

**Appendix 1**

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



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# The DFSA Rulebook

General Module

**(GEN)**

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## 1 INTRODUCTION

### 1.1 Application

**1.1.1** This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law 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 and sections 6.9, 6.10, 11.2, 11.3, 11.12 and 11.13 of GEN apply to a Representative Office.

### Overview of the module

#### Guidance

1. Chapter 2 prescribes, pursuant to Article 41(2) of the Regulatory Law 2004, the activities which constitute a Financial Service and, pursuant to Article 42(1) of the Regulatory Law 2004, the kind of Financial Services that may be carried on by Authorised Firms and Authorised Market Institutions. It also specifies various exclusions in relation to the 'by way of business' requirement and, where applicable, in relation to each Financial Service. Further, the appendices contain detailed definitions of what constitutes a Deposit, Investment, Collective Investment Fund and Contract of Insurance.
- 1A. Chapter 2A defines a Financial Product for the purposes of the general prohibition against misconduct in Article 41B of the Regulatory Law.
2. Chapter 3 sets out the requirements for a Person making or intending to make a Financial Promotion in or from the DIFC.
3. Chapter 4 sets out the Principles for Authorised Firms and Authorised Individuals.
4. Chapter 5 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Authorised Firm to apportion material responsibility among its senior management.
5. Chapter 6 contains mainly guidance in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, close links, complaints against the DFSA and the public register.
6. Chapter 7 specifies the DFSA's authorisation requirements for any applicant intending to become an Authorised Firm or Authorised Individual.
7. Chapter 8 specifies, in relation to Authorised Persons, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and regulatory returns and the functions of an auditor. There are also requirements for auditors to register with the DFSA.
8. Chapter 9 prescribes the manner in which an Authorised Firm must handle Complaints made against it by Retail Clients or Professional Clients.

9. Chapter 10 contains ~~two~~three sets of ~~Transitional~~ Rules.
- a. ~~Rules 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 impact on various modules of the Rulebook, particularly COB and CIR. These Rules enable Authorised Firms to make a smooth transition to the Current Regime that came into force on 1 July 2008 under Rulemaking Instrument No 56, following the DFSA's "Key Policy Review" outlined in Consultation Paper 52. They also provide for the continued application of some of the provisions of the Previous Regime under the Current Regime; and~~
  - b. ~~Section 10.6 contains Transitional Rules that allow, with effect from 4 January 2009:~~
    - i. ~~an Authorised Person to carry on a Financial Service in respect of a Designated Investment as if that Designated Investment were a Structured Product; and~~
    - ii. ~~a Designated Investment included in an Official List of Securities before that date to continue to be a listed Structured Product; and~~
  - a. Section 10.1 contains transitional rules relating to endorsements to hold Client Assets and Insurance Monies.
  - b. Section 10.2 contains transitional rules relating to a Safe Custody Auditor's Report.
  - c. Section 10.3 contains transitional rules relating to the reclassification of the Financial Services of 'Arranging Credit or Deals in Investments' and 'Advising on Financial Products or Credit'.
10. Chapter 11 specifies the DFSA's supervisory requirements for any Authorised Person being regulated by the DFSA.

## **2 FINANCIAL SERVICES**

### **2.1 Application**

**2.1.1** This chapter applies to every Person to whom the Regulatory Law 2004 applies, and to the same extent in relation to every such Person as that law.

### **2.2 Financial Service activities**

**2.2.1** An activity constitutes a Financial Service under the Regulatory Law 2004 and these Rules where:

- (a) it is an activity specified in Rule 2.2.2; and
- (b) such activity is carried on by way of business in the manner described in section 2.3.

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

- (a) Accepting Deposits;
- (b) Providing Credit;
- (c) Providing Money Services;
- (d) Dealing in Investments as Principal;
- (e) Dealing in Investments as Agent;
- (f) Arranging ~~Credit or~~ Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products ~~or Credit~~;
- (i) Managing a Collective Investment Fund;
- (j) Providing Custody;
- (k) Arranging Custody;
- (l) Effecting Contracts of Insurance;
- (m) Carrying Out Contracts of Insurance;
- (n) Operating an Exchange;
- (o) Operating a Clearing House;

- (p) Insurance Intermediation;
- (q) Insurance Management;
- (r) Managing a Profit Sharing Investment Account;
- (s) Operating an Alternative Trading System;
- (t) Providing Trust Services;
- (u) Providing Fund Administration;
- (v) Acting as the Trustee of a Fund;
- (w) Operating a Representative Office; ~~and~~
- (x) Operating a Credit Rating Agency; ~~and~~
- (y) Arranging Credit and Advising on Credit.

