



The DFSA Rulebook

General Module

(GEN)

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1 INTRODUCTION

1.1 Application

- 1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law 2005 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application. [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. Chapter 7 sets out the fees provisions for Authorised Persons, applicants for a Licence and auditors registered with the DFSA. [Amended][VER4/08-05]
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]

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;
- (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; and
- (t) Providing Trust Services. [Added][VER7/01-06]

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.

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]

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

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- (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.

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- (2) The arrangements in (1) include arrangements which do not bring about the transaction.
 - (3) The arrangements in (1)(a) do not include arrangements which amount to Operating an Alternative Trading System. [Added][VER4/08-05]

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, borrower or potential borrower, or in his capacity as agent for an investor or a potential investor, borrower or potential borrower; and
 - (b) is advice on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product (whether as principal or agent); or
 - (c) is advice on the merits of his entering into a particular Credit Facility.
- (2) Advice in (1) includes a statement of 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.

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- (3) 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 In Rule 2.2.2 Operating a Collective Investment Fund means:

- (a) operating, establishing or winding up a Collective Investment Fund;
- (b) acting as the trustee or as the depositary of a Collective Investment Fund;
- (c) acting as the responsible entity or authorised corporate director of a Collective Investment Fund; or

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- (d) acting as the administrator of a Collective Investment Fund, which includes the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds.

2.13 Providing custody

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

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 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.
- (3) In (2) ‘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) The arrangements in (1)(c) include arrangements which do not bring about the transaction.

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, portfolio or fund which is a Profit Sharing Investment Account.

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;

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- (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.
 - (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 2.23.3 the following Persons are exempt from the requirement to hold a Licence in respect of Providing Trust Services:

- (a) a Private Trust Company; or
- (b) an ASP which Provides Legal Services or Accountancy Services.

2.23.3 Under 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.

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]

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) Providing Custody;
- (i) Arranging Custody;
- (j) Effecting Contracts of Insurance;
- (k) Carrying Out Contracts of Insurance;
- (l) Insurance Intermediation; [Amended][VER6/12-05]
- (m) Insurance Management;
- (n) Managing a Profit Sharing Investment Account; and
- (o) Operating an Alternative Trading System. [Added][VER4/08-05]

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- (p) Providing Trust Services. [Added][VER7/01-06]

Guidance

The consequence of Rule 3.2.1 is that no Person may carry on the Financial Service of Providing Money Services or Operating a Collective Investment Fund. The prohibition in respect of Operating a Collective Investment Fund is of a temporary nature and will be in force until the relevant legislation has been drafted and is in effect.

- 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.

3.3 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 ten 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.

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) Principle 10, 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.

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 10 apply to an Authorised Firm with respect to activities wherever they are carried on.

- (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.

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) 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]

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]

5.2 Senior management arrangements

Apportionment of significant responsibilities

- 5.2.1** An Authorised Person must apportion significant responsibilities among its senior management and maintain such apportionment in such a way that:
- (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.

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.
- (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 that ensure that its affairs are managed effectively and responsibly by its senior management.
- (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.
- 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.
- 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.
- 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.

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- (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 staff are:
- (a) fit and proper;
 - (b) appropriately trained for the duties they perform; and
 - (c) trained in the requirements of the legislation applicable in the DIFC.
- (2) An Authorised Firm must establish and maintain systems and controls to comply with (1).

Guidance

When assessing the fitness and propriety of individuals, the Authorised Firm should satisfy itself that the conditions set out in AUT section A1.3 continue to apply as appropriate and should monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.

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:

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

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.

Complaints

5.3.24 An Authorised Person must establish and maintain a register of Customer Complaints and their resolutions. Records of the complaints must be maintained for a minimum of six years.

Guidance

Depending on the nature, size and complexity of its business, it may be appropriate for an Authorised Person to have a suitable complaint handling procedure in place in order to ensure that Customer Complaints are properly handled and that remedial action is taken promptly. Such complaint 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.

