



The DFSA Rulebook

General Module

(GEN)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

1	INTRODUCTION.....	1
1.1	Application.....	1
1.2	Overview of the module.....	1
2	FINANCIAL SERVICES.....	3
2.1	Application.....	3
2.2	Financial Service activities	3
2.3	By way of business.....	4
2.4	Accepting deposits	7
2.5	Providing credit.....	7
2.6	Providing money services	8
2.7	Dealing in investments as principal	8
2.8	Dealing in investments as agent	9
2.9	Arranging credit or deals in investments	9
2.10	Managing assets	11
2.11	Advising on financial products or credit.....	11
2.12	Operating a collective investment fund	13
2.13	Providing custody	14
2.14	Arranging custody	14
2.15	Effecting contracts of insurance	14
2.16	Carrying out contracts of insurance.....	15
2.17	Operating an exchange	15
2.18	Operating a clearing house	16
2.19	Insurance intermediation	17
2.20	Insurance management.....	19
2.21	Managing a profit sharing investment account.....	20
2.22	Operating an alternative trading system.....	20
2.23	Providing Trust Services	21
2.24	Providing fund administration	22
2.25	Acting as the Trustee of a Fund	23
3	FINANCIAL SERVICES WHICH MAY BE CARRIED ON IN OR FROM THE DIFC.....	24
3.1	Application.....	24
3.2	Permitted Financial Services for Authorised Firms	24
3.3	Permitted Financial Services for Authorised Market Institutions	25

4	CORE PRINCIPLES	26
4.1	Principles for Authorised Firms – application	26
4.2	The Principles for Authorised Firms	27
4.3	Principles for Authorised Individuals – application	29
4.4	The Principles for Authorised Individuals	29
5	MANAGEMENT, SYSTEMS AND CONTROLS	31
5.1	Application.....	31
5.2	Senior management arrangements.....	32
5.3	Systems and controls	33
6	GENERAL PROVISIONS	41
6.1	Application.....	41
6.2	Interpreting the rulebook	41
6.3	Emergency	42
6.4	Disclosure of regulatory status	43
6.5	Location of offices	43
6.6	Close links	44
6.7	Complaints against the DFSA	44
6.8	Public register.....	45
6.9	Communication with the DFSA	45
7	[Deleted] [VER18/12-07] [RM52/07].....	46
8	ACCOUNTING AND AUDITING	47
8.1	Application.....	47
8.2	Accounting standards.....	47
8.3	Accounting records and regulatory returns	48
8.4	Appointment and termination of auditors.....	49
8.5	Co-operation with auditors	50
8.6	Function of the auditor.....	51
8.7	Registration of Auditors	54
8.8	Regulatory appeals	56
8.9	Obligations of Auditors and Audit Principals	56
8.10	Notification of changes	57
8.11	Books and records	57
8.12	Withdrawal of registration.....	58
8.13	Withdrawal on the DFSA’s initiative	59

8.14	Suspension by the DFSA	60
8.15	Continuing professional development	61
8.16	Anti Money Laundering	61
8.17	Professional indemnity insurance.....	61
8.18	Register of Auditors.....	62
9	Complaints Handling and Dispute Resolution	63
9.1	Application.....	63
10	TRANSITIONAL RULES [Added][RM58][VER18/07-08]	67
10.1	Application.....	67
10.2	General.....	67
10.3	Specific relief – COB Module	68
10.4	Specific relief – CIR Module	69
10.5	Specific relief – ISF Module.....	69
App1	DEPOSITS	70
A1.1	Definition of a deposit.....	70
App2	INVESTMENTS.....	72
A2.1	General definition of investments	72
A2.3	Definitions of specific derivatives	75
App3	DELETED	79
App4	CONTRACTS OF INSURANCE	80
A4.1	Definition of a contract of insurance	80
APP 5	[Deleted][VER18/12-07][RM52/07]	84
APP6	[Deleted][VER18/12-07][RM52/07]	85

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. [Amended][VER4/08-05]

1.2 Overview of the module

Guidance

1. Chapter 2 prescribes, pursuant to Article 41(2), the activities which constitute a Financial Service. It also specifies various exclusions in relation to the ‘by way of business’ requirement and, where applicable, in relation to each Financial Service. Further, the appendices contain detailed definitions of what constitutes a Deposit, Investment, Collective Investment Fund and Contract of Insurance.
2. Chapter 3 prescribes, pursuant to Article 42(1), the kinds of Financial Services that may be carried on by Authorised Firms and Authorised Market Institutions.
3. Chapter 4 sets out the Principles for Authorised Firms and Authorised Individuals.
4. Chapter 5 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Authorised Firm to apportion material responsibility among its senior management.
5. Chapter 6 contains mainly guidance in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, close links, complaints against the DFSA and the public register. [Amended][VER4/08-05]
6. [Deleted][RM66][VER23/08-09]
7. Chapter 8 specifies, in relation to Authorised Persons, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and regulatory returns and the functions of an auditor. There are also requirements for auditors to register with the DFSA. [Amended][VER4/08-05]
8. Chapter 9 prescribes the manner in which an Authorised Firm must handle Complaints made against it by Retail Clients or Professional Clients. [Added][RM56] [VER19/07-08]

9. Chapter 10 contains two sets of Transitional Rules.
- a. Rules 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 impact on various modules of the Rulebook, particularly COB and CIR. These Rules enable Authorised Firms to make a smooth transition to the Current Regime that came into force on 1 July 2008 under Rulemaking Instrument No 56, following the DFSA's "Key Policy Review" outlined in Consultation Paper 52. They also provide for the continued application of some of the provisions of the Previous Regime under the Current Regime; and
 - b. Section 10.6 contains Transitional Rules that allow, with effect from 4 January 2009:
 - i. an Authorised Person to carry on a Financial Service in respect of a Designated Investment as if that Designated Investment were a Structured Product; and
 - ii. a Designated Investment included in an Official List of Securities before that date to continue to be a listed Structured Product,

[Added][RM58][VER14/07-08] [Amended][RM62][VER22/01-09]

2 FINANCIAL SERVICES

2.1 Application

2.1.1 This chapter applies to every Person to whom the Regulatory Law 2004 applies, and to the same extent in relation to every such Person as that law.

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) Operating a Collective Investment Fund;
- (j) Providing Custody;
- (k) Arranging Custody;
- (l) Effecting Contracts of Insurance;
- (m) Carrying Out Contracts of Insurance;

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- (n) Operating an Exchange;
 - (o) Operating a Clearing House;
 - (p) Insurance Intermediation; [Amended][VER6/12-05]
 - (q) Insurance Management;
 - (r) Managing a Profit Sharing Investment Account;
 - (s) Operating an Alternative Trading System;
 - (t) Providing Trust Services; [Added][VER7/01-06] [Amended][VER11/08-06]
 - (u) Providing Fund Administration; and [Added][VER8/04-06] [Amended][VER11/08-06]
 - (v) Acting as the Trustee of a Fund. [Added][VER11/08-06]

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB and may be fettered by the continuing operation of 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.

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 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: [Amended][VER6/12-05]

- (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;

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.

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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- 2.3.3** A Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an investment company or investment limited liability partnership, provided that:
- (a) such Shares carry at least 50% of the voting rights or the acquisition will take an existing holding to at least 50%; or
 - (b) the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the Body Corporate; and
 - (c) he is to enter as principal into the transaction.
- 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. [Amended][VER4/08-05]
- (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. [Amended][VER4/08-05]
- (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. [Added][VER3/04-05] [Amended][VER4/08-05]
- 2.3.5** (1) A Person who is a Trustee does not carry on an activity specified under paragraphs (d), (g), and (j) of Rule 2.2.2 by way of business in circumstances where he is acting as a trustee.
- (2) A Person who is an individual does not carry on an activity specified under paragraph (t) by way of business where he is acting as trustee, enforcer or protector or where he is arranging for a Person to act as trustee, in respect of less than three (3) trusts. [Added][VER7/01-06]
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- 2.3.6** (1) A Person does not carry on an activity specified under paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (p), (t), (u) and (v) of Rule 2.2.2 by way of business if:
- (a) that Person is the holder of a licence under the SFO Regulations to establish a Single Family Office in the DIFC; and
 - (b) the activity is carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a Single Family Office.
- (2) A Private Trust Company or Family Fiduciary Structure does not carry on an activity specified under paragraph (t) of Rule 2.2.2 by way of business if it:
- (a) carries on that activity exclusively for the purposes of, and only in so far as it is, providing services to a Single Family; and
 - (b) does not solicit trust business from, or provide trust services to, any Person outside the structure of the Single Family Office and outside the Single Family.

[Added] [RM60/08] [VER21/09-08]

2.4 Accepting deposits

2.4.1 In Rule 2.2.2 Accepting Deposits means accepting Deposits where:

- (a) money received by way of Deposit is lent to others; or
- (b) any other activity of the Person accepting the Deposit is financed, wholly or to a material extent, out of the capital of or returns on any money received by way of Deposit.

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 Financial Service is incidental to or in connection with another Financial Service other than Accepting Deposits.

2.6 Providing money services

- 2.6.1** (1) In Rule 2.2.2 Providing Money Services means providing currency exchange or money transmission.
- (2) In (1) 'money transmission' means:
- (a) selling or issuing payment instruments;
 - (b) selling or issuing stored value; or
 - (c) receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC.

Exclusions

- 2.6.2** A Person who is an Authorised Firm does not Provide Money Services if it does so in relation to the carrying on of another Financial Service where Providing Money Services is in connection with and a necessary part of that other Financial Service.

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.

2.8 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.

2.9 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 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). [Added][VER6/06-06]

(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) and includes the making of a referral. [Added][VER6/06-06]
[Amended][VER16/10-07][RM49/07]

- (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 authorisation for both arranging and advising may be required. [Added][VER6/06-06]

Exclusions

- 2.9.2** There are excluded from Rule 2.9.1 any arrangements for a transaction into which the Person making the arrangements enters or is to enter whether as principal or agent for some other Person.
- 2.9.3** A Person does not Arrange Credit or Deals in Investments merely by providing means by which one party to a transaction is able to communicate with other such parties.
- 2.9.4** A Person does not Arrange Credit or Deals in Investments by making arrangements under which another Person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which he or his principal has made or provided.
- 2.9.5** A Person does not Arrange Credit or Deals in Investments merely by making arrangements having as their sole purpose the provision of finance to enable a Person to buy, sell, subscribe for or underwrite Investments.
- 2.9.6** A Person does not Arrange Credit or Deals in Investments by making arrangements for the issue or redemption of Securities issued by it.
- 2.9.7** A Person does not Arrange Credit or Deals in Investments 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.

2.10 Managing assets

2.10.1 In Rule 2.2.2 Managing Assets means managing on a discretionary basis assets belonging to another Person if the assets include any Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.

Exclusions

2.10.2 A Person who is not an Authorised Firm or an Authorised Market Institution does not Manage Assets if:

- (a) he is a Person formally appointed in writing by the owner of the assets to manage the assets in question; and
- (b) all day-to-day decisions relating to the Investments which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.