**Guidance**

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

**2.2.3** Each activity specified in Rule 2.2.2:

- (a) is to be construed in the manner provided under these Rules; and
- (b) is subject to exclusions under these Rules which may apply to such an activity.

**Permitted Financial Services for Authorised Firms**

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**2.2.10C** An Insurance Intermediary may conduct Insurance Intermediation activities in respect of a contract of Long-Term Insurance, that is not a contract of reinsurance, only if it is permitted to do so by an endorsement on its Licence.

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**2.3 By way of business**

**2.3.1** Subject to Rules 2.3.2 and 2.3.3, for the purpose of these Rules a Person carries on an activity by way of business if the Person:

- (a) engages in the activity in a manner which in itself constitutes the carrying on of a business;

- (b) holds himself out as willing and able to engage in that activity; or
- (c) regularly solicits other Persons to engage with him in transactions constituting that activity.

**Exclusions**

**2.3.2** (1) Subject to Rule 2.3.5, a Person does not carry on an activity specified under paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (j), (k), (p), (q), ~~and (r)~~ and (y) of Rule 2.2.2 by way of business if:

- (a) the Person enters into transactions solely as a nominee for another Person and is bound to and does act on that other Person's instructions;
- (b) the Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporate:
  - (i) which are within the same Group as that Person; or
  - (ii) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise;

provided:

- (iii) for the purposes of the activities specified in paragraphs (g), (j), (k) and (r) of Rule 2.2.2 the assets in question belong to a Body Corporate falling within (i) or (ii); and
- (iv) for the purposes of the activities specified in paragraphs (f), (h), (p), ~~and (q)~~ and (y) of Rule 2.2.2, the activity does not involve an insurance Policyholder who is not a Group member; or
- (c) the Person carries on the activity solely for the purposes of or in connection with the sale of goods or the supply of services to a customer of the Person or a member of the same Group, provided that:
  - (i) the supplier's main business is to sell goods or supply services and not to carry on any Financial Service; and
  - (ii) the customer is not an individual;

and for the purposes of the activities specified in paragraphs (g), (j), (k) and (r) of Rule 2.2.2 the assets in question belong to that customer or member.

(2) .....

**2.3.3** A Person does not carry on an activity specified under paragraphs (d), (e), (f), ~~or (h)~~, or (y) of Rule 2.2.2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an Investment Company or Investment Partnership, provided that:

- (a) such Shares carry at least 50% of the voting rights or the acquisition will take an existing holding to at least 50%; or
- (b) the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the Body Corporate; and
- (c) he is to enter as principal into the transaction.

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**2.3.5** (1) A Person does not carry on an activity specified under paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (p), (t), (u), ~~and (v)~~ and (y) of Rule 2.2.2 by way of business if:

- (a) that Person is the holder of a licence under the SFO Regulations to establish a Single Family Office in the DIFC; and
- (b) the activity is carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a Single Family Office.

(2) A Private Trust Company or Family Fiduciary Structure does not carry on an activity specified under paragraph (t) of Rule 2.2.2 by way of business if it:

- (a) carries on that activity exclusively for the purposes of, and only in so far as it is, providing services to a Single Family; and
- (b) does not solicit trust business from, or provide trust services to, any Person outside the structure of the Single Family Office and outside the Single Family.

