

Appendix 6

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



The DFSA Rulebook

Islamic Financial Business Module

(ISF)

Contents

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2 DISCLOSURE

2.1 General disclosure requirements in relation to Islamic financial business

2.1.1 ~~An Authorised Firm must disclose the following information to each Client or Commercial Customer at the outset of the relationship and thereafter whenever the information changes:~~

- (a) at the outset of the relationship and thereafter at any time on request, details of the members of the Authorised Firm's Shari'a Supervisory Board; and
- (b) ~~if the Client or Commercial Customer requests,~~ at any time on request, details of the manner and frequency of Shari'a reviews.

Guidance

~~The initial disclosures made in accordance with Rule 2.1.1 may be made within the client agreement provided under COB chapter 8.~~

Marketing material

2.1.2 In addition to information required by COB 3.2, any marketing material communicated by an Authorised Firm to a Person must state which Shari'a Supervisory Board has reviewed the products or services to which the material relates.

Islamic window

2.1.3 An Authorised Firm which operates an Islamic Window must make the relevant disclosures required by AAOIFI FAS 18 to its Clients.

Guidance

1. The initial disclosures made in accordance with Rule 2.1.1 may be made within the Client Agreement provided under COB chapter 3.
2. COB section 3.2 discusses the meaning of "marketing material".
3. The disclosure requirements stipulated by AAOIFI FAS 18 apply in relation to Managing a PSIA and other relevant Islamic Financial Business conducted by the Authorised Firm which operates an Islamic Window. Accordingly, every Authorised Firm should make appropriate disclosures to its Clients as applicable to the type of Islamic Financial Business it conducts.

2.2 Additional disclosure requirements for PSIAs

2.2.1 An Authorised Firm must, prior to Managing a PSIA, provide written notice to the Client that the Client alone will bear any losses arising from the PSIA, which are limited to the amount of his contribution, unless there is negligence, misconduct or breach of contract on the part of the Authorised Firm.

Guidance

A PSIA does not constitute a Deposit, because a PSIA is managed in relation to property of any kind, and the risk of loss of capital, to the extent of the Client's contribution, remains with the Client. Accordingly, an Authorised Firm should take great care to ensure that a PSIA is not represented as a Deposit, either directly or indirectly. The DFSA may conclude that the Authorised Firm is Accepting a Deposit instead of Managing a PSIA in certain circumstances, for example, where the Authorised Firm attaches to the investment account characteristics or facilities that are generally regarded to be those of a Deposit or current account, or such as providing:

- a. an explicit or implicit guarantee to the Client against the risk of loss of capital; or
- b. a cheque book, an ATM card or a debit card.

2.2.2 In addition to matters referred to in COB section 3.3, an Authorised Firm must ensure that the following information is included in the Client Agreement relating to a PSIA:

- (a) how and by whom the funds of the Client will be managed and invested including details of its policy on diversification of the portfolio;
- (b) the basis for the allocation of profit between the Authorised Firm and the Client;
- (c) confirmation of the Client's investment objectives including details of any restrictions requested by the Client, as agreed between the Client and the Authorised Firm;
- (d) a summary of the policies and procedures for valuation of assets or portfolio;
- (e) a summary of policies and procedures for the transfer of funds to and from the Profit Equalisation Reserve or Investment Risk Reserve accounts, if applicable;
- (f) particulars of the management of the PSIA and of any third party to whom the Authorised Firm has or will delegate or outsource the management of the PSIA, including:
 - (i) the name of the third party;

- (ii) the regulatory status of the third party; and
- (iii) details of the arrangement.
- (g) details of early withdrawal , redemption or other exit arrangement and any costs to a Client as a result thereof;
- (h) details of segregation of the funds of the Client from the funds of the Authorised Firm and from any claims by the creditors of the Authorised Firm;
- (i) details of whether funds from one PSIA will be commingled with the funds of another PSIA; and
- (i) details of any applicable charges and the basis upon which such charges will be calculated including, any deductions of fees that may be made by the Authorised Firm from the profits of the PSIA.

Periodic Statements

- 2.2.3** (1) COB section 6.10 applies to an Authorised Firm as if the Authorised Firm is an investment manager in respect of those Clients who are PSIA holders.
- (2) In addition to the requirements of COB section 6.10, an Authorised Firm must ensure that a periodic statement provided to a Client contains the following information:
- (a) details of the performance of the Client's investment;
 - (b) the allocation of profit between the Authorised Firm and the Client; and
 - (c) where applicable, details of changes to the investment strategies that may affect the Client's account or portfolio

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4 SYSTEMS AND CONTROLS

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4.2 Policy and procedures manual

- 4.2.1** (1) An Authorised Firm undertaking Islamic Financial Business must implement and maintain an Islamic Financial Business policy and procedures manual which addresses the following matters:
- (a) the manner in which the compliance function will be undertaken, in respect of Shari'a compliance;
 - (b) the manner in which the Shari'a Supervisor Board will oversee and advise in regard to the Islamic Financial Business conducted by the Authorised Firm;
 - (c) the manner in which Shari'a Supervisory Board fatwas, rulings and guidelines will be recorded, disseminated and implemented and the internal Shari'a review undertaken;
 - (d) the manner in which disputes between the Shari'a Supervisory Board and the Authorised Firm in respect of Shari'a compliance will be addressed;
 - (e) the process for approving those internal systems and controls which are in place to ensure not only that the Islamic Financial Business is carried out in compliance with Shari'a, but that information is disseminated to investors in an appropriate manner;
 - (f) the manner in which conflicts of interest will be identified and managed including as prescribed in Rule 5.1.4; and
 - (g) in respect of an Authorised Firm operating an Islamic Window, the systems and controls in place to ensure the appropriate separation of the Islamic Financial Business from the conventional business of the Authorised Firm.

