



# **Key Policy Review - the outcome**

**External Presentation given to  
Firms on 28 and 29 April 2008**

# Introduction



# The current position

- CP52 published 4 December
- CP53 and CP54 published in January
- Rules now made by Board
- Come into effect 1 July
- Transitional arrangements

# Main changes in consultation

- Treatment as a Market Counterparty
- Employees as Professional Clients
- Licence endorsement to do retail business
- Outsourcing and delegation of Fund activities
- Referral fees and the inducement prohibition
- Numerous smaller and drafting changes



# **Main changes in consultation**

**Please read the final version**

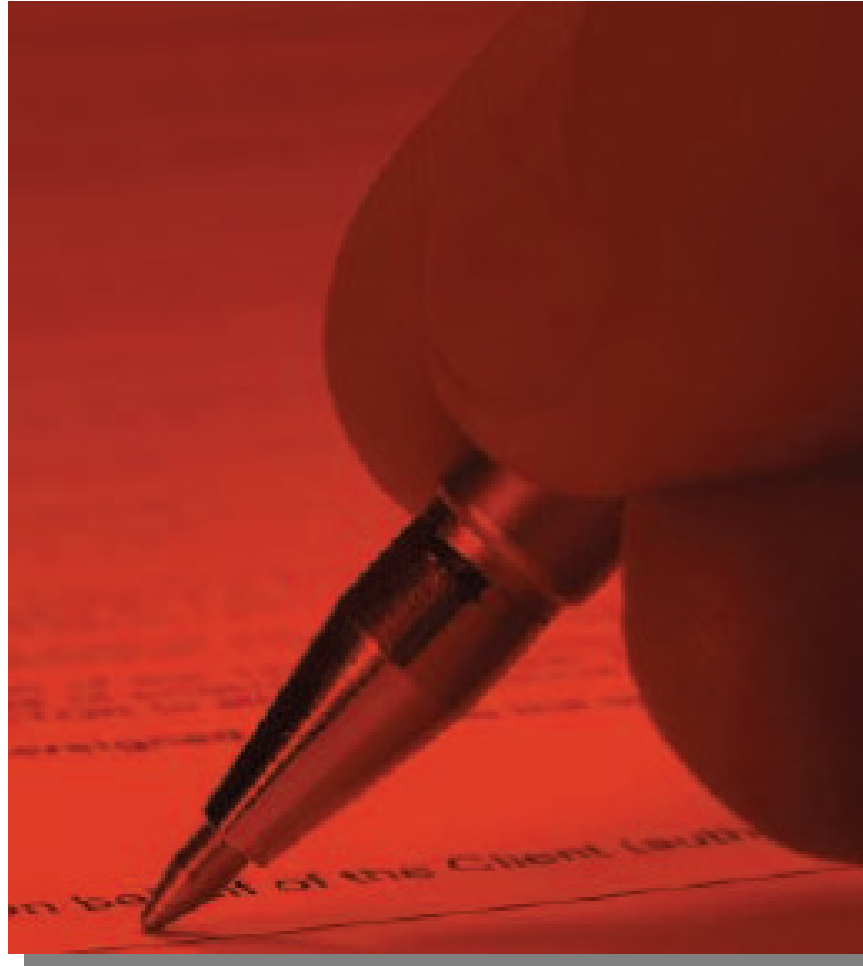
# General approach

- Firms can deal with Professional Clients with substantially the present regime...
- ...or Retail Clients with additional protections
- High level compatibility with MiFID
- More principle-based
- Respect Federal Law restrictions

# Key documents

- Rulemaking Instruments
- Summary of comments, with destination tables
- Leaflet

# Who is a Client?





# Client Overview

- Two types of Client: Retail and Professional
- Some classes of Professional Client may be treated as Market Counterparties

# Who is a Professional Client?

- A Person who has:
  - net assets (direct or indirect) of at least \$500,000; OR
  - been employed in the previous 2 years by the Authorised Firm OR another Authorised Firm in a professional capacity; AND
  - sufficient experience and understanding of relevant instruments, markets and risks; AND
  - not elected to be treated as a Retail Client
- A Client can be Professional in some circumstances and Retail in others

# PIV to be classified as Professional Client

- A personal investment vehicle can be classified as a Professional Client if it is used for managing the investment portfolio of an existing Professional Client
- No need to meet the net asset test

