

**Appendix 1**

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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## **1 INTRODUCTION**

### **1.1 Application**

- 1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law 2005 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

#### **Guidance**

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive of GEN apply to a Representative Office.

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## **2 FINANCIAL SERVICES**

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

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

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

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Providing Money Services;
- (d) Dealing in Investments as Principal;
- (e) Dealing in Investments as Agent;
- (f) Arranging Credit or Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products or Credit;
- (i) Managing a Collective Investment Fund;
- (j) Providing Custody;

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- (k) Arranging Custody;
  - (l) Effecting Contracts of Insurance;
  - (m) Carrying Out Contracts of Insurance;
  - (n) Operating an Exchange;
  - (o) Operating a Clearing House;
  - (p) Insurance Intermediation;
  - (q) Insurance Management;
  - (r) Managing a Profit Sharing Investment Account;
  - (s) Operating an Alternative Trading System;
  - (t) Providing Trust Services;
  - (u) Providing Fund Administration;
  - (v) Acting as the Trustee of a Fund; and
  - (w) Operating a Representative Office.

**Guidance**

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

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**Exclusions**

- 2.3.2** (1) Subject to Rule 2.3.5, a Person does not carry on an activity specified under paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (j), (k), (p), (q) and (r) of Rule 2.2.2 by way of business if:
- (a) the Person enters into transactions solely as a nominee for another Person and is bound to and does act on that other Person's instructions;
  - (b) the Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporates:
    - (i) which are within the same Group as that Person; or
    - (ii) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise;

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and for the purposes of the activities specified in paragraphs (g), (j), (k) and (r) of Rule 2.2.2 the assets in question belong to a Body Corporate falling within (i) or (ii); or

- (c) the Person carries on the activity solely for the purposes of or in connection with the sale of goods or the supply of services to a customer of the Person or a member of the same Group, provided that:
  - (i) the supplier's main business is to sell goods or supply services and not to carry on any Financial Service; and
  - (ii) the customer is not an individual;

and for the purposes of the activities specified in paragraphs (g), (j), (k) and (r) of Rule 2.2.2 the assets in question belong to that customer or member.

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

- (a) the Person carries on such activities as a member of an Authorised Market Institution or Recognised Body;
- (b) the Person carries on such activities for its own account or for another Body Corporate which is in the same Group as the Person, provided that any such member of the Group for which the Person acts is a wholly-owned Subsidiary of a Holding Company within the Group or is the Holding Company itself;
- (c) the Person restricts such activities to transactions involving or relating only to Commodity Derivatives on that Authorised Market Institution or Recognised Body; and
- (d) the main business of the Person and any Member of its Group is dealing as principal in relation to Commodity Derivatives.

#### **Guidance**

~~Where a Person transacts, for his own account or for another Body Corporate which is in the same Group as the Person, in Commodities Derivatives on a specific Authorised Market Institution or a Recognised Body, such Person may apply to the DFSA for a disapplication of GEN Rule 2.2.2(d) and (e) by modification to GEN 2.3.2, subject to it being in good standing and repute and having the relevant expertise in relation to such activity. [Added] [VER15/07-07]~~

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## 2.5 Providing credit

**2.5.1** In Rule 2.2.2 Providing Credit means providing a Credit Facility to a Person in his capacity as a borrower or potential borrower.

### Exclusions

**2.5.2** A Person who is an Authorised Firm does not Provide Credit where the provision of the Credit Facility Financial Service is incidental to or in connection with ~~another Financial Service other than Accepting Deposits~~ the trading of Shares, or conducting Insurance Business.

### Guidance

1. Where an Authorised Firm is providing brokerage services pursuant to its Financial Service of Dealing in Investments as Agent, it may in the ordinary course of that business also be necessary to provide margin lending facilities to its Clients. In doing so the Authorised Firm will not be considered to be Providing Credit to its Client.
2. Where an Authorised Firm is Effecting Contracts of Insurance or Carrying Out Contracts of Insurance, it may in the ordinary course of that Insurance Business be necessary to provide an instalment contract to a Client with respect to the payment of an insurance premium. This would otherwise amount to the Provision of Credit.

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## 2.7 Dealing in investments as principal

**2.7.1** In Rule 2.2.2 Dealing in Investments as Principal means buying, selling, subscribing for or underwriting any Investment as principal.

### Exclusions

**2.7.2** A Person does not Deal in Investments as Principal merely by accepting an instrument, creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which that person has made or provided.

