

**Appendix 3**

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



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# The DFSA Rulebook

General Module

**(GEN)**

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<b><u>Changes in relation to Consultation Paper No. 86</u></b>
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## **2 FINANCIAL SERVICES**

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### **2.23 Providing Trust Services**

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#### **Exclusions**

**2.23.2** A Person ~~who is an Ancillary Service Provider~~ meeting part (1) (d) or (e) of the definition of a DNFBP does not provide Trust Services where it only:

- (a) arranges for a Person to act as trustee in respect of an express trust;  
or
- (b) provides services with respect to the creation of an express trust;  
provided that:
  - (i) the provision of such services is solely incidental to the practice of law or accounting as the case may be; and
  - (ii) the DNFBP ASP is not holding itself out as Providing Trust Services.

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## **5 MANAGEMENT, SYSTEMS AND CONTROLS**

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### **5.3 Systems and controls**

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#### **Conduct**

**5.3.20** An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its

Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market misconduct;
- (b) money laundering; or
- ~~(c)~~(b) a financial crime under any applicable U.A.E. laws.

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**Relevant United Nations Resolutions and Sanctions**

~~5.3.29 Deleted (1) — An Authorised Person must establish and maintain effective systems and controls to:~~

- ~~(a) — obtain and make appropriate use of relevant resolutions or sanctions issued by the United Nations Security Council; and~~
- ~~(b) — disclose in its annual MLRO report to the DFSA the manner in which it has observed such resolutions or sanctions.~~

~~(2) — An Authorised Person must immediately notify the DFSA when it becomes aware that it is:~~

- ~~(a) — carrying on or about to carry on a Financial Service;~~
- ~~(b) — holding or about to hold money or other assets; or~~
- ~~(c) — undertaking or about to undertake any other business whether or not arising from or in connection with (a) or (b);~~

~~for or on behalf of a Person, where such carrying on, holding or undertaking constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.~~

~~(3) — An Authorised Person must ensure that the notification stipulated in (2) above includes the following information:~~

- ~~(a) — a description of the relevant activity in (2) (a), (b) or (c); and~~
- ~~(b) — the action proposed to be taken or that has been taken by the Authorised Person with regard to the matters specified in the notification.~~

**Guidance**

- ~~1. — In relation to the term “make appropriate use” in Rule 5.3.29 this may mean that an Authorised Person 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. — Relevant resolutions or sanctions mentioned in Rule 5.3.29 may, among other things, relate to money laundering and terrorist financing or financing of weapons of mass destruction or otherwise be relevant to the Financial Services carried on or the other business activities conducted by the Authorised Person. For example:~~
  - ~~a. — an Authorised Firm should exercise due care to ensure that it does not provide Financial Services to, or conduct business with, a Person engaged in~~

~~money laundering or terrorist financing or financing of weapons of mass destruction; and~~

~~b. an Authorised Market Institution should exercise due care to ensure that it does not facilitate fund raising activities or listings by Persons engaged in money laundering or terrorist financing or financing of weapons of mass destruction.~~

~~3. In respect of the United Nations Security Council's resolutions or sanctions, the MLRO should also refer to AML Rules 3.3.3(2)(h), 3.3.4(d) and 3.9.1(h) and AMI Rules 11.6.2(2)(k), 11.6.3(g) and 11.12.1(j) for requirements relating to the MLRO's responsibility, reporting and training and awareness.~~

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## 7 AUTHORISATION

### 7.1 Application

**7.1.1** (1) This chapter applies, subject to (2), to every Person who is:

- (a) an Authorised Firm;
- (b) an applicant for a Licence to be an Authorised Firm;
- (c) an Authorised Individual; or
- (d) an applicant for Authorised Individual status; or
- (e) a Controller of a Person referred to in (a) or (b).

(2) This chapter does not apply to a Person intending to:

- (a) Operate an Exchange;
- (b) Operate a Clearing House; or
- (c) Operate a Representative Office.

