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# The DFSA Rulebook

Conduct of Business Module

**(COB)**

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## **1 INTRODUCTION**

### **1.1 Application**

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

- (a) any Financial Service, except to the extent that a provision of COB provides for a narrower application; and
- (b) any activity, which is in connection with or for the purposes of a Financial Service, to the extent specified in any provision of COB.

### **1.2 General**

#### **Guidance**

This module is divided into seven parts: [Amended][VER5/04-06]

- a. COB part 1 prescribes certain restrictions in respect of the conduct of Insurance Business, Investment Business, Banking Business and Insurance Intermediation Business pursuant to Article 42(1) of the Regulatory Law 2004.
- b. COB part 2 deals with the conduct of Investment Business, that is, the relationship between the Authorised Firm and its Clients and how business is to be conducted with its Clients. The term Client includes Persons who are Market Counterparties. In their wholesale dealings, Market Counterparties do not expect nor require the same degree of protection as is afforded to Clients that are not Market Counterparties. Such dealings are mutually self-disciplining and Market Counterparties are expected to take responsibility for their own actions and decisions. Consequently, in their dealings with Market Counterparties, Authorised Firms are not required to comply with all the provisions of COB part 2, the sections which are not applicable are outlined in section 5.1.
- c. COB part 3 deals with the conduct of Insurance Intermediation Business, that is, the relationship between the Authorised Firm and its Commercial Customers and how business is to be conducted with its Commercial Customers.
- d. COB part 4 deals with the conduct of Insurance Business, that is, the relationship between the Authorised Firm and its Commercial Customers and how business is to be conducted with its Commercial Customers.
- e. COB part 5 contains additional Rules in relation to Operating Alternative Trading Systems. [Amended][VER2/08-05]



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- f. COB part 6 deals with the conduct of Providing Trust Services by a Trust Service Provider to its Clients. [Added] [VER4/01-06]
- g. COB part 7 contains Rules applying to Fund Administrators. [Added][VER5/04-06]

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## **PART 1 - RESTRICTIONS ON BUSINESS**

### **2 INSURANCE BUSINESS**

#### **2.1 Application**

**2.1.1** This chapter applies to an Authorised Firm which is an Insurer with respect to the conduct of Insurance Business.

**Guidance**

Insurance Business does not include the Financial Service of Insurance Intermediation or Insurance Management. An Authorised Firm carrying on either or both of these activities is required to comply with the restrictions set out in chapter 4. [Amended][VER3/12-05]

#### **2.2 Restrictions**

**2.2.1** An Insurer may only conduct Insurance Business to the extent specified in this section.

**2.2.2** (1) An Insurer must ensure that it does not in or from the DIFC:

[Amended][VER6/06-06]

- (a) Effect a Contract of Insurance or Carry Out a Contract of Insurance which is a contract of Long-Term Insurance; or
- (b) Effect Contracts of Insurance or Carry Out Contracts of Insurance in or from the DIFC a Contract of Insurance which is in relation to a risk situated within the U.A.E.;

unless such a contract is a contract of reinsurance.

(2) An Insurer which is a DIFC incorporated Insurer must ensure that it does not Effect a Contract of Insurance or Carry Out a Contract of Insurance with a natural person, in or from the DIFC , unless the contract is:

[Amended][VER6/06-06]

- (a) a contract of General Insurance effected or carried out collectively with the members of a Partnership or other unincorporated association, where the insured interest is held in common by the members of the Partnership or unincorporated association; or
  - (b) a contract of reinsurance effected or carried out with Lloyd's Underwriters.
- (3) An Insurer which is not a DIFC incorporated Insurer must ensure that it does not Effect Contracts of Insurance or Carry Out a Contract of Insurance with a natural person through a Branch in the DIFC unless the contract is:
- (a) a contract of General Insurance effected or carried out collectively with the members of a Partnership or other unincorporated association, where the insured interest is held in common by the members of the Partnership or unincorporated association; or
  - (b) a contract of reinsurance effected or carried out with Lloyd's Underwriters.
- (4) An Insurer must ensure that it does not carry on, in or from the DIFC, both Long-Term Insurance Business and General Insurance Business unless the General Insurance Business is restricted to Class 1 or Class 2 or both.
- (5) An Insurer which is a Protected Cell Company must ensure that, when it carries on Insurance Business in accordance with (1)-(4) as applicable, such business is attributable to a particular Cell of that Insurer.

**Guidance**

1. The classes of insurance are set out in GEN App4.
2. This Rule does not prevent an Insurer from being able to effect or carry out Direct Long-Term Contracts of Insurance from an establishment located outside the DIFC. Where an Insurer does so, it must comply with the requirements relating to Direct Long-Term Insurance Business that are set out in the PIN Module of the DFSA Rulebook. If the Insurer is a DIFC incorporated Insurer, SUP 7.2.2 requires it to notify the DFSA before establishing a branch outside the DIFC, and the DFSA has a right to object.

[Added] [VER11/07-07] [RM46/07]

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

**Guidance**

1. The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:
  - a. investing, reinvesting or trading, as investor or rabb ul maal and for the Insurer's own account, that of its Subsidiary, its Holding Company or any Subsidiary of its Holding Company but not any other party, in Securities, loans, investment accounts, units or shares in collective investment funds, certificates of mudaraba, certificates of musharaka or other forms of investments that are intended to earn profit or return for the investor;
  - b. rendering other services related to Insurance Business operations including, but not limited to, actuarial, risk assessment, loss prevention, safety engineering, data processing, accounting, claims handling, loss assessment, appraisal and collection services;
  - c. acting as agent for another insurer in respect of contracts of insurance in which both insurers participate; and
  - d. establishing Subsidiaries or Associates engaged or organised to engage exclusively in one or more of the businesses specified above.
2. The DFSA may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.

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### **3 INVESTMENT BUSINESS, BANKING BUSINESS AND TRUST SERVICES**

[Amended][VER12/10-07] [RM49/07]

#### **3.1 Application**

**3.1.1** This chapter applies to an Authorised Firm intending, in or from the DIFC, to:

- (a) Provide Trust Services to a Person; or
- (b) conduct Investment Business or Banking Business with or for a Person.

[Amended][VER12/10-07] [RM49/07]

**3.1.2** For the purposes of this chapter, Person includes a Collective Investment Fund, even if it does not have a separate legal personality.

#### **3.2 Restrictions**

**3.2.1** (1) An Authorised Firm must ensure that it does not conduct Investment Business, Banking Business or Provide Trust Services with or for a Retail Customer. [Amended] [VER4/01-06]

(2) An Authorised Firm must only conduct Investment Business, Banking Business or Provide Trust Services with or for a Person who is a Client. [Amended] [VER4/01-06]

(3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on Investment Business, Banking Business or Provide Trust Services is acting as agent for another Person, the 'second person' in relation to a particular Transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must not effect the Transaction unless the second person is a Client. [Amended] [VER4/01-06] [Amended][VER12/10-07] [RM49/07]

##### **Client**

**3.2.2** (1) Subject to (2) a Client is a Person who the Authorised Firm has determined, prior to the establishment of a relationship, is:

- (a) an individual who:

- (i) has at least \$1 million in liquid assets and has provided the Authorised Firm with written confirmation of this fact;
  - (ii) appears to the Authorised Firm, after analysis, to have sufficient financial experience and understanding to participate in financial markets; and
  - (iii) has consented in writing to being treated as a Client;
- (b) an individual who:
- (i) is an employee of the Authorised Firm; and
  - (ii) meets the conditions in (1)(a)(ii) and (iii);
- (c) an Undertaking which has had, or any of whose Holding Companies or Subsidiaries has had, in the last two years, called up share capital or net assets of at least \$5 million. In the case of a limited liability partnership calculated without deducting loans owing to any of the partners;
- (d) a trustee of a trust or pension fund which has had in the last two years assets of at least \$5 million calculated by aggregating the value of the cash and investments forming part of the trust's or fund's assets, but before deducting its liabilities;
- (e) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;
- (f) a public authority or state investment body;
- (g) a supranational organisation whose members are either countries, central banks or national monetary authorities;
- (h) an Authorised Firm or Regulated Financial Institution;
- (i) an Authorised Market Institution, regulated exchange or regulated clearing house;
- (j) an Undertaking which is a Holding Company or Subsidiary of an Undertaking in (h) or (i) with that undertakings consent;
- (k) a Body Corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country; or
- (l) a Collective Investment Fund or Special Purpose Vehicle.

- (2) (a) For the purposes only of giving advice of the kind specified in (b) (i) or the making of arrangements of the kind specified in (b) (ii), a Client is a Person who appears to the Authorised Firm on reasonable grounds to be:
- (i) an individual who has at least \$1 million in liquid assets; or
  - (ii) an Undertaking.
- (b) For the purposes of (a):
- (i) the advice is limited to generic advice as defined under GEN Rule 2.11.1 (3); or
  - (ii) the arrangements as defined under GEN Rule 2.9.1 are limited to the making of a referral to an Authorised Firm or to an entity authorised or licensed and supervised by a Financial Services Regulator.
- (3) Any Person who does not meet the criteria in (1) or (2) is a Retail Customer.

[Amended][VER12/10-07] [RM49/07]

### **Guidance**

1. In obtaining an individual's consent in Rule 3.2.2(1)(a)(iii) and (b)(ii) the DFSA expects an Authorised Firm to inform the individual of the consequences of being treated as a Client. This may include a statement that the DIFC is a wholesale jurisdiction and the individual will not be afforded the retail customer protections and compensation rights that may generally be available to them in other jurisdictions.
2. Generic advice is a Financial Services activity covered under GEN section 2.11. A referral is an activity that falls within GEN section 2.9. Rule 3.2.2(2) allows an Authorised Firm to give generic advice or make a referral without having to comply with the analysis and verification requirements under Rules 3.2.2 and 3.2.4.
3. An Authorised Firm is, however, required to satisfy itself that the Person meets the criteria in Rule 3.2.2(2). For this purpose, an Authorised Firm should consider maintaining some record of the information on which it relied to satisfy itself on this point. See also Rules 6.2.1 and 8.1.1.

[Amended][VER12/10-07] [RM49/07]

### **Liquid assets**

- 3.2.3** For the purpose of Rule 3.2.2(1)(a)(i) and 2(a)(i), liquid assets are cash or assets which can be readily converted into cash, including but not limited to marketable securities, government bonds, treasury bills and notes that mature within 90 days. [Amended][VER12/10-07] [RM49/07]



**Analysis**

**3.2.4** For the purpose of Rule 3.2.2(1)(a)(ii), and (b)(ii), an Authorised Firm must ensure that the analysis includes consideration of each of the following matters:

- (a) the individual's knowledge and understanding of the relevant financial markets, types of investment and of the risks involved either generally or in relation to the proposed Transaction;
- (b) the length of time the individual has been active in relevant financial markets, the frequency of dealings and the extent to which the individual has relied on financial advice from financial institutions;
- (c) the size and nature of transactions that have been undertaken for the individual in relevant financial markets;
- (d) the individual's relevant qualifications relating to financial markets;
- (e) the composition and size of the individual's existing financial investment portfolio; and
- (f) any other matters which the Authorised Firm considers relevant.

[Amended][VER12/10-07] [RM49/07]

**Verification systems and controls**

- 3.2.5** (1) For the purposes of Rule 3.2.2(1), an Authorised Firm must have systems and controls in place to verify, prior to undertaking Investment Business or Banking Business, or Providing Trust Services with or for a Person, that the Person is a Client. [Amended][VER12/10-07] [RM49/07]
- (2) These systems and controls must include carrying out appropriate checks.
- (3) If the Person is an individual these systems and controls must also include obtaining sufficient information to conduct the analysis under Rule 3.2.4.

**Record keeping**

- 3.2.6** (1) An Authorised Firm must keep records of the verification process undertaken under Rule 3.2.5 for each Client including any documents which evidence the Client's status.
- (2) If the Client in (1) is an individual the records must include the analysis undertaken, the reasons for the Authorised Firm concluding that the individual merits classification as a Client and the Client's written consent to being treated as a Client.
- (3) These records must be kept for at least six years from the date on which the business relationship has ended. If the date on which the business relationship ended remains unclear it may be taken to have ended on the date of the completion of the last Transaction.

[Amended][VER12/10-07] [RM49/07]

**3.3 Additional restrictions for banking business****Application**

- 3.3.1** This section applies to an Authorised Firm with respect to the conduct of Banking Business.

**Restrictions**

- 3.3.2** In addition to the restrictions in section 3.2, an Authorised Firm which is a Bank may only conduct Banking Business to the extent specified in this section.
- 3.3.3** An Authorised Firm must ensure when conducting Banking Business that it does not, through an establishment maintained by it in the DIFC:
- (a) Accept Deposits from the State's markets;
  - (b) Accept Deposits in the U.A.E. Dirham;
  - (c) Provide Credit in the UAE Dirham; or
  - (d) undertake currency transactions or foreign exchange transactions involving the U.A.E Dirham.

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## **4 INSURANCE INTERMEDIATION BUSINESS**

### **4.1 Application**

**4.1.1** This chapter applies to an Authorised Firm with respect to the conduct of Insurance Intermediation business.

### **4.2 Restrictions**

**4.2.1** An Authorised Firm may only conduct Insurance Intermediation Business to the extent specified in this chapter.

#### **Insurance Intermediation**

**4.2.2** (1) An Authorised Firm must ensure, except to the extent permitted in Rule 4.2.3, that it does not carry on the Financial Service of Insurance Intermediation with or for a natural Person.

(2) The application of (1) to a Domestic Firm is in relation to Insurance Intermediation carried on in or from the DIFC or from a branch outside the DIFC. [Amended][VER12/10-07] [RM50/07]

(3) The application of (1) to an Authorised Firm which is not a Domestic Firm, is in relation to Insurance Intermediation carried on through a Branch in the DIFC.

[Amended][VER3/12-05]

**4.2.3** An Authorised Firm carrying on the Financial Service of Insurance Intermediation may act on behalf of a natural Person where:

(a) it is acting on behalf of the members of a Partnership or other unincorporated association, where the insured interest or the interest to be insured is held in common by the members of the Partnership or unincorporated association; or

(b) it is acting on behalf of Lloyd's Underwriters, or in connection with a contract of reinsurance placed or to be placed by Lloyd's Underwriters. [Amended][VER3/12-05]

- 4.2.4** (1) An Authorised Firm carrying on the Financial Service of Insurance Intermediation must not act in relation to a contract of insurance which relates to a risk situated within the U.A.E. unless such a contract is a contract of reinsurance.
- (2) The application of (1) to a Domestic Firm is in relation to Insurance Intermediation carried on in or from the DIFC or from a branch outside the DIFC.
- (3) The application of (1) to an Authorised Firm which is not a Domestic Firm, is in relation to Insurance Intermediation carried on through a Branch in the DIFC. [Amended][VER3/12-05]

## PART 2 – CONDUCT OF INVESTMENT BUSINESS

### 5 INTRODUCTION

#### 5.1 Application

- 5.1.1** (1) COB part 2 applies to an Authorised Firm with respect to the conduct in or from the DIFC of Investment Business.
- (2) COB part 2 also applies to an Authorised Firm with respect to the carrying on in or from the DIFC an activity which is not a Financial Service constituting Investment Business, but which is:
- (a) carried on in connection with such a Financial Service; or
  - (b) held out as being for the purposes of such a Financial Service;

to the extent specified in any provision of COB part 2.

