

**Appendix 10**

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



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# Notice of Amendments

General Module

**(GEN)**

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## Consequential changes

### 1 INTRODUCTION

#### 1.1 Application

- 1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law ~~2005~~2012 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

##### **Guidance**

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive of GEN apply to a Representative Office.

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### 3. FINANCIAL PROMOTIONS

#### 3.1 Application

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- 3.1.2** Rules 3.4.1 to 3.6.3 do not apply to a Person who makes an Offer which is in accordance with the requirements relating to:
- (a) an Offer of Securities under the Markets Law ~~2004~~2012 and the ~~OSRMKT~~ Rules; or
  - (b) an Offer of Units under the Collective Investment Law 2010 and CIR Rules.

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#### 3.2 Overview

- 3.2.1** The Rules in this chapter are made for the purposes of the Financial Promotions Prohibition in Article 41A of the Regulatory Law 2004.

##### **Guidance**

1. Article 41A(3) of the Regulatory Law 2004 defines a Financial Promotion as:

“Any communication, however made, which invites or induces a Person to:

- (a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or

- (b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product.”
- 2. The Guidance in this chapter is designed to help explain the scope of the Financial Promotions Prohibition.
- 3. The definition of a Financial Promotion is very broad and encompasses the definitions of a “financial promotion” in Article 19(3) of the Collective Investment Law 2010 and ~~OSR Rule 2.2.1(3)~~. A Financial Promotion also includes “marketing material” as defined elsewhere in the Rulebook.
- 4. The DFSA considers that a Financial Promotion may be made in any manner and by any form including, but not limited to, an oral, electronic or written communication and includes an advertisement, or any form of promotion or marketing. A disclaimer stating that a communication is not a Financial Promotion would not, on its own, prevent a communication from being a Financial Promotion.
- 5. A Person who is permitted to make a Financial Promotion in the DIFC pursuant to these Rules should ensure that in making such a Financial Promotion he does not breach the Financial Services Prohibition in Article 41 of the Regulatory Law 2004.

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### **3.5 Additional Rules for Financial Promotions**

#### **3.5.1 .....**

##### **Guidance**

- 1. In presenting information relating to past performance of a financial product or financial service, a Person should use a reputable independent actuarial, financial or statistical reporting service provider.
- 2. The effect of Rule 3.5.1(2) is that a Person who is licensed and regulated by a Financial Services Regulator in the UAE is not required to comply with Rule 3.5.1(1) when communicating with an existing client. However, when making a Financial Promotion to a prospective client in the DIFC, Rule 3.5.1(1) does apply to such Persons, as do the prohibitions on the making of offers contained in the ~~Offered Securities Rules~~ Markets Law 2012 and Collective Investment Law 2010 respectively.

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## **6 GENERAL PROVISIONS**

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### **6.3 Emergency**

#### **6.3.1.....**

##### **Guidance**

- 1. Procedures for notification to the DFSA are set out in section 11.11.
- 2. The Rules in section 6.3 do not affect the powers of the DFSA under Article ~~926~~ of the ~~Markets Law 2004~~2012.

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## 10 TRANSITIONAL RULES

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### 10.6 Specific relief – Designated Investments

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**10.6.3** For the purposes of the requirements in ~~OSRMKT~~ and AMI modules, a Designated Investment which is included in an Official List of Securities of an Authorised Market Institution immediately prior to 4 January 2009 is deemed to be a Structured Product.

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## APP2 INVESTMENTS

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### A2.4 Financial instrument declared as an investment

#### A2.4.1 .....

##### Guidance

1. The terms and conditions that may be imposed on a declaration made by the DFSA under Rule A2.4.1(1) can include who should be the Reporting Entity and the type of disclosure requirements that should apply to that Reporting Entity.
2. If any issuer of a new financial instrument has any doubt as to whether that instrument can be included in an Official List of Securities as a particular type of a Security, that Person should first raise those issues with the relevant Authorised Market Institution before making an application to the DFSA for the exercise of the declaration power under this Rule. The DFSA has a discrete power to object to any proposed inclusion of a Security in an Official List of Securities of an Authorised Market Institution (see Article ~~17(14)~~34(1) of the Markets Law ~~2004~~2012).

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**Changes in relation to Consultation Paper No. 76**

**3. FINANCIAL PROMOTIONS**

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**3.4 Scope of the Financial Promotions Prohibition**

- 3.4.1** (1) A Person shall not, subject to (2), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.
- (2) A Person other than an Authorised Person may make a Financial Promotion in or from the DIFC if, and only to the extent that, the Person:
- (a) is licensed and supervised by a Financial Services Regulator in the UAE;
  - (b) is a Recognised Body Person or External Fund Manager;
  - (c) is a Reporting Entity and makes a Financial Promotion in or from the DIFC exclusively for the purpose of discharging its mandatory disclosure requirements; or
  - (d) makes an exempt Financial Promotion as specified in (3).

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**8 ACCOUNTING AND AUDITING**

**8.1 Application**

- 8.1.1** (1) This chapter applies subject to (2) to every:
- (a) Authorised Person other than a Representative Office;
  - (b) applicant for registration as an auditor with the DFSA; and
  - (c) Auditor registered with the DFSA.
- (2) This chapter does not apply to applicants for registration as Auditors in relation to Public Listed Companies.