2.11 Advising on financial products or credit

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. [Added][VER6/06-06]
- (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, subject to (4), that:

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- (a) contains information about a particular financial product or Credit Facility;
 - (b) could reasonably be regarded as being intended to influence a Person when making a decision relating to any financial product or Credit Facility to which the communication relates; and
 - (c) 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.

[Amended][VER16/10-07][RM49/07]

- (4) Any communication which contains generic advice where issued by or on behalf of a government or government entity does not constitute generic advice for the purposes of this Rule. [Added][VER10/06-06]

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 may therefore require authorisation. In any case, an Authorised Firm distributing such material is required to comply with COB section 3.2. Communication can be oral, printed or in electronic form. [Added][VER6/06-06] [Amended][RM62][VER22/01-09]

- (5) 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.

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.

2.12 Operating a collective investment fund

2.12.1 (1) In Rule 2.2.2, Operating a Collective Investment Fund means:

- (a) establishing, operating or winding up a Collective Investment Fund; and
 - (b) being responsible for the management of the property held for or within a Fund under the Fund's Constitution.
- (2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Credit or Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Operating a Collective Investment Fund.

[Deleted and Replaced][RM56][VER19/07-08]

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.

[Added][RM56][VER19/07-08]

Guidance

1. Rule 2.12.1(2) alleviates any requirement upon an Operator to obtain further authorisations for certain Financial Services where the activities fall within the ordinary scope of the activity of Operating a Collective Investment Fund. The provision also facilitates the delegation of these discrete activities under CIR section 7.3.
2. In relation to Rule 2.12.2, note that Article 17(3) of the Collective Investment Law prescribes circumstances where a Person is not to be regarded as operating a Fund.

[Added][RM56][VER19/07-08]

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.

[Amended] [RM56] [VER19/07-08]

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.

2.15 Effecting contracts of insurance

2.15.1 In Rule 2.2.2 Effecting Contracts of Insurance means effecting such contracts as principal.

2.16 Carrying out contracts of insurance

2.16.1 In Rule 2.2.2 Carrying Out Contracts of Insurance means carrying out such contracts as principal.

2.17 Operating an exchange

2.17.1 In Rule 2.2.2, Operating an Exchange means operating a facility:

- (a) organised on a temporary or permanent basis, whether or not governed by enforceable rules;
- (b) which provides a market, whether primary or secondary or both, for the trading of Investments;
- (c) which provides a system or mechanism, whether an order driven system, a quote driven system or a hybrid of such systems, enabling 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.

Guidance

The effect of the exemption in relation to the by way of business ‘test’ set out in Rule 2.3.3(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. [Added][VER3/04-05] [Amended][VER4/08-05]

Exclusions

- 2.17.2** A Person does not carry on an activity of the kind specified in Rule 2.17.1 if he operates a facility which merely amounts to an Alternative Trading System.
[Added][VER4/08-05]

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.

Guidance

The effect of the exemption in relation to the by way of business 'test' set out in Rule 2.3.3(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. [Added][VER3/04-05] [Amended][VER4/08-05]

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.

2.19 Insurance intermediation

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. [Added][VER6/06-06]

(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, subject to (5), that:

- (a) contains information about a particular Contract of Insurance or insurance cover; and
- (b) could reasonably be regarded as being intended to influence a 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. [Added][VER6/06-06]

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- (5) Any communication which contains generic advice where issued by or on behalf of a government or government entity does not constitute generic advice for the purposes of this Rule. [Added][VER6/06-06]
- (6) 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.
- [Added][VER6/06-06]
- (7) In (6)(b): [Added][VER6/06-06]
- (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 section 7.3 of COB. Communications can be oral, electronic or in print. [Added][VER6/06-06][Amended][RM66][VER23/08-09]

Exclusions

2.19.2 A Person does not carry on the activities specified in Rule 2.19.1(1)(b) or (c) if he enters or is to enter into a transaction in respect of a Contract of Insurance as principal.

2.19.3 A Person does not carry on Insurance Intermediation if the activity:

- (a) is carried on in the course of any professional business 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 professional business; and
- (c) is not remunerated separately from the other services.
[Amended][VER06/12-05]

2.19.4 A Person does not give advice in relation to a Contract of Insurance 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 2.19.1; nor
- (b) that of leading or enabling Persons to buy types of insurance.

2.19.5 A Person does not arrange a Contract of Insurance merely by providing the means by which one party to a transaction is able to communicate with other such parties.

2.19.6 A Person who is an Authorised Firm does not advise in relation to an Insurance Contract if it is authorised under its Licence to carry on the Financial Service of Advising on Financial Products or Credit, to the extent the advice relates to a contract of Long-Term Insurance not being a contract of reinsurance.

2.19.7 A Person who is an Authorised Firm does not arrange a Contract of Insurance if it is authorised under its Licence to carry on the Financial Service of Arranging Credit or Deals in Investments, to the extent that the arranging relates to rights under a contract of Long-Term Insurance not being a contract of reinsurance.

2.20 Insurance management

2.20.1 (1) In Rule 2.2.2 Insurance Management means providing management services or exercising managerial functions for an insurer.

(2) In (1) management services and managerial functions include administration and underwriting.

(3) In (1) an 'insurer' means a Person effecting or carrying out Contracts of Insurance.

Exclusions

2.20.2 A Person does not provide Insurance Management to an insurer if he is an Employee of that insurer.

2.20.3 A Person who is an Authorised Firm does not provide Insurance Management if it is an Insurer.

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 which is a Profit Sharing Investment Account. [Amended] [RM56] [VER19/07-08]

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 routing 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.

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- (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 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. [Added][VER4/08-05]

2.23 Providing Trust Services

2.23.1 In Rule 2.2.2 Providing Trust Services means:

- (a) the provision of services with respect to the creation of an express trust;
- (b) arranging for any Person to act as a trustee in respect of any express trust;
- (c) acting as trustee in respect of an express trust;
- (d) the provision of Trust Administration Services in respect of an express trust; or
- (e) acting as protector or enforcer in respect of an express trust.

Guidance

Providing generic advice on the desirability of using a trust does not amount to Providing Trust Services as defined in Rule 2.23.1.

Exclusions

2.23.2 Subject to Rule 2.23.3 an ASP which Provides Legal Services or Provides Accountancy Services is exempt from the requirement to hold a Licence in respect of Providing Trust Services. [Amended] [RM60/08] [VER21/09-08]

2.23.3 Under Rule 2.23.2(b) an ASP may only:

- (a) arrange for a Person to act as trustee in respect of an express trust; or
 - (b) provide services with respect to the creation of an express trust;
- provided that:
- (i) the provision of such services is solely incidental to the practice of law or accounting as the case may be; and
 - (ii) the ASP is not holding itself out as Providing Trust Services.

[Amended] [RM60/08] [VER21/09-08]

Guidance

Acting as trustee, protector or enforcer or Providing Trust Administration Services are not activities incidental to the practice of law or accounting and require a Licence.
[Added][VER7/01/06]

2.23.4 A Person is not Providing Trust Services if that Person is the Trustee of a Fund and the activities are in connection with or arise from, acting as the Trustee of the Fund. [Added][VER11/08-06]

2.24 Providing fund administration

2.24.1 In Rule 2.2.2, Providing Fund Administration means providing one or more of the following services in relation to a Fund:

- (a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements;
- (b) valuing of assets and performing net asset value calculations;
- (c) maintaining the share register and Unitholder registration details;
- (d) performing anti money laundering requirements;
- (e) undertaking transaction monitoring and reconciliation functions;
- (f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange;
- (g) producing financial statements, other than as the Fund's registered auditor; or

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- (h) communicating with participants, the Fund, the Operator, the fund managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund. [Added][VER8/04/06]

2.25 Acting as the Trustee of a Fund

- 2.25.1** (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 an Investment Trust.
- (2) To the extent that any activity under (1) constitutes Providing Fund Administration or Providing Custody, such a Financial Service is taken to be incorporated within Acting as the Trustee of a Fund.

[Deleted and Replaced] [RM56] [VER19/07-08]

Guidance

Rule 2.25.1(2) alleviates any requirement upon a Trustee to obtain further authorisations for certain Financial Services where the activities fall within the ordinary scope of the activity of Acting as the Trustee of a Fund. The provision also facilitates the delegation of these discrete activities under CIR section 7.3. [Added][RM56] [VER19/07-08]

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. [Added][RM56] [VER19/07-08]

3 FINANCIAL SERVICES WHICH MAY BE CARRIED ON IN OR FROM THE DIFC

3.1 Application

3.1.1 Chapter 3 applies to every Authorised Firm and Authorised Market Institution.

3.2 Permitted Financial Services for Authorised Firms

3.2.1 Pursuant to Article 42(1)(a) an Authorised Firm, subject to the Rules in this section, may carry on any one or more of the following Financial Services:

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Dealing in Investments as Principal;
- (d) Dealing in Investments as Agent;
- (e) Arranging Credit or Deals in Investments;
- (f) Managing Assets;
- (g) Advising on Financial Products or Credit;
- (h) Operating a Collective Investment Fund [Added][VER8/04-06]
- (i) Providing Custody;
- (j) Arranging Custody;
- (k) Effecting Contracts of Insurance;
- (l) Carrying Out Contracts of Insurance;
- (m) Insurance Intermediation; [Amended][VER6/12-05]
- (n) Insurance Management;
- (o) Managing a Profit Sharing Investment Account;
- (p) Operating an Alternative Trading System; [Added][VER4/08-05]
- (q) Providing Trust Services; [Added][VER7/01-06] [Amended][VER11/08-06]

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- (r) Providing Fund Administration; and [Added][VER8/04-06]
[Amended][VER11/08-06]
 - (s) Acting as the Trustee of a Fund. [Added][VER11/08-06]

Guidance

The consequence of Rule 3.2.1 is that no Person may carry on the Financial Service of Providing Money Services. [Amended][VER8/04-06]

- 3.2.2** 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.
- 3.2.3** 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.
- 3.2.4** The Financial Service of Operating 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. [Added][VER8/04-06]
- 3.2.5** 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. [Added][RM58][VER19/07-08]

3.3 Permitted Financial Services for Authorised Market Institutions

- 3.3.1** Pursuant to Article 42(1)(b) 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.

Guidance

1. An Authorised Market Institution may in addition to the Financial Services set out in Rule 3.3.1 also carry on 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 3.3.1, be carried on by an AMI. [Added][VER4/08-05]

4 CORE PRINCIPLES

4.1 Principles for Authorised Firms – application

4.1.1 The eleven Principles for Authorised Firms, set out in section 4.2, apply to every Authorised Firm in accordance with Rules 4.1.2 and 4.1.3. [Amended][VER14/06/07][RM43]

4.1.2 (1) For the purposes of Rule 4.1.3 the term ‘activities’ means:

- (a) Financial Services;
- (b) activities carried on in connection with a Financial Service;
- (c) activities held out as being for the purpose of a Financial Service; and
- (d) in relation to any particular Principle, any activity specified in (2), (3) and (4).

