

Appendix 1

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

A number of Rules included in the text are not being amended, but are included for reference.

*This text includes amendments proposed in CP [109]: [Crowdfunding: SME Financing through Lending]



The DFSA Rulebook

General Module

(GEN)

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2. FINANCIAL SERVICES

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2.2 Financial Services activities

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2.2.2 The following activities are specified for the purposes of Rule 2.2.1:

- (a)
- (y) Arranging Credit and Advising on Credit; and
- (z) Operating a ~~Loan-based~~ Crowdfunding Platform.

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Permitted Financial Services for Authorised Firms

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2.2.10D A ~~Loan-based~~ Crowdfunding Operator must not carry on either any of the following activities:

- (a) Managing Assets; or
- (b) Advising on Financial Products;
- (c) Managing a Collective Investment Fund; or
- (~~d~~) Advising on Credit.

2.2.10E A Crowdfunding Operator must not Operate a Crowdfunding Platform that facilitates a Person investing in any of the following kinds of Investments:

- (a) Warrants, Certificates, Units or Structured Products; or
- (b) Derivatives.

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2.5 Providing credit

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Exclusions

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2.5.3 A ~~Loan-based~~ Crowdfunding Operator does not Provide Credit to the extent that it carries on the activity of Operating a Loan-based Crowdfunding Platform.

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2.9 Arranging deals in investments

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Exclusions

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2.9.9 A Crowdfunding Operator does not Arrange Deals in Investments to the extent that it carries on the activity of Operating an Investment-based Crowdfunding Platform.

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2.22 Operating an alternative trading system

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Exclusions

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2.22.3 A ~~Loan-based~~ Crowdfunding Operator does not Operate an Alternative Trading System to the extent that it carries on the activity of Operating a ~~Loan-based~~ Crowdfunding Platform.

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2.28 Arranging Credit and Advising on Credit

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Exclusions

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2.28.8 A ~~Loan-based~~ Crowdfunding Operator does not Arrange Credit to the extent that it carries on the activity of Operating a Loan-based Crowdfunding Platform.

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2.29 Operating a ~~Loan-based~~ Crowdfunding Platform

2.29.1 (1) In Rule 2.2.2, a Person carries on the activity of Operating a Crowdfunding Platform if the Person:

(a) Operates a Loan-based Crowdfunding Platform; or

(b) Operates an Investment-based Crowdfunding Platform.

(21) ~~In Rule 2.2.2, a~~ A Person Operates ~~carries on the activity of Operating~~ a Loan-based Crowdfunding Platform under (1)(a) if the Person either:

(a) carries on both of the following activities:

(i) operates an electronic platform that facilitates the bringing together of potential lenders and borrowers; and

(ii) administers a loan agreement that results from operating the electronic platform; or

- (b) provides, in connection with it carrying on both of the activities in (a), a facility that assists a lender under a loan agreement referred to in (a) to transfer his rights and obligations under the loan agreement to another Person.
- (3) A Person Operates an Investment-based Crowdfunding Platform under (1)(b) if the Person:
 - (a) carries on both of the following activities:
 - (i) operates an electronic platform that facilitates the bringing together of potential investors and Persons who wish to obtain funding for a business or project, resulting in an investor making an Investment with the Person seeking funding; and
 - (ii) administers an Investment that results from operating the electronic platform; or
 - (b) provides, in connection with it carrying on the activities in (a), a facility that assists an investor in an Investment referred to in (a) to sell his Investment to another Person.
- (42) In this Rule:
 - (a) “administer” a loan agreement means:
 - (i) provide information or perform other duties under the loan agreement on behalf of the borrower or lender;
 - (ii) take steps to obtain the repayment of the loan; or
 - (iii) exercise rights or obligations under the loan agreement on behalf of the borrower or lender;
 - (b) “administer” an Investment means:
 - (i) provide information or perform other duties relating to the Investment on behalf of the Issuer or investor;
 - (ii) take steps to obtain the payment of any amount payable by the Issuer to an investor; or
 - (iii) exercise any rights or obligations relating to the Investment on behalf of the Issuer or investor;
 - (bc) “electronic platform” means a website or other form of electronic media.

- ~~(53)~~ A Person (A) administers a loan agreement or an Investment for the purposes of this Rule if A performs a function ~~referred to in (2)(a)~~ itself or through another Person who has been appointed by A, acts under an arrangement with A or acts at A's direction.

