

## ANNEX C

This Annex sets out the proposed amendments to the COB module.  
In this Annex, underlining indicates new text.

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# The DFSA Rulebook

Conduct of Business Module

**(COB)**

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## 1 INTRODUCTION

### 1.1 Application

1.1.1 This module (COB) applies to every Authorised Firm with respect to the carrying on in or from the DIFC of:

- (a) any Financial Service, except to the extent that a provision of COB provides for a narrower application; and
- (b) any activity, which is in connection with or for the purposes of a Financial Service, to the extent specified in any provision of COB.

### 1.2 General

#### Guidance

This module is divided into six parts:

- a. COB part 1 prescribes certain restrictions in respect of the conduct of Insurance Business, Investment Business, Banking Business, Insurance Intermediation Business and Providing Trust Services pursuant to Article 42(1) of the Regulatory Law 2004.
- b. COB part 2 deals with the conduct of Investment Business, that is, the relationship between the Authorised Firm and its Clients and how business is to be conducted with its Clients. The term Client includes Persons who are Market Counterparties. In their wholesale dealings, Market Counterparties do not expect nor require the same degree of protection as is afforded to Clients that are not Market Counterparties. Such dealings are mutually self-disciplining and Market Counterparties are expected to take responsibility for their own actions and decisions. Consequently, in their dealings with Market Counterparties, Authorised Firms are not required to comply with all the provisions of COB part 2, the sections which are not applicable are outlined in section 5.1.
- c. COB part 3 deals with the conduct of Insurance Intermediation Business, that is, the relationship between the Authorised Firm and its Commercial Customers and how business is to be conducted with its Commercial Customers.
- d. COB part 4 deals with the conduct of Insurance Business, that is, the relationship between the Authorised Firm and its Commercial Customers and how business is to be conducted with its Commercial Customers.
- e. COB part 5 contains additional Rules in relation to Operating Alternative Trading Systems.
- f. COB part 6 deals with the conduct of Providing Trust Services by a Trust Service Provider to its Clients.



### **3 INVESTMENT BUSINESS AND BANKING BUSINESS**

#### **3.1 Application**

**3.1.1** This chapter applies to an Authorised Firm intending to conduct, in or from the DIFC, Investment Business or Banking Business with or for a Person.

**3.1.2** For the purposes of this chapter, Person includes a Collective Investment Fund, even if it does not have a separate legal personality.

#### **3.2 Restrictions**

**3.2.1** (1) An Authorised Firm must ensure that it does not conduct Investment Business, Banking Business or Provide Trust Services with or for a Retail Customer.

(2) An Authorised Firm must only conduct Investment Business, Banking Business or Provide Trust Services with or to a Person who is a Client.

(3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on Investment Business, Banking Business or Provide Trust Services is acting as agent for another Person, the 'second person' in relation to a particular transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must not effect the transaction unless the second person is a Client.

## PART 6 – CONDUCT OF TRUST COMPANIES

### 18 TRUST SERVICE PROVIDERS

#### 18.1 Application

18.1.1 This chapter applies to a Trust Service Provider with respect to the conduct of Providing Trust Services.

#### 18.2 **General**

18.2.1 For the purposes of this Part, a settlor, a trustee or a named beneficiary of a trust in respect of which the Trust Service Provider Provides Trust Services may be treated as a Client of the Authorised Firm.

18.2.2 A Trust Service Provider must maintain adequate knowledge of, and comply with, all applicable laws, rules and regulations relevant to Providing Trust Services.

18.2.3 A Trust Service Provider must be able to demonstrate that it is in compliance with appropriate standards of corporate governance.

18.2.4 A Trust Service Provider must transact its business (including the establishing, transferring or closing of business relationships with its Clients) in an expeditious manner where appropriate unless there are reasonable grounds to do otherwise.

#### **Exercise of Discretion**

18.2.5 Where a Trust Service Provider is responsible for exercising discretion for, or in relation to, its Clients, it must take all reasonable steps to obtain sufficient information in order to exercise, subject to 18.2.6, its discretion or other powers in a proper manner.

