

**Appendix 1**

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



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# The DFSA Rulebook

## Conduct of Business Module

### **(COB)**

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## **6.11 Client Assets**

### **Application**

**6.11.1** This section applies to an Authorised Firm which:

- (a) holds or controls Client Assets; or
- (b) Provides Custody or Arranges Custody.

### **Guidance**

1. Client Assets is defined in the GLO Module as “Client Money and Client Investments”.
2. Principle 9 of the Principles for Authorised Firms (Customer assets and money) requires an Authorised Firm to arrange proper protection for Clients' Assets when the firm is responsible for them. An essential part of that protection is that an Authorised Firm must properly safeguard Client Money and Client Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the DIFC.
3. Rule 6.11.3 requires an Authorised Firm to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets, or of rights in connection with Client Assets, as a result of, for example, the Authorised Firm's or a third party's insolvency, fraud, poor administration, inadequate record-keeping or negligence.

### **General requirements**

- 6.11.2**
- (1) An Authorised Firm which holds or controls Client Money must comply with sections 6.12 and 6.14.
  - (2) An Authorised Firm which holds or controls Client Investments, or Provides Custody or Arranges Custody must comply with sections 6.13 and 6.14.
- 6.11.3**
- (1) An Authorised Firm must have systems and controls to ensure that Client Assets are identifiable and secure at all times.
  - (2) Where the Authorised Firm holds a mandate, or similar authority over an account with a third party, in the Client's own name, its systems and controls must:
    - (a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Firm on the use of the mandate;
    - (b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and
    - (c) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Firm entering into such Transactions.

**Guidance**

Authorised Firms are reminded that they must ensure that their auditor produces a Client Money Auditor's Report and a Safe Custody Auditor's Report as applicable, in accordance with GEN 8.6.

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**6.12 Client money**

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**Client money provisions**

- 6.12.2** (1) Subject to (2), an Authorised Firm which holds or controls Client Money for a Client must comply with the Client Money Provisions in App5.
- (2) Where the Client is a Market Counterparty, An an Authorised Firm may exclude the application of the Client Money Provisions but only where it has obtained the prior written consent of ~~a Professional Client~~ the Market Counterparty to do so.

**Guidance**

In accordance with GEN chapter 8, an Authorised Firm which holds or controls Client Money must arrange for a Client Money Auditor's Report to be submitted to the DFSA on an annual basis.

**Client disclosure**

- 6.12.3** (1) If an Authorised Firm holds or controls Client Money which is not subject to the Client Money Provisions pursuant to Rule 6.12.2 (2), it must disclose to that ~~Client~~ Market Counterparty in writing that:
- (a) the protections conferred by the Client Money Provisions do not apply to such Client Money;
  - (b) as a consequence of (a), such Client Money may be mixed with Money belonging to the Authorised Firm, and may be used by the Authorised Firm in the course of the Authorised Firm's business; and
  - (c) in the event of insolvency, winding up or other Distribution Event stipulated by the DFSA:
    - (i) in the case of a Domestic Firm, such Client Money will be subject to and distributed in accordance with the DFSA Client Money Distribution Rules; and

- (ii) in the case of a non-Domestic Firm, such Client Money will be subject to a regime which may differ from the regime applicable in the DIFC.
- (2) The Authorised Firm must obtain that Client's Market Counterparty's written acknowledgement of the disclosures made in (1) prior to holding or controlling Client Money for that Client Market Counterparty.

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### **6.13 Client investments**

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**6.13.3** (1) Subject to (2), an Authorised Firm:

- (a) holding or controlling Client Investments;
- (b) Providing Custody; or
- (c) Arranging Custody

in or from the DIFC must do so in accordance with the Safe Custody Provisions in App6.

- (2) The Safe Custody Provisions in App6 do not apply to Client Investments held as Collateral unless stated otherwise.

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**6.13.5** Before an Authorised Firm deposits Client's Collateral with a third party it must notify the third party that:

- (a) the Collateral does not belong to the Authorised Firm and must therefore be held by the third party in a segregated Client Account in a name that clearly identifies it as belonging to the Authorised Firm's Clients; and
- (b) the third party is not entitled to claim any lien or right of retention or sale over the Collateral except to cover the obligations owed to the third party which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the Collateral.

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## **APP5 CLIENT MONEY PROVISIONS**

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### **A5.3 Payment of client money into client accounts**

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**A5.3.3** (1) An Authorised Firm may deposit its own Money in a Client Account where:

- (a) it is a minimum sum required to open the account, or to keep it open;
- (b) the Money is received by way of mixed remittance, provided the Authorised Firm transfers out that part of the payment which is not Client Money within one day of the day on which the Authorised Firm would normally expect the remittance to be cleared;
- (c) interest credited to the account exceeds the amount payable to Segregated Clients, provided that the Money is removed within twenty five days; or
- (d) it is to meet a shortfall in Client Money.

