

Appendix 2

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

Conduct of Business Module

(COB)

2 CLIENT CLASSIFICATION

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2.2 Overview

Guidance

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Professional Clients

5. There are three routes through which a Person may be classified as a Professional Client:
 - a. ‘deemed’ Professional Clients under Rule 2.3.4. As these Persons have significant assets under their control, and, therefore, either possess, or have the resources to obtain, the necessary expertise to manage such assets, they can be classified as ‘deemed’ Professional Clients without having to meet any additional net asset and expertise criteria;
 - b. ‘service-based’ Professional Clients under Rule 2.3.5, Rule 2.3.6 or Rule 2.3.6A. Due to their inherent nature, certain Financial Services activities such as credit provided to an Undertaking for business purposes (‘commercial credit’), advisory and arranging activities relating to corporate structuring and financing and crowdfunding services provided to a Body Corporate that is a borrower or an Issuer, are generally provided to Persons with sufficient expertise to obtain such services or are of relatively low risk to the Client. Therefore, a Person to whom such a Financial Service is provided can be classified as a ‘service-based’ Professional Client; and
 - c. ‘assessed’ Professional Clients under Rules 2.3.7 and 2.3.8. These Persons are either individuals or Undertakings which can be classified as a Professional Client only if they meet the specified net assets and expertise requirements set out in Rules 2.4.2 and 2.4.3.

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2.3 Types of Clients

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Professional Clients

- 2.3.3** (1) An Authorised Firm may classify a Person as a Professional Client if that Person:
- (a) meets the requirements to be:
 - (i) a “deemed” Professional Client pursuant to Rule 2.3.4;
 - (ii) a “service-based” Professional Client pursuant to Rule 2.3.5, Rule 2.3.6 or Rule 2.3.6A; or
 - (iii) an “assessed” Professional Client pursuant to either Rule 2.3.7 or Rule 2.3.8; and
 - (b) has not opted-in to be classified as a Retail Client in accordance with the requirements in Rule 2.4.1.
- (2) If an Authorised Firm becomes aware that a Professional Client no longer fulfils the requirements to remain classified as a Professional Client, the Authorised Firm must, as soon as possible, inform the Client that this is the case and the measures that are available to the firm and the Client to address that situation.

[The above text is included for reference only]

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‘Service-based’ Professional Clients**Guidance**

Rule 2.3.5, Rule 2.3.6 and Rule 2.3.6A each set out different circumstances in which a Person can be classified as a ‘service-based’ Professional Client. The professional status allowed under these three ‘service-based’ Professional Client categories can only be used for those three Financial Services and not for any other Financial Service provided to the same Client. If such a Client also obtains other Financial Services from the same firm, unless the Client can qualify either as a ‘deemed’ or ‘assessed’ Professional Client, that Client will need to be classified as a Retail Client for those other Financial Services.

[The above text is included for reference only]

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2.3.6A For the purposes of Rule 2.3.3(1)(a)(ii), a Person is a ‘service-based’ Professional Client if:

- (a) the Financial Service provided to that Person is “Operating a ~~Loan-based~~ Crowdfunding Platform”; and
- (b) the Person is a Body Corporate and is using the service to borrow funds from lenders or to obtain funds from investors.

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3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, PROVIDING TRUST SERVICES AND OPERATING A CROWDFUNDING PLATFORM

3.1.1 This chapter applies to an Authorised Firm which carries on or intends to carry on:

- (a) Investment Business;
- (b) Accepting Deposits;

- (c) Providing Credit;
 - (d) Providing Trust Services; or
 - (e) Operating a ~~Loan-based~~ Crowdfunding Platform,
- except where it is expressly provided otherwise.

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6 ADDITIONAL RULES - INVESTMENT BUSINESS

6.1 Application

- 6.1.1**
- (1) The Rules in this chapter apply to an Authorised Firm when conducting Investment Business.
 - (2) Sections 6.11, 6.12, 6.13 and 6.14 also apply to an Authorised Firm in respect of Client Assets Money that it holds or controls (within the meaning of Rule 6.11.4) in the course of, or in connection with, Operating a ~~Loan-based~~ Crowdfunding Platform.
 - (3) The requirements in this chapter apply to an Authorised Firm regardless of the classification of the Client, unless expressly provided otherwise.

Guidance

The requirements in chapter 3 also apply to the conduct of Investment Business.

