

Appendix 2.

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

The DFSA Rulebook

Conduct of Business (COB)

3 INVESTMENT BUSINESS, AND BANKING BUSINESS AND TRUST SERVICES

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, in or from the DIFC, to:~~

- (a) Provide Trust Services to a Person; or
- (b) conduct 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 or 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 for 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.

Client

3.2.2 (1) Subject to (2), A a Client is a Person who the Authorised Firm has determined, prior to the establishment of a relationship, is:

- (a) an individual who:
 - (i) has at least \$1 million in liquid assets and has provided the Authorised Firm with written confirmation of this fact;
 - (ii) appears to the Authorised Firm, after analysis, to have sufficient financial experience and understanding to participate in financial markets; and
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- (iii) has consented in writing to being treated as a Client;
 - (b) an individual who:
 - (i) is an employee of the Authorised Firm; and
 - (ii) meets the conditions in (1)(a)(ii) and (iii);
 - (c) an Undertaking which has had, or any of whose Holding Companies or Subsidiaries has had, in the last two years, called up share capital or net assets of at least \$5 million. In the case of a limited liability partnership calculated without deducting loans owing to any of the partners;
 - (d) a trustee of a trust or pension fund which has had in the last two years assets of at least \$5 million calculated by aggregating the value of the cash and investments forming part of the trust's or fund's assets, but before deducting its liabilities;
 - (e) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;
 - (f) a public authority or state investment body;
 - (g) a supranational organisation whose members are either countries, central banks or national monetary authorities;
 - (h) an Authorised Firm or Regulated Financial Institution;
 - (i) an Authorised Market Institution, regulated exchange or regulated clearing house;
 - (j) an Undertaking which is a Holding Company or Subsidiary of an Undertaking in (h) or (i) with that undertakings consent;
 - (k) a Body Corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country; or
 - (l) a Collective Investment Fund or Special Purpose Vehicle.
- (2) (a) For the purposes only of giving advice of the kind specified in (b) (i) or the making of arrangements of the kind specified in (b) (ii), a Client is a Person who appears to the Authorised Firm on reasonable grounds to be:
- (i) an individual who has at least \$1 million in liquid assets;
or
 - (ii) an Undertaking.
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(b) For the purposes of (a):

(i) the advice is limited to generic advice as defined under GEN Rule 2.11.1 (3); or

(ii) the arrangements as defined under GEN Rule 2.9.1 are limited to the making of a referral to an Authorised Firm or to an entity authorised or licensed and supervised by a Financial Services Regulator.

~~(2)~~ (3) Any Person who does not meet the criteria in (1) or (2) is a Retail Customer.

Guidance

1. In obtaining an individual's consent in Rule 3.2.2(1)(a)(iii) and (b)(ii), the DFSA expects an Authorised Firm to inform the individual of the consequences of being treated as a Client. 2. This may include a statement that the DIFC is a wholesale jurisdiction and the individual will not be afforded the retail customer protections and compensation rights that may generally be available to them in other jurisdictions.
2. Generic advice is a Financial Services activity covered under GEN section 2.11. A referral is an activity that falls within GEN section 2.9. Rule 3.2.2(2) allows an Authorised Firm to give generic advice or make a referral without having to comply with the analysis and verification requirements under Rules 3.2.2 and 3.2.4.
3. An Authorised Firm is, however, required to satisfy itself that the Person meets the criteria in Rule 3.2.2 (2). For this purpose, an Authorised Firm should consider maintaining some record of the information on which it relied to satisfy itself on this point. See also Rules 6.2.1 and 8.1.1.

Liquid assets

3.2.3 For the purpose of Rule 3.2.2(1)(a)(i) and 2(a)(i), liquid assets are cash or assets which can be readily converted into cash, including but not limited to marketable securities, government bonds, treasury bills and notes that mature within 90 days.

Analysis

3.2.4 For the purpose of Rule 3.2.2(1)(a)(ii), and (b)(ii), an Authorised Firm must ensure that the analysis includes consideration of each of the following matters:

- (a) the individual's knowledge and understanding of the relevant financial markets, types of investment and of the risks involved either generally or in relation to the proposed ~~t~~Transaction;
 - (b) the length of time the individual has been active in relevant financial markets, the frequency of dealings and the extent to which the individual has relied on financial advice from financial institutions;
 - (c) the size and nature of transactions that have been undertaken for the individual in relevant financial markets;
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- (d) the individual's relevant qualifications relating to financial markets;
- (e) the composition and size of the individual's existing financial investment portfolio; and
- (f) any other matters which the Authorised Firm considers relevant.

Verification systems and controls

- 3.2.5** (1) For the purposes of Rule 3.2.2(1), An Authorised Firm must have systems and controls in place to verify, prior to undertaking Investment Business or Banking Business, or Providing Trust Services with or for a Person, that the Person is a Client.
- (2) These systems and controls must include carrying out appropriate checks.
- (3) If the Person is an individual these systems and controls must also include obtaining sufficient information to conduct the analysis under Rule 3.2.4.