**Guidance**

Chapter 4 of the Islamic Finance Rules (IFR) contains accounting and audit requirements that are specific to Islamic Financial Business.

Chapter 5 of the Markets Rules (MKT) contains the audit requirements that are specific to a Public Listed Company including registration criteria etc

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## 8.4 Appointment and termination of auditors

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**8.4.6** ~~Where an auditor appointed by an Authorised Person is not suitable in the opinion of the DFSA, or w~~ Where an auditor has not been appointed by an Authorised Person, the DFSA may direct an Authorised Person to replace or appoint an auditor in accordance with the requirements in this chapter.

**8.4.7** Where an auditor appointed by an Authorised Person is in the opinion of the DFSA not suitable to audit that Authorised Person, the DFSA may direct that auditor to remove itself as the auditor of that Authorised Person.

**8.4.8** The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a direction made under Rule 8.4.7.

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## 8.9 Obligations of Auditors and Audit Principals

**8.9.1** An Auditor must:

- (a) continue to comply with all its obligations including those in Chapter 8;
- (b) comply with the applicable International Standards of Auditing, Quality Control and Codes of Ethics referred to in Rule 8.7.3(c) and (d); ~~and~~
- (c) Appoint an Audit Principal in accordance with the International Standards on Quality Control; and
- (d) ensure that each Audit Principal is fit and proper to conduct audit work on behalf of the Auditor.

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## 8.15 Continuing professional development

**8.15.1** An Auditor must ensure that all Employees, including Audit Principals, engaged in audit work undertake continuing professional development in accordance with the requirements of:

- (a) ~~in the case of an Audit Principal,~~ the Recognised Professional Body of which the Employee or Audit Principal is a member;
- (b) any applicable internal standards of the Auditor; and
- (c) any direction or order given by the DFSA.

## Changes in relation to Consultation Paper No. 77

### **4 CORE PRINCIPLES**

#### **4.1 Principles for Authorised Firms – application**

**4.1.1** The ~~twelve~~ ~~eleven~~ Principles for Authorised Firms, set out in section 4.2, apply to every Authorised Firm, other than a Representative Office, in accordance with Rules 4.1.2 and 4.1.3.

**4.1.2** (1) For the purposes of Rule 4.1.3 the term ‘activities’ means:

- (a) Financial Services business;
- (b) activities carried on in connection with a Financial Service business;
- (c) activities held out as being for the purpose of a Financial Service business; and
- (d) in relation to any particular Principle, any activity specified in (2), (3) and (4).

(2) Principles 3 and 4 also apply in a Prudential Context to an Authorised Firm with respect to the carrying on of all its activities.

(3) Principles 3 and 4 also take into account any activities of other members of the Group of which the Authorised Firm is a member.

(4) Principles 10 and 11, to the extent that it relates to disclosing to the DFSA, also applies to an Authorised Firm with respect to the carrying on of all its activities, and takes into account any activities of other members of the Group of which the Authorised Firm is a member.

**4.1.3** (1) The Principles apply to an Authorised Firm only with respect to activities carried on from an establishment maintained by it in the DIFC, unless an extension in (2), (3), (4) or (5) applies.

(2) Where another applicable Rule, which is relevant to the activity, has a wider territorial scope than that in (1), any related Principle applies with that wider scope in relation to the activity described in the Rule.

(3) Principles 1, 2 and 3 apply in a Prudential Context to an Authorised Firm with respect to activities wherever they are carried on.

(4) Principles 4 and 11 apply to an Authorised Firm with respect to activities wherever they are carried on.

(5) Principle 5 also applies to an Authorised Firm with respect to the activities carried on in or from any place outside the DIFC if and to the extent that the activities have, or might reasonably be regarded as

likely to have, a negative effect on confidence in the financial markets operating in the DIFC.

**Guidance**

1. The Principles for Authorised Firms have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules and also in new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of the Rulebook build upon these fundamental principles. Consequently the Rules and Guidance elsewhere in the Rulebook should not be seen as exhausting the implications of the Principles.
2. Breaching a Principle for Authorised Firms makes an Authorised Firm liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Financial Service or to hold a Licence and the DFSA may consider withdrawing authorisation or the Licence on that basis.
3. The onus will be on the DFSA to show that the Authorised Firm has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

**4.2 The Principles for Authorised Firms****Principle 1 - Integrity**

- 4.2.1** An Authorised Firm must observe high standards of integrity and fair dealing.

**Principle 2 - Due skill, care and diligence**

- 4.2.2** In conducting its business activities, an Authorised Firm must act with due skill, care and diligence.

**Principle 3 - Management, systems and controls**

- 4.2.3** An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

**Principle 4 - Resources**

- 4.2.4** An Authorised Firm must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.

**Principle 5 - Market conduct**

- 4.2.5** An Authorised Firm must observe proper standards of conduct in financial markets.



**Principle 6 - Information and interests**

- 4.2.6** An Authorised Firm must pay due regard to the interests of its customers and communicate information to them in a way which is clear, fair and not misleading.

**Principle 7 - Conflicts of interest**

- 4.2.7** An Authorised Firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers, between its Employees and customers and between one customer and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a customer are not adversely affected.

**Principle 8 - Suitability**

- 4.2.8** An Authorised Firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who are entitled to rely upon its judgement.