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 three days.
- 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.

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. Unless the contrary intention appears, a day or business day refers to:
 - a. in relation to anything done or to be done in (including to be submitted to a place in) the U.A.E. any day which is not a Friday or Saturday or an official U.A.E. bank holiday; and
 - b. in relation to anything done or to be done by reference to a market outside the U.A.E. any day on which that market is normally open for business.

Defined Terms

9. 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 FEES

7.1 Application

7.1.1 This chapter applies to every:

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

7.2 General provisions

7.2.1 Where a fee is payable for any application to the DFSA, the application will not be regarded as submitted until the fee and any supplementary fee has been paid in full.

7.2.2 Where an annual fee or supplementary fee in relation to ongoing supervision is due from any Person under a provision of these Rules, the Person must pay it by the date on which it becomes due. If he fails to do so then, without limiting the right of the DFSA to take any other action, the sum due shall be increased by 1% for each calendar month, or part of a calendar month, that it remains outstanding beyond the due date.

Guidance

If a fee is not paid by the date on which it becomes due, the Person is in breach of a Rule and the DFSA is entitled to take action including, but not limited to, taking steps to withdraw authorisation to conduct one or more Financial Services.

7.2.3 The DFSA may reduce, waive or refund all or part of any fee if it considers that, in the exceptional circumstances of a particular case, it would be equitable to do so.

- 7.2.4**
- (1) The DFSA may require a Person to pay to the DFSA a supplementary fee in circumstances where it expects to incur substantial additional costs in dealing with an application or conducting ongoing supervision.
 - (2) In such cases the DFSA will notify the Person as soon as reasonably possible of the amount of the supplementary fee.

Guidance

1. A supplementary fee may be levied by the DFSA because it expects that certain applications will require more intensive scrutiny than others. An example is where the entity is a Branch from a jurisdiction where there are not or are not expected to be in place arrangements for co-operation between the DFSA and the relevant regulators in that jurisdiction. Equally, where the entity is incorporated in the DIFC, a full analysis of the prudential and systems arrangements will be required.
2. A supplementary fee may also be levied by the DFSA in cases where the ongoing supervision of the Authorised Person appears to the DFSA to be likely to cause it to incur substantial additional costs.

7.3 Application fees**7.3.1** The following Persons:

- (a) an applicant for a Licence; and
- (b) an Authorised Person applying for authorisation to carry on an additional Financial Service,

must pay to the DFSA:

- (c) the applicable fee specified in section A5.2 or A5.3 as appropriate; and
- (d) any supplementary fee required by the DFSA.

7.3.2 An applicant for registration as an auditor with the DFSA must pay to the DFSA the applicable fee specified in App6.**7.4 Annual fees****7.4.1** An Authorised Person must pay to the DFSA:

- (a) the applicable fee specified in section A5.4; and
- (b) any supplementary fee required by the DFSA.

7.4.2 An auditor registered with the DFSA must pay to the DFSA the applicable fee specified in App6.

- 7.4.3** (1) The initial annual fee must be paid in full to the DFSA within 21 days of the date on which the Licence or registration is granted.
- (2) Subsequent annual fees must be paid in full to the DFSA on or before 1 January of any calendar year.

Guidance

In regard to the payment of an annual fee on or before 1 January, invoices will be issued at least 21 days before that date.

7.5 Fees to maintain an official list of securities

- 7.5.1** An Authorised Market Institution, or an applicant to be an Authorised Market Institution must, to maintain an Official List of Securities, pay to the DFSA the applicable application and annual fees in section A5.5. [Added[VER3/04-05]

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.

8.2 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;

- 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 three days, in hard copy and in English.

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 appendix 7 or PIN chapter 6 as applicable.

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.

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;

- (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 9 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 9 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 9 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;

- (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 chapter 14;
 - (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 chapter 14 have not been met;
 - (iv) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Insurance Monies in accordance with COB chapter 14 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;

- (f) produce, if the Authorised Firm Provides Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business 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.