18.2.6 A Trust Service Provider must only exercise its power or discretion for a proper purpose.



18.2.7 The Trust Service Provider must ensure that its understanding of Client's business is refreshed with regular reviews.

18.2.8 The Trust Service Provider must ensure that any trustee exercises his discretion in accordance with his fiduciary and other duties under the laws governing the trust of which he is a trustee.

### **18.3 Conflicts of interest**

18.3.1 (1) A Trust Service Provider must manage any conflict of interest or material interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.

(2) Where a Trust Service Provider has knowledge of a conflict or a material interest, it must manage that interest by:

(a) establishing and maintaining effective Chinese Walls to restrict the communication of that knowledge;

(b) disclosing the material interest or conflict of interest to the Client in writing either generally or in relation to a specific transaction; or

(c) relying on a written policy of independence, which requires an Employee to disregard any conflict of interest or material interest when advising a Client or exercising discretion.

(3) If a Trust Service Provider is unable to ensure fair treatment for a Client, it must decline to act for that Client.

#### **Delegation of duties or powers**

18.3.2 Any delegation of duties or powers by a Trust Service Provider, whether by Power of Attorney or otherwise, must only be entered into for a proper purpose, permissible by law, limited and monitored as appropriate.

### **18.4 Reviews**

18.4.1 A Trust Service Provider must ensure that adequate procedures are implemented to ensure that regular reviews at appropriate intervals are conducted in respect of the Provision of Trust Services to its Clients.



## 18.5 Communications

- 18.5.1** When communicating information to a Person in relation to Providing Trust Services, a Trust Service Provider must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- 18.5.2** A Trust Service Provider must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under relevant legislation.
- 18.5.3** Where a Rule in COB requires information to be sent to a Client, the Trust Service Provider must provide that information directly to the Client and not to another Person, unless it is on the written instruction of the Client.

## 18.6 Marketing material

- 18.6.1** (1) Before a Trust Service Provider communicates any marketing material to a Person, it must ensure the material contains the following information:
- (a) the name of the Trust Service Provider communicating the marketing material or on whose behalf the marketing material is being communicated;
  - (b) a statement that the marketing material is directed at wholesale customers and not Retail Customers;
  - (c) a statement to the effect that the Provision of Trust Services to which the marketing material relates will only be made available to a wholesale customer who the Trust Service Provider is satisfied meets the regulatory criteria to be a Client; and
  - (d) the Trust Service Provider 's regulatory status as required under GEN section 6.4.
- (2) In (1) marketing material means any invitation or inducement to enter into an agreement in relation to the Provision of Trust Services by a Trust Service Provider.
- 18.6.2** A Trust Service Provider must take reasonable steps to ensure that no other Person communicates or otherwise uses marketing material on behalf of a Trust Service Provider unless it is in compliance with the Rules in this section.

### **Record Keeping**

- 18.6.3** (1) A Trust Service Provider must keep records of any marketing material issued by, or on behalf of, the Trust Service Provider.
- (2) The records in (1) must be maintained for a minimum of six years.

### **18.7 Professional indemnity insurance cover**

- 18.7.1** A Trust Service Provider must maintain Professional indemnity insurance cover appropriate to the nature and size of the Trust Service Provider's business.
- 18.7.2** A Trust Service Provider must (a) provide the DFSA with a copy of professional indemnity insurance cover and (b) notify the DFSA of any changes to the cover including termination and renewal.
- 18.7.3** A Trust Service Provider must provide the DFSA on yearly basis details of the arrangements in force together with evidence of the cover. Any claims in excess of \$10,000 or changes to the arrangements previously notified to the DFSA under this paragraph must be notified to the DFSA as they arise.

### **18.8 Dual control**

- 18.8.1** The Trust Service Provider must have adequate internal controls, including having two persons with appropriate skills and experience managing the business.
- 18.8.2** While a Trust Service Provider may have a single Person with overall responsibility, at least another Person must have the skills and experience to be able to run the business of the Trust Service Provider in the absence of the senior Person and must be in a position to challenge the actions of the senior Person where they consider that those actions may be contrary to the provisions of DIFC Laws, Rules or Regulations or any other applicable legislation, may not be in the interests of the Client, or may be contrary to sound business principles.