# Who is a Market Counterparty?

- A sub-set of Professional Clients
- Assumed to possess necessary expertise
- Notification required, with a right to object, in most cases
- Prior express consent required in other cases
- Some important changes from CP52 – new groups, notification versus written consent

# When does firm determine if a Person is a Professional Client?

- Before carrying on a Financial Service – except if Firm:
  - refers the Person to another Authorised Firm or regulated entity; or
  - gives generic advice
- Can treat as Retail without conducting classification

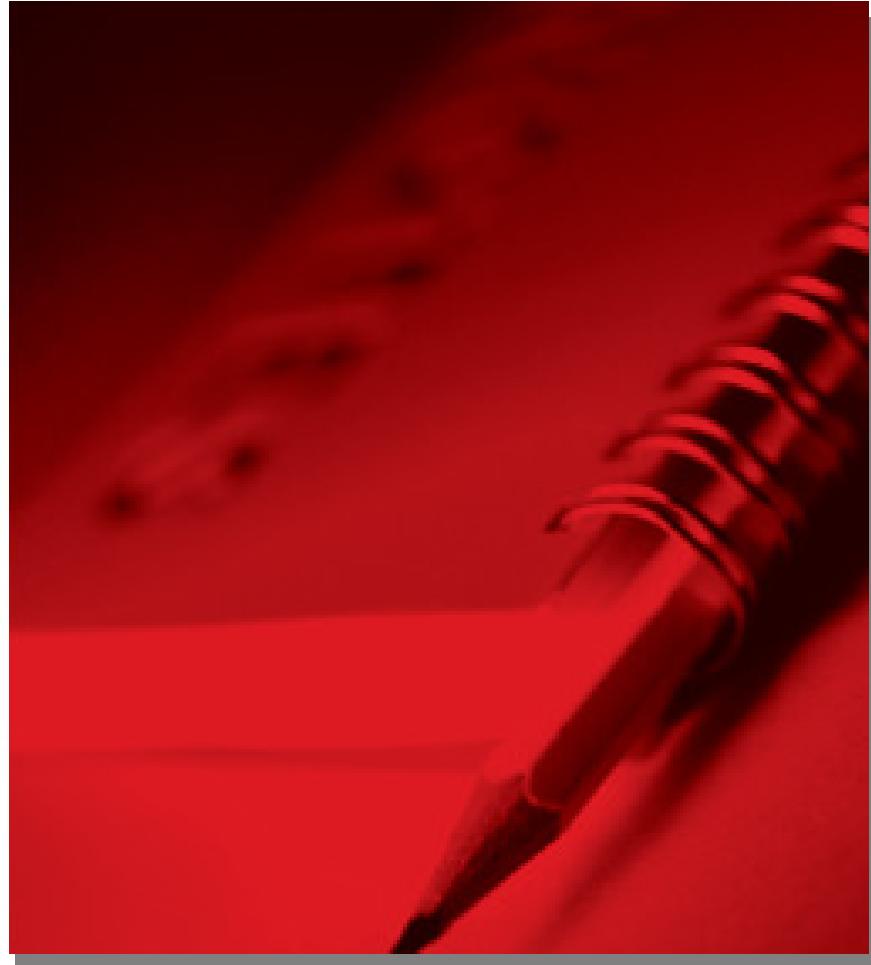
# Qualified Investors and Commercial Customers

- “Qualified Investor” and “Commercial Customer” concepts abolished
- Replaced by Professional/Retail structure

# Offers of securities

- An Exempt Offer – only to a Professional Client
- A Prospectus Offer – can be made to both Professional and Retail Clients

# The Client Relationship





# Who can deal with Retail Clients?

- Any Authorised Firm:
  - willing to provide the additional protections;
  - with Retail Endorsement on its licence
- No Accepting Deposits from Retail Clients
- Credit can only be given to Undertakings for business purposes

# Enhancements for Retail Clients

- Strengthened financial promotions regime – eg past performance and forecasts
- Prior disclosures – Client Agreement
- Suitability assessment – no opting out for Retail Clients
- Internal complaints handling procedures

# Marketing Materials (Retail)

Forecasts and projections must:

- present a “fair and balanced view”
- identify information source
- include warnings

# Client Agreements

- A tailored content of Client Agreement:
  - Retail Clients – more detail
  - Professional Clients – less detail
- Other enhancements:
  - All Clients get key information in good time to make a considered decision