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 Auditor registration and qualification

8.7.1 An auditor applying for registration must use the appropriate form in PFN, supported by such additional material as may be required by the DFSA and pay the prescribed fee in App6.

8.7.2 Before the DFSA grants registration as an auditor, an applicant must satisfy the DFSA that it:

- (a) is fit and proper to be registered as an auditor taking into account the applicant's:
 - (i) background and history;
 - (ii) ownership and Group; and
 - (iii) resources;
- (b) has adequate professional indemnity insurance which provides cover in respect of work undertaken in the DIFC; and
- (c) meets any other requirements prescribed by the DFSA.

8.7.3 An auditor must pay the annual fee prescribed in App6 to remain registered as an auditor.

- 8.7.4** (1) An auditor must file with the DFSA:
- (a) at the time of filing an application for registration; and
 - (b) at the time of payment of the annual fee or by such later time that the DFSA may direct;

an assessment completed within the preceding three months by an independent body and addressing such matters relating to the auditor as notified by the DFSA.

- (2) If upon receiving an annual assessment the DFSA forms the view that the auditor is no longer fit and proper to be on the register of auditors, the DFSA may cancel the registration of the auditor.
- (3) The auditor must pay for the services of the independent body in (1).

8.7.5 If, at any time after registration, an auditor no longer meets the requirements for registration as an auditor, the auditor must immediately inform the DFSA in writing.

8.8 Register of auditors

8.8.1 The DFSA will maintain the register of auditors by recording the following information in respect of current and former registered auditors:

- (a) full name;
- (b) address;
- (c) date of registration as auditor with the DFSA; and
- (d) date of cessation of registration as auditor.

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;

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- (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

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

App2 INVESTMENTS

A2.1 Definition of an investment

A2.1.1 An Investment means:

Shares

- (a) a share or stock in the share capital of any Body Corporate (wherever incorporated) or any unincorporated body but excluding a Unit in a Collective Investment Fund;

Debentures

- (b) a debenture or other instrument creating or acknowledging indebtedness, including but not limited to:
- (i) a debenture;
 - (ii) debenture stock;
 - (iii) loan stock;
 - (iv) a bond; or
 - (v) a certificate of deposit;

but excluding:

- (vi) 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;
- (vii) 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);
- (viii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; and
- (ix) a Contract of Insurance;

Warrants

- (c) a warrant or other instrument entitling the holder to subscribe for any investment of the kind specified by (a) or (b);

Certificates

- (d) a certificate, receipt or other instrument which confers contractual or property rights (other than rights of the type described in (e)):
 - (i) in respect of any investment of the kind specified by (a), (b) or (c), being an investment held by a Person (the first Person) other than the Person on whom the rights are conferred by the certificate, receipt or instrument (the second Person); and
 - (ii) the transfer of which may be effected without the consent of that second Person;

Options

- (e) an option to acquire or dispose of:
 - (i) a Security or contractually based investment;
 - (ii) currency of any country or territory;
 - (iii) commodities of any kind; or
 - (iv) an option to acquire or dispose of an investment of the kind specified by this paragraph by virtue of (a), (b) or (c);

Units

- (f) a unit in or a share in a Collective Investment Fund;

Futures

- (g) rights under a future or other 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, but excluding rights under any contract which is made for commercial purposes and which is not subject to the rules of a regulated exchange; 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, 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 excluding rights under:

- (C) 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 on terms that any return to be paid on the sum deposited will be calculated by reference to an index, interest rate, exchange rate or other factor; or
- (E) a Contract of Insurance; or

Rights and interests

- (h) any right to or interest in anything which is specified by any of (a) – (g).