- (2) If an Authorised Firm undertakes Islamic Financial Business and Manages a ~~Profit Sharing Investment Account~~ PSIA the policy and procedures manual must also contain the following matters:
- (a) the basis upon which a ~~Profit Sharing Investment Account~~ PSIA will be deemed restricted or unrestricted;
 - (b) the basis for allocation of profit or loss to the ~~Profit Sharing Investment Account~~ PSIA;
 - (c) the basis for allocation of expenses to the ~~Profit Sharing Investment Account~~ PSIA;
 - (d) the manner in which an Authorised Firm's own funds, funds of restricted ~~Profit Sharing Investment Accounts~~ PSIAs and funds from unrestricted ~~Profit Sharing Investment Accounts~~ PSIAs are to be controlled;
 - (e) the manner in which the funds of each type of investment account holder will be managed;
 - (f) the manner in which it will determine priority for investment of own funds and those of holders of unrestricted ~~Profit Sharing Investment Accounts~~ PSIAs;
 - (g) how provisions and reserves against equity and assets in accordance with AAOIFI FAS 11 are to be applied; and
 - (h) the manner in which losses incurred as a result of the misconduct or negligence for which the Authorised Firm is responsible will be dealt with.

Guidance

For the purposes of Rule 4.1.2(2) the policy and procedures manual should include procedures to ensure that the Authorised Firm manages the accounts of Profit Sharing Investment Account holders in accordance with their instructions.

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5 SHARI'A SUPERVISORY BOARD

5.1 Appointment and operation of a Shari'a supervisory board

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~~5.1.4 An Authorised Firm must take reasonable steps to ensure that the Shari'a Supervisory Board is independent of and not subject to any conflict of interest with respect to the Authorised Firm.~~

- ~~(1) The Islamic Financial Business policy and procedures manual must provide that:
 - ~~(a) a member of the Shari'a Supervisory Board is obliged to notify the Authorised Firm of any conflict of interest that such member may have with respect to the Authorised Firm or, in the case of an Investment Trust, the Trustee; and~~
 - ~~(b) the Authorised Firm will take appropriate steps to manage any such conflict of interest so that the Islamic Financial Business is carried out appropriately and in compliance with Shari'a, the interest of a Client is not adversely affected and all Clients are fairly treated and not prejudiced by any such interests.~~~~
- ~~(2) If an Authorised Firm is unable to manage a conflict of interest as provided above, it must dismiss or replace the member as appropriate.~~

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6 CONDUCT OF BUSINESS STANDARDS

6.1 Conduct of Islamic financial business

Profit sharing investment accounts

~~6.1.1 Where a transaction will involve a Client becoming a Profit Sharing Investment Account holder, an Authorised Firm must warn the Client in writing that the risk of loss rests with the Client and that the Authorised Firm will not share in the losses, unless there is negligence or misconduct for which it is responsible.~~

~~**6.1.2** An Authorised Firm must ensure that a client agreement provided to a Client in accordance with COB Rule 8.1.1 contains, in addition to those matters referred to in COB Rule 8.1.4, the following information:~~

- ~~(a) how the monies of the Client will be managed and invested including details of its policy on diversification of the portfolio;~~
- ~~(b) the basis for the allocation of profit between the Authorised Firm and the Client; and~~
- ~~(c) confirmation of the investment objectives of the Profit Sharing Investment Account investment account holder, including details of any restrictions requested by the Client.~~

~~**6.1.3** (1) COB Rule 8.3.1 applies to an Authorised Firm as if the Authorised Firm is an investment manager in respect of those Clients who are Profit Sharing Investment Account holders.~~

~~(2) An Authorised Firm must ensure that a periodic statement provided to a Client in accordance with COB Rule 8.3.1 contains, in addition to those matters referred to in COB Rule 8.3.1, the following information:~~

- ~~(a) details of the performance of the Client's investment; and~~
- ~~(b) the allocation of profit between the Authorised Firm and the Client.~~

Islamic window

~~**6.1.4** An Authorised Firm that operates an Islamic Window must ensure that the disclosures required by AAOIFI FAS 18 are made to all Clients.~~

Marketing material

~~**6.1.5** Before an Authorised Firm communicates any marketing material to a Person, it must ensure that, in addition to the information required by COB Rule 6.1.4, the material states which Shari'a Supervisory Board has reviewed the products or services to which the material relates.~~