**Principle 9 - Customer assets and money**

- 4.2.9** Where an Authorised Firm has control of or is otherwise responsible for assets or money belonging to a customer which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

**Principle 10 - Relations with regulators**

- 4.2.10** An Authorised Firm must deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Authorised Firm of which the DFSA would reasonably expect to be notified.

**Principle 11 - Compliance with high standards of corporate governance**

- 4.2.11** ~~An Authorised Firm must meet applicable standards of corporate governance as appropriate considering the nature, size and complexity of the Authorised Firm's activities.~~

An Authorised Firm must have a corporate governance framework as appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Authorised Firm's business and to protect the interests of its customers and stakeholders.

**Guidance**

Corporate governance framework encompasses structural and procedural arrangements such as systems, policies and practices that are put in place to promote good governance and include the specific measures required under GEN Rule 5.3.30. ~~and AMI Rule 7.2.2(d).~~

**Principle 12 – Remuneration practices**

**4.2.12** An Authorised Firm must have a remuneration structure and strategies which are well aligned with the long term interests of the firm, and are appropriate to the nature, scale and complexity of its business.

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**5 MANAGEMENT, SYSTEMS AND CONTROLS**

**5.1 Application**

- 5.1.1**
- (1) Subject to (5), this chapter applies to every Authorised Person with respect to the Financial Services carried on in or from the DIFC.
  - (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
  - (3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch's activities wherever they are carried on.
  - (4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance.
  - (5) Rules 5.3.13, 5.3.14, 5.3.15, 5.3.23, ~~and 5.3.24~~, 5.3.30 and 5.3.31 do not apply to an Authorised ISPV.
  - (6) This chapter does not apply to a Representative Office.

**Guidance**

1. The purpose of this chapter is:
  - a. ~~to set out the requirements for the Governing Body and the senior management within an Authorised Person who are to take direct responsibility for the Authorised Person's arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA's objectives or they affect the DFSA's functions under the legislation applicable in the DIFC; and. See also the requirements relating to organisation in Rules 5.3.2 and 5.3.3.~~
  - b. ~~to require an Authorised Firm to vest responsibility in senior management for effective and responsible organisation and to have effective systems and controls~~
2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module.
3. In relation to an Authorised Firm which is a Fund Manager or the Trustee, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates or for which it acts as the Trustee.

## 5.2 Allocation of significant responsibilities ~~Senior management arrangements~~

### Apportionment of significant responsibilities

**5.2.1** An Authorised Person must apportion significant responsibilities ~~among~~ between the members of its Governing Body and its senior management and maintain such apportionment in such a way that:

- (a) it meets the corporate governance requirements in Rule 5.3.30;
- ~~(a)~~ (b) it is appropriate with regard to:
  - (i) the nature, scale and complexity of the business ~~and affairs of~~ the Authorised Person; and
  - (ii) the ability and qualifications of the responsible individuals;
- ~~(b)~~ (c) it is clear who is responsible for which matters; and
- ~~(c)~~ (d) the business ~~and affairs~~ of the Authorised Person can be adequately monitored and controlled by the Authorised Person's Governing Body and senior management.

**5.2.2** An Authorised Person must allocate to the Senior Executive Officer or to the individual holding equivalent responsibility for the conduct for the Authorised Person's business or the Governing Body, the functions of:

- (a) dealing with the apportionment of responsibilities; and
- (b) overseeing the establishment and maintenance of systems and controls.

### Guidance

Rules 5.2.1 and 5.2.2 do not derogate from the overall responsibility of the Governing Body in Rule 5.3.30(2) with respect to the strategic objectives and corporate values of the Authorised Person as appropriate taking into consideration the nature, size and complexity of the Authorised Person's activities.

### Recording of apportionment

- 5.2.3**
- (1) An Authorised Person must establish and maintain an up-to-date record of the arrangements it has made to comply with Rules 5.2.1 and 5.2.2.
  - (2) The record must show that the members of the Governing Body and the relevant senior management are aware of and have accepted the responsibilities apportioned in accordance with Rule 5.2.1.
  - (3) Where a responsibility has been allocated to more than one individual, the record must show clearly how that responsibility is allocated between the individuals.

- (4) The record must be retained for six years from the date on which it was established or superseded by a more up-to-date record.

## 5.3 Systems and controls

### General requirement

- 5.3.1** (1) An Authorised Person must establish and maintain systems and controls, including but not limited to financial and risk systems and controls, that ensure that its affairs are managed effectively and responsibly by its senior management.
- (2) An Authorised Person must undertake regular reviews of its systems and controls.

### Guidance

The nature and extent of the systems and controls of an Authorised Person will depend upon a variety of factors including the nature, ~~size~~ scale and complexity of its business. While all Authorised Persons, irrespective of ~~size, the nature, scale, and complexity of their business~~ and legal structure or organisation need to comply with this chapter, the DFSA will take into account these factors and the differences that exist between Authorised Persons when assessing the adequacy of an Authorised Person's systems and controls. Nevertheless, neither these factors nor the differences relieve an Authorised Person from compliance with its regulatory obligations.