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## **2.9 Arranging credit or deals in investments**

**2.9.1** (1) In Rule 2.2.2, Arranging Credit or Deals in Investments means:

- (a) making arrangements with a view to another Person, ~~whether as principal or agent~~, buying, selling, subscribing for or underwriting an Investment (whether that other Person is acting as principal or agent); ~~or~~
- (b) ~~making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility.~~

- (2) The arrangements in (1) include:
  - (a) arrangements which do not bring about the transaction; and
  - (b) arrangements comprising or involving the receipt and transmission of Client orders in relation to Investments.
- (3) The arrangements in (1) do not include:
  - ~~(a) arrangements which amount to Operating an Alternative Trading System; or~~
  - ~~(b) arrangements of the kind described in Rule 2.26.1 that constitute marketing.~~
- (4) In this Rule and in Rules 2.9.2 to 2.9.7, an “Investment” includes rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

#### Guidance

- ~~1. In regard to arrangements under Rule 2.9.1(3)(b), pursuant to Rule 2.2.10, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.~~

#### What constitutes ‘Arranging deals in Investments’?

1. The activities which constitute making arrangements with a view to another Person buying, selling, underwriting or subscribing for an Investment (whether that other Person is acting as principal or agent) generally involve the following elements:
  - a. the purpose of such an arrangement is to ‘facilitate’ or ‘bring about’ transactions between other parties such as:
    - i. buyers and sellers of Investments;
    - ii. issuers of and subscribers for Securities (note – subscription is generally an activity associated with an initial offer of Securities);
    - iii. issuers and underwriters of securities (note – underwriting here is an activity associated with an initial offer of Securities, as opposed to underwriting of risks, which is an activity of an insurer); and
    - iv. insurers writing Long-Term Insurance and policyholders who wish to obtain such insurance.
  - b. such arrangements can be either of an on-going nature, for example, an arrangement which is available to potential buyers or sellers of Investments, or an arrangement which is bespoke (i.e. available on a one-off basis for a particular client, such as an underwriter of Securities).
2. The activities referred to in Guidance item 1 can include one or more of the following:
  - a. the introduction of:

- i. potential buyers of Investments to issuers or sellers of Investments, or vice versa;
  - ii. potential subscribers for Securities to issuers;
  - iii. potential underwriters to issuers of Securities, or vice-versa;
  - iv. potential parties to a derivatives transaction; and
  - v. policyholders or cedants to insurers or reinsurers underwriting Long-Term Insurance;
- b. assisting any of the parties referred to in a. through activities, such as, completing the applications or other processes relevant to the transaction;
  - c. negotiating and settling terms of the contracts between the parties referred to in a.;
  - d. collecting and processing fees, commissions or other payments (such as premiums in the case of Long-Term Insurance); and
  - e. transmitting instructions or confirmations relating to transactions.

**Do arrangements which form part of another facility constitute arranging?**

3. An arrangement which is part of a wider arrangement for the purpose of bringing about transactions in Investments still falls within the scope of the Financial Service of arranging. For example, an arranger may arrange (i.e. allow access) for potential investors to access a facility set up by an offeror of Securities. The arrangement to allow access constitutes arranging, although, for a transaction to be concluded, the investor will also need to use the offeror's facility.

**How does 'arranging deals' differ from 'dealing as agent'?**

4. 'Arranging Deals in Investments' differs from the Financial Service of 'Dealing in Investments as Agent' in Rule 2.8.1 because:
  - a. a Person 'arranging deals' (i.e. the 'arranger') does not have the authority to bind the parties to an Investment transaction resulting from its 'arranging' activities; and
  - b. a Person 'dealing as agent' acts as the agent of a party to the Investment transaction and has the authority to bind its principal.
5. For example, a Person acting as an agent either:
  - a. executes the transaction for its principal (the Client); or
  - b. if using another broker to execute the client order, commits the Client to the transaction by giving a binding order to the broker.
6. In contrast, a Person acting as an arranger may, for example, receive and transmit client orders to a broker, but does not have the power to execute or enter into the transaction for the client, or commit the client to a transaction. See the exclusion in GEN Rule 2.8.3 from 'Dealing in Investments as Agent', and GEN Rule 2.9.1(2)(b), both of which reflect the above position.

**Do arrangements that do not bring about transactions constitute arranging?**

7. An activity falls within the scope of the Financial Service of ‘arranging’ even if it does not necessarily lead to a completed transaction. For example, a prospective buyer or seller of Securities may change his mind and not sign a contract for the sale or purchase of Securities. Similarly, a potential buyer of Long-Term Insurance, after having completed an application form for Long-Term Insurance with the assistance of an arranger, may not go ahead with the purchase of the policy. In both examples, just because the transaction has not been concluded, the arranger’s activities do not cease to be ‘arranging’ under Rule 2.9.1.

