

Annex B

RULE CHANGES RELATING TO FINANCIAL PROMOTION

Proposed changes to the ASP Module

1. The ASP Module will be amended by the deletion of the following provisions:
 - a. Rule 2.1.1(2)(d) – Operating a Local Services Office;
 - b. Rule 2.3.4 – Definition of Operating a Local Services Office;
 - c. Section 10.4 – Rules applying to Local Services Offices.

Proposed changes to the GEN Module

[Proposed changes to the Rules are underlined]

2. Rule 2.9.1 – The definition of “Arranging credit and deals in Investments” to be amended as follows:
 - 2.9.1(1)** In Rule 2.2.2 Arranging credit or deals in Investments means:
 - (a) making arrangements with a view to another Person whether as principal or agent buying, selling, subscribing for or underwriting an Investment; or
 - (b) making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility.
 - (2) The arrangements in (1) include:
 - (a) arrangements which do not bring about the transaction; and
 - (b) making invitations or, engaging in any other conduct with a view to influencing another Person to enter into a transaction referred to in (1).
 - (3) In (2)(b):
 - (a) invitations mean any communications that directly or indirectly invite a Person to enter into any transaction referred to in (1); and
 - (b) other conduct means any conduct, though not amounting to an invitation, that can be viewed as a step in the chain that directly or indirectly leads a Person to enter in to a transaction referred to in (1).
 - (4) The arrangements in (1) do not include arrangements which amount to Operating an Alternative Trading System [Added][VER4/08-05].

Guidance – Activities referred to in (2)(b) may include providing communications that contain generic advice, in which case authorisations for both Arranging and Advising would be required.

3. Rule 2.11.1 – The definition of ‘Advising on financial products or credit’ to be amended as follows:

2.11.1(1) In Rule 2.2.2 Advising on financial products or credit means giving advice which:

- (a) is given to a Person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product (whether as principal or agent); or
- (b) is given to a Person in his capacity as a borrower or potential borrower or as agent for a borrower or potential borrower on the merits of his entering into a particular Credit Facility; or
- (c) constitutes generic advice.

(2) Advice in (1)(a) and (b) includes a statement, opinion or report:

- (a) where the intention is to influence a Person, in making a decision, to select a particular financial product or an interest in a particular financial product or to enter into a particular Credit Facility; or
- (b) which could reasonably be regarded as being intended to have such an influence.

(3) In (1)(c), ‘generic advice’ means any communication:

- (a) that contains information about a particular financial product or Credit Facility; and
- (b) which is given to a Person for the purpose of directly or indirectly influencing that Person in making a decision relating to any financial product or Credit Facility to which the communication relates.

although the communication does not contain any advice on the merits of that Particular person entering into a transaction to buy, sell, hold, subscribe for or underwrite those financial products or enter into a particular Credit Facility, whether as principal or agent.

Guidance – Promotional material that does not contain any information about any particular financial product (such as flyers containing general information about any financial service provider) would not be generic advice. However, their distribution may amount to Arranging and require an Arranging authorisation. In any case, an AF distributing such material must comply with Rule 6.1 of COB. Communication can be oral, printed or in electronic form.

- (4) For the purposes of this Rule and Rule 2.11.2, a financial product is an Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.

4. Rule 2.19.1 – The definition of ‘Insurance Intermediation’ to be amended as follows:

2.19.1(1) In Rule 2.2.2 Insurance Intermediation means:

- (a) advising on insurance;
- (b) acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or
- (c) making arrangements with a view to another Person, whether as principal or agent, buying insurance.

(2) In (1)(a), ‘advising’ means giving advice:

- (a) which is given to a Person in his capacity as a policyholder or potential policyholder, or in his capacity as agent for a policyholder or potential policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent; or

(b) that constitutes generic advice.

(3) In (2)(a), ‘advice’ includes a statement, opinion or report:

- (a) where the intention is to influence a Person, in making a decision, to select a particular Contract of Insurance or insurance cover; or
- (b) which could reasonably be regarded as being intended to have such influence.

(4) In (2)(b), ‘generic advice’ means any communication:

- (a) that contains information about a particular Contract of Insurance or insurance cover; and
- (b) which is given to a Person for the purpose of directly or indirectly influencing that Person when making a decision relating to any particular Contract of Insurance or type of insurance cover to which the communication relates.

although the communication does not contain any advice on the merits of the Particular person entering into those Contracts of Insurance or obtaining insurance cover referred to in the communication.

(5) The arrangements in (1)(c) include:

- (a) arrangements which do not bring about the transaction; and
 - (b) making invitations or, engaging in any other conduct with a view to influencing another Person when making a decision in relation to a particular Contract of Insurance or insurance cover.
- (6) In (5)(b):
- (a) invitations mean any communications that directly or indirectly invite a Person to enter into a particular Contract of Insurance; and
 - (b) other conduct means any conduct, though not amounting to an invitation, that can be viewed as a step in the chain that directly or indirectly leads a Person to enter in to a particular Contract of Insurance.

Guidance – An Authorised Firm when distributing material relating to Insurance Contracts or cover must comply with the requirements in Rule 11.1 of COB. Communications can be oral, electronic or in print.

Proposed changes to the COB Module

5. Rule 6.1.4(2) – Responsible Conduct – marketing material is to be amended as follows:
- 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.
- (3) An Authorised Firm which communicates marketing material in (2)(b) must:
 - (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.

Proposed changes to the PIB Module

6. Base capital requirements in Rule 2.4.1 is to be amended as follows:

2.4.1 The table below sets out the Base Capital Requirement.

Category	Base Capital Requirement
Category 1	US \$10 million
Category 2 other than those Category 2 Authorised Firms included elsewhere in this table.	US \$2 million
Category 3 other than those Category 3 Authorised Firms included elsewhere in this table.	US \$500,000
Categories 2 or 3 that are depositaries of mutual funds/OEICs or provide custodial services to other Collective Investment Funds.	US \$10 million
<u>Category 4</u>	<u>US \$10,000</u>
Category 5	US \$10 million