(2) Where an Authorised Firm deposits any Money into a Client Account such Money is Client Money until such time as the Money is withdrawn from the Client Account in accordance with the Client Money Provisions.

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### **A5.4 Client accounts**

**A5.4.1** A Client Account in relation to Client Money is an account which:

- (a) is held with a Third Party Agent;
- (b) is established to hold Client Assets;
- (c) is maintained in the name of;
  - (i) if a Domestic Firm, the Authorised Firm; or
  - (ii) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Firm; and
- (d) includes the words 'Client Account' in its title.

- A5.4.2** (1) An Authorised Firm must maintain a master list of all Client Accounts.
- (2) The master list must detail:
- (a) the name of the account;
  - (b) the account number;
  - (c) the location of the account;
  - (d) whether the account is currently open or closed; and
  - (e) the date of opening or closure.
- (3) The details of the master list must be documented and maintained for at least six years following the closure of an account.

**Guidance**

1. An Authorised Firm may hold or control Client Money belonging to a Segregated Client in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client Money in a Client Account containing Client Money of more than one Segregated Client.
2. The purpose of controlling or holding Client Money in a Client Account is to ensure that Money belonging to Segregated Clients is readily identifiable from Money belonging to the Authorised Firm such that, following a Distribution Event, Segregated Clients will rank highest in line in terms of any subsequent distribution of Client Money in proportion to each Client's valid claim over that ~~that~~ Money.
3. Following a Distribution Event, a Segregated Client ~~will~~ may not have a valid claim over Client Money held or controlled in a Client Account if that Client Account was not established to hold or control Client Money for that Client or a pool of Clients of which that Client was a part.

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**A5.7 Payment of client money to a third party agent**

- A5.7.1** (1) Subject to Rule A5.7.3, an Authorised Firm may only pass, or permit to be passed, a Segregated Client's Money to a Third Party Agent if:
- (a) the Client Money is to be used in respect of a Transaction or series of Transactions for that Client;
  - (b) the Client Money is to be used to meet an obligation of that Client; or
  - (c) the Third Party Agent is a ~~Bank~~ Bank or a Regulated Financial Institution which is authorised to accept or take Deposits.

- (2) In respect of (1)(a) and (b), an Authorised Firm must not hold any excess Client Money with the Third Party Agent longer than necessary to effect a Transaction or satisfy the Client's obligation.

## **A5.10 Client reporting**

- A5.10.1** (1) In relation to a Client to whom the Client Money Provisions are applicable, an Authorised Firm must send a statement to the a Retail Client at least monthly or in the case of a Professional Client, at other intervals as agreed in writing with the Professional Client.
- (2) The statement must include:
- (a) the Client's total Client Money balances held by the Authorised Firm reported in the currency in which the Client Money is held, or the relevant exchange rate if not reported in the currency in which the Money is held;
  - (b) the amount, date and value of each credit and debit paid into and out of the account since the previous statement; and
  - (c) any interest earned ~~and~~ or charged on the Client Account Money since the previous statement.
- (3) The statement sent to the Client must be prepared within 25 days of the statement date.

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## **A5.14 Failure to comply with this appendix**

- A5.14.1** An Authorised Firm which becomes aware that it does not comply with any Rule in this appendix must, within one day, give notice of that fact to the DFSA.

## **APP6 SAFE CUSTODY PROVISIONS**

### **A6.1 Application**

**A6.1.1** ~~In accordance with Rule 6.13.3, this~~ This appendix applies to an Authorised Firm in accordance with Rule 6.13.3, which Provides Custody or Arranges Custody

### **A6.2 General requirements**

**A6.2.1** The provisions of this appendix are referred to as the Safe Custody Provisions.

**A6.2.2** An Authorised Firm ~~which Provides Custody or Arranges Custody~~ must:

- (a) comply with the Safe Custody Provisions; and
- (b) have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.

### **A6.3 Recording, registration and holding requirements**

**A6.3.1** An Authorised Firm which Provides Custody or holds or controls Client Investments must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property.

**A6.3.2** Subject to Rule A6.4.1, an Authorised Firm which Provides Custody or holds or controls Client Investments must record, register and hold Safe Custody Investments separately from its own Investments.

