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# The DFSA Rulebook

## Authorised Market Institutions

### **(AMI)**

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## **1 INTRODUCTION**

### **1.1 Application**

- 1.1.1**
- (1) Subject to (2), this module applies to every Person who carries on, or intends to carry on, either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC.
  - (2) This module does not apply to a Recognised Body or a Person who intends to carry on a Financial Service as a Recognised Body.
- 1.1.2**
- (1) Chapter 6 also applies to a Person who is, or proposes to become, a Controller as specified in Rule 6.1.2.
  - (2) Chapter 11 also applies to an Authorised Market Institution's Money Laundering Reporting Officer.

#### **Guidance**

#### **Interpretations**

1. References to Articles in this module are references to Articles in the Regulatory Law unless stated otherwise.

#### **The Regulatory Law 2004 and the Markets Law 2004**

2. The Regulatory Law establishes a principle based framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions. This framework is supplemented by some supervisory powers and other requirements in relation to Authorised Market Institutions in the Markets Law. The Laws provide for the creation of Rules in relation to these activities. This module contains those Rules.
3. The Markets Law further establishes a framework in relation to how an Authorised Market Institution administers and operates an Official List of Securities and stipulates some specific Rule requirements in respect of this, for example an Authorised Market Institution must have a set of listing rules.

## **1.2 Financial Services, ancillary services, official lists of securities and Authorised Market Institutions**

### **Guidance**

#### **Financial Services**

1. Articles 41 and 42 prohibit 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 or by a Recognised Body in respect of those Financial Services set out in its Recognition Notice. REC provides relevant Rules in respect of Recognised Bodies and, accordingly, Recognised Bodies are not the subject of this module.
2. GEN prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution.

#### **Ancillary Services**

3. Article 44(1) prohibits Ancillary Services from being carried on in or from the DIFC unless they are carried on by an Ancillary Services Provider whose registration allows it to do so.
4. The ASP module prescribes the Ancillary Services which may be carried on by an Ancillary Services Provider. An exchange, clearing house or settlement operator already established outside of the DIFC may, if not carrying on a Financial Service in or from the DIFC, instead apply to register to conduct the Ancillary Service of Operating a Management Office, Operating a Local Services Office or both in or from the DIFC.

#### **Authorised Market Institutions and regulatory processes**

5. This module sets out the DFSA's regulatory process in relation to Authorised Market Institutions. The regulatory processes contained here supplement other Rules that relate to Authorised Market Institutions. These are set out in the GEN, SUP, ENF and OSR modules of the Rulebook.
6. The following modules of the Rulebook, in addition to this module, apply to Authorised Market Institutions:

Module	Applicable chapters
General (GEN)	1, 2, 3, 5, 6, 7 and 8
Supervision (SUP)	Chapters 2 - 8
Enforcement (ENF)	All chapters
Offered Securities Rules (OSR)	7

#### **The AMI module**

7. Chapters 2 to 5 and chapter 7 set out the requirements for a new Licence application and also an application by an existing Authorised Market Institution to change the scope of its existing Licence.

8. Chapters 8, 9, 10 and 11 contain Rules relating to the ongoing obligations and supervision of Authorised Market Institutions and are in addition to those set out in SUP and include a series of notification requirements, anti money laundering provisions and supervisory directions that may be made by the DFSA to Authorised Market Institutions under Article 9 of the Markets Law.
9. Chapter 12 refers to ENF which describes the DFSA's enforcement powers under the Regulatory Law and outlines the policy for using these powers. ENF also establishes the framework for the DFSA's decision making process and the giving of notice in relation to enforcement powers.
10. Chapter 13 refers to specific requirements applying to Authorised Market Institutions undertaking Islamic Financial Business under the Law Regulating Islamic Financial Business 2004.

**Change in control**

11. Chapter 6 of this module covers the requirements with regard to changes and proposed changes to an Authorised Market Institution's Controllers.

**Official lists of securities**

12. Chapter 7 contains a specific Licensing Requirement for applicants who wish to maintain an Official List of Securities. Chapter 10 contains some disclosure requirements in respect of listing decisions by an Authorised Market Institution and also some supervisory powers in relation to listings. Other Rules in respect of Authorised Markets Institutions and Official Lists of Securities are contained in OSR chapter 7.

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## **2 APPLICATION FOR A LICENCE**

### **2.1 Application**

**2.1.1** This chapter applies to a Person who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC.

**2.1.2** A Person who intends to carry on either or both of the Financial Services is referred to in this chapter as an applicant.

#### **Guidance**

An applicant, or potential applicant, to be an Authorised Market Institution is advised to contact the DFSA to discuss its application at the earliest possible time, but at least prior to the submission of any written documentation. In particular, the appropriateness of such a Licence will be discussed in relation to the proposed business activities.

### **2.2 Licence application**

**2.2.1** An applicant who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House must apply to the DFSA for a Licence in accordance with the Rules in this chapter.

#### **Guidance**

1. If a Person intends to carry on a Financial Service which is not:
  - a. Operating an Exchange; or
  - b. Operating a Clearing House;it should apply to the DFSA for a Licence in accordance with the Rules in AUT.
2. If a Person intends to carry on the Financial Service of Operating an Exchange or Operating a Clearing House without having a physical presence in the DIFC, it should apply for a Recognition Notice in accordance with the Rules in REC.

**2.2.2** The DFSA will only consider an application for a Licence from an applicant who is a Body Corporate and who is not an Authorised Firm or an applicant to be an Authorised Firm.

**2.2.3** A Person applying for a Licence must submit a written application to the DFSA:

- (a) demonstrating how the applicant intends to satisfy the Licensing Requirements and any other applicable requirements; and
- (b) with copies of any relevant agreements or other information in relation to the application.

[Amended][VER4/10-07][RM50/07]



**Guidance**

[Deleted][VER5/12-07][RM52/07]

- 2.2.4** (1) An applicant will only be authorised to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House if the DFSA is satisfied that the applicant:
- (a) has satisfied or will satisfy the Licensing Requirements in relation to the nature of the Financial Services concerned;
  - (b) if applicable, will maintain an Official List of Securities, in a proper and independent manner;
  - (c) is fit and proper; and
  - (d) will conduct and manage its affairs in a sound and prudent manner.
- (2) In making the assessment as to whether an applicant is fit and proper, the DFSA will consider:
- (a) the applicant's connection with its Controllers or any other Person;
  - (b) the Financial Services concerned;
  - (c) any matter which may harm or may have harmed the integrity or the reputation of the DIFC;
  - (d) the activities of the applicant, the associated risks and accumulation of risks, that those activities pose to the DFSA's objectives;
  - (e) 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; and
  - (f) any other relevant matters.
- 2.2.5** In assessing an application for a Licence, the DFSA may:
- (a) carry out any enquiries which it considers appropriate including enquiries independent of the applicant;
  - (b) require the applicant to provide additional information in such form as the DFSA considers appropriate;
  - (c) require any information submitted by the applicant to be verified in such manner as the DFSA may specify; and
  - (d) take into account any information which the DFSA considers relevant.

**Guidance**

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 in accordance with Article 46(2).

- 2.2.6**
- (1) In assessing an application for a Licence, the DFSA may, by means of written notice, indicate the legal form that the applicant must 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 APPLICATION TO CHANGE THE SCOPE OF A LICENCE**

#### **3.1 Application**

**3.1.1** This chapter applies to an Authorised Market Institution 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.

**3.1.2** An Authorised Market Institution 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 including an assessment of how it intends to satisfy the Licensing Requirements in relation to the new Licence scope.

##### **Guidance**

Where an Authorised Market Institution applies to change the scope of its Licence, it should provide at least the following information:

- a. particulars of the new Financial Service or varied scope and the date of the proposed commencement of activities;
- b. a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;
- c. 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 Market Institution will be able to comply with any additional regulatory requirements including the Licensing Requirements; and
- d. if the Authorised Market Institution is reducing its activities and it has existing Members who may be affected by the cessation of a Financial Service, details of any transitional arrangements.

## **4 DETERMINATION**

### **4.1 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.
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 Market Institution.
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 Market Institution in writing of the decision.

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## **5 WITHDRAWAL OF A LICENCE**

### **5.1 Application**

**5.1.1** This chapter applies to an Authorised Market Institution.

### **5.2 Withdrawal of a licence at an Authorised Market Institution's request**

- 5.2.1**
- (1) An Authorised Market Institution must continue to carry on every Financial Service it is authorised to conduct under its Licence until its Licence is withdrawn or the DFSA consents in writing.
  - (2) An Authorised Market Institution seeking to have its Licence withdrawn must submit a request in writing stating:
    - (a) the reasons for the request;
    - (b) the date on which it will cease to carry on Financial Services in or from the DIFC;
    - (c) where applicable, how persons with Securities admitted to an Official List of Securities are affected and any alternative arrangements made for the listing and trading of the relevant Securities; and
    - (d) that it has discharged, or will discharge, all obligations owed to its users in respect of whom the Authorised Market Institution has carried on Financial Services in or from the DIFC.

#### **Guidance**

1. The DFSA will need to be satisfied when considering requests under Rule 5.2.1, that an Authorised Market Institution has made appropriate arrangements with respect to its existing users (including the receipt of consent where required) and, in particular:
  - a. whether there may be a long period in which the business will be wound down or transferred;
  - b. whether money and other assets belonging to users must be returned to them; and
  - c. 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 Market Institution 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 Market Institution 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 Market Institutions should discuss these arrangements with the DFSA.
4. The DFSA may refuse a request for the withdrawal of a Licence where it appears that users and customers may be adversely affected.
5. The DFSA may also refuse a request for the withdrawal of a Licence where:
  - a. the Authorised Market Institution 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, the Markets Law or Rules in relation to an Authorised Market Institution for two years from the date on which the Licence was withdrawn.

### **5.3 Withdrawal of a licence on the DFSA's initiative**

#### **Guidance**

In section 5.2 above, an application to withdraw a Licence will be at the Authorised Market Institution's request. Under Article 51, the DFSA may act on its own initiative to withdraw an Authorised Market Institution's Licence in cases when the Authorised Market Institution no longer has authority to carry on any Financial Service, is no longer meeting the conditions of its Licence or has failed to remove a Controller in the circumstances described in Article 64.

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## **6 CONTROLLERS**

### **6.1 Application**

**6.1.1** This chapter applies to:

- (a) an Authorised Market Institution; or
- (b) a Person who is, or is proposing to become, a Controller.

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

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

(2) In (1) a share means:

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

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## **6.2 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 Market Institution continues to satisfy the Licensing Requirements and remains fit and proper in light of any changes in control.
2. Where the DFSA deems a Controller to be unacceptable and the Authorised Market Institution fails to ensure the Controller is removed or take other specified action to the DFSA's satisfaction, the DFSA may withdraw the Authorised Market Institution's Licence under Article 64.

### **6.2.1** A Person must not act as a Controller of an Authorised Market Institution unless it, or the Authorised Market Institution, has:

- (a) obtained prior approval in accordance with Rule 6.2.3(2); or
- (b) made a prior notification in accordance with Rule 6.2.3(3) or Rule 6.2.5(2), as may be applicable.

### **6.2.2** An Authorised Market Institution must take reasonable steps to monitor changes or proposed changes concerning:

- (a) its Controllers;
- (b) the level of control of existing Controllers; and
- (c) significant changes in the circumstances of existing Controllers which might reasonably be considered to affect the fitness and propriety of the Authorised Market Institution.

### **Guidance**

1. Steps taken by an Authorised Market Institution to comply with Rule 6.2.2 must have regard to the approval and notification requirements set out in this chapter.
2. Reasonable steps in Rule 6.2.2 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.

### **6.2.3** (1) Where the Authorised Market Institution is incorporated under DIFC law and a Person proposes to become a Controller or, in respect of an existing Controller, the level of control changes in regard to the kind of shareholding and influence set out in Rule 6.1.2(1), as a result of the events described in (2) or (3) below, the Authorised Market Institution 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) a Person becomes a Controller;
  - (b) when a holding is increased from below 10% to 10% or more;



- (c) when a holding is increased from below 30% to 30% or more;
  - (d) when a holding is increased from below 50% to 50% or more; or
  - (e) when any significant management influence as identified under Rule 6.1.2(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.
- 6.2.4** (1) An Authorised Market Institution must submit the notification or application required in Rule 6.2.3(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 Market Institution is not reasonably able to comply with (1), the Person identified in Rule 6.1.1(b) must submit the required notification or application for approval.
- (3) In the event of (2), an Authorised Market Institution 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.
- 6.2.5** (1) Where the Authorised Market Institution is incorporated other than under DIFC law and a Person proposes to become a Controller or, in respect of an existing Controller, the level of control changes in regard to the kind of shareholding and influence set out in Rule 6.1.2(1), as a result of the events described in (2) or (3) below, the Authorised Market Institution must submit a notification to the DFSA.
- (2) The events mentioned in (1) which trigger a notification are as follows:
- (a) a Person becomes a Controller;
  - (b) when a holding is increased from below 10% to 10% or more;
  - (c) when a holding is increased from below 30% to 30% or more;
  - (d) when a holding is increased from below 50% to 50% or more;
  - (e) when a holding is decreased from more than 50% to 50% or less; or
  - (f) when any significant management influence as identified under Rule 6.1.2(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.
- 6.2.6** (1) An Authorised Market Institution must submit the notification required in Rule 6.2.5(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 Market Institution is not reasonably able to comply with (1), the Person identified in Rule 6.1.1(b) must submit the required notification.
- (3) In the event of (2), an Authorised Market Institution must notify the DFSA in writing of the relevant circumstances and must also, at the same time, notify the Person in (2) of his obligations under this chapter.

**Guidance**

1. In determining an application for approval made in accordance with Rule 6.2.3 the DFSA will consider all relevant information.
2. The DFSA will endeavour to determine applications made in accordance with Rule 6.2.3 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 Rules 6.2.3 or 6.2.5 if it requires further information in light of the changes referred to in the notification.
4. Rules 6.2.3 or 6.2.5 also applies 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 re-organisation.

**6.3 Annual reporting of controllers**

**6.3.1** An Authorised Market Institution must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

**6.3.2** The Authorised Market Institution's annual report on its Controllers must include:

- (a) the name and address of each Controller;
- (b) the current holding of each Controller (expressed as a percentage of issued capital); and
- (c) where a Person is a Controller by virtue of the operation of Rule 6.1.2(c) or (d), the circumstances that cause it to be such a Controller.

**Guidance**

An Authorised Market Institution may satisfy the requirements of Rule 6.3.2 by submitting a corporate structure diagram along with the relevant information.

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## **7 LICENSING REQUIREMENTS**

### **7.1 Application**

**7.1.1** This chapter applies to an Authorised Market Institution and an applicant for a Licence to be an Authorised Market Institution.

### **7.2 Licensing requirements**

#### **Guidance**

This section sets out the Licensing Requirements which an Authorised Market Institution must meet in order to be licensed and thereafter.

- 7.2.1**
- (1) An Authorised Market Institution must be able to satisfy the Licensing Requirements to the satisfaction of the DFSA at the time a Licence is granted and at all times thereafter.
  - (2) The Licensing Requirements referred to in (1) are set out in this section and contain requirements relating to:
    - (a) fitness and propriety;
    - (b) proper markets;
    - (c) financial resources;
    - (d) human and technology resources;
    - (e) systems and controls;
    - (f) Members' access to facilities;
    - (g) general safeguards for investors;
    - (h) identification, deterrence and prevention of Market Misconduct, financial crime and money laundering
    - (i) promotion and maintenance of standards;
    - (j) whistle blowing;
    - (k) clearing and settlement;
    - (l) transaction recording;
    - (m) safeguarding and administration of assets;
    - (n) Business Rules;

- (o) compliance with Business Rules;
- (p) complaints;
- (q) default rules;
- (r) an Official List of Securities; and
- (s) compliance with Listing Rules.