**Which activities do not constitute ‘arranging’?**

8. A Person who performs for a financial service provider (in or outside the DIFC) delegated or outsourced functions, such as back office administration services, does not carry on ‘arranging’ activities under Rule 2.9.1. For example, a Person undertaking administrative tasks (such as processing applications, transmitting orders, or issuing confirmations of transactions for a brokerage firm or an insurer) is not arranging transactions.
9. A passive display of literature which advertises Investments does not amount to arranging, unless something more is done to help potential investors or policyholders to buy such Investments or policies. For example, a passive display of leaflets advertising Investments in property funds at the reception of an office, such as an accountant’s office, or a display of leaflets advertising permanent health policies of an Long-Term Insurance insurer at a doctor’s or dentist’s waiting rooms, would not constitute arranging, provided the relevant service providers or employees in their offices do not assist or facilitate transactions by potential investors/policyholders.

**Arranging Long-Term Insurance**

- ~~2.10.~~ An “Investment” is defined in Rule 2.9.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance). As a result, arranging activities relating to contracts of Long-Term Insurance fall within Arranging ~~Credit or Deals in Investments instead of Insurance Intermediation.~~ “Long-Term Insurance” is defined in GLO, in summary, as a contract of the type described in ~~GEN~~ Rule A4.1.2 (certain types of life insurance) that is expressed to be in force for more than one year and meets specified conditions.

**Exclusions**

- 2.9.2** A Person does not carry on the activity of Arranging Deals in Investments under Rule 2.9.1(1) in relation to a transaction if the Person becomes, or proposes to become, a party to the transaction (regardless of whether the transaction is effected). This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.9.1(1).

~~There are excluded from Rule 2.9.1 any arrangements for a transaction into which the Person making the arrangements enters or is to enter whether as principal or agent for some other Person.~~

- 2.9.3** A Person does not Arrange ~~Credit or Deals~~ in Investments merely by providing means by which one party to a transaction is able to communicate with other such parties.

- 2.9.4** A Person does not Arrange ~~Credit or Deals~~ in Investments by making arrangements under which another Person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which he or his principal has made or provided.
- 2.9.5** A Person does not Arrange ~~Credit or Deals~~ in Investments merely by making arrangements having as their sole purpose the provision of finance to enable a Person to buy, sell, subscribe for or underwrite Investments.
- 2.9.6** A Person does not Arrange ~~Credit or Deals~~ in Investments by making arrangements for the issue or redemption of Securities issued by it.
- 2.9.7** A Person does not Arrange ~~Credit or Deals~~ in Investments if the activity:
- (a) is carried on in the course of providing legal or accountancy services, which do not otherwise consist of the carrying on of Financial Services;
  - (b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services;
  - (c) is not remunerated separately from the other services; and
  - (d) in the case of a contract of Long-Term Insurance, does not assist in the conclusion or performance of the contract.
- 2.9.8** An Exchange does not make arrangements referred to in Rule 2.9.1(1a), merely by making arrangements for, or taking steps that facilitate, another Person to act as Central Counterparty to transactions entered into on a facility operated by the Exchange.

### Guidance

1. Rule 2.9.2 excludes the activities of a party to a transaction from being 'arranging'. This is because a person cannot be both a party to a transaction, and its arranger.
2. Where a Person (an arranger) makes arrangements in the DIFC for another Person to obtain dealing services (e.g. broking services) from its head office, the arranger is not regarded as 'Dealing in Investments as Agent' in the DIFC merely because it is the same legal entity as its head office. However, to be able to do so without breaching the Financial Services Prohibition, the arranger would need to have an Authorisation for 'Arranging Deals in Investments'. It would also need to take care not to conduct activities that go beyond 'arranging' (see Guidance under Rule 2.9.1 for activities which constitute arranging).
3. Rule 2.9.3 excludes providers of means by which one party to a transaction (or potential transaction) communicates with the other contracting parties, from being arrangers. Communication channel providers, such as internet or telecommunication network providers, are excluded from being arrangers under this exclusion. However, if such a provider goes beyond being a 'mere' communication channel provider, for example, by adding value to the service provided to those communicating with each

other, with a view to facilitating a contract being concluded, this exclusion will not apply to them.