- (3) An Authorised Firm conducting Investment Business or carrying on an activity described in (2), with or for a Client who is a Market Counterparty, need not comply with the following provisions of COB part 2:

Section	
6.2	Suitability
6.6	Inducements
6.7	Soft dollar agreements
7.1	Best execution
7.3	Aggregation and allocation
7.5	Other dealing rules
8.1	Client agreement
8.2	Confirmation notes
8.3	Periodic statements

- (4) For the purposes of this Rule, COB part 2 consists of chapters 5-9 of this module.

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## **6 RESPONSIBLE CONDUCT**

### **6.1 Communication of information and marketing material**

#### **General**

- 6.1.1** When communicating information to a Person in relation to Investment Business, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- 6.1.2** An Authorised Firm must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the Regulatory Law 2004 or Rules.
- 6.1.3** Where a Rule in COB requires information to be sent to a Client, the Authorised Firm must provide that information directly to the Client and not to another Person, unless it is on the written instruction of the Client.

#### **Marketing material**

- 6.1.4** (1) Before an Authorised Firm communicates any marketing material to a Person it must ensure the material contains the following information:
- (a) the name of the Authorised Firm communicating the marketing material or on whose behalf the marketing material is being communicated;
  - (b) a statement that the marketing material is directed at wholesale customers and not Retail Customers;
  - (c) a statement to the effect that the financial products or Financial Services to which the marketing material relates will only be made available to a wholesale customer who the Authorised Firm is satisfied meets the regulatory criteria to be a Client; and
  - (d) the Authorised Firm's regulatory status as required under GEN section 6.4.
- (2) In (1) marketing material means any invitation or inducement to enter into an agreement:
- (a) in relation to a financial product or to engage in a Financial Service with the Authorised Firm; or

- (b) in relation to a financial product or financial service offered by an establishment other than the Authorised Firm. [Added][VER6/06-06]
- (3) An Authorised Firm which communicates marketing material in (2)(b) must: [Added][VER6/06-06]
  - (a) ensure that the marketing material complies with the applicable requirements under the DFSA laws and the Rulebook; and
  - (b) not distribute such marketing material if it becomes aware that the establishment offering the financial product or financial service to which the material relates is in breach of the regulatory requirements that apply to that establishment.

**6.1.5** An Authorised Firm must not allow any other Person to communicate or otherwise use marketing material on behalf of the Authorised Firm unless it is in compliance with the Rules in this section.

### **Record Keeping**

- 6.1.6** (1) An Authorised Firm must keep records of any marketing material issued by, or on behalf of, the Authorised Firm.
- (2) The records in (1) must be maintained for a minimum of six years.

## **6.2 Suitability**

### **Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 6.2.1** (1) Subject to (2), an Authorised Firm may only:
  - (a) give advice of the kind referred to in GEN Rule 2.11.1(1)(a) or (b) to a Client who is an individual; or
  - (b) execute a Transaction for any Client on a discretionary basis;where that advice or Transaction is suitable for that Client having regard to:
  - (c) that Client's investment objectives and risk tolerance; and
  - (d) any other requirements or relevant facts about that Client of which the Authorised Firm is, or ought reasonably be aware.

- (2) An Authorised Firm may, subject to (3), limit the extent to which it will consider suitability when carrying on an activity specified in (1)(a) or (b) if prior to carrying on such an activity:
  - (a) it has given a written warning to the Client in the form of a notice clearly stating either that the Authorised Firm will not consider suitability in regard to any of the activities specified in (1)(a) or (b), or, that it will do so but only to the extent specified in the notice; and
  - (b) the Client has given his express consent, after a proper opportunity to consider the warning, by signing the notice.
- (4) Where an Authorised Firm is acting for a Client as Investment Manager it must ensure the Client's portfolio or account remains suitable, having regard to the facts in (1)(c) and (d).
- (5) An Authorised Firm must ensure the facts it holds about a Client are accurate, complete and up to date.
- (6) Where an Authorised Firm has pooled that Client's funds with those of others with a view to taking common discretionary management decisions, the Authorised Firm must take reasonable steps to ensure that the Transaction is suitable for the fund having regard to the stated investment objectives of the fund.

[Amended][VER12/10-07] [RM49/07]

### **Record Keeping**

- 6.2.2** (1) An Authorised Firm must keep a record of each advice or recommendation made to an individual, and be able to demonstrate to the DFSA compliance with Rule 6.2.1.
- (2) The records in (1) must be maintained for a minimum of six years.

## **6.3 Conflicts and material interest**

### **Fair treatment**

- 6.3.1** (1) An Authorised Firm must manage any conflict of interest or material interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.



- (2) Where an Authorised Firm has knowledge of a conflict or a material interest, it must manage that interest by:
  - (a) establishing and maintaining effective Chinese Walls to restrict the communication of that knowledge;
  - (b) disclosing the material interest or conflict of interest to the Client in writing either generally or in relation to a specific transaction; or
  - (c) relying on a written policy of independence, which requires an Employee to disregard any conflict of interest or material interest when advising a Client or exercising discretion.
- (3) If an Authorised Firm is unable to ensure fair treatment for a Client, it must decline to act for that Client.

#### **Attribution of knowledge**

- 6.3.2** When a COB Rule applies to an Authorised Firm that acts with knowledge, the Authorised Firm will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved on behalf of the Authorised Firm acts with that knowledge as a result of a Chinese Wall arrangement established under Rule 6.3.1 (2).

## **6.4 Personal account transactions**

### **Conditions for personal account transactions**

- 6.4.1** An Authorised Firm must establish and maintain adequate policies and procedures so as to ensure that:
- (a) an Employee does not undertake a Personal Account Transaction unless:
    - (i) the Authorised Firm has, in a written notice, drawn to the attention of the Employee the conditions upon which the Employee may undertake Personal Account Transactions and that the contents of such a notice are made a term of his contract of employment or services;
    - (ii) the Authorised Firm has given its written permission to that Employee for that transaction or to transactions generally in Investments of that kind; and
    - (iii) the transaction will not conflict with the Authorised Firm's duties to its Clients;

- (b) it receives prompt notification or is otherwise aware of each Employee Personal Account Transaction; and
- (c) if an Employee's Personal Account Transactions are conducted with the Authorised Firm, each Employees account must be clearly identified and distinguishable from other Clients' accounts.

**6.4.2** The written notice in Rule 6.4.1(a)(i) must make it explicit that, if an Employee is prohibited from undertaking a Personal Account Transaction, he must not, except in the proper course of his employment:

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

#### **Guidance**

For an Employee to be a Client of the Authorised Firm they must meet the criteria under chapter 3.

**6.4.3** Where an Authorised Firm has taken reasonable steps to determine that an Employee will not be involved to any material extent in, or have access to information about, the Authorised Firm's Investment Business, then the conditions or restrictions on Personal Account Transactions, in Rule 6.4.1, need not be applied to that Employee.

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

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

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

#### **Record Keeping**

- 6.4.5** (1) An Authorised Firm must maintain and keep a record of:
- (a) the written notice setting out the conditions for Personal Account Transactions under Rule 6.4.1(a)(i);
  - (b) each permission given or denied by the Authorised Firm under Rule 6.4.1(a)(ii);

- (c) each notification made to it under Rule 6.4.1(b); and
  - (d) the basis upon which the Authorised Firm has ascertained that an Employee will not be involved in to any material extent, or have access to information about, the Authorised Firm's Investment Business under Rule 6.4.3.
- (2) The records in (1) must be retained for a minimum of six years from the date of:
- (a) in (1)(a) and (1)(d), termination of the employment contract of each Employee;
  - (b) in (1)(b), each permission given or denied by the Authorised Firm; and
  - (c) in (1)(c), each notification made to the Authorised Firm.

## **6.5 Investment research and offers of securities**

### **Guidance**

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

- 6.5.1** An Authorised Firm that prepares and publishes Investment Research must have adequate procedures and controls to ensure:
- (a) the effective supervision and management of Investment Analysts;
  - (b) that the actual or potential conflicts of interest are proactively managed in accordance with the Rule 6.3.1;
  - (c) that the Investment Research issued to Clients is impartial; and
  - (d) that the Investment Research contains the disclosures described under Rules 6.5.2 and 6.5.3.

**Guidance**

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

**Disclosures in investment research**

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

- (a) identifies the types of Clients for whom it is principally intended;
- (b) distinguishes fact from opinion or estimates, and includes references to sources of data used;
- (c) specifies the date when it was first published;
- (d) specifies the period the ratings or recommendations are intended to cover;
- (e) contains a clear and unambiguous explanation of the rating or recommendation system used;
- (f) includes a price chart or line graph depicting the performance of the Investment for the period that the Authorised Firm has assigned a rating or recommendation for that investment, which must also show the dates on which the ratings were revised; and
- (g) includes a distribution of the different ratings or recommendations, in percentage terms:
  - (i) for all Investments;
  - (ii) for Investments in each sector covered; and
  - (iii) for Investments, if any, where the Authorised Firm has undertaken corporate finance business with or for the Issuer over the past 12 months.

**Disclosure of conflicts in investment research and public appearances**

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

- (a) any financial interest or material interest that the Investment Analyst or a Close Relative has, which relates to the Investment;
- (b) any shareholding by the Authorised Firm or its Associate of 1% or more of the total issued share capital of the Issuer;
- (c) if the Authorised Firm or its Associate acts as corporate broker for the Issuer;
- (d) any material shareholding by the Issuer in the Authorised Firm;
- (e) any corporate finance business undertaken by the Authorised Firm with or for the Issuer over the past 12 months, and any future relevant corporate finance business initiatives; and
- (f) that the Authorised Firm is a Market Maker in the Investment, if that is the case.

**Restrictions on publication**

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

- (a) it does not publish Investment Research relating to the Investment during a Quiet Period; and
- (b) that an Investment Analyst from the Authorised Firm does not make a Public Appearance relating to that Investment during a Quiet Period.

**Guidance**

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

**Restriction on own account transactions**

**6.5.5** Unless Rule 6.5.6 applies, an Authorised Firm or its Associate must not knowingly execute an Own Account Transaction in an Investment or related Investments, which is the subject of Investment Research, prepared either by the Authorised Firm or its Associate, until the Clients for whom the Investment Research was principally intended have had a reasonable opportunity to act upon it.

**Exceptions**

- 6.5.6** The restriction in Rule 6.5.5 does not apply if:
- (a) the Authorised Firm or its Associate is a Market Maker in the relevant Investment;
  - (b) the Authorised Firm or its Associate Executes an unsolicited Transaction for a Client; or
  - (c) it is not expected to materially affect the price of the Investment.

**Guidance**

The exceptions in Rule 6.5.6 allow an Authorised Firm to continue to provide key services to the market and to its Clients even if the Authorised Firm would be considered to have knowledge of the timing and content of the Investment Research which is intended for publication to Clients, for example when it is impractical for an Authorised Firm to put in place a Chinese Wall because the Authorised Firm has few Employees or cannot otherwise separate its functions.

**Offers of securities**

- 6.5.7** When an Authorised Firm carries out a mandate to manage an offering of Securities, it must implement adequate internal arrangements, in accordance with section 6.3, to manage any conflicts of interest that may arise as a result of the Authorised Firm's duty to two distinct sets of Clients: the corporate finance Client and the investment Client.

**Disclosure**

- 6.5.8** For the purposes of Rule 6.5.7, when an Authorised Firm accepts a mandate to manage the offering, it must take reasonable steps to disclose to its corporate finance Client:
- (a) the process the Authorised Firm proposes to adopt in order to determine what recommendations it will make about allocations for the offering;
  - (b) details of how the target investor group, to whom it is planned to offer the Securities, will be identified;
  - (c) the process through which recommendations are prepared and by whom; and
  - (d) (if relevant) that it may recommend placing Securities with an investment Client of the Authorised Firm for whom the Authorised Firm provides other services, with the Authorised Firm's own proprietary book, or with an Associate, and that this represents a potential conflict of interest.

**Guidance**

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

**6.6 Inducements****Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 6.6.1** An Authorised Firm must have systems and controls, policies and procedures to ensure that neither it, nor any of its Employees, offers, gives, solicits or accepts any inducement which is likely to conflict significantly with any duty that it owes to its Clients.

**6.7 Soft dollar agreements****Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 6.7.1** An Authorised Firm may only accept goods and services under a Soft Dollar Agreement if the goods and services do not constitute an inducement for the purposes of Rule 6.6.1, and are reasonably expected to:

- (a) assist in the provision of Investment Business services to the Authorised Firm's Clients by means of:
  - (i) specific advice on dealing in, or on the value of, any Investment;
  - (ii) research or analysis relevant to (i) or about Investments generally;  
or
  - (iii) use of computer or other information facilities to the extent that they are associated with specialist computer software or research services, or dedicated telephone lines;
- (b) provide custody services relating to Investments belonging to, or managed for, Clients;

- (c) provide services relating to portfolio valuation or performance measurement services; or
- (d) provide market price services.

**Guidance**

For the purposes of Rule 6.7.1, an Authorised Firm should undertake a thorough assessment of the goods and services, for example dealing screens and telephone lines to be provided under a Soft Dollar Agreement. The focus of this assessment should be towards ensuring that Clients get value for money. In this respect, the Authorised Firm should consider limiting the pass through of any management costs to Clients funds in the form of commission payments.

**Requirements for soft dollar agreements**

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

- (a) the agreement is a written agreement for the supply of goods or services described in Rule 6.7.1, which do not take the form of, or include, cash or any other direct financial benefit;
- (b) Transaction execution by the broker is consistent with any best execution obligations owed to the Client;
- (c) the Authorised Firm has taken reasonable steps to ensure that the services provided by the broker are competitive, with no comparative price disadvantage, and take into account the interests of the Client;
- (d) for Transactions in which the broker acts as principal, the Authorised Firm has taken reasonable steps to ensure that Commission paid under the agreement will be sufficient to cover the value of the goods or services to be received and the costs of execution; and
- (e) the Authorised Firm makes adequate disclosure in accordance with Rules 6.7.3 and 6.7.4.

**Prior disclosure**

**6.7.3** Before an Authorised Firm enters into a Transaction for a Client, either directly or indirectly, with or through the agency of another Person, under the Soft Dollar Agreement which the Authorised Firm has, or knows that another member of its Group has, with that other Person, it must disclose to its Client:

- (a) the existence of a Soft Dollar Agreement; and
- (b) the Authorised Firm's or its Group's policy relating to Soft Dollar Agreements.



**Periodic disclosure**

- 6.7.4** (1) If an Authorised Firm or member of its Group has a Soft Dollar Agreement under which either the Authorised Firm or member of its Group Deals for a Client, the Authorised Firm must provide that Client with the following information:
- (a) the percentage paid under Soft Dollar Agreements of the total Commission paid by or at the direction of:
    - (i) the Authorised Firm; and
    - (ii) any other member of the Authorised Firm's Group which is a party to those agreements;
  - (b) the value, on a cost price basis, of the goods and services received by the Authorised Firm under Soft Dollar Agreements, expressed as a percentage of the total Commission paid by or at the direction of:
    - (i) the Authorised Firm; or
    - (ii) other members of the Authorised Firm's Group;
  - (c) a summary of the nature of the goods and services received by the Authorised Firm under the Soft Dollar Agreements; and
  - (d) the total Commission paid from the portfolio of that Client.
- (2) The information in (1) must be provided to that Client at least once a year, covering the period since the Authorised Firm last reported to that Client.

**Record keeping**

- 6.7.5** An Authorised Firm must make and retain records of:
- (a) the reports sent to its Clients as required by Rules 6.7.3 and 6.7.4 and retain those records for at least six years from the date on which the Soft Dollar Agreement to which they relate is terminated; and
  - (b) each payment made by the Authorised Firm of disclosable Commission, under each Soft Dollar Agreement and must retain that record for at least six years from the date of payment.