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6.12 Client money

- 6.12.1**
- All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business or Operating a ~~Loan-based~~ Crowdfunding Platform in or from the DIFC is Client Money, except Money which is:
- (a) held by the Authorised Firm as a Bank in an account with itself, provided the Authorised Firm notifies the Client in writing that the Client Money is held by it as a Bank and not in accordance with this chapter;

- (b) immediately due and payable by the Client to the Authorised Firm;
- (c) belonging to another Person within the Authorised Firm's Group unless that Person is an Authorised Firm or Regulated Financial Institution and that Person has confirmed to the Authorised Firm, in writing, that the beneficial owner of the Money is a Person who is not part of the Authorised Firm's Group;
- (d) in an account in the Client's name over which the Authorised Firm has a mandate or similar authority and who is in compliance with Rule 6.11.3 (2);
- (e) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Firm, provided the cheque or other payable order is intended to be forwarded to the third party within 1 business day of receipt; or
- (f) Fund Property of a Fund.

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Client money provisions

- 6.12.2**
- (1) An Authorised Firm in Category 4 must not hold Client Money, except if it does so in connection with it Operating a Crowdfunding Platform.
 - (2) An Authorised Firm which holds or controls Client Money for a Client must, subject to (3), comply with the Client Money Provisions in App5.
 - (3) Where the Client is a Market Counterparty, an Authorised Firm may exclude the application of the Client Money Provisions but only where it has obtained the prior written consent of 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.

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11 CROWDFUNDING

11.1 Operating a Loan-based Crowdfunding Platform Overview

Guidance

1. This ~~chapter section~~ applies to an Authorised Firm that is Operating a ~~Loan-based Crowdfunding Platform~~ (an “operator”).
 2. A Crowdfunding Platform may be either a Loan-based Crowdfunding Platform or an Investment-based Crowdfunding Platform. The key distinction is whether the Person providing funding on the platform enters into a loan agreement with the Person to whom it is providing funding or purchases an Investment (such as a Share or a Debenture) issued by that Person.
 3. The terminology used in this chapter will vary according to the type of Crowdfunding Platform:
 - (a) ‘borrower’, ‘lender’ and ‘loan’ for a Loan-based Crowdfunding Platform; and
 - (b) ‘Issuer’, ‘investor’ and ‘Investment’ for an Investment-based Crowdfunding Platform.
 4. In this chapter, sections 1, 2 and 3 apply to all Crowdfunding Platforms (unless specified otherwise); section 4 sets out additional requirements for Loan-based Crowdfunding Platforms and section 5 sets out additional requirements for Investment-based Crowdfunding Platforms.
 - ~~52.~~ In addition to the Rules in this ~~chapter section~~, an operator must comply with other parts of COB such as chapters 1, 2 and 3 and, if it holds or controls Client Assets Money, sections 6.11, 6.12, ~~6.13~~ and 6.14. ~~It should be noted that if the operator is a Category 4 firm, it may control Client Money but it is not permitted to hold Client Money (see Rule 6.12.2).~~
 - ~~63.~~ Both An operator will have two types of Clients: borrowers and lenders (in the case of Loan-based Crowdfunding) or Issuers and investors (in the case of Investment-based Crowdfunding) will be Clients of the operator of a Crowdfunding Platform. COB requirements will apply in relation to both types of Clients. Under section 3.3 and App 2, additional terms must be included in Client Agreements with Clients who are borrowers or lenders or Issuers or investors (see Rules A2.1.5 and A2.1.6).
 - ~~74.~~ An operator will also need to comply with relevant requirements in the AML module, such as carrying out customer due diligence on Clients who are borrowers or lenders or Issuers or investors.
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8. In the case of an Investment-based Crowdfunding Platform, the issue of Investments may result in the application of requirements under the Markets Law such as provisions relating to Market Abuse or, if it is not an Exempt Offer, requirements relating to Prospectuses.

11.2 **Application and interpretation**

Application

- 11.24.1** This ~~chapter section~~ applies to an Authorised Firm with respect to the Operation of a ~~Loan-based~~ Crowdfunding Platform.

