

**Appendix 3**

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

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# The DFSA Rulebook

General Module

**(GEN)**

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## 2 FINANCIAL SERVICES

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### 2.12 Operating a collective investment fund

- 2.12.1** (1) In Rule 2.2.2 Operating a Collective Investment Fund means establishing, operating or winding up a Collective Investment Fund; and includes the activities of Managing Assets, Providing Fund Administration, Dealing as Agent, Arranging Credit or Deals in Investments, and Providing Custody to the extent that such activities relate to the operation of that Fund.
- (2) For the purposes of (1), “operating” a Collective Investment Fund includes being responsible for the management of the property held for or within a Fund under the Fund’s ~~constitution~~ Constitution.  
[Amended][VER8/04-06]

#### Exclusions

- 2.12.2** Without limiting the application of Article 17(4) of the Collective Investment Law 2006, a Person is not Operating a Collective Investment Fund merely because he is acting as an agent, employee or delegate of an Operator.

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### 2.13 Providing custody

- 2.13.1** (1) In Rule 2.2.2 Providing Custody means both:
- (a) \_\_\_\_\_ safeguarding Investments belonging to another Person or, in the case of a Fund, Fund Property; and
  - (b) \_\_\_\_\_ the administration of ~~these~~ such Investments or Fund Property.
- (2) In (1) the following activities do not constitute the ‘administration of ~~these~~ such Investments or Fund Property’:
- (a) providing information as to the number and value of any Investments or Fund Property safeguarded;
  - (b) converting currency; or
  - (c) receiving documents relating to an Investment or Fund Property for the purpose of onward transmission to, from or at
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the direction of the Person to whom the Investment or Fund Property belongs.

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**2.21 Managing a profit sharing investment account**

**2.21.1** In Rule 2.2.2 Managing a Profit Sharing Investment Account means managing an account, or portfolio ~~or fund~~ which is a Profit Sharing Investment Account.

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**2.25 Acting as the Trustee of a Fund**

**2.25.1** In Rule 2.2.2, Acting as the Trustee of a Fund means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of ~~trust~~ an Investment Trust, and includes the activities of Providing Fund Administration and Providing Custody to the extent that such activities relate to the operation of that Fund.

**Exclusions**

**2.25.2** A Person is not Acting as the Trustee of a Fund merely because he is acting as an agent, employee or delegate of a Trustee.

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## 5 MANAGEMENT, SYSTEMS AND CONTROLS

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### 5.3 Systems and controls

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#### Staff and agents

**5.3.18** An Authorised Person must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

**5.3.19** (1) An Authorised Firm must ensure, as far as reasonably practical, that its Employees are: [Amended][VER10/06-06]

(a) fit and proper;

(b) competent and capable of performing the functions which are assigned to those Employees; and

~~(b) —appropriately trained for the duties they perform; and~~

(c) trained in the requirements of the legislation applicable in the DIFC.

(2) An Authorised Firm must establish and maintain systems and controls to comply with (1). An Authorised Firm must be able to demonstrate that it has complied with these requirements through appropriate measures, including the maintenance of relevant records. [Amended][VER10/06-06]

**Guidance** [Amended][VER10/06-06]

1. When considering whether an Employee is fit and proper, competent and capable, an Authorised Firm should consider any training undertaken or required by an Employee, the nature of the Clients to whom an Employee provides Financial Services, and the type of activities performed by an Employee in the provision of such Financial Services including any interface with Clients.

±.2. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in AUT section A1.3 and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.

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2.3. ~~In particular, when~~ When assessing the competence and capability of ~~Employees an~~ Employee, an Authorised Firm should:

- a. obtain details of the skills, knowledge and experience ~~skills~~ of the ~~individual~~ Employee relevant to the nature and requirements of the role ~~in relation to the knowledge and skills required for the role;~~
- b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained; ~~and~~
- c. determine, in light of the ~~individual's~~ Employee's relevant skills, qualifications, knowledge and experience, that the Employee ~~person~~ is competent and capable of fulfilling the duties of the role ~~to be assigned to the person. it;~~ and
- d. consider the level of responsibility that the Employee will assume within the Authorised Firm, including whether the Employee will be providing Financial Services to Retail Clients in an interfacing role.

3.4. An Authorised Firm should also satisfy itself that an Employee:

- a. continues to be competent and capable of performing ~~in his proposed~~ the role;
- b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the ~~Employee's role,~~ through training or other means; and
- c. is able to apply his knowledge.

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## **9 INTERNAL DISPUTE RESOLUTION AND COMPLAINTS HANDLING**

### **9.1 Application**

**9.1.1** This chapter applies to an Authorised Person carrying on a Financial Service in or from the DIFC as follows.

- (a) Section 9.2 applies to an Authorised Firm carrying on a Financial Service with or for a Retail Client; and
- (b) Section 9.3 applies to an Authorised Person carrying on a Financial Service with or for a Professional Client.

### **9.2 Complaints handling procedures for Retail Clients**

#### **Written Complaints handling procedures**

**9.2.1** An Authorised Firm must have adequate policies and procedures in place for the investigation and resolution of Complaints made against it by Retail Clients, and the manner of redress (including compensation for acts or omissions of the Authorised Firm).

**9.2.2** The policies and procedures for handling Complaints must be in writing and provide that Complaints are handled fairly, consistently and promptly.