4. Rule 2.9.4 excludes from being arranging the activity of making arrangements for a lender (such as a bank) to accept an instrument acknowledging debt by a person who has obtained credit, a loan, a guarantee or any other form of financial facility. This mirrors the similar carve-out from regulation available to banks and other lenders where they are not considered to be ‘dealing as principal’ in Investments merely because they accept instruments acknowledging debt from those obtaining credit, loans, guarantees or any other form of financial facility from them.
5. Rule 2.9.6 excludes issuers of Securities from being regarded as arrangers. For example, if an issuer of Securities sets up a website which enables prospective buyers of Securities to read the offer document and apply for the relevant Securities, the issuer is not required to have a Licence as an arranger due to this exclusion (but may have to comply with the disclosure requirements in MKT relating to the offer).
6. Rule 2.9.7 excludes from being ‘arrangers’ lawyers and accountants, who, in the course of conducting their legal and accounting business, arrange for their clients to buy or sell Securities. To have the benefit of this exclusion, certain conditions have to be met (such as the activity being reasonably regarded as a necessary part of services provided by legal and accounting practitioners and not being separately remunerated). For example, if a lawyer arranges as part of estate planning services for a portfolio of investments to be sold by a brokerage firm, this exclusion can be applied, provided the lawyer’s fees do not include a separate charge for arranging the liquidation of the portfolio, and the lawyer does not assist or participate in the conclusion of the contracts.

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**2.10.2** A Person who is not an Authorised Firm or an Authorised Market Institution does not Manage Assets if:

- (a) he is a Person formally appointed in writing by the owner of the assets to manage the assets in question; and
- (b) all day-to-day decisions relating to the Investments which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.

**Guidance**

1. A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Managing Assets to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the proper management of the Fund in accordance with its Constitution and Prospectus.
2. If an Authorised Firm has a discretionary portfolio mandate from a Client to manage assets on behalf of the Client, the firm controls those Client Assets as it can execute transactions relating to those assets, within the parameters set in the mandate (see also COB Rule 6.11.4(d)).

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## 2.11 Advising on financial products ~~or credit~~

- 2.11.1** (1) In Rule 2.2.2, Advising on Financial Products ~~or Credit~~ means giving advice to a Person:
- (a) in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, on the merits of his buying, selling, holding, subscribing for or underwriting a particular financial product (whether as principal or agent); ~~or~~
  - (b) ~~in his capacity as a borrower or potential borrower or as agent for a borrower or potential borrower on the merits of his entering into a particular Credit Facility.~~
- (2) Advice in ~~(1a) and (b)~~ includes a statement, opinion or report:
- (a) where the intention is to influence a Person, in making a decision, to select a particular financial product or an interest in a particular financial product ~~or to enter into a particular Credit Facility~~; or
  - (b) which could reasonably be regarded as being intended to have such an influence.
- (3) Giving advice to a Person under (1a) includes operating an Insurance Aggregation Site relating to contracts of Long-Term Insurance, other than contracts of reinsurance.
- (4) For the purposes of this Rule and Rule 2.11.2, a “financial product” is an Investment, Deposit, Profit Sharing Investment Account or rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

### Guidance

1. As a “financial product” is defined in Rule 2.11.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance), advice on contracts of Long-Term Insurance will fall within Advising on Financial Products, ~~or Credit~~ instead of Insurance Intermediation.
2. An “Insurance Aggregation Site” is defined in GLO. In summary, it is a website or other form of electronic media that provides a facility for a user to search for, and then to conclude, directly or indirectly, a Contract of Insurance. The site may, for example, enable the user to conclude a Contract of Insurance:
  - a. directly, if the user can enter into the Contract of Insurance by clicking a button on the website itself; or
  - b. indirectly, if it provides a link to the insurer, transmits the details of one party to the other party or otherwise facilitates contact between the parties.
3. Operating an Insurance Aggregation Site will fall under Advising on Financial Products ~~or Credit~~ to the extent that it relates to contracts of Long-Term Insurance, and

under Insurance Intermediation to the extent that it relates to other types of Contracts of Insurance.