**Fit and proper - constitution, regulation and governance**

- 7.2.2** (1) An Authorised Market Institution must:
- (a) be fit and proper;
  - (b) be appropriately constituted;
  - (c) have taken appropriate measures to:
    - (i) satisfy the Licensing Requirements; and
    - (ii) perform its Regulatory Functions; and
  - (d) meet applicable standards of corporate governance as appropriate considering the nature, size and complexity of the Authorised Market Institution's activities. [Added][VER3/06/07]  
[RM43/07]
- (2) In particular, the Governing Body of an Authorised Market Institution must:
- (a) demonstrate integrity, competence and commitment to satisfying its obligations under the Licensing Requirements;
  - (b) assign Key Individuals with appropriate levels of experience, knowledge and qualifications to oversee the Regulatory Functions;
  - (c) appoint a Key Individual who is ordinarily resident in the United Arab Emirates as a Money Laundering Reporting Officer;
  - (d) have independent directors constituting at least one-half of the total number of directors in the Governing Body and ensure that these independent directors are provided with direct access to:
    - (i) Key Individuals when required; and
    - (ii) all relevant information concerning the satisfaction of Licensing Requirements and the performance of Regulatory Functions; and

- (e) ensure that Key Individuals have unfettered, direct access to the Governing Body.
- (3) For the purposes of this Rule and Article 23(2)(f)(ii) of the Regulatory Law, Regulatory Functions are those functions of an Authorised Market Institution which contribute directly to the satisfaction by the Authorised Market Institution of a Licensing Requirement.
- (4) An Exchange maintaining an Official List of Securities must ensure the function is properly and independently operated.

**Guidance**

1. In determining whether an Authorised Market Institution has satisfied this Licensing Requirement, the DFSA will consider, in addition to those matters set out in App1:
  - a. its arrangements, policies and resources for fulfilling its obligations under the Licensing Requirements;
  - b. the extent to which its constitution and organisation provide for effective governance;
  - c. the arrangements made to ensure that the Governing Body has effective oversight of its Regulatory Functions;
  - d. the access the Key Individuals have to the Governing Body;
  - e. the size and composition of the Governing Body including:
    - i. the number of independent directors in the Governing Body;
    - ii. the number of members of the Governing Body who represent Members of the Authorised Market Institution or other persons and the types of person whom they represent; and
    - iii. the number and responsibilities of any members of the Governing Body with executive roles within the Authorised Market Institution.
  - f. the structure and organisation of its Governing Body including any distribution of responsibilities among its members and committees;
  - g. the integrity, qualifications and competence of its Governing Body and Key Individuals;
  - h. its arrangements for ensuring that it employs individuals who are honest and demonstrate integrity; and
  - i. the independence of its regulatory and listings departments from its commercial departments.
2. The DFSA will consider a Director to be “independent” if the Director is found, on the reasonable determination by the Governing Body, to:
  - a. be independent in character and judgement; and
  - b. have no relationships or circumstances which are likely to affect or could appear to affect the Director’s judgement in a manner other than in the best interests of the Authorised Market Institution.

3. In forming a determination the Governing Body should consider the length of time the director has served as a member of the Governing Body and whether the relevant director:
  - a. has been an employee of the Authorised Market Institution or group within the last five years;
  - b. has or has had, within the last three years, a material business relationship with the Authorised Market Institution, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the Authorised Market Institution;
  - c. receives or has received, in the last three years, additional remuneration or payments from the Authorised Market Institution apart from a director's fee, participates in the Authorised Market Institution's share option, or a performance-related pay scheme, or is a member of the Authorised Market Institution's pension scheme;
  - d. is or has been a director, partner or employee of a firm which is the Authorised Market Institution's auditor;
  - e. has close family ties with any of the Authorised Market Institution's advisors, directors or senior employees;
  - f. holds cross directorships or has significant links with other directors through involvement in other bodies; or
  - g. represents a significant shareholder.

**Proper markets**

- 7.2.3** (1) An Exchange must have systems, policies and procedures which ensure that only:
- (a) Investments in which there is a proper market; or
  - (b) those Securities which are admitted to its Official List of Securities;
- are admitted to trading.
- (2) For a proper market to exist:
- (a) arrangements must be in place for relevant market information to be made available to Persons engaged in dealing on an equitable basis;
  - (b) Investments must serve an economic purpose;
  - (c) there must be a sufficient range and number of investors willing and able to generate adequate supply and demand in the Investments;
  - (d) where appropriate, there must be a sufficiently liquid underlying cash market;

- (e) where appropriate, there must be capacity to make and take delivery of the Investments; and
  - (f) the Business Rules and Listing Rules of an Exchange must allow for the discontinuance or suspension of trading in Investments when disclosure obligations have not been complied with and in other appropriate circumstances.
- (3) Securities in which there is a proper market and which are listed in a jurisdiction acceptable to the DFSA meet the requirements of Article 17(1)(b) of the Markets Law 2004.

**Guidance**

1. Before admitting to trading, Securities listed in jurisdictions elsewhere, or any other type of Investment such as a derivative product, the Exchange should consider the following factors to determine whether a proper market exists in that Investment:
  - a. any restrictions whether legal or physical on Persons who may hold the Investment;
  - b. the liquidity or anticipated liquidity of the Investment;
  - c. the number of persons already holding the Investment or interested in dealing in the Investment;
  - d. whether there is sufficient relevant information available to allow market participants to make an informed judgement on the value of assets and underlying assets;
  - e. how the information required by market participants to make an informed assessment of the value of the Investment is accessed; and
  - f. whether there are adequate settlement and delivery procedures in relation to the Investment.
2. In determining whether material information is disclosed to allow investors to make an informed judgement of the value of the Investment, the DFSA may consider the extent to which persons can obtain information about Investments through acceptable channels of communication such as through third party information vendors. Where there is no alternative way to obtain information about an Investment, the exchange will need to provide those services.

**Financial resources**

- 7.2.4**
- (1) An Authorised Market Institution must have and maintain at all times, in addition to the minimum financial resource requirement in (2), financial resources of a type acceptable to the DFSA. These financial resources must be adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due.
  - (2) The minimum financial resource requirement for an Authorised Market Institution is:

- (a) an amount equal to one half of the estimated gross operating costs of the Authorised Market Institution for the next twelve-month period; or
  - (b) such other base capital amount as may be set by the DFSA under (4).
- (3) When calculating its twelve-month gross operation costs, an Authorised Market Institution must also include any penalty payments for which it has become liable as part of any outsourcing or other arrangements which are integral to its being able to function as an Authorised Market Institution.
- (4) The DFSA may prescribe a base capital amount for an Authorised Market Institution and will determine such amount by reference to other international jurisdictions deemed by the DFSA to be comparable.
- (5) An Authorised Market Institution must have systems and controls to enable it to determine and monitor whether its financial resources are sufficient for the purposes of the additional financial resource requirement in (1) and the minimum financial resource requirement in (2).
- (6) For the purposes of (5), the systems and controls of an Authorised Market Institution address the following factors, with any others that are appropriate to its operations model:
- (a) the scale, nature, activities and risks of the operation;
  - (b) the operational, counterparty, market and settlement risks to which the body is exposed;
  - (c) the amount, composition and legal position of its available financial resources; and
  - (d) its ability to access additional financial resources if required.

**Guidance**

1. The financial resource requirement is intended to ensure that an Authorised Market Institution not only has sufficient financial resources to meet its liabilities as they fall due, but also to allow, if circumstances require, for the orderly wind-down of the Authorised Market Institution's business, while still allowing the institution to meet the conditions of its Licence.
2. The systems and controls should be such as to enable an assessment of the financial resources required to be conducted periodically or after any significant change or event, whether internal or external, to the Authorised Market Institution, which may require re-assessment. This regular re-assessment is necessary to satisfy the DFSA that the Licensing Requirements are being satisfied on an ongoing basis and the DFSA will often request to see the conclusions.
3. In determining whether to set a base capital amount the DFSA will take into account the risks that the Authorised Market Institution poses to the DIFC market and products which it intends, or is, trading, clearing or settling.



4. A Clearing House which offers central counterparty services will need to have adequate financial resources in place to cover the credit risk it assumes when acting in this capacity. Financial resources which may satisfy this Licensing Requirement include:
  - a. capital and resources held by the Authorised Market Institution for this purpose;
  - b. clearing guarantee funds;
  - c. legally enforceable lines of credit;
  - d. insurance policies; and
  - e. other powers to call on resources in appropriate cases.

### **Human and technology resources**

- 7.2.5**
- (1) An Authorised Market Institution must have sufficient human and independent technology resources to operate and supervise its facilities.
  - (2) An Authorised Market Institution must ensure, as far as reasonably practical, that its staff are:
    - (a) fit and proper;
    - (b) appropriately trained for the duties they perform; and
    - (c) trained in the requirements of the legislation applicable in the DIFC.
  - (3) The Authorised Market Institution must satisfy the DFSA that its technology resources are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain.

### **Guidance**

1. In assessing an Authorised Market Institution's systems and controls used to operate and carry on its functions, the DFSA recognises that an Authorised Market Institution is likely to have significant reliance on its information technology systems. In assessing the adequacy of these systems, the DFSA will consider:
  - a. the organisation, management and resources of the information technology department of the Authorised Market Institution;
  - b. the arrangements for controlling and documenting the design, development, implementation and use of technology systems; and
  - c. the performance, capacity and reliability of information technology systems.
2. The DFSA shall also, during its assessment of technology systems, have regard to the:
  - a. procedure for the evaluation and selection of information technology systems;
  - b. procedures for problem management and system change;

- c. arrangements for testing information technology systems before live operations;
- d. arrangements to monitor and report system performance, availability and integrity;
- e. arrangements made to ensure information technology systems are resilient and not prone to failure;
- f. arrangements made to ensure business continuity in the event that an information technology system fails;
- g. arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access;
- h. arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems; and
- i. any third party outsourcing arrangements.

### **Systems and controls**

- 7.2.6** (1) An Authorised Market Institution must ensure that its systems and controls are adequate and suitable for the performance of its functions and appropriate to the scale and nature of its operations. In particular, systems and controls should exist in relation to:
- (a) the transmission of information to users of its facilities;
  - (b) the assessment and management of risks including conflicts of interest;
  - (c) the operation of its functions;
  - (d) the safeguarding and administration of assets belonging to its users; and
  - (e) the fitness and propriety of its Employees and the adequacy of its technology resources.
- (2) An Exchange must also have systems and controls in relation to the supervision and monitoring of transactions on its facilities.
- (3) An Authorised Market Institution must undertake regular reviews of its systems and controls.

### **Guidance**

1. The systems and controls Licensing Requirement exists in addition to the requirements of GEN chapter 5.
2. In assessing whether an Authorised Market Institution's systems and controls are adequate and appropriate for the scale and nature of its business, the DFSA will have regard to the Authorised Market Institution's arrangements for managing, controlling and carrying out its Regulatory Functions, including:

- a. the distribution of duties and responsibilities among its Key Individuals and the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;
  - b. the staffing and resources of the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;
  - c. the arrangements made to enable Key Individuals to supervise the departments for which they are responsible;
  - d. the arrangements for appointing and supervising the performance of Key Individuals and their departments; and
  - e. the arrangements by which the Governing Body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of Key Individuals under review.
3. In assessing an Authorised Market Institution's systems and controls for the transmission of information, the DFSA will consider to the extent to which these systems and controls ensure the information is transmitted promptly and accurately:
- a. within the Authorised Market Institution itself;
  - b. to Members; and
  - c. where appropriate, to other market participants or other persons including the DFSA.
4. In assessing an Authorised Market Institution's systems and controls for assessing and managing risk, the DFSA may also have regard to the extent to which these systems and controls enable the Authorised Market Institution to:
- a. identify all the general, operational, legal and market risks wherever they arise in its activities;
  - b. measure and control the different types of risk;
  - c. allocate responsibility for risk management to persons with appropriate levels of knowledge and expertise; and
  - d. provide sufficient, reliable information to Key Individuals and, where relevant, the Governing Body of the Authorised Market Institution.
5. Where the Clearing House assumes counterparty risk, the DFSA will consider:
- a. the position and role of the risk management department within the Clearing House;
  - b. the frequency with which exposures and risks are monitored against limits or other control parameters and the frequency with which these parameters are reviewed;
  - c. the reliability and robustness of intra-day monitoring and counterparty risk management;
  - d. the arrangements for calculating, collecting and holding margin payments and the allocation of losses; and

- e. arrangements for stress testing the risk model in unusual market conditions and in recognition of the amount of capital resources maintained by the Clearing House to cover its exposure which may arise, for example, with substantial movements in market values or counterparty defaults.
6. An Authorised Market Institution should have proper procedures and policies to allocate responsibility for regulatory decisions so that it can take proper regulatory decisions notwithstanding any conflicts of interest arising from the performance of its regulatory functions and commercial objectives. The policies and procedures should include:
- a. policies on the use of confidential information received in carrying out its Regulatory Functions and to ensure it is only used for proper purposes;
  - b. arrangements for transferring decisions or responsibilities to alternates in individual cases;
  - c. arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which the conflict is relevant; and
  - d. the contracts of employment, staff rules, letters of appointment for members of the Governing Body, members of relevant committees and other Key Individuals and other guidance given to individuals on handling conflicts of interest which may include:
    - i. the need for prompt disclosure of a conflict of interest to enable others who are not affected by the conflict to assist in deciding how it may need to be covered;
    - ii. the circumstances in which a general disclosure of conflicts of interest in advance of any particular instance in which a conflict of interest arises may be sufficient;
    - iii. the circumstances in which a general advance disclosure may not be adequate;
    - iv. the circumstances in which it would be appropriate for a conflicted individual to withdraw from any involvement in the matter concerned, without disclosing the interests; and
    - v. the circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-making process or from access to relevant information.
7. In assessing an Authorised Market Institution's systems and controls for the safeguarding and administration of assets belonging to users of the facilities, the DFSA will consider:
- a. records of the assets held and the identity of the owners of (and other persons with relevant rights over) those assets;
  - b. records of any instructions given in relation to those assets;
  - c. records of the carrying out of those instructions;
  - d. records of any movements in those assets (or any corporate actions or other events in relation to those assets); and

- e. how an Authorised Market Institution reconciles its records of assets held with the records of any custodian or sub-custodian used to hold those assets, and with the record of beneficial or legal ownership of those assets.
8. In assessing an Exchange's systems and controls for the effecting and monitoring of transactions, the DFSA will consider the arrangements under which:
- a. orders are received and matched;
  - b. transactions are reported;
  - c. relevant information is transmitted to a Clearing House; and
  - d. conduct that may amount to Market Misconduct is identified using surveillance systems.
9. The DFSA will also consider how internal and external audits operate in the context of systems and controls. In doing so the following factors may be considered:
- a. the size, composition and terms of reference of any audit committee of the Authorised Market Institution;
  - b. the frequency and scope of external audit;
  - c. the provision and scope of internal audit;
  - d. the staffing and resources of the Authorised Market Institution's internal audit department;
  - e. the internal audit department's access to the Authorised Market Institution's records and other relevant information; and
  - f. the position, responsibilities and reporting lines of the audit department and its relationship with other departments of the Authorised Market Institution.

### **Members' access to facilities**

**7.2.7** An Authorised Market Institution must restrict access to its facilities to persons:

- (a) who, if performing a Financial Service in or from the DIFC, are Authorised Firms, Authorised Market Institutions, Recognised Members or Recognised Bodies; and
- (b) who are granted access on the basis of criteria which have been approved by the DFSA and which are designed to protect the orderly functioning of its facilities and the interests of investors.

### **Guidance**

1. In assessing the criteria used by an Authorised Market Institution to permit access to its facilities, the DFSA will consider:
  - a. whether its Business Rules can be enforced contractually over persons granted access to its facilities;
  - b. whether the criteria are objective and applied in a non-discriminatory manner;

- c. if the persons granted access to the facilities are subject to training, competence and experience checks;
  - d. how electronic access is approved and the measures taken to prevent or resolve problems which would arise from the failure of this access; and
  - e. the financial resource requirements for those not authorised by the DFSA.
2. In assessing how electronic access is approved, the DFSA will consider:
- a. the rules and guidance governing persons procedures, controls and security arrangements for inputting instructions into the system;
  - b. the rules and guidance governing facilities offered to third persons for inputting instructions into the system and restrictions placed on the use of those systems;
  - c. the rules and practices to detect, identify and halt or remove instructions breaching any relevant instructions;
  - d. the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and
  - e. the procedures to determine whether to suspend trading by those systems or access to them by or through individual Members.