# Suitability

- Same suitability test for Direct Long-Term Insurance, Investments and Trust Services
- Same suitability assessment process
- Mandatory for Retail Clients
- Professional Clients can opt out (same as now)
- For General Insurance:
  - firms must take reasonable steps to ensure suitability
  - applies only to Retail Clients

# Conflicts of Interest

- Substantially the same conflicts of interest provisions
- Inducements – brought under Conflicts of Interests
- Firm must disclose commissions and other benefits to Retail Clients
- Guidance on referral commissions
- Soft dollar benefits – same criteria as before

# Internal Complaints Handling for Retail Clients

- Fair, consistent and prompt handling of Complaints
- Details in Client Agreement and at point of Complaint

# Collective Investments





# Domestic Funds

- Public Funds – open to all Clients (incl Retail)
- Private Funds – only to Professional Clients, by private placement and limited to 100 investors

# Removal of Restrictions on Activities

- Restriction removed – for asset pricing and fund valuation, issue and redemption and Unit register to be in the DIFC
- Delegation of Fund Administration – only to a firm in Zone 1 or Rec Jurisdiction if a Public Fund – No restriction for Private Funds
- Delegation of Managing Assets – only to a firm authorised in Zone 1 or Rec Jurisdiction
- Changes made in consultation

# Approval to Delegate

- No DFSA prior approval required for delegation of activities
- Firm must carry out due diligence
- Revised requirements for outsourcing and delegation agreements

## Other Fund-related changes

- Reduced base capital for custodians – from \$10 million to \$4 million
- Supplementary Prospectuses encompass replacement prospectus
- 12 month end dates for Prospectuses (where units still on offer)
- Replace single property fund prohibition with disclosure regime
- Replace Shari'a Board conflicts prohibition with a disclosure regime
- Marketing of Foreign Funds broadly aligned with new Domestic Funds regime

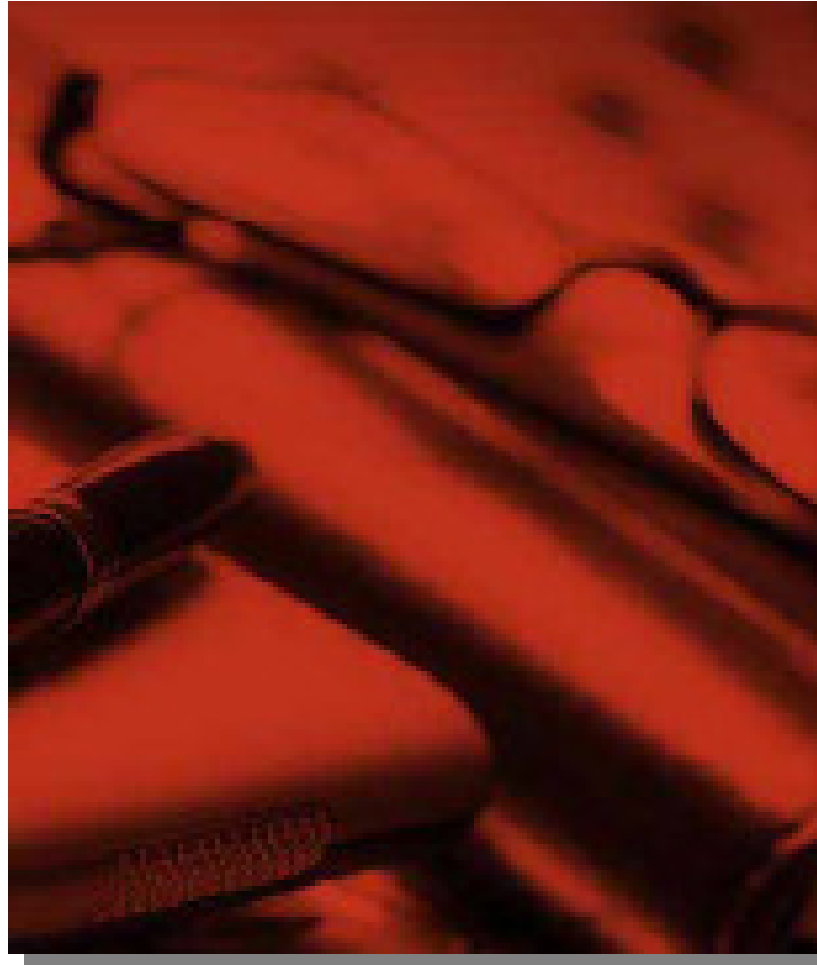
# Other Key Changes



# Other Key Changes

- Enhanced training and competency provisions
- Some restructuring of the Rulebook, especially COB and CIR
- Technical changes to Financial Services definitions
- Islamic Prudential rules