Interpretation

- 11.24.2** In this ~~chapter section~~:

- (a) “borrower” means a Person that has borrowed or is seeking to borrow money using ~~the~~ a Loan-based Crowdfunding Platform;
- (b) “commitment period” means the period specified by the operator during which lenders may commit to lending money to a particular borrower or investors may commit to making an Investment with a particular Issuer;
- (c) “cooling-off period”, in relation to Investment-based Crowdfunding, means the period referred to in Rule 11.5.2 when an investor may withdraw their commitment to make an Investment;
- (d) “investor” means an investor or potential investor using an Investment-based Crowdfunding Platform;
- (e) “lender” means a Person who:
 - (i) lends money under a loan agreement; or
 - (ii) by assignment has assumed the rights and obligations of a Person who has lent money under a loan agreement;
- (f) “loan agreement” means a loan agreement between a borrower and lender referred to in Rule 11.4.14-7;
- (g) “operator” means a ~~Loan-based~~ Crowdfunding Operator;

- (hf) “platform” means the website or other electronic media used to provide the service;
- (ig) “service” means Operating a ~~Loan-based~~ Crowdfunding Platform; and
- (jh) “transfer”, in relation to a loan agreement, means the assignment by a Person who has lent money under a loan agreement of his rights and obligations under the agreement to another Person.

11.3 Requirements for Crowdfunding Platforms

Crowdfunding risk disclosure

11.3.11.3 An operator must disclose prominently on its website the main risks to a lender or an investor of using a ~~Loan-based~~ Crowdfunding Platform including that:

- (a) the lender or investor may lose all or part of their money or may experience delays in being repaid;
- (b) borrowers or Issuers may include new businesses and, as many new businesses fail, a loan to such a borrower or an investment with such an Issuer may involve high risks; ~~and~~
- (c) if for any reason the operator ceases to carry on its business, the lender or investor may lose all or part of their money or experience delays in being repaid; and
- (d) the lender may not be able to transfer their loan, or the investor may not be able to sell their Investment, when they wish to, or at all.

Information about default or failure rates

- 11.3.21.4** (1) An operator must disclose prominently on its website:
- (a) for Loan-based Crowdfunding, the actual and expected default rates of borrowers who obtain loans using its service; and
 - (b) for Investment-based Crowdfunding, the actual and expected failure rate of Issuers who obtain funds using its service.
- (2) The information referred to in (1) must:

- (a) for actual default or failure rates, cover the period since the operator began providing the service;
- (b) for expected default or failure rates, set out a summary of the assumptions used in determining those expected default or failure rates; and
- (c) be presented in a way that is fair, clear and not misleading.

Guidance

Rule 11.3.21-4 requires an operator of a Loan-based Crowdfunding Platform to disclose historical information about the proportion of borrowers that have defaulted on loans provided using the platform (i.e. the actual default rates). It also requires the operator to set out the expected default rates in the future. An operator of an Investment-based Crowdfunding Platform is required to disclose similar information about the failure rates of Issuers on its platform. Failure of an Issuer should include where an Issuer defaults on payments, becomes insolvent, is wound up or ceases to carry on business. These disclosures are intended to assist potential lenders or investors to assess the risks of lending or investing using the platform.

Information about the service

11.3.31.5 An operator must disclose prominently on its website key information about how its service operates including:

- (a) details of how the platform functions;
- (b) details of how the operator is remunerated for the service it provides, including fees and charges imposed;
- (c) any financial interest of the operator or a Related Person that may create a conflict of interest;
- (d) the eligibility criteria for borrowers or Issuers;
- (e) the minimum and maximum amounts, if any, of loans or Investments that may be sought by a borrower or an Issuer using the service;
- (f) what, if any, security is usually sought from borrowers or Issuers, the circumstances in which it might be exercised and any limitations on its use;
- (g) the eligibility criteria for lenders or investors;

- (h) ~~the~~ any limits on the amounts a lender may lend or an investor may invest using the service: both to an individual borrower or Issuer and over any 12 month period;
- (i) ~~if applicable, the circumstances, if any, in which a lender or an investor may withdraw a commitment to provide funding, make a loan and the procedure for exercising such a right;~~
- (j) what will happen if loans sought by a borrower or funds sought by an Issuer either fail to meet, or exceed, the target level;
- (k) steps the operator will take if there is a material change in a borrower's or an Issuer's circumstances and the rights of the lender and borrower or Issuer and investor in that situation;
- (l) how the operator will deal with overdue payments or a default by a borrower or an Issuer;
- (m) arrangements and safeguards for Client Assets ~~Monies~~ held or controlled by the operator, including details of any legal arrangements (such as nominee companies) that may be used to hold Client Assets;
- (n) any facility it provides to facilitate the transfer of loans or the sale of Investments, the conditions for using the facility and any risks relating to the use of that facility;
- (o) measures it has in place to ensure the platform is not used for money-laundering or other unlawful activities;
- (p) measures it has in place for the security of information technology systems and data protection; and
- (q) contingency arrangements for the orderly administration of loans or Investments in the event that the operator ceases to carry on its business.