### Organisation

- ~~5.3.2 An Authorised Person must implement clear reporting lines that take into account the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, must be communicated to all Employees and documented within the Authorised Person. If it is an Authorised Firm, it must also clearly identify the Employees who will be delivering Financial Services to its customers, and their respective lines of accountability and supervision.~~

An Authorised Person must establish and implement, taking due account of the nature, scale and complexity of its business and structure, adequate measures to ensure:

- (a) clearly defined roles and responsibilities assigned to its Governing Body and the members of that body, senior management and Persons Undertaking Key Control Functions;
- (b) there are clear reporting lines applicable to the individuals undertaking those functions;
- (c) the roles, responsibilities and reporting lines referred to in (a) and (b), are documented and communicated to all relevant Employees; and
- (d) in the case of an Authorised Firm, the Employees who will be delivering Financial Services to its customers are also clearly identified, together with their respective lines of accountability and supervision.

**Guidance**

1. The term Employee is defined in the GLO widely and includes members of the Governing Body or directors and senior managers of the Authorised Firm. Therefore, the requirements relating to Employees in Rules 5.3.3 and 5.3.6 apply to all Employees including those across the organisation.
2. The division of responsibilities between the Governing Body and the senior management should be clearly established and set out in writing. In assigning duties, the Governing Body should take care that no one individual has unfettered powers in making material decisions.
3. Members of the Governing Body may include individuals undertaking senior management functions (such as the chief executive of the firm) and Persons Undertaking Key Control Functions. In assigning specific functions to such individuals, care should be taken to ensure that the integrity and effectiveness of the functions they are to perform are not compromised. For example, if the Chairperson of the Governing Body is also the chief executive officer of the Authorised Person, the Governing Body should ensure that the performance assessment of that individual in his roles should be undertaken by a senior non-executive member of the Governing Body or an independent external consultant.
4. Persons Undertaking Key Control Functions are defined in GLO in an inclusive manner to encompass Persons such as the heads of risk control, compliance and internal audit functions. In the case of an Insurer, the actuary also is a Person who Undertakes a Key Control Function.

**5.3.3** ~~Deleted~~ ~~An Authorised Person must ensure that key duties and functions are segregated so as to avoid the situation where the allocation of duties and functions to be performed by the same individual could result in undetected errors or be vulnerable to abuse and thus expose the Authorised Person or its customers or users to inappropriate risks.~~

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**Management information**

**5.3.18** An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise, monitor and control its activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

**Staff and agents**

**5.3.19** An Authorised Person must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

- 5.3.20** (1) An Authorised Firm must ensure, as far as reasonably practical, that its Employees are:
- (a) fit and proper;
  - (b) competent and capable of performing the functions which are to be assigned to those Employees; and

- (c) trained in the requirements of the legislation applicable in the DIFC.
- (2) An Authorised Firm must establish and maintain systems and controls to comply with (1). An Authorised Firm must be able to demonstrate that it has complied with these requirements through appropriate measures, including the maintenance of relevant records.

### **Guidance**

1. When considering whether an Employee is fit and proper, competent and capable, an Authorised Firm should consider any training undertaken or required by an Employee, the nature of the Clients to whom an Employee provides Financial Services, and the type of activities performed by an Employee in the provision of such Financial Services including any interface with Clients.
2. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in section 2.3 of the RPP Sourcebook and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.
3. When assessing the competence and capability of an Employee, an Authorised Firm should:
  - a. obtain details of the skills, knowledge and experience of the Employee relevant to the nature and requirements of the role;
  - b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained;
  - c. determine, in light of the Employee's relevant skills, knowledge and experience, that the Employee is competent and capable of fulfilling the duties of the role; and
  - d. consider the level of responsibility that the Employee will assume within the Authorised Firm, including whether the Employee will be providing Financial Services to Retail Clients in an interfacing role.
4. An Authorised Firm should also satisfy itself that an Employee:
  - a. continues to be competent and capable of performing the role;
  - b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the role, through training or other means; and
  - c. is able to apply his knowledge.
5. Refer to section 2.2.13 of the RPP Sourcebook for criteria for suitability of members of the Governing Body of the Authorised Firm.

### **Conduct**

**5.3.21** An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market misconduct;

- (b) money laundering; or
- (c) a financial crime under any applicable U.A.E. laws.

**Guidance**

~~An Authorised Firm should adopt, at a minimum, a policy on ethics and professional conduct and clearly communicate such a policy to those persons involved in its affairs in order to comply with the obligations under this Rule and its general duty to observe high standards of integrity and fair dealing under section 4.2.~~

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**Records**

- 5.3.25** (1) An Authorised Person must make and retain records of matters and dealings, including accounting records and corporate governance practices which are the subject of requirements and standards under the legislation applicable in the DIFC.
- (2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding 3 business days.

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**Corporate Governance**

- 5.3.30** (1) An Authorised Person must have a Governing Body and senior management that meet the requirements in (2) and (3) respectively.
- (2) The Governing Body of the Authorised Person must:
- (a) be clearly responsible for setting or approving (or both) the business objectives of the firm and the strategies for achieving those objectives and for providing effective oversight of the management of the firm;
  - (b) comprise an adequate number and mix of individuals who have, among them, the relevant knowledge, skills, expertise and time commitment necessary to effectively carry out the duties and functions of the Governing Body; and
  - (c) have adequate powers and resources, including its own governance practices and procedures, to enable it to discharge those duties and functions effectively.
- (3) The senior management of the Authorised Person must be clearly responsible for the day-to-day management of the firm's business in accordance with the business objectives and strategies approved or set by the Governing Body.