# Transition



# Transitional relief

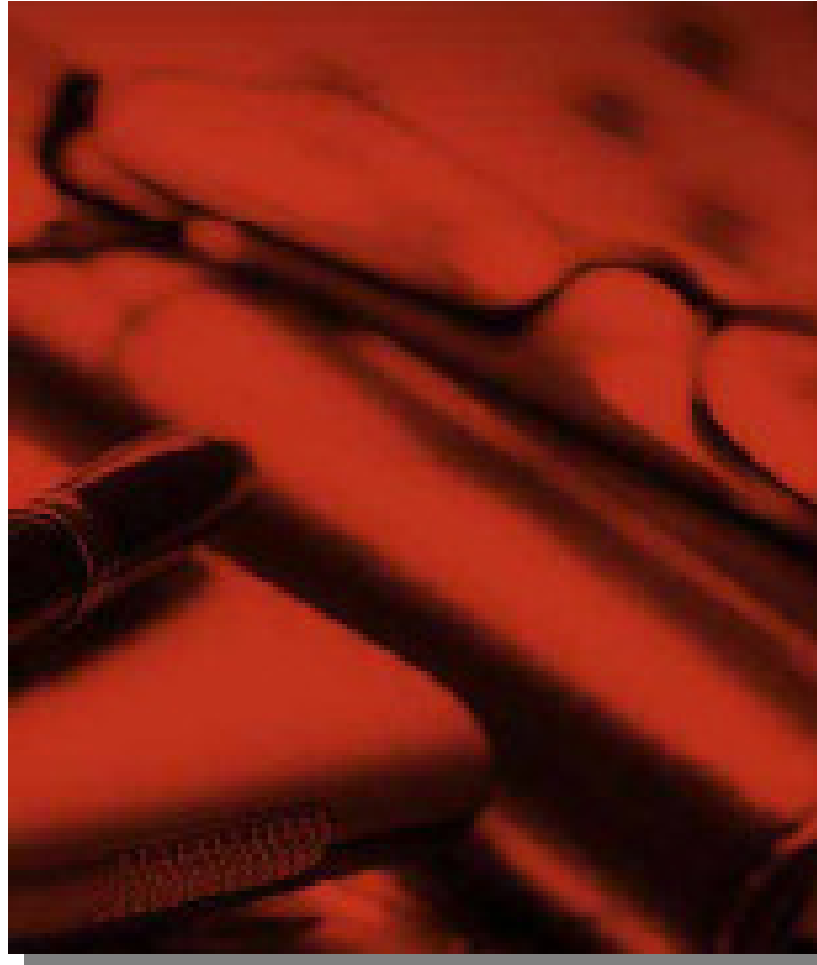
- Objective: to ensure firms could continue existing business as before
- Found in GEN Module
- Covers requirements in COB, CIR and ISF modules
- Grandfathering of existing relief eg client modification



# Details of transitional relief

- No Client classification required for existing Clients – must provide the same service as before
- No notice/consent for Market Counterparty treatment – for dealing with existing Market Counterparties
- No new Client Agreement required – for dealing with existing customers
- Can distribute existing marketing material and Prospectuses for 6 months after implementation – to same clientele as before
- Can treat existing Commercial Customers as Professional Clients without Client classification

# Implementation



# Retail Endorsement – Existing Firms

- To provide Financial Services to Retail Clients an Authorised Firm must obtain an endorsement on its licence
- Application for endorsement
  - No application fee
  - DFSA has absolute discretion to grant/refuse to grant
  - Can appeal the DFSA decision to Regulatory Appeals Committee

# Applying for an Endorsement

- AFN SUP 5
- Two questions tailored to nature, scale and complexity
- Processing target 15 days
- Applicants must describe changes, if any, to:
  - Regulatory business plan
  - Policies and procedures
  - Systems and controls