Providing regulated and unregulated crowdfunding services

11.3.41.6 If an operator provides both regulated and unregulated crowdfunding services, it must take reasonable steps to ensure that lenders or investors can clearly distinguish between, and are not misled about, which parts of the service are regulated and unregulated.

Guidance

Examples of steps an operator may take to comply with Rule 11.3.41.6 include using different legal entities to provide the regulated and unregulated parts of the service, using separate platforms for the different services or making clear and prominent disclosures on its platform about which parts are regulated and unregulated.

~~Written loan agreement~~

11.1.7 ~~An operator must ensure that, when a loan is made using its service, there is a written loan agreement in place between the borrower and lender that is legally enforceable and sets out sufficient details of the loan, the terms of repayment and the rights and obligations of the borrower and lender.~~

Due diligence on borrowers or Issuers

11.3.5 1.8 An operator must not permit a borrower or an Issuer to use its service unless the borrower or Issuer is a Body Corporate.

11.3.6 1.9 An operator must conduct due diligence on each borrower or Issuer before allowing it to use its service, including as a minimum taking reasonable steps to verify:

- (a) the borrower's or Issuer's identity including details of its incorporation and business registration;
- (b) the identity and place of domicile of each director, officer and controller of the borrower or Issuer;
- (c) the fitness and propriety of the Persons referred to in (a) and (b);
- (d) the financial strength of the borrower or Issuer, including checking financial statements;
- (e) the financial history and past performance of the borrower or Issuer;
- (f) the credit history of the borrower or Issuer, including checking with external credit agencies;

- (g) any credentials or expertise that the borrower or Issuer claims to have;
- (h) the valuation of the borrower's or Issuer's business, its current borrowing or funding levels and the source of any existing borrowing or funding;
- (i) the borrower's or Issuer's business proposal;
- (j) the commitment of the borrower or Issuer and its directors, officers and controllers to the business, including how much capital they have provided and any potential flight risk; and
- (k) that the borrower or Issuer is complying with applicable laws in the jurisdiction in which it is incorporated.

Guidance

The type of background checks the DFSA expects an operator to conduct under Rule 11.3.6-9(c) include, for example, whether the Person has been:

- a. found guilty of a criminal offence;
- b. the subject of any finding in a civil proceeding of fraud, misfeasance or other misconduct or a judgment or agreed settlement in a civil proceeding exceeding \$10,000;
- c. disqualified from acting as a director or taking part in the management of a company; or
- d. bankrupt or the director or a person concerned in the management of a company which has gone into liquidation or administration.

Disclosure of information about the borrower or Issuer

11.3.7 4-10 An operator must disclose prominently on its website relevant information about each borrower or Issuer including as a minimum:

- (a) the borrower's or Issuer's name and the full name and position of each director and officer of the Body Corporate and the full names of its controllers;
 - (b) the place of incorporation of the borrower or Issuer and the place of domicile of each director, officer and controller;
 - (c) a description of the borrower's or Issuer's business;
 - (d) the most recent financial statements, if any, of the borrower or Issuer;
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- (e) the valuation of the borrower's or Issuer's business, its current borrowing levels and the source of its borrowing and its liquidity;
- (f) a detailed description of the proposal for which it is seeking funding including the total funding sought;
- (g) full details of how the funds will be used;
- (h) the results of the due diligence carried out by the operator on the borrower or Issuer and any limits on the due diligence that could be carried out;
- (i) any grading or rating by the operator of the borrower's or Issuer's creditworthiness, including:
 - (i) how the grading or rating has been assessed;
 - (ii) an explanation of what the different grading or rating levels mean; and
 - (iii) a clear statement that this should not be taken as advice about whether money should be lent to the borrower or invested with the Issuer;
- (j) in the case of a loan or Debenture, the duration of the loan or Debenture, details of interest payable and any other rights attaching to the loan or Debenture;
- (k) in the case of a Share, any rights attaching to the Share, such as dividend, voting or pre-emption rights;
- (l) the target level of funding that must be obtained and what will happen if that target is not met or is exceeded;
- (km) whether any security has been provided by the borrower or Issuer, the circumstances in which it might be exercised and any limitations on its use; ~~and~~
- (ln) if applicable, any other reward or benefit attaching to the loan or Investment and the terms on which it is available-;
- (o) in the case of an issue of Shares, whether investors have any protection from their shareholding being diluted by the issue of further Shares;

- (p) that the operator gives no assurances that financial statements provided by the borrower or Issuer are accurate; and
- (q) that the borrower or Issuer, and information provided about the borrower or Issuer, are not checked or approved by the DFSA.