#### Guidance

1. This chapter outlines DFSA's authorisation requirements for an Authorised Firm and Authorised Individual.
2. The DFSA's requirements for authorisation of:
  - a. Authorised Market Institutions are covered by the AMI module; and
  - b. Representative Offices are covered by the REP module; and
  - ~~c. Ancillary Service Providers are covered by the ASP module.~~
3. The DFSA's requirements for registration of DNFBCPs are found in the AML module.

34. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA's general regulatory policy and processes. Some additional processes may be outlined in other chapters of this module.
45. Chapter 2 of the RPP Sourcebook sets out DFSA's approach to the authorisation of undertakings and individuals to conduct Financial Services or Licensed Functions, as the case may be.

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## **7.4 Licensed Functions and Authorised individuals**

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### **Money Laundering Reporting Officer**

- 7.4.8** The Money Laundering Reporting Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm and who has responsibility for the implementation of an Authorised Firm's anti money laundering policies, procedures, systems and controls and day to day oversight of its compliance with the Rules in AML and any relevant anti money laundering legislation applicable in the DIFC.

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## **7.6 Application for Authorised Individual status**

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

### **Guidance**

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

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## **8.16 Deleted Anti Money Laundering**

~~**8.16.1** An Auditor must comply with the U.A.E. Federal Law No. 4 of 2002 regarding Criminalisation of Money Laundering.~~

~~**8.16.2** An Auditor, in relation to its duties as an Auditor of a Domestic Firm or Domestic Fund, must comply with the same anti money laundering requirements in Chapters 5 and 6 of the ASP module. In that Chapter, references to Ancillary Service Providers are to be treated as references to Auditors unless the context requires otherwise.~~

~~**8.16.3** Rule 5.2.2 of the ASP module does not apply to an Auditor.~~

**Changes in relation to Consultation Paper No. 87**

## **2.2 Financial Service activities**

**2.2.1** An activity constitutes a Financial Service under the Regulatory Law 2004 and these Rules where:

- (a) it is an activity specified in Rule 2.2.2; and
- (b) such activity is carried on by way of business in the manner described in section 2.3.

**2.2.2** The following activities are specified for the purposes of Rule 2.2.1:

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Providing Money Services;
- (d) Dealing in Investments as Principal;
- (e) Dealing in Investments as Agent;
- (f) Arranging Credit or Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products or Credit;
- (i) Managing a Collective Investment Fund;
- (j) Providing Custody;
- (k) Arranging Custody;
- (l) Effecting Contracts of Insurance;
- (m) Carrying Out Contracts of Insurance;
- (n) Operating an Exchange;
- (o) Operating a Clearing House;
- (p) Insurance Intermediation;
- (q) Insurance Management;
- (r) Managing a Profit Sharing Investment Account;
- (s) Operating an Alternative Trading System;
- (t) Providing Trust Services;

- (u) Providing Fund Administration;
- (v) Acting as the Trustee of a Fund;
- (w) Operating a Representative Office; and
- (x) Operating a Credit Rating Agency.

**Guidance**

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

**2.2.3** Each activity specified in Rule 2.2.2:

- (a) is to be construed in the manner provided under these Rules; and
- (b) is subject to exclusions under these Rules which may apply to such an activity.

**Permitted Financial Services for Authorised Firms**

**2.2.4** Pursuant to Article 42(1)(a) of the Regulatory Law 2004 an Authorised Firm, subject to the Rules, may carry on any one or more Financial Services other than Providing Money Services.

**2.2.5** The Financial Services of Effecting Contracts of Insurance and Carrying Out Contracts of Insurance may be carried on only by an Authorised Firm which by virtue of its Licence is permitted to carry on such Financial Services and no other Financial Services.

**2.2.6** The Financial Service of Managing a Profit Sharing Investment Account may be carried on only by an Authorised Firm which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.

**2.2.7** The Financial Service of Managing a Collective Investment Fund may be carried on in respect of an Islamic Fund only by an Operator which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.

