

**Appendix 7**

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



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# The DFSA Rulebook

Conduct of Business Module

**(COB)**

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**Changes in relation to Consultation Paper No. 86**

**5 ADDITIONAL RULES – PROVIDING TRUST SERVICES**

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**5.8 Qualification and experience of Trust Service Provider staff**

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

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

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

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**3.4 Suitability**

**Application**

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

- (a) undertakes a Transaction with a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits or Providing Credit; ~~or~~
- (d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing; or
- (e) carries on the activity of operating an MTF.

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**6 ADDITIONAL RULES - INVESTMENT BUSINESS**

**6.4 Best execution**

**Application**

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

- (a) it undertakes with a Market Counterparty;
- (b) it carries out for the purposes of managing a Fund of which it is the Fund Manager; ~~or~~
- (c) is an Execution-Only Transaction; or
- (d) it undertakes on an MTF which it operates.

## 6.5 Non-market price transactions

### Application

- 6.5.1** (1) Subject to (2), this section applies to an Authorised Firm conducting Investment Business regardless of the classification of the Client.
- (2) This section does not apply to a Client to whom a Person operating an MTF provides its MTF services.

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## 6.6 Aggregation and allocation

### Application

- 6.6.1** The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which it:
- (a) it undertakes with a Market Counterparty; or
  - (b) it carries out for the purposes of managing a Fund of which it is the Fund Manager, or
  - (c) is undertaken on an MTF which it operates.

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## 6.8 Other dealing rules

### Application

- 6.8.1** (1) Subject to (2), the Rules in this section, other than Rule 6.8.7, do not apply to an Authorised Firm with respect to any Transaction which it:
- (a) undertakes with a Market Counterparty; or
  - (b) carries out for the purposes of managing a Fund of which it is the Fund Manager.
- (2) The Rules in this section do not apply to an Authorised Firm in respect of any Transactions which it undertakes on an MTF which it operates.

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## 6.15 ~~ATS Operators~~

### 6.15.1 ~~Application~~

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

#### ~~Access to an ATS~~

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

#### ~~Client Disclosures~~

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

- ~~(a)~~ sufficient information about how the ATS operates to enable the Client to use the system efficiently and to understand any material risks involved in using the system. Such information should include any dealing processes and rules of the system;
- ~~(b)~~ the arrangements for clearing and settlement of transactions and the responsibilities of the ATS Operator in relation to this;
- ~~(c)~~ a statement as to whether transactions executed using the ATS are reported to an Authorised Market Institution or any other regulated exchange. If transactions are to be reported then the ATS Operator must provide details as to the identity of the Authorised Market Institution or other regulated exchange and the arrangements for providing such information;
- ~~(d)~~ the trading procedures that may be adopted in the event of system disruption; and
- ~~(e)~~ the circumstances in which the ATS Operator may revise the terms of, or terminate, a Client's access to the ATS.

#### ~~Systems and controls~~

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

- ~~(a)~~ fair and orderly trading;
- ~~(b)~~ the equitable treatment of Clients;
- ~~(c)~~ fair pricing of the Investments having regard to the time, quantity and other specifications of the quote or order; and
- ~~(d)~~ that sufficient information about quotes, orders and completed transactions is made available to Clients of the system in a timely manner.

**Guidance**

1. ~~The appropriateness of different arrangements for particular systems and controls depends upon a number of factors including the nature of the Investments being traded, the nature and characteristics of the ATS and the significance of the ATS to the overall market.~~
2. ~~For the purposes of Rule 6.15.4(d), information should be available to Clients of the system close to the time when the quote or order is given or the transaction is executed.~~

**Information**

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

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

- (a) ~~quotes and orders that the ATS displays to Clients of the system; and~~
- (b) ~~prices, volumes and times of completed transactions;~~

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

**Guidance**

1. ~~For the purposes of Rule 6.15.6, information should be made publicly available within a reasonable period.~~
2. ~~An Authorised Firm may make information publicly available by publishing the information itself, for example, by posting data on a web site, or by arranging with a third party to publish the information.~~

**Monitoring and Disclosure**

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

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

**Record Keeping**

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

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## **9 ADDITIONAL RULES: OPERATING AN ALTERNATIVE TRADING SYSTEM**

### **9.1 Application and interpretation**

**9.1.1** This chapter applies to an Authorised Firm which Operates an Alternative Trading System (ATS Operator).

#### **Guidance**

The Financial Service of Operating an Alternative Trading System can be either operating a Multilateral Trading Facility (MTF) or operating an Organised Trading Facility (OTF). See GEN Rule 2.22.1.