Proposals not to be advertised outside platform**11.3.8**

An operator:

- (a) must not advertise a specific lending or Investment proposal that is available on its platform; and
- (b) must take reasonable steps to ensure that borrowers and Issuers that use its platform do not advertise such a lending or Investment proposal.

unless the advertisement is made on the platform and is accessible only to existing Clients who use the platform.

Guidance

1. Rule 11.3.8 does not prevent a Person such as a borrower or an Issuer from referring other Persons to the operator or providing a link to the operator's website homepage. However, a link to a specific lending or investment proposal should not be displayed outside the platform if it is accessible to Persons who are not Clients of the operator.
2. If an Investment proposal is advertised to Persons who are not Clients of the operator, in addition to breaching Rule 11.3.8, there may be an Offer of Securities to the Public that requires a Prospectus, as the offer may no longer meet the conditions of the Exempt Offer exclusion for crowdfunding platforms in MKT Rule 2.3.1(m).

Material changes affecting a borrower or Issuer**11.3.94-11**

- (1) An operator must disclose prominently on its website:
 - (a) details of any material change relating to a borrower or an Issuer, its business or the carrying out of its proposal;
 - (b) any change in the rights of the lenders and the borrower, or the investors and the Issuer, arising from the material change; and
 - (c) further steps, if any, the operator is proposing to take as a result of the change.

- (2) The disclosures under (1) must be made as soon as practicable after the operator becomes aware of the material change referred to in (1)(a).

Guidance

1. A borrower or an Issuer is required under its Client Agreement to give reasonable advance notice to the operator of any material change in its circumstances (see Rule A2.1.6). An operator is required to specify on its website what steps it will take, and the rights of a lender and borrower or an Issuer and investor, if a material change occurs (see Rule 11.3.3+5(k)).
2. A ‘material change’ is likely to be any factor that could significantly affect the borrower’s ability to meet its payment obligations under the loan agreement or an Issuer’s business or ability to carry out its proposal. This might include, for example, a change in the management, control or structure of the business, an event affecting its profitability, a change relating to its assets or a default in meeting another obligation.

Borrower or Issuer not to use other platforms

- 11.3.104.12** An operator must take reasonable steps to restrict a borrower or an Issuer from using another loan crowdfunding platform to obtain funding during the commitment period.

Guidance

Allowing a borrower or an Issuer to use different platforms at the same time creates the risk that the borrower or Issuer might offer different terms interest rates, repayment maturities and information about the proposal, causing potential confusion for lenders or investors and creating the potential for arbitrage by a borrower or an Issuer. This restriction only applies during the commitment period for the borrower or Issuer i.e. the period when it is open to lenders to commit to making loans to that borrower or investors to commit to investing with that Issuer.

Lending limits

- ~~**11.1.13** — An operator must maintain effective systems and controls to ensure that a Retail Client using its service does not lend more than:~~
- ~~(a) — US\$5,000 to any single borrower; and~~
 - ~~(b) — US\$50,000 in total in any calendar year using the service.~~

Equal treatment of lenders and investors

11.3.114.14 An operator must ensure that lenders or investors who use its service are able to have access to the same information on its website about a borrower or an Issuer or a lending or investment proposal.

11.3.124.15 If an operator provides an auto-lending system, or any other facility, that provides some lenders or investors with the opportunity to lend or invest money ahead of other lenders or investors, the operator must disclose prominently on its website that some lenders or investors may have preferential access to better proposals.

Guidance

An ‘auto-lending system’ is a facility that automatically allocates certain loans to a lender according to parameters chosen by the lender. The availability of this type of facility creates the risk that other lenders may not be aware that the best lending opportunities have already been allocated and that remaining lending opportunities may be of lower quality. For Investment-based Crowdfunding, a facility that enables selected investors to invest ahead of other investors, may raise similar risks.