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## **6.8 Marketing and selling Units of a Domestic Fund**

### **General Requirements and application**

**6.8.1** (1) An Authorised Firm must comply with the requirements in the Rules in this section when undertaking Transactions in or from the DIFC in relation to a Unit of a Domestic Fund, except where the Transaction:  
[Amended][VER7/08-06]

- (a) is an execution only Transaction as defined in (2)(b); or
- (b) is carried out in connection with or for the purposes of a discretionary portfolio management agreement which it has entered into with a Client.

[Added][VER7/08-06]

(2) For the purposes of this section, section 6.9 and section 6.10:

- (a) a “Transaction” is a transaction undertaken by an Authorised Firm in the course of carrying on a Financial Service in or from the DIFC and includes any Offer of the Units of a Fund in or from the DIFC; and
- (b) a Transaction is an “execution only Transaction” where the Authorised Firm merely executes an unsolicited Client order. An order is an unsolicited Client order only if the Authorised Firm has not provided Advice to the Client as defined in GEN 2.11 in relation to any Units of the Fund to which the Transaction relates.

[Added][VER7/08-06]

**6.8.2** An Authorised Firm must not enter into Transactions in relation to Units in a Domestic Fund with any Person other than a Qualified Investor.  
[Amended][VER7/08-06]

### **Prospectus requirements**

#### **Guidance**

There are other Prospectus requirements that apply to the Offer, issue and sale of Units of Domestic Funds (both Public and Private Funds), which are set out in the Collective Investment Law 2006 and the CIR Module. An Authorised Firm must, where applicable, ensure compliance with those requirements in addition to the requirements in these Rules. [Added][VER7/08-06]

- 6.8.3** (1) An Authorised Firm which undertakes a Transaction in respect of any Units of a Domestic Fund must have at its place of business in the DIFC copies of the relevant Prospectus for inspection by potential participants and the DFSA. Such copies may be stored electronically so long as potential participants and the DFSA can easily and immediately access the relevant Prospectus for inspection and print out a hard copy.
- (2) An Authorised Firm must not undertake any Transactions in relation to the Units mentioned in (1) unless it has offered the Person with whom it is transacting a copy of the Prospectus.

[Amended][VER7/08-06]

### **Private Funds**

- 6.8.4** An Operator of a Domestic Fund which is a Private Fund must ensure when entering into a Transaction for the issue or sale of the Units in its Fund, that it does so:

- (a) by means only of private placement with Qualified Investors; and
- (b) to no more than 100 such investors.

[Amended][VER7/08-06]

- 6.8.5** If an Operator of a Domestic Fund which is a Private Fund makes arrangements with other Authorised Firms or Persons in other jurisdictions, to Offer or sell the Units, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not Offer or sell the Units in a manner that would result in a breach of the limitations applicable to the Operator under Rule 6.8.4. [Amended][VER7/08-06]

- 6.8.6** An Authorised Firm must not enter into a Transaction in relation to the Units of a Domestic Fund, which is a Private Fund, where such a Transaction would result in a breach of the limitations applicable to the Operator of a Domestic Fund under Rule 6.8.4. [Added][VER7/08-06]

### **Periodic Information to DFSA**

- 6.8.7** (1) An Authorised Firm must submit to the DFSA, at the same time as its quarterly regulatory returns in accordance with PIB, a report regarding any Transaction in respect of Units of a Domestic Fund which it has entered into during the preceding quarter. [Amended][VER7/08-06]

- (2) The report required under (1) must include;
  - (i) the name of the Fund; and
  - (ii) the name of the Operator of the Fund.

## **6.9 Marketing and selling Units of a Foreign Fund**

### **General Requirements and application**

- 6.9.1** (1) An Authorised Firm must comply with the requirements in the Rules in this section when it undertakes a Transaction in the Units of a Foreign Fund except where the Transaction: [Amended][VER7/08-06]
- (a) is an execution only Transaction as defined in Rule 6.8.1(2)(b);
  - (b) is carried out in connection with or for the purposes of a discretionary portfolio management agreement which it has entered into with a Client and the Authorised Firm provides to the Client information required under Rule 6.9.2;
  - (c) is carried out with the Operator of a Foreign Fund for the purpose of redeeming a Unit of that Fund for or on behalf of a Client; or
  - (d) falls within (3).

[Added][VER7/08-06]

- (2) An Authorised Firm must not enter into Transactions in relation to the Units of a Foreign Fund with any Persons other than a Client. [Added][VER7/08-06]
- (3) The requirements in this section do not apply to a Transaction in relation to the Units of a Foreign Fund where an Authorised Firm:
  - (a) enters into the Transaction on an Authorised Market Institution in the DIFC or on an exchange regulated by a Financial Services Regulator in a Recognised Jurisdiction; and
  - (b) the Authorised Firm has provided to the Client the information of the kind referred to in Rule 6.9.2(4) prior to the execution of the Transaction for or on behalf of that Client.

[Added][VER7/08-06]

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**Prospectus requirements**

- 6.9.2** (1) An Authorised Firm must ensure, before it enters into any Transaction relating to the Units of a Foreign Fund, that it:
- (a) offers to the Client the relevant Fund's Prospectus, which must be in the English language and contain the information required pursuant to (2) and, if applicable, (3); or
  - (b) has provided the information required under (4).

[Added][VER7/08-06] [Deleted & Replaced] [VER10/07-07] [RM45/07]

- (2) The Authorised Firm must ensure that the Prospectus contains in a prominent position or has attached to it, a statement that describes clearly: [Deleted, Renumbered & Amended] [VER10/07-07]
- (a) the regulatory status accorded to the Fund by the foreign Regulator;
  - (b) the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
  - (c) the name of the Regulator; and
  - (d) the following warning:

[Amended][VER7/08-06]

"This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority ("DFSA").

This Prospectus is intended for distribution only to Persons of a type specified in the DFSA's Rules (i.e. "Qualified Investors") and must not, therefore, be delivered to, or relied on by, any other type of Person.

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser."

- (3) In respect of an Islamic Fund which is specified in App 7, an Authorised Firm must ensure that the Prospectus contains in a prominent position or has attached to it the statement prescribed under App 7.

[Added] [VER/10/07-07] [RM45/07]

- (4) The Authorised Firm may satisfy the information requirement for the purposes of (1)(b) by entering into a prior agreement with the Client where:
- (a) that agreement sets out in substance the information to the effect set out in (2) in respect of the Transactions which the Authorised Firm may enter into for or on behalf of the Client in relation to Units of Foreign Funds; and
  - (b) the Authorised Firm provides confirmation of that information on an annual basis in respect of each Foreign Fund the Units of which have been the subject of any Transactions the Authorised Firm had entered into for or on behalf of that Client during the preceding year.

[Added][VER7/08-06] [Amended] [RM45] [VER10/07-07]

- 6.9.3** An Authorised Firm must, when undertaking Transactions in respect of any Units of a Foreign Fund, have at its place of business in the DIFC copies in English of the relevant Prospectus for inspection by potential participants and the DFSA. Such copies may be stored electronically so long as potential participants and the DFSA can easily and immediately access the relevant Prospectus for inspection and print out a hard copy. [Amended][VER7/08-06]

#### **Designated Foreign Fund located in a recognised jurisdiction**

- 6.9.4** Subject to Rule 6.9.5, an Authorised Firm may only undertake a Transaction in respect of the Units of a Foreign Fund:
- (a) where the Fund:
    - (i) is a Designated Fund in a Recognised Jurisdiction;
    - (ii) is approved or authorised by the Recognised Jurisdiction's Financial Services Regulator; and
    - (iii) satisfies the requirements that govern the ability of Persons in that jurisdiction, to Offer the Units to Retail Customers by means of public offering; and

[Amended][VER7/08-06]

- (b) if the Fund is a Property Fund, the requirements in Rule 6.9.6 are met.

[Added][VER7/08-06]

### **Guidance**

In relation to the requirements of Rules 6.9.4 and 6.9.5, in respect of Recognised Jurisdictions and Designated Funds, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

### **Non-Designated Funds**

- 6.9.5** (1) An Authorised Firm may only undertake a Transaction in respect of the Units of a Foreign Fund not falling within Rule 6.9.4 where:  
[Amended][VER7/08-06]

- (a) both the custodian and the investment manager of the Fund meet one of the requirements set out under (4) or (5), as applicable; or
- (b) both the custody and investment management activities of the Fund are performed by a Person who meets the requirements in (6); or
- (c) the Fund has been rated in accordance with the requirement in (7);

and, in any event

- (d) if the Fund is a Property Fund, the requirements in Rule 6.9.6 are met.

[Amended][VER7/08-06]

- (2) For the purposes of (1)(a), the “custodian” is a Person who is retained by the Fund, the Operator of the Fund or the Fund’s Directors or Partners under a commercial arrangement which is not an “employee contract of service” to safeguard the Fund’s assets. [Amended][VER7/08-06]
- (3) For the purposes of (1)(a), the “investment manager” is a Person who is retained by the Fund, the Operator of the Fund or the Fund’s Directors or Partners under a commercial arrangement which is not an “employee contract of service” to manage the Fund’s assets. [Amended][VER7/08-06]
- (4) For the purposes of (1)(a), the custodian must be:
  - (a) an Eligible Custodian;

- (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that regulation;
- (c) appointed under an agreement by a Person who is subject to regulation and supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that regulator; or
- (d) a Person whom the Authorised Firm has satisfied itself as having adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
  - (i) whether the Person providing custody is licensed and subjected to regulation by a Financial Services Regulator for the purposes of providing custody;
  - (ii) the extent of segregation of assets;
  - (iii) independence and management of conflicts of interests;
  - (iv) the terms of the safe custody agreement; and
  - (v) periodic reporting requirements;

[Amended][VER7/08-06]

- (5) For the purposes of (1)(a), the investment manager must be a Person who is:
  - (a) authorised or licensed and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the regulation; or
  - (c) appointed under an agreement by another Person who is subject to regulation and supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the regulator.

[Amended][VER7/08-06]



- (6) For the purposes of (1)(b), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
- (a) authorised or licensed and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
  - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that regulation; or
  - (c) appointed under an agreement by another Person who is subject to regulation and supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that regulator.

[Added][VER7/08-06]

- (7) The requirement in (1)(c) in respect of the Foreign Fund is that the Fund has been rated or graded as at least “investment grade” by Moodys, Fitch or Standard & Poor’s or such other international rating agency as may be recognised by the DFSA. [Added][VER7/08-06]

### **Property Funds**

- 6.9.6** (1) An Authorised Firm must ensure that it does not undertake a Transaction in respect of the Units of a Foreign Fund which is a Property Fund in respect of which 60% or more of the Fund’s assets comprise Real Property unless the requirements in (2) and (3) are met.
- (2) The Fund in (1) is a closed-ended structure.
- (3) The Fund in (1) is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction unless the Units are to be Offered, issued or sold by means only of private placement.

[Amended][VER7/08-06]

### **Guidance**

A closed ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund. [Added][VER7/08-06]

**Periodic Information to DFSA**

- 6.9.7** (1) An Authorised Firm must submit to the DFSA, at the same time as its quarterly regulatory returns in accordance with PIB, a report regarding any Transactions in respect of the Units of a Foreign Fund which have been made during the preceding quarter. [Amended][VER7/08-06]
- (2) The report required under (1) must include details of:
- (a) the name of the Fund and its Operator;
  - (b) whether it is a Designated Fund and, if so, in which Recognised Jurisdiction it is authorised or approved; and
  - (c) if the Fund is not a Designated Fund, the criteria met under Rule 6.9.5 to enable a Transaction to be undertaken in respect of the Fund's Units. [Amended][VER7/08-06]

**6.10 Record keeping**

- (1) An Authorised Firm must keep records of any marketing material issued by, or on behalf of, the Authorised Firm.
- (2) The records in (1) must include the relevant Prospectus and documentary evidence of the offering of a copy of the Prospectus and, if applicable, disclosure of the mandatory statement.
- (3) The records in (1) must be maintained for a minimum of six years.
- [Added][VER5/04-06]

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## **7 DEALING**

### **7.1 Best execution**

#### **Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 7.1.1** (1) When an Authorised Firm agrees, or decides in the exercise of its discretion, to Execute any Transaction with or for a Client in an Investment, it must provide best execution.
- (2) An Authorised Firm provides best execution if it takes reasonable care to determine the best overall price available for that Investment under the prevailing market conditions and deals at a price which is no less advantageous to that Client.
- (3) An Authorised Firm is not required to provide best execution where the Authorised Firm has agreed with the Client in writing that it will not provide best execution.
- (4) An Authorised Firm which is an ATS Operator is not required to provide best execution for its clients in circumstances where such clients are dealing with each other on the Authorised Firm's facility and the Authorised Firm is not acting for or on behalf of any such client in relation to a deal on that facility. [Added][VER2/08-05]

#### **Requirements**

- 7.1.2** In determining whether an Authorised Firm has taken reasonable care to provide the best overall price for a Client in accordance with Rule 7.1.1, the DFSA will have regard to whether an Authorised Firm has:
- (a) discounted any fees and charges previously disclosed to the Client;
  - (b) not taken a Mark-up or Mark-down from the price at which it Executed the Transaction, unless this is disclosed to the Client; and
  - (c) had regard to price competition or the availability of a range of price sources for the execution of its Clients' Transactions. In the case where the Authorised Firm has access to prices of different Authorised Market Institutions, other regulated financial markets or alternative trading systems, it must Execute the Transaction at the best overall price available having considered other relevant factors.

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

**Guidance**

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

## **7.2 Non-market price transactions**

- 7.2.1** (1) An Authorised Firm must not enter into a non-market price transaction in any capacity, with or for a Client, unless it has taken reasonable steps to ensure that the transaction is not being entered into by the Client for an improper purpose.
- (2) The requirement in (1) does not apply in relation to a non-market price transaction subject to the Rules of an Authorised Market Institution or regulated exchange.
- (3) An Authorised Firm must make and retain, for a minimum of six years, a record of the steps it has taken in relation to each transaction, under this Rule.

**Guidance**

1. A non-market price transaction is a transaction where the dealing rate or price paid by the Authorised Firm or its Client differs from the prevailing market rate or price to a material extent or the Authorised Firm or its Client gives materially more or less in value than it receives in return.
2. In general, Authorised Firms should undertake transactions at the prevailing market price. Failure to do this may result in an Authorised Firm participating, whether deliberately or unknowingly, in the concealment of a profit or loss, or in the perpetration of a fraud.

## **7.3 Aggregation and allocation**

**Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

**Aggregation of orders**

- 7.3.1** An Authorised Firm may aggregate an order for a Client with an order for other Clients or with an order for its own account where:
- (a) it is unlikely that the aggregation will operate to the disadvantage of any of the Clients whose Transactions have been aggregated;
  - (b) the Authorised Firm has disclosed in writing to the Client that his order may be aggregated and that the effect of the aggregation may operate on some occasions to his disadvantage;
  - (c) the Authorised Firm has made a record of the intended basis of allocation and the identity of each Client before the order is effected; and
  - (d) the Authorised Firm has in place written standards and policies on aggregation and allocation which are consistently applied and should include the policy that will be adopted when only part of the aggregated order has been filled.