**9.1.2** In this chapter:

- (a) a reference to a “member” is a reference to a Client of the ATS Operator who has been granted access to its facilities in accordance with the requirements in this chapter;
- (b) a reference to a “facility” is a reference to a Multilateral Trading Facility (MTF) and an Organised Trading Facility (OTF), except where specific reference is made only to an MTF or OTF;
- (c) a reference to an “ATS Operator” is a reference to a Person operating an MTF and a Person operating an OTF, except where specific reference is made only to a Person operating an MTF or a Person operating an OTF; and
- (d) where a Rule in this chapter conflicts with any other provision in the DFSA Rulebook, the Rule in this chapter prevails over those other provisions.

### **9.2 Main requirements relating to trading on the facility**

**9.2.1** (1) An ATS Operator must, at the time a Licence is granted and at all times thereafter, have:

- (a) transparent and non-discriminatory rules and procedures to ensure fair and orderly trading of Investments on its facility (“Operating Rules”);
- (b) objective criteria governing access to its facility (“Access Criteria”);
- (c) objective and transparent criteria for determining the Investments that can be traded on its facility (“Investment Criteria”);
- (d) adequate technology resources (“Technology Resources”); and

- (e) rules and procedures to ensure only Investments in which there is a Proper Market are traded on its facilities (“Proper Markets”).
- (2) A breach of the Operating Rules of an ATS Operator is a prescribed matter for the purposes of Article 67(1)(b) of the Regulatory Law 2004.

**Guidance**

Pursuant to Article 67(1) of the Regulatory Law 2004, an Authorised Firm is required to disclose to the DFSA anything which reasonably tends to show breaches or likely breaches of requirements as prescribed in Rules. Rule 9.2.1(2) prescribes a breach of Operating Rules as a the matter which is reportable to the DFSA by an ATS Operator.

**Operating Rules**

**9.2.2**

- (1) The Operating Rules of an ATS Operator must be:
  - (a) based on objective criteria;
  - (b) non-discriminatory;
  - (c) clear and fair;
  - (d) legally binding and enforceable against each member and where relevant, any other Person who has been allowed access to the facility through the member; and
  - (e) in the case of a Person operating an MTF, non-discretionary and made publicly available.
- (2) The Operating Rules of an ATS Operator must place obligations upon Persons who are admitted to trading on its facility (“members”):
  - (i) when undertaking transactions on its facilities; and
  - (iii) relating to professional standards applicable to staff and other Persons allowed access to the facility through such a member.
- (3) Without limiting the generality of (1) and (2), the Operating Rules of an ATS Operator must contain:
  - (a) criteria for admission of members to its facility, in accordance with Rule 9.3.1;
  - (b) criteria relating to Investments traded on its facility, in accordance with Rule 9.4.1;
  - (c) the rules and procedures governing trading on the facility;
  - (d) default rules;
  - (e) the rules and procedures for the clearing and settlement of transactions executed on the facility; and
  - (f) any other matters necessary for the proper functioning of its facility.



### **Material changes to Current Arrangements**

- 9.2.3**
- (1) An ATS Operator may only make material changes to its existing arrangements to meet the requirements in this chapter in accordance with the requirements in this Rule.
  - (2) The reference to “Existing Arrangements” in (1) is a reference to both the arrangements which were in place at the time of the initial grant of the Licence and any changes made to such arrangements in accordance with the requirements in this Rule.
  - (3) For the purposes of obtaining the DFSA approval, an ATS Operator must provide to the DFSA, at least 30 days before the proposed change is intended to come into effect, a notice setting out:
    - (a) the proposed change;
    - (b) the reasons for the proposed change; and
    - (c) what impact the proposed change would have on its members and its ability to operate the facility.
  - (4) The DFSA will, upon receipt of a notice referred to in (1), approve or disapprove the proposed change as soon as practicable and in any event within 30 days of the receipt of the notice, unless that period has been extended by notification to the applicant.
  - (5) The DFSA may, in circumstances where a material change to Current Arrangements is shown on reasonable grounds to be urgently needed, accept an application for approval of such a change on shorter notice than 30 days.
  - (6) Where the DFSA does not approve a proposed change, it must give to the ATS Operator reasons for its decision. Such a decision is appealable to the Regulatory Appeals Committee.