## Guidance

### Scope of corporate governance

1. Corporate governance is a framework of systems, policies, procedures and controls through which an entity:
  - a. promotes the sound and prudent management of its business;
  - b. protects the interests of its customers and stakeholders; and
  - c. places clear responsibility for achieving (a) and (b) on the Governing Body and its members and the senior management of the Authorised Person.
  
2. Many requirements designed to ensure sound corporate governance of companies, such as those relating to shareholder and minority protection and responsibilities of the Board of Directors of companies, are found in the company laws and apply to Authorised Persons. Additional disclosure requirements also apply if they are listed companies. The requirements in this Module are tailored to Authorised Persons and are designed to augment and not to exclude the application of those requirements.
  
3. Whilst Rule 5.3.30 deals with two aspects of corporate governance, the requirements included in other provisions under sections 5.2 and 5.3 also go to the heart of sound corporate governance by promoting prudent and sound management of the Authorised Person's business in the interest of its customers and stakeholders. These requirements together are designed to promote sound corporate governance practices in Authorised Persons whilst also providing a greater degree of flexibility for Authorised Persons in establishing and implementing a corporate governance framework that are both appropriate and practicable to suit their operations.
  
4. Stakeholder groups of an Authorised Person, who would benefit from the sound and prudent management of firms, can be varied but generally encompass its owners (shareholders), customers (in the case of an AMI, its members and investors), creditors, counterparties and employees, whose interests may not necessarily be mutually coextensive. A key objective in enhancing corporate governance standards applicable to Authorised Persons is to ensure that firms are soundly and prudently managed, with the primary regard being had to its customers.

### Proportionate application to firms depending on the nature of their business

5. One of the key considerations that underpins how the corporate governance requirements set out in Rule 5.3.30 apply to an Authorised Person is the nature, scale and complexity of the Authorised Person's business, and its organisational structure.
  
6. While requiring banks, insurers and dealers to have more detailed and complex corporate governance systems and controls, simpler systems and procedures could be required for other firms, depending on the nature and scale of their Financial Services. For example, in the case of certain types of Category 4 Financial Service providers such as arranging or advising only firms, less extensive and simpler corporate governance systems and procedures may be sufficient to meet their corporate governance obligations.
  
7. For example, an Authorised Person which is a small scale operation with a tightly held ownership structure may not have a Governing Body which comprises members who are fully independent of the firm's business and from each other, nor be sufficiently large to be able to form numerous committees of the Governing Body to undertake various functions such as nomination and remuneration. In such cases, whilst strict adherence to such aspects of best practice would not be required, overall measures as appropriate to achieve the sound and prudent management of the business would be needed. For example, a firm with no regulatory track record would be expected to have additional corporate governance controls in place to ensure the



sound and prudent management of its business, such as the appointment of an independent director (who has relevant regulatory experience) to its Governing Body.

### **Application to Branches and Groups**

8. As part of the flexible and proportionate application of corporate governance standards to firms, whether a firm is a Branch or a subsidiary within a Group is also taken into account. An Authorised Person which is a member of a Group may, instead of developing its own corporate governance policies, adopt group-wide corporate governance standards. However, the Governing Body of the Authorised Person should consider whether those standards are appropriate for the firm, and to the extent possible, make any changes as necessary.
  
9. In the case of a Branch, corporate governance practices adopted at the head office would generally apply to the Branch and are expected to be adequate. The DFSA considers, as part of its authorisation of a Branch and on-going supervision, the adequacy of regulatory and supervisory arrangements applicable in the home jurisdiction, including a corporate governance framework adopted and implemented by the head office (see section 3.2.15 of the RPP Sourcebook).

### **Best practice relating to corporate governance**

10. In addition to the considerations noted above, best practice that an Authorised Person may adopt to achieve compliance with the applicable corporate governance standards is set out in Guidance at Appendix 3.1. An Authorised Person may, where the best practice set out in App3.1 is not suited to its particular business or structure, deviate from such best practice or any aspects thereof. The DFSA will expect the Authorised Person to demonstrate to the DFSA, upon request, what the deviations are and why such deviations are considered by the Authorised Person to be appropriate.

### **Remuneration structure and strategies**

**5.3.31** (1) The Governing Body of an Authorised Person must ensure that the remuneration structure and strategy of the firm:

- (a) are consistent with the business objectives and strategies and the identified risk parameters within which the firm's business is to be conducted;
  
- (b) provide for effective alignment of risk outcomes and the roles and functions of the Employees, taking account of:
  - (i) the nature of the roles and functions of the relevant Employees; and
  
  - (ii) whether the actions of the Employees may expose the firm to unacceptable financial, reputational and other risks;
  
- (c) at a minimum, include the members of its Governing Body, the senior management, Persons Undertaking Key Control Functions and any major risk-taking Employees; and
  
- (d) are implemented and monitored to ensure that they operate, on an on-going basis, effectively and as intended.

(2) The Governing Body must provide to the DFSA and relevant stakeholders sufficient information about its remuneration structure

and strategies to demonstrate that such structure and strategies meet the requirements in (1) on an on-going basis.

- (3) For the purposes of this Rule, “major risk-taking Employees” are Employees whose actions have a material impact on the risk exposure of the Authorised Person.