### **General safeguards for investors**

**7.2.8** An Authorised Market Institution must have Business Rules, procedures and an effective surveillance program that:

- (a) ensures that business conducted on or through its facilities is conducted in an orderly manner so as to afford proper protection to investors; and
- (b) monitors for conduct which may amount to Market Misconduct, financial crime or money laundering.

### **Guidance**

1. To satisfy the DFSA that Rule 7.2.8(a) is met, an Authorised Market Institution should have rules and procedures in place for:
- a. preventing and detecting the use of its facilities for abusive, improper or fraudulent purposes;
  - b. preventing the improper, reckless or negligent use of its facilities;
  - c. users to monitor and raise queries about business conducted on or through the facilities; and
  - d. enable users to comply with any relevant regulatory or legal requirements.

2. Abusive, improper and fraudulent purposes include:
  - a. trades in which a party is improperly indemnified against losses;
  - b. trades intended to create a false appearance of trading activity;
  - c. pre-arranged or pre-negotiated trades;
  - d. trades which one party does not intend to close out or settle;
  - e. conduct which is likely to result in disorderly trading in the market; and
  - f. any contravention of Part 8 of the Market Misconduct provisions of the Markets Law.
3. An Authorised Market Institution must have an effective surveillance system in place for:
  - a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments conducted elsewhere; and
  - b. communicating information about Market Misconduct, financial crime and money laundering to the DFSA or appropriate regulatory authorities.
4. In determining whether an Exchange is ensuring that business conducted on its facilities is conducted in an orderly manner the DFSA will consider:
  - a. arrangements for pre and post trade transparency taking into account the nature and liquidity of the Investments traded; and
  - b. the need to provide anonymity for trading participants.
5. An Exchange will also have appropriate procedures allowing it to influence trading conditions, suspend trading promptly when required, and to support or encourage liquidity when necessary to maintain an orderly market. The DFSA will consider the transparency of such procedures and the fairness of their application and potential application.
6. In addition, Members should be able to satisfy any other legal obligations they may have, including those to Clients that may exist under COB.
7. In pursuit of the detection and prevention of Market Misconduct and financial crime, an Authorised Market Institution should communicate information promptly and accurately to the DFSA and other appropriate organisations under the guidance of the DFSA. An Authorised Market Institution should also co-operate with the DFSA and such organisations in any ensuing investigation. If an Authorised Market Institution has concerns about sharing such information it should seek guidance and act on instructions from the DFSA.
8. An Authorised Market Institution shall have regard to Part 8 of the Markets Law in relation to Market Misconduct and the relevant provisions of the Regulatory Law.

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**Market misconduct, financial crime and money laundering**

**7.2.9** An Authorised Market Institution must:

- (a) operate appropriate measures to identify, deter and prevent Market Misconduct, financial crime and money laundering on and through the Authorised Market Institution's facilities; and
- (b) report to the DFSA any Market Misconduct, financial crime and money laundering.

**Guidance**

1. In determining whether an Authorised Market Institution's measures are appropriate to reduce the extent to which its facilities can be used for Market Misconduct, financial crime or money laundering, the DFSA will consider:
  - a. whether the Authorised Market Institution has appropriate staff, surveillance systems, resources and procedures for this purpose;
  - b. the monitoring conducted for possible patterns of normal, abnormal or improper use of those facilities;
  - c. how promptly and accurately information is communicated about Market Misconduct, financial crime and money laundering to the DFSA and other appropriate organisations;
  - d. how the Authorised Market Institution co-operates with relevant bodies in the prevention, investigation and pursuit of Market Misconduct, financial crime and money laundering; and
  - e. whether the Authorised Market Institution is able to demonstrate that it can comply with the applicable DIFC Laws and Rules and in particular:
    - i. the Markets Law 2004;
    - ii. the Regulatory Law 2004;
    - iii. the Federal Law No. 4 of 2002 "Criminalisation of Money Laundering" of the United Arab Emirates; and
    - iv. the Law Regulating Islamic Financial Business.
2. An Authorised Market Institution is also subject to the anti money laundering requirements in chapter 11.

**Promotion and maintenance of standards**

**7.2.10** An Authorised Market Institution must be able and willing to:

- (a) promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities; and
- (b) co-operate with the DFSA or other appropriate regulatory authorities with regard to regulatory matters when required.



**Guidance**

1. In determining whether an Authorised Market Institution is able and willing to promote high standards of integrity and fair dealing, the DFSA will consider:
  - a. the extent to which an Authorised Market Institution seeks to promote and encourage such standards through its rules, procedures and practices;
  - b. the extent to which Members are required to, and do, adhere to such standards; and
  - c. any other applicable Rules and principles which apply to the carrying on of business on or through its facilities.
2. In assessing the ability and willingness of an Authorised Market Institution to cooperate with the DFSA and other regulatory authorities, the DFSA will consider:
  - a. the agreements in place between Persons granted access to the facilities and the relevant Authorised Market Institution for sharing information, such as information regarding large open positions; and
  - b. how diligently the Authorised Market Institution responds to enquiries from the DFSA or other regulatory authorities.

**Whistleblowing**

- 7.2.11** An Authorised Market Institution must have appropriate procedures and protections for allowing Employees to disclose any information to the DFSA or to other appropriate bodies involved in the prevention of Market Misconduct, financial crime or money laundering.

**Clearing and settlement**

- 7.2.12** (1) An Exchange must ensure that satisfactory arrangements are in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facilities.
- (2) A Clearing House that conducts clearing services must ensure those services include satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions for which it provides such services.
- (3) A Clearing House that conducts settlement services must ensure those services include satisfactory arrangements for securing the timely discharge of settlement obligations of the parties to transactions for which it provides such services.

**Guidance**

In determining whether Rule 7.2.12 is satisfied, the DFSA will consider the Authorised Market Institution's:

- a. rules, procedures and practices relating to clearing and settlement;
- b. arrangements for matching trades and ensuring that the parties are in agreement about trade details;
- c. arrangements for making deliveries and payments and, where relevant, for collecting margin and holding collateral, in all relevant jurisdictions;
- d. procedures to detect and deal with the failure of settlement in accordance with its rules;
- e. arrangements for taking action to settle if settlement does not take place in accordance with its rules;
- f. arrangements for monitoring settlement performance; and
- g. default rules and default procedures.

**Transaction recording**

**7.2.13** An Authorised Market Institution must ensure that satisfactory arrangements are made for:

- (a) recording the activity and transactions effected on or through its facilities;
- (b) maintaining the activity and transaction records for at least 6 years; and
- (c) providing the DFSA with these records in a timely manner if required by the DFSA.

**Guidance**

1. The type of information that requires recording will vary according to the activity and type of transactions conducted on or through the facilities of the Authorised Market Institution.
2. In general, for an Exchange, the type of information which should be recorded will include:
  - a. the name of the relevant Investment and the price, quantity and date of the transaction;
  - b. the order type, time of instruction and expiry date;
  - c. the identities and, where appropriate, the roles of the counterparties to the transaction;
  - d. the facilities on which the transaction was effected and is to be cleared and settled; and
  - e. the date and manner of settlement of the transaction.

3. In general, for a Clearing House, the type of information which should be recorded will include:
  - a. the name of the relevant Investment and the price, quantity and date of the transaction;
  - b. the identities and, where appropriate, the roles of the counterparties to the transaction;
  - c. the facilities on which the transaction was effected and is to be cleared;
  - d. (where applicable) time novation takes place; and
  - e. the date and manner of settlement of the transaction.

### **Safeguarding and administration of assets**

**7.2.14** An Authorised Market Institution must ensure that where its facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities:

- (a) satisfactory arrangements are made for that purpose; and
- (b) clear terms of agreement exist between the users of the facility and the Authorised Market Institution.

### **Guidance**

In determining whether the Authorised Market Institution has made satisfactory arrangements for safeguarding and administering assets, the DFSA will consider:

- a. the terms of any agreement;
- b. the level of protection provided to users against the risk of theft, fraud, defalcation or other types of loss;
- c. whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owners of the assets or in accordance with the terms of the agreement and any applicable law;
- d. whether an investor's assets are adequately segregated from assets belonging to the Authorised Market Institution and other users of the facilities;
- e. the frequency of reconciliation between the assets and accounts which are being administered;
- f. whether the records kept of those assets and the operating of the safeguarding services provide sufficient accurate and timely information:
  - i. to identify the legal and beneficial owners of assets and of any persons who have charges over or other interests in the assets;
  - ii. to record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and

- iii. to identify separately the assets owned by (or where appropriate on behalf of) different persons, including, where appropriate, the assets owned by persons granted access to the facilities of an Authorised Market Institution and their clients.
- g. the frequency with which statements of their holdings are provided to users of the services, to the owners of assets held, and to other appropriate persons in accordance with the terms of agreement; and
- h. whether the arrangements include satisfactory procedures for the selection and oversight of any custodians or sub-custodians used in the safeguarding and administering of assets.

### **Business rules**

- 7.2.15** An Authorised Market Institution must have clear and fair Business Rules which are legally enforceable against its Members, published and made freely available.

#### **Guidance**

The Business Rules should not include or approve any restrictive practices which may prevent effective competition for business in Investments.

### **Compliance with business rules**

- 7.2.16** (1) An Authorised Market Institution must have compliance procedures in place to ensure:
- (a) its Business Rules are monitored and enforced;
  - (b) complaints regarding Persons granted access to its facilities are investigated;
  - (c) appeal procedures are in place; and
  - (d) where appropriate, disciplinary action resulting in financial and other types of penalties is available.
- (2) An Exchange must have arrangements for monitoring compliance with its Business Rules in relation to the provision of clearing and settlement services in respect of transactions effected by its facilities.

#### **Guidance**

1. In determining whether an Authorised Market Institution can effectively monitor its Business Rules, the DFSA will consider:
  - a. the oversight of activity conducted on its facilities;
  - b. the range of powers it retains over Persons granted access to its facilities, which should include the ability to modify, revoke or suspend access; and
  - c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

2. In determining whether an Authorised Market Institution can effectively oversee the activities conducted on its facilities the DFSA will consider how non-compliance is identified and how the significance of any non-compliance is assessed.

### **Complaints**

- 7.2.17**
- (1) An Authorised Market Institution must have effective arrangements in place for the investigation and resolution of complaints made against it.
  - (2) An Authorised Market Institution must establish and maintain a register of complaints made against it and their resolution. Records of the complaints must be maintained for a minimum of six years.

### **Guidance**

1. Procedures should be in place to acknowledge a complaint promptly, for making an objective consideration of the complaint and for a timely response to be sent to the complainant. The response should inform the complainant that, if he is not satisfied with the response, he should contact the DFSA.
2. Complaints should be fairly and impartially investigated by a person not involved in the conduct about which the complaint has been made. At the conclusion of the investigation a report should be prepared and provided to the relevant Key Individuals.

[Amended][RM56][VER6/07-08]

### **Default rules**

- 7.2.18** An Authorised Market Institution must have default rules which in the event of a Member being, or appearing to be, unable to meet his obligations in respect of one or more contracts, enables action to be taken in respect of unsettled market contracts to which the Member is a party.

### **Guidance**

The DFSA requires all Authorised Market Institutions to have default rules under Article 11 of the Markets Law. Default rules allow an Authorised Market Institution to close-out open positions by discharging the appropriate rights and liabilities of transactions which a person granted access to its facilities can not, or may not, be able to fulfil.

### **Official list of securities**

- 7.2.19**
- (1) An Exchange wishing to admit Securities to its own Official List of Securities must have Listing Rules.
  - (2) Listing rules must be made by an Exchange in accordance with Article 18 of the Markets Law 2004 and must also be approved by the DFSA.
  - (3) Listing Rules must be clear and fair, legally enforceable and published and made freely available.
  - (4) The Listing Rules of an Authorised Market Institution must include, where appropriate to the type the Securities being admitted to the Official List of Securities, requirements in respect of:

- (a) an Issuer's financial reporting and, in particular how regular reports are made and the international accounting standards to which they comply;
- (b) auditing standards;
- (c) an Issuer's track record in terms of profit or operating history;
- (d) the amount of Securities in the class of Securities which can be considered as in free float;
- (e) any restrictions that may exist on transferability; and
- (f) any other matter deemed necessary by the DFSA.

**Guidance**

1. Securities that have been admitted to an Official List of Securities by an Authorised Market Institution may be admitted to trading under Rule 7.2.3 subject to no further conditions.
2. It may not be appropriate for all types of Exchange to administer its own Official List of Securities. For example, an Exchange that only trades derivatives may not administer an Official List of Securities. In addition, an Exchange that only wishes to trade Securities on its facilities without listing Securities need not operate an Official List of Securities. An Exchange that does maintain an Official List of Securities must have its Licence endorsed in accordance with Article 17.2 of the Markets Law 2004.

**Compliance with listing rules**

**7.2.20** An Exchange must have procedures in place to ensure:

- (a) its Listing Rules are monitored and enforced; and
- (b) complaints regarding persons subject to the Listing Rules are investigated.

**7.2.21** An Exchange must ensure that:

- (a) where appropriate, disciplinary action may be carried out and financial and other types of penalties can be imposed on persons subject to the Listing Rules; and
- (b) appeal procedures are in place.

**Guidance**

In determining whether an Exchange can effectively monitor its Listing Rules, the DFSA will consider amongst other things:

- a. the oversight of the Official List of Securities;

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- b. the range of powers the Exchange retains over Persons with Securities admitted to its Official List of Securities which should include the ability to suspend, restore from suspension and de-list Securities from the Official List of Securities in accordance with this module; and
- c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

## **8. ONGOING OBLIGATIONS OF AN AUTHORISED MARKET INSTITUTION**

### **8.1 Application**

**8.1.1** This chapter applies to an Authorised Market Institution.

### **8.2 General obligations**

**8.2.1** An Exchange must at all times do all things necessary to ensure that its market is fair, orderly and efficient.

**8.2.2** A Clearing House must at all times do all things necessary to ensure that its facilities are operated in a fair and efficient way and which reduces systemic risk.

### **8.3 Reports**

**8.3.1** For the purposes of Article 74(2) of the Regulatory Law, an Authorised Market Institution must deliver to the DFSA a report in writing at such times as the DFSA may direct addressing those matters contained in Article 74(2)(a)-(d) and such other matters as the DFSA may reasonably require.



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## **9 AMENDMENTS TO BUSINESS RULES AND LISTING RULES**

### **9.1 Application**

**9.1.1** This chapter applies to an Authorised Market Institution.

### **9.2 Amendments**

- 9.2.1** (1) Any amendment to an Authorised Market Institution's Business Rules or Listing Rules must, prior to the amendment being effective, be:
- (a) available for market consultation; and
  - (b) approved by the DFSA.
- (2) In urgent cases, the DFSA may, on written application by the Authorised Market Institution, dispense with the requirement in (1)(a).

**9.2.2** An Authorised Market Institution must have procedures for notifying users of these amendments.

#### **Guidance**

1. Amendments include the introduction of new Business Rules or Listing Rules as well as changes to existing Business Rules and Listing Rules.
2. Any Business Rules and Listing Rules consultation should include:
  - a. informal discussions at an early stage with users of the facilities and appropriate representative bodies;
  - b. publication of a formal consultation paper which includes clearly expressed reasons for the changes and an appropriately detailed assessment of the likely costs and benefits;
  - c. adequate time for users of its facilities to respond to the consultation paper and for the Authorised Market Institution to take responses properly into account;
  - d. adequate arrangements for making responses to the consultation available for inspection by users of its facilities unless the respondent requests otherwise;
  - e. adequate arrangements for ensuring that the Authorised Market Institution has proper regard to the comments received; and
  - f. publication, no later than the publication of the amended rules, of a reasoned account of the Authorised Market Institution's decision to amend its rules.

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3. The DFSA expects that an Authorised Market Institution will submit proposed changes at least 28 days before the proposed effective date. Furthermore, when submitting amendments of the Business Rules or Listing Rules to the DFSA, the Authorised Market Institution will need to:
  - a. set out the text of the amendment (including a marked-up version for comparison);
  - b. provide an explanation for the amendment; and
  - c. provide the DFSA with the proposed effective date.
4. In urgent cases, the DFSA may dispense with the requirement for market consultation but still requires the Authorised Market Institution to seek approval prior to making any amendment effective.