**Allocation of investments**

- 7.3.2** Where an Authorised Firm has aggregated a Client order with an order for other Clients or with an order for its own account, and part or all of the aggregated order has been filled, it must:
- (a) promptly allocate the Investments concerned;
  - (b) allocate the Investments in accordance with the stated intention;
  - (c) ensure the allocation is done fairly and uniformly by not giving undue preference to itself or to any of those for whom it dealt; and
  - (d) make and maintain a record of:
    - (i) the date and time of the allocation;
    - (ii) the relevant Investments;
    - (iii) the identify of each Client concerned; and
    - (iv) the amount allocated to each Client and to the Authorised Firm recorded against the intended allocation required in Rule 7.3.1 (d).

**Record keeping**

**7.3.3** An Authorised Firm must retain the records required in Rules 7.3.1 and 7.3.2 for six years from the date on which the order is allocated.

**7.4 Record keeping – transactions and orders****Voice records**

**7.4.1** An Authorised Firm must make and retain voice recordings of its telephone lines used for negotiating, agreeing, arranging and confirming Transactions and for the passing of payment instructions.

- 7.4.2** (1) An Authorised Firm must be able to demonstrate prompt accessibility of all records.
- (2) Records must be maintained in comprehensible form or must be capable of being promptly so reproduced.
- (3) The Authorised Firm must make and implement appropriate procedures to prevent unauthorised alteration of its records.

**7.4.3** Voice recordings must be retained for a minimum of three months.

**Records of orders and transactions**

- 7.4.4** (1) When an Authorised Firm receives a Client order or in the exercise of its discretion decides upon a Transaction, it must promptly make a record of the information set out in App1 Rule A1.1.1.
- (2) When an Authorised Firm Executes a Transaction, it must promptly make a record of the information set out in App1 Rule A1.1.2
- (3) When an Authorised Firm passes a Client order to another Person for Execution, it must promptly make a record of the information set out in App 1 Rule A1.1.3.

**7.4.5** The records referred to in Rule 7.4.4 must be retained by an Authorised Firm for a minimum of six years.

## **7.5 Other dealing rules**

### **Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

### **Churning**

- 7.5.1** (1) An Authorised Firm must not Execute a Transaction for a Client in its discretion or advise any Client to transact with a frequency or in amounts to the extent that those Transactions might be deemed to be excessive.
- (2) The onus will be on the Authorised Firm to ensure that such Transactions were fair and reasonable at the time they were entered into.

### **Timely execution**

- 7.5.2** (1) Once an Authorised Firm has agreed or decided to enter into a Transaction for a Client, it must do so as soon as reasonably practical.
- (2) An Authorised Firm may postpone the execution of a Transaction in (1) if it has taken reasonable steps to ensure that it is in the best interests of the Client.

### **Fairly and in due turn**

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

### **Averaging of prices**

- 7.5.4** (1) An Authorised Firm may execute a series of Transactions on behalf of a Client within the same trading day or within such other period as may be agreed in writing by the Client, to achieve one investment decision or objective, or to meet Transactions which it has aggregated.
- (2) If the Authorised Firm does so, it may determine a uniform price for the Transactions executed during the period, calculated as the weighted average of the various prices of the Transactions in the series.

### **Timely allocation**

- 7.5.5** (1) An Authorised Firm must ensure that a Transaction it Executes is promptly allocated.
- (2) The allocation must be:



**CONDUCT OF BUSINESS (COB)**

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- (a) to the account of the Client on whose instructions the Transaction was executed;
- (b) in respect of a discretionary Transaction, to the account of the Client or Clients with or for whom the Authorised Firm has made and recorded, prior to the Transaction, a decision in principle to execute that Transaction; or
- (c) in all other cases, to the account of the Authorised Firm.



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## **8 DOCUMENTATION**

### **8.1 Client agreement**

#### **Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 8.1.1** Subject to Rules 8.1.2 and 8.1.3, an Authorised Firm must before conducting Investment Business with a Client provide him with a client agreement containing the matters referred to in Rule 8.1.4 or if impractical to do so, provide it within a reasonable period. [Amended][VER12/10-07] [RM49/07]

#### **Exclusions**

- 8.1.2** An Authorised Firm does not need to provide a client agreement to a Client when:

- (a) an execution only Transaction is to be undertaken for that Client; or
- (b) generic advice as defined under GEN Rule 2.11.1(3) is provided to a Client or a referral of the kind specified in Rule 3.2.2(2)(b)(ii) is made.

[Deleted and Replaced][VER12/10-07] [RM49/07]

#### **Guidance**

If the provision of generic advice or a referral results in the provision of another Financial Service by the Authorised Firm, such as Dealing as Principal, the exemption in Rule 8.1.2(b) does not apply.

[Added][VER12/10-07] [RM49/07]

- 8.1.3** An Authorised Firm does not need to provide a client agreement to an Operator of a Collective Investment Fund for any Investment Business conducted as part of fund management activity or the purchase or sale as principal of units or shares in the fund.

#### **Content**

- 8.1.4** (1) The client agreement must set out in sufficient detail the basis on which Investment Business is to be conducted with or for the Client.
- (2) The agreement must be easy to understand, not likely to be misunderstood and conform to the requirements in these Rules.

- (3) All client agreements must contain the information outlined in App2 section A2.1 as applicable.

### **Changes to client agreement**

- 8.1.5** If the client agreement provided to a Client allows an Authorised Firm to amend its client agreement without the Client's consent, the Authorised Firm must give at least 14 days notice to a Client before conducting Investment Business with or for that Client on any amended terms, unless it is impractical to do so.  
[Amended][VER8/02-07][RM42/07]

### **Record keeping**

- 8.1.6** An Authorised Firm must make a record of each client agreement including any amendments it provides to a Client and retain them for a minimum of six years from the date the Client ceases to be a customer of the Authorised Firm.

## **8.2 Confirmation notes**

### **Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 8.2.1** (1) When an Authorised Firm Executes a Transaction in an Investment for a Client, it must ensure a confirmation note is sent to the Client as soon as possible and in any case no later than 2 business days following the date of Execution of the Transaction.
- (2) Where an Authorised Firm has executed a Transaction or series of Transactions in accordance with Rule 7.5.4, the Authorised Firm must send a confirmation note relating to those Transactions as soon as possible, but no later than 2 business days following the last Transaction.
- (3) The confirmation note must include the details of the Transaction in accordance with App3 section A3.1.
- (4) An Authorised Firm is not required to issue a confirmation note where:
- (a) the Client has advised in writing that he does not wish to receive such confirmation notes; or
  - (b) separate arrangements are in place for the Client relating to the purchase of units or shares in a Collective Investment Fund.

[Amended][VER8/02-07][RM42/07]

**Record keeping**

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

**8.3 Periodic statements****Guidance**

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

**Investment management and contingent liability investments**

- 8.3.1** When an Authorised Firm:

- (a) acts as an Investment Manager for a Client; or
- (b) operates a Client's account containing uncovered open positions in a Contingent Liability Investment;

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

**Suitable intervals**

- 8.3.2** An Authorised Firm must provide a periodic statement:

- (a) six-monthly to a Client;
- (b) monthly, if the Client's portfolio includes an uncovered open position in Contingent Liability Investments; or
- (c) at any alternative interval, if a Client has on his own initiative agreed with the Authorised Firm but in any case at least annually.

**Record keeping**

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

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## **9 CLIENT ASSETS**

### **9.1 Application**

**9.1.1** This chapter applies to every Authorised Firm which:

- (a) holds or controls Client Assets; or
- (b) Provides Custody or Arranges Custody.

#### **Guidance**

- 1. Client Assets are comprised of Client Money and Client Investments.
- 2. Pursuant to GEN section 2.13, Providing Custody means the activity of both safeguarding assets belonging to another Person and the administration of those assets, if the assets include any Investment or rights under a Contract of Long-Term Insurance, not being a contract of reinsurance.
- 3. Pursuant to GEN section 2.14, Arranging Custody means arranging for one or more Persons to carry on Providing Custody.
- 4. An Authorised Firm is reminded that carrying on the Financial Service of Providing Custody or Arranging Custody is an activity which requires authorisation in accordance with GEN section 2.2.

### **9.2 General requirements**

**9.2.1** (1) An Authorised Firm which holds or controls Client Money must comply with sections 9.3 and 9.5.

(2) An Authorised Firm which holds Client Investments or Provides Custody or Arranges Custody must comply with sections 9.4 and 9.5

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

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

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

- (b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and
- (c) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Firm entering into such Transactions.

### **Holding or controlling client assets**

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

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

#### **Guidance**

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

## **9.3 Client money**

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

- (a) held by the Authorised Firm as a bank in an account with itself, provided the Authorised Firm notifies the Client in writing that the Client Money is held by it as a bank and not in accordance with this chapter;
- (b) immediately due and payable by the Client to the Authorised Firm;
- (c) belonging to another Person within the Authorised Firm's Group unless that Person is an Authorised Firm or an Regulated Financial Institution and that Person has confirmed to the Authorised Firm, in writing, that the beneficial owner of the Money is a Person who is not part of the Authorised Firm's Group;

- (d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and who is in compliance with Rule 9.2.2(2); or
- (e) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Firm, provided the cheque or other payable order is intended to be forwarded to the third party within 1 business day of receipt.  
[Amended][VER8/02-07][RM42/07]

**Guidance**

1. Authorised Firms are reminded that the exemption in Rule 9.3.1(a) would not apply to Money which is passed to a third party i.e. not held in an account with the Authorised Firm itself.
2. Pursuant to Rule 9.3.1(b), examples of Money which is immediately due and payable to an Authorised Firm includes Money which is:
  - a. paid by the way of brokerage, fees and other charges to the Authorised Firm or where it is entitled to deduct such remuneration from the Client Money held or controlled;
  - b. paid by the Authorised Firm in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or
  - c. owed by the Client to the Authorised Firm in respect of unpaid purchases by or for the Client if delivery of Investments has been made to the Client or credited to his account.

**Client money provisions**

- 9.3.2** (1) An Authorised Firm which holds or controls Client Money for:
- (a) a Client who is an individual, other than an individual who has opted out of the Client Money Provisions in accordance with (2);
  - (b) any Client in connection with discretionary investment management services; or
  - (c) any other Client for whom the Authorised Firm has agreed to provide the protections conferred under the Client Money Provisions in relation to one or more Financial Services;

must comply with the Client Money Provisions in App5 in relation to the Client Money held for those Clients or in respect of those services.

- (2) A Client who is an individual may opt out of the Client Money Provisions, other than in respect of discretionary Investment Management services, by written consent.

**Guidance**

1. Where an Authorised Firm provides discretionary Investment Management services or it has agreed to provide the protections conferred under the Client Money Provisions in relation to one or more Financial Services, the Authorised Firm is only required to comply with the Client Money Provisions with regard to Client Money held or controlled in relation to those services.

**Client money auditor's report**

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

**Client disclosure**

- 9.3.3** (1) If an Authorised Firm holds or controls Client Money which is not subject to the Client Money Provisions pursuant to Rule 9.3.2, it must disclose to that Client in writing that:
- (a) the protections conferred by the Client Money Provisions do not apply to such Client Money;
  - (b) as a consequence of (a), such Client Money may be mixed with Money belonging to the Authorised Firm, and may be used by the Authorised Firm in the course of the Authorised Firm's business; and
  - (c) in the event of insolvency, winding up or other Distribution Event stipulated by the DFSA:
    - (i) in the case of a Domestic Firm, such Client Money will be subject to and distributed in accordance with the DFSA Client Money Distribution Rules; and
    - (ii) in the case of a non-Domestic Firm, such Client Money will be subject to a regime which may differ from the regime applicable in the DIFC.
- (2) In the case of a Client who is an individual, the Authorised Firm must obtain that Client's written acknowledgement of the disclosures made in (1) prior to holding or controlling Client Money for that Client.

**Distribution event**

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

**Record keeping**

- 9.3.5** (1) An Authorised Firm must maintain records:
- (a) which enable the Authorised Firm to demonstrate compliance with section 9.2;
  - (b) which enable the Authorised Firm to demonstrate and explain all entries of Money held or controlled in accordance with this chapter; and
  - (c) of all cheques received and forwarded in accordance with Rule 9.3.1(e).
- (2) Records must be kept for a minimum of six years.

**Guidance**

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

**9.4 Client investments**

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

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

**Guidance**

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



- 9.4.3** (1) Subject to (2), an Authorised Firm Providing Custody or Arranging Custody in or from the DIFC must do so in accordance with the Safe Custody Provisions in App6.
- (2) The Safe Custody Provisions in App6 do not apply to Client Investments held as Collateral unless stated otherwise.

#### **Holding collateral**

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

- (a) the basis and any terms governing the way in which the Collateral will be held, including any rights which the Authorised Firm may have to realise the Collateral;
- (b) if applicable, that the Collateral will not be registered in that Client's own name;
- (c) if applicable, that the Authorised Firm proposes to return to the Client Collateral other than the original Collateral, or original type of Collateral; and
- (d) that in the event of the insolvency, winding up or other Distribution Event stipulated by the DFSA:
- (i) of a Domestic Firm, any excess Collateral will be sold and the resulting Client Money shall be distributed in accordance with the DFSA Client Money Distribution Rules; or
  - (ii) of a non-Domestic Firm, that Collateral will be subject to a regime which may differ from the regime applicable in the DIFC.

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

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

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

- (2) An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which it considers the third party to be suitable to hold Client's Collateral.
- 9.4.7** (1) An Authorised Firm must take reasonable steps to ensure that the Collateral is properly safeguarded.
- (2) An Authorised Firm must withdraw the Collateral from the third party where the Collateral is not being properly safeguarded unless the Client has indicated otherwise in writing.
- 9.4.8** An Authorised Firm holding Client's Collateral must send a statement every six months to the Client in accordance with section A6.8.
- 9.4.9** An Authorised Firm must reconcile the Client's Collateral in accordance with section A6.9.

## **9.5 Record keeping**

- 9.5.1** (1) An Authorised Firm must maintain records:
  - (a) which enable the Authorised Firm to demonstrate compliance with section 9.2;
  - (b) which enable the Authorised Firm to demonstrate and explain all entries of Client Investments and Collateral held or controlled in accordance with this chapter.
- (2) Records must be kept for a minimum of six years.

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## **PART 3 – CONDUCT OF INSURANCE INTERMEDIATION AND INSURANCE MANAGEMENT BUSINESS**

### **10 INTRODUCTION**

#### **10.1 Application**

- 10.1.1** (1) COB part 3 applies to an Authorised Firm with respect to the conduct in or from the DIFC of Insurance Intermediation or Insurance Management business.
- (2) COB part 3 also applies to an Authorised Firm with respect to the carrying on in or from the DIFC of an activity which is not a Financial Service constituting Insurance Intermediation or Insurance Management business, but which is:
- (a) carried on in connection with such a Financial Service; or
  - (b) held out as being for the purpose of such a Financial Service;
- to the extent specified in any provision of COB part 3.
- (3) For the purposes of this Rule, COB part 3 consists of chapters 10-14 of this module. [Amended][VER03/12-05]

## **11 RESPONSIBLE CONDUCT**

### **11.1 Communication of information and marketing material**

#### **General**

**11.1.1** This section applies to both Insurance Intermediaries and Insurance Managers.

**11.1.2** (1) When communicating any information in relation to Insurance Intermediation or Insurance Management business to a Person, an Authorised Firm must take reasonable steps to ensure that it communicates any such information in a manner which is clear, fair and not misleading.

(2) An Authorised Firm must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under the Regulatory Law 2004 or Rules. [Amended][VER3/12-05]

### **11.2 Authorised Firm's duty of disclosure**

**11.2.1** This section applies only to Insurance Intermediaries.

**11.2.2** Before carrying on any Insurance Intermediation with or for a Commercial Customer an Authorised Firm must disclose whether it acts on behalf of an Insurer or any other Person or acts independently on behalf of Commercial Customers. [Amended][VER12/10-07] [RM50/07]

### **11.3 Customers duty of disclosure**

**11.3.1** This section applies only to Insurance Intermediaries.

**11.3.2** An Authorised Firm must explain to a Commercial Customer the duty to disclose all circumstances material to the insurance and the consequence of any failure to make such disclosures both before the insurance commences and during the continuance of the policy.

