

ANNEX C

In this Annex, underlining indicates new text and striking through indicates deleted text.



CONDUCT OF BUSINESS (COB)

1 INTRODUCTION

1.2 General

Guidance

This module is divided into ~~six~~ seven parts:

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g. COB part 7 contains Rules applying to Fund Administrators.

(As 6.8 and 6.9 consist of new text, there is no underlining in the usual manner)

6.8 Marketing and selling Units of a Domestic Fund

General Requirements

- 6.8.1** An Authorised Firm must ensure when it, in or from the DIFC, Offers, issues or sells Units of a Domestic Fund, that it does so in accordance with the Rules in this section.
- 6.8.2** An Authorised Firm must take reasonable care to ensure that when it, in or from the DIFC, Offers or sells the Units of a Domestic Fund it does so only to Persons who are Qualified Investors.

Prospectus requirements

- 6.8.3** (1) An Authorised Firm must, in respect of any Units of a Domestic Fund which it Offers or sells, in or from the DIFC, have at its place of business in the DIFC copies of the relevant Prospectus for inspection by potential participants and the DFSA.
- (2) An Authorised Firm must not, in or from the DIFC, Offer or sell the Units mentioned in (1) to any Person unless it has offered the Person a copy of the Prospectus.
- (3) The requirements in (1) and (2) do not apply to an Authorised Firm where it can demonstrate to the DFSA's satisfaction that sale of the relevant Units was an execution only transaction.
- (4) For the purposes of (3), a transaction is an "execution only transaction" where:

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- (a) the Authorised Firm did not Offer the Units in question to the relevant Person;
 - (b) the Authorised Firm did not, directly or indirectly, recommend the Units in question to the relevant Person; and
 - (c) the Authorised Firm is merely executing an order received from the relevant Person which was not in any way solicited.

Private Funds

6.8.4 An Authorised Firm must ensure when it, in or from the DIFC, Offers or sells the Units of a Domestic Fund, which is a Private Fund, that the Units are Offered or sold to Qualified Investors by means only of private placement and are not Offered or sold to any Person by means of public offering.

6.8.5 An Operator of a Domestic Fund which is a Private Fund, when Offering, issuing or selling, in or from the DIFC, the Units in its Fund, must ensure that it does so:

- (a) by means only of private placement with Qualified Investors; and
- (b) to no more than 100 such investors.

6.8.6 If an Operator of a Domestic Fund, which is a Private Fund makes arrangements with other Authorised Firms or Persons in other jurisdictions, to Offer or sell the Units, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do so by means only of private placement with Qualified Investors, and that they do not so place with more than 100 such investors.

Periodic Information to DFSA

6.8.7 (1) An Authorised Firm must submit to the DFSA, at the same time as its quarterly regulatory returns in accordance with PIB, a report regarding any Offer or sale of a Unit of a Domestic Fund which has been made during the preceding quarter.

- (2) The report required under (1) must include;
 - (i) the name of the Fund; and
 - (ii) the name of Operator of the Fund.

6.9 Marketing and selling Units of a Foreign Fund

General Requirements

- 6.9.1** An Authorised Firm must ensure when it, in or from the DIFC, Offers or sells Units of a Foreign Fund, that it does so in accordance with the Rules in this section.

Prospectus requirements

- 6.9.2** (1) An Authorised Firm must ensure that every Prospectus, in respect of the Units of any Foreign Fund which it Offers or sells, in or from the DIFC, contains the mandatory statement in (2) either in a prominent position within the Prospectus or alternatively attached as an addendum to the Prospectus.
- (2) The statement referred to in (1) is a statement that describes clearly the regulatory status accorded to the Fund by the foreign Regulator. It must specify the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund and name the Regulator. It must also state the following:

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

This Prospectus is intended for distribution only to Persons of a type specified in the DFSA’s Rules (i.e. “Qualified Investors”) and must not, therefore, be delivered to, or relied on by, any other type of Person.

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”

- 6.9.3** (1) An Authorised Firm must, in respect of any Units of a Foreign Fund which it Offers or sells in or from the DIFC, have at its place of business in the DIFC copies, in English, of the relevant Prospectus for inspection by potential participants and the DFSA.

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- (2) An Authorised Firm must not in or from the DIFC Offer or sell Units in (1) to any person unless it has offered the Person a copy of the Prospectus and informed that Person of the contents of the mandatory statement in Rule 6.9.2(2).
 - (3) The requirements in (1) and (2) do not apply to an Authorised Firm where it can demonstrate to the DFSA's satisfaction that sale of the relevant Units was an execution only transaction.
 - (4) For the purposes of (3), a transaction is an "execution only transaction" where:
 - (a) the Authorised Firm did not Offer the Units in question to the relevant Person;
 - (b) the Authorised Firm did not, directly or indirectly, recommend the Units in question to the relevant Person; and
 - (c) the Authorised Firm is merely executing an order received from the relevant Person which was not in any way solicited.

Designated Foreign Fund located in recognised jurisdiction

6.9.4 An Authorised Firm may, subject to Rule 6.9.6, Offer or sell the Units of a Foreign Fund where the Fund:

- (a) is a Designated Fund in a Recognised Jurisdiction;
- (b) is approved or authorised by the Recognised Jurisdiction's Financial Services Regulator; and
- (c) satisfies the requirements that govern the ability of Persons in that jurisdiction, to Offer the Units to Retail Customers by means of public offering.