### **Guidance**

1. The period of 30 days runs from the time the DFSA has received all the relevant information to assess the application.
2. An ATS Operator should consider submitting its application for the DFSA approval well in advance of the date on which a proposed amendment is intended to come into effect, especially in the case of significant material changes to its existing arrangements, to allow the DFSA sufficient time to consider the application. If additional time is reasonably required to properly assess the impact of a proposed change due to its nature, scale and complexity, the DFSA may make an appropriate extension of time beyond 30 days. Such an extension would be made in consultation with the applicant.
3. If a proposed material change remains not approved by the DFSA within the 30 day period and the DFSA has not expressly extended the period beyond 30 days, the ATS Operator may treat the proposed change as not being approved by the DFSA, and on that basis, appeal such a decision to the Regulatory Appeals Committee.

### **9.3 Member access criteria**

- 9.3.1**
- (1) An ATS Operator may, subject to (2) and (3), only accept as a member a Person if that Person:
- (a) is an Authorised Firm;
  - (b) is a Recognised Member;
  - (c) meets the criteria in GEN Rule 2.3.2(2); or
  - (d) is classified as a Professional Client pursuant to COB Rule 2.3.2(2)(g), (h) and (i).
- (2) An ATS Operator must not admit a Person referred to in (1)(c) or (d), unless such Person:
- (a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facility;
  - (b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facility;
  - (c) agrees in writing to subject itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facility; and
  - (d) appoints and maintains at all times an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.
- (3) Prior to admitting a Person referred to in (1) (c) or (d) as a member, an ATS Operator must undertake due diligence to ensure that such a Person:
- (a) is of sufficiently good repute;
  - (b) has a sufficient level of competence and experience; and
  - (c) has adequate organisational arrangements, including financial and technological resources, which are no less than those required of an Authorised Firm appropriate to the nature of its operations.

### Direct electronic access

**9.3.2** An ATS Operator must have adequate rules and procedures to ensure that its members do not allow any other Person to have Direct Electronic Access to the facility unless such other Person meets the requirements in Rule 9.3.1(1).

**9.3.3** An ATS Operator must, where it permits its members to provide to another Person Direct Electronic Access to its facilities, have adequate systems and controls including:

- (a) appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;
- (b) mechanisms to identify and distinguish orders placed by those Persons who are allowed to place orders through Direct Electronic Access; and
- (c) if necessary, the ability to stop orders of, or trading by, the Persons allowed Direct Electronic Access.

### Monitoring of compliance

**9.3.4** An ATS Operator must establish and maintain adequate and effective systems and controls, including policies and procedures, to ensure that its members and other Persons to whom access to its facility is provided through members comply with its Operational Rules and where any gaps or deficiencies are identified, they are promptly addressed.

## 9.4 Investment criteria

**9.4.1** An ATS Operator must ensure in respect of every Investment traded on its facility that:

- (a) only Investments which meet the requirements in (i) or (ii) are permitted to be traded on its facility:
  - (i) in the case of Securities, only Securities which are admitted to trading on an Authorised Market Institution or other Regulated Exchange; or
  - (ii) in the case of Derivatives, only instruments that meet the contract specification criteria set out in AMI Rule 6.3.2;
- (b) there is sufficient information relating to the Investments traded on the facility available to members and other Persons having access to the facility through such members to enable such Persons to make informed decisions relating to such Investments; and
- (c) if it is an Investment that references to an underlying benchmark or index provided by a Price Information Provider, the requirements in Rule 9.4.2 are met.

### Use of price information providers

- 9.4.2**
- (1) An ATS Operator may only trade Investments that reference to an underlying benchmark or index provided by a Price Information Provider where it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).
  - (2) A Price Information Provider is a price reporting agency or an index provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, rates, indices, commodities or figures, which are made available to users.
  - (3) For the purposes of (1), the Price Information Provider must:
    - (a) have fair and non-discriminatory procedures for establishing prices of Investments which are made public.
    - (b) demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations;
    - (c) where appropriate, give priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;
    - (d) be of good standing and repute as an independent and objective price reporting agency or index provider;
    - (e) have a sound corporate governance framework;
    - (f) have adequate arrangements to avoid its staff having any conflicts of interest where such conflicts have, or are likely to have, a material adverse impact on price establishment process; and
    - (g) adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