**2.7.3** A Person does not Deal in Investments as Principal by issuing or redeeming Securities issued by that Person.

**2.7.4** A Person who is not an Authorised Firm or an Authorised Market Institution does not Deal in Investments as Principal in relation to an Investment by entering into a transaction with or through an Authorised Firm or a Regulated Financial Institution.

**2.7.5** A Person who is an Authorised Firm does not Deal in Investments as Principal if in the course of managing the assets of a Private Equity Fund:

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- (a) the Person makes an initial subscription for Units of that Fund, in order to provide seeding capital for the Fund; and
  - (b) the Units are held by that Person for a period of more than 12 months.

## 2.8 Dealing in investments as agent

**2.8.1** In Rule 2.2.2 Dealing in Investments as Agent means buying, selling, subscribing for or underwriting any Investment as agent.

### Exclusions

**2.8.2** A Person does not Deal in Investments as Agent if the activity:

- (a) is carried on in the course of Providing Legal Services or Providing Accountancy Services which does not otherwise consist of the carrying on of Financial Services;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of that Providing Legal Services or Providing Accountancy Services; and
- (c) is not remunerated separately from the other services.

**2.8.3** A Person does not Deal in Investments as Agent if that Person:

- (a) is merely receiving and transmitting a Client order in respect of an Investment; and
- (b) does not execute the Client order for and on behalf of the Client or otherwise commit the Client to the transaction relating to the relevant Investment.

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## 2.9 Arranging credit or deals in investments

**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<sub>1</sub> whether as principal or agent<sub>1</sub> 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:

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- (a) arrangements which do not bring about the transaction; and
  - (b) arrangements involving or comprising the receipt and transmission of Client orders in relation to Investments.
- (3) The arrangements in (1) do not include:
- (a) arrangements which amount to Operating an Alternative Trading System; or
  - (b) arrangements of the kind described in Rule 2.26.1 that constitute marketing.

**Guidance**

In regard to arrangements under Rule 2.9.1(3)(b), pursuant to Rule 3.2.7, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.

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**2.11 Advising on financial products or credit**

- 2.11.1** (1) In Rule 2.2.2 Advising on ~~f~~Financial ~~p~~Products or ~~e~~Credit means giving advice to a Person:
- (a) 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) 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.
- (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) For the purposes of this Rule and Rule 2.11.2, a “financial product” is an Investment, Deposit, Profit Sharing Investment Account or rights under a contract of Long-Term Insurance, ~~not being that is not a~~ contract of reinsurance.

## **Exclusions**

**2.11.2** A Person does not Advise on Financial Products or Credit by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) that of giving advice of the kind mentioned in Rule 2.11.1; nor
- (b) that of leading or enabling Persons:
  - (i) to buy, sell, subscribe for or underwrite a particular financial product; or
  - (ii) to enter into a particular Credit Facility.

**2.11.3** A Person does not Advise on Financial Products or Credit if the activity:

- (a) is carried on in the course of Providing Legal Services or Providing Accountancy Services, which does not otherwise consist of the carrying on of Financial Services;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of Providing Legal Services or Providing Accountancy Services; and
- (c) is not remunerated separately from the other services.

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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 such Investments or Fund Property.

(2) In (1) the following activities do not constitute the 'administration of such Investments or Fund Property':

- (a) providing information as to the number and value of any Investments or Fund Property safeguarded;
- (b) converting currency; or
- (c) receiving documents relating to an Investment or Fund Property for the purpose of onward transmission to, from or at the direction of the Person to whom the Investment or Fund Property belongs.



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**Guidance**

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

**2.14 Arranging custody**

**2.14.1** In Rule 2.2.2 Arranging Custody means arranging for one or more Persons to carry on the activity described in Rule 2.13.1.

**Exclusions**

**2.14.2** ~~A Person (the 'first Person') does not Arrange Custody by introducing a Person to another Person (the 'custodian') who is authorised to carry on Providing Custody, if such a custodian:~~

~~(a) is not a member of the same Group as the first Person; and~~

~~(b) does not remunerate the first Person.~~

(1) A Person (the 'introducer') does not Arrange Custody by introducing a Person to another Person (the 'custodian') who is authorised by the DFSA or a Financial Services Regulator to carry on the activity described in Rule 2.13.1, if the introducer is not connected to the custodian.

(2) For the purposes of (1) an introducer is connected to a custodian if:

(a) the custodian is a member of the same Group as the introducer; or

(b) the introducer is remunerated by the custodian or a member of the custodian's Group for making the introduction.

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