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## **10 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS**

### **10.1 Application**

**10.1.1** This chapter applies to an Authorised Market Institution.

### **10.2 Relations with regulators and the risk based approach**

**10.2.1** An Authorised Market Institution must deal with regulatory authorities in an open and co-operative manner and keep the DFSA promptly informed of significant events or activities, wherever they are carried on relating to the Authorised Market Institution of which the DFSA would reasonably expect to be notified.

**10.2.2** An Authorised Market Institution must advise the DFSA immediately it becomes aware, or has reasonable grounds to believe, that a significant breach of a Rule of Licensing Requirement by the Authorised Market Institution or any of its Employees may have occurred or may be about to occur.

#### **Guidance**

1. This chapter focuses on supervision of an Authorised Market Institution and the supervisory approach of the DFSA towards an Authorised Market Institution. It explains how the ongoing relationship between an Authorised Market Institution and the DFSA will operate. It specifically contains an explanation of the supervisory regulatory process which applies to Authorised Market Institutions and the key elements of this risk based approach.
2. This chapter also contains Rules in relation to an Authorised Market Institution in relation to co-operation with regulators, a number of notification requirements and also the process by which the supervisory directions powers contained in the Markets Law will be exercised.

#### **Risk-based regulator**

3. The DFSA is a risk-based regulator and has adopted a risk-based approach to the regulation and supervision of Authorised Market Institutions. The DFSA will work with Authorised Market Institutions to identify, assess, mitigate and control these risks where appropriate. When exercising powers the DFSA will consider its statutory objectives which are set out in Article 8(3) and the associated guiding principles as set out in Article 8(4). This guidance outlines the DFSA's supervisory approach to Authorised Market Institutions which is based upon:
  - a. developing a strong relationship with an Authorised Market Institution;
  - b. utilising the risk-based approach to supervision including the risk assessment as part of the DFSA's continuous risk management cycle;
  - c. using appropriate supervisory tools; and
  - d. considering any lead or consolidated supervision which an Authorised Market Institution may be subject to.

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**Relationship with Authorised Market Institutions**

4. In order to meet its objectives, the DFSA requires an open, transparent and co-operative relationship between itself and the Authorised Market Institution. The DFSA expects to maintain an ongoing dialogue with the Governing Body, senior management and Key Individuals of an Authorised Market Institution in order to develop and sustain a thorough understanding of the Authorised Market Institution's business, systems and controls, the way in which Key Individuals perform Regulatory Functions and, through this relationship, to be aware of all the areas of risks to its objectives. In addition, the DFSA must always be confident that an Authorised Market Institution is satisfying the Licensing Requirements.
5. The DFSA seeks to maintain an up-to-date knowledge of an Authorised Market Institution's business. However, an Authorised Market Institution is also required to keep the DFSA informed of significant events, or anything related to the firm of which the DFSA would reasonably expect to be notified.
6. The nature and intensity of the DFSA's relationship with an Authorised Market Institution will depend upon a number of factors. The DFSA's level of supervision will be proportionate to the risks which the Authorised Market Institution poses to the DFSA's objectives and will place emphasis on the responsibilities of the Governing Body and senior management in assessing, mitigating and controlling its risks.

**Risk-based supervision of Authorised Market Institutions**

7. The DFSA seeks to ensure that Authorised Market Institutions comply with legislation applicable in the DIFC and it has established a risk-based approach to the supervision of Authorised Market Institutions.
8. The DFSA's supervisory approach is based on transparent and accountable risk-based regulation. This approach enables the DFSA to identify and focus its attention on the areas where there are perceived to be the greatest risks to its objectives.
9. The purpose of the DFSA's risk-based approach to supervision is to:
  - a. ensure that its resources are deployed in relation to the perceived risks that an Authorised Market Institution poses to the DFSA's objectives;
  - b. formalise a structured supervisory approach to the use of its supervisory tools, for example to establish the frequency and type of on-site visits to an Authorised Market Institution; and
  - c. encourage Authorised Market Institutions to develop a compliance culture and to identify, assess, mitigate and control significant risks, with particular reliance on an Authorised Market Institution's Governing Body and senior management to address the issues that are identified.

**Risk management cycle**

10. The DFSA has adopted a continuous risk management cycle. This comprises the identification, assessment, prioritisation and mitigation of risks arising from a range of areas within an Authorised Market Institution, including business, operations, internal controls and compliance arrangements. General factors that apply across the regulated community as a whole, or to particular sectors, are also be taken into consideration. Authorised Market Institutions are subject to similar risk factors as other parts of the regulated community carrying on other financial services though the impact of such factors may differ in certain circumstances.

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**Risk categories, risk groups and risk elements**

11. The DFSA differentiates between the two high level risk categories 'business and operations' and 'internal controls and compliance arrangements'. Within these risk categories are risk groups which the DFSA may review to identify risks that could inhibit the achievement of its objectives.
  - a. The risk category 'business and operations' includes the following risk groups:
    - i. financial risks;
    - ii. business and strategic risks; and
    - iii. external risks.
  - b. The risk category 'internal controls and compliance arrangements' includes the following risk groups:
    - i. regulatory and legal risks;
    - ii. system and control risks;
    - iii. management and governance risks; and
    - iv. risks to Members, users and markets.

**Risk identification and assessment**

12. DFSA's risk management cycle and an Authorised Market Institution's initial risk assessment will begin upon receipt of an application for authorisation.
13. The DFSA will assess and prioritise all identified risks to its objectives and as a result assign each Authorised Market Institution an aggregate risk classification of low, medium or high.
14. The risk classification process for Authorised Market Institutions comprises an assessment of the specific risks to the DFSA's objectives within each firm and the probability of the risks occurring. The results will be brought together in aggregate which determine the classification of an Authorised Market Institution as 'high', 'medium' or 'low' risk to the DFSA's objectives.
15. Probability is considered by way of analysis of the control structures in place to mitigate risks within an Authorised Market Institution. The DFSA considers the adequacy of controls in respect of the specific risks identified. Where a particular control is considered to be weak, this will be taken into account in the allocation of the Authorised Market Institution's overall risk score.

**Risk prioritisation and mitigation**

16. Whenever appropriate, the DFSA will inform the Authorised Market Institution of the steps the firm needs to take in relation to specific risks. Subsequently, the DFSA expects the Authorised Market Institution to demonstrate that it has taken appropriate steps to mitigate the risks it poses to the DFSA's objectives.
17. Where necessary, risk mitigation programmes will be developed with Authorised Market Institutions in order to mitigate or remove identified areas of risk.

18. Whilst the DFSA will discuss certain information with the Authorised Market Institution, in particular the specific risks that lead it to assign an overall risk classification to the Authorised Market Institution and any necessary remedial actions, it will not usually disclose the final risk classification.

**Ongoing risk analysis**

19. The risk assessment process will apply equally to all Authorised Market Institutions, although the information required for the assessment may vary from firm to firm. Authorised Market Institutions with a higher risk classification will be subject to closer regulatory attention and would typically be subject to supervisory reviews specifically designed to address particular causes of risk. All Authorised Market Institutions will be subject to an individual risk assessment, except where more than one Authorised Market Institution belongs to the same Group, in which case the DFSA may decide to carry out a Group risk assessment.
20. The risk assessment process is ongoing and it is expected that the risks of each Authorised Market Institution will be reviewed on at least an annual basis. Notifications, reporting of information, an on-going dialogue with the Governing Body, senior management and Key Individuals and visits to the Authorised Market Institution will ensure that the DFSA has current information on key risk areas of the Authorised Market Institution, facilitating the updating of the Authorised Market Institution's risk classification at any time.
21. There are also a number of trigger events which may affect the frequency of a risk assessment and the Authorised Market Institution's overall risk classification. Examples include:
- a. a notification from a non-DIFC regulator or other authority of an issue concerning the Authorised Market Institution;
  - b. a material change in an Authorised Market Institution's business, Member composition and new business activities;
  - c. notification from an Authorised Market Institution claiming that it is no longer satisfying a licensing requirement;
  - d. a change in the Authorised Market Institution's Controllers;
  - e. an Authorised Market Institution's development of high risk products or business lines;
  - f. an Authorised Market Institution's development of business areas with characteristics such as unusual profitability;
  - g. an Authorised Market Institution's appointment of new personnel in key business areas or to perform Regulatory Functions;
  - h. an Authorised Market Institution's acquisition of new or revised information systems or new technology;
  - i. a rapid growth in specific areas of activity of an Authorised Market Institution including new listings;
  - j. an Authorised Market Institution's corporate restructuring, merger or acquisitions;
  - k. an Authorised Market Institution's expansion or acquisition of non-DIFC operations including the impact of changes in related economic and regulatory environments;

- l. the DFSA's response to industry-wide concerns or themes; or
- m. the occurrence of material disruptions with the provision of services by an Authorised Market Institution;
- n. recurrent complaints from Members or users of the facilities of an Authorised Market Institution; or
- o. problems relating to the maintenance of orderly markets with respect to an Exchange.

**Review of risk management systems**

22. Pursuant to GEN Rule 5.3.6, an Authorised Market Institution must ensure that its risk management systems provide the Authorised Market Institution with the means to identify, assess, mitigate and control its risks.
23. The DFSA may review the results of the Authorised Market Institutions internal risk assessment and determine the extent to which each of the Authorised Firm's risks impacts on DFSA's objectives, and consider the controls and mitigation programmes the firm has in place. Pursuant to AMI Rule 7.2.6, an Authorised Market Institution is also subject to some additional risk management requirements.
24. The requirements under AMI Rule 7.2.6 relate more specifically to the functions and services offered by the Authorised Market Institution but are equal in importance to the general risk management requirements, for example an Authorised Market Institution licensed to be Operating a Clearing House is likely to have substantial risk management procedures in relation to its role as a central counterparty.

**Regulatory and supervisory tools used by the DFSA**

25. The DFSA's risk-based approach emphasises the continuous nature of supervision of Authorised Market Institutions, early detection of risk issues, and the need for efficient use of resources. This will be achieved through the appropriate and where possible pre-emptive use of its regulatory tools. Once an Authorised Market Institutions risks to the DFSA's objectives have been identified and assessed, the DFSA will take appropriate action to mitigate them before they crystallise. In doing so, the DFSA will consider all regulatory tools at its disposal.
26. The DFSA has a wide range of regulatory tools available to address risks at different stages of their development. These tools can be classified as diagnostic, monitoring, preventative or remedial in nature, though many tools are multi-purpose:
  - a. diagnostic tools help to identify and assess risks;
  - b. monitoring tools help to monitor and track identified risks;
  - c. preventative tools help to mitigate identified risks and prevent them from crystallising; and
  - d. remedial tools help to respond to risks that have crystallised, for example disciplinary sanctions or restrictions placed on an Authorised Market Institution's business or property.
27. Regulatory tools are utilised during the authorisation, supervision and enforcement regulatory processes. Some regulatory tools are used mainly within the supervisory process. Others, for example the development of new rules or publicising a particular issue, lie outside the relationship with individual firms.

28. An Authorised Market Institution must be able to demonstrate that it is fit and proper at the time of its authorisation and will remain to do so by adhering to the Licensing Requirements. The DFSA will use its regulatory tools to test an Authorised Market Institution's satisfaction of the Licensing Requirements and its ongoing fitness and propriety.
29. For the purpose of supervision, the DFSA will select those supervisory tools which are most suitable and effective to identify and address particular risks in a specific situation.
30. Examples of the DFSA's supervisory tools include:
  - a. on-site visits;
  - b. high level meetings;
  - c. external auditor reports, statements and tripartite meetings;
  - d. desk based reviews;
  - e. requiring information and documents;
  - f. independent expert reports;
  - g. reliance on an Authorised Market Institution's compliance and audit department;
  - h. varying the scope of an Authorised Market Institution's Licence; and
  - i. setting capital requirements.

**Official list of securities**

31. Where an Exchange administers and operates an Official List of Securities, the risk-based approach to supervision also applies to the carrying on of this activity.

**Group supervision**

32. When the DFSA licenses an Authorised Market Institution, it takes into consideration the relationship with any wide Group to which the firm may belong or with other Persons closely linked to it. The DFSA will also taken into account lead or consolidated supervision to which an Authorised Market Institution or its Group may be subject to in another jurisdiction. This may lead to the DFSA placing some reliance on the supervisory arrangements in another jurisdiction or creating and participating in special arrangements for the supervision of the Authorised Market Institution and its Group. The Authorised Market Institution is expected to provide information required or reasonably requested in relation to these consolidated or lead supervisory arrangements before final supervisory arrangements are established.
33. Each application and relationship will be considered on a case by case basis and according to the risks posed by the licensing and ongoing supervision of an Authorised Market Institution. The supervisory arrangements may include a process be agreed by the DFSA, the Authorised Market Institution itself and other relevant regulators.
34. Effective co-operation with regulators will provide for prompt exchange of information and co-operation in relation to supervision, investigation and enforcement between jurisdictions. This will include exchanges of information and co-operation in respect of activity conducted in the facilities of an Authorised Market Institution. Usually co-operation arrangement will be in the form of memoranda of understanding or other arrangements. The information exchange will enhance the DFSA's understanding of the operations of a Group and the effect on the firm.



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## **10.3 Notifications**

### **Guidance**

An Authorised Market Institution must make notifications as required by SUP 7. This section requires additional notifications to be made. The additional notifications required by this section are specific to Authorised Market Institutions rather than the more general notifications contained elsewhere. The notifications are not exhaustive and an Authorised Market Institution should consider the requirements imposed upon it by Rule 10.2.2.

- 10.3.1** Unless otherwise provided, notifications in this section may be made orally or in writing, whichever is more appropriate in the circumstances, but where the Authorised Market Institution gives notice or information orally, it must confirm that notice or information in writing without delay.

## **10.4 Key individuals and regulatory functions**

- 10.4.1** Where an individual becomes or ceases to be a Key Individual of an Authorised Market Institution, that Authorised Market Institution must immediately give written notice to the DFSA of that event setting out the following information:

- (a) where an individual has been appointed or elected as a Key Individual:
  - (i) that individual's name;
  - (ii) his date of birth;
  - (iii) a description of the responsibilities which he will have in the position to which he has been appointed or elected;
  - (iv) the relevant experience and qualifications of the individual; or
- (b) where an individual has resigned as or otherwise ceased to be a Key Individual, that individual's name and the date of resignation or other form of cessation.

### **Guidance**

The DFSA does not need to be notified where minor changes are made to the responsibilities of a Key Individual, but where major changes in responsibilities are made which amount to a new appointment or a significant re-alignment of responsibilities, then the DFSA should be notified with the appropriate information.

### **Disciplinary action and events relating to key individuals or directors**

- 10.4.2** Where any Key Individual or Director of an Authorised Market Institution:

- (a) is the subject of any:
  - (i) disciplinary action arising out of alleged misconduct; or

- (ii) criminal prosecution arising out of alleged misconduct involving fraud or dishonesty;
- (b) resigns as a result of an investigation into alleged misconduct; or
- (c) is dismissed for misconduct;

the Authorised Market Institution must immediately give the DFSA notice of that event and give the following information:

- (d) the name of the Key Individual or Director and his responsibilities within the Authorised Market Institution;
- (e) details of the alleged acts of misconduct by that Key Individual or Director; and
- (f) details of any disciplinary action which has been imposed or is proposed to be taken by that body in relation to that Key Individual or Director.

**10.4.3** Where an Authorised Market Institution becomes aware that any of the following events have occurred in relation to a Key Individual or Director, it must immediately give the DFSA notice of that event:

- (a) a petition of bankruptcy is presented against that Key Individual or Director;
- (b) a bankruptcy order is made against him; and
- (c) he enters into a voluntary arrangement with his creditors.

## **10.5 Constitution and governance**

**10.5.1** Where an Authorised Market Institution is to circulate any notice or other document proposing any amendment to its memorandum or articles of association, or other document relating to its constitution, to:

- (a) its shareholders or any group or class of them;
- (b) persons granted access to its facilities or any group or class of them; or
- (c) any other group or class of persons which has the power to make that amendment or whole consent or approval is required before it may be made:

that Authorised Market Institution must give notice of that proposed amendment to the DFSA setting out the following information:

- (d) the proposed amendment;
- (e) the reasons for the proposal; and

- (f) a description of the group or class of persons to whom the proposal is to be circulated.