### Guidance

An ATS Operator, when assessing the suitability of a Price Information Provider (the provider), should take into account factors such as:

- a. the provider's standing and reliability in the relevant physical or derivatives markets as a credible price reporting agency;
- b. the quality of corporate governance adopted, covering areas such as independent members of the board, independence of its internal audit and risk management function;
- c. whether the methodologies and processes (including any material changes to such methodologies and processes) adopted by the provider for the purposes of pricing are made publicly available;
- d. whether there are adequate procedures adopted to ensure that conflicts between the provider's commercial interests and those of users of its services, including those of its

Employees involved in pricing process, are adequately addressed, including through codes of ethics;

- e. whether there is a clear conveyance to its users of the economic realities of the underlying interest the Price Information Provider seeks to measure; and,
- f. the degree to which the Price Information Provider has given consideration to the characteristics of the underlying interests measured, such as:
  - **the size and liquidity:** Whether the size of the market informs the selection of an appropriate compilation mechanism and governance processes. For example, a benchmark or index that measures a smaller market may be impacted by single trades and therefore be more prone to potential manipulation, whereas a benchmark for a larger market may not be well represented by a small sample of participants;
  - **the relative market size.** Where the size of a market referencing a benchmark is significantly larger than the volume of the underlying market, the potential incentive for benchmark manipulation to increase; and
  - **Transparency:** Where there are varying levels of transparency regarding trading volumes and positions of market participants, particularly in non-regulated markets and instruments, whether the benchmark represents the full breadth of the market, the role of specialist participants who might be in a position to give an overview of the market, and the feasibility, costs and benefits of providing additional transparency in the underlying markets.

## 9.5 Technology resources

### 9.5.1 (1) An ATS Operator must:

- (a) have sufficient technology resources to operate, maintain and supervise the facility it operates;
- (b) be able to 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; and
- (c) ensure that its members and other participants on its facility have sufficient technology resources which are compatible with its own.

(2) For the purposes of meeting the requirement in (1)(c), an ATS Operator must have adequate procedures and arrangements for the evaluation, selection and on-going monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

- (a) problem management and system change;
- (b) adequate procedures for testing information technology systems before live operations, which are in conformity with the requirements that would apply to an Authorised Market Institution under App 1 of AMI;
- (c) monitoring and reporting on system performance, availability and integrity; and

- (d) adequate measures to ensure:
  - (i) the information technology systems are resilient and not prone to failure;
  - (ii) business continuity in the event that an information technology system fails;
  - (iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and
  - (iv) the integrity of data forming part of, or being processed through, information technology systems.

**Guidance**

1. In assessing the adequacy of an ATS Operator's systems and controls used to operate and carry on its functions, the DFSA will consider:
  - a. the organisation, management and resources of the information technology department of the firm;
  - 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 will 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. third party outsourcing arrangements.
3. In particular, when assessing whether an ATS Operator has adequate information technology resourcing, the DFSA will consider:
  - a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

- b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

### **Regular review of systems and controls**

- 9.5.2**
- (1) An ATS Operator must undertake regular review and updates of its systems and controls as appropriate to the nature, scale and complexity of its operations.
  - (2) For the purposes of (1), an ATS Operator must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

### **Guidance**

Through the use of such testing methodologies, the ATS Operator should be able to ensure, amongst other things, that:

- a. its systems and controls are compatible with its operations and functions;
- b. compliance and risk management controls embedded in its system operate as intended (for example by generating error reports automatically); and
- c. it can continue to work effectively in stressed market conditions.

## **9.6 Proper Markets**

- 9.6.1**
- (1) Without limiting the generality of the other requirements in this chapter, an ATS Operator must, for the purposes of meeting the requirement in Rule 9.2.1(e) relating to Proper Markets, ensure that:
    - (a) if Derivatives are traded on its facilities, such Derivatives meet the contract design specifications in AMI Rule 6.3.2;
    - (b) relevant market information is made available to Persons engaged in dealing on an equitable basis, including pre-trade and post-trade orders, in accordance with Rules 9.6.2 and 9.6.3;
    - (c) there are adequate mechanisms to discontinue, suspend or remove from trading on its facilities any Investments in circumstances where the requirements in this chapter are not met;
    - (d) there are controls to prevent volatility in the markets that is not caused by market forces, in accordance with Rule 9.6.4;
    - (e) error trades are managed, in accordance with Rule 9.6.5;
    - (f) Short Selling and position concentration are monitored and managed, in accordance with Rule 9.6.5;
    - (g) there are fair and non-discretionary algorithm operating in respect of matching of orders on its facilities;

- (h) there are adequate controls to monitor and manage any foreign ownership restrictions applying to Investments traded on its facilities, in accordance with Rule 9.6.7;
- (i) liquidity incentive schemes are offered only in accordance with Rule 9.6.8; and
- (i) there are adequate rules and procedures to address Market Abuse and financial crime, in accordance with Rules 9.6.9 and 9.6.10.