(2) Principles 3 and 4 also apply in a Prudential Context to an Authorised Firm with respect to the carrying on of all its activities.

(3) Principles 3 and 4 also take into account any activities of other members of the Group of which the Authorised Firm is a member.

(4) Principles 10 and 11, to the extent that it relates to disclosing to the DFSA, also applies to an Authorised Firm with respect to the carrying on of all its activities, and takes into account any activities of other members of the Group of which the Authorised Firm is a member. [Amended][VER14/06/07][RM43/07]

4.1.3 (1) The Principles apply to an Authorised Firm only with respect to activities carried on from an establishment maintained by it in the DIFC, unless an extension in (2), (3), (4) or (5) applies.

(2) Where another applicable Rule, which is relevant to the activity, has a wider territorial scope than that in (1), any related Principle applies with that wider scope in relation to the activity described in the Rule.

(3) Principles 1, 2 and 3 apply in a Prudential Context to an Authorised Firm with respect to activities wherever they are carried on.

(4) Principles 4 and 11 apply to an Authorised Firm with respect to activities wherever they are carried on. [Amended][VER14/05/07][

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- (5) Principle 5 also applies to an Authorised Firm with respect to the activities carried on in or from any place outside the DIFC if and to the extent that the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the financial markets operating in the DIFC.

Guidance

1. The Principles for Authorised Firms have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules and also in new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of the Rulebook build upon these fundamental principles. Consequently the Rules and Guidance elsewhere in the Rulebook should not be seen as exhausting the implications of the Principles.
2. Breaching a Principle for Authorised Firms makes an Authorised Firm liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Financial Service or to hold a Licence and the DFSA may consider withdrawing authorisation or the Licence on that basis.
3. The onus will be on the DFSA to show that the Authorised Firm has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

4.2 The Principles for Authorised Firms

Principle 1 - Integrity

- 4.2.1** An Authorised Firm must observe high standards of integrity and fair dealing.

Principle 2 - Due skill, care and diligence

- 4.2.2** In conducting its business activities an Authorised Firm must act with due skill, care and diligence.

Principle 3 - Management, systems and controls

- 4.2.3** An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

Principle 4 - Resources

- 4.2.4** An Authorised Firm must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.

Principle 5 - Market conduct

- 4.2.5** An Authorised Firm must observe proper standards of conduct in financial markets.

Principle 6 - Information and interests

- 4.2.6** An Authorised Firm must pay due regard to the interests of its customers and communicate information to them in a way which is clear, fair and not misleading.

Principle 7 - Conflicts of interest

- 4.2.7** An Authorised Firm must take 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.

Principle 8 - Suitability

- 4.2.8** An Authorised Firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who are entitled to rely upon its judgement.

Principle 9 - Customer assets and money

- 4.2.9** Where an Authorised Firm has control of or is otherwise responsible for assets or money belonging to a customer which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

Principle 10 - Relations with regulators

- 4.2.10** An Authorised Firm must deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Authorised Firm of which the DFSA would reasonably expect to be notified.

Principle 11 - Compliance with high standards of corporate governance

- 4.2.11** An Authorised Firm must meet applicable standards of corporate governance as appropriate considering the nature, size and complexity of the Authorised Firm's activities.

[Added][VER14/06/07][RM43/07]

4.3 Principles for Authorised Individuals – application

4.3.1 The six Principles for Authorised Individuals set out in section 4.4 apply to every Authorised Individual in respect of every Licensed Function.

Guidance

1. The Principles for Authorised Individuals do not apply to an Authorised Individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.
2. Breaching a Principle for Authorised Individuals makes an Authorised Individual liable to disciplinary action and may indicate that he is no longer fit and proper to perform a Licensed Function and the DFSA may consider suspending or withdrawing Authorised Individual status on that basis.
3. The onus will be on the DFSA to show that he is culpable, taking into account the standard of conduct required under the Principle in question. In determining whether or not the particular conduct of an Authorised Individual complies with the Principles for Authorised Individuals, the DFSA will take account of whether that conduct is consistent with the requirements and standards relevant to his Authorised Firm, the Authorised Individual's own role and the information available to him.

4.4 The Principles for Authorised Individuals

Principle 1 - Integrity

4.4.1 An Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function.

Principle 2 - Due skill, care and diligence

4.4.2 An Authorised Individual must act with due skill, care and diligence in carrying out every Licensed Function.

Principle 3 - Market conduct

4.4.3 An Authorised Individual must observe proper standards of conduct in financial markets in carrying out every Licensed Function.

Principle 4 - Relations with the DFSA

4.4.4 An Authorised Individual must deal with the DFSA in an open and co-operative manner and must disclose appropriately any information of which the DFSA would reasonably be expected to be notified.

Principle 5 - Management, systems and control

- 4.4.5** An Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Firm for which he is responsible is organised so that it can be managed and controlled effectively.

Principle 6 - Compliance

- 4.4.6** An Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Firm for which he is responsible complies with any legislation applicable in the DIFC.

5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

- 5.1.1** (1) Subject to (5), this chapter applies to every Authorised Person with respect to the Financial Services carried on in or from the DIFC.
- (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
- (3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch's activities wherever they are carried on.
- (4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance. [Added][VER3/04-05]
- (5) Rules 5.3.13, 5.3.14, 5.3.15, 5.3.23, and 5.3.24 do not apply to an Authorised ISPV.

[Amended] [VER16/10-07] [RM48/07]

Guidance

1. The purpose of this chapter is:
 - a. to set out the requirements for senior management within an Authorised Person to take direct responsibility for their Authorised Person's arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA's objectives or they affect the DFSA's functions under the legislation applicable in the DIFC; and
 - b. to require an Authorised Firm to vest responsibility in senior management for effective and responsible organisation and to have effective systems and controls.
2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module. [Amended][VER3/04-05]
3. In relation to an Authorised Firm which is an Operator or the Trustee, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates or for which it acts as the Trustee. [Added][VER8/04-06] [Amended][VER11/08-06]

5.2 Senior management arrangements

Apportionment of significant responsibilities

5.2.1 An Authorised Person must apportion significant responsibilities among its Governing Body and its senior management and maintain such apportionment in such a way that:

[Amended][VER14/06/07][RM43/07]

- (a) it is appropriate with regard to:
 - (i) the business and affairs of the Authorised Person; and
 - (ii) the ability and qualifications of the responsible individuals;
- (b) it is clear who is responsible for which matters; and
- (c) the business and affairs of the Authorised Person can be adequately monitored and controlled by the Authorised Person's Governing Body and senior management.

5.2.2 An Authorised Person must allocate to the Senior Executive Officer or to the individual holding equivalent responsibility for the conduct for the Authorised Person's business or the Governing Body, the functions of:

- (a) dealing with the apportionment of responsibilities; and
- (b) overseeing the establishment and maintenance of systems and controls.

Guidance

Rules 5.2.1 and 5.2.2 do not derogate from the overall responsibility of the Governing Body with respect to the strategic objectives and corporate values of the Authorised Person as appropriate taking into consideration the nature, size and complexity of the Authorised Person's activities.
[Added][VER14/06/07][RM43/07]

Recording of apportionment

- 5.2.3**
- (1) An Authorised Person must establish and maintain an up-to-date record of the arrangements it has made to comply with Rules 5.2.1 and 5.2.2.
 - (2) The record must show that the relevant senior management are aware of and have accepted the responsibilities apportioned in accordance with Rule 5.2.1.
 - (3) Where a responsibility has been allocated to more than one individual, the record must show clearly how that responsibility is allocated between the individuals.

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- (4) The record must be retained for six years from the date on which it was established or superseded by a more up-to-date record.

5.3 Systems and controls

General requirement

- 5.3.1** (1) An Authorised Person must establish and maintain systems and controls, including but not limited to financial and risk systems and controls, that ensure that its affairs are managed effectively and responsibly by its senior management. [Amended][VER14/06/07][RM43/07]
- (2) An Authorised Person must undertake regular reviews of its systems and controls.

Guidance

The nature and extent of the systems and controls of an Authorised Person will depend upon a variety of factors including the nature, size and complexity of its business. While all Authorised Persons, irrespective of size, legal structure or organisation need to comply with this chapter, the DFSA will take into account these factors and the differences that exist between Authorised Persons when assessing the adequacy of an Authorised Person's systems and controls. Nevertheless, neither these factors nor the differences relieve an Authorised Person from compliance with its regulatory obligations.

Organisation

- 5.3.2** An Authorised Person must implement clear reporting lines that take into account the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, must be communicated to all Employees and documented within the Authorised Person. If it is an Authorised Firm, it must also clearly identify the Employees who will be delivering Financial Services to its customers, and their respective lines of accountability and supervision. [Amended][VER10/06-06]
- 5.3.3** An Authorised Person must ensure that key duties and functions are segregated so as to avoid the situation where the allocation of duties and functions to be performed by the same individual could result in undetected errors or be vulnerable to abuse and thus expose the Authorised Person or its customers or users to inappropriate risks.

Risk management

- 5.3.4** An Authorised Person must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks.

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- 5.3.5** An Authorised Person must develop, implement and maintain policies and procedures to manage the risks to which the Authorised Person and where applicable, its customers or users, are exposed.

Guidance

As part of its policies and procedures to manage risks, an Authorised Firm which is a Domestic Firm may need to implement an Internal Risk Assessment Process and Internal Capital Adequacy Assessment Process, as prescribed in chapter 6 of the SUP module.

[Added][RM63/08][VER22/01-09]

- 5.3.6** (1) An Authorised Person must appoint an individual to advise its Governing Body and senior management of such risks.
- (2) An Authorised Person which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

Compliance

- 5.3.7** An Authorised Firm 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 must document the organisation, responsibilities and procedures of the compliance function.
- 5.3.9** An Authorised Firm 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 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 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 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. [Added][VER3/04-05]

Internal audit

- 5.3.13** (1) An Authorised Person must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.
- (2) The internal audit function must be independent from operational and business functions.
- 5.3.14** An Authorised Person must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the Authorised Person's Governing Body or the relevant committee, established by its Governing Body for this purpose.
- 5.3.15** An Authorised Person must document the organisation, responsibilities and procedures of the internal audit function.

Business plan and strategy

- 5.3.16** (1) An Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its customers are exposed.
- (2) The business plan must take into account the Authorised Person's current business activities and the business activities forecast for the next twelve months.
- (3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in the business of the Authorised Person.

Management information

- 5.3.17** An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise and control its activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

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 to be assigned to those Employees; 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.
3. When assessing the competence and capability of an Employee, an Authorised Firm should:
 - a. obtain details of the skills, knowledge and experience of the Employee relevant to the nature and requirements of the role;
 - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained;
 - c. determine, in light of the Employee's relevant skills, knowledge and experience, that the Employee is competent and capable of fulfilling the duties of the role; 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.
4. An Authorised Firm should also satisfy itself that an Employee:
 - a. continues to be competent and capable of performing the role;
 - b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the role, through training or other means; and
 - c. is able to apply his knowledge.