# Complaints Handling

- Adequate policies and procedures to ensure fair, consistent and prompt handling of Complaints
  - Client must be made aware of these policies and procedures
  - Should be available free-of-charge to any Retail Client upon request
  - Must inform Retail Client of any other avenues for redress if not resolved
- Ensure Complaint handling staff have adequate training and competencies, as well as impartiality and sufficient authority

# Client Agreements

- Ensure adherence to prescribed requirements under App 2 of COB, for instance inclusion of key particulars of Complaints handling procedures

# Suitability

- Same suitability test applies
- Procedures to assess the Retail Clients' needs and objectives, financial situation, knowledge and risk tolerance
- Ensure information obtained from Client is accurate, complete and up-to-date

# Marketing material

- Policies and procedures to ensure that the marketing material complies with enhanced applicable rules



# Conflicts of Interest

- Procedures to ensure timely and adequate disclosure of fees, commissions, and other charges to Retail Clients
  - An option to Client to obtain more detailed information upon request

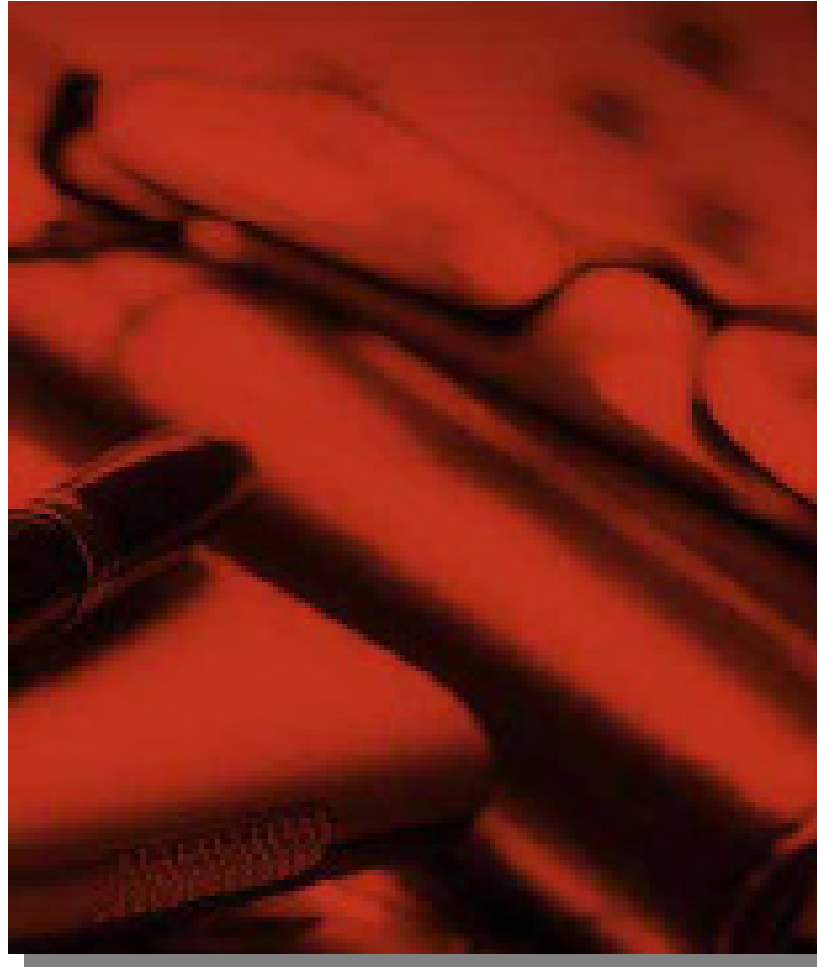
# Staffing and Training

- Ensure employees are competent and capable with respect to providing Financial Services to Retail Clients
- Identify current and ongoing training needs of staff

# Other key requirements

- Mandatory segregation of Client Money and/or Client Assets for Retail Clients
- Record keeping requirements are the same
- Marketing of funds: New CIR F3 form replacing COB1 form and reporting requirement reduced to yearly from quarterly