### **Pre-trade transparency**

- 9.6.2**
- (1) An ATS Operator must disclose the information specified in (2) relating to trading of Investments on its facility in the manner prescribed in (3).
  - (2) The information required to be disclosed pursuant to (1) includes:
    - (a) the current bid and offer prices and volume;
    - (b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Investments; and
    - (c) any other information relating to Investments which would promote transparency relating to trading.
  - (3) The information referred to in (2) must be made available to members and the public as appropriate on a continuous basis during normal trading.

### **Guidance**

- 1. When making disclosure, an ATS Operator should adopt a technical mechanism by which the public can differentiate between transactions that have been transacted in the central order book and transactions that have been reported to the facility as off-order book transactions. Any transactions that have been cancelled pursuant to its rules should also be identifiable.
- 2. An ATS Operator should use appropriate mechanisms to enable pre-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An ATS Operator may charge a reasonable fee for the information which it makes available to the public.
- 3. An ATS Operator may seek a waiver or modification from the disclosure requirement in Rule 9.6.1(1) in relation to certain transactions where the order size is pre-determined, exceeds a pre-set and published threshold level and the details of the exemption are made available to its members and the public.
- 4. In assessing whether an exemption from pre-trade disclosure should be allowed, the DFSA will take into account factors such as:
  - a. the level of order threshold compared with normal market size for the Investment;
  - b. the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;



- c. whether there is sufficient transparency relating to trades executed without pre-trade disclosure (as a result of dark orders), whether or not they are entered in transparent markets;
  - d. whether the ATS Operator supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and
  - e. whether there is adequate disclosure of details relating to dark orders available to members and other participants on the facility to enable them to understand the manner in which their orders will be handled and executed on the facility.
5. Dark pools are orders executed on execution platforms without pre-trade transparency.

### **Post-trade transparency requirements**

- 9.6.3**
- (1) An ATS Operator must disclose the information specified in (2) in the manner prescribed in (3).
  - (2) The information required to be disclosed pursuant to (1) is the price, volume and time of the transactions executed in respect of Investments.
  - (3) The information referred to in (2) must be made available to the public as close to real-time as is technically possible on reasonable commercial terms and on a non-discretionary basis.

### **Guidance**

An ATS Operator should use adequate mechanism to enable post-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An ATS Operator may charge a reasonable fee for the information which it makes available to the public.

### **Volatility controls**

- 9.6.4**
- (1) An ATS Operator's Operating Rules must include effective systems, controls and procedures to ensure that its trading systems:
    - (a) are resilient;
    - (b) have adequate capacity to deal with peak orders and message volumes; and
    - (c) are able to operate in an orderly manner under conditions of market stress.
  - (2) Without limiting the generality of its obligations arising under (1) or any other Rule, an ATS Operator must be able under its rules, systems, controls and procedures to:
    - (a) reject orders that exceed its pre-determined volume and price thresholds, or are clearly erroneous;
    - (b) temporarily halt trading of Investments traded on its facility if there is a significant price movement in relation to those Investments on its market or a related market during a short period; and

- (c) where appropriate, cancel, vary or correct any transaction.

**Guidance**

An ATS Operator should test its trading systems to ensure that they are resilient and capable of operating orderly trading under conditions of market stress and other contingencies.

**Error Trade policy**

- 9.6.5**
- (1) An ATS Operator must be able to cancel, amend or correct any error trades.
- (2) An “Error Trade” is the execution of an order resulting from:
- (a) an erroneous order entry;
- (b) malfunctioning of the system of a member or of the ATS Operator; or
- (c) a combination of (a) and (b).
- (3) For the purposes of (1), an ATS Operator must include a comprehensive error trade policy in its Operating Rules, which sets out clearly the extent to which transactions can be cancelled by it at its sole discretion, at the request of a member or by mutual consent of members involved.
- (4) An ATS Operator must have adequate systems and controls to:
- (a) prevent or minimise error trades;
- (b) promptly identify and rectify error trades where they occur; and
- (c) identify whether error trades are related to disorderly market activity.