[Amended][RM56][VER19/07-08]

Conduct

5.3.20 An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market misconduct;
- (b) money laundering; or
- (c) a financial crime under any applicable U.A.E. laws.

Guidance

An Authorised Firm should adopt, at a minimum, a policy on ethics and professional conduct and clearly communicate such a policy to those persons involved in its affairs in order to comply with the obligations under this Rule and its general duty to observe high standards of integrity and fair dealing under Rule 4.2. [Added][VER14/06/07][RM43/07]

Outsourcing

- 5.3.21** (1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to third party providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.
- (2) The outsourced function under this Rule shall be deemed as being carried out by the Authorised Person itself.
- (3) An Authorised Person which uses such third party providers must ensure that it:
- (a) has undertaken due diligence in choosing suitable third party providers;
 - (b) effectively supervises the outsourced functions or activities; and
 - (c) deals effectively with any act or failure to act by the third party provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

Guidance

1. An Authorised Person's outsourcing arrangements should include consideration of:
 - a. applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or
 - b. any equivalent principles or regulations the Authorised Person is subject to in its home country jurisdiction.

2. As a minimum, the DFSA expects an Authorised Person which has material outsourcing arrangements to:
 - a. establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;
 - b. enter into an appropriate and written outsourcing contract; and
 - c. ensure that outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder the supervision by the DFSA.

5.3.22 An Authorised Person must inform the DFSA about any material outsourcing arrangements.

Business continuity and disaster recovery

- 5.3.23** (1) An Authorised Person must have in place adequate arrangements to ensure that it can continue to function and meet its obligations under the legislation applicable in the DIFC in the event of an unforeseen interruption.
- (2) These arrangements must be kept up to date and regularly tested to ensure their effectiveness.

Guidance

1. In considering the adequacy of an Authorised Person's business continuity arrangements, the DFSA will have regard to the Authorised Person's management of the specific risks arising from interruptions to its business including its crisis management and disaster recovery plans.
2. The DFSA expects an Authorised Person to have:
 - a. arrangements which establish and maintain the Authorised Person's physical security and protection for its information systems for business continuity purposes in the event of planned or unplanned information system interruption or other events that impact on its operations;
 - b. considered its primary data centres' and business operations' reliance on infrastructure components, for example transportation, telecommunications networks and utilities and made the necessary arrangements to minimise the risk of interruption to its operations by arranging backup of infrastructure components and service providers; and
 - c. considered, in its plans for dealing with a major interruption to its primary data centre or business operations, its alternative data centres' and business operations' reliance on infrastructure components and made the necessary arrangements such that these do not rely on the same infrastructure components and the same service provider as the primary data centres and operations.

5.3.24 [Deleted][RM56][VER19-07/08]

Records

- 5.3.25** (1) An Authorised Person must make and retain records of matters and dealings, including accounting records which are the subject of requirements and standards under the legislation applicable in the DIFC.
- (2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding 3 business days.
[Amended][VER13/02-07][RM42/07]
- 5.3.26** Subject to Rule 5.3.27, the records required by Rule 5.3.25 or by any other Rule in this Rulebook must be maintained by the Authorised Person in the English language.
- 5.3.27** If an Authorised Person's records relate to business carried on from an establishment in a territory outside the DIFC, an official language of that territory may be used instead of the English language as required by Rule 5.3.26.
- 5.3.28** An Authorised Person must have systems and controls to fulfil the Authorised Person's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

Fraud

- 5.3.28** An Authorised Person must establish and maintain effective systems and controls to:
- (a) deter and prevent suspected fraud against the Authorised Person; and
- (b) report suspected fraud and other financial crimes to the relevant authorities.

[Added][VER14/06/07][RM43/07]

Relevant United Nations Resolutions and Sanctions

- 5.3.30** (1) An Authorised Person must establish and maintain effective systems and controls to:
- (a) obtain and make appropriate use of relevant resolutions or sanctions issued by the United Nations Security Council; and
- (b) disclose in its annual MLRO report to the DFSA the manner in which it has observed such resolutions or sanctions.
- (2) An Authorised Person must immediately notify the DFSA when it becomes aware that it is:
- (a) carrying on or about to carry on a Financial Service;

- (b) holding or about to hold money or other assets; or
- (c) undertaking or about to undertake any other business whether or not arising from or in connection with (a) or (b);

for or on behalf of a Person, where such carrying on, holding or undertaking constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.

- (3) An Authorised Person must ensure that the notification stipulated in (2) above includes the following information:
 - (a) a description of the relevant activity in (2) (a), (b) or (c); and
 - (b) the action proposed to be taken or that has been taken by the Authorised Person with regard to the matters specified in the notification.

Guidance

1. In relation to the term “make appropriate use” in Rule 5.3.50 this may mean that an Authorised Person cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. Relevant resolutions or sanctions mentioned in Rule 5.3.30 may, among other things, relate to money laundering and terrorist financing or financing of weapons of mass destruction or otherwise be relevant to the Financial Services carried on or the other business activities conducted by the Authorised Person. For example:
 - a. an Authorised Firm should exercise due care to ensure that it does not provide Financial Services to, or conduct business with, a Person engaged in money laundering or terrorist financing or financing of weapons of mass destruction; and
 - b. an Authorised Market Institution should exercise due care to ensure that it does not facilitate fund raising activities or listings by Persons engaged in money laundering or terrorist financing or financing of weapons of mass destruction.
3. In respect of the United Nations Security Council’s resolutions or sanctions, the MLRO should also refer to AML Rules 3.3.3(2)(h), 3.3.4(d) and 3.9.1(h) and AMI Rules 11.6.2(2)(k), 11.6.3(g) and 11.12.1(j) for requirements relating to the MLRO’s responsibility, reporting and training and awareness.

[Added] [RM59/08] [VER20/09-08]

6 GENERAL PROVISIONS

6.1 Application

- 6.1.1** (1) Sections 6.1, 6.2, 6.3 and 6.9 apply to every Person to whom any provision in the Rulebook applies. [Amended][VER3/04-05]
- (2) Section 6.4 applies to every Authorised Person. [Amended][VER3/04-05]
- (3) Sections 6.5 and 6.6 apply to every Authorised Firm, Authorised Market Institution and Person who has submitted an application for authorisation to carry on one or more Financial Services.
- (4) Section 6.7 applies to any Person who has been affected by the activities of the DFSA.
- (5) Section 6.8 applies to the DFSA.

6.2 Interpreting the rulebook

Guidance

Interpretation

1. Every provision in the Rulebook must be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.
2. When this section refers to a provision, this means every type of provision, including Rules and Guidance.
3. Where reference is made in the Rulebook to another provision of the Rulebook or other DIFC legislation, it is a reference to that provision as amended from time to time.
4. Unless the contrary intention appears:
 - a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
 - b. words in the Rulebook in the singular include the plural and words in the plural include the singular.
5. If a provision in the Rulebook refers to a communication, notice, agreement, or other document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

6. Any reference to 'dollars' or '\$' is a reference to United States Dollars unless the contrary intention appears.
7. References to Articles made throughout the Rulebook are references to Articles in the Regulatory Law 2004 unless otherwise stated.
8. [Deleted][VER13/02-07][RM42/07]
9. [Deleted][VER13/02-07][RM42/07]
10. Unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official State holiday in the DIFC, the obligation must take place on the next calendar day which is a business day. [Added][VER13/02-07][RM42/07]

Defined Terms

11. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

6.3 Emergency

- 6.3.1** (1) If an Authorised Person is unable to comply with a particular Rule due to an emergency which is outside its or its Employees' control and could not have been avoided by taking all reasonable steps, the Authorised Person will not be in contravention of that Rule to the extent that, in consequence of the emergency, compliance with that Rule is impractical.
- (2) This Rule applies only for so long as the consequences of the emergency continue and the Authorised Person is able demonstrate that it is taking all practical steps to deal with those consequences, to comply with the Rule, and to mitigate losses and potential losses to its customers or users.
- (3) An Authorised Person must notify the DFSA as soon as practical of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.

Guidance

1. Procedures for notification to the DFSA are set out in SUP chapter 7.
2. The Rules in section 6.3 do not affect the powers of the DFSA under Article 9 of the Markets Law 2004.

6.4 Disclosure of regulatory status

6.4.1 An Authorised Person must not misrepresent its status expressly or by implication.

6.4.2 (1) An Authorised Person must take reasonable care to ensure that every key business document which is in connection with the Authorised Person carrying on a Financial Service in or from the DIFC includes one of the disclosures under this Rule.

(2) A key business document includes letterhead whether issued by post, fax or electronic means, terms of business, client agreements, written promotional materials, business cards, prospectuses and websites but does not include compliment slips, account statements or text messages.

(3) The disclosure required under this Rule is:

(a) 'Regulated by the Dubai Financial Services Authority'; or

(b) 'Regulated by the DFSA'.

[Amended][VER3/04-05]

(4) The DFSA logo must not be reproduced without express written permission from the DFSA and in accordance with any conditions for use.

(5) Rules 6.4.2(1) – (4) also apply to the operation and administration of an Official List of Securities by an Authorised Market Institution.
[Added][VER3/04-05]

6.5 Location of offices

6.5.1 (1) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a Body Corporate incorporated under the Companies Law 2004, its head office and registered office must be in the DIFC.

(2) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a Partnership established under the Limited Liability Partnership Law 2004 or the General Partnership Law 2004, its head office must be in the DIFC.

(3) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services is an unincorporated association formed within the jurisdiction of the DIFC, its head office must be in the DIFC.

Guidance

1. In considering the location of an Authorised Firm's or Authorised Market Institution's head office, the DFSA will have regard to the location of its directors, partners and senior management and to the main location of its day-to-day operational, control, management and administrative arrangements and will judge matters on a case by case basis.
2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect to the location of its offices will, on this point alone not be considered fit and proper or able to satisfy the Licensing Requirements.

6.6 Close links

- 6.6.1** (1) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services has Close Links with another Person, the DFSA must be satisfied that those Close Links are not likely to prevent the effective supervision by the DFSA of the Authorised Person.
- (2) If requested by the DFSA the Authorised Person must submit a Close Links report or notification, in a form specified by the DFSA. This may be requested on an ad hoc or periodic basis.

Guidance

1. Procedures for notification to the DFSA are set out in SUP chapter 7.
2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect of its Close Links will, on this point alone, not be considered fit and proper or able to satisfy the Licensing Requirements.

6.7 Complaints against the DFSA**Guidance**

1. A Person who feels he has been adversely affected by the manner in which the DFSA has carried out its functions may make a complaint to the DFSA about its conduct or the conduct of its Employees.
2. A complaint must be in writing and should be addressed to the Chief Executive of the DFSA. The complaint will be dealt with by the DFSA in a timely manner.