Designated Investment [Added][VER5/09-05]

- (i) rights under any contract where:
 - (i) the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in an index of Shares;
 - (ii) the index referred to is acceptable to the DFSA;
 - (iii) the contract is wholly settled by cash or set-off between the parties but excludes rights under:
 - (A) a contract where one or more of the parties will or may take delivery of any property to which the contract relates;
 - (B) a contract under which money is received by way of deposit on terms that any return to be paid on the sum deposited will be calculated by reference to an index, interest rate, exchange rate or other factor; or
 - (C) a Contract of Insurance
 - (iv) the rights under the contract are such as to ensure that the profit or loss of either party is proportioned directly to the fluctuations in question, and not leveraged upon them; and

- (v) the holder of the rights under the contract is not exposed to contingent liabilities with any counterparty.

Guidance [Added][VER5/09-05]

The DFSA will determine an index is acceptable based on, but not limited to, whether:

- (a) the index of shares is broad-based;
- (b) the shares constituting the index are traded on one or more recognised exchanges; and
- (c) information concerning the composition, weighting and calculation of the index is publicly available.

A2.1.2 A Designated Investment is excluded from being an Investment of a type specified under (a) to (h) of Rule A 2.1.1.

[Added][VER5/09-05]

App3 COLLECTIVE INVESTMENT FUNDS

A3.1 Definition of a collective investment fund

- A3.1.1** (1) A Collective Investment Fund means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable Persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the Persons who are to participate (participants) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.
- (3) The arrangements must also have either or both of the following characteristics:
- (i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
 - (ii) the property is managed as a whole by or on behalf of the operator of the fund.
- (4) If arrangements provide for such pooling as is mentioned in (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment fund unless the participants are entitled to exchange rights in one part for rights in another.

Exclusions

A3.1.2 Arrangements in Rule A3.1.1 is not a Collective Investment Fund if:

- (a) the whole amount of each participant's contribution is a Deposit which is accepted by an Authorised Firm authorised under its Licence to carry on the Financial Service of Accepting Deposits;
- (b) (i) the arrangements are arrangements under which the rights or interests of participants are rights or interests in money held in a common account; and

- (ii) the money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied in making payments to him or in satisfaction of sums owed by him or in the acquisition of property for him or the provision of services to him;
- (c) each of the participants carries on a business which does not involve any activities in Rule 2.2.2(d) to (k) or (n) to (q) or activities which would be apart from any applicable exclusion and enters into the arrangement for commercial purposes related to that business except where the participant would carry on the business in question by virtue of being a participant in the arrangement;
- (d) each of the participants is a Body Corporate in the same Group as the operator;
- (e) the arrangements are franchise arrangements;
- (f) the purpose is the provision of clearing services and the services are operated by an Authorised Market Institution;
- (g) the rights or interests of the participants are Investments of the kind specified under Rule A2.1.1(d);
- (h) the rights or interests of the participants are time share rights; or
- (i)
 - (i) a predominant purpose of the arrangements is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and
 - (ii) the property to which the arrangements relate does not consist of the currency of any country or territory and does not consist of or include any Investment of the kind specified in Rule A2.1.1 or which would be of such a kind apart from any applicable exclusion.

A3.1.3 Arrangements in Rule A3.1.1 is not a Collective Investment Fund if:

- (a) the arrangements are arrangements under which the rights or interests of the participants are represented by the following:
 - (i) Debentures which are issued by a single Body Corporate which is not an open-ended investment company or which are issued by a single issuer which is not a Body Corporate and are guaranteed by the government of any country or territory;

- (ii) Debentures falling within (i) which are convertible into or exchangeable for Shares provided that those Shares are issued by the same Person as issued the Debentures falling within (i) or issued by a single other issuer;
 - (iii) Debentures issued by the same government or public authority; or
 - (iv) Warrants which are issued otherwise than by a Collective Investment Fund and which confer rights in respect of Shares or Investments, falling within (i), (ii) or (iii), issued by the same issuer; or
- (b) the arrangements are arrangements which would fall within (a) were it not for the fact that the rights or interests of a participant (counterparty) whose ordinary business involves him engaging in activities which fall within chapter 2 or would do so apart from any applicable exclusions or include rights or interests under a swap agreement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether any particular amount or currency or at a particular time or rate of interest or any combination of those things, being an arrangement under which:
- (i) the counterparty is entitled to receive amounts, whether representing principal or interest, payable in respect of any property subject to the arrangement or sums determined by reference to such amount; and
 - (ii) the counterparty makes payments, whether or not all of the same amount and whether or not in the same currency as those referred in (i), which are calculated in accordance with agreed formula by reference to the amounts or sums referred to those amounts or sums.