**10.5.2** Where an Authorised Market Institution makes an amendment to its memorandum or articles of association, or other document relating to its constitution, that Authorised Market Institution must immediately give the DFSA notice of that event, setting out written particulars of that amendment and of the date on which it is to become or became effective.

**10.5.3** Where any change is made to an agreement which relates to the constitution or governance of an Authorised Market Institution, that Authorised Market Institution must give the DFSA notice of that event as soon as it is aware of it, and give written particulars of the date on which it is to become or became effective.

**Guidance**

The purpose of these notifications is to ensure the DFSA is informed of changes to arrangements which specify the arrangements by which an Authorised Market Institution will be governed or by which important decisions will be taken within that body.

## **10.6 Financial and other information**

**10.6.1** An Authorised Market Institution must give the DFSA:

- (a) a copy of its annual report and accounts; and
- (b) a copy of any consolidated annual report and accounts of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

- (c) three months after the end of the financial year to which the document relates;
- (d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or
- (e) the time when the document is sent to a Holding Company of the Authorised Market Institution.

**10.6.2** Where an audit committee of an Authorised Market Institution has received a report in relation to any period or any matter relating to any Regulatory Functions of that Authorised Market Institution, the Authorised Market Institution must immediately give the DFSA a copy of that report.

**10.6.3** An Authorised Market Institution must give the DFSA a copy of its quarterly management accounts within one month of the end of the period to which they relate.

**10.6.4** An Authorised Market Institution must give the DFSA:

- (a) a statement of its anticipated income, expenditure and cash flow for each financial year; and
- (b) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

**Guidance**

An Authorised Market Institution is subject to GEN 8 and the requirements imposed by those Rules.

**Fees and charges**

**10.6.5** An Authorised Market Institution must give the DFSA a summary of:

- (a) any proposal for changes to the fees or charges levied on users of its facilities, or any group or class of them, at the same time as the proposal is communicated to the relevant users; and
- (b) any such change, no later than the date when it is published and notified to relevant parties.

## **10.7 Complaints**

**10.7.1** Where an Authorised Market Institution has investigated a complaint arising in connection with the performance of, or failure to perform any of its Regulatory Functions, and the conclusion is that the Authorised Market Institution should:

- (a) make a compensatory payment to any person; or
- (b) remedy the matter which was the subject of that complaint

the Authorised Market Institution must immediately notify the DFSA of that event and give the DFSA a copy of the report and particulars of the recommendation as soon as that report or those recommendations are available to it.

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## **10.8 Notification in respect of trading**

**10.8.1** Where an Exchange proposes to remove from trading or admit to trading, by means of its facilities a class of Investment which it has not previously traded, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholder, with the following information;

- (a) a description of the Investment to which the proposal relates;
- (b) where that Investment is a derivative product, the proposed terms of that derivative; and
- (c) the name of any clearing or settlement facility in respect of that Investment.

**10.8.2** Where an Exchange decides to suspend, restore from suspension or cease trading any Investment it must immediately notify the DFSA and any person granted access to its facilities of the decision.

**10.8.3** Where a Clearing House proposes to cease clearing or settling, or to clear or settle by means of its facilities a class of Investment which it has not previously traded, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholder, with the following information;

- (a) a description of the Investment to which the proposal relates;
- (b) where that Investment is a derivative product, the proposed terms of that derivative; and
- (c) the name of any trading facility in respect of that Investment.

## **10.9 Information technology systems**

**10.9.1** Where an Authorised Market Institution changes any of its plans for action in response to a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately give the DFSA notice of that event, and a copy of the revised or new plan.

**10.9.2** Where any reserve information technology system of an Authorised Market Institution fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that body must immediately give the DFSA notice of that event, and inform the DFSA of:

- (a) what action that Authorised Market Institution is taking to restore the operation of the reserve information technology system; and
- (b) when it is expected that the operation of that system will be restored.

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**Inability to discharge regulatory functions**

- 10.9.3** Where, because of the occurrence of any event or circumstances, an Authorised Market Institution is unable to discharge any Regulatory Function, it must immediately give the DFSA written notice of its inability to discharge that function, and inform the DFSA of:
- (a) what event or circumstance has caused it to become unable to do so;
  - (b) which of its Regulatory Functions it is unable to discharge; and
  - (c) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that Regulatory Function.

**10.10 Investigations and disciplinary action**

- 10.10.1** Where an Authorised Market Institution becomes aware that a person other than the DFSA has been appointed by any regulatory authority to investigate:
- (a) any business transacted on or through its facilities; or
  - (b) any aspect of the clearing or settlement services which it provides,
- it must immediately give the DFSA notice of that event.

**Guidance**

An Authorised Market Institution need not give the DFSA notice of:

- a. routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of theme visits;
- b. routine requests for information; or
- c. investigations into the conduct of Persons granted access to the facilities of an Authorised Market Institution where the use of its facilities is a small or incidental part of the subject matter of the investigation.

**Disciplinary action relating to persons granted access to its facilities**

- 10.10.2** Where an Authorised Market Institution has taken disciplinary action against a Person granted access to its facilities, or any Employee of such Person, in respect of a breach of its Business Rules or Listing Rules the Authorised Market Institution must immediately notify the DFSA of that event, and give:
- (a) the name of the Person concerned;
  - (b) details of the disciplinary action taken by the Authorised Market Institution; and

- (c) the Authorised Market Institution's reasons for taking that disciplinary action.

**10.10.3** Where an appeal is lodged against any disciplinary action referred to in Rule 10.10.2, the Authorised Market Institution must immediately give the DFSA notice of that event and:

- (a) the name of the appellant and the grounds on which the appeal is based, immediately; and
- (b) the outcome of the appeal, when known.

#### **Criminal offences and civil prohibition**

**10.10.4** Where an Authorised Market Institution has information tending to suggest that any person has:

- (a) been carrying on Financial Services in the DIFC in contravention of the general prohibition;
- (b) engaged in Market Misconduct; or
- (c) engaged in financial crime or money laundering;

it must immediately give the DFSA notice of that event, along with full details of that information in writing.

#### **Directions by an exchange**

**10.10.5** Where an Exchange:

- (a) decides to limit the open position of any Person in Investments; or
- (b) issues directions to any Person to close out his position in any Investment;

that Exchange must immediately give the DFSA notice of that event, and the Person's name, the Investment and size of any position to be limited or closed-out and the reasons for the Exchange's decision.

## **10.11 Supervisory directions**

### **Guidance**

1. Article 9 of the Markets Law provides as follows:
  - “(1) Without limiting the application of the Regulatory Law, the DFSA may by written notice direct an Authorised Market Institution to do or not do specified things that the DFSA considers are necessary or desirable to comply with the Law or ensure the integrity of the financial services industry in the DIFC, including but not limited to directions:

- 
- (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution; or
      - (b) requiring an Authorised Market Institution to act in a specified manner in relation to transactions conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions.
    - (2) Without limiting the application of Article 75 of the Regulatory Law, the DFSA may, with the approval of the Council, by written notice direct an Authorised Market Institution to:
      - (a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period;
      - (b) suspend transactions on the market or through the facilities operated by an Authorised Market Institution;
      - (c) suspend transactions in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;
      - (d) prohibit trading in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;
      - (e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by an Authorised Market Institution; or
      - (f) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the DFSA's objectives.
    - (3) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under this Article.
    - (4) Where an Authorised Market Institution has made rules for the purpose of persons using its facilities and has not exercised powers under those Rules and where the DFSA reasonably considers it necessary and desirable to do so, the DFSA may exercise the powers contained in the Rules as though it was the Authorised Market Institution."
  2. The DFSA expects to use these powers only in exceptional circumstances. Factors the DFSA will consider in exercising these powers include:
    - a. what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;
    - b. the impact on the DFSA's objectives if a direction were not issued; or
    - c. whether it is in the interests of the DIFC.
  3. The written notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers. Though the DFSA is not required to do so under the Markets Law, in most cases, the DFSA will contact the Authorised Market Institution prior to issuing such a direction.
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## **10.12 Listing directions**

### **Guidance**

Article 19(1) of the Markets Law allows the DFSA to direct an Authorised Market Institution to suspend or delist from or restore from suspension to Securities from its Official List of Securities. Such directions may take immediate effect or from a date and time as may be specified in the directive. Chapter 7 of the OSR contains details in respect of this.

## **10.13 Public disclosures of decisions in relation to an official list of securities and traded investments**

**10.13.1** (1) An Exchange must make a market disclosure:

- (a) on the website of the Exchange;
- (b) to NASDAQ Dubai Limited for public dissemination; and
- (c) to the DFSA

of decisions in relation to the following events:

- (d) an admission of Securities to an Official List of Securities,
  - (e) a suspension of Securities from an Official List of Securities;
  - (f) a restoration from suspension of Securities from an Official List of Securities;
  - (g) a delisting of Securities from an Official List of Securities; and
  - (h) a suspension, restoration from suspension or decision to cease trading of any Investment.
- (2) The disclosure made in accordance with (1) should also indicate whether the event was made under a direction made to the Exchange by the DFSA.

[Amended] [RM63][VER8/01-09]

### **Guidance**

Disclosures made in accordance with Rule 10.13.1 are designed to help ensure that an orderly market exists in relation to Securities admitted to an Official List of Securities.

## **11 ANTI MONEY LAUNDERING RULES FOR AUTHORISED MARKET INSTITUTIONS**

### **11.1 U.A.E. federal law**

#### **Guidance**

1. In connection with Article 72 of the Regulatory Law 2004, this chapter relates to regulatory requirements imposed by the DFSA, as opposed to requirements imposed by applicable criminal laws, that is relevant provisions of the 'Federal Law No 4. of 2002 - Criminalisation of Money Laundering of the U.A.E.' (U.A.E. Law No. 4), the 'Federal Law No. 1 of 2004' regarding anti terrorism, the U.A.E. Penal Code and any other federal law of the U.A.E as applicable in the DIFC in relation to anti money laundering compliance. The Rules of the chapter should therefore not be relied upon to interpret or determine the application of the money laundering laws of the U.A.E.
2. By virtue of Article 3(1) of 'Federal Law No. 8 of 2004', the U.A.E. Law No. 4 of 2002 applies to all operations in the DIFC. In recognition of this, Article 70(3) of the Regulatory Law requires an Authorised Market Institution to comply with the U.A.E. Law No. 4. Pursuant to Article 70(3), an Authorised Market Institution is required to comply with the U.A.E. Law No. 4. The defined term of 'Money Laundering' in these Rules follows that in the U.A.E. Law No.4. The legal definition of the offence of 'Money Laundering' is set out in Article 1 of the U.A.E. Law No.4.

### **11.2 Application**

- 11.2.1** This chapter applies to every Authorised Market Institution and the Money Laundering Reporting Officer (MLRO) of an Authorised Market Institution.

#### **Guidance**

The requirement for the appointment of an MLRO of an Authorised Market Institution is set out in Rule 7.2.2(2)(c).

### **11.3 Purpose**

#### **Guidance**

1. These Rules require an Authorised Market Institution to have adequate policies, procedures, systems and controls in place to prevent the activity of money laundering. Money laundering is generally described as the process by which criminals attempt to hide or disguise the true origin and ownership of the proceeds of their criminal activities, thereby avoiding prosecution, conviction and confiscation of criminal funds. This includes the closely related subject of 'terrorist financing'.
2. Accordingly, where the DFSA uses 'money laundering' either as a defined or undefined term, Authorised Market Institutions are required to include 'terrorist financing' in all considerations with regard to their policies, procedures, systems and controls.

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## **11.4 General requirements**

- 11.4.1** (1) An Authorised Market Institution must establish and maintain effective anti money laundering policies, procedures, systems and controls to prevent opportunities for Money Laundering, in relation to the Authorised Market Institution, and its activities in relation to its Members.
- (2) An Authorised Market Institution must take reasonable steps to ensure that its Employees comply with the relevant requirements of its anti money laundering policies, procedures, systems and controls.

### **Guidance**

1. An Authorised Market Institution's anti money laundering policies, procedures, systems and controls should:
    - a. ensure compliance with the U.A.E Law No.4 and any other relevant Federal laws;
    - b. enable suspicious transactions to be detected and reported;
    - c. ensure the Authorised Market Institution is able to provide an audit trail of a transaction; and
    - d. comply with any other obligation in these Rules.
  2. An Authorised Market Institution's anti money laundering compliance arrangements should consist of policies, procedures, systems and controls and may also encompass appropriate anti money laundering programmes and strategies.
  3. An Authorised Market Institution should have a policy statement detailing the duties and obligations of its MLRO.
  4. In accordance with GEN Rule 5.3.19 an Authorised Market Institution should have specific arrangements to consider the fitness and propriety of its staff. The arrangements should take into account criminal convictions, adverse findings by courts or regulatory authorities in the U.A.E. or elsewhere, or engagement in dishonest or improper business practices.
  5. Under Article 3 of the U.A.E. Law No.4, an Authorised Market Institution may be criminally liable for the offence of Money Laundering if such an activity is intentionally committed in its names or for its accounts.
- 11.4.2** (1) An Authorised Market Institution must include in its Business Rules an anti money laundering regime applicable to its Members.
- (2) The anti money laundering regime referred to in (1) must include at least rules in relation to:
- (a) application of the 'Federal Law No. 4 of 2002 - Criminalisation of Money Laundering of the U.A.E.' (U.A.E. Law No. 4), the 'Federal Law No. 1 of 2004' regarding anti-terrorism and the U.A.E. Penal Code;
  - (b) anti money laundering compliance arrangements;

- (c) appointment of an MLRO;
  - (d) customer identification, ongoing due diligence and scrutiny required under Rule 11.7.3, and retention of documents;
  - (e) internal and external reporting of suspicious transactions, taking into account the applicable anti money laundering legislation;
  - (f) transaction monitoring;
  - (g) use of government, regulatory and international findings with regard to anti money laundering deficiencies in specific jurisdictions and with regard to money laundering and terror suspects;
  - (h) risk assessment; and
  - (i) training.
- (3) An Authorised Market Institution must monitor and regularly review compliance of its Members with its anti money laundering regime.
- (4) An Authorised Market Institution must ensure that its Members rectify any contraventions of its anti money laundering regime without delay.
- (5) An Authorised Market Institution must notify the DFSA of any:
- (a) material breach of its anti money laundering regime by a Member;
  - (b) circumstances in which a Member will not or cannot rectify a breach of its anti money laundering regime; and
  - (c) conduct which the Authorised Market Institution knows or ought reasonably to know amounts to terrorist financing.

[Amended] [RM59/08] [VER7/09/08]

### **Guidance**

1. In accordance with the Regulatory Law, the DFSA is responsible for monitoring anti money laundering compliance of Authorised Market Institutions. An Authorised Market Institution is responsible for anti money laundering compliance of all its Members with its anti money laundering regime. Authorised Firms must also comply with the DFSA's AML module.
2. An Authorised Market Institution must operate appropriate measures to reduce Market Misconduct on the Authorised Market Institution's facilities. As part of this requirement, an Authorised Market Institution shall include an anti money laundering regime in their Business Rules.
3. An Authorised Market Institution may review the operation of its Members' anti money laundering policies, procedures, systems and controls in its regular reviews of Members' operations.

4. Before an Authorised Market Institution accepts a prospective Member, it should ensure that the applicant has an anti money laundering programme in place which is designed to comply with all applicable anti money laundering legislation.

## **11.5 Co-operation with regulators**

- 11.5.1** An Authorised Market Institution that receives a request for information from a Financial Services Regulator or agency responsible for anti money laundering regarding enquiries into potential money laundering related to activities carried on in or from the DIFC, must promptly inform the DFSA in writing.

## **11.6 Appointment, responsibilities and duties of the MLRO**

### **Appointment**

#### **Guidance**

1. The requirement to appoint an individual as MLRO is contained in Rule 7.2.2(2)(c).
2. Pursuant to Rule 7.2.2(2)(c), the MLRO must be ordinarily resident in the U.A.E.

