

Appendix 2

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



The DFSA Rulebook

General Module

(GEN)

2.2 Financial Service activities

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;
 - (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;
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- (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;
- (w) Operating a Representative Office; and
- (x) Operating a Credit Rating Agency.

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 the Federal Law.

2.2.3 Each activity specified in Rule 2.2.2:

- (a) is to be construed in the manner provided under these Rules; and
- (b) is subject to exclusions under these Rules which may apply to such an activity.

Permitted Financial Services for Authorised Firms

2.2.4 Pursuant to Article 42(1)(a) of the Regulatory Law 2004 an Authorised Firm, subject to the Rules, may carry on any one or more Financial Services other than Providing Money Services.

2.2.5 The Financial Services of Effecting Contracts of Insurance and Carrying Out Contracts of Insurance may be carried on only by an Authorised Firm which by virtue of its Licence is permitted to carry on such Financial Services and no other Financial Services.

2.2.6 The Financial Service of Managing a Profit Sharing Investment Account may be carried on only by an Authorised Firm which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.

2.2.7 The Financial Service of Managing a Collective Investment Fund may be carried on in respect of an Islamic Fund only by an Operator which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.

2.2.8 A Financial Service may be carried on with or for a Retail Client only by an Authorised Firm which is permitted to do so by endorsement on its Licence.

2.2.9 An Authorised Firm which is licenced to carry on the Financial Service of Operating a Representative Office may not be licenced to carry on any other Financial Service.

2.2.10 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.

Permitted Financial Services for Authorised Market Institutions

2.2.11 Pursuant to Article 42(1)(b) of the Regulatory Law 2004 and subject to Rule 2.2.12, an Authorised Market Institution may carry on any one or more of the following Financial Services:

- (a) Operating an Exchange; or
- (b) Operating a Clearing House; or
- (c) Operating an Alternative Trading System to the extent that such activities constitute Operating a Multilateral Trading Facility as defined in Rule 2.22.1(1)(a).

2.2.12 The Financial Service of Operating an Alternative Trading System may be carried on by an Authorised Market Institution which is permitted to do so by an endorsement on its Licence.

Other permitted activities

2.2.13 (1) The activity of maintaining a Trade Repository may be carried on by an Authorised Person which is permitted to do so by an endorsement on its Licence.

(2) In (1), a Trade Repository is a centralised registry that maintains an electronic database containing records of transactions in Investments and over-the-counter derivatives.

Guidance

1. Maintaining a Trade Repository is not a separately licensed Financial Service, but may be carried on by an Authorised Person which has on its Licence an endorsement permitting it to do so. An Authorised Person maintaining a Trade Repository is subject to some specific requirements relating to that activity, which are set out in App 5.
 2. The functions of a Trade Repository promote increased transparency and integrity of information, particularly for centrally clearing OTC Derivatives. Currently there are no transaction reporting requirements, in the DIFC which require reporting to Trade Repositories.
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3. An Authorised Person does not carry on the activities of a Trade Repository to the extent that it maintains records of transactions pursuant to the record keeping requirements applicable to that firm (such as those relating to transactions carried out on behalf of its Clients by an Authorised Firm, or transactions carried out on the facilities of an Authorised Market Institution), such a firm does not carry out the activities of a Trade Repository.
 1. ~~An Authorised Market Institution may in addition to the Financial Services set out in Rule 2.2.11 also carry on, by way of one or more ancillary activities specified under Rule 2.2.2 but only in circumstances where the relevant activity is carried on as a necessary part of the AMI's business as an Exchange or for the purpose of, or in connection with the provisions of clearing or settlement services.~~
 2. ~~The majority of these activities do not amount to Financial Services as the activities are not carried on by way of business (see Rule 2.3.4). However, pursuant to Rule 2.3.4 certain activities do amount to Financial Services. One of the activities is Operating an Alternative Trading System which cannot, pursuant to Rule 2.2.11, be carried on by an AMI.~~

2.3 By way of business

2.3.1 Subject to Rules 2.3.2 and 2.3.3, for the purpose of these Rules a Person carries on an activity by way of business if the Person:

- (a) engages in the activity in a manner which in itself constitutes the carrying on of a business;
- (b) holds himself out as willing and able to engage in that activity; or
- (c) regularly solicits other Persons to engage with him in transactions constituting that activity.

Exclusions

- 2.3.2** (1)
- (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;
- (d) the main business of the Person is dealing in relation to Commodity Derivatives; and
- (e) the Person is not part of a Group whose main business is the provision of financial services.