A3.1.4 A Contract of Insurance is not a Collective Investment Fund.

A3.1.5 (1) A Body Corporate is not a Collective Investment Fund unless it is a closed-ended or open-ended company operated for collective investment purposes.

(2) A Partnership, whether or not it is in the form of a limited partnership, is not a Collective Investment Fund unless it is operated for collective investment purposes.

A3.1.6 Arrangements do not amount to a Collective Investment Fund if the arrangements constitute an account, portfolio or fund which is a Profit Sharing Investment Account.

Guidance

Whether closed ended investment companies and investment trusts will remain to be classified Collective Investment Funds is dependant upon the Rules to be made under the Markets Law 2004. It is anticipated that those Rules will be in force by December 2004.

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 7 – Credit and suretyship

- (g)
 - (i) 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;
 - (ii) 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

- (iii) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee.

Class 8 – Other

- (h) 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 FEES

A5.1 Fees table

A5.1.1 The fees table.

[Amended] [VER2/10-04] [Amended]VER3/04-05] [Amended]VER4/08-05]

(a)	Accepting Deposits or Providing Credit	\$50,000
(b)	Dealing in Investments as Principal	\$30,000
(c)	<ul style="list-style-type: none"> (i) Dealing in Investments as Agent; or (ii) Arranging Credit or Deals in Investments; or (iii) Managing Assets; or (iv) Advising on Financial Products or Credit; or (v) Providing Custody; or (vi) Arranging Custody; or (vii) Insurance Broking; or (viii) Insurance Management; or (ix) Effecting Contracts of Insurance or Carrying out Contracts of Insurance: <ul style="list-style-type: none"> (A) where the applicant is intending to carry on business as a Captive Insurer; or (B) where the Authorised Firm is carrying on business as a Captive Insurer; or 	\$10,000

<ul style="list-style-type: none"> (x) Managing a Profit Sharing Investment Account; or (xi) Providing Trust Services. [Added][VER7/01-06] 	
<ul style="list-style-type: none"> (d) Operating an Alternative Trading System. 	\$30,000
<ul style="list-style-type: none"> (e) Effecting Contracts of Insurance or Carrying out Contracts of Insurance: <ul style="list-style-type: none"> (i) where the applicant is not also intending to carry on business as a Captive Insurer; or (ii) where the Authorised Firm is not carrying on business as a Captive Insurer. 	\$50,000

A5.2 Fees in relation to an application for a licence

A5.2.1 An applicant applying for a Licence authorising it to carry on one or more Financial Services specified in the left hand column of the fees table in Rule A5.1.1 must pay:

- (a) the highest of the corresponding fees in the right hand column of the fees table; plus
- (b) \$1,000 for each individual for whom Authorised Individual status is sought, subject to a maximum amount of \$50,000 for such individuals.

A5.2.2 An applicant applying for a Licence authorising it to carry one or more of the Financial Services of Operating an Exchange and Operating Clearing House must pay to the DFSA:

- (a) for Operating an Exchange an application fee of \$125,000;
- (b) for Operating a Clearing House an application fee of \$125,000; and
- (c) for Operating an Exchange and Operating a Clearing House an application fee of \$250,000.