**2.2.8** A Financial Service may be carried on with or for a Retail Client only by an Authorised Firm which is permitted to do so by endorsement on its Licence.

**2.2.9** An Authorised Firm which is licenced to carry on the Financial Service of Operating a Representative Office may not be licenced to carry on any other Financial Service.

**2.2.10** An Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.

**Permitted Financial Services for Authorised Market Institutions**

**2.2.11** Pursuant to Article 42(1)(b) of the Regulatory Law 2004 and subject to Rule 2.2.12, an Authorised Market Institution may carry on any one or more of the following Financial Services:

- (a) Operating an Exchange; or
- (b) Operating a Clearing House; or
- (c) Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility as defined in Rule 2.22.1(1)(a).

**2.2.12** The Financial Service of Operating an Alternative Trading System, to the extent that such activities constitute operating a Multilateral Trading Facility, may be carried on by an Authorised Market Institution which is permitted to do so by an endorsement on its Licence.

**Other permitted activities**

**2.2.13** (1) The activity of maintaining a Trade Repository may be carried on by an Authorised Person which is permitted to do so by an endorsement on its Licence.

(2) In (1), a Trade Repository is a centralised registry that maintains an electronic database containing records of transactions in Investments and over-the-counter derivatives.

**Guidance**

1. Maintaining a Trade Repository is not a separately licensed Financial Service, but may be carried on by an Authorised Person which has on its Licence an endorsement permitting it to do so. An Authorised Person maintaining a Trade Repository is subject to some specific requirements relating to that activity, which are set out in App 5.

2. The functions of a Trade Repository promote increased transparency and integrity of information, particularly for centrally clearing over-the-counter derivatives. Currently there are no transaction reporting requirements in the DIFC which require reporting to Trade Repositories.

3. An Authorised Person does not carry on the activities of a Trade Repository to the extent that it maintains records of transactions pursuant to the record keeping requirements applicable to that firm (such as those relating to transactions carried out on behalf of its Clients by an Authorised Firm, or transactions carried out on the facilities of an Authorised Market Institution).

~~1. An Authorised Market Institution may in addition to the Financial Services set out in Rule 2.2.11 also carry on, by way of one or more ancillary activities specified under Rule 2.2.2 but only in circumstances where the relevant activity is carried on as a necessary part of the AMI's business as an Exchange or for the purpose of, or in connection with the provisions of clearing or settlement services.~~

~~2. The majority of these activities do not amount to Financial Services as the activities are not carried on by way of business (see Rule 2.3.4). However, pursuant to Rule 2.3.4 certain activities do amount to Financial Services. One of the activities is Operating an Alternative Trading System which cannot, pursuant to Rule 2.2.11, be carried on by an AMI.~~

## 2.3 By way of business

**2.3.1** Subject to Rules 2.3.2 and 2.3.3, for the purpose of these Rules a Person carries on an activity by way of business if the Person:

- (a) engages in the activity in a manner which in itself constitutes the carrying on of a business;
- (b) holds himself out as willing and able to engage in that activity; or
- (c) regularly solicits other Persons to engage with him in transactions constituting that activity.

### Exclusions

**2.3.2** (1) .....

(2) A Person who is a Body Corporate does not carry on the activity specified under paragraph (d) or (e) of Rule 2.2.2 by way of business, if:

- (a) the Person carries on such activities as a member of an Authorised Market Institution or Recognised Body;
- (b) the Person carries on such activities for its own account or for another Body Corporate which is in the same Group as the Person, provided that any such member of the Group for which the Person acts is a wholly-owned Subsidiary of a Holding Company within the Group or is the Holding Company itself;
- (c) the Person restricts such activities to transactions involving or relating only to Commodity Derivatives on that Authorised Market Institution or Recognised Body;
- (d) the main business of the Person is dealing in relation to Commodity Derivatives; and
- (e) the Person is not part of a Group whose main business is the provision of financial services.