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2.3.4 (1) ~~A Person who is an Exchange does not carry on any of the other activities, save for the activity of Operating a Clearing House or Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity, is carried on as a necessary part of the Exchange's business as an exchange.~~

(2) ~~A Person who is a Clearing House does not carry on any of the other activities, save for the activity of Operating an Exchange or Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity is carried on for the purpose of, or in connection with the provision of clearing or settlement services by the Clearing House.~~

(3) ~~A Person who is an Authorised Market Institution and authorised to operate both as an Exchange and as a Clearing House does not carry on any of the other activities save for the activity of Operating an Alternative Trading System, specified under Rule 2.2.2 by way of business in circumstances where the relevant activity:~~

(a) ~~is carried on as a necessary part of the Authorised Market Institution's business as an Exchange; or~~

(b) ~~is carried on for the purposes of, or in connection with, the provision of clearing or settlement services by the Authorised Market Institution.~~

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2.13 Providing custody

- 2.13.1** (1) In Rule 2.2.2, Providing Custody means one or more of the following activities both:
- (a) safeguarding Investments belonging to another Person;
 - (b) ~~or,~~ in the case of a Fund, safeguarding Fund Property; ~~and~~
 - (c) acting as a Central Securities Depository for an Authorised Market Institution, or
 - (~~bd~~) the administration of ~~such~~ Investments or Fund Property for the purposes of (a) and (b).
- (2) In (1)(~~d~~), 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.
- (3) In (1)(c), acting as a “Central Securities Depository” means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions executed on a facility operated by an Authorised Market Institution or an Alternative Trading System.

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.

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2.17 Operating an exchange

- 2.17.1** (1) In Rule 2.2.2, Operating an Exchange means operating a facility: which functions regularly and brings together multiple third party buying and selling interests in Investments, in accordance with its non-discretionary rules, in a way that results in a contract in respect of Investments admitted to trading or traded on the facility in the manner provided in (2)(b).
- (2) In (1), the facility:
- (a) ~~may be organised on a temporary or permanent basis whether or not governed by enforceable rules;~~
 - (b) ~~which provides a market;~~
 - (i) in the case of Securities, whether primary or secondary or both, for the trading of Investments Securities admitted to trading on its facility; or
 - (ii) for the trading of Derivatives; and
 - (c) ~~which provides a system or mechanism, whether may be an order driven system, a quote driven system or a hybrid of such systems, which enabling enables the market to operate by face to face trading (open outcry), electronic trading or trading by other means; and~~
 - (d) ~~through which:~~
 - (i) ~~offers to buy or sell Investments are made or accepted;~~
 - (ii) ~~buyers and sellers can negotiate the purchase or sale of Investments;~~
 - (iii) ~~contracts can be entered into for the transfer of ownership of or the title to Investments;~~
 - (iv) ~~the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to the transactions in respect of which they provide such services (being rights and liabilities in relation to those transactions) is secured; or~~
 - (v) ~~the prices of Investments, price movements and price and size of the most recent trades are displayed and updated.~~
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- (3) To the extent that any activity under (1) constitutes Dealing in Investments as Agent, Arranging Credit or Deals in Investments or Arranging Custody, such Financial Services are taken to be incorporated within Operating an Exchange, provided such activity is carried out as an incidental and integral part of activities of Operating an Exchange.

Guidance

~~The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.4(1) is that the activity in Rule 2.17.1 of Operating an Exchange also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating a Clearing House and Operating an Alternative Trading System, if the activity is carried on as part of an Exchange’s business as an Exchange. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution’s Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.~~

1. An Authorised Market Institution authorised to Operate an Exchange may carry on the Financial Service of Operating a Multilateral Trading Facility, as defined in Rule 2.22.1(1)(a), provided it has an endorsement on its Licence that permits it to do so (see Rule 2.2.12).
2. An Authorised Market Institution may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.14). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conduct requirements in GEN APP 5.

