

**Appendix 1**

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



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# The DFSA Rulebook

## Authorised Market Institutions

### (AMI)

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## 11 ANTI MONEY LAUNDERING RULES FOR AUTHORISED MARKET INSTITUTIONS

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### 11.4 General requirements

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- 11.4.2** (1) An Authorised Market Institution must include in its Business Rules an anti money laundering regime applicable to its Members.
- (2) The anti money laundering regime referred to in (1) must include at least rules in relation to:
- (a) application of the 'Federal Law No. 4 of 2002 - Criminalisation of Money Laundering of the U.A.E.' (U.A.E. Law No. 4), the 'Federal Law No. 1 of 2004' regarding anti-terrorism and the U.A.E. Penal Code;
  - (b) anti money laundering compliance arrangements;
  - (c) appointment of an MLRO;
  - (d) customer identification, ongoing due diligence and scrutiny required under Rule 11.7.3, and retention of documents;

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### 11.6 Appointment, responsibilities and duties of the MLRO

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#### Responsibilities

- 11.6.2** (1) An Authorised Market Institution must ensure that its MLRO is responsible for all of its anti money laundering activities carried on in or from the DIFC.
- (2) An Authorised Market Institution must ensure that its MLRO carries out and is responsible for the following:

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- (i) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA; ~~and~~
- (j) establishing and maintaining an appropriate anti money laundering training programme and adequate awareness arrangements pursuant to Rules under section 11.12-; and
- (k) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions, described in section 11.9 and GEN Rule 5.3.30.

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### Reporting

**11.6.3** The MLRO must report at least annually to the Governing Body or senior management of the Authorised Market Institution on the following matters:

- (a) the Authorised Market Institution's compliance with applicable anti money laundering laws including Rules;
- (b) the quality of the Authorised Market Institution's anti money laundering policies, procedures, systems and controls;
- (c) the general compliance of its Members with the anti money laundering regime contained in the Business Rules;
- (d) any internal Suspicious Transaction Reports made by the Authorised Market Institution's ~~staff~~ Employees pursuant to Rule 11.8.1 and action taken in respect of those reports, including the grounds for all decisions;
- (e) any external Suspicious Transaction Reports made by the Authorised Market Institution pursuant to Rule 11.8.2 and action taken in respect of those reports including the grounds for all decisions;
- (f) any external Suspicious Transaction Reports made by the Authorised Market Institution's Members to the AMLSCU; ~~and~~
- (g) any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in section 11.9 and GEN Rule 5.3.30 and how the Authorised Market Institution has taken them into account; and
- ~~(g)~~ (h) any other relevant matters related to money laundering as it concerns the Authorised Market Institution's business.

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## **11.7 Member identification requirements**

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- 11.7.3** (1) An Authorised Market Institution must:
- (a) ensure that the information and documentation concerning a Member's identity remains accurate and up-to-date; and
  - (b) conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of transactions undertaken by, a Member throughout the course of the relationship.
- (2) If at any time an Authorised Market Institution becomes aware that it lacks sufficient information or documentation concerning a Member's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the Member's identity.

### **Guidance**

1. An Authorised Market Institution should undertake a periodic review to ensure that Member identity documentation is accurate and up-to-date.
2. An Authorised Market Institution should undertake a review particularly when there is a material change in the nature or ownership of the Member.
3. Additional elements concerning the Member identification and ongoing due diligence of the business relationship with the Member and scrutiny of transactions which an Authorised Market Institution should take into account are set out as further Guidance in App2.
4. The degree of the ongoing due diligence to be undertaken will depend on the risk assessment carried out pursuant to section 11.10.

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- 11.7.6** (1) All relevant information, correspondence and documentation used by an Authorised Market Institution:
- (a) to verify a Member's identity pursuant to Rules 11.7.1; and
  - (b) in respect of the ongoing due diligence and scrutiny required under Rule 11.7.3,

must be kept for at least six years from the date on which the business relationship with a Member has ended.