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**2.3.4** (1) ~~A Person who is an Exchange does not carry on any of the other activities, save for the activity of Operating a Clearing House or Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity, is carried on as a necessary part of the Exchange's business as an exchange.~~

(2) ~~A Person who is a Clearing House does not carry on any of the other activities, save for the activity of Operating an Exchange or Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity is carried on for the purpose of, or in connection with the provision of clearing or settlement services by the Clearing House.~~

- (3) ~~A Person who is an Authorised Market Institution and authorised to operate both as an Exchange and as a Clearing House does not carry on any of the other activities save for the activity of Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity:~~
- ~~(a) is carried on as a necessary part of the Authorised Market Institution's business as an Exchange; or~~
  - ~~(b) is carried on for the purposes of, or in connection with, the provision of clearing or settlement services by the Authorised Market Institution.~~

2.3.45 .....

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## 2.13 Providing custody

- 2.13.1** (1) In Rule 2.2.2, Providing Custody means one or more of the following activities ~~both~~:
- (a) safeguarding Investments belonging to another Person;
  - ~~(b) or, in the case of a Fund, safeguarding Fund Property; and~~
  - ~~(c) acting as a Central Securities Depository; or~~
  - ~~(b)-(d) the administration of such administering Investments or Fund Property for the purpose of (a) and (b).~~
- (2) In ~~(1)(d)~~, the following activities do not constitute the 'administration of such Investments or Fund Property':
- (a) providing information as to the number and value of any Investments or Fund Property safeguarded;
  - (b) converting currency; or
  - (c) receiving documents relating to an Investment or Fund Property for the purpose of onward transmission to, from or at the direction of the Person to whom the Investment or Fund Property belongs.
- (3) In (1)(c), "acting as a Central Securities Depository" means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions executed on a facility operated by an Authorised Market Institution or an Alternative Trading System or a similar facility regulated and supervised by a Financial Services Regulator.

**Guidance**

A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Providing Custody to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the safe custody and proper management of the Fund in accordance with its Constitution and Prospectus.

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**2.17 Operating an exchange**

**2.17.1** (1) In Rule 2.2.2, Operating an Exchange means operating a facility; which functions regularly and brings together multiple third party buying and selling interests in Investments, in accordance with its non-discretionary rules, in a way that can result in a contract in respect of Investments admitted to trading or traded on the facility.

(2) The facility referred to in (1) may be organised on a temporary or permanent basis and can be an order driven system, a quote driven system or a hybrid of such systems that enables the market to operate electronic trading or trading by other means.

~~(a) — organised on a temporary or permanent basis whether or not governed by enforceable rules; and~~

~~(b) — which provides a market, whether primary or secondary or both, for the trading of Investments;~~

~~(c) — which provides a system or mechanism, whether an order driven system, a quote driven system or a hybrid of such systems, enabling the market to operate by face to face trading (open outcry), electronic trading or trading by other means; and~~

~~(d) — through which:~~

~~(i) offers to buy or sell Investments are made or accepted;~~

~~(ii) buyers and sellers can negotiate the purchase or sale of Investments;~~

~~(iii) contracts can be entered into for the transfer of ownership of or the title to Investments;~~

~~(iv) the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to the transactions in respect of which they provide such services (being rights and liabilities in relation to those transactions) is secured; or~~

~~(v) the prices of Investments, price movements and price and size of the most recent trades are displayed and updated.~~

- (3) To the extent that any activity under (1) constitutes Dealing in Investments as Agent, Arranging Credit or Deals in Investments or Arranging Custody, such Financial Services are taken to be incorporated within Operating an Exchange, provided such activity is carried out as an incidental and integral part of the activities of Operating an Exchange.

### Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.4(1) is that the activity in Rule 2.17.1 of Operating an Exchange also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating a Clearing House and Operating an Alternative Trading System, if the activity is carried on as part of an Exchange’s business as an Exchange. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

1. An Authorised Market Institution authorised to Operate an Exchange may carry on the Financial Service of operating a Multilateral Trading Facility, as defined in Rule 2.22.1(1)(a), provided it has an endorsement on its Licence that permits it to do so (see Rule 2.2.12).
2. An Authorised Market Institution may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.14). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conduct requirements in GEN App 5. APP 5.