Exclusions

- ~~**2.17.2** A Person does not carry on an activity of the kind specified in Rule 2.17.1 if it he operates a facility which merely amounts to an Alternative Trading System.~~

2.18 Operating a clearing house

- ~~**2.18.1** (1) In Rule 2.2.2, Operating a Clearing House means operating a facility:~~
- ~~(a) organised on a temporary or permanent basis, whether or not governed by enforceable rules;~~
 - ~~(b) which provides by electronic or other means or mechanism by which or through which clearing or settlement occurs in respect of any transaction in respect of an Investment; and~~
 - ~~(c) which in the course of providing clearing or settlement services:

 - ~~(i) becomes the legal counterparty to transactions;~~~~

- ~~(ii) — becomes the guarantor of the performance of contracts;~~
- ~~(iii) — administers and co-ordinates delivery and settlement of contracts;~~
- ~~(iv) — secures the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to the transactions in respect of which they provide such services (being rights and liabilities in relation to those transactions); or~~
- ~~(v) — acts as registrar to a market by recording details of matched trades.~~

~~(2) — ‘Provides’ in (1)(b) includes providing such means or mechanism to, or for, an Authorised Market Institution.~~

2.18.1 (1) In Rule 2.2.2, operating a Clearing House means operating a facility where confirmation, clearance and settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which, the Person operating the facility`:

- (a) becomes a Central Counterparty (“CCP”); or
- (b) provides a Securities Settlement System (“SSS”).

regardless of whether or not such a Person also acts as a Central Securities Depository in respect of Securities cleared or settled on its facility.

- (2) In (1), confirmation, clearance and settlement means the process of:
- (a) establishing settlement positions, including the calculation of net positions arising from any transaction in Investments (the transactions);
 - (b) checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transactions; and
 - (c) securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transactions.

(3) In (1)(a), a Person operates as a CCP where it:

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- (a) ensures the performance of open contracts relating to Investments, made on a facility for trading Investments; and
 - (b) does so by interposing itself between counterparties to such contracts by becoming the buyer to every seller, and the seller to every buyer.
- (4) In (1)(b), a Person operates an SSS where it operates a system which holds Investment accounts and which enables it to transfer or settle Investments held in such accounts by book entry and in accordance with its predetermined multilateral rules.
- (5) To the extent that any activity under (1) constitutes Dealing In Investments as Principal, Dealing in Investments as Agent, Arranging Credit or Deals in Investments, Managing Assets, Providing Custody or Arranging Custody, such Financial Services are taken to be incorporated within Operating a Clearing House, provided such activities are carried out as an incidental and integral part of Operating a Clearing House.

Guidance

The effect of the exemption in relation to the by-way-of-business 'test' set out in Rule 2.3.4(2) in that the activity in Rule 2.18.1 of Operating a Clearing House also includes the carrying on of any activity specified under Rule 2.2.2, other than Operating an Exchange or Operating an Alternative Trading System, if the activity is carried on for the purpose of, or in connection with, the provision of clearing services by a Clearing House. Such an Authorised Market Institution is, therefore, automatically authorised under its Licence in respect of such activities unless the DFSA imposes a restriction on the Authorised Market Institution's Licence to remove such authorisation. Rule 2.3.4(3) covers the situation where the Authorised Market Institution is Operating both as an Exchange and as a Clearing House.

1. The term Central Securities Depository in (1) has the meaning given to that term in GEN Rule 2.13.1(3).
2. An Authorised Market Institution Licensed to Operate a Clearing House may also act as a Trade Repository if it has an endorsement on its Licence to do so (see Rule 2.2.14). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conducts requirements in GEN App5.

Exclusions

~~**2.18.2** A Person does not carry on an activity of the kind specified in Rule 2.18.1 if he acts on his own behalf or on behalf of only one party to a transaction.~~

2.22 Operating an alternative trading system

- ~~2.22.1 (1) In Rule 2.2.2, Operating an Alternative Trading System means making arrangements with a view to another Person whether as principal or agent buying or selling an Investment by way of operating a facility:~~
- ~~(a) which is organised on a temporary or permanent basis, whether or not governed by enforceable rules;~~
 - ~~(b) which provides a means by which over the counter (OTC) trading of Investments can take place; and~~
 - ~~(c) which provides a system or mechanism, whether an order driven system, a quote driven system or a hybrid of such systems, which enables electronic trading or trading by other means and through which:

 - ~~(i) offers to buy or sell Investments are made or accepted;~~
 - ~~(ii) buyers and sellers can negotiate the purchase or sale of Investments;~~
 - ~~(iii) contracts can be entered into for the transfer of ownership of or the title to Investments; or~~
 - ~~(iv) the prices of Investments, price movements and price and size of the most recent trades are displayed and updated.~~~~
- ~~(2) For the purposes of (1), "OTC" means in relation to a transaction in an Investment, a transaction not effected on an Exchange or its equivalent in any other jurisdiction.~~
- ~~(3) In (1), a facility is not an Alternative Trading System if it is merely an order routeing system where buying and selling interests or orders are merely transmitted but do not interact.~~
- ~~(4) In (1) a Person providing the facility still operates an Alternative Trading System even though that Person may from time to time deal as agent for another Person or deal as principal with another Person using the facility.~~
- ~~(5) For the purposes of (1) a Person operates an Alternative Trading System even though the facility itself is provided by a third party on behalf of that Person and that Person merely provides use of that facility to other Persons.~~