4. An operator of an Insurance Aggregation Site that can be used by Retail Clients will need an endorsement on its Licence to deal with Retail Clients (see Rule 2.2.8). ~~The operator will also need to consider what controls it must put in place to ensure that it does not contravene COB Rule 7.2.2 (which prohibits firms from acting in relation to a Contract of Insurance where the risk is situated outside the DIFC and within the U.A.E). Such controls may include:~~
  - a. ~~mechanisms that block a U.A.E customer from being able to access the site or conclude a Contract of Insurance using the site; and~~
  - b. ~~clear and prominent warnings on the site that it is not intended for use by U.A.E customers."~~

### **Exclusions**

**2.11.2** A Person does not Advise on Financial Products ~~or Credit~~ by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) that of giving advice of the kind mentioned in Rule 2.11.1; nor
- (b) that of leading or enabling Persons:
  - (i) to buy, sell, subscribe for or underwrite a particular financial product of the kind in Rule 2.11.1(4); ~~or~~
  - (ii) to enter into a particular Credit Facility.

**2.11.3** A Person does not Advise on Financial Products ~~or Credit~~ if the activity:

- (a) is carried on in the course of providing legal or accountancy services, which do not otherwise consist of the carrying on of Financial Services;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services; and
- (c) is not remunerated separately from the other services.

## **2.12 Managing a collective investment fund**

**2.12.1** (1) In Rule 2.2.2, Managing a Collective Investment Fund means:

- (a) being legally accountable to the Unitholders in the Fund for the management of the property held for or within a Fund under the Fund's Constitution; and

- (b) establishing, managing or otherwise operating or winding up a Collective Investment Fund; and
- (2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Credit or Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Managing a Collective Investment Fund.
- (3) The Person referred to in (1) is a Fund Manager.

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## 2.13 Providing custody

- 2.13.1** (1) In Rule 2.2.2, Providing Custody means one or more of the following activities:
- (a) safeguarding and administering Investments belonging to another Person;
  - (b) in the case of a Fund, safeguarding and administering Fund Property; or
  - (c) acting as a Central Securities Depository.
- (2) In (1) (a) and (b), the following activities do not constitute administering Investments or Fund Property:
- (a) providing information as to the number and value of any Investments or Fund Property safeguarded;
  - (b) converting currency; or
  - (c) receiving documents relating to an Investment or Fund Property for the purpose of onward transmission to, from or at the direction of the Person to whom the Investment or Fund Property belongs.
- (3) In (1)(c), “acting as a Central Securities Depository” means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions executed on a facility operated by an Authorised Market Institution or an Alternative Trading System or a similar facility regulated and supervised by a Financial Services Regulator.

### Guidance

1. A Person does not become a Fund Manager of a Fund merely by being appointed by a Fund Manager of a Fund to provide the Financial Service of Providing Custody to the Fund. This is because the Fund Manager remains legally accountable to the

Unitholders of the Fund for the safe custody and proper management of the Fund in accordance with its Constitution and Prospectus.

**How does Providing Custody differ from Arranging Custody?**

2. The Financial Service of Providing Custody differs from that of Arranging Custody because:
  - a. a Person Providing Custody is legally accountable to Clients for safeguarding and administering Client Investments (which are defined as Client Assets – see the GLO definition), even if it appoints a Third Party Agent (see GLO) to hold Client Investments; and
  - b. a Person arranging Custody does not become a party to the arrangement to Provide Custody and hence does not assume any duties or responsibilities to the Client for the safe custody of the Client’s Investments – instead, such a Person merely facilitates a custodian to provide its services to a potential user of its services.

**What is ‘Safeguarding’ and ‘Administering’ Investments?**

3. As set out in Rule 2.13.1, both the elements (i.e. the activities) of safeguarding and administering, must be present before a Person is said to carry on the Financial Service of Providing Custody.
4. A Person:
  - a. ‘safeguards’ a Client’s Investments if that Person is the holder of the legal title to the Client’s Investments (whether in certificated or uncertificated form); and
  - b. ‘administers’ a Client’s Investments if that Person carries out activities as the holder of legal title to the Investments, such as effecting transactions, reinvesting dividends or other income arising from the Investments, and carrying out corporate actions relating to the exercise of rights attaching to the Investments (e.g. voting or appointing proxies to vote and accepting a rights offer/issue of Investments).