### Exclusions

~~2.17.2 A Person does not carry on an activity of the kind specified in Rule 2.17.1 if it he operates a facility which merely amounts to an Alternative Trading System.~~

## 2.18 Operating a clearing house

- ~~2.18.1 (1) In Rule 2.2.2, Operating a Clearing House means operating a facility:~~
- ~~(a) organised on a temporary or permanent basis, whether or not governed by enforceable rules;~~
  - ~~(b) which provides by electronic or other means or mechanism by which or through which clearing or settlement occurs in respect of any transaction in respect of an Investment; and~~
  - ~~(c) which in the course of providing clearing or settlement services:
 
    - ~~(i) becomes the legal counterparty to transactions;~~
    - ~~(ii) becomes the guarantor of the performance of contracts;~~
    - ~~(iii) administers and co-ordinates delivery and settlement of contracts;~~~~

- (iv) ~~secures the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to the transactions in respect of which they provide such services (being rights and liabilities in relation to those transactions); or~~
  - (v) ~~acts as registrar to a market by recording details of matched trades.~~
- (2) ~~'Provides' in (1)(b) includes providing such means or mechanism to, or for, an Authorised Market Institution.~~

**2.18.1** (1) In Rule 2.2.2, operating a Clearing House means operating a facility where confirmation, clearance and settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:

- (a) becomes a Central Counterparty ("CCP"); or
- (b) provides a book-entry Securities Settlement System ("SSS"),

regardless of whether or not such a Person also operates a Central Securities Depository.

- (2) In (1), confirmation, clearance and settlement means the process of:
- (a) establishing settlement positions, including the calculation of net positions arising from any transactions in Investments (the transactions);
  - (b) checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transactions; and
  - (c) securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transactions.

(3) In (1)(a), a Person operates as a CCP where it:

- (a) ensures the performance of open contracts relating to Investments made on a facility for trading Investments; and
- (b) does so by interposing itself between counterparties to such contracts by becoming either the buyer to every seller, or the seller to every buyer.

(4) In (1)(b), a Person operates an SSS where it operates a system which enables Investments held in accounts to be transferred and settled by book entry according to a set of predetermined multilateral rules.

(5) Acting as a Central Securities Depository in (1) means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions on its own facility and on any other similar facility, including an Alternative Trading Facility or a facility supervised or regulated by another Financial Services Regulator.

- (6) To the extent that any activity under (1) constitutes Dealing In Investments as Principal, Dealing in Investments as Agent, Arranging Credit or Deals in Investments, Managing Assets or Arranging Custody, such Financial Services are taken to be incorporated within Operating a Clearing House, provided such activities are carried out as an incidental and integral part of Operating a Clearing House.

### Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.4(2) in that the activity in Rule 2.18.1 of Operating a Clearing House also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating an Exchange or Operating an Alternative Trading System, if the activity is carried on for the purpose of, or in connection with, the provision of clearing services by a Clearing House. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

1. The activity of operating a Central Securities Depository may be carried on by an Authorised Market Institution licensed to Operate a Clearing House in conjunction with its regulated activities, particularly operating an SSS. An Authorised Firm which has a licence authorising it to carry on Custody Services may also operate a CSD under its licence (see GEN Rule 2.13.1(3)). If a Clearing House were to operate a CSD through a subsidiary, that subsidiary would need to be licensed separately as an Authorised Firm Providing Custody.
2. An Authorised Market Institution Licensed to Operate a Clearing House may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.14). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conducts requirements in GEN App 5.

### Exclusions

- 2.18.2** A Person does not carry on an activity of the kind specified in Rule 2.18.1 if he acts on his own behalf or on behalf of only one party to a transaction.