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## 11.9 Government, regulatory and international findings

### Guidance

1. ~~Taking into account its risk assessment pursuant to section 11.10, the DFSA expects that an Authorised Market Institution will make reference to and make appropriate use of any findings issued by:
 
  - a. ~~the government of the U.A.E. or any government departments in the U.A.E.;~~
  - b. ~~the Central Bank of the U.A.E. or the AMLSCU;~~
  - e. ~~the Financial Action Task Force (FATF); and~~
  - d. ~~the DFSA;~~

~~which contain:~~

  - e. ~~a finding or other conclusion concerning arrangements for restraining money laundering in a particular country or jurisdiction; and~~
  - f. ~~an assessment that those arrangements assessed to be materially deficient in comparison with one or more of the relevant, internationally accepted standards, including any recommendations published by the FATF, required of or recommended to countries and jurisdictions.~~~~
2. ~~When an Authorised Market Institution makes a decision about its anti money laundering policies, procedures, systems and controls, it may take into account any findings of inadequacy, for example from the FATF list of Non-Cooperative Countries and Territories, concerning the approach to money laundering of individual countries or jurisdictions.~~
3. ~~Authorised Market Institutions should examine and pay special attention to any transactions or business relations with Persons located in such countries or jurisdictions.~~
4. ~~Authorised Market Institutions considering transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments, or the specific recommendations have been made.~~
5. ~~The Authorised Market Institution's MLRO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU and the DFSA if they do not qualify as suspicious pursuant to U.A.E. Law No.4.~~
6. ~~Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example taken off the FATF list of NCCTs, may nevertheless require attention which is higher than normal.~~
7. ~~In order to assist Authorised Market Institutions, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings. However, the DFSA expects that an Authorised Market Institution will take its own steps in acquiring relevant information from various available sources.~~
8. ~~Taking into account its risk assessment pursuant to section 11.10, an Authorised Market Institution may make reference to and make appropriate use of any findings issued by:
 
  - a. ~~the government of the U.A.E. or any government departments in the U.A.E.;~~~~

- ~~b. — the Central Bank of the U.A.E. or the AMLSCU;~~
- ~~e. — U.A.E. enforcement agencies; and~~
- ~~d. — the DFSA;~~

~~which contain a finding or other conclusion concerning names of Persons, groups, organisations or entities or any other body where suspicion of Money Laundering or terrorist financing exists.~~

- ~~9. — An Authorised Market Institution may obtain and appropriately use available national and international information, for example suspect lists or databases from credible public or private sources with regard to Money Laundering and terrorist financing. The DFSA encourages Authorised Market Institutions to perform checks against their Member databases and records for any names appearing on such lists and databases.~~

**11.9.1** An Authorised Market Institution must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) the Financial Action Task Force (FATF); and
- (d) the DFSA;

concerning arrangements for preventing money laundering or terrorist financing in a particular country or jurisdiction, including any assessment of material deficiency against relevant countries in adopting international standards.

**Guidance**

- 1. The systems and controls mentioned in Rule 11.9.1 should be established and maintained by an Authorised Market Institution taking into account its risk assessment pursuant to section 11.10. In relation to the term “make appropriate use” in Rule 11.9.1 this may mean that an Authorised Market Institution cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
- 2. When an Authorised Market Institution makes a decision about its anti money laundering policies, procedures, systems and controls, it should take into account any findings of inadequacy, for example, any notice or guidance issued by the FATF concerning the approach to money laundering of individual countries or jurisdictions.
- 3. An Authorised Market Institution should examine and pay special attention to any transactions or business relations with Persons located in such countries or jurisdictions.
- 4. An Authorised Market Institution considering transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments or the specific recommendations have been made.