**Who is a Third Party Agent?**

5. A Third Party Agent is simply an agent of the firm which Provides Custody. A Person is regarded as Providing Custody even if it appoints a Third Party Agent (see GLO) to carry out either or both of the activities of safeguarding and administering its Clients’ Investments. The Person Providing Custody (and not the Third Party Agent) remains accountable to the Client for the safe custody of the Investments of the Client.
6. The DFSA requires a firm which Provides Custody, if it is outsourcing or delegating the safeguarding or administering of Client Investments to a Third Party Agent, to undertake due diligence relating to the Third Party Agent (see COB Rule A6.5.1).

**What is the relationship between ‘Providing Custody’ and ‘holding or controlling’ Client Assets?**

7. A firm Providing Custody, in order to safeguard and administer Client Investments, must hold and control those Investments. Therefore, a firm Providing Custody is subject to the Client Investments provisions in COB section 6.13 and the Safe

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Custody Provisions in COB App6. The firm may hold and control Client Investments directly (i.e. itself) or indirectly (i.e. through a Third Party Agent).

8. Activities that constitute ‘holding or controlling’ Client Investments and ‘safeguarding and administering’ Client Investments can overlap. Guidance items 9 to 11 set out some examples to illustrate the interconnectivity and overlap of such activities.
9. In the case of Investments the title to which is evidenced by a physical instrument (e.g. a share or debenture certificate), a Person who has physical possession of the certificate ‘holds’ it. It is possible that the Person who has physical possession is also the legal owner (i.e. the Person in whose name the title to the certificate is registered). If this is not the case, the Person who ‘holds’ the certificate is generally regarded as an agent of the legal owner whose name appears on the share or debenture certificate. An example would be a firm Providing Custody in whose name the certificates are registered, but the actual possession of the certificates is with a Third Party Agent (custodian) appointed by the firm. In this example, the firm Providing Custody continues to be subject to the Client Investments provisions in COB 6.13 and the Safe Custody Provisions in COB App6.
10. In the case of Investments which are held in uncertificated or dematerialised form, the Person in whose name the rights to the relevant Investments are registered (by the central securities depository) is the holder and controller of the relevant Investments. Generally, the ‘PIN’ or other unique identifier of the owner of the Investments will be issued to the Person in whose name the dematerialised Investments are registered. Again, a firm that Provides Custody may appoint a Third Party Agent to hold and have access to them, in which case, the firm Providing Custody indirectly holds and controls those Investments, and remains accountable to the Client for the safe custody of those Investments. The firm must also comply with the Client Investments provisions in COB 6.13 and the Safe Custody Provisions in COB App6.
11. A Person, who has the power and authority to give directions in relation to Investments, controls the relevant Investments. Generally, the Person who is the legal owner would have the power to give such directions. Examples are directions to effect transactions, to reinvest dividends or other income arising from the Investments, and to carry out corporate actions relating to the exercise of rights attaching to the Investments (e.g. to vote or appoint proxies to vote and to accept or renounce a rights offer/issue of Investments). A firm Providing Custody would carry out such tasks for the purposes of administering Client Investments, either directly (i.e. itself) or indirectly (i.e. through a Third Party Agent appointed by it).

## **2.14 Arranging custody**

**2.14.1** In Rule 2.2.2, Arranging Custody means arranging for one or more Persons to carry on the activity described in Rule 2.13.1 (Providing Custody).

### **Exclusions**

**2.14.2** A Person (an ‘introducer’) does not carry on the activity of Arranging Custody specified in Rule 2.14.1 merely by introducing another Person to a custodian

who is an Authorised Firm or a Regulated Financial Institution authorised to provide custody. This exclusion does not apply if:

- (a) the custodian is a member of the same Group as the introducer;
- (b) the custodian is a part of the same legal entity as the introducer and, conducts custody services outside the DIFC; or
- (c) the introducer is remunerated for making the introduction by any Person, including by an entity referred to in (a) or (b).

~~(1) A Person (the 'introducer') does not Arrange Custody by introducing a Person to another Person (the 'custodian') who is authorised by the DFSA or a Financial Services Regulator to carry on the activity described in Rule 2.13.1, if the introducer is not connected to the custodian.~~

~~(2) For the purposes of (1) an introducer is connected to a custodian if:~~

- ~~(a) the custodian is a member of the same Group as the introducer; or~~
- ~~(b) the introducer is remunerated by the custodian or a member of the custodian's Group for making the introduction.~~

**2.14.3** An Exchange does not Arrange Custody merely by making arrangements for, or taking steps that facilitate:

- (a) the safeguarding and administration of assets belonging to Members or other participants for the purposes of AML section 5.10; or
- (b) the settlement by another Person of transactions entered into on a facility operated by the Exchange.