### **Guidance**

#### **Proportionate application to firms depending on the nature of their business**

1. Those considerations set out in Guidance items 5 – 7 under Rule 5.3.30 apply equally to the way in which the remuneration structure and strategies related requirement in Rule 5.3.31 is designed to apply to an Authorised Person. Accordingly, whilst most Category 4 firms may have simple arrangements to achieve the outcome of aligning performance outcomes and risks associated with remuneration structure and strategies, banks, insurers and dealers are expected to have more stringent measures to address such risks.

#### **Application to Branches and Groups**

2. As part of the flexible and proportionate application of corporate governance standards to firms, whether a firm is a Branch or a subsidiary within a Group is also taken into account. As such, the considerations noted in Guidance items 8 – 9 under Rule 5.3.30 apply equally to the application of the remuneration related requirements for Branches and Groups. For example, where an Authorised Person is a member of a Group, its Governing Body should consider whether the Group wide policies, such as those relating to the Employees covered under the remuneration strategy and the disclosure relating to remuneration made at the Group level are adequate to meet its obligations under Rule 5.3.31.

#### **Best practice relating to corporate governance**

3. In addition to the considerations noted above, best practice that an Authorised Person may adopt to promote sound remuneration structure and strategies within the firm is set out as Guidance at Appendix 3.2. Where such best practice or any aspects thereof are not suited to a particular Authorised Person’s business or structure, it may deviate from such best practice. The DFSA will expect the Authorised Person to demonstrate, upon request, what the deviations are and why such deviations are considered appropriate.

#### **Disclosure of information relating to remuneration structure and strategy**

4. The information which an Authorised Person provides to the DFSA relating to its remuneration structure and strategies should be included in the annual report or accounting statements. The DFSA expects the annual report of Authorised Persons to include, at a minimum, information relating to:
- a. the decision making process used to determine the firm-wide remuneration policy (such as by a remuneration committee or an external consultant if any, or by the Governing Body);
  - b. the most important elements of its remuneration structure (such as, in the case of performance based remuneration, the link between pay and performance and the relevant assessment criteria); and
  - c. aggregate quantitative information on remuneration of its Governing Body, the senior management, Persons Undertaking Key Control Functions and any major risk taking Employees.

5. The DFSA may, pursuant to its supervisory powers, require additional information relating to the remuneration structure and strategy of an Authorised Firm to assess whether the general elements relating to remuneration under Rule 5.3.31(1) are met by the firm. Any significant changes to the remuneration structure and strategy should also be notified to the DFSA before being implemented. See Rule 11.10.20.
6. The information included in the annual report is made available to the DFSA and the shareholders, and in the case of a listed company, to the public. The Governing Body of the Authorised Person should also consider what additional information should be included in the annual report. In the case of banks, insurers and dealers, more detailed disclosure of remuneration structure and strategy and its impact on the financial soundness of the firm would be required. When providing disclosure relating to remuneration in its annual report, Authorised Persons should take account of the legal obligations that apply to the firm including the confidentiality of information obligations.

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## 10 TRANSITIONAL RULES

### 10.1 Application

**10.1.1** This chapter applies as follows:

- (a) Rule 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 apply to every Person to whom a provision of the Previous Regime applied;
- (b) Rule 10.6.2 applies to a Person who has been authorised to carry on a Financial Service in respect of a Designated Investment as defined in Rule 10.6.1; and
- (c) Rule 10.6.3 applies to a Reporting Entity which has its Designated Investments included in an Official List of Securities of an Authorised Market Institution and to an Authorised Market Institution where its Official List of Securities includes Designated Investments as defined in Rule 10.6.1.
- (d) Rule 10.7.2 applies to every Authorised Person in respect of the corporate governance requirement in Rule 5.3.30 and the remuneration related requirement Rule 5.3.31.

**10.1.2** For the purposes of the provisions referred to in Rule 10.1.1(a):

“Commencement Date” means 1 July 2008, the date on which the Current Regime came into force under rule-making instruments No 56 and No.58.

“Current Regime” means the Rules in force on the Commencement Date;

“Previous Regime” means the Rules that were in force immediately prior to the Commencement Date;

“Transitional Rules” mean the Rules in this chapter; and

any specific reference to a module is a reference to that module under the Current Regime, unless otherwise specified.

## 10.2 General

**10.2.1** An Authorised Person Firm must continue to maintain any records required to be maintained under the Previous Regime as if any such requirements continued to apply.

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## **10.7 Specific relief – Corporate governance and remuneration related enhancements**

**10.7.1** This section applies to every Person who is an Authorised Person on the date on which the rule-making instrument No 95 came into force.

**10.7.2** A Person referred to Rule 10.7.1 has a transitional period of three months from the date on which the rule-making instrument No 95 came into force within which to comply with the corporate governance and the remuneration requirements introduced under rule-making instrument 95.

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## 11 SUPERVISION

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### 11.10 Notifications

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#### **Information relating to corporate governance and remuneration**

**11.10.20** (1) Subject to (2), an Authorised Firm must provide to the DFSA notice of any significant changes to its corporate governance framework or the remuneration structure or strategy as soon as practicable.

(2) An Authorised Firm which is a Branch must provide notice of any significant changes to its corporate governance framework or the remuneration structure or strategy only if the changes are relevant to the activities and operations of the Branch.