### **18.9 Internal reporting**

- 18.9.1** The Trust Service Provider must have arrangements for internal reporting to ensure that the directors or the partners can satisfy themselves that:
- (a) the requirements of the relevant legislation are being met on an on going basis;

- (b) the Trust Service Provider 's business is being managed according to sound business principles and, in particular, that it can meet its financial commitments as they fall due;
- (c) the affairs of the Clients are being managed in accordance with the service agreements;
- (d) trustees are acting in accordance with their fiduciary and other duties;
- (e) the affairs of Clients are being properly monitored and in particular that the client is not using the trust structure to hide assets from legitimate enquiry, to avoid proper obligations in other jurisdictions or to engage in illegal activities in other jurisdictions;
- (f) the assets of Clients are properly managed and safeguarded; and
- (g) the recruitment, training and motivation of staff is sufficient to meet the obligations of the business.

## **18.10 Recording of Selection Criteria**

**18.10.1** Where the Trust Service Provider seeks the advice of a third party in connection with a Client's affairs, for example to advise on or manage investments, the Trust Service Provider must record the criteria for selection of the adviser and the reasons for the selection made.

**18.10.2** The Trust Service Provider must monitor the performance of the adviser and ensure that it is in a position to change advisers if it is in the interests of the Client.





- 18.11 Qualification and experience of Trust Service Provider staff**
- 18.11.1** Staff employed or Persons recommended by the Trust Service Provider must have appropriate qualifications and experience.
- 18.11.2** A Trust Service Provider must ensure that all transactions or decisions entered into, taken by or on behalf of Clients are properly authorised and handled by Persons with an appropriate level of knowledge, experience, qualifications and status according to the nature and status of the transactions or decisions involved (this applies also to decisions taken by trustees who are recommended by, but not employed by, a Trust Service Provider).
- 18.11.3** A Trust Service Provider must ensure that, each of its officers and employees, agents, Persons acting with its instructions and Persons it recommends to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.
- 18.11.4** A Trust Service Provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.
- 18.11.5** A Trust Service Provider must ensure that staff receives appropriate training on the defences against money laundering and terrorist financing.



**18.12 Books and records**

**18.12.1** The books and records of a Trust Service Provider must be sufficient to demonstrate adequate and orderly management of Clients' affairs. A Trust Service Provider must prepare proper accounts, at appropriately regular intervals on the trusts and underlying companies administered for Clients. Where trusts and underlying companies are governed by the laws of a jurisdiction that require accounts to be kept in a particular form, the Trust Service Provider must meet those requirements. In any case, the Trust Service Provider's books and records must be sufficient to allow the recreation of the transactions of the business and its Clients and to demonstrate what assets are due to each Client and what liabilities are attributable to each Client.

**18.13 Due diligence**

**18.13.1** A Trust Service Provider must, at all times, have verified documentary evidence of the settlors, trustees (in addition to the Trust Service Provider itself) and principal named beneficiaries of trusts for which it Provides Trust Services. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, a Trust Service Provider must also have verified, where reasonably possible, documentary evidence of any Person who receives a distribution from the trust and any other Person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust.

**18.13.2** A Trust Service Provider must demonstrate that it has knowledge of the source of funds that have been settled into trusts or have been used to provide capital to companies, or have been used in transactions with which the Trust Service Provider has an involvement.

**18.14 Suitability**

**18.14.1** (1) Subject to (2), a Trust Service Provider may only Provide Trust Services to a Client which are suitable for that Client having regard to:

- (a) that Client's needs, and objectives; and
  - (b) any other requirements or relevant facts about that Client of which the Trust Service Provider is, or ought reasonably to be, aware.
- (2) A Trust Service Provider must ensure that the facts it holds about a Client are accurate, complete and up to date.

#### **Record Keeping**

- 18.14.2** A Trust Service Provider must keep record of information required under 18.14.1 for a minimum of six years.