- 11.6.1** An Authorised Market Institution must ensure that the MLRO is of sufficient seniority within the Authorised Market Institution to enable him to:

- (a) act on his own authority;
- (b) have direct access to the Governing Body and senior management;
- (c) have sufficient resources including, if necessary, an appropriate number of appropriately trained Employees to assist in the performance of his duties in an effective, objective and independent manner;
- (d) have unrestricted access to information the Authorised Market Institution has about the financial and business circumstances of a Member; and
- (e) have unrestricted access to relevant information about the features of the transactions relevant to the Authorised Market Institution.

#### **Guidance**

GEN Rule 5.3.18 requires an Authorised Market Institution to establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

### **Responsibilities**

- 11.6.2** (1) An Authorised Market Institution must ensure that its MLRO is responsible for all of its anti money laundering activities carried on in or from the DIFC.
- (2) An Authorised Market Institution must ensure that its MLRO carries out and is responsible for the following:

- (a) establishing and maintaining the Authorised Market Institution's anti money laundering policies, procedures, systems and controls and compliance with anti money laundering legislation applicable in the DIFC;
- (b) the day-to-day operations for compliance with the Authorised Market Institution's anti money laundering policies, procedures, systems and controls;
- (c) the compliance monitoring and review of its Member's anti money laundering policies, procedures, systems and controls with the Authorised Market Institution's anti money laundering regime pursuant to Rule 11.4.2;
- (d) taking appropriate action pursuant to Rule 11.4.2(3) in order to ensure that contraventions of its Members are rectified without delay;
- (e) acting as the point of contact to receive internal Suspicious Transaction Reports from the Authorised Market Institution's Employees pursuant to Rule 11.8.1;
- (f) taking appropriate action pursuant to Rule 11.8.2 following the receipt of an internal Suspicious Transaction Report from the Authorised Market Institution's Employees;
- (g) making, in accordance with U.A.E. Law No.4, external Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. and sending corresponding copies to the DFSA under Rule 11.8.2;
- (h) acting as the point of contact within the Authorised Market Institution for competent U.A.E. authorities, the DFSA and its Members regarding money laundering issues;
- (i) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;
- (j) establishing and maintaining an appropriate anti money laundering training programme and adequate awareness arrangements pursuant to Rules under section 11.12; and
- (k) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions, described in section 11.9 and GEN Rule 5.3.30.

[Amended] [RM59/08] [VER7/09/08]

### **Guidance**

In accordance with GEN Rule 5.3.21 where an Authorised Market Institution outsources specific anti money laundering tasks of its MLRO to another suitable individual of a third party provider, including within a corporate Group, the MLRO of the Authorised Market Institution remains responsible for ensuring compliance with the duties imposed on the MLRO.

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**Reporting**

**11.6.3** The MLRO must report at least annually to the Governing Body or senior management of the Authorised Market Institution on the following matters:

- (a) the Authorised Market Institution's compliance with applicable anti money laundering laws including Rules;
- (b) the quality of the Authorised Market Institution's anti money laundering policies, procedures, systems and controls;
- (c) the general compliance of its Members with the anti money laundering regime contained in the Business Rules;
- (d) any internal Suspicious Transaction Reports made by the Authorised Market Institution's Employees pursuant to Rule 11.8.1 and action taken in respect of those reports, including the grounds for all decisions;
- (e) any external Suspicious Transaction Reports made by the Authorised Market Institution pursuant to Rule 11.8.2 and action taken in respect of those reports including the grounds for all decisions;
- (f) any external Suspicious Transaction Reports made by the Authorised Market Institution's Members to the AMLSCU;
- (g) any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in section 11.9 and GEN Rule 5.3.30 and how the Authorised Market Institution has taken them into account; and
- (h) any other relevant matters related to money laundering as it concerns the Authorised Market Institution's business.

[Amended] [RM59/08] [VER7/09/08]

**11.6.4** An Authorised Market Institution must ensure that its Governing Body or senior management promptly:

- (a) assess the report provided under Rule 11.6.3;
- (b) take action, as required subsequent to the findings of the report, in order to resolve any identified deficiencies; and
- (c) make a record of their assessment in (a) and the action taken in (b).

**11.6.5** (1) The report provided under Rule 11.6.3 and the records of the assessment and actions pursuant to Rule 11.6.4 must be documented in writing.

- (2) A complete copy of the Report and records of the assessment and actions must be provided to the DFSA promptly.

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## **11.7 Member identification requirements**

### **Duties and responsibilities**

- 11.7.1** (1) Subject to the exception under Rule 11.7.4, an Authorised Market Institution must establish and verify the identity of any Member to whom the Authorised Market Institution allows access or proposes to allow access to its facilities.
- (2) In establishing and verifying a Member's true identity, an Authorised Market Institution must obtain sufficient and satisfactory evidence having considered:
- (a) its risk assessment under Rule 11.10.1 in respect of the Member; and
  - (b) the relevant provisions of App2 and App3.
- (3) An Authorised Market Institution must update as appropriate any Member identification policies, procedures, systems and controls.

### **Guidance**

1. An Authorised Market Institution should adopt a risk-based approach for the Member identification and verification process. Depending on the outcome of the Authorised Market Institution's money laundering risk assessment of its Member, it should decide to what level of detail the Member identification and verification process will need to be performed.
2. The requirements for Members on how to identify and verify their clients should be set out in the Authorised Market Institution's anti money laundering regime.

**11.7.2** The obligations under Rules 11.7.1 must be fulfilled before the Authorised Market Institution effects any transaction on behalf of the Member.

- 11.7.3** (1) An Authorised Market Institution must :
- (a) ensure that the information and documentation concerning a Member's identity remains accurate and up-to-date ; and
  - (b) conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of transactions undertaken by, a Member throughout the course of the relationship.
- (2) If at any time an Authorised Market Institution becomes aware that it lacks sufficient information or documentation concerning a Member's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the Member's identity.

[Amended] [RM59/08] [VER7/09/08]



**Guidance**

1. An Authorised Market Institution should undertake a periodic review to ensure that Member identity documentation is accurate and up-to-date.
2. An Authorised Market Institution should undertake a review particularly when there is a material change in the nature or ownership of the Member.
3. Additional elements concerning the Member identification and ongoing due diligence of the business relationship with the Member and scrutiny of transactions which an Authorised Market Institution should take into account are set out as further Guidance in App2.
4. The degree of the ongoing due diligence to be undertaken will depend on the risk assessment carried out pursuant to section 11.10.

[Amended] [RM59/08] [VER7/09/08]

**Exception to member identification requirements**

- 11.7.4** (1) Subject to Rule 11.7.5, an Authorised Market Institution is not required to establish the identity of a Member pursuant to Rule 11.7.1 if the Member is one of the following:
- (a) an Authorised Firm; or
  - (b) a Recognised Member whose identity has been verified in a manner consistent with these Rules or equivalent international standards applying in FATF Countries, provided that:
    - (i) no exception from identification obligations has been applied in the original identification process; and
    - (ii) a written statement is received from the introducing exchange or clearing house confirming that the Recognised Member has been identified with the relevant standards under (b)(i); any identification evidence can be accessed by the Authorised Market Institution without delay; and the identification evidence is kept for at least six years or any other period acceptable to the DFSA.
- (2) If an Authorised Market Institution is not satisfied that the Recognised Member has been identified in a manner consistent with these Rules, the Authorised Market Institution must perform the verification process itself.

**Guidance**

The DFSA would expect an Authorised Market Institution to take reasonable steps to determine whether or not a Member falls within the exceptions under this Rule, and to keep records of the basis on which a Member's identity was not required to be verified.

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- 11.7.5** (1) Rule 11.7.4 does not apply where the Authorised Market Institution:
- (a) knows or suspects; or
  - (b) has reasonable grounds to know or suspect;
- that a Member is engaged in Money Laundering.
- (2) The Authorised Market Institution will be taken to know or suspect or to have reasonable grounds to know or suspect, if:
- (a) any Employee handling the transaction or potential transaction; or
  - (b) anyone managerially responsible for it;
- knows or suspects or has reasonable grounds to know or suspect that a Member is engaged in Money Laundering.

#### **Documentation and records**

- 11.7.6** (1) All relevant information, correspondence and documentation used by an Authorised Market Institution:
- (a) to verify a Member's identity pursuant to Rules 11.7.1; and
  - (b) in respect of the ongoing due diligence and scrutiny required under Rule 11.7.3,
- must be kept for at least six years from the date on which the business relationship with a Member has ended.
- (2) If the date on which the business relationship with a Member has ended remains unclear, it may be taken to have ended on the date of the completion of the last transaction.

[Amended] [RM59/08] [VER7/09/08]

#### **Guidance**

The records maintained by an Authorised Market Institution should be kept in such a manner that:

- a. the DFSA or another competent third party is able to assess the Authorised Market Institution's compliance with legislation applicable in the DIFC;
- b. any transaction which was processed by or through the Authorised Market Institution on behalf of a Member can be reconstructed;
- c. any Member can be identified;
- d. all internal and external Suspicious Transaction Reports can be identified; and
- e. the Authorised Market Institution can satisfy, within an appropriate time, any regulatory enquiry or court order to disclose information.

- 11.7.7** All relevant details of any transaction carried out by the Authorised Market Institution with or for a Member must be kept for at least six years from the date on which the transaction was completed.
- 11.7.8** (1) Where Member identification records are kept by the Authorised Market Institution or other Persons outside the U.A.E., an Authorised Market Institution must take reasonable steps to ensure that the records are held in a manner consistent with these Rules.
- (2) An Authorised Market Institution must verify if there are secrecy or data protection legislation that would restrict access without delay to such data by the Authorised Market Institution, the DFSA or the law enforcement agencies of the U.A.E. Where such legislation exists, the Authorised Market Institution must obtain without delay certified copies of the relevant identification evidence and keep these copies in a jurisdiction which allows access by all those Persons.
- 11.7.9** An Authorised Market Institution must not:
- (a) establish a correspondent banking relationship with a Shell Bank;
  - (b) establish or keep anonymous accounts or accounts in false names; or
  - (c) maintain a nominee account which is held in the name of one Person, but controlled by or held for the benefit of another Person whose identity has not been disclosed to the Authorised Market Institution.

**Guidance**

An Authorised Market Institution should also have arrangements to guard against establishing a business relationship with business partners who permit their accounts to be used by Shell Banks.

## **11.8 Internal and external reporting requirements**

- 11.8.1** (1) An Authorised Market Institution must have appropriate arrangements to ensure that whenever any Employee, acting in the ordinary course of his employment, either:
- (a) knows or suspects; or
  - (b) has reasonable grounds for knowing or suspecting;
- that a Person is engaged in Money Laundering, that Employee makes an internal Suspicious Transaction Report to the Authorised Market Institution's MLRO.
- (2) An Authorised Market Institution must have policies and procedures to ensure that disciplinary action can be taken against any Employee who fails to make such a report.

**Guidance**

The requirement for Employees to make an internal Suspicious Transaction Report should include situations when no business relationship was developed because the circumstances were suspicious.

**11.8.2** If an Authorised Market Institution's MLRO receives an internal Suspicious Transaction Report he must without delay:

- (a) investigate the circumstances in relation to which the report was made;
- (b) determine whether in accordance with U.A.E Law No.4 of 2002 a corresponding external Suspicious Transaction Report must be made to the AMLSCU;
- (c) if required, make such an external report to the AMLSCU; and
- (d) provide a copy of such an external report to the DFSA at the time of provision under U.A.E Law No.4 of 2002.

**Guidance**

1. An Authorised Market Institution may allow its Employees to consult with their line managers before sending a report to the MLRO. The DFSA would expect that such consultation does not prevent making a report whenever an Employee has stated that he has knowledge, suspicion or reasonable grounds for knowing or suspecting that a transaction may involve money laundering.
2. Authorised Market Institutions are reminded that the failure to report suspicions of Money Laundering may constitute a criminal offence that is punishable under the laws of the U.A.E.
3. External Suspicious Transaction Reports under U.A.E. Law No.4 should be faxed to the AMLSCU and a copy faxed to the DFSA. The dedicated fax numbers and the template for making Suspicious Transaction Reports are available on the DFSA website.

**11.8.3** The MLRO must document:

- (a) the steps taken to investigate the circumstances in relation to which an internal Suspicious Transaction Report is made; and
- (b) where no external Suspicious Transaction Report is made to the AMLSCU the reasons why no such report was made.

**11.8.4** All relevant details of any internal and external Suspicious Transaction Report pursuant to Rules 11.8.1 and 11.8.2 must be kept for at least six years from the date on which the report was made.

**11.8.5** An Authorised Market Institution must ensure that if the MLRO decides to make an external Suspicious Transaction Report in accordance with Rule 11.8.2, his decision is made independently and is not subject to the consent or approval of any other Person.

- 11.8.6** Authorised Market Institutions must not carry out transactions which they know or suspect or have reasonable grounds for knowing or suspecting to be related to Money Laundering until they have informed the AMLSCU and the DFSA pursuant to Rule 11.8.2.

**Guidance**

1. If the Authorised Market Institution has reported a suspicion to the AMLSCU, the AMLSCU may instruct an Authorised Market Institution on how to proceed with the transaction. If a Person expresses his wish to move the funds before an Authorised Market Institution receives instruction from the AMLSCU on how to proceed, the Authorised Market Institution should immediately contact the AMLSCU for further instructions.
2. Pursuant to Article 4 of the U.A.E. Law No.4:
  - a. the Central Bank of the U.A.E. may order the freezing of suspected Property for a maximum of seven days;
  - b. the public prosecutor office of the U.A.E. may order seizure of suspected Property, proceeds or instrumentalities; or
  - c. a competent court of the U.A.E. may order provisional attachment for undetermined periods on any Property, proceeds or instrumentalities, if they have resulted from, or are associated with, a Money Laundering offence.
3. Further, and pursuant to Article 4 of the U.A.E. Law No. 4, the Attorney General of the U.A.E. has the exclusive authority to initiate criminal action against a perpetrator of offences set out in the law.

**Tipping-off**

4. Authorised Market Institutions are reminded that in accordance with Article 16 of the U.A.E. Law No.4 of 2002, Authorised Market Institutions or any of their Employees must not tip-off any Person, that is, inform any Person that his transaction is being scrutinised for possible involvement in suspicious Money Laundering operations, or that any other competent authority is investigating his possible involvement in suspicious Money Laundering operations.

**11.9 Government, regulatory and international findings**

[Amended] [RM59/08] [VER7/09/08]

- 11.9.1** An Authorised Market Institution must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) the Financial Action Task Force (FATF); and
- (d) the DFSA;

concerning arrangements for preventing money laundering or terrorist financing in a particular country or jurisdiction, including any assessment of material deficiency against relevant countries in adopting international standards.

**Guidance**

1. The systems and controls mentioned in Rule 11.9.1 should be established and maintained by an Authorised Market Institution taking into account its risk assessment pursuant to section 11.10. In relation to the term “make appropriate use” in Rule 11.9.1 this may mean that an Authorised Market Institution cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. When an Authorised Market Institution makes a decision about its anti money laundering policies, procedures, systems and controls, it should take into account any findings of inadequacy, for example, any notice or guidance issued by the FATF concerning the approach to money laundering of individual countries or jurisdictions.
3. An Authorised Market Institution should examine and pay special attention to any transactions or business relations with Persons located in such countries or jurisdictions.
4. An Authorised Market Institution considering transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments or the specific recommendations have been made.
5. The Authorised Market Institution’s MLRO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU and the DFSA if they do not qualify as suspicious pursuant to U.A.E. Law No.4. See section 11.8 on internal and external reporting requirements.
6. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example, taken off the sources mentioned in this Guidance, may nevertheless require attention which is higher than normal.
7. In order to assist Authorised Market Institutions, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings, guidance, directives or sanctions. However, the DFSA expects an Authorised Market Institution to take its own steps in acquiring relevant information from various available sources. For example, an Authorised Market Institution may obtain relevant information from the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and from the Office of Foreign Assets Control (OFAC) of the United States Department of Treasury.
8. Authorised Market Institutions should take note of GEN Rule 5.3.30 which requires such institutions to obtain and make appropriate use of the United Nations Security Council’s relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and financing of weapons of mass destruction.