6.8 Public register

Maintenance and publication

6.8.1 The registers required to be maintained and published by the DFSA pursuant to Article 62 shall be published and maintained in either or both of the following manners:

- (a) by maintaining hard copy registers which are made available for inspection at the premises of the DFSA during normal business hours; or
- (b) by maintaining an electronic version of the registers and making the information from those registers available through the DFSA website.

6.9 Communication with the DFSA

6.9.1 An Authorised Person must ensure that any communication with the DFSA is conducted in the English language.



7 [DELETED] [VER18/12-07] [RM52/07]

8 ACCOUNTING AND AUDITING

8.1 Application

8.1.1 This chapter applies to every:

- (a) Authorised Person;
- (b) applicant for registration as an auditor with the DFSA; and
- (c) Auditor registered with the DFSA.

8.1.2 In this chapter in relation to an Authorised Person which is a Domestic Firm a reference to “auditor” include references to an “Auditor”.

8.2 Accounting standards

- 8.2.1 (1) An Authorised Person must prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards (IFRS) unless (2) or (3) applies.
- (2) If an Authorised Firm is an Islamic Financial Institution it must prepare and maintain all financial accounts and statements in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI).
- (3) If an Authorised Person operates an Islamic Window it must prepare and maintain all financial accounts and statements in accordance with the IFRS, as supplemented by AAOIFI FAS 18 in respect of its Islamic Financial Business.

Guidance

1. AAOIFI FAS 18 sets out the accounting rules for recognising, measuring and presenting the assets managed and funds mobilised on the basis of Islamic Shari’a rules and principles in the financial accounts and statements of conventional financial institutions that offer Islamic financial services, as well as the income generated from these services. The standard also determines the necessary disclosures related to these services.
2. Under AAOIFI FAS 18, Authorised Persons which operate Islamic Windows must disclose (in their relevant financial statements) the following:
 - a. whether or not they co-mingle funds related to Islamic Financial Business with funds relating to conventional financial business;

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- b. the sources and applications of funds mobilised and invested through their Islamic Financial Business and the sources of funds used to cover a deficit if it occurs;
 - c. any reserves of expenditures prohibited by Shari'a and the disposition of any revenues, the latter shall be determined by the Shari'a Supervisory Board;
 - d. any reserves deducted from the funds mobilised according to Shari'a, the purpose of such reserves and to whom the reserves shall revert in the case where the activities in respect of which the reserves were deducted have ceased; and
 - e. the percentage amount of funds relating to Islamic Financial Business in comparison with the percentage amount of funds relating to conventional financial business.

8.3 Accounting records and regulatory returns

8.3.1 Every Authorised Person must keep accounting records which are sufficient to show and explain transactions and are such as to:

- (a) be capable of disclosing the financial position of the Authorised Person on an ongoing basis; and
- (b) record the financial position of the Authorised Person as at its financial year end.

8.3.2 Accounting records must be maintained by an Authorised Person such as to enable its Governing Body to ensure that any accounts prepared by the Authorised Person comply with the legislation applicable in the DIFC.

8.3.3 An Authorised Person's accounting records must be:

- (a) retained by the Authorised Person for at least ten years from the date to which they relate;
- (b) at all reasonable times, open to inspection by the DFSA or the auditor of the Authorised Person; and
- (c) if requested by the DFSA capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English. [Amended][VER13/02-07][RM42/07]

8.3.4 All regulatory returns prepared by the Authorised Firm must be prepared and submitted in accordance with the requirements set out in PIB or PIN as applicable. [Amended][VER17/11-07][RM51/07]

Changes to the financial year end

- 8.3.5** (1) If an Authorised Firm is a Domestic Firm and intends to change its financial year end, it must obtain the DFSA's prior consent before implementing the change.
- (2) The application for consent must include reasons for the change.
- (3) The DFSA may require the Authorised Firm to obtain written confirmation from its auditor that the change of financial year end would not result in any significant distortion of the financial position of the Authorised Firm.
- 8.3.6** If an Authorised Firm is not a Domestic Firm and intends to change its financial year, it must provide the DFSA with reasonable advance notice prior to the change taking effect.

8.4 Appointment and termination of auditors

8.4.1 An Authorised Person must:

- (a) notify the DFSA of the appointment of an auditor, including the name and business address of the auditor and the date of the commencement of the appointment;
- (b) prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the business of the Authorised Person for which the auditor has been appointed; and
- (c) if it is a Domestic Firm, ensure that the auditor, at the time of appointment and for the duration of the engagement as auditor, is registered with the DFSA.

8.4.2 An Authorised Person must notify the DFSA immediately if the appointment of the auditor is or is about to be terminated, or on the resignation of its auditor, giving the reasons for the cessation of the appointment.

8.4.3 An Authorised Person must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

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- 8.4.4** (1) An Authorised Person must take reasonable steps to ensure that the relevant audit staff of the auditor are independent of and not subject to any conflict of interest with respect to the Authorised Person.
- (2) An Authorised Person must notify the DFSA if it becomes aware, or has reason to believe, that the relevant audit staff of the auditor are no longer independent of the Authorised Person, or have a conflict of interest which may affect their judgement in respect of the Authorised Person.

Guidance

1. The relevant staff of an auditor are independent if their appointment or retention by an Authorised Person is not contrary to any applicable ethical guidance issued by the professional supervisory body.
2. An Authorised Person should consider rotating the appointed relevant staff of the auditor every five years to ensure that the relevant staff of the auditor remains independent.

8.4.5 If requested by the DFSA, an Authorised Person which carries on Financial Services through a Branch must provide the DFSA with information on its appointed or proposed auditor with regard to the auditor's, skills, experience and independence.

8.4.6 Where an auditor appointed by an Authorised Person is not suitable in the opinion of the DFSA, or where an auditor has not been appointed, the DFSA may direct an Authorised Person to replace or appoint an auditor in accordance with the requirements in this chapter.

8.5 Co-operation with auditors

8.5.1 An Authorised Person must take reasonable steps to ensure that it and its Employees:

- (a) provide such assistance as the auditor reasonably requires to discharge its duties;
- (b) give the auditor right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the auditor's ability to discharge its duties;
- (d) do not provide false or misleading information to the auditor; and
- (e) report to the auditor any matter which may significantly affect the financial position of the Authorised Person.

8.6 Function of the auditor

8.6.1 An Authorised Firm or Authorised Market Institution, as applicable, must in writing require its auditor to:

- (a) conduct an audit of the Authorised Person's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of conventional financial business and the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in respect of any Islamic Financial Business undertaken;
- (b) produce a report on the audited accounts which states:
 - (i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;
 - (ii) in particular, whether the accounts give a true and fair view of the financial position of the Authorised Person for the financial year and of the state of the Authorised Person's affairs at the end of the financial year end; and
 - (iii) any other matter or opinion relating to the requirements of this chapter;
- (c) produce an Auditor's Annual Report which states whether:
 - (i) the auditor has audited the Authorised Person's annual financial statements in accordance with the IAASB or AAOIFI in respect of Islamic Financial Business;
 - (ii) the auditor has carried out any other procedures considered necessary, having regard to the IAASB and to AAOIFI auditing standards in respect of Islamic Financial Business;
 - (iii) the auditor has received all necessary information and explanations for the purposes of preparing this report to the DFSA;
 - (iv) (in the case of an Authorised Firm) in the auditor's opinion, the regulatory returns specified by the applicable Rules in PIN or PIB have been properly prepared by the Authorised Firm and provide a true and fair representation of the financial position of the Authorised Firm, as at the date of the Authorised Firm's financial year end;

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- (v) in the auditor's opinion, the Authorised Person's regulatory returns to the DFSA have been properly reconciled with the appropriate audited accounts;
 - (vi) in the case of an Authorised Firm, in the auditor's opinion, that an Authorised Firm which is subject to an expenditure based requirement has calculated the expenditure based requirement in accordance with the Rules;
 - (vii) in the auditor's opinion, the Authorised Person's financial resources as at its financial year end have been properly calculated in accordance with the Rules and are sufficient to meet the relevant prudential requirements or minimum financial resources requirement; and
 - (viii) in the case of an Authorised Firm, in the auditor's opinion, the Authorised Firm has kept proper accounting records, in compliance with the applicable Rules in PIN or PIB;
- (d) produce, if the Authorised Firm controls or holds Client Money, a Client Money Auditor's Report which states whether, in the opinion of the auditor:
- (i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB chapter 6 and, if applicable, COB App5;
 - (ii) the Authorised Firm's controls are such as to ensure that Client Money is identifiable and secure at all times;
 - (iii) any of the requirements in COB chapter 6 and the Client Money Provisions have not been met;
 - (iv) if applicable, Client Money belonging to Segregated Clients has been segregated in accordance with the Client Money Provisions;
 - (v) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Client Money in accordance with COB chapter 6 and with the Client Money Provisions as at the date on which the Authorised Firm's audited balance sheet was prepared; and
 - (vi) if applicable, there have been any material discrepancies in the reconciliation of Client Money;

[Amended][RM62][VER22/01-09]

- (e) produce, if the Authorised Firm controls or holds Insurance Monies, an Insurance Monies Auditor's Report which states whether, in the opinion of the auditor:

- (i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB section 7.12;
- (ii) the Authorised Firm's controls are such as to ensure that Insurance Monies are identifiable and secure at all times;
- (iii) any of the requirements in COB section 7.12 have not been met;
- (iv) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Insurance Monies in accordance with COB section 7.12 as at the date on which the Authorised Firm's audited balance sheet was prepared; and
- (v) if applicable, there have been any material discrepancies in the reconciliation of Insurance Monies;

[Amended][RM62][VER22/01-09]

- (f) produce, if the Authorised Firm holds or controls Client Investments, Arranges Custody or Provides Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, which states whether, in the opinion of the auditor:
 - (i) the Authorised Firm has, throughout the year, maintained systems and controls to enable it to comply with the Safe Custody Provisions in COB App6;
 - (ii) the Safe Custody Investments are registered, recorded or held in accordance with the Safe Custody Provisions;
 - (iii) there have been any material discrepancies in the reconciliation of Safe Custody Investments; and
 - (iv) any of the requirements of the Safe Custody Provisions have not been met;
- (g) submit the reports produced pursuant to Rules 8.6.1(b)-8.6.1(f) above to the Authorised Person; and
- (h) notify the DFSA in writing if he resigns due to significant concerns which have previously been raised with senior management of the Authorised Person and which have not been addressed.

[Amended][RM66][VER23/08-09]

- 8.6.2** An Authorised Person must submit any auditor's reports and financial statements required by this chapter to the DFSA within four months of the Authorised Person's financial year end.

- 8.6.3** If requested, an Authorised Person must provide to any Person a copy of its most recent audited accounts, together with the auditor's report referred to in Rule 8.6.1(b). If the copy is made available in printed form, the Authorised Person may make a charge to cover reasonable costs incurred in providing the copy.

8.7 Registration of Auditors

[Deleted and Replaced][VER12/11-06]

Registration of an Auditor

- 8.7.1** A Person intending to audit Authorised Firms and Authorised Market Institutions (that are Domestic Firms), or Domestic Funds must apply to the DFSA for registration in accordance with the Rules in this Chapter.