#### **Guidance**

1. The purpose of these notifications is to ensure that the DFSA is informed of any significant changes to the Authorised Firm's corporate governance framework and remuneration structure and strategies.
2. Significant changes that the DFSA expects Authorised Firms to notify the DFSA pursuant to Rule 11.10.20 generally include:
  - a. any major changes to the composition of the Governing Body;
  - b. any changes relating to Persons Undertaking Key Control Functions, such as their removal or new appointments or changes in their reporting lines; and
  - c. significant changes to the remuneration structure that apply to the members of the Governing Body, senior management, Persons Undertaking Key Control Functions and major risk taking Employees.
3. The DFSA expects Branches to provide to the DFSA notification of significant changes that are relevant to the Branch operations.

## **APP3 BEST PRACTICE RELATING TO CORPORATE GOVERNANCE AND REMUNERATION**

### **A3.1 Best practice relating to corporate governance**

#### **Guidance**

#### **Roles of the Governing Body and the senior management**

1. The Governing Body should adopt a rigorous process for setting and approving and overseeing the implementation of, the Authorised Person's overall business objectives and risk strategies, taking into account the long term financial safety and soundness of the firm as a whole, and the protection of its customers and stakeholders. These objectives and strategies should be adequately documented and properly communicated to the firm's senior management, Persons Undertaking Key Control Functions (such as the heads of risk management and compliance) and all the other relevant Employees. Senior management should ensure the effective implementation of such strategies in carrying out the day-to-day management of the Authorised Person's business.
2. The Governing Body, with the support of the senior management, should take a lead in setting the "tone at the top", including by setting the fundamental corporate values that should be pursued by the Authorised Person. These should, to the extent possible, be supported by professional standards and codes of ethics that set out acceptable and unacceptable conduct. Such professional standards and codes of ethics should be clearly communicated to those individuals involved in the conduct of business of the firm.
3. The Governing Body should review the overall business objectives and strategies at appropriate intervals (at least annually) to ensure that they remain suitable in light of any changes in the internal or external business and operating conditions.
4. The Governing Body should also ensure that the senior management is effectively discharging the day-to-day management of the Authorised Person's business in accordance with the business objectives and strategies that have been set or approved by the Governing Body. For this purpose, the Governing Body should ensure that there are clear and objective performance goals and measures (and an objective assessment against such criteria at reasonable intervals), for the Authorised Person and the members of its Governing Body and the senior management to ascertain whether the firm's business objectives and risk strategies are implemented effectively and as intended.

#### **Internal governance of the Governing Body**

5. The Governing Body should have appropriate practices and procedures for its own internal governance, and ensure that these are followed, and periodically reviewed to ensure their effectiveness and adequacy. These policies and procedures should cover a formal and transparent process for nomination, selection, and removal of the members of the Governing Body (see section 2.2.13 of the RPP Sourcebook), and a specified term of office as appropriate to the roles and responsibilities of the member, particularly to ensure the objectivity of his decision making and judgement. Appropriate succession planning should also form part of the Governing Body's internal governance practices.
6. The Governing Body should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The working procedures of the Governing Body should be well defined.

7. The Governing Body should also ensure that when assessing the performance of the members of the Governing Body and its senior managers and Persons Undertaking Key Control Functions, the independence and objectivity of that process is achieved through appropriate mechanisms, such as the assignment of the performance assessment to an independent member of the Governing Body or a committee of the Governing Body comprising a majority of independent members. See section 2.2.13(b)(iii) of the RPP Sourcebook for the independence criteria for Authorised Firms and section 2.2.15 and 2.2.16 of the RPP Sourcebook for the independence criteria for Authorised Market Institutions.

#### **Committees of the Governing Body**

8. To support the effective discharge of its responsibilities, the Governing Body should establish its committees as appropriate. The committees that a Governing Body may commonly establish, depending on the nature, scale and complexity of its business and operations, include the audit, remuneration, ethics/compliance, nominations and risk management committees. Where committees are appointed, they should have clearly defined mandates, authority to carry out their respective functions, and the degree of independence and objectivity as appropriate to the role of the committee. If the functions of any committees are combined, the Governing Body should ensure such a combination does not compromise the integrity or effectiveness of the functions so combined. In all cases, the Governing Body remains ultimately responsible for the matters delegated to any such committees.

#### **Independence and objectivity**

9. The Governing Body should establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body to promote objectivity and independence in decision making by the Governing Body. See section 2.2.13(b)(iii) of the RPP Sourcebook for independence criteria).

#### **Powers of the Governing Body**

10. To be able to discharge its role and responsibilities properly, the Governing Body should have adequate and well-defined powers, which are clearly set out either in the legislation or as part of the constituent documents of the Authorised Person (such as the constitution, articles of incorporation and organisational rules). These should, at a minimum, include the power to obtain timely and comprehensive information relating to the management of the firm, including direct access to relevant persons within the organisation for obtaining information such as its senior management and Persons Undertaking Key Control Functions (such as the head of compliance, risk management or internal audit).