#### **Guidance**

1. In establishing adequate Complaints handling policies and procedures an Authorised Firm should have regard to:
    - a. the nature, scale and complexity of its business; and
    - b. its size and organisational structure.
  2. In handling Complaints, an Authorised Firm should consider its obligations under the Data Protection Law 2007, DIFC Law No 1 of 2007.
  3. An Authorised Firm should consider its obligations under GEN Rule 5.3.19 and accompanying guidance.
  4. The DFSA considers 60 days from the receipt of a Complaint to be an appropriate period in which an Authorised Firm should be able to resolve most Complaints.
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**9.2.3** On receipt of a Complaint, an Authorised Firm must:

- (a) acknowledge the Complaint promptly in writing;
- (b) provide the complainant with the contact details of any individual responsible for handling the Complaint and a summary of the Authorised Firm's Complaints handling procedures; and
- (c) consider the subject matter of the Complaint.

**9.2.4** Where appropriate, an Authorised Firm must update the complainant on the progress of the handling of the Complaint.

**Guidance**

The DFSA considers 7 days to be an adequate period in which an Authorised Firm should be able to acknowledge most Complaints.

The DFSA expects an update to be provided to the complainant in circumstances where the resolution of the Complaint is taking longer than 30 days.

**Resolution of Complaints**

**9.2.5** Upon conclusion of an investigation of a Complaint, an Authorised Firm must promptly:

- (a) advise the complainant in writing of the resolution of the Complaint;
- (b) provide the complainant with clear terms of redress, if applicable; and
- (c) comply with the terms of redress if accepted by the complainant.

**9.2.6** If the complainant is not satisfied with the terms of redress offered by the Authorised Firm, the Authorised Firm must inform the complainant of other avenues, if any, for resolution of the Complaint, such as an external dispute resolution scheme, and provide him with the appropriate contact details upon request.

**Employees handling Complaints**

**9.2.7** Where appropriate, taking into account the nature, scale and complexity of an Authorised Firm's business, an Authorised Firm must ensure that any individual handling the Complaint is not or was not involved in the conduct of the Financial Service about which the Complaint has been made, and is able to handle the Complaint in a fair and impartial manner.

**9.2.8** An Authorised Firm must ensure that any individual responsible for handling the Complaint has sufficient authority to resolve the Complaint or has access to individuals with the necessary authority.

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### **Complaints involving other Authorised Firms or Regulated Financial Institutions**

**9.2.9** If an Authorised Firm considers that another Authorised Firm or a Regulated Financial Institution is entirely or partly responsible for the subject matter of a Complaint, it may refer the Complaint, or the relevant part of it, to the other Authorised Firm or Regulated Financial Institution in accordance with Rule 9.2.10.

**9.2.10** To refer a Complaint, an Authorised Firm must:

- (a) inform the complainant promptly and in writing that it would like to refer the Complaint, either entirely or in part, to another Authorised Firm or Regulated Financial Institution, and obtain the written consent of the complainant to do so;
- (b) if the complainant consents to the referral of the Complaint, refer the Complaint to the other Authorised Firm or Regulated Financial Institution promptly and in writing;
- (c) inform the complainant promptly and in writing that the Complaint has been referred and include adequate contact details of any individual at the other Authorised Firm or Regulated Financial Institution responsible for handling the Complaint; and
- (d) continue to deal with any part of the Complaint not referred to the other Authorised Firm or Regulated Financial Institution, in accordance with this chapter.

#### **Guidance**

The referral of a Complaint may involve the transfer of Personal Data, as defined under the Data Protection Law 2007, DIFC Law No 1 of 2007. In this respect, an Authorised Firm should consider its obligations under the Data Protection Law 2007.

#### **Retail Client awareness**

**9.2.11** An Authorised Firm must ensure that a copy of its Complaints handling procedures is freely available to any Retail Client upon request.

#### **Retention of records**

**9.2.12** An Authorised Firm must maintain a record of all Complaints made against it for a minimum period of six years from the date of receipt of a Complaint.

**9.2.13** This record must contain the name of the complainant, the substance of the Complaint, a record of the Authorised Firm's response, and any other relevant correspondence or records, and the action taken by the Authorised Firm to resolve each Complaint.

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### **Systems and controls**

**9.2.14** In accordance with GEN Rules 5.3.4 and 5.3.5, an Authorised Firm must put in place adequate systems and controls in order for it to identify and remedy any recurring or systemic problems identified from Complaints.

#### **Guidance**

An Authorised Firm should consider whether it is required to notify the DFSA, pursuant to SUP Rule 7.3.1, of any recurring or systemic problems identified from Complaints.

### **Outsourcing**

#### **Guidance**

An Authorised Firm may outsource the administration of its Complaints handling procedures in accordance with GEN Rule 5.3.21.

## **9.3 Complaints handling procedures for Professional Clients**

**9.3.1** An Authorised Person must have adequate policies and procedures in place for the recording of Complaints made against it by Professional Clients.

**9.3.2** An Authorised Person must maintain a record of any Complaint made against it for a minimum period of six years from the date of receipt of the Complaint.

#### **Guidance**

Depending on the nature, scale and complexity of its business, it may be appropriate for an Authorised Person to have a suitable Complaints handling procedure in place in order to ensure that Complaints are properly handled and that remedial action is taken promptly. Such Complaints handling procedures would be expected to include provisions about the independence of staff investigating the Complaint and bringing the matter to the attention of senior management.

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