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## 2.22 Operating an alternative trading system

- 2.22.1** (1) In Rule 2.2.2, Operating an Alternative Trading System means making arrangements with a view to another Person whether as principal or agent buying or selling an Investment by way of operating a facility:
- (a) ~~which is organised on a temporary or permanent basis, whether or not governed by enforceable rules;~~
  - (b) ~~which provides a means by which over the counter (OTC) trading of Investments can take place; and~~
  - (c) ~~which provides a system or mechanism, whether an order driven system, a quote driven system or a hybrid of such~~

~~systems, which enables electronic trading or trading by other means and through which;~~

- ~~(i) offers to buy or sell Investments are made or accepted;~~
  - ~~(ii) buyers and sellers can negotiate the purchase or sale of Investments;~~
  - ~~(iii) contracts can be entered into for the transfer of ownership of or the title to Investments; or~~
  - ~~(iv) the prices of Investments, price movements and price and size of the most recent trades are displayed and updated.~~
- ~~(2) For the purposes of (1), "OTC" means in relation to a transaction in an Investment, a transaction not effected on an Exchange or its equivalent in any other jurisdiction.~~
- ~~(3) In (1), a facility is not an Alternative Trading System if it is merely an order routing system where buying and selling interests or orders are merely transmitted but do not interact.~~
- ~~(4) In (1) a Person providing the facility still operates an Alternative Trading System even though that Person may from time to time deal as agent for another Person or deal as principal with another Person using the facility.~~
- ~~(5) For the purposes of (1) a Person operates an Alternative Trading System even though the facility itself is provided by a third party on behalf of that Person and that Person merely provides use of that facility to other Persons.~~

### Exclusions

**2.22.2** ~~A Person does not carry on an activity of the kind specified in Rule 2.22.1 if it, he as the operator of the facility:~~

- ~~(a) is a counterparty to every transaction effected on the facility;~~
- ~~(b) acts as a central counterparty accepting the risk of default of any of its Clients or otherwise becomes the guarantor of the performance of every transaction effected using the facility;~~
- ~~(c) exercises discretion as to how the buying or selling interests interact on the facility; or~~
- ~~(d) is an Authorised Market Institution.~~

**2.22.1** (1) In Rule 2.2.2, Operating an Alternative Trading System means:

- (a) operating a Multilateral Trading Facility ("MTF"); or
- (b) operating an Organised Trading Facility ("OTF").

- (2) In (1)(a), a Person operates an MTF if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such Investments.
- (3) In (1)(b), a Person operates an OTF if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its discretionary rules, in a way that results in a contract in respect of such Investments.

**Guidance**

The main distinction between operating an MTF and operating an OTF is that the former is operated in accordance with the non-discretionary rules adopted and implemented by the operator, whereas the latter is operated in accordance with the discretionary rules of the operator. Accordingly, a Person operating an OTF has more flexibility relating to how it applies its rules to participants on its facility, whereas a Person operating an MTF is required to apply its rules in a non-discretionary manner across all participants on its facility.

**Exclusion**

- 2.22.2** A Person does not carry on the activity of the kind specified in Rule 2.22.1 if it operates a facility which is merely an order routing system where buying and selling interests in, or orders for, Investments are merely transmitted but do not interact.

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## **5 MANAGEMENT, SYSTEMS AND CONTROLS**

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**Compliance**

- 5.3.7** An Authorised Firm Person must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.
- 5.3.8** An Authorised Firm Person must document the organisation, responsibilities and procedures of the compliance function.
- 5.3.9** An Authorised Firm Person must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.
- 5.3.10** An Authorised Firm Person must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Person's Firm's Governing Body and senior management.
- 5.3.11** An Authorised Firm Person must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.

**5.3.12** An Authorised Firm Person must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

**Guidance**

~~Similar requirements to those in Rules 5.3.7 to 5.3.12 are set out in the AMI module in relation to Authorised Market Institutions.~~

**Internal audit**

**5.3.13** .....

**Guidance**

The Person appointed as the Internal Auditor of an Authorised Market Institution is a Key Individual pursuant to AMI Rule 5.3.12.