**Guidance**

When assessing whether an ATS Operator has an appropriate and adequate error trade policy, the DFSA will consider whether the rules and procedures included in its Operating Rules:

- a. are adequate to minimise the impact of error trades where prevention of such trades is not possible;
- b. are sufficiently flexible in the design to address varying scenarios;
- c. establish a predictable and timely process for dealing with Error Trades, including measures specifically designed to detect and identify Error Trade messages to market users;
- d. promote transparency to market users with regard to any cancellation decisions involving material transactions resulting from the invocation of the Error Trade policy;
- e. include adequate surveillance conducted in the markets to detect Error Trades;
- f. promote predictability, fairness and consistency of actions taken under the Error Trade policy; and

- g. enable sharing of information with other markets when possible concerning the cancellation of trades.

### **Short Selling**

- 9.6.6** (1) An ATS Operator must have in place effective systems, controls and procedures to monitor and manage:
- (a) Short Selling in Securities; and
  - (b) position concentrations.
- (2) For the purposes of (1), an ATS Operator must have adequate powers over its members to address risks to an orderly functioning of its facility arising from unsettled positions in Investments.
- (3) Short Selling for the purposes of this Rule constitutes the sale of a Security by a Person who does not own the Security at the point of entering into the contract to sell.

### **Guidance**

1. An ATS Operator should, when developing its controls and procedures with regard to short selling and position management, have regard to:
  - a. its own settlement cycle, so that any short selling activities on its facilities do not result in any delay or prevent effective settlement within such cycle; and
  - b. orderly functioning of its facilities, so that any long or short position concentration on Investments that remain unsettled does not interrupt such functioning;
2. Examples of circumstances that would not be treated as short selling in Rule 6.7.1(3) include where the seller:
  - a. has entered into an unconditional contract to purchase the relevant Securities but has not received their delivery at the time of the sale;
  - b. has title to other securities which are convertible or exchangeable for the Securities to which the sale contract relates;
  - c. has exercised an option to acquire the Securities to which the sale contract relates;
  - d. has rights or warrants to subscribe and receive Securities to which the sale contract relates; and
  - e. is making a sale of Securities that trades on a “when issued” basis and has entered into a binding contract to purchase such Securities, subject only to the condition of issuance of the relevant Securities.

### **Foreign ownership restrictions**

- 9.6.7** An ATS Operator must not permit its facility to be used for trading Investments which are subject to foreign ownership restrictions unless it has adequate and effective arrangements to:
- (a) monitor applicable foreign ownership restrictions;

- (b) promptly identify and take appropriate action where any breaches of such restrictions occur without any undue interruption or negative impact to its trading activities; and
- (c) suspend trading in the relevant Investments where the ownership restrictions are, or are about to be, breached and reinstate trading when the breaches are remedied.

**Guidance**

The kind of arrangements an ATS Operator should implement to meet the requirements in Rule 9.6.7 are such as those specified in AMI Rule 6.8.1(2).

**Liquidity providers**

**9.6.8**

- (1) An ATS Operator must not introduce a liquidity incentive scheme unless:
  - (a) participation of such a scheme is limited to:
    - (i) a member as defined in Rule 9.3.1(1); or
    - (ii) any other Person where:
      - (A) it has undertaken due diligence to ensure that the Person is of sufficient good repute and has adequate competencies and organisational arrangements; and
      - (B) the Person has agreed in writing to comply with its Operating Rules so far as those rules are applicable to that Person's activities; and
  - (b) it has obtained the prior approval of the DFSA.
- (2) For the purposes of this section, a "liquidity incentive scheme" means an arrangement designed to provide liquidity to the market in relation to Investments traded on the facility.
- (3) Where an ATS Operator proposes to introduce or amend a liquidity incentive scheme, it must lodge with the DFSA, at least 10 days before the date by which it expects to obtain the DFSA approval, a statement setting out:
  - (a) the details of the relevant scheme, including benefits to the ATS and members arising from that scheme; and
  - (b) the date on which the scheme is intended to become operative.
- (4) The DFSA must within 10 days of receiving the notification referred to in (3), approve a proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme would be detrimental to the facility or markets in general. Where the DFSA does not approve the proposed liquidity incentive scheme, it must notify the ATS Operator of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.