**11.3.3** An Authorised Firm must explain to a Commercial Customer that all answers or statements given on a proposal form, claim form or any other relevant document are the Commercial Customer's own responsibility and that the Commercial Customer is responsible for checking the accuracy of such information.

**11.3.4** If an Authorised Firm believes that any disclosure of material facts by a Commercial Customer is not true, fair or complete it must request the Commercial Customer to make the necessary true, fair or complete disclosure, and if this is not forthcoming must consider declining to continue acting on that Commercial Customer's behalf. [Amended][VER3/12-05]

## **11.4 Costs and remuneration**

**11.4.1** This section applies to both Insurance Intermediaries and Insurance Managers.

**11.4.2** An Authorised Firm must provide details of the costs of each Contract of Insurance or Insurance Intermediation service or Insurance Management service offered to a Commercial Customer.

**11.4.3** An Authorised Firm must ensure that it does not impose any fees or charges without first disclosing the amount and the purpose of the charge to the Commercial Customer on whose behalf it acts.

**11.4.4** (1) An Authorised Firm must, on the request of any Commercial Customer, disclose to that customer all commissions and other economic benefits accruing to the Authorised Firm or any member of the same Group from:

- (a) any Insurance Intermediation business;
- (b) any Insurance Management business; or
- (c) any other business connected to or related to the provision of such business.

transacted by the Authorised Firm on behalf of that customer.

(2) (1) does not apply where an Insurance Intermediary acts solely on behalf of a single insurer, and this fact has been disclosed to the Commercial Customer.

**11.4.5** An Authorised Firm must disclose to a Commercial Customer any payment that it receives for providing to, or securing on behalf of, its Commercial Customer any additional insurance related services. [Amended][VER03/12-06]

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## **11.5 Information about the proposed insurance**

**11.5.1** This section applies only to Insurance Intermediaries.

**11.5.2** An Authorised Firm must provide adequate information in a comprehensive and timely manner to enable a Commercial Customer to make an informed decision about the Contract of Insurance being proposed.

### **Guidance**

1. If an Authorised Firm is acting on behalf of a Commercial Customer it should explain the differences in, and the relative costs of, the types of insurance, which in the opinion of the Authorised Firm, would suit the Commercial Customer's needs. In so doing an Authorised Firm should take into consideration the knowledge held by the Commercial Customer when deciding to what extent it is appropriate to explain the terms and conditions of a particular insurance explained to that Commercial Customer.
2. An Authorised Firm should provide a Commercial Customer with the key features of any insurance proposed including the essential cover and benefits, any significant or unusual restrictions, exclusions, conditions or obligations, and a period of cover. In so doing, an Authorised Firm should take into consideration the knowledge held by the Commercial Customer when deciding to what extent it is appropriate to explain the terms and conditions of a particular insurance to that Commercial Customer.

**11.5.3** If an Authorised Firm is unable to match a Commercial Customer's requirements it must explain the differences in the insurance proposed.

## **11.6 Suitability**

### **Guidance**

Before an Authorised Firm provides any Insurance Intermediation services to a Commercial Customer it should take reasonable steps to:

- a. obtain from that Commercial Customer such information about the customer's circumstances and objectives as might reasonably be expected to be relevant in enabling the Authorised Firm to identify the Commercial Customer's requirements to fulfil its responsibilities to its Commercial Customer; and
- b. to understand the type of Commercial Customer it is dealing with and the extent of that Commercial Customer's knowledge of risk and insurance products.  
[Amended][VER03/12-05]

## **11.7 Conflicts of interest**

**11.7.1** This section applies to both Insurance Intermediaries and Insurance Managers.

- 11.7.2** (1) An Authorised Firm must manage any conflict of interest or material interest to ensure that all its customers are fairly treated and not prejudiced by any such interests.
- (2) An Authorised Firm must manage the conflict of interest or material interest by disclosing the material interest or conflict of interest to the Commercial Customer in writing either generally or in relation to a specific transaction.
- (3) If an Authorised Firm is unable to manage a conflict of interest or material interest, it must decline to act for the Commercial Customer.  
[Amended][VER03/12-05]

## **12 PLACEMENT OF INSURANCE**

### **12.1 Applications**

**12.1.1** This chapter applies only to Insurance Intermediaries.

### **12.2 Instructions**

**12.2.1** As soon as reasonably possible after being instructed by a Commercial Customer an Authorised Firm must provide that Commercial Customer with a letter confirming in detail the customer's instructions, the Insurance Intermediation services that will be provided by the Authorised Firm and any advice given. [Amended][VER03/12-05]

**12.2.2** Where an Authorised Firm is instructed to obtain insurance which is contrary to the advice that the Authorised Firm has given to that Commercial Customer the Authorised Firm must obtain from the Commercial Customer written confirmation of the customer's instructions before arranging or buying the relevant insurance.

### **12.3 Quotations**

**12.3.1** When giving a quotation an Authorised Firm must take due care to ensure the accuracy of the quotation and its ability to obtain the insurance at the quoted terms.

### **12.4 Confirmation of cover**

**12.4.1** (1) An Authorised Firm must, as soon as reasonably possible, provide a Commercial Customer with written confirmation and details of the insurance which has been obtained on the customer's behalf including identification of the insurer or insurers and of any changes to the Contract of Insurance.

(2) An Authorised Firm must as soon reasonably practical; provide the Commercial Customer with the full policy documentation where this was not included with the confirmation of cover.



## **13 PROVIDING AN ONGOING SERVICE**

### **13.1 Application**

**13.1.1** This chapter applies only to Insurance Intermediaries. [Amended][VER03/12-05]

### **13.2 Amendments to and renewal of insurance**

**13.2.1** (1) An Authorised Firm must deal promptly with a Commercial Customer's request for an amendment to the insurance cover and provide the Commercial Customer with full details of any premium or charges to be paid or returned.

(2) An Authorised Firm must provide a Commercial Customer with written confirmation when the amendment is made and remit any return premium or charges due to the Commercial Customer without delay.

**13.2.2** An Authorised Firm must give adequate advance notification to a Commercial Customer of the renewal or expiration date of an existing insurance policy so as to allow the Commercial Customer sufficient time to consider whether continuing cover is required.

**13.2.3** On expiry or cancellation of the insurance, at the request of the Commercial Customer, an Authorised Firm must promptly make available all documentation and information to which the Commercial Customer is entitled.

### **13.3 Claims**

**13.3.1** Where an Authorised Firm handles insurance claims it must:

- (a) on request, give the Commercial Customer reasonable guidance in pursuing a claim under the relevant policy;
- (b) handle claims fairly and promptly and keep the Commercial Customer informed of progress;
- (c) inform the Commercial Customer in writing, with an explanation, if the Authorised Firm is unable to deal with any part of a claim; and
- (d) forward settlement of any claim, as soon as reasonably possible, once it has been agreed.

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## **14 INSURANCE MONIES**

### **14.1 Application**

**14.1.1** This chapter applies to any Authorised Firm whose Licence allows it to carry on the Financial Services of Insurance Intermediation or Insurance Management, in respect of activities carried on in or from the DIFC. [Amended][VER03/12-05]

### **14.2 General**

**14.2.1** (1) Insurance Monies are, subject to (2), any monies arising from Insurance Intermediation or the Insurance Management business which are any of the following: [Amended][VER03/12-05]

- (a) premiums, additional premiums and return premiums of all kinds;
- (b) claims and other payments due under Contracts of Insurance;
- (c) refunds and salvages;
- (d) fees, charges, taxes and similar fiscal levies relating to Contracts of Insurance;
- (e) discounts, commissions and brokerage; or
- (f) monies received from or on behalf of a customer of an Insurance Manager, in relation to his Insurance Management business.

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

- (a) the Insurance Intermediary or Insurance Manager, as the case may be, holds as agent for the insurer all monies received by it in connection with Contracts of Insurance effected or to be effected by the insurer;
- (b) insurance cover is maintained for the customer once the monies are received by the Insurance Intermediary or the Insurance Manager, as the case may be; and

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

[Amended][VER12/10-07] [RM50/07]

**14.2.2** In this chapter, a customer of an Insurance Manager means:

- (a) any insurer for which the Insurance Manager provides Insurance Management;
- (b) any shareholder of an insurer mentioned in (a); or
- (c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.

**14.2.3** For the purposes of Rule 14.2.2:

- (a) an Insurer includes a Cell of a Protected Cell Company which is an Insurer; and
- (b) a shareholder includes a holder of Cell Shares.

### **14.3 Insurance money segregation**

**14.3.1** An Insurance Intermediary or Insurance Manager when dealing with Insurance Monies must:

[Amended][VER03/12-05]

- (a) ~~[Deleted] [VER12/10-07] [RM50/07]~~
- (b) maintain one or more separate Insurance Bank Accounts with an Eligible Bank in the U.A.E.;
- (c) ensure that each Insurance Bank Account contains in its title the name of the Authorised Firm, together with the designation Insurance Bank Account (or IBA);
- (d) prior to operating an Insurance Bank Account, give written notice to, and receive written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the Authorised Firm, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;

- (e) pay all Insurance Monies directly and without delay into an Insurance Bank Account;
- (f) use an Insurance Bank Account only for the following purposes:
  - (i) the receipt of Insurance Monies;
  - (ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Firm with any conditions or requirements prescribed by the DFSA;
  - (iii) the payment to customers or to insurers of monies due under Insurance Intermediation Business transactions;
  - (iv) the payment of all monies payable by the Authorised Firm in respect of the acquisition of or otherwise in connection with Approved Assets;
  - (v) the withdrawal of brokerage, management fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;
  - (vi) the withdrawal of monies paid into the Insurance Bank Account in error; and
  - (vii) the withdrawal of any monies credited to the Insurance Bank Account in excess of those required by any conditions and requirements prescribed by the DFSA;
- (g) ensure that any amount held in the Insurance Bank Account or other Approved Assets, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and
- (h) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.

[Amended][VER12/10-07] [RM50/07]

- 14.3.2** An Insurance Intermediary or Insurance Manager may not obtain a loan or overdraft for any purpose relating to an Insurance Bank Account unless that advance:
- (a) is on a bank account which is designated as an Insurance Bank Account, and the loan or overdraft is used for payment to customers or to insurers of monies due under Insurance Intermediation transactions;
  - (b) does not give rise to a breach of the requirements of Rule 14.3.1(f); and
  - (c) is of a temporary nature and is repaid as soon as reasonably practicable. [Amended][VER03/12-05]
- 14.3.3** An Insurance Intermediary or Insurance Manager must hold Insurance Monies either in an Insurance Bank Account or in Approved Assets. [Amended][VER03/12-05]
- 14.3.4** An Insurance Intermediary must ensure that Approved Assets are:
- (a) registered in the name of the Insurance Intermediary or Insurance Manager and designated 'Insurance Bank Account'; or
  - (b) held for the Insurance Bank Account of the Insurance Intermediary or Insurance Manager at the bank at which such Insurance Bank Account is held. [Amended][VER03/12-05]
- 14.3.5** An Insurance Intermediary or Insurance Manager must ensure that monies, other than interest, arising from Approved Assets or their realisation, sale or disposal are paid into an Insurance Bank Account.
- 14.3.6** An Insurance Intermediary or Insurance Manager may not hold Insurance Monies in Approved Assets until it has given written notice to and received written notice from the bank referred to in Rule 14.3.4(b) that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against Approved Assets held for the Insurance Intermediary's or Insurance Manager's Insurance Bank Account.
- 14.3.7** An Insurance Intermediary or Insurance Manager may only use Approved Assets as security for a loan or overdraft where that loan or overdraft is for a purpose relating to an Insurance Bank Account as permitted by Rule 14.3.2.
- 14.3.8** Where Insurance Monies are held in Approved Assets whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an Approved Asset and the Insurance Intermediary or Insurance Manager must dispose of the investment or asset as soon as possible and no later than within 30 days of the rating change. [Amended][VER8/02-07][RM42/07]

- 14.3.9** An Insurance Intermediary or Insurance Manager may not use derivatives in the management of Insurance Monies except for the prudent management of foreign exchange risks.
- 14.3.10** An Insurance Intermediary who has a credit balance for a customer who cannot be traced should not take credit for such an amount except where:
- (a) he has taken reasonable steps to trace the customer and to inform him that he is entitled to the money;
  - (b) at least six years from the date the credit was initially notified to the customer; and
  - (c) Rule 14.3.1(g) will continue to be satisfied after the withdrawal of such money.
- 14.3.11** An Insurance Intermediary must keep records of all sums withdrawn from the Insurance Bank Account or realised Approved Assets as a result of credit taken under Rule 14.3.10 for at least six years from the date of withdrawal or realisation.
- 14.3.12** [Deleted] [VER12/10-07] [RM50/07]

## PART 4 – CONDUCT OF INSURANCE BUSINESS

### 15 INTRODUCTION

#### 15.1 Application

- 15.1.1** (1) Subject to (3), COB part 4 applies to an Insurer with respect to the conduct in or from the DIFC of Insurance Business.
- (2) For the purposes of this Rule, COB part 4 consists of chapters 15 and 16 of this module.
- (3) COB part 4 does not apply to an Insurer that is an Authorised ISPV.

[Amended] [VER12/10-07] [RM48/07]

## **16 RESPONSIBLE CONDUCT**

### **16.1 Communication of information**

- 16.1.1** (1) When communicating any information in relation to Insurance Business to a Person, an Insurer must take reasonable steps to ensure that it communicates any such information in a manner which is clear, fair and not misleading.
- (2) An Insurer must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under the Regulatory Law 2004 or Rules.

### **16.2 Customers duty of disclosure**

- 16.2.1** An Insurer must explain to a Commercial Customer the duty to disclose all circumstances material to the insurance and the consequence of any failure to make such disclosures both before the insurance commences and during the continuance of the policy.

### **16.3 Information about the proposed insurance**

- 16.3.1** An Insurer must provide adequate information in a comprehensive and timely manner to enable a Commercial Customer to make an informed decision about the Contract of Insurance being proposed.

#### **Guidance**

An Insurer should provide a Commercial Customer with the key features of any insurance proposed including the essential cover and benefits, any significant or unusual restrictions, exclusions, conditions or obligations, and a period of cover. In so doing, an Insurer should take into consideration the knowledge held by the Commercial Customer when deciding to what extent it is appropriate to explain the terms and conditions of a particular insurance to that Commercial Customer.

- 16.3.2** If an Insurer is unable to match a Commercial Customer's requirements it must explain the differences in the insurance proposed.



## **16.4 Confirmation of cover**

- 16.4.1** (1) An Insurer must, as soon as reasonably possible, provide a Commercial Customer with written confirmation and details of the insurance which it has effected for the customer including any changes to the Contract of Insurance.
- (2) An Insurer must as soon reasonably practical provide the Commercial Customer with the full policy documentation where this was not included with the confirmation of cover.

## **16.5 Amendments to and renewal of insurance**

- 16.5.1** (1) An Insurer must deal promptly with a Commercial Customer's request for an amendment to the insurance cover and provide the Commercial Customer with full details of any premium or charges to be paid or returned.
- (2) An Insurer must provide a Commercial Customer with written confirmation when the amendment is made and remit any return premium or charges due to the Commercial Customer without delay.
- 16.5.2** An Insurer must give adequate advance notification to a Commercial Customer of the renewal or expiration date of an existing insurance policy so as to allow the Commercial Customer sufficient time to consider whether continuing cover is required.