Guidance

Authorised Firms and Authorised Market Institutions that are Domestic Firms and Operators of Domestic Funds are required to appoint and retain Auditors who are registered for the duration of the audit. See Rule 8.4.1(c) and CIR Rule 12.2.1 (c).

- 8.7.2** An applicant for registration must:

- (a) complete and submit the appropriate form in AFN, supported by such additional material as may be required by the DFSA; and
- (b) pay to the DFSA the prescribed application fee in GEN App 6.

Guidance

There are additional requirements that apply to Auditors that are appointed for a Domestic Firm or Domestic Fund (see GEN 8.4.4 and CIR Rule 12.2.4). These requirements must be met independently of the requirements that are set out in the Rules in this Chapter.

Consideration of the application

- 8.7.3** (1) An applicant for registration must be able to demonstrate to the DFSA's satisfaction that:
- (a) it is fit and proper as provided in (2);
 - (b) it has professional indemnity insurance as required under Section 8.17;
 - (c) it has adequate systems, procedures and controls to ensure due compliance with:
 - (i) the International Standards on Auditing;
 - (ii) the International Standards on Quality Control; and

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- (iii) the Code of Ethics for Professional Accountants;
 - (d) where applicable, it has adequate systems, procedures and controls to ensure due compliance with:
 - (i) the Islamic Accounting and Auditing Standards; and
 - (ii) the Code of Ethics for Accountants and Audit Firms of Islamic Financial Institutions;
 - (e) it is controlled by Persons each of whom hold a Recognised Professional Qualification from a Recognised Professional Body; and
 - (f) it has complied with any other requirement as specified by the DFSA.
- (2) For the purposes of assessing whether an applicant for registration meets the fit and proper requirement under (1)(a), the DFSA will consider:
- (a) the application and submissions;
 - (b) background and history;
 - (c) the ownership and the Group structure;
 - (d) resources, including human and technological;
 - (e) whether the applicant's affairs are likely to be conducted and managed in a sound and prudent manner; and
 - (f) any other matter considered relevant by the DFSA.
- (3) For the purposes of (1)(e):
- (a) "control" means:
 - (i) in a body corporate, a majority of the directors and a majority of the votes of the shareholders; or
 - (ii) in a partnership (except a limited partnership) means a majority of the partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote; and
 - (iii) in a limited partnership means a majority of the general partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote;

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- (b) “majority” means:
- (i) where under the Auditor’s constitution matters are decided on by the exercise of voting rights, a majority of the rights to vote on all, or substantially all, matters; or
 - (ii) in any other case a majority of the Persons having rights under the constitution of the Auditor to enable them to direct its overall policy or alter its constitution.

8.7.4 The DFSA may impose in its absolute discretion any terms or conditions on the registration.

8.8 Regulatory appeals

[Deleted and Replaced][VER12/11-06]

8.8.1 An applicant may appeal to the Regulatory Appeals Committee against any refusal to grant registration, or any condition of registration imposed under Rule 8.7.4 and the Regulatory Appeals Committee has jurisdiction to hear any such appeal.

Guidance

Under Article 98 of the Regulatory Law the DFSA may in its absolute discretion grant or refuse to grant registration.

8.9 Obligations of Auditors and Audit Principals

[Added][VER12/11-06]

8.9.1 An Auditor must:

- (a) continue to comply with all its obligations including those in Chapter 8;
- (b) comply with the applicable International Standards of Auditing, Quality Control and Codes of Ethics referred to in Rule 8.7.3(c) and (d); and
- (b) ensure that each Audit Principal is fit and proper to conduct audit work on behalf of the Auditor.

8.9.2 An Audit Principal must:

- (a) manage the conduct of audit work undertaken by the Auditor;
- (b) sign audit reports on behalf of the Auditor; and
- (c) sign any other report as may be required by the DFSA from time to time.

8.9.3 In assessing whether an Audit Principal is fit and proper, the Auditor must ensure that the Audit Principal at a minimum:

- (a) holds a Recognised Professional Qualification;
- (b) has at least five years of prior relevant experience in the past seven years in auditing financial services; and
- (c) is a member in good standing of a Recognised Professional Body.

Guidance

When assessing a person's suitability to be appointed as an Audit Principal, an Auditor should ascertain matters such as whether any disciplinary action has been taken against that person by a Recognised Professional Body.

8.10 Notification of changes

[Added][VER12/11-06]

8.10.1 An Auditor must notify the DFSA in writing within 30 days:

- (a) of any change of its Audit Principals, including the appointment of any new Audit Principal;
- (b) of any claims made against the Auditor including but not limited to those lodged against the Auditor's professional indemnity insurance;
- (c) of any matter that can reasonably be regarded as having a material adverse effect on the DFSA's registration of the Auditor;
- (d) of a change of name or address of the Auditor; and
- (e) if it no longer meets the requirements for registration as an Auditor.

8.11 Books and records

[Added][VER12/11-06]

8.11.1 An Auditor must maintain proper books and records at all times to facilitate the proper performance of its functions and discharge of its duties under these Rules.

8.11.2 An Auditor must maintain records demonstrating how it established the fitness and propriety of each Audit Principal for the purposes of Rule 8.9.

8.11.3 An Auditor must:

- (a) maintain records and all relevant information relating to its professional indemnity insurance including the terms of cover and its duration; and
- (b) upon a request by the DFSA, provide to the DFSA forthwith evidence of the terms of cover and the validity of those policies.

8.11.4 An Auditor must maintain records of insurance claims made under its professional indemnity insurance policy. Such records, together with each annual renewal proposal form, must be available for inspection by the DFSA.

8.11.5 An Auditor must maintain records of proof of continuing professional development undertaken by its Employees, including Audit Principals.

8.11.6 An Auditor must maintain books and records referred to in the above Rules for a period of at least 6 years. In the case of the books and records referred to in Rule 8.11.1, those records must be kept for at least a period of 6 years after the completion of each audit carried out in respect of each client that is an Authorised Firm, Authorised Market Institution or Domestic Fund.

8.12 Withdrawal of registration

[Added][VER12/11-06]

Guidance

Under Article 98(3) of the Regulatory Law, the DFSA may make Rules setting out how and on what grounds registration may be withdrawn.

8.12.1 (1) The DFSA may withdraw an Auditor's registration either on its own initiative or at the request of the Auditor.

(2) A request for withdrawal by an Auditor must be in writing.

8.12.2 In considering requests for the withdrawal of an Auditor's registration, the DFSA must be satisfied that:

- (a) the Auditor has made appropriate arrangements with respect to its existing customers; and
- (b) any other matter which the DFSA would reasonably expect to be resolved has been resolved;

before granting a request for a withdrawal.

8.12.3 An application by an Auditor to withdraw its registration does not in itself result in a cancellation of its registration. Until such time as the DFSA withdraws the registration, the Auditor remains subject to, and must comply with, the Regulatory Law 2004, Rules and any other relevant legislation administered by the DFSA.

8.12.4 Once an Auditor applies to withdraw its registration, the Auditor must not accept appointments as an Auditor nor issue any audit reports without obtaining the prior written consent of the DFSA.

8.12.5 The DFSA must take the necessary steps to withdraw the registration of an Auditor as soon as practicable after an Auditor has applied to withdraw its registration.

8.13 Withdrawal on the DFSA's initiative

[Added][VER12/11-06]

8.13.1 The DFSA may withdraw the registration of an Auditor on its own initiative if it has reasonable grounds to believe that:

- (a) the Auditor is no longer fit and proper; or
- (b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

8.13.2 The DFSA may only withdraw the registration of an Auditor on its own initiative if it has given to the Auditor:

- (a) a prior written notice setting out the DFSA's reasons for proposing to withdraw its registration; and
- (b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed withdrawal.

8.13.3 Upon deciding to withdraw the registration of an Auditor, the DFSA must without delay inform the Auditor in writing of:

- (a) such decision; and
- (b) the date on which the decision is to take effect.

Guidance

Generally, the DFSA will only consider exercising the power to withdraw the registration of an Auditor on its own initiative after a thorough investigation. For example, the DFSA may receive a notification of termination of that Auditor of a Domestic Fund under CIR 12.2.2. Whether or not the DFSA would exercise its discretion to withdraw registration of the Auditor would depend on the grounds upon which the cessation of the appointment had occurred and the DFSA's investigation.

8.13.4 An Auditor may appeal to the Regulatory Appeals Committee against a decision of the DFSA to withdraw its registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

8.14 Suspension by the DFSA

[Added][VER12/11-06]

Guidance

Under Article 105 of the Regulatory Law, the DFSA may make Rules setting out how and on what grounds registration may be suspended.

8.14.1 The DFSA may suspend an Auditor's registration if it has reasonable grounds to believe that:

- (a) the Auditor is no longer fit and proper; or
- (b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

8.14.2 Subject to Rule 8.14.3, the DFSA may only suspend the registration of an Auditor after it has given to the Auditor:

- (a) a prior written notice setting out the DFSA's reasons for proposing to suspend its registration; and
- (b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed suspension.

8.14.3 Where the DFSA forms the view that any delay likely to arise as a result of having to comply with the requirements in Rule 8.14.2 is likely to be prejudicial to the interests of the DIFC, it may suspend an Auditor's registration immediately. In such circumstances, the Auditor may make representations during the suspension period.

8.14.4 An Auditor may appeal to the Regulatory Appeals Committee in relation to the DFSA's decision to suspend the Auditor's registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

8.14.5 Upon deciding to exercise its powers under Rule 18.14.1, the DFSA must, without delay, inform the Auditor in writing of:

- (a) its decision;
- (b) the reasons for the suspension; and
- (c) the date on which the decision is to take effect and, if known, the duration of the suspension.

Guidance

The decision of the DFSA to suspend an Auditor's registration remains in effect until the appeal is heard and a decision is rendered, unless the Regulatory Appeals Committee orders a stay of the suspension decision.

8.15 Continuing professional development

[Added][VER12/11-06]

8.15.1 An Auditor must ensure that all Employees, including Audit Principals, engaged in audit work undertake continuing professional development in accordance with the requirements of:

- (a) in the case of an Audit Principal, the Recognised Professional Body of which the Audit Principal is a member;
- (b) any applicable internal standards of the Auditor; and
- (c) any direction or order given by the DFSA.

8.16 Anti Money Laundering

[Added][VER12/11-06]

8.16.1 An Auditor must comply with the U.A.E. Federal Law No. 4 of 2002 regarding Criminalisation of Money Laundering.

8.16.2 An Auditor, in relation to its duties as an Auditor of a Domestic Firm or Domestic Fund, must comply with the same anti money laundering requirements in Chapters 5 and 6 of the ASP module. In that Chapter, references to Ancillary Service Providers are to be treated as references to Auditors unless the context requires otherwise.

8.16.3 Rule 5.2.2 of the ASP module does not apply to an Auditor.

8.17 Professional indemnity insurance

[Added][VER12/11-06]

8.17.1 An Auditor must hold adequate professional indemnity insurance covering all civil liability arising in connection with the conduct of the Auditor's business by Employees including its Audit Principals.