## **A3.2 Best practice relating to remuneration**

### **Guidance**

#### **Development and monitoring of the remuneration structure**

1. To ensure that the remuneration structure and strategies of the Authorised Person are appropriate to the nature, scale and complexity of the Authorised Person's business, the Governing Body should take account of the risks to which the firm could be exposed as a result of the conduct or behaviour of its Employees. The Governing Body should play an active role in developing the remuneration strategy and policies of the Authorised Person. A remuneration committee of the Governing Body could play an important role in the development of the firm's remuneration structure and strategy.
2. For this purpose, particularly where remuneration structure and strategies contain performance based remuneration (see also Guidance no 7 and 8 below), consideration should be given to various elements of the remuneration structure such as:

- a. the ratio and balance between the fixed and variable components of remuneration and any other benefits;
  - b. the nature of the duties and functions performed by the relevant Employees and their seniority within the firm;
  - c. the assessment criteria against which performance based components of remuneration are to be awarded; and
  - d. the integrity and objectivity of the process of performance assessment against the set criteria.
3. Generally, not only the senior management but also the Persons Undertaking Key Control Functions should be involved in the remuneration policy-setting and monitoring process to ensure the integrity and objectivity of the process.

#### **Who should be covered by remuneration policy**

4. An Authorised Person's remuneration policy should, at a minimum, cover those specified in Rule 5.3.31(1)(c). Accordingly, the members of the Governing Body, the senior management, the Persons Undertaking Key Control Functions and any major risk taking Employees should be included in the firm's remuneration policy. With the exception of the 'senior management', all the other three categories attract their own definitions. Although the expression "senior management" carries its natural meaning, Rule 5.3.30(3) describes the senior management's role as the "day-to-day management of the firm's business..." Guidance No. 3 under Rule 5.3.3 gives further clarification as to who may perform senior management functions.

#### **Remuneration of Persons Undertaking Key Control Functions**

5. Any performance based component of remuneration of Persons Undertaking Key Control Functions as well as other Employees undertaking activities under the direction and supervision of those Persons should not be linked to the performance of any business units which are subject to their control or oversight. For example, where risk and compliance functions are embedded in a business unit, a clear distinction should be drawn between the remuneration structure applicable to those Persons Undertaking Key Control Functions and the Employees undertaking activities under their direction and supervision on the one hand and the other Employees in the business unit on the other hand. This may be achieved by separating the pools from which remuneration is paid to the two groups of Employees, particularly where such remuneration comprises performance based variable remuneration.

#### **Use of variable remuneration**

6. Where an Authorised Person includes in its remuneration structure performance based variable components (such as bonuses, equity participation rights such as share based awards or other benefits), especially if they form a significant portion of the overall remuneration structure, or remuneration of any particular Employees or class of Employees, the Governing Body should ensure that there are appropriate checks and balances relating to their award. This is because, while such performance based remuneration is an effective tool in aligning the interests of the Employees with the interests of the firm, if used without necessary checks and balances, it could lead to inappropriate risk taking by Employees.
7. Therefore, the Governing Body should, when using any performance based variable component in the Authorised Person's remuneration structure, ensure that:
- a. the overall remuneration structure contains an appropriate mix of fixed and variable components. For example, if the fixed component of remuneration of an Employee is very small relative to the variable (eg. bonus) component,



- it may become difficult for the firm to reduce or eliminate bonuses even in a poor performing financial year;
- b. there are clear and objective criteria for allocating performance based remuneration (see below in Guidance note (7));
  - c. there are appropriate adjustments for the material ‘current’ and ‘future’ risks associated with the performance of the relevant Employee, as the time horizon in which risks could manifest themselves may vary. For example, where practicable, the measurement of performance should be set in a multi-year framework. If this is not practicable, there should be deferral of vesting of the benefits or retention or claw-back arrangements applicable to such components as appropriate;
  - d. there are appropriate prudential limits, consistent with the Authorised Person’s capital management strategy and its ability to maintain a sound capital base taking account of the internal capital targets or regulatory capital requirements;
  - e. in the case of Employees involved in the distribution of financial products whose remuneration is commission based, there are adequate controls and monitoring to mitigate marketing which is solely commission driven; and
  - f. the use of guaranteed bonuses is generally avoided as such payments are not consistent with sound risk management and performance based rewards. However, there may be circumstances where such guaranteed bonuses may be paid to attract new Employees (for example to compensate bonuses forfeited from the previous employer).

### **Performance assessment**

- 8. The performance criteria applicable, particularly relating to the variable components of remuneration, as well as the performance assessment against such criteria, contribute to the effectiveness of the use of performance based remuneration. Therefore, the Governing Body should ensure that such criteria:
  - a. are clearly defined and objectively measurable;
  - b. include not only financial but also non-financial elements as appropriate (such as compliance with regulation and internal rules, achievement of risk management goals as well as compliance with market conduct standards and fair treatment of customers);
  - c. take account of not only the individual’s performance, but also the performance of the business unit concerned and the overall results of the firm and if applicable the Group; and
  - d. do not treat growth or volume as an element in isolation from other performance measurements included in the criteria.

### **Severance payments**

- 9. Where an Authorised Person provides discretionary payouts on termination of employment (“severance payments”, also called “golden parachutes”), such payment should generally be subject to appropriate limits or shareholder approval. In any case, such payouts should be aligned with the firm’s overall financial condition and performance over an appropriate time horizon and should not be payable in the case of failure or threatened failure of the firm, particularly to an individual whose actions may have contributed to the failure or potential failure of the firm.