## **16.6 Claims**

- 16.6.1** Where an Insurer handles insurance claims it must handle claims fairly and promptly and keep the Commercial Customer informed of progress.

## **PART 5 – ATS OPERATOR**

[Added][VER2/08-05]

### **17 ATS OPERATORS**

#### **17.1 Application**

**17.1.1** This chapter applies to an Authorised Firm which is an ATS Operator.

#### **17.2 Client Disclosures**

**17.2.1** 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.

## **17.3 Systems and controls**

**17.3.1** 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 17.2.4 (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.

## **17.4 Information**

**17.4.1** 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.

**17.4.2** 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 17.4.2, 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.

**17.5 Monitoring and Disclosure**

**17.5.1** 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.

**17.5.2** 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.

**17.6 Record Keeping**

**17.6.1** 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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## **PART 6 – CONDUCT OF TRUST SERVICE PROVIDERS**

[Added] [VER6/06-06]

### **18 TRUST SERVICE PROVIDERS**

#### **18.1 Application**

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

#### **18.2 General**

**18.2.1** For the purposes of this Part, a settlor, a trustee or a named beneficiary of a trust in respect of which the Trust Service Provider Provides Trust Services may be treated as a Client of the Authorised Firm.

**18.2.2** A Trust Service Provider must maintain adequate knowledge of, and comply with, all applicable laws, rules and regulations relevant to Providing Trust Services.

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

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

##### **Exercise of Discretion**

**18.2.5** Where a Trust Service Provider is responsible for exercising discretion for, or in relation to, its Clients, it must take all reasonable steps to obtain sufficient information in order to exercise, subject to 18.2.6, its discretion or other powers in a proper manner.

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

**18.2.7** The Trust Service Provider must ensure that its understanding of Client's business is refreshed with regular reviews.

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

### **18.3 Conflicts of interest**

**18.3.1** (1) A Trust Service Provider must manage any conflict of interest or material interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.

(2) Where a Trust Service Provider has knowledge of a conflict or a material interest, it must manage that interest by:

(a) establishing and maintaining effective Chinese Walls to restrict the communication of that knowledge;

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

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

(3) If a Trust Service Provider is unable to ensure fair treatment for a Client, it must decline to act for that Client.

#### **Delegation of duties or powers**

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

### **18.4 Reviews**

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

## **18.5 Communications**

- 18.5.1** When communicating information to a Person in relation to Providing Trust Services, a Trust Service Provider must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- 18.5.2** A Trust Service Provider must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under relevant legislation.
- 18.5.3** Where a Rule in COB requires information to be sent to a Client, the Trust Service Provider must provide that information directly to the Client and not to another Person, unless it is on the written instruction of the Client.

## **18.6 Marketing material**

- 18.6.1** (1) Before a Trust Service Provider communicates any marketing material to a Person, it must ensure the material contains the following information:
- (a) the name of the Trust Service Provider communicating the marketing material or on whose behalf the marketing material is being communicated;
  - (b) a statement that the marketing material is directed at wholesale customers and not Retail Customers;
  - (c) a statement to the effect that the Provision of Trust Services to which the marketing material relates will only be made available to a wholesale customer who the Trust Service Provider is satisfied meets the regulatory criteria to be a Client; and
  - (d) the Trust Service Provider 's regulatory status as required under GEN section 6.4.
- (2) In (1) marketing material means any invitation or inducement to enter into an agreement in relation to the Provision of Trust Services by a Trust Service Provider.
- 18.6.2** A Trust Service Provider must take reasonable steps to ensure that no other Person communicates or otherwise uses marketing material on behalf of a Trust Service Provider unless it is in compliance with the Rules in this section.

**Record Keeping**

- 18.6.3** (1) A Trust Service Provider must keep records of any marketing material issued by, or on behalf of, the Trust Service Provider.
- (2) The records in (1) must be maintained for a minimum of six years.

**18.7 Professional indemnity insurance cover**

- 18.7.1** A Trust Service Provider must maintain Professional indemnity insurance cover appropriate to the nature and size of the Trust Service Provider's business.
- 18.7.2** A Trust Service Provider must (a) provide the DFSA with a copy of professional indemnity insurance cover and (b) notify the DFSA of any changes to the cover including termination and renewal.
- 18.7.3** A Trust Service Provider must provide the DFSA on yearly basis details of the arrangements in force together with evidence of the cover. Any claims in excess of \$10,000 or changes to the arrangements previously notified to the DFSA under this paragraph must be notified to the DFSA as they arise.

**18.8 Dual control**

- 18.8.1** The Trust Service Provider must have adequate internal controls, including having two persons with appropriate skills and experience managing the business.
- 18.8.2** While a Trust Service Provider may have a single Person with overall responsibility, at least another Person must have the skills and experience to be able to run the business of the Trust Service Provider in the absence of the senior Person and must be in a position to challenge the actions of the senior Person where they consider that those actions may be contrary to the provisions of DIFC Laws, Rules or Regulations or any other applicable legislation, may not be in the interests of the Client, or may be contrary to sound business principles. [Amended][VER6/06/-06]



## **18.9 Internal reporting**

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

- (a) the requirements of the relevant legislation are being met on an on going basis;
- (b) the Trust Service Provider 's business is being managed according to sound business principles and, in particular, that it can meet its financial commitments as they fall due;
- (c) the affairs of the Clients are being managed in accordance with the service agreements;
- (d) trustees are acting in accordance with their fiduciary and other duties;
- (e) the affairs of Clients are being properly monitored and in particular that the client is not using the trust structure to hide assets from legitimate enquiry, to avoid proper obligations in other jurisdictions or to engage in illegal activities in other jurisdictions;
- (f) the assets of Clients are properly managed and safeguarded; and
- (g) the recruitment, training and motivation of staff is sufficient to meet the obligations of the business.

## **18.10 Recording of Selection Criteria**

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

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

## **18.11 Qualification and experience of Trust Service Provider staff**

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

- 18.11.2** A Trust Service Provider must ensure that all transactions or decisions entered into, taken by or on behalf of Clients are properly authorised and handled by Persons with an appropriate level of knowledge, experience, qualifications and status according to the nature and status of the transactions or decisions involved (this applies also to decisions taken by trustees who are recommended by, but not employed by, a Trust Service Provider).
- 18.11.3** A Trust Service Provider must ensure that, each of its officers and employees, agents, Persons acting with its instructions and Persons it recommends to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.
- 18.11.4** A Trust Service Provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.
- 18.11.5** A Trust Service Provider must ensure that staff receive appropriate training on the defences against money laundering and terrorist financing.

## **18.12 Books and records**

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

### **18.13 Due diligence**

- 18.13.1** A Trust Service Provider must, at all times, have verified documentary evidence of the settlors, trustees (in addition to the Trust Service Provider itself) and principal named beneficiaries of trusts for which it Provides Trust Services. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, a Trust Service Provider must also have verified, where reasonably possible, documentary evidence of any Person who receives a distribution from the trust and any other Person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust.
- 18.13.2** A Trust Service Provider must demonstrate that it has knowledge of the source of funds that have been settled into trusts or have been used to provide capital to companies, or have been used in transactions with which the Trust Service Provider has an involvement.

### **18.14 Suitability**

- 18.14.1** (1) Subject to (2), a Trust Service Provider may only Provide Trust Services to a Client which are suitable for that Client having regard to:
- (a) that Client's needs, and objectives; and
  - (b) any other requirements or relevant facts about that Client of which the Trust Service Provider is, or ought reasonably to be, aware.
- (2) A Trust Service Provider must ensure that the facts it holds about a Client are accurate, complete and up to date.

#### **Record Keeping**

- 18.14.2** A Trust Service Provider must keep record of information required under 18.14.1 for a minimum of six years.

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## **18.15 Attribution of Knowledge and Inducements**

### **Attribution of knowledge**

- 18.15.1** When a COB Rule applies to a Trust Service Provider that acts with knowledge, the Trust Service Provider will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved on behalf of the Trust Service Provider act with that knowledge as a result of a Chinese Wall arrangement established under Rule 18.3.1(2).

### **Inducements**

- 18.15.2** A Trust Service Provider must have systems and controls, policies and procedures to ensure that neither it, nor any of its Employees, offers, gives, solicits or accepts any inducement which is likely to conflict significantly with any duty that it owes to its Clients.

## **18.16 DOCUMENTATION**

### **Client agreement**

- 18.16.1** Subject to Rule 18.16.3, a Trust Service Provider must before Providing Trust Services to a Client provide him with a written client agreement containing the matters referred to in Rule 18.16.2 or if impractical to do so, provide it within a reasonable period. [Amended][VER12/10-07] [RM50/07]

### **Content**

- 18.16.2** (1) The client agreement must, as a minimum, include:
- (a) when and how the client agreement is to come into force and how the agreement may be terminated;
  - (b) the regulatory status of the Trust Service Provider; and
  - (c) the services that the Trust Service Provider will provide, including details of fees and charges.
- (2) The client agreement must be easy to understand and not likely to be misunderstood.

**Changes to client agreement**

- 18.16.3** If the client agreement provided to a Client allows a Trust Service Provider to amend its client agreement without the Client's consent, the Trust Service Provider must give at least 14 days notice to a Client before Providing Trust Services to that Client on any amended terms, unless it is impractical to do so. [Amended][VER8/02-07][RM42/07]

**18.17 Fitness and Propriety of Persons acting as trustees**

- 18.17.1** Where a Trust Service Provider arranges for a Person who is not an employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.
- 18.17.2** A Trust Service Provider must notify the DFSA of the appointment of a Person under 18.17.1, including the name and business address if applicable and the date of commencement of the appointment.
- 18.17.3** Prior to the appointment of such Person to act as trustee, the Trust Service Provider must take reasonable steps to ensure that the Person has the required skills, experience and resources to act as trustee for a Client of the Trust Service Provider.
- 18.17.4** A Trust Service Provider must notify the DFSA immediately if the appointment of such Person is or is about to be terminated, or on the resignation of such Person, giving the reasons for the resignation of such Person and the measures which have been taken to ensure that a new trustee has been appointed.
- 18.17.5** A Person appointed to act as trustee for a Client of a Trust Service Provider who is not an employee of the Trust Service Provider, must agree in writing to be bound by and comply with the same legal and regulatory requirements as if he were an employee of the Trust Service Provider.

**Record keeping**

- 18.17.6** A Trust Service Provider must make a record of each client agreement including any amendments it provides to a Client and retain them for a minimum of six years from the date the Client ceases to be a Client of the Authorised Firm.

## **PART 7 – FUND ADMINISTRATION**

### **19 FUND ADMINISTRATORS**

#### **19.1 Application**

**19.1.1** This chapter applies to an Authorised Firm which is a Fund Administrator.

#### **19.2 Compliance with the AML Rules**

**19.2.1** When a Fund Administrator is Providing Fund Administration for a Fund, it must in respect of each Fund for which it so provides such services comply with the AML Rules and in so doing construe all references therein to “customer” as a reference to “Unitholder” or “potential Unitholder” as appropriate to the context of the particular AML Rule.

#### **19.3 Compliance with the CIR Rules**

**19.3.1** When a Fund Administrator is Providing Fund Administration for a Domestic Fund, it must provide such administration in accordance with the CIR Rules applying to that Fund and in accordance with the Service Level Agreement.

#### **19.4 Client Money and Assets**

**19.4.1** A Fund Administrator when carrying on the Financial Service of Providing Fund Administration, is not permitted to hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:

- (a) holding cheques to the order of a Fund’s bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund’s bank account or returned to the drawer of the cheque; or

- (b) where a mandate over a Fund's or other third parties bank account is granted to a Fund Administrator and the mandate has been agreed in writing with the bank concerned, and transfers out of the relevant bank account may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely in accordance with the payment of invoiced fees and expenses, made in accordance with the relevant Fund's Constitution and Prospectus and are not remitted to the account of the Fund Administrator except by express instructions of the Fund's Operator.

## **19.5 Service Level Agreements**

- 19.5.1** (1) A Fund Administrator must have a Service Level Agreement with the Operator of the Fund for which it is Providing Fund Administration setting out the functions and service standards that will be applied to the provision of such administration by the Fund Administrator.
- (2) The Agreement in (1) must be such as to ensure that the Fund Administrator cannot in turn delegate the activities and functions delegated to it by the Operator unless the sub-delegate has been approved by the Operator.
- (3) The Agreement in (1) must also require the Fund Administrator to retain any relevant work or record relating to the delegated activities and functions should the contract be terminated by the Operator.

### **Guidance**

The DFSA would expect any agreement required under Rule 19.5.1 to include as a minimum the following provisions:

- (a) unambiguous descriptions and definitions of the activities and functions to be provided by the Fund Administrator and the duties to be performed by both parties;
- (b) an agreed standard in respect of resources and services supported as necessary by performance measures in accordance with the applicable legislation;
- (c) the requirement for regular detailed reporting to a specified frequency from the Fund Administrator in respect of its duties and activities;
- (d) provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Fund Administrator to fulfil its duties;
- (e) the requirement for an annual review (at a minimum) of the performance of the functions by the Fund Administrator; and

- (f) provisions relating to records and adequate access by the Operator, the Fund's auditor, any Persons providing oversight of the Fund, and the DFSA.

## **19.6 Record keeping**

**19.6.1** A Fund Administrator must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each Operator in relation to the relevant Fund, Unitholders or potential Unitholders of the Fund as appropriate.

**19.6.2** The records required to be held under Rule 19.6.1 must be:

- (a) maintained by the Fund Administrator such as to enable the Fund's Governing Body to ensure that any accounts prepared comply with the relevant CIR Rules and any other applicable legislation;
- (b) retained by the Fund Administrator for at least 6 years from the date to which they relate;
- (c) at all reasonable times, open to inspection by the DFSA, the Fund's auditor and any Person providing oversight functions for the relevant Fund; and
- (d) if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.



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## PART 8 – CONDUCT OF BANKING BUSINESS

[Added][VER9/06/07][RM43/07]

### 20 CONFLICT OF INTERESTS

#### 20.1 Application

**20.1.1** This chapter applies to an Authorised Firm with respect to the conduct of Banking Business.

#### 20.2 Managing Conflict of Interests

- 20.2.1** (1) An Authorised Firm when conducting Banking Business must ensure that it takes all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of a customer are not adversely affected and to ensure that all its customers are fairly treated and not prejudiced by any such interests.
- (2) Where an Authorised Firm has knowledge of a conflict of interest it must manage the conflict of interest by:
- (a) establishing and maintaining effective Chinese Walls to restrict the communication of the information;
  - (b) disclosing the conflict of interest to the customer in writing either generally or in relation to a specific transaction; or
  - (c) relying on a written policy of independence, which requires an Employee to disregard any conflict of interest when advising a customer or exercising discretion.
- (3) If an Authorised Firm is unable to manage a conflict of interest as provided above, it must decline to act for the customer.
- (4) For the purposes of this Rule, when an Authorised Firm acts with knowledge, the Authorised Firm will not be taken to act with knowledge as long as none of the relevant individuals involved on behalf of the Authorised Firm acts with that knowledge as a result of a Chinese Wall arrangement established under (2)(a).