**11.9.2** An Authorised Market Institution must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;

- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) U.A.E. enforcement agencies; and
- (d) the DFSA;

concerning names of Persons, groups, organisations or entities or any other body where suspicion of money laundering or terrorist financing exists.

**Guidance**

1. The systems and controls mentioned in Rule 11.9.2 should be established and maintained by an Authorised Market Institution taking into account its risk assessment pursuant to section 11.10. In relation to the term “make appropriate use” in Rule 11.9.2 this may mean that an Authorised Market Institution cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. An Authorised Market Institution may obtain and appropriately use available national and international information, for example, suspect lists or databases from credible public or private sources, with regard to money laundering and terrorist financing. The DFSA encourages Authorised Market Institutions to perform checks against their Member databases and records for any names appearing on such lists and databases. In addition, the Authorised Market Institution may refer to the sources mentioned in Guidance under Rule 11.9.1.
3. Authorised Market Institutions should take note of GEN Rule 5.3.30 which requires such institutions to obtain and make appropriate use of the United Nations Security Council’s relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and financing of weapons of mass destruction.

**11.10 Money laundering risks****Risk assessment**

- 11.10.1** (1) The anti money laundering policies, procedures, systems and controls of an Authorised Market Institution must adequately address the money laundering risks which take into account any vulnerabilities of its products, services and Members.
- (2) In assessing the risks in relation to money laundering, an Authorised Market Institution must have regard to the relevant provisions of App2 and App3.
- (3) An Authorised Market Institution must assess its risks in relation to money laundering and perform enhanced due diligence investigations for higher risk products, services and Members.
- (4) An Authorised Market Institution must be aware of any money laundering risks that may arise from new or developing technologies that might favour anonymity and take measures to prevent their use for the purpose of money laundering.

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**Risks regarding corruption and politically exposed persons**

- 11.10.2** (1) An Authorised Market Institution must have systems and controls to determine whether a Member is a Politically Exposed Person.
- (2) When an Authorised Market Institution has a Member relationship with a Politically Exposed Person, it must have specific arrangements to address the risks associated with corruption and Politically Exposed Persons.

**Guidance**

Guidance on how an Authorised Market Institution may address this risk is set out in App3 section A3.2.

**Suspicious transactions and transaction monitoring**

- 11.10.3** An Authorised Market Institution must establish and maintain policies, procedures, systems and controls in order to monitor and detect suspicious transactions. [Amended] [RM59/08] [VER7/09/08]

**Guidance**

1. An Authorised Market Institution should apply an intensified and ongoing monitoring programme over higher risk transactions and accounts.
2. Various risk aspects about transaction monitoring and about the detection of suspicious transactions, which the Authorised Market Institution should take into account, are set out as further Guidance in App3 section A3.3.
3. An Exchange may have transaction monitoring arrangements which are less sophisticated than those for clearing houses.

**11.11 Transfer of funds**

- 11.11.1** (1) Where an Authorised Market Institution makes a payment on behalf of a Person to a financial institution using an electronic payment and message system, it must include the Person's name, address and either an account number or a unique reference number in the payment instruction.
- (2) The requirement in (1) does not apply to an Authorised Market Institution which transfers funds to a financial institution where both the originator and the beneficiary are financial institutions acting on their own behalf.

**Guidance**

1. 'FATF Special Recommendation Number 7' seeks to ensure that national or international electronic payment and message systems, including fund or wire transfer systems such as SWIFT, are not misused as a means to break the money laundering audit trail. Therefore, the information about a Person as the originator of the fund transfer should remain with the payment instruction through the payment chain.



2. An Authorised Market Institution should monitor for and conduct enhanced scrutiny of suspicious activities including incoming fund transfers that do not contain complete originator information, including name, address and account number or unique reference number in accordance with App3.

## **11.12 Awareness and training**

**11.12.1** An Authorised Market Institution must have arrangements to provide periodic information and relevant training to all Employees to ensure that they are aware of:

- (a) the identity and responsibilities of the Authorised Market Institution's MLRO;
- (b) the Authorised Market Institution's anti money laundering regime in relation to its Members pursuant to Rule 11.4.2;
- (c) applicable legislation relating to anti money laundering;
- (d) the potential effect on the Authorised Market Institution, its Employees and its Members of breaches of applicable legislation relating to money laundering;
- (e) the Authorised Market Institution's anti money laundering policies, procedures, systems and controls and any changes to these;
- (f) money laundering risks, trends and techniques;
- (g) the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged that may warrant an internal Suspicious Transaction Report pursuant to Rule 11.8.1;
- (h) the Authorised Market Institution's arrangements regarding the making of an internal Suspicious Transaction Report pursuant to Rule 11.8.2;
- (i) requirements relating to Member identification and ongoing due diligence and scrutiny pursuant to the Rules in section 11.7; and
- (j) the use of findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in section 11.9 and GEN Rule 5.3.30.

[Amended] [RM59/08] [VER7/09/08]

**11.12.2** Information described under Rule 11.12.1 must be brought to the attention of new Employees and must remain available to all Employees.

- 11.12.3** (1) An Authorised Market Institution must have arrangements to ensure that:
- (a) its anti money laundering training is up-to-date with money laundering trends and techniques;

- (b) its anti money laundering training is appropriately tailored to the Authorised Market Institution's different activities, services, Members and indicates any different levels of money laundering risk and vulnerabilities; and
    - (c) all Employees receive anti money laundering training.
  - (2) An Authorised Market Institution must conduct anti money laundering training sessions with sufficient frequency to ensure that within 12 months it is provided to all Employees.
- 11.12.4** (1) All relevant details of the Authorised Market Institution's anti money laundering training must be recorded, including:
- (a) dates when the training was given;
  - (b) the nature of the training, and
  - (c) the names of the Employees who received the training.
- (2) These records must be kept for at least six years from the date on which the training was given.

## **12 ENFORCEMENT POWERS AND AUTHORISED MARKET INSTITUTIONS**

### **12.1 Application of ENF module**

#### **Guidance**

The DFSA has powers of enforcement and intervention which apply to Authorised Market Institutions. These powers are dealt with in ENF.

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## **13 ISLAMIC FINANCIAL BUSINESS**

### **13.1 Application**

**13.1.1** The requirements in this chapter apply to an Authorised Market Institution whose Licence has been endorsed authorising the Authorised Market Institution to conduct Islamic Financial Business as an Islamic Financial Institution or an Islamic Window in accordance with Article 12 of the Law Regulating Islamic Financial Business 2004.

### **13.2 Disclosure requirements in relation to Islamic financial business**

**13.2.1** An Authorised Market Institution must disclose the following information to each Person granted access to its facilities at the outset of the relationship, following the endorsement process required by Article 12 of the Law Regulating Islamic Financial Business 2004, and thereafter whenever the information changes:

- (a) the members of the Authorised Market Institution's Shari'a Supervisory Board (SSB); and
- (b) if the Person granted access to its facilities requests, the manner and frequency of Shari'a reviews.

#### **Guidance**

Article 12 of the Law Regulating Islamic Financial Business 2004 sets out the basis upon which an Authorised Firm and an Authorised Market Institution must seek an endorsement on its Licence to conduct Islamic Financial Business as an Islamic Financial Institution or an Islamic Window.

### **13.3 Constitutional documents**

**13.3.1** An Authorised Market Institution endorsed as an Islamic Financial Institution must ensure that its constitutional documents state that its business operations will be conducted in accordance with Shari'a.

### **13.4 Systems and controls**

#### **General requirement**

**13.4.1** An Authorised Market Institution must establish and maintain systems and controls which ensure that it complies with Shari'a.

**Guidance**

Responsibility for ensuring that an Authorised Market Institution complies with Shari'a ultimately rests with its senior management.

**13.5 Policy and document requirements****Policy and procedures manual**

- 13.5.1** (1) An Authorised Market Institution must implement and maintain an Islamic Financial Business policy and procedures manual which addresses the following matters:
- (a) the manner in which the compliance with Shari'a will be ensured;
  - (b) the manner in which the SSB will oversee and advise in regard to the Islamic Financial Business conducted by the Authorised Market Institution;
  - (c) the manner in which SSB fatwas, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'a review undertaken;
  - (d) the manner in which disputes between the SSB and the Authorised Market Institution in respect of Shari'a compliance will be addressed;
  - (e) the process for approving those internal systems and controls which are in place to ensure not only that the Islamic Financial Business is carried out in compliance with Shari'a, but that information is disseminated to a Person granted access to its facilities in an appropriate manner; and
  - (f) the manner in which conflicts of interest will be identified and managed.

**13.6 Shari'a Supervisory Board****Appointment and operation of a Shari'a Supervisory Board****Guidance**

Pursuant to Article 13 of the Law Regulating Islamic Financial Business 2004, an Authorised Market Institution undertaking Islamic Financial Business must appoint a Shari'a Supervisory Board.

**13.6.1** When an Authorised Market Institution appoints a Shari'a Supervisory Board, it must ensure that:

- (a) the Shari'a Supervisory Board has at least three members;
- (b) the members appointed to the Shari'a Supervisory Board are competent to perform their functions as Shari'a Supervisory Board members;
- (c) any appointments, dismissals or changes in respect of members of the Shari'a Supervisory Board are approved by the Governing Body of the Authorised Market Institution; and
- (d) no member of the Shari'a Supervisory Board is a director or Controller of the Authorised Market Institution.

**Guidance**

For the purposes of Rule 6.1.1, an Authorised Market Institution should consider the previous experience and qualifications of the proposed Shari'a Supervisory Board members to assess whether the proposed Shari'a Supervisory Board member is competent to advise on the Islamic Financial Business to be undertaken by the Authorised Market Institution.

**13.6.2** An Authorised Market Institution must document its policy in relation to:

- (a) how appointments, dismissals or changes will be made to the Shari'a Supervisory Board;
- (b) the process through which the suitability of Shari'a Supervisory Board members will be considered; and
- (c) the remuneration of the members of the Shari'a Supervisory Board;

**13.6.3** An Authorised Market Institution must establish and maintain records of:

- (a) its assessment of the competency of the Shari'a Supervisory Board members;
- (b) the agreed terms of engagement of each member of the Shari'a Supervisory Board; and
- (c) the matters in Rules 13.6.1(c) and 13.6.2,

for six years.

**Guidance**

The records of the assessment of competency of Shari'a Supervisory Board members should clearly indicate; at least:

- a. the factors that have been taken into account when making the assessment of competency;
- b. the qualifications and experience of the Shari'a Supervisory Board members;

- c. the basis upon which the Authorised Market Institution has deemed that the proposed Shari'a Supervisory Board member is suitable; and
- d. details of any other Shari'a Supervisory Boards of which the proposed Shari'a Supervisory Board member is, or has been, a member.

**13.6.4** An Authorised Market Institution must take reasonable steps to ensure that the Shari'a Supervisory Board is independent of and not subject to any conflict of interest with respect to the Authorised Market Institution.

**13.6.5** If requested by the DFSA, an Authorised Market Institution must provide the DFSA with information on its appointed or proposed Shari'a Supervisory Board members with regard to the qualifications, skills, experience and independence of the Shari'a Supervisory Board members.

**13.6.6** An Authorised Market Institution must take reasonable steps to ensure that it and its Employees:

- (a) provide such assistance as the Shari'a Supervisory Board reasonably requires to discharge its duties;
- (b) give the Shari'a Supervisory Board right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the Shari'a Supervisory Board's ability to discharge its duties; and
- (d) do not provide false or misleading information to the Shari'a Supervisory Board.

## **13.7 Shari'a reviews**

**13.7.1** An Authorised Market Institution must ensure that all Shari'a reviews are undertaken by the Shari'a Supervisory Board in accordance with AAOIFI GSIFI No 2.

- 13.7.2**
- (1) An Authorised Market Institution must commission an annual report from the Shari'a Supervisory Board which complies with AAOIFI GSIFI No 1.
  - (2) An Authorised Market Institution must deliver a copy of the annual report of the Shari'a Supervisory Board to the DFSA within 14 days of having received it.

## **13.8 Internal Shari'a review**

**13.8.1** An Authorised Market Institution must perform an internal Shari'a review to assess the extent to which the Authorised Market Institution complies with fatwas, rulings and guidelines issued by the Authorised Market Institution's Shari'a Supervisory Board.

**13.8.2** An Islamic Financial Institution must perform the internal Shari'a review in accordance with AAOIFI GSIFI No 3.

**13.8.3** An Authorised Market Institution which operates an Islamic Window must, to the extent possible, perform the internal Shari'a review in accordance with AAOIFI GSIFI No 3 and must document the manner in which it will conduct that part of the internal Shari'a review that is not conducted in accordance with AAOIFI GSIFI No 3.

**Guidance**

GSIFI No. (3) (Internal Shari'a Review) establishes standards and provides guidance on the internal Shari'a review in institutions that conduct business in conformity with Shari'a. The standard covers the following:

- a. Objectives;
- b. Internal Shari'a review;
- c. Independence and objectivity;
- d. Professional proficiency;
- e. Scope of work;
- f. Performance of the internal Shari'a review work;
- g. Management of the internal Shari'a review;
- h. Quality assurance; and
- i. Elements of an effective internal Shari'a review control system.

**13.8.4** An Authorised Market Institution must ensure that the internal Shari'a review is performed by the internal audit function or the compliance function of the Authorised Market Institution and that the individuals or departments involved in performing the review are competent and sufficiently independent to assess compliance with Shari'a.

**Guidance**

For the purposes of assessing competency of personnel or departments which perform the internal Shari'a review, Authorised Market Institutions should consult AAOIFI GSIFI No 3 paragraphs 9-16 inclusive.



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## **14 APPEALS OF EXCHANGE DECISIONS**

### **14.1 Application**

**14.1.1** Pursuant to Article 56(2)(d) of the Markets Law, any person who:

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

may appeal the Exchange decision to the Financial Markets Tribunal by a notice in writing sent to the Financial Markets Tribunal within 30 days after the date on which the Exchange sent the notice of the decision to the person.

**14.1.2** The grounds on which an appeal may lie under this Rule are limited to the following:

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

**14.1.3** The Financial Markets Tribunal has jurisdiction to hear and determine an appeal of an Exchange decision filed under this Rule and may uphold, vary or reverse the Exchange decision under appeal or refer the matter back to the Exchange for further reconsideration.

**14.1.4** The powers of the Financial Markets Tribunal prescribed under Article 57 of the Markets Law apply to appeals brought under this Rule.

[Added][VER2/09-05]

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## **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 AMI, the fitness and propriety of:
  - a. an applicant for a Licence to be an Authorised Market Institution; and
  - b. an Authorised Market Institution.
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 an Authorised Market Institution includes an applicant for a Licence to be an Authorised Market Institution.

### **A1.2 An Authorised Market Institution**

#### **Guidance**

##### **Locations of offices and close links**

1. An Authorised Market Institution 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 Market Institution is a Body Corporate constituted under the laws of the DIFC it must maintain its head office and registered office in the DIFC. In considering the location of an Authorised Market Institution'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 Market Institution by the DFSA. Where the DFSA is not satisfied concerning an Authorised Market Institution'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.

#### **General**

2. An Authorised Market Institution 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.
3. An Authorised Market Institution that satisfies the matters described under Guidance notes 1 and 2 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 7 to 11 below.
4. 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 Market Institution has demonstrated, or continues to demonstrate, that it is fit and proper.

5. In considering any specific matters, the DFSA may request reviews by any appropriately skilled third party on any aspect of the Authorised Market Institution'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.
6. The DFSA may request or require any information which it considers relevant to its consideration of an application by an Authorised Market Institution.

**Background and history**

7. The DFSA will have regard to:
  - a. any matter affecting the propriety of the Authorised Market Institution'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 Market Institution 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;
  - d. whether an Authorised Market Institution 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 Market Institution in excess of \$10,000 or awards that total more than \$10,000;
  - f. whether an Authorised Market Institution 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 Market Institution has been open and truthful in all its dealings with the DFSA.