Exclusions

~~2.22.2~~ A Person does not carry on an activity of the kind specified in Rule 2.22.1 if it, he as the operator of the facility:

- ~~(a) is a counterparty to every transaction effected on the facility;~~
- ~~(b) acts as a central counterparty accepting the risk of default of any of its Clients or otherwise becomes the guarantor of the performance of every transaction effected using the facility;~~
- ~~(c) exercises discretion as to how the buying or selling interests interact on the facility; or~~
- ~~(d) is an Authorised Market Institution.~~

2.22.1 (1) In Rule 2.2.2, Operating an Alternative Trading System means:

- (a) operating a Multilateral Trading Facility (“MTF Operator”); or
 - (b) operating an Organised Trading Facility (“OTF Operator”).
- (2) In (1)(a), a Person is an MTF Operator if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such Investments.
- (3) In (1)(b), a Person is an OTF Operator if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its discretionary rules, in a way that results in a contract in respect of such Investments.

Guidance

The main distinction between Operating an MTF and Operating an OTF is that the former is operated in accordance with the non-discretionary rules adopted and implemented by the Operator, whereas the latter is operated in accordance with the discretionary rules of the Operator. Accordingly, an OTF Operator has more flexibility relating to how it applies its rules to participants on its facility, whereas an MTF Operator is required to apply its rules in a non-discretionary manner across all participants on its facility.

Exclusion

2.22.2 A Person does not carry on the activity of the kind specified in Rule 2.22.1 if it operates a facility which is merely an order routing system where buying and selling interests in, or orders for, Investments are merely transmitted but do not interact.

5 MANAGEMENT, SYSTEMS AND CONTROLS

Compliance

- 5.3.7** An Authorised Firm Person must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.
- 5.3.8** An Authorised Firm Person must document the organisation, responsibilities and procedures of the compliance function.
- 5.3.9** An Authorised Firm Person must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.
- 5.3.10** An Authorised Firm Person must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Firm's Governing Body and senior management.
- 5.3.11** An Authorised Firm Person must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.
- 5.3.12** An Authorised Firm Person must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

Guidance

Similar requirements to those in Rules 5.3.7 to 5.3.12 are set out in the AMI module in relation to Authorised Market Institutions.

Internal audit

- 5.3.13**

Guidance

The Person appointed as the Internal Auditor of an AMI is a Key Individual pursuant to AMI Rule 5.3.2.

APP5 TRADE REPOSITORY

A5.1 Requirements applicable to Trade Repositories

Disclosure of market data by Trade Repositories

A5.1.1 A Trade Repository must provide data in line with regulatory and industry expectations to relevant regulatory authorities and the public. Such information must be comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.

Guidance

1. At a minimum, a Trade Repository should provide aggregate data on open positions and transaction volumes and values and categorised data (for example, aggregated breakdowns of trading counterparties, reference entities, or currency breakdowns of products), as available and appropriate, to the public.
2. Relevant regulatory authorities should be given access to additional data recorded in a Trade Repository, including participant-level data, as relevant to the respective mandates and legal responsibilities of the relevant regulatory authority (such as market regulation and surveillance, oversight of exchanges, and prudential supervision or prevention of market misconduct).

Processes and procedures

A5.1.2 A Trade Repository must have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.

Guidance

A Trade Repository should have procedures to facilitate enhanced monitoring, special actions, or official proceedings taken by relevant authorities in relation to data on troubled or failed participants by making relevant information in the Trade Repository available in a timely and effective manner. The provision of data from a Trade Repository to relevant authorities should be supported from a legal, procedural, operational, and technological perspective.

Information systems

A5.1.3 A Trade Repository must have robust information systems that enable it to provide accurate current and historical data. Such Data should be provided in a timely manner and in a format that permits it to be easily analysed.

Guidance

A Trade Repository should collect, store, and provide data to participants, regulatory authorities, and the public in a timely manner and in a format that can facilitate prompt analysis. Data should be made available that permits both comparative and historical analysis of the relevant markets.