### **18.15 Attribution of Knowledge and Inducements**

#### **Attribution of knowledge**

- 18.15.1** When a COB Rule applies to a Trust Service Provider that acts with knowledge, the Trust Service Provider will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved on behalf of the Trust Service Provider act with that knowledge as a result of a Chinese Wall arrangement established under Rule 18.3.1(2).

#### **Inducements**

- 18.15.2** A Trust Service Provider must have systems and controls, policies and procedures to ensure that neither it, nor any of its Employees, offers, gives, solicits or accepts any inducement which is likely to conflict significantly with any duty that it owes to its Clients.

**18.16 DOCUMENTATION****Client agreement**

**18.16.1** Subject to Rule 8.16.3, a Trust Service Provider must before Providing Trust Services to a Client provide him with a written client agreement containing the matters referred to in Rule 8.16.2 or if impractical to do so, provide it within a reasonable period.

**Content**

- 18.16.2** (1) The client agreement must, as a minimum, include:
- (a) when and how the client agreement is to come into force and how the agreement may be terminated;
  - (b) the regulatory status of the Trust Service Provider; and
  - (c) the services that the Trust Service Provider will provide, including details of fees and charges.
- (2) The client agreement must be easy to understand and not likely to be misunderstood.

**Changes to client agreement**

**18.16.3** If the client agreement provided to a Client allows a Trust Service Provider to amend its client agreement without the Client's consent, the Trust Service Provider must give at least ten days notice to a Client before Providing Trust Services to that Client on any amended terms, unless it is impractical to do so.

**18.17 Fitness and Propriety of Persons acting as trustees**

**18.17.1** Where a Trust Service Provider arranges for a Person who is not an employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.

**18.17.2** A Trust Service Provider must notify the DFSA of the appointment of a Person under 18.17.1, including the name and business address if applicable and the date of commencement of the appointment.

- 18.17.3** Prior to the appointment of such Person to act as trustee, the Trust Service Provider must take reasonable steps to ensure that the Person has the required skills, experience and resources to act as trustee for a Client of the Trust Service Provider.
- 18.17.4** A Trust Service Provider must notify the DFSA immediately if the appointment of such Person is or is about to be terminated, or on the resignation of such Person, giving the reasons for the resignation of such Person and the measures which have been taken to ensure that a new trustee has been appointed.
- 18.17.5** A Person appointed to act as trustee for a Client of a Trust Service Provider who is not an employee of the Trust Service Provider, must agree in writing to be bound by and comply with the same legal and regulatory requirements as if he were an employee of the Trust Service Provider.

**Record keeping**

- 18.17.6** A Trust Service Provider must make a record of each client agreement including any amendments it provides to a Client and retain them for a minimum of six years from the date the Client ceases to be a Client of the Authorised Firm.



## **App2 CLIENT AGREEMENT**

### **A2.1 Application**

**A2.1.1** This appendix does not apply to a Trust Service Provider.

### **A2.2 Content of client agreement**

#### **General requirements**

- A2.2.1** (1) An Authorised Firm's client agreement provided to a Client must include, as a minimum, the following general information:
- (a) when and how the client agreement is to come into force and how the agreement may be terminated;
  - (b) the regulatory status of the Authorised Firm;
  - (c) any restrictions on the types of Investments or markets in which the Client wishes to invest or a statement to the effect that there are no such restrictions;
  - (d) the services that the Authorised Firm will provide, including details of fees and charges or the basis upon which the Authorised Firm will charge for services;
  - (e) where appropriate, the Client's investment objectives;
  - (f) where appropriate, the extent to which the Authorised Firm will consider the Clients' personal circumstances when considering suitability under section 6.2 and the details of such matters that will be taken into account;
  - (g) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty;
  - (h) any conflict of interest disclosure as required by section 6.3;
  - (i) any disclosure of soft dollar agreement under section 6.7;
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- (i) the arrangements for notifying the Client of any Transaction Executed on his behalf;
- (k) that the Authorised Firm may act as principal in a Transaction, if that is the case.