Operator not to permit staff to use the platform

11.3.134.16 An operator must take reasonable steps to ensure that its officers and employees and their family members do not:

- (a) lend money or provide finance to a borrower or an Issuer;
- (b) borrow money from a lender or receive funding from an investor; or
- (c) hold any direct or indirect interest in the capital or voting rights of a borrower or lender or an Issuer or investor.

Forums

11.3.144.17 If an operator provides a means of communication (a “forum”) for lenders and borrowers or Issuers and investors to discuss funding proposals made using the service, it must:

- (a) refer lenders or investors to the forum as a place where they can find, or take part in, further discussion about proposals, while clearly stating that the operator does not conduct due diligence on information on the forum;
- (b) restrict posting of comments on the forum to Persons who are Clients using the service;

- (c) ensure that all Clients using the forum have equal access to information posted on the forum;
- (d) require a Person posting a comment on the forum to disclose clearly if he is affiliated in any way with a borrower or an Issuer or is being compensated, directly or indirectly, to promote a proposal by a borrower or an Issuer;
- (e) take reasonable steps to monitor and prevent posts on the forum that are potentially misleading or fraudulent;
- (f) immediately take steps to remove a post, or to require a post to be deleted or amended, if the operator becomes aware that (d) or (e) have not been complied with; and
- (g) not participate in discussions on the forum except to moderate posts or to take steps referred to in (f).

Facility for transfer of loans or Investments

11.3.154-18 If an operator provides a facility that assists the transfer of rights or obligations under a loan agreement or the sale of Investments, it must ensure that:

- (a) the facility relates only to loans or Investments originally facilitated using its service;
- ~~(b) the facility allows only lenders (and not borrowers) to transfer their rights and obligations under loan agreements;—~~
- (be) transfers can take place only between lenders or investors who are already Clients using the service and have initially lent money under loan agreements or initially subscribed for Investments using the service;
- (c) in the case of a loan agreement, the facility allows only a lender (and not the borrower) to transfer their rights and obligations under the agreement;
- (d) in the case of a loan agreement, a lender must transfer the rights and obligations relating to the whole of a loan made (and not just a part of the loan);

- (e) potential transferees or buyers have access to all information on the website about the borrower or Issuer that was available to earlier lenders or investors; and
- (f) fees it charges for the use of the facility are designed to recover its costs of providing the facility, rather than generating additional income.

Guidance

1. A facility for the transfer of rights and obligations under loan agreements or the sale of Investments should exist mainly to provide an exit route for lenders or investors rather than being a facility for the active trading of loans or Investments. For example, the operator should ensure that transferees or buyers are Clients who already initially lent money to either the particular borrower or another borrower or initially invested funds in the Issuer or another Issuer. That is, the facility should not be used by persons who are only involved in secondary ~~buying~~ trading of loans or Investments.
2. The conditions in Rule 11.3.154-18 apply only to the transfer of rights and obligations under a loan agreement, or the sale of Investments, using the ~~transfer~~ facility provided by the operator. They do not affect transfers of rights and obligations or Investments that may occur outside that facility, for example, by operation of law such as under a will or by a Court order.

Information technology

- 11.3.164-19** (1) An operator must have adequate measures in place to ensure:
- (a) its information technology systems are resilient and not prone to failure;
 - (b) business continuity in the event that an information technology system fails;
 - (c) protection of its information technology systems from damage, tampering, misuse or unauthorised access; and
 - (d) the integrity of data forming part of, or being processed through, its information technology systems.
- (2) An operator must review the measures referred to in (1) at least annually to ensure they are adequate.

Business cessation plan

- 11.3.174-20** The operator must maintain a business cessation plan that sets out appropriate contingency arrangements, including measures that have
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already been put in place, to ensure the orderly administration of loan agreements or Investments in the event that it ceases to carry on its business.

Guidance

The business cessation plan may, for example, set out arrangements for another appropriately regulated third party to take over the administration of existing loans or Investments. The plan must set out what steps have been taken to ensure that the arrangements can be implemented immediately if the operator ceases to carry on its business (for example, any existing agreement with a third party).

11.4 **Loan-based Crowdfunding – extra requirements**

Written loan agreement

11.4.1 An operator of a Loan-based Crowdfunding Platform must ensure that, when a loan is made using its service, there is a written loan agreement in place between the borrower and lender that is legally enforceable and sets out sufficient details of the loan, the terms of repayment and the rights and obligations of the borrower and lender.