### **A6.4 Client accounts in relation to Client Investments**

**A6.4.1** An Authorised Firm which Provides Custody or holds or controls Client Investments must register or record all Safe Custody Investments in the legal title of:

- (a) a Client Account; or
- (b) the Authorised Firm where, due to the nature of the law or market practice, it is not feasible to do otherwise.



- A6.4.2** A Client Account in relation to Client Investments is an account which:
- (a) is held with a Third Party Agent or by an Authorised Firm which is authorised under its Licence to Provide Custody;
  - (b) is established to hold Client Assets;
  - (c) when held by a Third Party Agent, is maintained in the name of;
    - (i) if a Domestic Firm, incorporated in the DIFC, the Authorised Firm; or
    - (ii) if not a Domestic Firm, the Authorised Firm is not incorporated in the DIFC, a Nominee Company controlled by the Authorised Firm; and
  - (d) includes the words 'Client Account' in its title.

- A6.4.3** (1) An Authorised Firm must maintain a master list of all Client Accounts.
- (2) The master list must detail:
- (a) the name of the account;
  - (b) the account number;
  - (c) the location of the account;
  - (d) whether the account is currently open or closed; and
  - (e) the date of opening or closure.
- (3) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.

**Guidance**

1. An Authorised Firm may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client's Investment in a Client Account containing Investments of more than one Client.
2. The purpose of recording, registering or holding Investments in a Client Account is to ensure that Investments belonging to Clients are readily identifiable from Investments belonging to the Authorised Firm such that, following a Distribution Event, any subsequent distribution of Investments may be made in proportion to each Client's valid claim over those Investments.
3. Following a Distribution Event, a Client ~~will~~ may not have a valid claim over Investments registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments for that Client or a pool of Clients of which that Client was a part.

**A6.4.4** An Authorised Firm ~~which Provides Custody~~ must not use a Client's Safe Custody Investment for its own purpose or that of another Person without that Client's prior written permission.

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## **A6.6 Safe custody agreements with third party agents**

**A6.6.1** Before an Authorised Firm ~~Providing Custody~~ passes, or permits to be passed, Safe Custody Investments to a Third Party Agent it must have procured a written acknowledgement from the Third Party Agent stating:

- (a) that the title of the account sufficiently distinguishes that account from any account containing Investments belonging to the Authorised Firm, and is in the form requested by the Authorised Firm;
- (b) that the Client Investment will only be credited and withdrawn in accordance with the instructions of the Authorised Firm;
- (c) that the Third Party Agent will hold Client Investments separately from assets belonging to the Third Party Agent;
- (d) the arrangements for recording and registering Client Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
- (e) that the Third Party Agent will deliver a statement to the Authorised Firm (including the frequency of such statement), which details the Client Investments deposited to the account;
- (f) that all Investments standing to the credit of the account are held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to it on any other account of the Authorised Firm; and
- (g) ~~The~~ the extent of liability of the Third Party Agent in the event of default.

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## **A6.8 Client reporting**

**A6.8.1** (1) An Authorised Firm which Provides Custody or which holds or controls Client Investments for a Client must send a statement to ~~that a Retail Client~~ at least every six months or in the case of a Professional Client at other intervals as agreed in writing with the Professional Client.

- (2) The statement must include:
  - (a) a list of that Client's Safe Custody Investments as at the date of reporting;
  - (b) a list of that Client's Collateral and the market value of that Collateral as at the date of reporting; and
  - (c) details of any Client Money held by the Authorised Firm as at the date of reporting.
- (3) The statement sent to the Client must be prepared within 25 business days of the statement date.

## **A6.9 Reconciliation**

**A6.9.1** An Authorised Firm ~~which Provides Custody~~ must:

- (a) at least every 25 business days, reconcile its records of Client Accounts held with Third Party Agents with monthly statements received from those Third Party Agents;
- (b) at least every six months, count all Safe Custody Investments physically held by the Authorised Firm, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Firm; and
- (c) at least every six months, reconcile individual Client ledger balances with the Authorised Firm's records of Safe Custody Investment balances held in Client Accounts.

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- A6.9.3** (1) Reconciliation performed in accordance with section A6.9 must be reviewed by a member of the Authorised Firm who has adequate seniority.
- (2) The ~~person~~ individual referred to in (1) must provide a written statement confirming that the reconciliation has been undertaken in accordance with the requirements of this section.

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## **A6.10 Auditor's reporting requirements**

### **Guidance**

In accordance with GEN chapter 8, an Authorised Firm to which Provides Custody this appendix applies must arrange for a Safe Custody Auditor's Report to be submitted to the DFSA on an annual basis.