Record keeping

- 3.2.6** (1) An Authorised Firm must keep records of the verification process undertaken under Rule 3.2.5 for each Client including any documents which evidence the Client's status.
- (2) If the Client in (1) is an individual, the records must include the analysis undertaken, the reasons for the Authorised Firm concluding that the individual merits classification as a Client and the Client's written consent to being treated as a Client.
- (3) These records must be kept for at least six years from the date on which the business relationship has ended. If the date on which the business relationship ended remains unclear it may be taken to have ended on the date of the completion of the last ~~+~~Transaction.

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6.2 Suitability

Guidance

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 6.2.1** (1) Subject to (2), an Authorised Firm may only:
- (a) ~~Advise a Client who is an individual on Financial Products or Credit;~~

- ~~(a)~~ (a) give advice of the kind referred to in GEN Rule 2.11.1(1)(a) or (b) to a Client who is an individual; or
- ~~(b)~~ recommend a Transaction to a Client who is an Individual; or
- ~~(e)~~(b) execute a Transaction for any Client on a discretionary basis;
- where that advice, ~~recommendation~~ or Transaction is suitable for that Client having regard to:
- ~~(d)~~ (c) that Client's investment objectives and risk tolerance; and
- ~~(e)~~ (d) any other requirements or relevant facts about that Client of which the Authorised Firm is, or ought reasonably be aware.
- (3) An Authorised Firm may, subject to (3), limit the extent to which it will consider suitability when carrying on an activity specified in (1)(a), ~~(b)~~ or ~~(e)~~ (b) if prior to carrying on such an activity:
- (a) it has given a written warning to the Client in the form of a notice clearly stating either that the Authorised Firm will not consider suitability in regard to any of the activities specified in (1)(a), ~~(b)~~ or ~~(e)~~ (b), or, that it will do so but only to the extent specified in the notice; and
- (b) the Client has given his express consent, after a proper opportunity to consider the warning, by signing the notice.
- (4) Where an Authorised Firm is acting for a Client as Investment Manager it must ensure the Client's portfolio or account remains suitable, having regard to the facts in (1)~~(d)~~(c) and ~~(e)~~(d).
- (5) An Authorised Firm must ensure the facts it holds about a Client are accurate, complete and up to date.
- (6) Where an Authorised Firm has pooled that Client's funds with those of others with a view to taking common discretionary management decisions, the Authorised Firm must take reasonable steps to ensure that the Transaction is suitable for the fund having regard to the stated investment objectives of the fund.

Record Keeping

- 6.2.2** (1) An Authorised Firm must keep a record of each advice or recommendation made to an individual, and be able to demonstrate to the DFSA compliance with Rule 6.2.1.
- (2) The records in (1) must be maintained for a minimum of 6 years.
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8 DOCUMENTATION

8.1 Client agreement

Guidance

The Rules in this section do not apply to an Authorised Firm in circumstances where the Client is a Market Counterparty.

- 8.1.1** Subject to Rules 8.1.2 and 8.1.3, an Authorised Firm must before conducting Investment Business with a Client provide him with a client agreement containing the matters referred to in Rule 8.1.4 or if impractical to do so, provide it within a reasonable period.

Exclusions

- 8.1.2** ~~An Authorised Firm does not need to provide a client agreement to a Client undertaking an execution Transaction.~~

An Authorised Firm does not need to provide a client agreement to a Client when:

- (a) an execution only Transaction is to be undertaken for that Client; or
- (b) generic advice as defined under GEN Rule 2.11.1(3) is provided to a Client or a referral of the kind specified in Rule 3.2.2(2)(b)(ii) is made.

Guidance

If the provision of generic advice or a referral results in the provision of another Financial Service by the Authorised Firm, such as Dealing as Principal, the exemption in Rule 8.1.2(b) does not apply.

- 8.1.3** An Authorised Firm does not need to provide a client agreement to an Operator of a Collective Investment Fund for any Investment Business conducted as part of fund management activity or the purchase or sale as principal of units or shares in the fund.

Content

- 8.1.4** (1) The client agreement must set out in sufficient detail the basis on which Investment Business is to be conducted with or for the Client.
- (2) The agreement must be easy to understand, not likely to be misunderstood and conform to the requirements in these Rules.
- (3) All client agreements must contain the information outlined in App2 section A2.1 as applicable.

Changes to client agreement

- 8.1.5** If the client agreement provided to a Client allows an Authorised Firm to amend its client agreement without the Client's consent, the Authorised Firm must give at least 14 days notice to a Client before conducting Investment Business with or for that Client on any amended terms, unless it is impractical to do so. [Amended][VER8/02-07][RM42/07]

Record keeping

- 8.1.6** An Authorised Firm 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 customer of the Authorised Firm.