[Added][VER3/0405]

A5.2.3 An applicant under Rule A 5.2.2(a) or (c) seeking an endorsement to its Licence authorising it to maintain an Official List of Securities must pay to the DFSA an additional application fee of \$100,000. [Added][VER3/0405] [Amended][VER4/0805]

A5.3 Fees in relation to an application to carry on additional Financial Services

A5.3.1 An Authorised Firm applying for authorisation to carry on additional Financial Services must pay a fee equal to the difference between:

- (a) the basic fee which would be payable under Rule A5.2.1(a) if it were an applicant for a Licence in the terms currently being sought; and
- (b) the basic fee which would be payable under Rule A5.2.1(a) if it were an applicant for a Licence in the terms of that currently held.

A5.3.2 An Authorised Market Institution applying for authorisation to carry on an additional Financial Service must pay:

- (a) a fee of \$125,000 for the Financial Service of Operating a Clearing House; or
- (b) a fee of \$125,000 for the Financial Service of Operating an Exchange.

[Amended][VER3/0405]

A5.4 Annual Fees

Initial annual fee for Authorised Firms and Authorised Market Institutions

- A5.4.1**
- (1) An Authorised Firm or Authorised Market Institution must pay to the DFSA an initial annual fee for the initial period of regulation after the grant of its Licence.
 - (2) The initial annual fee is the fee which was payable at the time of its application for the Licence, multiplied by the number of whole calendar months between the date of the grant of the Licence and the end of the year and divided by 12.

Subsequent annual fees for Authorised Firms

- A5.4.2** (1) An Authorised Firm must pay to the DFSA a standard annual fee for any period of regulation after the period described in Rule A5.4.1.
- (2) The standard annual fee is:
- (a) the highest of the fees specified in the right hand column of the fees table corresponding to the Financial Services which the Authorised Firm is authorised to carry on under its Licence; plus
 - (b) \$1,000 for each Authorised Individual employed by the Authorised Firm at 30 September in the previous year, or on the date of the grant of its Licence, whichever is the later; plus
 - (c) \$1,000 for each complete \$1,000,000 of turnover, where turnover has the meaning given in Rule A5.4.3.
- (3) The total standard annual fee payable is subject to a maximum total amount of \$150,000.

- A5.4.3** (1) For the purposes of this appendix, and subject to (2) and (3) 'turnover' means:
- (a) in the case of an Authorised Firm to which PIB applies, gross fees and commissions, plus realised gains on the Authorised Firm's Trading Book, if any, plus net interest received, in respect of business carried on in or from the DIFC; or
 - (b) in the case of an Authorised Firm to which PIN applies, Gross Written Premium in respect of business carried on in or from the DIFC;

for the last financial year for which the Authorised Firm has submitted regulatory returns to the DFSA.

- (2) If the last financial year referred to in (1) was not twelve months in duration, the turnover figure shall be increased or decreased on a pro rata basis to produce an equivalent twelve month figure.
- (3) If the Authorised Firm has not yet submitted any regulatory returns to the DFSA, the turnover figure shall be that forecast in the most recent business plan submitted to the DFSA for the period including 1 January of the year for which the fee is to be charged.

Subsequent annual fees for Authorised Market Institutions

- A5.4.4** (1) An Authorised Market Institution carrying on the Financial Service of Operating an Exchange must pay to the DFSA an annual fee of \$60,000.
- (2) An Authorised Market Institution carrying on the Financial Service of Operating a Clearing House must pay to the DFSA an annual fee of \$60,000.
- (3) An Authorised Market Institution carrying on both of the Financial Services of Operating an Exchange and Operating a Clearing House must pay to the DFSA an annual fee of \$120,000.

[Added][VER3/0405]

- A5.4.5** An Authorised Market Institution maintaining an Official List of Securities must pay to the DFSA an annual fee of \$50,000. [Added][VER3/0405]

App 6 FEES

A6.1 Fees table

A6.1.1 The fees table.

Upon receipt by the DFSA of:	
(a) Application for registration of auditor	\$5,000
(b) Annual fee for registration as an auditor	\$2,000