- (5) An ATS Operator must, as soon practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.
- (6) An ATS Operator may appeal a decision of the DFSA not to approve a liquidity incentive scheme to the Regulatory Appeals Committee.

### **Prevention of Market Abuse**

#### **9.6.9**

- (1) An ATS Operator must:
  - (a) implement and maintain appropriate measures to identify, deter and prevent Market Abuse on and through its facility; and
  - (b) report promptly to the DFSA any Market Abuse.
- (2) For the purposes of (1)(a), an ATS Operator must:
  - (a) include in its Operating Rules a regime to prevent Market Abuse, which is applicable to its members and their Clients; and
  - (b) implement and maintain adequate measures to ensure that its members comply with that regime.
- (3) The regime to prevent Market Abuse referred to in (2)(a) must, at a minimum, include rules and procedures in relation to compliance with the applicable requirements in Part 6 of the Market Law, including adequate compliance arrangements applicable to its members and staff and the clients of members, record keeping, transaction monitoring, risk assessment and appropriate training.

### **Guidance**

- 1. An ATS Operator should 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 Abuse or suspected abuse, to the DFSA or appropriate regulatory authorities.
- 2. In determining whether an ATS Operator 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.
- 3. An ATS Operator 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.

#### **9.6.10**

- (1) An ATS Operator must:
  - (a) before accepting a prospective member, ensure that the applicant has in place adequate arrangements, including

- systems and controls to comply with its regime for preventing Market Abuse;
- (b) monitor and regularly review compliance by its members with that regime; and
- (c) take appropriate measures to ensure that its members rectify to the extent feasible any contraventions of its regime without delay.
- (2) An ATS Operator must promptly notify the DFSA of any:
- (a) material breach of its regime to prevent Market Abuse by a member, or by staff or clients of the member; and
- (b) circumstances in which a member will not or cannot rectify a breach of its regime.

### **Guidance**

1. An Authorised Firm is subject to the requirements in the DFSA's AML module. Members of an Authorised Firm which are themselves Authorised Firms are also subject, by virtue of being Authorised Firms, to the requirements in the DFSA's AML module.
2. In determining whether an ATS Operator's measures are adequate and appropriate to reduce the extent to which its facilities can be used for Market Abuse, the DFSA will consider:
  - a. whether the ATS Operator 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 Abuse to the DFSA and other appropriate organisations; and
  - d. how the ATS Operator co-operates with relevant bodies in the prevention, investigation and pursuit of Market Abuse.
3. An ATS Operator must have regard to Part 6 of the Markets Law in relation to forms of Market Abuse. Practices that amount to market manipulation (which is Market Abuse) in an automated trading environment which an ATS should be able to identify and prevent in order to promote proper markets include the following:
  - a. entering small orders in order to ascertain the level of hidden orders, particularly used to assess what is resting on a dark platform, called Ping Orders;
  - b. entering large numbers of orders and/or cancellations/updates to orders to create uncertainty for other market participants, to slow down their process and to camouflage the ATS Operator's own strategy, called Quote Stuffing;
  - c. entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price, called Moment Ignition; and

- d. submitting multiple orders often away from one side of the order book with the intention of executing a trade on the other side of the order book, where once that trade has taken place, the manipulative orders will be removed, called Layering and Spoofing.

### **Clearing and settlement arrangements**

- 9.6.11** (1) An ATS Operator must:
- (a) ensure that there are satisfactory arrangements in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facility; and
  - (b) inform its members and other Persons having access to its facility through members of details relating to such arrangements.
- (2) For the purposes of (1)(a), an ATS Operator must ensure that:
- (a) the Person who provides clearing and settlement services to a member is either:
    - (i) an Authorised Person appropriately licensed to carry on clearing or settlement services; or
    - (ii) an entity which is authorised and supervised by a Financial Services Regulator acceptable to the DFSA for the activity of clearing and settlement services and is operating under broadly equivalent standards as defined under Chapter 7 of the AMI module; and
  - (b) notification of such arrangements (including any changes thereto) is provided to the DFSA at least 30 days before making the arrangements and the DFSA has not objected to such arrangements within that period.

### **Guidance**

An ATS Operator is not authorised under its Licence to provide clearing and settlement services. Therefore, it must make suitable arrangements relating to clearing and settlement of transactions that are undertaken on its facility. For this purpose, it may arrange for its members to obtain such services from an appropriately licensed Person.