Guidance

1. ~~The activity in~~ Operating a Crowdfunding Platform under Rule 2.29.1(4)(a) requires a Person not only to operate an electronic platform that brings together lenders and borrowers or investors and issuers, but also to administer any resulting loan agreements or Investments ~~that result from the bringing together of lenders and borrowers~~. The administration may be carried out by the platform operator itself or by another person acting under an arrangement with, or at the direction of, the platform operator.
2. The activity in Rule 2.29.1(42)(a)(i) and (3)(a)(i) only covers electronic systems such as online portals and does not include, for example, meetings to facilitate a loan.
3. The operator of an electronic platform may in some cases provide a facility that assists lenders or investors using the platform to transfer their rights and obligations under a loan agreement to another lender or to sell their Investment to another investor. Providing such a facility will also fall within the definition of Operating a ~~Loan-based~~ Crowdfunding Platform (see Rule 2.29.1(2)(b) and (3)(b)).
4. Operating a Loan-based Crowdfunding Platform will apply to a number of types of crowdfunding services such as 'peer to peer' lending, 'peer to business' lending and 'business to business' lending. However, it should be noted that COB Rule 11.1.8 requires a borrower to be a Body Corporate.
5. Investment-based Crowdfunding differs from Loan-based Crowdfunding in that, instead of the platform facilitating a loan, it facilitates the issue of an investment to an investor. Under Rule 2.2.10E, the type of Investment that can be facilitated using an Investment-based Crowdfunding Platform is restricted to Investments such as Shares or Debentures (including Sukuk) and does not include more complex Investments such as Derivatives or Structured Products.
- ~~65.~~ Other types of crowdfunding such as 'reward-based crowdfunding' (i.e. where a financial contribution is made in anticipation of a benefit in existing or future goods or services), and 'donation-based crowdfunding' (i.e. where contributions are made in support of a social cause), will not constitute an activity referred to in Rule 2.29.1 as no loan or Investment is involved. ~~Rule 2.29.1 also does not cover crowdfunding models where the investor receives Securities, which are likely to involve a different Financial Service.~~
- ~~76.~~ An Operator of a ~~Loan-based~~ Crowdfunding Platform will need an endorsement on its Licence to deal with Retail Clients (see Rule 2.2.8) if it carries on its activities with a borrower or lender or an Issuer or investor that is a Retail Client. It will also need an endorsement on its Licence if it holds or controls Client Assets (see Rule 2.2.10A).

Exclusions

- 2.29.2** A Person does not carry on the activity referred to in Rule 2.29.1 if the Person who carries on those activities is itself the sole lender or the sole Issuer on the electronic platform.

Guidance

The activity in Rule 2.29.1 does not cover an electronic platform where the operator itself is the sole lender providing the loans e.g. if it is a credit provider and provides an electronic facility for use by its clients. Similarly, it does not apply to a platform where the operator is the sole Issuer of Investments. However, ~~in such a case~~ if a platform operator acts as a lender, the Person is likely to be carrying on the Financial Service of Providing Credit.

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2A. DEFINITION OF FINANCIAL PRODUCT IN THE GENERAL PROHIBITION AGAINST MISCONDUCT

Definition of Financial Product in the general prohibition against misconduct

- 2A.1.1** For the purposes of Article 41B of the Regulatory Law, a “Financial Product” means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, a Contract of Insurance or a Crowdfunding Loan Agreement.

[This Rule is included for reference only]*

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3. FINANCIAL PROMOTIONS

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3.3 Definition of a Financial Product

3.3.1 Pursuant to Article 41A(4) of the Regulatory Law, “financial product” in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, a Contract of Insurance or a Crowdfunding Loan Agreement.

[This Rule is included for reference only]*

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APP 1 DEPOSITS

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A1.1.3 A sum is not a Deposit if it is received:

- (a) by a lawyer acting in his professional capacity;
- (b) by an accountant acting in his professional capacity;
- (c) by an Authorised Firm or an Authorised Market Institution authorised under its Licence to carry on any one or more of the following Financial Services:
 - (i) Dealing in Investments as Principal;
 - (ii) Dealing in Investments as Agent;
 - (iii) Arranging Deals in Investments;
 - (iv) Managing Assets;
 - (v) Operating a Collective Investment Fund;
 - (vi) Effecting Contracts of Insurance;
 - (vii) Carrying Out Contracts of Insurance;
 - (viii) Operating an Exchange;
 - (ix) Operating a Clearing House;
 - (x) Insurance Intermediation;
 - (xi) Insurance Management;
 - (xii) Managing a Profit Sharing Investment Account;
 - (xiii) Providing Trust Services;
 - (xiv) Arranging Credit and Advising on Credit; or
 - (xv) Operating a ~~Loan-based~~ Crowdfunding Platform,

in the course of or for the purpose of any such Financial Service disregarding any applicable exclusions in chapter 2; or

(d) by a Person as consideration for the issue by him of a Debenture.

APP2 INVESTMENTS

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A2.2 Definitions of specific securities

A2.2.1 For the purposes of Rule A2.1.2:

Shares

- (a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

Debentures

- (b) a Debenture is an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:
- (i) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (ii) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
 - (iii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property;
 - (iv) a Contract of Insurance; and
 - (v) a Crowdfunding Loan Agreement;

Guidance

1. A Debenture may include a bond, debenture stock, loan stock or note. Certain Islamic products ("Sukuk") structured as a debt instrument can also fall within this definition.
2. If the interest or financial return component on a debt instrument is to be calculated by reference to fluctuations of an external factor such as an index, exchange rate or interest rate, that does not prevent such an instrument being characterised as a Debenture.

[This Rule is included for reference only]*

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