5. The Authorised Market Institution's MLRO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU and the DFSA if they do not qualify as suspicious pursuant to U.A.E. Law No.4. See section 11.8 on internal and external reporting requirements.
6. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example, taken off the sources mentioned in this Guidance, may nevertheless require attention which is higher than normal.
7. In order to assist Authorised Market Institutions, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings, guidance, directives or sanctions. However, the DFSA expects an Authorised Market Institution to take its own steps in acquiring relevant information from various available sources. For example, an Authorised Market Institution may obtain relevant information from the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and from the Office of Foreign Assets Control (OFAC) of the United States Department of Treasury.
8. Authorised Market Institutions should take note of GEN Rule 5.3.30 which requires such institutions to obtain and make appropriate use of the United Nations Security Council's relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and financing of weapons of mass destruction.

**11.9.2** An Authorised Market Institution must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) U.A.E. enforcement agencies; and
- (d) the DFSA;

concerning names of Persons, groups, organisations or entities or any other body where suspicion of money laundering or terrorist financing exists.

**Guidance**

1. The systems and controls mentioned in Rule 11.9.2 should be established and maintained by an Authorised Market Institution taking into account its risk assessment pursuant to section 11.10. In relation to the term "make appropriate use" in Rule 11.9.2 this may mean that an Authorised Market Institution cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. An Authorised Market Institution may obtain and appropriately use available national and international information, for example, suspect lists or databases from credible public or private sources, with regard to money laundering and terrorist financing. The DFSA encourages Authorised Market Institutions to perform checks against their Member databases and records for any names appearing on such lists and databases. In addition, the Authorised Market Institution may refer to the sources mentioned in Guidance under Rule 11.9.1.

3. Authorised Market Institutions should take note of GEN Rule 5.3.30 which requires such institutions to obtain and make appropriate use of the United Nations Security Council's relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and financing of weapons of mass destruction.

## **11.10 Money laundering risks**

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### **Suspicious transactions and transaction monitoring**

- 11.10.3** An Authorised Market Institution must establish and maintain policies, procedures, systems and controls in order to monitor for and detect suspicious transactions.

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## **11.12 Awareness and training**

- 11.12.1** An Authorised Market Institution must have arrangements to provide periodic information and relevant training to all Employees to ensure that they are aware of:
- (a) the identity and responsibilities of the Authorised Market Institution's MLRO;
  - (b) the Authorised Market Institution's anti money laundering regime in relation to its Members pursuant to Rule 11.4.2;
  - (c) applicable legislation relating to anti money laundering;
  - (d) the potential effect on the Authorised Market Institution, its Employees and its Members of breaches of applicable legislation relating to money laundering;
  - (e) the Authorised Market Institution's anti money laundering policies, procedures, systems and controls and any changes to these;
  - (f) money laundering risks, trends and techniques;
  - (g) the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged that may warrant an internal Suspicious Transaction Report pursuant to Rule 11.8.1;
  - (h) the Authorised Market Institution's arrangements regarding the making of an internal Suspicious Transaction Report pursuant to Rule 11.8.2;  
and



- (i) requirements relating to Member identification and ongoing due diligence and scrutiny requirements pursuant to the Rules in section 11.7.; and
- (j) the use of findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in section 11.9 and GEN Rule 5.3.30.

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## **App2 MEMBER IDENTIFICATION AND ONGOING DUE DILIGENCE REQUIREMENTS**

### **A2.1 Duties and responsibilities**

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#### **Guidance relating to Rule 11.7.3.**

- 11. When conducting ongoing due diligence on the business relationship with, and scrutiny of transactions undertaken by, a Member, an Authorised Market Institution should:
  - a. ensure consistency of such transactions with its knowledge of the Member and the Member's purpose and risk profile; and
  - b. verify, where necessary, the source of funds.