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**APP3 BEST PRACTICE RELATING TO CORPORATE GOVERNANCE AND REMUNERATION**

**A3.1 Best practice relating to corporate governance**

**Guidance**

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**Internal governance of the Governing Body**

5. The Governing Body should have appropriate practices and procedures for its own internal governance, and ensure that these are followed, and periodically reviewed to ensure their effectiveness and adequacy. These policies and procedures should cover a formal and transparent process for nomination, selection, and removal of the members of the Governing Body (see ~~section~~ paragraph 2.2.134 of the RPP Sourcebook), and a specified term of office as appropriate to the roles and responsibilities of the member, particularly to ensure the objectivity of his decision making and judgement. Appropriate succession planning should also form part of the Governing Body's internal governance practices.
6. The Governing Body should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The working procedures of the Governing Body should be well defined.
7. The Governing Body should also ensure that when assessing the performance of the members of the Governing Body and its senior managers and Persons Undertaking Key Control Functions, the independence and objectivity of that process is achieved through appropriate mechanisms, such as the assignment of the performance assessment to an independent member of the Governing Body or a committee of the Governing Body comprising a majority of independent members. See ~~section~~ paragraph 2.2.135(b)(iii) of the RPP Sourcebook for the independence criteria for Authorised Firms and ~~section paragraphs~~ 2.2.156 and 2.2.168 of the RPP Sourcebook for the independence criteria for Authorised Market Institutions.

**Committees of the Governing Body**

8. To support the effective discharge of its responsibilities, the Governing Body should establish its committees as appropriate. The committees that a Governing Body may commonly establish, depending on the nature, scale and complexity of its business and operations, include the audit, remuneration, ethics/compliance, nominations and risk management committees. Where committees are appointed, they should have clearly defined mandates, authority to carry out their respective functions, and the degree of independence and objectivity as appropriate to the role of the committee. If the functions of any committees are combined, the Governing Body should ensure such a combination does not compromise the integrity or effectiveness of the functions so combined. In all cases, the Governing Body remains ultimately responsible for the matters delegated to any such committees.

### **Independence and objectivity**

9. The Governing Body should establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body to promote objectivity and independence in decision making by the Governing Body. See ~~section~~ paragraph 2.2.135(b)(iii) of the RPP Sourcebook for independence criteria).

### **Powers of the Governing Body**

10. To be able to discharge its role and responsibilities properly, the Governing Body should have adequate and well-defined powers, which are clearly set out either in the legislation or as part of the constituent documents of the Authorised Person (such as the constitution, articles of incorporation and organisational rules). These should, at a minimum, include the power to obtain timely and comprehensive information relating to the management of the firm, including direct access to relevant persons within the organisation for obtaining information such as its senior management and Persons Undertaking Key Control Functions (such as the head of compliance, risk management or internal audit).

### **Role of user committees**

11. An Authorised Market Institution should consider all relevant stakeholders' interests, including those of its Members and other participants, and issuers, in making major decisions, such as those relating to its system's design, overall business strategy and rules and procedures. An Authorised Market Institution which has cross-border operations should ensure that full range of views across jurisdictions in which it operates is appropriately considered in its decision-making process.
12. In some instances, an Authorised Market Institution may be required under the applicable Rules to undertake public consultation in relation to certain matters, such as any proposed amendments to its Business Rules under AMI Rule 5.6.5.
13. Effective mechanisms for obtaining stakeholder input to the Authorised Market Institution's decision-making process, including where such input is mandatory, include the establishment of, and consultation with, user committees. As opinions among interested parties are likely to differ, an Authorised Market Institution should have clear processes for identifying and appropriately managing the diversity of stakeholder views and any conflicts of interest between stakeholders and the Authorised Market Institution.
14. Where an Authorised Market Institution establishes user committees to obtain stakeholder input to its decision making, to enable such committees to be effective, an Authorised Market Institution should structure such committees to:
  - a. have adequate representation of the Authorised Market Institution's Members and other participants, and stakeholders including issuers. The other stakeholders of an Authorised Market Institution may include clients of its Members or participants, custodians and other service providers;