8.17.2 An Auditor must, upon request of the DFSA, provide to the DFSA any information relating to the Auditor's professional indemnity insurance policy including the terms and duration of, and any claims made under, such policy.

8.17.3 An Auditor's professional indemnity insurance may be effected with any reputable insurance company or other underwriter provided that the DFSA may require Auditors not to use certain insurance companies or underwriters or forms of insurance cover.

Run-off cover

8.17.4 An Auditor, who intends to cease operations in the DIFC, must make appropriate arrangements to cover its liability in connection with past conduct of the Auditor for a period of at least 2 years.

8.18 Register of Auditors

[Added][VER12/11-06]

8.18.1 The DFSA must maintain a register of Auditors by recording the following information in respect of current and former Auditors:

- (a) full name of the Auditor;
- (b) names of the Audit Principals of the Auditor;
- (c) address of the Auditor;
- (d) contact details of the Auditor;
- (e) date of registration of the Auditor;
- (f) date of withdrawal of registration of the Auditor;
- (g) date of any suspensions of registration applicable to an Auditor; and
- (h) date of cessation of suspension or registration.

9 COMPLAINTS HANDLING AND DISPUTE RESOLUTION

[Added] [RM56][VER19/07-08]

9.1 Application

9.1.1 This chapter applies to an Authorised Firm 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 Firm 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.
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:
 - (i) the contact details of any individual responsible for handling the Complaint;
 - (ii) key particulars of the Authorised Firm's Complaints handling procedures; and
 - (iii) a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11; 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

1. The DFSA considers 7 days to be an adequate period in which an Authorised Firm should be able to acknowledge most Complaints.
2. 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 and provide him with the appropriate contact details upon request.

Guidance

Other avenues for resolution of a Complaint may include an external dispute resolution scheme, arbitration or the DIFC Court.

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.

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 available free of charge 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.

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 recording procedures for Professional Clients

- 9.3.1** An Authorised Firm must have adequate policies and procedures in place for the recording of Complaints made against it by Professional Clients.
- 9.3.2** An Authorised Firm 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 Firm to have in place a suitable Complaints handling procedure for Professional Clients in order to ensure that such Complaints are properly handled and 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.

10 TRANSITIONAL RULES [Added][RM58][VER18/07-08]

10.1 Application

10.1.1 This chapter applies as follows:

- (a) Rule 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 apply to every Person to whom a provision of the Previous Regime applied;
- (b) Rule 10.6.2 applies to a Person who has been authorised to carry on a Financial Service in respect of a Designated Investment as defined in Rule 10.6.1; and
- (c) Rule 10.6.3 applies to a Reporting Entity which has its Designated Investments included in an Official List of Securities of an Authorised Market Institution and to an Authorised Market Institution where its Official List of Securities includes Designated Investments as defined in Rule 10.6.1.

[Amended][RM62][VER22/01-09]

10.1.2 For the purposes of the provisions referred to in Rule 10.1.1(a):

“Commencement Date” means 1 July 2008, the date on which the Current Regime came into force under rule-making instruments No 56 and No.58.

“Current Regime” means the Rules in force on the Commencement Date;

“Previous Regime” means the Rules that were in force immediately prior to the Commencement Date;

“Transitional Rules” mean the Rules in this chapter; and

any specific reference to a module is a reference to that module under the Current Regime, unless otherwise specified.

[Amended][RM62][VER22/01-09]

10.2 General

10.2.1 An Authorised Firm must continue to maintain any records required to be maintained under the Previous Regime as if any such requirements continued to apply.

10.3 Specific relief – COB Module

10.3.1 An Authorised Firm, when carrying on Investment Business, Accepting Deposits, Providing Credit or Providing Trust Services under chapters 3 to 6 of COB:

- (a) may treat a Person as a Professional Client without having to undertake the determination referred to in COB Rule 2.3.1(1) where the Authorised Firm:
 - (i) had determined that Person to be a Client under the Previous Regime, including where such determination had been made under a waiver or modification in force under the Previous Regime; and
 - (ii) carries on the same Financial Service it had carried on with or for that Person under the Previous Regime;
- (b) may treat a Person as a Market Counterparty without having to comply with the requirements in COB Rule 2.3.4(1) if that Person was so treated by the firm under the Previous Regime;
- (c) may, for a period of not more than 6 months after that Commencement Date, distribute marketing material that was produced in accordance with the requirements under the Previous Regime to a Person:
 - (i) to whom it could have distributed such material under the Previous Regime; or
 - (ii) who is a Professional Client pursuant to this Rule or pursuant to COB chapter 2; and
- (d) may carry on a Financial Service with or for a Person without having to comply with COB Rule 3.3.2(1) where the Authorised Firm carries on the same Financial Service it carried on with or for that Person under the Previous Regime and there is a client agreement in force in respect of that service.

10.3.2 (1) An Authorised Firm, when carrying on Insurance Business, Insurance Intermediation or Insurance Management as provided under chapter 7, may treat a Person it had treated as a Commercial Customer under the Previous Regime as a Professional Client without having to undertake the determination referred to in COB Rule 2.3.1(1) to the extent that it carries on the same Financial Service as it had carried on with or for that Person under the Previous Regime.

- (2) For the purposes of (1), a “Commercial Customer” means in relation to an Insurer, Insurance Manager or Insurance Intermediary, a customer who

was an Undertaking or natural person carrying on a trade or business, with or without a view for profit.

10.4 Specific relief – CIR Module

10.4.1 Within a period no later than 6 months after the Commencement Date:

- (a) an Operator of a Fund may make an Offer in respect of a Unit of a Fund it operates by means of a Prospectus that complies with the requirements under the Previous Regime; and
- (b) an Authorised Firm may, for the purpose of complying with the requirements in CIR 3.2.1(1) or 3.4.3(1), make available to a Client a Prospectus in respect of a Unit of a Fund where that Prospectus complies with the requirements under the Previous Regime.

10.5 Specific relief – ISF Module

10.5.1 An Authorised Firm may distribute marketing material without having to comply with the requirements in ISF Rule 2.1.2 provided the marketing material complies with the Previous Regime and is distributed no later than 6 months after the Commencement Date.

10.6 Specific relief – Designated Investments

10.6.1 In this section, the term Designated Investment has the meaning that it had under this module immediately prior to 4 January 2009.

10.6.2 An Authorised Person that is authorised under its Licence to carry on a Financial Service in respect of a Designated Investment may carry on that Financial Service as if that Designated Investment were a Structured Product.

10.6.3 For the purposes of the requirements in OSR and AMI modules, a Designated Investment which is included in an Official List of Securities of an Authorised Market Institution immediately prior to 4 January 2009 is deemed to be a Structured Product.

Guidance

Under Rule 10.6.3, a Reporting Entity which had its Designated Investments included in an Official List of Securities of an Authorised Market Institution prior to 4 January 2009 will be treated as the Reporting Entity of Structured Products. Therefore, OSR and AMI Rules that apply to a Reporting Entity in relation to a Structured Product will apply to that Reporting Entity.

[Added][RM62][VER22/01-09]

APP1 DEPOSITS

A1.1 Definition of a deposit

- A1.1.1** (1) A Deposit means a sum of money paid on terms:
- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the Person making the payment and the Person receiving it; and
 - (b) which is not referable to the provision of property (other than currency) or services or the giving of security.
- (2) In (1) money is paid on terms which are referable to the provision of property or services or the giving of security if:
- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services are not in fact sold, hired or otherwise provided;
 - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) without prejudice to (b), it is paid by way of security for the delivery up of property, whether in a particular state of repair or otherwise.

Exclusions

- A1.1.2** A sum is not a Deposit if it is paid:
- (a) by a Person in the course of carrying on a business consisting wholly or to a significant extent of lending money;
 - (b) by one company to another at a time when both are members of the same Group;
 - (c) by an Authorised Firm authorised under its Licence to carry on the following Financial Services:
 - (i) Accepting Deposits;
 - (ii) Effecting Contracts of Insurance; or
 - (iii) Carrying Out Contracts of Insurance; or

- (d) by a Person who is a close relative of the Person receiving it or who is a director, manager or Controller of that Person.

A1.1.3 A sum is not a Deposit if it is received:

- (a) by a lawyer registered as an Ancillary Service Provider and acting in his professional capacity;
- (b) by an accountant registered as an Ancillary Service Provider and acting in his professional capacity;
- (c) by an Authorised Firm or an Authorised Market Institution authorised under its Licence to carry on any one or more of the following Financial Services:
 - (i) Dealing in Investments as Principal;
 - (ii) Dealing in Investments as Agent;
 - (iii) Arranging Credit or Deals in Investments;
 - (iv) Managing Assets;
 - (v) Operating a Collective Investment Fund;
 - (vi) Effecting Contracts of Insurance;
 - (vii) Carrying Out Contracts of Insurance;
 - (viii) Operating an Exchange;
 - (ix) Operating a Clearing House;
 - (x) Insurance Broking;
 - (xi) Insurance Management;
 - (xii) Managing a Profit Sharing Investment Account; or
 - (xiii) Providing Trust Services. [Added][VER7/01-06]

in the course of or for the purpose of any such Financial Service disregarding any applicable exclusions in chapter 2; or

- (d) by a Person as consideration for the issue by him of a Debenture.

APP2 INVESTMENTS

A2.1 General definition of investments

[Amended][RM62][VER22/01-09]

Investments

- A2.1.1** (1) An Investment is, subject to (3), either:
- (a) a Security; or
 - (b) a Derivative,
- as defined in Rule A2.1.2 or Rule A2.1.3.
- (2) Such a Security or Derivative includes:
- (a) a right or interest in the relevant Security or Derivative; and
 - (b) any instrument declared as a Security or Derivative pursuant to Rule A2.4.1(1).
- (3) Where a Rule provides that a Security or Derivative has a different classification for a specified purpose, it shall have that effect for that specified purpose and no other purpose.

Guidance

An example of the application of Rule A2.1.1 (3) is Rule A2.1.2(2), where a Derivative is treated as a Security for the purposes of the requirements in PIB.

Security

- A2.1.2** (1) For the purposes of Rule A2.1.1(1)(a), a Security is:
- (a) a Share;
 - (b) a Debenture;
 - (c) a Warrant;
 - (d) a Certificate;
 - (e) a Unit; or
 - (f) a Structured Product.
- (2) For the purposes of the requirements in PIB, each Derivative specified in Rule A2.1.3 is to be treated as a Security.

Derivative

A2.1.3 For the purposes of Rule A2.1.1(1)(b), a Derivative is:

- (a) an Option; or
- (b) a Future.

A2.2 Definitions of specific securities

[Amended][RM62][VER22/01-09]

A2.2.1 For the purposes of Rule A2.1.2:

Shares

- (a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

Debentures

- (b) a Debenture is an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:
 - (i) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (ii) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
 - (iii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; and
 - (iv) a Contract of Insurance;

Guidance

1. A Debenture may include a bond, debenture stock, loan stock or note. Certain Islamic products ("Sukuk") structured as a debt instrument can also fall within this definition.
2. If the interest or financial return component on a debt instrument is to be calculated by reference to fluctuations of an external factor such as an index, exchange rate or interest rate, that does not prevent such an instrument being characterised as a Debenture.