Guidance

In relation to the requirements of Rules 6.9.4 and 6.9.5, in respect of Recognised Jurisdiction and Designated Funds, the DFSA has issued and published a Recognised Jurisdiction Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

Investment Manager and Custodian located in recognised jurisdiction

6.9.5 (1) An Authorised Firm may, subject to Rule 6.9.6, Offer and sell the Units of a Foreign Fund not falling within Rule 6.9.4 where both:

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- (a) the Investment Manager; and
 - (b) the Custodian

of the Fund are located in a Recognised Jurisdiction and are authorised or licensed and supervised by a Regulator in that jurisdiction.

- (2) For the purposes of (1)(a), the Investment Manager is a Person who is retained by the Fund, the Operator of the Fund or the Fund's Directors or Partners under a commercial arrangement which is not a contract "of service" to manage the Fund's assets.
- (3) For the purposes of (1)(b), the Custodian who is retained by the Fund, the Operator of the Fund or the Fund's directors or partners under a commercial arrangement which is not a contract "of service" to safeguard the Fund's assets, must be a Bank graded by an internationally recognised rating agency such as Moodys or Standard & Poors as at least "investment grade" in respect of its financial strength.

Property Funds

- 6.9.6** (1) An Authorised Firm must ensure that it does not Offer or sell the Units of a Foreign Fund which is a Property Fund in respect of which 60% or more of the Fund's assets comprise Real Property unless the requirements in (2) and (3) are met.
- (2) The Fund in (1), must be a closed-ended structure.
- (3) The Fund in (1), must be listed on an exchange unless the Units are to be Offered, issued or sold by means only of private placement to Qualified Investors.

Periodic Information to DFSA

- 6.9.7** (1) An Authorised Firm must submit to the DFSA, at the same time as its quarterly regulatory returns in accordance with PIB, a report regarding any Offer or sale of a Unit of a Foreign Fund which has been made during the preceding quarter.
- (2) The report required under (1) must include details of:
 - (i) the name of the Fund and its Operator;
 - (ii) whether it is a Designated Fund and, if so, in which Recognised Jurisdiction it is authorised or approved; and

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- (iii) if the Fund is not a Designated Fund, the Recognised Jurisdiction in which its Investment Manager and Eligible Custodian are authorised and supervised.

6.10 Record Keeping

- (1) An Authorised Firm must keep records of any marketing material issued by, or on behalf of, the Authorised Firm.
- (2) The records in (1) must include the relevant Prospectus and documentary evidence of the offering of a copy of the Prospectus and, if applicable, disclosure of the mandatory statement.
- (3) The records in (1) must be maintained for a minimum of six years.

(As the whole of this part is new text, there is no underlining in the usual manner)

19 FUND ADMINISTRATORS

19.1 Application

19.1.1 This chapter applies to an Authorised Firm which is a Fund Administrator.

19.2 Compliance with the AML Rules

19.2.1 When a Fund Administrator is Providing Fund Administration for a Fund, it must in respect of each Fund for which it so provides such services comply with the AML Rules and in so doing construe all references therein to “customer” as a reference to “Unitholder” or “potential Unitholder” as appropriate to the context of the particular AML Rule.

19.3 Compliance with the CIR Rules

19.3.1 When a Fund Administrator is Providing Fund Administration for a Domestic Fund, it must provide such administration in accordance with the CIR Rules applying to that Fund and in accordance with the Service Level Agreement.

19.4 Client Money and Assets

19.4.1 A Fund Administrator when carrying on the Financial Service of Providing Fund Administration, is not permitted to hold or control monies or assets belonging to third parties in connection with such administration except in the following circumstances:

- (a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or
- (b) where a mandate over a Fund's or other third parties bank account is granted to a Fund Administrator and the mandate has been agreed in writing with the bank concerned, and transfers out of the relevant bank account may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely in accordance with the payment of invoiced fees and expenses, made in accordance with the relevant Fund's Constitution and Prospectus and are not remitted to the account of the Fund Administrator except by express instructions of the Fund's Operator.

19.5 Service Level Agreements

- 19.5.1** (1) A Fund Administrator must have a Service Level Agreement with the Operator of the Fund for which it is providing Fund Administration setting out the functions and service standards that will be applied to the provision of such administration by the Fund Administrator.
- (2) The Agreement in (1) must be such as to ensure that the Fund Administrator cannot in turn delegate the activities and functions delegated to it by the Operator unless the sub-delegate has been approved by the Operator.
- (3) The Agreement in (1) must also require the Fund Administrator to retain any relevant work or record relating to the delegated activities and functions should the contract be terminated by the Operator.

Guidance

The DFSA would expect any agreement required under Rule 19.5.1 to include as a minimum the following provisions:

- (a) unambiguous descriptions and definitions of the activities and functions to be provided by the Fund Administrator and the duties to be performed by both parties;

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- (b) an agreed standard in respect of resources and services supported as necessary by performance measures in accordance with the applicable legislation;
 - (c) the requirement for regular detailed reporting to a specified frequency from the Fund Administrator in respect of its duties and activities;
 - (d) provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Fund Administrator to fulfil its duties;
 - (e) the requirement for an annual review (at a minimum) of the performance of the functions by the Fund Administrator; and
 - (f) provisions relating to records and adequate access by the Operator, the Fund's auditor, any Persons providing oversight of the Fund, and the DFSA.

19.6 Record Keeping

19.6.1 A Fund Administrator must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each Operator in relation to the relevant Fund, Unitholders or potential Unitholders of the Fund as appropriate.

19.6.2 The records required to be held under 19.6.1 must be:

- (a) maintained by the Fund Administrator such as to enable the Fund's Governing Body to ensure that any accounts prepared comply with the relevant CIR Rules and any other applicable legislation;
- (b) retained by the Fund Administrator for at least 6 years from the date to which they relate;
- (c) at all reasonable times, open to inspection by the DFSA, the Fund's auditor and any Person providing oversight functions for the relevant Fund; and
- (d) if requested by the DFSA, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.