applicant employs or intends to employ him to perform.

Financial soundness

3. In determining the financial soundness of an Authorised Individual, the DFSA may have regard to any factors including, but not limited to, the following:
 - a. whether an Authorised Individual is able to meet his debts as they fall due; or
 - b. whether an Authorised Individual has been adjudged bankrupt, been the subject of a receiving or administration order, had a bankruptcy petition served on him, had his estate sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in the U.A.E. or elsewhere.