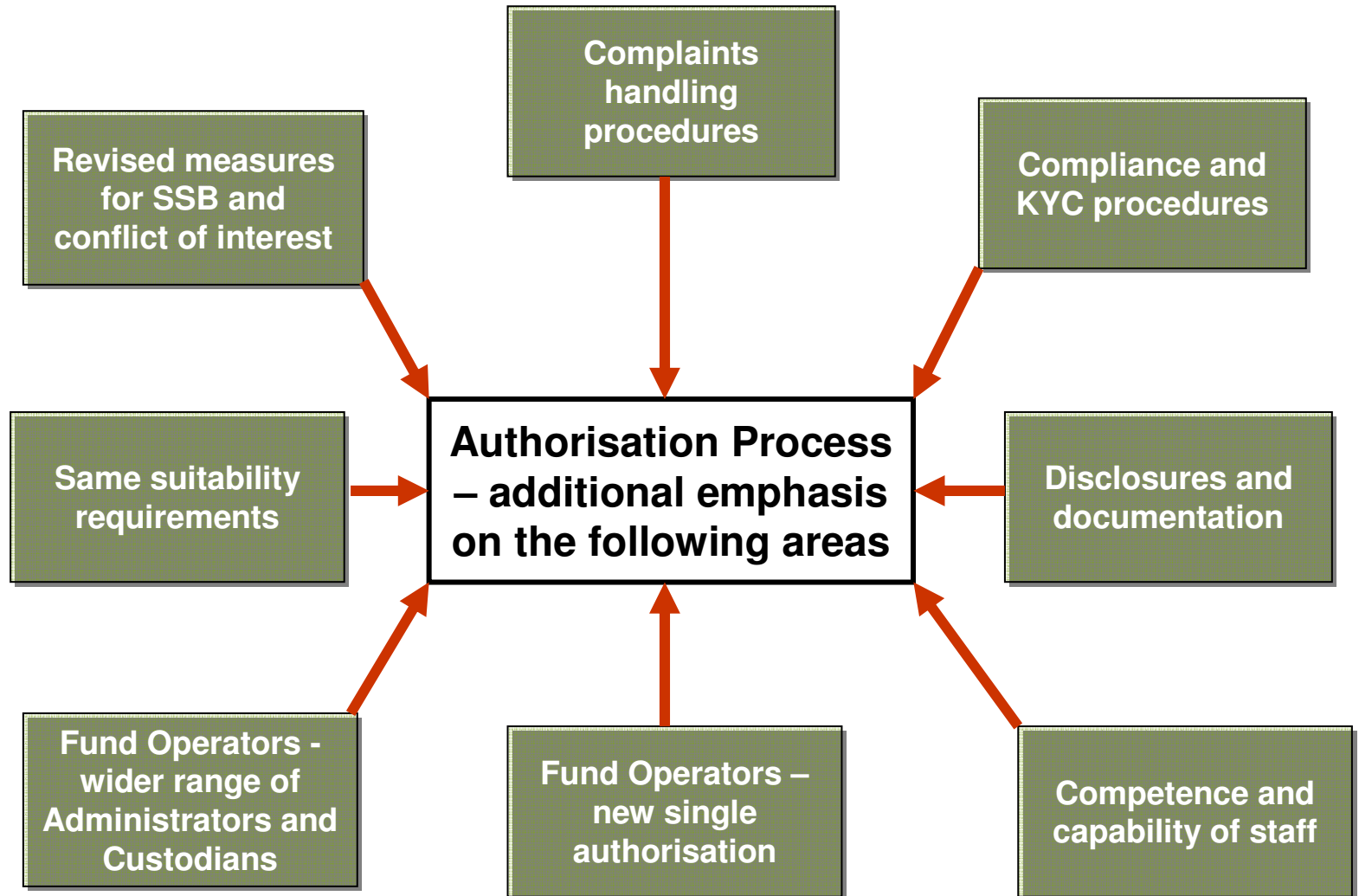
# The Authorisation Perspective



# The Authorisation perspective (1)

- For applicants, no change in our basic approach and supporting process
- We have, however, updated certain questions in the Authorisation Core Form and business specific forms
- Generic questions remain unchanged, but may require an expanded response where Retail Clients are concerned
- Please read important new guidance in AUT CORE Form concerning firms wishing to obtain the “Retail Endorsement”

# The Authorisation perspective (2)



## The Authorisation perspective (3)

- For firms wishing to revise applications already in progress, please:

Read the new guidance in the AUT CORE form  
(available on the DFSA's website)

Contact your Authorisation Case Manager who  
will identify those questions where you may need  
to provide a revised response

Note that if additional information needs to be  
reviewed and considered your application may  
take longer

Note that existing applicants with "In Principle"  
approval may require re-assessment if they are  
adding a proposal to do business with Retail  
Clients

# Questions?