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**App1 RECORDS OF ORDERS AND TRANSACTIONS****A1.1 Minimum contents of transaction records****Receipt of client order or discretionary decision to transact**

**A1.1.1** An Authorised Firm must, pursuant to Rule 7.4.4(1), make a record of the following:

- (a) the identity and account number of the Client;
- (b) the date and time in the jurisdiction in which the instructions were received or the decision was taken by the Authorised Firm to deal;
- (c) the identity of the Employee who received the instructions or made the decision to deal;
- (d) the Investment, including the number of or its value and any price limit; and
- (e) whether the instruction relates to a purchase or sale.

**Executing a transaction**

**A1.1.2** An Authorised Firm must, pursuant to Rule 7.4.4(2), make a record of the following:

- (a) the identity and account number of the Client for whom the Transaction was Executed, or an indication that the Transaction was an Own Account Transaction;
- (b) the name of the counterparty;
- (c) the date and time in the jurisdiction in which the Transaction was executed;
- (d) the identity of the employee executing the Transaction;
- (e) the Investment, including the number of or its value and price; and
- (f) whether the Transaction was a purchase or a sale.

**Passing a client order to another person for execution**

**A1.1.3** An Authorised Firm must, pursuant to Rule 7.4.4(3), make a record of the following:

- (a) the identity of the Person instructed;
- (b) the terms of the instruction; and
- (c) the date and time that the instruction was given.

**App2 CLIENT AGREEMENT****A2.1 Application**

**A2.1.1** This appendix does not apply to a Trust Service Provider.

**A2.2 Content of client agreement****General requirements**

- A2.2.1** (1) An Authorised Firm's client agreement provided to a Client must include, as a minimum, the following general information:
- (a) when and how the client agreement is to come into force and how the agreement may be terminated;
  - (b) the regulatory status of the Authorised Firm;
  - (c) any restrictions on the types of Investments or markets in which the Client wishes to invest or a statement to the effect that there are no such restrictions;
  - (d) the services that the Authorised Firm will provide, including details of fees and charges or the basis upon which the Authorised Firm will charge for services;
  - (e) where appropriate, the Client's investment objectives;
  - (f) where appropriate, the extent to which the Authorised Firm will consider the Clients' personal circumstances when considering suitability under section 6.2 and the details of such matters that will be taken into account;
  - (g) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty;
  - (h) any conflict of interest disclosure as required by section 6.3;
  - (i) any disclosure of soft dollar agreement under section 6.7;

- (j) the arrangements for notifying the Client of any Transaction Executed on his behalf;
- (k) that the Authorised Firm may act as principal in a Transaction, if that is the case;
- (l) the frequency of any periodic statements and whether those statements will include some measure of performance, and if so, what the basis of that measurement will be; and
- (m) where applicable, the basis on which assets comprised in the portfolio are to be valued.

**Additional requirements – investment management activities**

- (2) In addition to the requirements in (1), where the Authorised Firm acts as an Investment Manager the client agreement must also include:
  - (a) the arrangements for giving instructions to the Authorised Firm and acknowledging those instructions;
  - (b) the initial value of the managed portfolio;
  - (c) the initial composition of the managed portfolio; and
  - (d) the period of account for which periodic statements of the portfolio are to be provided in accordance with section 8.3.

**Additional requirements - discretionary investment management activities**

- (3) In addition to the requirements in (1) and (2), where the Authorised Firm acts as an Investment Manager on a discretionary basis the client agreement must also include:
  - (a) the extent of the discretion to be exercised by the Authorised Firm, including any restrictions on the value of any one Investment or the proportion of the portfolio which any one Investment or any particular kind of Investment may constitute; or that there are no such restrictions;
  - (b) whether the Authorised Firm may commit the Client to supplement the funds in the portfolio, and if it may include borrowing on his behalf:
    - (i) the circumstances in which the Authorised Firm may do so;



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- (ii) whether there are any limits on the extent to which the Authorised Firm may do so and, if so, what those limits are; and
  - (iii) any circumstances in which such limits may be exceeded;
- (c) that the Authorised Firm may enter into Transactions for the Client, either generally or subject to specified limitation; and
- (d) where the Authorised Firm may commit the Client to any obligation to underwrite or sub-underwrite any issue or offer for sale of Securities:
  - (i) whether there are any restrictions on the categories of Securities which may be underwritten and, if so, what these restrictions are; and
  - (ii) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are.

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**App3 CONFIRMATION OF TRANSACTIONS****A3.1 Content of confirmation notes****General information**

- A3.1.1** (1) For the purposes of Rule 8.2.1, an Authorised Firm must include the following general information:
- (a) the Authorised Firm's name and address;
  - (b) whether, the Authorised Firm Executed the Transaction as principal or agent;
  - (c) the Client's name, account number or other identifier;
  - (d) a description of the Investment or fund, including the amount invested or number of units involved;
  - (e) whether the Transaction is a sale or purchase;
  - (f) the price or unit price at which the Transaction was Executed;
  - (g) if applicable, a statement that the Transaction was Executed on an execution only basis;
  - (h) the date and time of the Transaction;
  - (i) the total amount payable and the date on which it is due;
  - (j) the amount of the Authorised Firms charges in connection with the Transaction, including Commission charges and the amount of any Mark-up or Mark-down, Fees, taxes or duties;
  - (k) the amount or basis of any charges shared with another Person or statement that this will be made available on request; and
  - (l) for Collective Investment Funds, at statement that the price at which the Transaction has been Executed is on a Historic Price or Forward Price basis, as the case may be.
- (2) An Authorised Firm may combine items (f) and (j) in respect of a Transaction where the Client has requested a note showing a single price combining both of these items.

**Additional information: derivatives**

- A3.1.2** For the purposes of Rule 8.2.1, and in relation to Transactions in Derivatives, an Authorised Firm must include the following additional information:
- (a) the maturity, delivery or expiry date of the Derivative;
  - (b) in the case of an Option, the date of exercise or a reference to the last exercise date;
  - (c) whether the exercise creates a sale or purchase in the underlying asset;
  - (d) the strike price of the Option; and
  - (e) if the Transaction closes out an open Futures position, all essential details required in respect of each contract comprised in the open position and each contract by which it was closed out and the profit or loss to the Client arising out of closing out that position (a difference account).



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**App4 PERIODIC STATEMENTS****A4.1 Content of periodic statements: investment management****General information**

**A4.1.1** Pursuant to section 8.3, a periodic statement, as at the end of the period covered, must contain the following general information:

- (a) the number, description and value of each Investment;
- (b) the amount of cash held;
- (a) the total value of the portfolio; and
- (b) a statement of the basis on which the value of each Investment has been calculated.

**Additional information: discretionary investment management activities**

**A4.1.2** In addition to Rule A4.1.1, where an Authorised Firm act as an Investment Manager on a discretionary basis, the periodic statement must also include the following additional information:

- (a) a statement of which Investments, if any, were at the closing date loaned to any third party and which Investments, if any, were at that date charged to secure borrowings made on behalf of the portfolio;
- (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period;
- (c) details of each Transaction which have been entered into for the portfolio during the period;
- (d) the aggregate of Money and details of all Investments transferred into and out of the portfolio during the period;
- (e) the aggregate of any interest payments, including the dates of their application and dividends or other benefits received by the Authorised Firm for the portfolio during that period;
- (f) a statement of the aggregate Charges of the Authorised Firm and its Associates; and

- (g) a statement of the amount of any Remuneration received by the Authorised Firm or its Associates or both from a third party.

**Additional information: contingent liability investments**

**A4.1.3** In addition to Rules A4.1.1 and A4.1.1.2, in the case where Contingent Liability Investments are involved, an Authorised Firm must include the following additional information:

- (a) the aggregate of Money transferred into and out of the portfolio during the valuation period;
- (b) in relation to each open position in the account at the end of the account period, the unrealised profit or loss to the Client (before deducting or adding any Commission which would be payable on closing out);
- (c) in relation to each Transaction Executed during the account period to close out a Client's position, the resulting profit or loss to the Client after deducting or adding any Commission;
- (d) the aggregate of each of the following in, or relating to, the Client's portfolio at the close of business on the valuation date:
  - (i) cash;
  - (ii) Collateral value;
  - (iii) management Fees; and
  - (iv) Commissions; and
- (e) Option account valuations in respect of each open Option contained in the account on the valuation date stating:
  - (i) the Share, Future, index or other Investment involved;
  - (ii) the trade price and date for the opening Transaction, unless the valuation statement follows the statement for the period in which the Option was opened;
  - (iii) the market price of the contract; and
  - (iv) the exercise price of the contract.

**App5 CLIENT MONEY PROVISIONS****A5.1 Application**

**A5.1.1** This appendix applies to an Authorised Firm, in accordance with Rule 9.3.2.

**A5.2 General requirements**

**A5.2.1** (1) The provisions of this appendix are referred to as the Client Money Provisions.

(2) The types of Client described in Rule 9.3.2 are referred to in this appendix as Segregated Clients.

**A5.2.2** An Authorised Firm which holds or controls Client Money for a Segregated Client must:

- (a) comply with the Client Money Provisions in relation to that Client Money; and
- (b) have systems and controls in place to be able to evidence compliance with the Client Money Provisions.

**A5.3 Payment of client money into client accounts**

**A5.3.1** Where an Authorised Firm holds or controls Client Money it must ensure, except where otherwise provided in section A5.5 that the Client Money is paid into one or more Client Accounts within one day of receipt.

**A5.3.2** Subject to Rule A5.3.3, an Authorised Firm must not deposit its own Money into a Client Account.

**A5.3.3** An Authorised Firm may deposit its own Money in a Client Account where:

- (a) it is a minimum sum required to open the account, or to keep it open;
- (b) the Money is received by way of mixed remittance provided the Authorised Firm transfers out that part of the payment which is not Client Money within one day of the day on which the Authorised Firm would normally expect the remittance to be cleared;

- (c) interest credited to the account exceeds the amount payable to Segregated Clients, provided that the Money is removed within twenty five days; or
- (d) it is to meet a shortfall in Client Money.

**A5.3.4** An Authorised Firm must maintain systems and controls for identifying Money which must not be in a Client Account and for transferring it without delay.

**A5.3.5** Where an Authorised Firm is aware that a Person may make a payment of Client Money to the Authorised Firm, it must take reasonable steps:

- (a) to ensure that such payment of Client Money is directed to a Client Account; and
- (b) to ensure that the Authorised Firm is notified by that Person of such payment as soon as reasonably practicable.

**Guidance**

An Authorised Firm should have procedures for identifying Client Money received by the Authorised Firm, and for promptly recording the receipt of the Money either in the books of account or a register for later posting to the Client cash book and ledger accounts. The procedures should cover Client Money received by the Authorised Firm through the mail, electronically or via agents of the Authorised Firm or through any other means.

## **A5.4 Client accounts**

**A5.4.1** A Client Account is an account which:

- (a) is held with a Third Party Agent;
- (b) is established to hold Client Assets;
- (c) is maintained in the name of;
  - (i) if a Domestic Firm, the Authorised Firm; or
  - (ii) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Firm; and
- (d) includes the words 'Client Account' in its title.

**A5.4.2** (1) An Authorised Firm must maintain a master list of all Client Accounts.

- (2) The master list must detail:
  - (a) the name of the account;
  - (b) the account number;
  - (c) the location of the account;
  - (d) whether the account is currently open or closed; and
  - (e) the date of opening or closure.
- (3) The details of the master list must be documented and maintained for at least six years following the closure of an account.

**Guidance**

1. An Authorised Firm may hold or control Client Money belonging to a Segregated Client in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client Money in a Client Account containing Client Money of more than one Segregated Client.
2. The purpose of controlling or holding Client Money in a Client Account is to ensure that Money belonging to Segregated Clients is readily identifiable from Money belonging to the Authorised Firm such that, following a Distribution Event, Segregated Clients will rank highest in line in terms of any subsequent distribution of Client Money in proportion to each Client's valid claim over that that Money.
3. Following a Distribution Event, a Segregated Client will not have a valid claim over Client Money held or controlled in a Client Account if that Client Account was not established to hold or control Client Money for that Client.

**A5.5 Exceptions to holding client money in client accounts**

**A5.5.1** The requirement for an Authorised Firm to pay Client Money into a Client Account does not, subject to Rule A5.5.2, apply with respect to such Client Money:

- (a) received in the form of cheque, or other payable order, until the Authorised Firm, or a Person or account controlled by the Authorised Firm, is in receipt of the proceeds of that cheque;
- (b) temporarily held by an Authorised Firm before forwarding to a Person nominated by the Client; or

- (c) in connection with a Delivery Versus Payment Transaction where:
  - (i) in respect of a Client purchase, Client Money from the Client will be due to the Authorised Firm within one day upon the fulfilment of a delivery obligation; or
  - (ii) in respect of a Client sale, Client Money will be due to the Client within one day following the Client's fulfilment of a delivery obligation.

**A5.5.2** An Authorised Firm must pay Client Money of the type described in Rule A5.5.1(b) or (c) into a Client Account where it has not fulfilled its delivery or payment obligation within three days of receipt of the Money or Investments unless in the case of the type of Client Money referred to in Rule A5.5.1(c)(ii) it instead safeguards Client Investments at least equal to the value of such Client Money.

- A5.5.3**
- (1) An Authorised Firm must maintain adequate records of all cheques and payment orders received in accordance with Rule A5.5.1(a) including, in respect of each payment, the:
    - (a) date of receipt;
    - (b) name of the Client for whom payment is to be credited; and
    - (c) date when the cheque or payment order was presented to the Authorised Firm's Third Party Agent.
  - (2) The records must be kept for a minimum of six years.

## **A5.6 Appointment of a third party agent**

- A5.6.1**
- (1) An Authorised Firm may only pay, or permit to be paid, Client Money to a Third Party Agent in accordance with Rule 5.7.1 where it has undertaken a prior assessment of the suitability of that agent and concluded on reasonable grounds that the Third Party Agent is suitable to hold that Client Money in a Client Account.
  - (2) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred by this appendix.
  - (3) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

**A5.6.2** An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent to be suitable to hold that Client Money.

**Guidance**

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

- a. its credit rating;
- b. its capital and financial resources in relation to the amount of Client Money held;
- c. the insolvency regime of the jurisdiction in which it is located;
- d. its regulatory status and history;
- e. its Group structure; and
- f. its use of agents and service providers.

## **A5.7 Payment of client money to a third party agent**

**A5.7.1** (1) Subject to Rule A5.7.3, an Authorised Firm may only pass, or permit to be passed, a Segregated Client's Money to a Third Party Agent if:

- (a) the Client Money is to be used in respect of a Transaction or series of Transactions for that Client;
  - (b) the Client Money is to be used to meet an obligation of that Client;  
or
  - (c) the Third Party Agent is a bank.
- (2) In respect of (1)(a) and (b), an Authorised Firm must not hold any excess Client Money with the Third Party Agent longer than necessary to effect a Transaction or satisfy the Client's obligation.

**A5.7.2** When an Authorised Firm opens a Client Account with a Third Party Agent it must obtain, within a reasonable period, a written acknowledgement from the Third Party Agent stating that:

- (a) all Money standing to the credit of the account is held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Money in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

- (b) the title of the account sufficiently distinguishes that account from any account containing Money that belongs to the Authorised Firm, and is in the form requested by the Authorised Firm.

**Guidance**

The DFSA would consider twenty days as being a reasonable period for an Authorised Firm to receive a written acknowledgement from the Third Party Agent.

**A5.7.3** If the Third Party Agent does not provide the acknowledgement referred to in Rule A5.7.2 within a reasonable period, the Authorised Firm must refrain from making further deposits of Client Money with that Third Party Agent and withdraw any Client Money standing to the credit of that Client Account.