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## **App3 Money laundering risks**

### **A3.1 Risk assessment**

#### **Guidance relating to Rule 11.10.1**

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- 5. a. The Authorised Market Institution should take specific and adequate measures necessary to compensate for the higher risk of money laundering which might arise, for example from the following products, services or Members:
  - i. "Wash sales" or other fictitious trading schemes to transfer money or value through the clearing and settlement infrastructure;
  - ii. activities of employees that unwittingly are requested to take actions which further a Person's money laundering scheme; including the activities of "rogue employees";

- iii. acceptance of orders and related funds from intermediaries or banks operating from jurisdictions that do not have effective systems in place to prevent the introduction of laundered funds into the investment firms and banks operating in those jurisdictions;
  - iv. non face-to-face business relationships or transactions, such as via mail, telephone or the Internet;
  - v. correspondent banking relationships, see also Rule 11.7.9;
  - vi. Members from ~~FATF 'Non-Cooperative Countries and Territories'~~ and higher-risk countries, as may be found in sources mentioned in Guidance under Rule 11.9.1; ~~see also Guidance under section 11.9.1~~; and
  - vii. Politically Exposed Persons, see also Rule 11.10.2.
- b. Pursuant to Rule 11.10.3, an Authorised Market Institution should apply an intensified monitoring of transactions and accounts in relation to these products, services and Members.
6. While an Authorised Market Institution should assess the money laundering risks posed by the products and services it offers and devise its products with due regard to those risks, a risk-based approach does not release the Authorised Market Institution from its overall obligation to comply with anti money laundering obligations.
7. Money laundering risks are increased if a Person is able to hide behind corporate structures such as limited companies, offshore trusts, special purpose vehicles and nominee arrangements. When devising its internal procedures, an Authorised Market Institution should consider how its Members and operational systems impact upon the capacity of its staff to identify suspicious transactions.
8. The geographical location of an Authorised Market Institution's Member may also affect the money laundering risk assessment. The DFSA recommends that where an Authorised Market Institution has Members located in countries:
- a. without adequate anti money laundering strategies;
  - b. where cash is the normal medium of exchange;
  - c. which have a politically unstable regime with high levels of public or private sector corruption;
  - d. which are known to be drug producing or drug transit countries; or
  - e. which have been classified as countries with inadequacies in their anti money laundering regulations, see ~~Guidance under section~~ Rule 11.9.1;
- it should consider which additional 'Know Your Member' and monitoring procedures might be necessary to compensate for the enhanced risks of money laundering. Such measures may encompass, for example, the following:
- f. requiring additional documentary evidence;
  - g. taking supplementary measures to verify or certify the documents supplied; or
  - h. performing direct mailing of account opening documentation to a Member at an independently verified address.

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### **A3.3 Suspicious transactions and transaction monitoring**

#### **Guidance relating to Rule 11.10.3**

1.
  - a. The Rules in section 11.8 require a Suspicious Transaction Report to be made when there is knowledge or suspicion of money laundering. Suspicion is a personal and subjective assessment. Suspicion of money laundering requires a degree of satisfaction although this may not amount to belief, it should at least extend beyond mere speculation and should be based upon some foundation that money laundering has occurred or is about to occur.
  - b. A Member of staff who considers a transaction to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.
  - c. The Rules in section 11.8 also make reference to 'reasonable grounds to suspect' which introduces an objective test rather than a subjective test of suspicion by assessing whether or not 'suspicion' was ignored in the way of:
    - i. wilful blindness;
    - ii. negligence, that is wilfully and recklessly failing to make the adequate enquiries; or
    - iii. failing to assess adequately the facts and information that are either presented or available.
2. Circumstances that might give rise to suspicion or reasonable grounds for suspicion may be:
  - a. transactions which have no apparent purpose and which make no obvious economic sense;
  - b. transactions requested by a Member without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of an Authorised Market Institution in relation to a particular Member or Person;
  - c. the size or pattern of transactions, without reasonable explanation, is out of line with any pattern that has previously emerged;
  - d. a Member or Person refuses to provide the information requested without reasonable explanation;
  - e. a Member or Person who has just entered into a business relationship uses the relationship for a single ~~Transaction~~ transaction or for only a very short period of time;
  - f. an extensive use of offshore accounts, companies or structures in circumstances where the Member's economic needs do not support such requirements;
  - g. unnecessary routing of funds through third party accounts; or
  - h. unusual ~~Transactions~~ transactions without an apparently profitable motive.