**Ownership and group**

8. The DFSA will have regard to:
  - a. the Authorised Market Institution's position within its Group, including any other relationships that may exist between the Authorised Market Institution's affiliates, Controllers, Associates or other Close Links;
  - b. any information provided by other regulators in relation to the Authorised Market Institution or any entity within its group;
  - c. the background, history and principal activities of the Authorised Market Institution'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 Market Institution and/or its activities; or

- d. whether the Authorised Market Institution 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**

9. The DFSA will have regard to whether the Authorised Market Institution has sufficient resources of all types, including:
  - a. the Authorised Market Institution's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Market Institution appears in a position to be able to continue to comply with such rules;
  - b. the extent to which the Authorised Market Institution 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 Market Institution's affairs, in addition to having a sufficient type and number of Authorised Individuals to conduct and manage the Authorised Market Institution's Financial Services;
  - d. whether the Authorised Market Institution 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 Market Institution 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 Market Institution's Group on the adequacy of the Authorised Market Institution's resources and in particular, though not exclusively, the extent to which the Authorised Market Institution is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator.

### **The DFSA's Rulebook**

10. In assessing whether an Authorised Market Institution is fit and proper, the DFSA will also consider the degree to which the Authorised Market Institution is ready, willing and able to conduct the relevant activities in accordance with the Rules and other legislation applicable in the DIFC.
11. An Authorised Market Institution which fails to comply with any one or more Rules of the DFSA may also be in breach of one or more of the Licensing Requirements. Accordingly, the Authorised Market Institution 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.

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## APP2 IDENTIFICATION AND ONGOING DUE DILIGENCE REQUIREMENTS

### A2.1 Duties and responsibilities

#### Guidance relating to Rule 11.7.1

1. Pursuant to Rule 11.7.1, an Authorised Market Institution is required to be satisfied that a prospective Member is who he claims to be and obtain evidence to verify this.
2. It is important for an Authorised Market Institution to obtain such information because this process should allow for the risk of being exploited for the purpose of money laundering to be reduced to a minimum.
3. Any unusual facts of which an Authorised Market Institution becomes aware during the identification process may be an indication of money laundering and should prompt the Authorised Market Institution to request supplementary information and evidence.
4. The following list, which is not meant to be exhaustive, should be considered as Guidance regarding the type of information and evidence which should be obtained by an Authorised Market Institution to establish and verify the identity of a Member.

#### Individuals

- a. Evidence to be obtained in either documentary (hard copy) or electronic form:
  - i. true full name or names used;
  - ii. complete current permanent address, including all relevant details with regard to country of residence;
  - iii. telephone, fax number and email address;
  - iv. date and place of birth;
  - v. nationality;
  - vi. fiscal residence;
  - vii. occupation or profession, name of employer and location of activity;
  - viii. information regarding the nature of the business to be conducted;
  - ix. information regarding the origin of the funds; and
  - x. information regarding the source of wealth or income.
- b. The address of a prospective Member should enable an Authorised Market Institution to physically locate the Member. If P.O. Box numbers are customary to a country, additional methods of physically locating the Member should be applied.
- c. Documentary evidence of identity:
  - i. current, signed passport;
  - ii. current, signed ID card; or
  - iii. other identification documentation that is customary in the country of residence, such as driving licence, including a clear photograph of the prospective Member.
- d. An Authorised Market Institution should ensure that any documents used for the purpose of identification are original documents.

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- e. Where personal identity documents, such as passport, ID card or other identification documentation cannot be obtained in original form, for example because the Member is not physically present in the DIFC the identification documentation provided should be certified as a true copy of the original document by any one of the following:
  - i. a registered lawyer;
  - ii. a registered notary;
  - iii. a chartered accountant;
  - iv. a government ministry;
  - v. a post office;
  - vi. a police officer; or
  - vii. an embassy or consulate.
- f. The individual or authority undertaking the certification under (e) should be contactable if necessary.
- g. Where a copy of an original identification document is made by an Authorised Market Institution, the copy should be dated, signed and marked with 'original sighted'.
- h. Documentary evidence of address:
  - i. record of home visit;
  - ii. confirmation from an electoral register search that a Person of such a name lives at that address;
  - iii. tenancy agreement;
  - iv. utility bill; or
  - v. local authority tax bill.

### **Unincorporated businesses or partnerships**

- i. Evidence to be obtained in either documentary or electronic form:
  - i. true full name or names;
  - ii. complete current registered and trading address, including relevant details with regard to country of establishment;
  - iii. telephone, fax number and email address;
  - iv. fiscal residence;
  - v. business activity;
  - vi. information on the nature of the business to be conducted;
  - vii. trading licence, with renewal date;
  - viii. list of authorised signatories of the business or partnership;
  - ix. regulatory body, if applicable;
  - x. information regarding the origin of funds; and
  - xi. information regarding the source of wealth/income.
- j. Documentary evidence of identity:
  - i. latest annual report and accounts, audited where applicable, and
  - ii. certified copy of the partnership deed, to ensure that it has a legitimate purpose and to ascertain the nature of the business or partnership.
- k. Evidence of the trading address of the business or partnership should be obtained and may be verified with a visit to the place of business.

**Corporate entities including financial or credit institutions**

- l. Evidence to be obtained in either documentary or electronic form:
    - i. registered corporate name and any trading names used;
    - ii. complete current registered address and any separate principal trading addresses, including all relevant details with regard to country of residence;
    - iii. telephone, fax number and email address;
    - iv. date and place of incorporation;
    - v. corporate registration number;
    - vi. fiscal residence;
    - vii. business activity;
    - viii. regulatory body, if applicable;
    - ix. name and address of Group, if applicable;
    - x. legal form;
    - xi. name of external auditor;
    - xii. information regarding the nature and level of the business to be conducted;
    - xiii. information regarding the origin of the funds; and
    - xiv. information regarding the source of wealth/income.
  
  - m. Documentary evidence of identity:
    - i. copy of the extract of the register of the regulator or exchange, or state law or edict creating the entity, in case of regulated, listed or state-owned companies;
    - ii. certified copy of the articles of association or statutes;
    - iii. certified copy of either the certificate of incorporation or the trade register entry and the trading licence including the renewal date;
    - iv. latest annual report, audited and published if applicable;
    - v. certified copies of the list of authorised signatories specifying who is authorised to act on behalf of the Member account and of the board resolution authorising the signatories to operate the account;
    - vi. certified copies of the identification documentation of the authorised signatories;
    - vii. names, country of residence, nationality of directors or partners and of the Members of the governing body; and
    - viii. list of the main shareholders holding more than 5% of the issued capital.
  
  - n. If the applying Member is not obliged to publish an audited annual report, adequate information about the financial accounts should be obtained.
  
  - o. An Authorised Market Institution should verify that the applying Member is active and has not been, or is not in the process of being dissolved, wound-up or terminated.
  
  - p. Pursuant to Rules 11.7.4, identification evidence is not required for Members which are Authorised Market Institutions.
  
  - q. However, the confirmation of the existence of such a relevant firm or institution under Guidance note 2.s. above and its regulatory status should be verified by the Authorised Market Institution prior to entering into a Member relationship. Regular professional and commercial checks and due diligence investigations should still be performed.
5. The DFSA will from time to time:

- a. review the Guidance under App2 in light of changing money laundering legislation issued by the U.A.E. Central Bank, money laundering trends and techniques and according to international standards, in order to keep the Guidance current; and
  - b. provide such other Guidance as it deems appropriate regarding Member identification obligations.
  - c. The DFSA expects that an Authorised Market Institution will take these changes into account by amending, as appropriate, its policies, procedures, systems and controls including its anti money laundering regime for Members.
6. Sound Member identification arrangements have particular relevance to the safety and soundness of an Authorised Market Institution, in that:
- a. they help to protect its reputation and the integrity of the DIFC by reducing the likelihood of Authorised Market Institutions becoming a vehicle for, or a victim of, financial crime and suffering consequential reputational damage; and
  - b. they constitute an essential part of sound risk management.
7. In accordance with Rule 11.7.1, an Authorised Market Institution should adopt a risk-based approach for the Member identification and verification process. Depending on the money laundering risk assessment regarding the Authorised Market Institution's Member, the Authorised Market Institution should decide to what level of detail the Member identification and verification process will need to be performed. See also Rules under section 11.10. The risk assessment regarding a Member should be recorded in the Member file.
8. The risk-based approach does not release an Authorised Market Institution from its overall obligation to identify fully and obtain evidence of Member identification to the DFSA's satisfaction.
9. An Authorised Market Institution is advised that in cases of doubt it should adopt a stricter rather than a moderate approach in its judgement concerning the risk level and the level of detail to which Member identification is performed and evidence obtained.

**Guidance relating to Rule 11.7.3.**

10. Pursuant to Rule 11.7.3, an Authorised Market Institution must ensure that the information and evidence concerning a Member's identity is accurate and up-to-date.
- a. An Authorised Market Institution is expected to ensure that the information and the evidence obtained from a Member is valid and has not expired, for example, when obtaining copies of identification documentation such as a passport or trading licence.
  - b. The Member identification process does not end at the point of application. Following the start of the Member relationship, an Authorised Market Institution should ensure that all relevant evidence and information is kept up-to-date including, for example, the list of authorised signatories who can act on behalf of a corporate Member.
  - c. If a Member account is dormant or an Authorised Market Institution has had no contact with the Member within the previous twelve months, an Authorised Market Institution should take reasonable steps to verify whether available information, documentation and evidence concerning the Member is still valid and up-to-date.



11. When conducting ongoing due diligence on the business relationship with, and scrutiny of transactions undertaken by, a Member, an Authorised Market Institution should:
- a. ensure consistency of such transactions with its knowledge of the Member and the Member's purpose and risk profile; and
  - b. verify, where necessary, the source of funds.

[Amended] [RM59/08] [VER7/09/08]

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## **APP3 MONEY LAUNDERING RISKS**

### **A3.1 Risk assessment**

#### **Guidance relating to Rule 11.10.1**

1. The securities sector on a global scale is characterised by its diversity, the ease with which trading can take place (through electronic trading for example) and the ability to perform transactions in markets with little regard to national borders. These characteristics, along with the sheer volume of transactions, also make the securities sector potentially vulnerable to the laundering of funds. The securities sector is to be understood in the broader sense and shall include all trading and related activities relating to Investments.
2. The illegal funds laundered through the securities sector may be generated by illegal activities both from outside and from within the sector. For illegal funds generated outside the sector, securities transactions or the creation of legal entities are used as the mechanism for concealing or obscuring the source of these funds. In the case of illegal activities carried out within the securities market itself, for example, embezzlement, insider trading, securities fraud, market manipulation, terrorist financing etc., the securities transactions or manipulations generate illegal funds that must then be laundered.
3. Funds in the form of cash are generally introduced into the financial system before entering the securities sector. Consequently, the securities sector is less at risk than the banking sector regarding the placement of laundered funds directly into the securities industry. However, the securities sector is especially vulnerable to the layering of laundered funds subsequent to the placement phase.
4. Generally, an Authorised Market Institution is expected to take a risk-based approach when assessing any business relationship or transaction with respect to its specific money laundering risk and the information and evidence that might be required or validated for this purpose. ‘Know Your Member’ procedures need to be established and managed according to the perceived money laundering risk.
5. a. The Authorised Market Institution should take specific and adequate measures necessary to compensate for the higher risk of money laundering which might arise, for example from the following products, services or Members:
  - i. “Wash sales” or other fictitious trading schemes to transfer money or value through the clearing and settlement infrastructure;
  - ii. activities of employees that unwittingly are requested to take actions which further a Person’s money laundering scheme; including the activities of “rogue employees”;
  - iii. acceptance of orders and related funds from intermediaries or banks operating from jurisdictions that do not have effective systems in place to prevent the introduction of laundered funds into the investment firms and banks operating in those jurisdictions;
  - iv. non face-to-face business relationships or transactions, such as via mail, telephone or the Internet;
  - v. correspondent banking relationships, see also Rule 11.7.9;
  - vi. Members from higher-risk countries as may be found in sources mentioned in Guidance under Rule 11.9.1; and

- vii. Politically Exposed Persons, see also Rule 11.10.2
  - b. Pursuant to Rule 11.10.3, an Authorised Market Institution should apply an intensified monitoring of transactions and accounts in relation to these products, services and Members.
6. While an Authorised Market Institution should assess the money laundering risks posed by the products and services it offers and devise its products with due regard to those risks, a risk-based approach does not release the Authorised Market Institution from its overall obligation to comply with anti money laundering obligations.
7. Money laundering risks are increased if a Person is able to hide behind corporate structures such as limited companies, offshore trusts, special purpose vehicles and nominee arrangements. When devising its internal procedures, an Authorised Market Institution should consider how its Members and operational systems impact upon the capacity of its staff to identify suspicious transactions.
8. The geographical location of an Authorised Market Institution's Member may also affect the money laundering risk assessment. The DFSA recommends that where an Authorised Market Institution has Members located in countries:
- a. without adequate anti money laundering strategies;
  - b. where cash is the normal medium of exchange;
  - c. which have a politically unstable regime with high levels of public or private sector corruption;
  - d. which are known to be drug producing or drug transit countries; or
  - e. which have been classified as countries with inadequacies in their anti money laundering regulations, see Rule 11.9.1;
- it should consider which additional 'Know Your Member' and monitoring procedures might be necessary to compensate for the enhanced risks of money laundering. Such measures may encompass, for example, the following:
- f. requiring additional documentary evidence;
  - g. taking supplementary measures to verify or certify the documents supplied; or
  - h. performing direct mailing of account opening documentation to a Member at an independently verified address.

[Amended] [RM59/08] [VER7/09/08]

## **A3.2 Risks regarding corruption and politically exposed persons**

### **Guidance relating to Rule 11.10.2**

1. Corruption, especially with the involvement of Politically Exposed Persons, may involve serious crimes and has become the subject of increasing global concern. The risk for an Authorised Market Institution can be reduced if the Authorised Market Institution conducts detailed 'Know Your Member' investigations at the beginning of a relationship with an Individual and on an ongoing basis where it knows, suspects, or is advised that, the business relationship involves a Politically Exposed Person. An Authorised Market Institution should develop and maintain enhanced scrutiny and monitoring practices to address this risk, see also App2.

2. Where a Member relationship is maintained with a Politically Exposed Person, detailed monitoring and due diligence procedures should include:
  - a. analysis of any complex structures, for example involving trusts or multiple jurisdictions;
  - b. appropriate measures to establish the source of wealth;
  - c. development of a profile of expected activity for the business relationship in order to provide a basis for transaction and account monitoring;
  - d. senior management approval for the Member relationship; and
  - e. regular oversight of the relationship with a Politically Exposed Person by senior management.
3. An Authorised Market Institution is advised that Member relationships with family Members or close associates of Politically Exposed Persons involve similar risks to those with Politically Exposed Persons themselves.

### **A3.3 Suspicious transactions and transaction monitoring**

#### **Guidance relating to Rule 11.10.3**

1.
  - a. The Rules in section 11.8 require a Suspicious Transaction Report to be made when there is knowledge or suspicion of money laundering. Suspicion is a personal and subjective assessment. Suspicion of money laundering requires a degree of satisfaction although this may not amount to belief, it should at least extend beyond mere speculation and should be based upon some foundation that money laundering has occurred or is about to occur.
  - b. A Member of staff who considers a transaction to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.
  - c. The Rules in section 11.8 also make reference to 'reasonable grounds to suspect' which introduces an objective test rather than a subjective test of suspicion by assessing whether or not 'suspicion' was ignored in the way of:
    - i. wilful blindness;
    - ii. negligence, that is wilfully and recklessly failing to make the adequate enquiries; or
    - iii. failing to assess adequately the facts and information that are either presented or available.
2. Circumstances that might give rise to suspicion or reasonable grounds for suspicion may be:
  - a. transactions which have no apparent purpose and which make no obvious economic sense;
  - b. transactions requested by a Member without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of an Authorised Market Institution in relation to a particular Member or Person;

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- c. the size or pattern of transactions, without reasonable explanation, is out of line with any pattern that has previously emerged;
- d. a Member or Person refuses to provide the information requested without reasonable explanation;
- e. a Member or Person who has just entered into a business relationship uses the relationship for a single transaction or for only a very short period of time;
- f. an extensive use of offshore accounts, companies or structures in circumstances where the Member's economic needs do not support such requirements;
- g. unnecessary routing of funds through third party accounts; or
- h. unusual transactions without an apparently profitable motive.