**A5.8 Payment of client money from client accounts**

**A5.8.1** An Authorised Firm must have procedures for ensuring all withdrawals from a Client Account are authorised.

**A5.8.2** Subject to Rule A5.8.3, a Segregated Client's Client Money must remain in a Client Account until it is:

- (a) due and payable to the Authorised Firm;
- (b) paid to the Client on whose behalf the Client Money is held;
- (c) paid in accordance with a Client instruction on whose behalf the Client Money is held;
- (d) required to meet the payment obligations of the Client on whose behalf the Client Money is held; or
- (e) paid out in circumstances that are otherwise authorised by the DFSA.

**A5.8.3** Money paid out by way of cheque or other payable order under Rule A5.8.2 must remain in a Client Account until the cheque or payable order is presented to the Client's bank and cleared by the paying agent.

**A5.8.4** An Authorised Firm must not use Client Money belonging of one Client to satisfy an obligation of another Client.



**Guidance**

The effect of Rule A5.8.4 is that an Authorised Firm would be required to deposit its own Money into a Client Account to remedy a shortfall arising from a client debit balance.

**A5.8.5** An Authorised Firm must have a system for ensuring no off-setting or debit balances occur on Client Accounts.

**A5.9 Client disclosure**

**A5.9.1** Before, or as soon as reasonably practicable after, an Authorised Firm receives Client Money belonging to a Segregated Client, it must disclose to the Client on whose behalf the Client Money is held:

- (a) the basis and any terms governing the way in which the Client Money will be held;
- (b) that the Client is subject to the protection conferred by the DFSA's Client Money Provisions and as a consequence:
  - (i) this Money will be held separate from Money belonging to the Authorised Firm; and
  - (ii) in the event of the Authorised Firm's insolvency, winding up or other Distribution Event stipulated by the DFSA, the Client's Money will be subject to the DFSA's Client Money Distribution Rules;
- (c) whether interest is payable to the Client and, if so, on what terms;
- (d) if applicable, that the Client Money may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;
- (e) if applicable, details about how any Client Money arising out of Islamic Financial Business are to be held;
- (f) if applicable, that the Authorised Firm holds or intends to hold the Client Money in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

- (g) details of any rights which the Authorised Firm may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise, and of any rights which the Authorised Firm may have to close out or liquidate contracts or positions in respect of any of the Client's Investments.

## **A5.10 Client reporting**

- A5.10.1** (1) An Authorised Firm must send a statement to the Client at least monthly or at other intervals as agreed in writing with the Client.
- (2) The statement must include:
  - (a) the Client's total Client Money balances held by the Authorised Firm reported in the currency in which the Client Money is held, or the relevant exchange rate if not reported in the currency in which the Money is held;
  - (b) the amount, date and value of each credit and debit paid into and out of the account since the previous statement; and
  - (c) any interest earned and charged on the Client Money since the previous statement.
- (3) The statement sent to the Client must be prepared within 25 days of the statement date.

## **A5.11 Reconciliation**

- A5.11.1** (1) An Authorised Firm must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out at least every 25 days.
- (2) The reconciliation must include:
  - (a) a full list of individual Segregated Client credit ledger balances, as recorded by the Authorised Firm;
  - (b) a full list of individual Segregated Client debit ledger balances, as recorded by the Authorised Firm;
  - (c) a full list of unrepresented cheques and outstanding lodgements;

- (d) a full list of Client Account cash book balances; and
  - (e) formal statements from Third Party Agents showing account balances as at the date of reconciliation.
- (3) An Authorised Firm must:
- (a) reconcile the individual credit ledger balances, Client Account cash book balances, and the Third Party Agent Client Account balances;
  - (b) check that the balance in the Client Accounts as at the close of business on the previous day was at least equal to the aggregate balance of individual credit ledger balances as at the close of business on the previous day; and
  - (c) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the Third Party Agent and the Authorised Firm, are investigated and, where applicable, corrective action taken as soon as possible.
- (4) An Authorised Firm must perform the reconciliations in (3) within 10 days of the date to which the reconciliation relates.

**Guidance**

When performing the reconciliations, an Authorised Firm should:

- a. include in the credit ledger balances:
  - i. unallocated Client Money;
  - ii. dividends received and interest earned and allocated;
  - iii. sale proceeds which have been received by the Authorised Firm and the Client has delivered the Investments or the Authorised Firm holds or controls the Investment; and
  - iv. Money paid by the Client in respect of a purchase where the Authorised Firm has not remitted the Money to the counterparty or delivered the Investment to the Client; and
- b. deduct from the credit ledger balances:
  - i. Money owed by the client in respect of unpaid purchases by or for the Client if delivery of those Investments has been made to the Client; and
  - ii. Money remitted to the Client in respect of sales transactions by or for the Client if the Client has not delivered the Investments.

**A5.11.2** An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

**Guidance**

When performing reconciliations, an Authorised Firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has the authority to make payments, does not perform the reconciliations under Rule A5.11.1

**A5.11.3** (1) Reconciliation performed in accordance with Rule A5.11.1 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The individual referred to in (1) must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.

**A5.11.4** The Authorised Firm must notify the DFSA where there has been a material discrepancy with the reconciliation which has not been rectified.

**Guidance**

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

## **A5.12 Auditor's reporting requirements**

**Guidance**

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

## **A5.13 Client money distribution rules**

**A5.13.1** This section is referred to as the Client Money Distribution Rules and to the extent that these Rules are inconsistent with part 4.13 of the Insolvency Regulations, these Rules will prevail.

- A5.13.2** Following a Distribution Event, the Authorised Firm must distribute Money in the following order of priorities:
- (a) firstly, in relation to Client Money held in a Client Account on behalf of Segregated Clients, claims relating to that Money must be paid to each Segregated Client in full or, where insufficient funds are held in a Client Account, proportionately, in accordance with each Segregated Client's valid claim over that Money;
  - (b) secondly, where the amount of Client Money in a Client Account is insufficient to satisfy the claims of Segregated Clients in respect of that Money, or not being immediately available to satisfy such claims, all other Money held by the Authorised Firm must be used to satisfy any outstanding amounts remaining payable to Segregated Clients but not satisfied from the application of (a) above;
  - (c) thirdly, upon resolution of claims in relation to Segregated Clients, any Money remaining with the Authorised Firm must be paid to each Client in full or, where insufficient funds are held by the Authorised Firm, proportionately, in accordance with each Client's valid claim over that Money; and
  - (d) fourthly, upon satisfaction of all claims in (a), (b) and (c) above, in the event of:
    - (i) the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy over the Authorised Firm, payment must be made accordance with the Insolvency Law 2004; or
    - (ii) all other Distribution Events, payment must be made in accordance with the direction of the DFSA.

**Guidance**

A Segregated Client would not have a valid claim over Client Money held in a Client Account if that Client Account was not established to hold Client Money for that Client.

- A5.13.3** Following a Distribution Event, an Authorised Firm must sell all Collateral and use the proceeds of the sale to satisfy claims made in accordance with Rule A5.13.2

**A5.14 Failure to comply with this appendix**

- A5.14.1** An Authorised Firm which becomes aware that it does not comply with this appendix must, within one day, give notice of that fact to the DFSA.

**App6 SAFE CUSTODY PROVISIONS****A6.1 Application**

**A6.1.1** In accordance with Rule 9.4.3, this appendix applies to an Authorised Firm which Provides Custody or Arranges Custody.

**Guidance**

Sections 6.3, 6.4, 6.6, 6.8, 6.9 and 6.10 do not apply in relation to Arranging Custody.

**A6.2 General requirements**

**A6.2.1** The provisions of this appendix are referred to as the Safe Custody Provisions.

**A6.2.2** An Authorised Firm which Provides Custody or Arranges Custody must:

- (a) comply with the Safe Custody Provisions; and
- (b) have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.

**A6.3 Recording, registration and holding requirements**

**A6.3.1** An Authorised Firm which Provides Custody must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property.

**A6.3.2** Subject to Rule A6.4.1, an Authorised Firm which Provides Custody must record, register and hold Safe Custody Investments separately from its own Investments.

**A6.4 Client accounts**

**A6.4.1** An Authorised Firm which Provides Custody must register or record all Safe Custody Investments in the legal title of:

- (a) a Client Account; or
- (b) the Authorised Firm where, due to the nature of the law or market practice, it is not feasible to do otherwise.

**A6.4.2** A Client Account is an account which:

- (a) is held with a Third Party Agent;
- (b) is established to hold Client Assets;
- (c) is maintained in the name of;
  - (i) if incorporated in the DIFC, the Authorised Firm; or
  - (ii) if the Authorised Firm is not incorporated in the DIFC, a Nominee Company controlled by the Authorised Firm; and
- (d) includes the words 'Client Account' in its title.

**A6.4.3** (1) An Authorised Firm must maintain a master list of all Client Accounts.

(2) The master list must detail:

- (a) the name of the account;
  - (b) the account number;
  - (c) the location of the account;
  - (d) whether the account is currently open or closed; and
  - (e) the date of opening or closure.
- (3) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.

**Guidance**

1. An Authorised Firm may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client's Investment in a Client Account containing Investments of more than one Client.
2. The purpose of recording, registering or holding Investments in a Client Account is to ensure that Investments belonging to Clients are readily identifiable from Investments belonging to the Authorised Firm such that, following a Distribution Event, any subsequent distribution of Investments may be made in proportion to each Client's valid claim over those Investments.
3. Following a Distribution Event, a Client will not have a valid claim over Investments registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments for that Client.

**A6.4.4** An Authorised Firm which Provides Custody must not use a Client's Safe Custody Investment for its own purpose or that of another Person without that Client's prior written permission.

**A6.4.5** An Authorised Firm which intends to use a Client's Safe Custody Investments for its own purpose or that of another Person, must have systems and controls in place to ensure that:

- (a) it obtains that Client's prior written permission;
- (b) adequate records are maintained to protect Safe Custody Investments which are applied as collateral or used for stock lending activities;
- (c) the equivalent assets are returned to the Client Account of the Client; and
- (d) the Client is not disadvantaged by the use of his Safe Custody Investments.

**A6.5 Holding or arranging custody with third party agents**

**A6.5.1** (1) Before an Authorised Firm holds a Safe Custody Investment with a Third Party Agent or Arranges Custody through a Third Party Agent, it must undertake an assessment of that Third Party Agent and have concluded on reasonable grounds that the Third Party Agent is suitable to hold those Safe Custody Investments.

- (2) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.



- (3) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred in this appendix.

**A6.5.2** An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent to be suitable to hold Safe Custody Investments.

**Guidance**

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

- a. its credit rating;
- b. its capital and financial resources in relation to the amount of Safe Custody Investments held;
- c. the insolvency regime of the jurisdiction in which it is located;
- d. its arrangements for holding the Investments;
- e. its regulatory status, expertise, reputation and history;
- f. its Group structure;
- g. its use of agents and service providers; and
- h. any other activities of the agent.

**A6.6 Safe custody agreements with third party agents**

**A6.6.1** Before an Authorised Firm Providing Custody passes, or permits to be passed, Safe Custody Investments to a Third Party Agent it must have procured a written acknowledgement from the Third Party Agent stating:

- (a) that the title of the account sufficiently distinguishes that account from any account containing Investments belonging to the Authorised Firm, and is in the form requested by the Authorised Firm;
- (b) that the Client Investment will only be credited and withdrawn in accordance with the instructions of the Authorised Firm;
- (c) that the Third Party Agent will hold Client Investments separately from assets belonging to the Third Party Agent;
- (d) the arrangements for recording and registering Client Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;

- (e) that the Third Party Agent will deliver a statement to the Authorised Firm (including the frequency of such statement), which details the Client Investments deposited to the account;
- (f) that all Investments standing to the credit of the account are held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to it on any other account of the Authorised Firm; and
- (g) The extent of liability of the Third Party Agent in the event of default.

- A6.6.2**
- (1) An Authorised Firm must maintain records of all Safe Custody Agreements and any instructions given by the Authorised Firm to the Third Party Agent under the terms of the agreement.
  - (2) The records must be maintained for at least of six years.

## **A6.7 Client disclosure**

- A6.7.1**
- (1) Before an Authorised Firm Arranges Custody for a Client it must disclose to that Client, if applicable, that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC.
  - (2) Before an Authorised Firm Provides Custody for a Client it must disclose to the Client on whose behalf the Safe Custody Investments will be held:
    - (a) a statement that the Client is subject to the protections conferred by the Safe Custody Provisions;
    - (b) the arrangements for recording and registering Safe Custody Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody Investments;
    - (c) the obligations the Authorised Firm will have to the Client in relation to exercising rights on behalf of the Client;

- (d) the basis and any terms governing the way in which Safe Custody Investments will be held, including any rights which the Authorised Firm may have to realise Safe Custody Investments held on behalf of the Client in satisfaction of a default by the Client;
- (e) the method and frequency upon which the Authorised Firm will report to the Client in relation to his Safe Custody Investments;
- (f) if applicable, a statement that the Authorised Firm intends to mix Safe Custody Investments with those of other Clients;
- (g) if applicable, a statement that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;
- (h) if applicable, a statement that the Authorised Firm holds or intends to hold Safe Custody Investments in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and
- (i) the extent of the Authorised Firm's liability in the event of default by a Third Party Agent.

## **A6.8 Client reporting**

- A6.8.1**
- (1) An Authorised Firm which Provides Custody for a Client must send a statement to that Client at least every six months or at other intervals as agreed in writing with the Client.
  - (2) The statement must include:
    - (a) a list of that Client's Safe Custody Investments as at the date of reporting;
    - (b) a list of that Client's Collateral and the market value of that Collateral as at the date of reporting; and
    - (c) details of any Client Money held by the Authorised Firm as at the date of reporting.
  - (3) The statement sent to the Client must be prepared within 25 business days of the statement date.

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**A6.9 Reconciliation**

**A6.9.1** An Authorised Firm which Provides Custody must:

- (a) at least every 25 business days, reconcile its records of Client Accounts held with Third Party Agents with monthly statements received from those Third Party Agents;
- (b) at least every six months, count all Safe Custody Investments physically held by the Authorised Firm, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Firm; and
- (c) at least every six months, reconcile individual Client ledger balances with the Authorised Firm's records of Safe Custody Investment balances held in Client Accounts.

**A6.9.2** An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

**Guidance**

An Authorised firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has authority over Safe Custody Investments, should not perform the reconciliations under Rule A6.9.1.

**A6.9.3** (1) Reconciliation performed in accordance with section A6.9 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The person referred to in (1) must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.

**A6.9.4** The Authorised Firm must notify the DFSA where there have been material discrepancies with the reconciliation which have not been rectified.

**Guidance**

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

## **A6.10 Auditor's reporting requirements**

### **Guidance**

In accordance with GEN chapter 8, an Authorised Firm which Provides Custody must arrange for a Safe Custody Auditor's Report to be submitted to the DFSA on an annual basis.

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**App 7 ADDITIONAL PROSPECTUS DISCLOSURES FOR FOREIGN FUNDS****A7.1 Shari'a approval process statement**

- A7.1.1** (1) In respect of an Islamic Fund which is an approved Malaysian Fund, an Authorised Firm must ensure that the Prospectus contains in a prominent position or has attached to it the following statement:

“This Prospectus relates to an Islamic Fund, the Shari'a approval process of which, is regulated by the Securities Commission of Malaysia.”

- (2) For the purposes of (1), an “approved Malaysian Fund” is a Designated Fund that is a Fund approved under section 32 of the Securities Commission Act 1993 of Malaysia by the Securities Commission of Malaysia and domiciled in the Recognised Jurisdiction of Malaysia.

[Added] [VER10/07-07] [RM45/07]