Lending limits

11.4.2 An operator of a Loan-based Crowdfunding Platform must maintain effective systems and controls to ensure that a Retail Client using its service does not lend more than:

- (a) US\$5,000 to any single borrower; and
- (b) US\$50,000 in total in any calendar year using the service.

11.5 **Investment-based Crowdfunding – extra requirements**

Risk acknowledgement form

11.5.1 (1) An operator of an Investment-based Crowdfunding Platform must ensure that a Retail Client provides a signed risk acknowledgement form for each Investment that it makes using the platform.

(2) The risk acknowledgement form under (1) must:

- (a) set out clearly the risks referred to in Rule 11.3.1;
 - (b) require the Retail Client to confirm that he understands those risks; and
 - (c) be provided before, or at the same time as, the Retail Client commits to making the Investment.
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Cooling-off period

- 11.5.2** (1) An operator of an Investment-based Crowdfunding Platform must ensure that investors who have committed to providing funding to a particular Issuer, may withdraw that commitment, without any penalty and without giving a reason, during the cooling-off period.
- (2) In (1), the “cooling-off period” means the period of 48 hours after the investor initially commits to making the investment.

Guidance

An operator may provide investors with a cooling-off period that is longer than the period specified in Rule 11.5.2(2).

Lending limit

- 11.5.3** An operator of an Investment-based Crowdfunding Platform must maintain effective systems and controls to ensure that a Retail Client using its service does not invest more than US\$50,000 in total in any calendar year using the service.

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APP2 KEY INFORMATION AND CLIENT AGREEMENT**A2.1 Key Information and content of the Client Agreement****General**

- A2.1.1** The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

- (a) the core information set out in:
- (i) Rule A2.1.2 (1) if it is a Retail Client; and
 - (ii) Rule A2.1.2(2) if it is a Professional Client;

- (b) where relevant, the additional information required under Rule A2.1.3 for Investment Business and Rule A2.1.4 for Investment Management; and
- (c) the additional terms set out in Rules A2.1.5 and A2.1.6 if the Client Agreement relates to the use of a ~~Loan-based~~ Crowdfunding Platform.

Core information**A2.1.2**

- (1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:
 - (a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;
 - (b) the regulatory status of the Authorised Firm;
 - (c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;
 - (d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;
 - (e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;
 - (f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);
 - (g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and
 - (h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11.
 - (2) In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).
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Additional terms for ~~Loan-based~~ Crowdfunding Platforms

A2.1.5 The following terms must be included in a Client Agreement between a ~~Loan-based~~ Crowdfunding Operator and a Client that is a lender or an investor:

- (a) the operator's obligations to administer the loan or Investment, including how repayments made by the borrower or Issuer will be transferred to the lender or investor and steps that will be taken if repayments by a borrower or an Issuer are overdue or the borrower or Issuer is in default;
- (b) if the Client is a Retail Client, the steps that will be taken by the operator and lender or investor to ensure that the lender or investor complies with any applicable limits relating to the amounts of loans or investments that may be made using the platform; ~~and~~
- (c) for Investment-based Crowdfunding, if the Client is a Retail Client, that the Client agrees to sign a risk acknowledgement form each time before he makes an Investment using the platform; and
- (ed) the contingency arrangements that the operator will put in place to deal with a platform failure or the operator ceasing to carry on its business.

A2.1.6 The following terms must be included in a Client Agreement between a ~~Loan-based~~ Crowdfunding Operator and a Client that is a borrower or an Issuer:

- (a) a restriction on the borrower or Issuer using any other crowdfunding service to raise funds during the commitment period;
 - (b) a restriction on the borrower or Issuer or any Person that is Connected to the borrower or Issuer, lending or financing, or arranging lending or finance for, a lender or an investor using the service;
 - (c) a restriction on the borrower or Issuer advertising its proposal, or soliciting potential lenders or investors, outside the platform during the commitment period, ~~except by referring to, or providing a link to, the platform;~~
 - (d) a restriction on the borrower or Issuer making any material change to its proposal during the commitment period;
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- (e) a requirement on the borrower or Issuer to give reasonable advance notice to the operator of any material change affecting the borrower or Issuer, its business or the carrying out of its proposal; ~~and~~
- (f) the obligations of the borrower or Issuer if there is any material change after funds have been provided-; and
- (g) an obligation on the borrower or Issuer to produce financial statements at least annually.