- b. have direct access to the members of the Authorised Market Institution's Governing Body and members of the senior management as appropriate;
- c. not be subject to any direct or indirect influence by the senior management of the Authorised Market Institution in carrying out their functions; and
- d. have clear terms of reference (mandates) which include matters on which the advice of user committees will be sought. For example, the criteria for selecting Members, setting service levels and pricing structures and for assessing the impact on Members and other stakeholders of any proposed material changes to the Authorised Market Institution's existing arrangements (section 4.3 of AMI) and any amendments to its Business Rules (AMI Rule 5.6.4); and
- e. have adequate internal governance arrangements (such as the regularity of committee meetings and the quorum and other operational procedures).

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## **APP5 TRADE REPOSITORY**

### **A5.1 Requirements applicable to Trade Repositories**

#### **Disclosure of market data by Trade Repositories**

**A5.1.1** A Trade Repository must provide data in line with regulatory and industry expectations to relevant regulatory authorities and the public. Such information must be comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.

#### **Guidance**

1. At a minimum, a Trade Repository should provide aggregate data on open positions and transaction volumes and values and categorised data (for example, aggregated breakdowns of trading counterparties, reference entities, or currency breakdowns of products), as available and appropriate, to the public.
2. Relevant regulatory authorities should be given access to additional data recorded in a Trade Repository, including participant-level data, as relevant to the respective mandates and legal responsibilities of the relevant regulatory authority (such as market regulation and surveillance, oversight of exchanges, and prudential supervision or prevention of market misconduct).

#### **Processes and procedures**

**A5.1.2** A Trade Repository must have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.

#### **Guidance**

A Trade Repository should have procedures to facilitate enhanced monitoring, special actions, or official proceedings taken by relevant authorities in relation to data on troubled or failed participants by making relevant information in the Trade Repository available in a timely and effective manner. The provision of data from a Trade Repository to relevant authorities should be supported from a legal, procedural, operational, and technological perspective.

### Information systems

**A5.1.3** A Trade Repository must have robust information systems that enable it to provide accurate current and historical data. Such data should be provided in a timely manner and in a format that permits it to be easily analysed.

#### Guidance

A Trade Repository should collect, store, and provide data to participants, regulatory authorities, and the public in a timely manner and in a format that can facilitate prompt analysis. Data should be made available that permits both comparative and historical analysis of the relevant markets.

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<b><u>Changes in relation to Consultation Paper No. 88</u></b>
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**5 MANAGEMENT, SYSTEMS AND CONTROLS**

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**5.3 Systems and controls**

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- 5.3.24** (1) An Authorised Person must make and retain records of matters and dealings, including Accounting Records ~~accounting records~~ and corporate governance practices which are the subject of requirements and standards under the legislation applicable in the DIFC.

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**8 ACCOUNTING AND AUDITING**

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**8.3 Accounting records and regulatory returns**

- 8.3.1** Every Authorised Person must keep Accounting Records ~~accounting records~~ which are sufficient to show and explain transactions and are such as to:

- (a) be capable of disclosing the financial position of the Authorised Person on an ongoing basis; and
- (b) record the financial position of the Authorised Person as at its financial year end.

- 8.3.2** Accounting Records ~~records~~ must be maintained by an Authorised Person such as to enable its Governing Body to ensure that any accounts prepared by the Authorised Person comply with the legislation applicable in the DIFC.

- 8.3.3** An Authorised Person's Accounting Records ~~accounting records~~ must be:

- (a) retained by the Authorised Person for at least ten years from the date to which they relate;
- (b) at all reasonable times, open to inspection by the DFSA or the auditor of the Authorised Person; and
- (c) if requested by the DFSA capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.