## **9.7 Specific requirements applicable to Persons operating an OTF**

- 9.7.1** A Person operating an OTF must not execute any orders made on the facility against its own proprietary capital.

## **10 CUSTODY PROVIDERS ACTING AS A CENTRAL SECURITIES DEPOSITORY (“CSD”)**

### **10.1 Application and interpretation**

- 10.1.1** (1) This chapter applies to an Authorised Firm which operates a Central Securities Depository (CSD).
- (2) Such an Authorised Firm is referred to in this chapter as a CSD.

#### **Guidance**

The Financial Service of Providing Custody includes the activity of operating a CSD. See GEN Rule 2.13.1(1)(c) and (3).

### **10.2 Additional requirements for CSDs**

- 10.2.1** (1) A CSD must have rules and procedures, including robust accounting practices and controls that:
- (a) ensure the integrity of the securities issues; and
  - (b) minimise and manage risks associated with the safekeeping and transfer of securities.
- (2) A CSD must ensure that securities referred to in (1)(a) are recorded in book-entry form prior to the trade date.
- (3) For the purposes of (1)(a), a CSD's systems and controls must ensure that:
- (a) the unauthorised creation or deletion of securities is prevented;
  - (b) appropriate intraday reconciliation is conducted to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the Members and other participants of the CSD;
  - (c) where entities other than the CSD are involved in the reconciliation process for a securities issue, such as the issuer, registrars, issuance agents, transfer agents or other CSDs, the CSD has adequate arrangements for cooperation and information exchange between all involved parties so that the integrity of the issue is maintained; and
  - (d) there are no securities overdrafts or debit balances in securities accounts.



**CSD links**

- 10.2.2** (1) A CSD must not establish any link with another CSD (CSD link) unless it:
- (a) has, prior to establishing the CSD link, identified and assessed potential risks, for itself and its members and other participants using its facilities, arising from establishing such a link;
  - (b) has adequate systems and controls to effectively monitor and manage, on an on-going basis, the risks identified under (a) above; and
  - (c) is able to demonstrate to the DFSA, prior to the establishment of the CSD link, that the CSD link satisfies the requirements referred to in (2).
- (2) The requirements referred to in (1)(c) are that:
- (a) the link arrangement between the CSD and all linked CSDs contains adequate mitigants against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;
  - (b) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;
  - (c) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the additional risks arising from the use of the intermediary;
  - (d) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs and, where such settlement is not practicable or feasible, reasons for non-DVP settlement are notified to the DFSA; and
  - (e) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are:
    - (i) identical moments established for the entry of transfer orders into the system;
    - (ii) irrevocable transfer orders; and
    - (iii) finality of transfers of securities and cash.

**Guidance**

A CSD should include in its notification to the DFSA relating to the establishment of CSD links the results of due diligence undertaken in respect of the matters specified in Rule 10.2.2(2) to demonstrate that those requirements are met. Where a CSD changes any existing CSD arrangements, fresh notification relating to such changes, along with its due diligence relating to the new CSD link, should be provided to the DFSA in advance of the proposed change.

**Changes in relation to Consultation Paper No. 88**

**6 ADDITIONAL RULES - INVESTMENT BUSINESS**

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**6.4 Best execution**

**Application**

- 6.4.1** (1) The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which:
- (a) it undertakes with a Market Counterparty;
  - (b) it carries out for the purposes of managing a Fund of which it is the Fund Manager; or
  - (c) is an Execution-Only Transaction.
- (2) Where an Authorised Firm undertakes an Execution-Only Transaction with or for a Client, the Authorised Firm is not relieved from providing best execution in respect of any aspect of that Transaction which lies outside the Client's specific instructions.

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**8 SPECIFIC RULES – OPERATING A CREDIT RATING AGENCY**

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**8.10 Record keeping**

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

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- (v) the Accounting Records ~~accounting records~~ relating to fees and charges received from or in respect of the Rating Subject;
  - (vi) the internal records and files, including non-public information and working papers, used to form the basis of any Credit Rating; and
  - (vii) credit analysis and credit assessment reports including any internal records and non-public information and working papers used to form the basis of the opinions expressed in such reports;
- (b) the Accounting Records ~~accounting records~~ relating to fees received from any person in relation to services provided by the Credit Rating Agency;
  - (c) the Accounting Records ~~accounting records~~ for each subscriber to the Credit Rating Agency's services;

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