Warrants

- (c) a Warrant is an instrument that confers on the holder a right entitling the holder to acquire an unissued Share, Debenture or Unit;

Guidance

A Warrant confers on the holder an entitlement (but not an obligation) to acquire an unissued Share, Debenture or Unit, thereby distinguishing it from a call Option which entitles the holder, upon exercise, to acquire an already issued (i.e. existing) Security.

Certificates

- (d) a Certificate is an instrument:
- (i) which confers on the holder contractual or property rights to or in respect of a Share, Debenture, Unit or Warrant held by a Person; and
 - (ii) the transfer of which may be effected by the holder without the consent of that other Person;

but excludes rights under an Option;

Guidance

Certificates confer rights over existing Shares, Debentures, Units or Warrants held by a Person and include receipts, such as Global Depository Receipts (i.e. GDRs).

Units

- (e) a Unit is a unit in or a share representing the rights or interests of a Unitholder in a Fund; and

Structured Products

- (f) a Structured Product is an instrument comprising rights under a contract where:
- (i) the gain or loss of each party to the contract is ultimately determined by reference to the fluctuations in the value or price of property of any description, an index, interest rate, exchange rate or a combination of any of these as specified for that purpose in the contract (“the underlying factor”) and is not leveraged upon such fluctuations;
 - (ii) the gain or loss of each party is wholly settled by cash or set-off between the parties;

(iii) each party is not exposed to any contingent liabilities to any other counterparty; and

(iv) there is readily available public information in relation to the underlying factor;

but excludes any rights under an instrument:

(v) where one or more of the parties takes delivery of any property to which the contract relates;

(vi) which is a Debenture; or

(vii) which is a Contract of Insurance.

Guidance

1. Instruments previously known as Designated Investments are now included within the definition of Structured Products.
2. The reference in Rule A2.2.1(f)(i) to “property of any description” covers tangible or intangible property, including Securities.

A2.3 Definitions of specific derivatives

[Amended][RM62][VER22/01-09]

A2.3.1 For the purposes of Rule A2.1.3:

Options

(a) An Option is an instrument that confers on the holder, upon exercise, rights of the kind referred to in any of the following:

(i) a right to acquire or dispose of:

(A) a Security (other than a Warrant) or contractually based investment;

(B) currency of any country or territory;

(C) a commodity of any kind;

(ii) a right to receive a cash settlement, the value of which is determined by reference to:

(A) the value or price of an index, interest rate or exchange rate; or

(B) any other rate or variable; or

- (iii) a right to acquire or dispose of another Option under (i) or (ii).

Guidance

1. For example, a call Option confers on the holder, upon exercise, a right but not an obligation to acquire an issued (i.e. existing) Security, thereby distinguishing it from a Warrant which entitles the holder, upon exercise, to acquire an unissued Share, Debenture or Unit.
2. Options over a 'contractually based investment' referred to in Rule A2.3.1(a)(i)(A) covers Options over Futures.
3. Cash settled Options such as Index Options are covered under Rule A2.3.1(a)(ii). Other cash settled Options that are covered under this Rule include instruments which confer rights determined by reference to climatic variables, inflation or other official economic statistics, freight rates or emission allowances.
4. Options over Options are covered under A2.3.1(a)(iii).

Futures

- (b) a Future is an instrument comprising rights under a contract:
 - (i) for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made, and that contract:
 - (A) is made or traded on a regulated exchange;
 - (B) is made or traded on terms that are similar to those made or traded on a regulated exchange; or
 - (C) would, on reasonable grounds, be regarded as made for investment and not for commercial purposes; or
 - (ii) where the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in:
 - (A) the value or price of property of any description; or
 - (B) an index, interest rate, any combination of these, exchange rate or other factor designated for that purpose in the contract; and
- which is wholly settled by cash or set-off between the parties but excludes:
- (C) rights under a contract where one or more of the parties takes delivery of any property to which the contract relates;

- (D) a contract under which money is received by way of deposit or an acknowledgement of a debt on terms that any return to be paid on the sum deposited or received will be calculated by reference to an index, interest rate, exchange rate or any combination of these or other factors; or
- (E) a Contract of Insurance.

Guidance

1. An over the counter (OTC) contract may qualify as a Future under Rule A2.3.1(b)(i)(C) if it can reasonably be regarded as being made for investment and not for commercial purposes. Some of the indicative factors that such a contract is reasonably likely to be made for commercial rather than investment purposes include the following:
 - a. a party to the contract is the producer or a user of the underlying commodity;
 - b. the delivery of the underlying commodity is intended to take place within 7 days of the date of the contract;
 - c. there is no provision made in the contract for margin arrangements; and
 - d. the terms of the contract are not standardised terms.
2. A contract under Rule A2.3.1(b)(i) can provide for the physical delivery of the underlying commodity or property. Further, the price agreed under such a contract can be by reference to an underlying factor, such as by reference to an index or a spot price on a given date.
3. Contracts for differences (CFDs) fall under the definition in A2.3.1(b)(ii) and may include credit default swaps (CDSs) and forward rate agreements (FRAs). More exotic types of Derivative contracts may also fall within the definition in A2.3.1(b)(ii). These can include weather or electricity derivatives where the underlying factor by reference to which the parties' entitlements are calculated can be the number of days in a period in which the temperature would reach below or above a specified level.

A2.4 Financial instrument declared as an investment

[Added][RM62][VER22/01-09]

- A2.4.1** (1) The DFSA may, subject to (5), declare by written notice any financial instrument or class of financial instruments to be a particular type of an existing Security or Derivative as defined in these Rules or a new type of a Security or Derivative. It may do so on such terms and conditions as it considers appropriate.
- (2) The DFSA may exercise the power under (1) either upon written application made by a Person or on its own initiative.

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- (3) Without limiting the generality of the matters that the DFSA may consider when exercising its power under (1), it must consider the following factors:
- (a) the economic effect of the financial instrument or class of financial instruments;
 - (b) the class of potential investors to whom the financial instrument is intended to be marketed;
 - (c) the treatment of similar financial instruments for regulatory purposes in other jurisdictions; and
 - (d) the possible impact of such a declaration on any person issuing or marketing such a financial instrument.
- (4) A Person who makes an application for a declaration under (1) must address, as far as practicable, the factors specified in (3).
- (5) The DFSA must publish any proposed declaration under (1) for public consultation for at least 30 days from the date of publication, except where:
- (a) it declares a financial instrument to be a particular type of an existing Security or Derivative;
 - (b) it determines that any delay likely to result from public consultation is prejudicial to the interests of the DIFC; or
 - (c) it determines that there is a commercial exigency that warrants such a declaration being made without any, or shorter than 30 day, public consultation.

Guidance

1. The terms and conditions that may be imposed on a declaration made by the DFSA under Rule A2.4.1(1) can include who should be the Reporting Entity and the type of disclosure requirements that should apply to that Reporting Entity.
2. If any issuer of a new financial instrument has any doubt as to whether that instrument can be included in an Official List of Securities as a particular type of a Security, that Person should first raise those issues with the relevant Authorised Market Institution before making an application to the DFSA for the exercise of the declaration power under this Rule. The DFSA has a discrete power to object to any proposed inclusion of a Security in an Official List of Securities of an Authorised Market Institution (see Article 17(14) of the Markets Law 2004).



APP3 DELETED

[Amended][VER8/04-06]

APP4 CONTRACTS OF INSURANCE

A4.1 Definition of a contract of insurance

A4.1.1 A Contract of Insurance means any contract of insurance or contract of reinsurance.

A4.1.2 The classes of life insurance are as follows:

Class I – Life and annuity

- (a) Contracts of insurance on human life or contracts to pay annuities on human life, but excluding, in each case, contracts within (c).

Class II – Marriage and birth

- (b) Contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Class III – Linked long term

- (c) Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

Class IV – Permanent health

- (d) Contracts of insurance providing specified benefits against risks of individuals becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that:
- (i) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the individuals concerned, or without limit of time; and
 - (ii) either are not expressed to be terminable by the Insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Class V - Tontines

- (e) Tontines.

Class VI - Capital redemption

- (f) Contracts, other than contracts in (a) to provide a capital sum at the end of a term.

Class VII – Pension fund management

- (g)
 - (i) pension fund management contracts; or
 - (ii) contracts of the kind mentioned in (i) that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

A4.1.3 The classes of non-life insurance are as follows:

Class 1 – Accident

- (a) Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity, or a combination of both, against risks of the Person insured:
 - (i) sustaining injury as the result of an accident or of an accident of a specified class;
 - (ii) dying as the result of an accident or of an accident of a specified class; or
 - (iii) becoming incapacitated in consequence of disease or of disease of a specified class;

inclusive of contracts relating to industrial injury and occupational disease.

Class 2 – Sickness

- (b) Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity, or a combination of the two, against risks of loss to the Persons insured attributable to sickness or infirmity.

Class 3 – Land vehicles

- (c) Contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.

Class 4 – Marine, aviation and transport

- (d) Contracts of insurance:
 - (i) against loss of or damage to railway rolling stock;
 - (ii) upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft;
 - (iii) upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels; or
 - (iv) against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.

Class 5 – Fire and other property damage

- (e) Contracts of insurance against loss of or damage to property, other than property to which classes 3 and 4 relate, due to fire, explosion, storm, natural forces other than storm, nuclear energy, land subsidence, hail, frost or any event, such as theft.

Class 6 – Liability

- (f) Contracts of insurance against risks of the Persons insured incurring liabilities to third parties, including risks of damage arising out of or in connection with the use of motor vehicles on land, aircraft and vessels on the sea or on inland water, including third-party risks and carrier's liability.

Class 7a – Credit

- (g) contracts of insurance against risks of loss to the Persons insured arising from the insolvency of debtors of theirs or from the failure, otherwise than through insolvency, of debtors of theirs to pay their debts when due;

[Amended] [VER15/07-07] [RM46/07]

Class 7b – Suretyship

- (h)
 - (i) contracts of insurance against risks of loss to the Persons insured arising from their having to perform contracts of guarantee entered into by them; or
 - (ii) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee.

[Added] [VER15/07-07] [RM46/07]

Class 8 – Other

- (i) Contracts of Insurance:
 - (i) against risks of loss to the Persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;
 - (ii) against risks of loss to the Persons insured attributable to their incurring unforeseen expense;
 - (iii) against risks of loss to the Persons insured attributable to their incurring legal expenses, including costs of litigation; and
 - (iv) providing assistance, whether in cash or in kind, for Persons who get into difficulties, whether while travelling, while away from home, while away from their permanent residence, or otherwise.



APP 5 [DELETED][VER18/12-07][RM52/07]



APP6 [DELETED][VER18/12-07][RM52/07]