### **Guidance**

#### **How does Providing Custody differ from Arranging Custody?**

1. Refer to Guidance item 2 under Providing Custody in section 2.13.

#### **Activities which constitute arranging**

2. The type of activities that constitute Arranging Custody include:
  - a. negotiating and settling terms of the contract between the custody provider and the Person who is obtaining that service (the Client);
  - b. assisting the Client to complete application forms and other processes;
  - c. collecting and processing the Client's payments; and
  - d. transmitting information (including instructions from the Client and confirmations by the custody provider) between the Customer and the custody provider.

**Non-application of the Client Asset provisions**

3. The Client Asset provisions only apply to firms holding or controlling Client Assets and to firms Providing Custody. As a firm Arranging Custody does not ‘safeguard and administer Investments’ (see Guidance items 3 and 4 under Providing Custody in section 2.13), the Client Asset provisions in COB section 6.11 have only limited application to such a firm (see COB Rule 6.11.2(3)). The requirement for a Safe Custody Auditor’s Report under Rule 8.6.1(e) also does not apply to a firm Arranging Custody.
4. A firm ‘Arranging Custody’, although not subject to substantive Client Asset provisions (because it does not hold or control Client Assets), is still required to undertake due diligence on a non-DIFC custodian with whom it arranges for its Client to obtain custody services – see COB Rule A6.5.1A.

**Who can rely on the exclusion in Rule 2.14.2?**

5. The exclusion in Rule 2.14.2 is available to an introducer who introduces a potential customer to a regulated firm. However, this exclusion does not apply if the introducer:
  - a. is a member of the same Group as the custodian;
  - b. is part of the same legal entity as the custodian (i.e. the custodian is the introducer’s head office or another branch of the same legal entity as the introducer); or
  - c. receives remuneration for making the introduction from any Person – which can be a related party referred to in a. or b. above or any unrelated party.

## **2.15 Effecting contracts of insurance**

- 2.15.1** (1) In Rule 2.2.2, Effecting Contracts of Insurance means effecting such contracts as principal.
- (2) An Insurer authorised to Effect Contracts of Insurance is taken under that authorisation to be authorised also to carry on an activity that:
- (a) is referred to in Rule 2.9.1(1)(a), 2.11.1(1)(a) or 2.19(1)(a) or (c); and
  - (b) relates to a Contract of Insurance entered into, or to be entered into, as principal by the Insurer.

**Guidance**

A Contract of Insurance is defined in GEN App 4 to include a contract of reinsurance.

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## **2.17 Operating an exchange**

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- 2.17.1** (1) In Rule 2.2.2, Operating an Exchange means operating a facility which functions regularly and brings together multiple third party buying and selling interests in Investments, in accordance with its non-discretionary rules, in a way that can result in a contract in respect of Investments admitted to trading or traded on the facility.
- (2) The facility referred to in (1) may be organised on a temporary or permanent basis and can be an order driven system, a quote driven system or a hybrid of such systems that enables the market to operate electronic trading or trading by other means.

**Guidance**

1. An Authorised Market Institution authorised to Operate an Exchange may carry on the Financial Service of operating a Multilateral Trading Facility, as defined in Rule 2.22.1(1)(a), provided it has an endorsement on its Licence that permits it to do so (see Rule 2.2.12).
2. An Authorised Market Institution may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.13~~4~~). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conduct requirements in ~~GEN~~ App 5.

## **2.18 Operating a clearing house**

- 2.18.1** (1) In Rule 2.2.2, operating a Clearing House means operating a facility where confirmation, clearance and settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:
- (a) becomes a Central Counterparty (“CCP”); or
  - (b) provides a book-entry Securities Settlement System (“SSS”),  
regardless of whether or not such a Person also operates a Central Securities Depository.
- (2) In (1), confirmation, clearance and settlement means the process of:
- (a) establishing settlement positions, including the calculation of net positions arising from any transactions in Investments (the transactions);
  - (b) checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transactions; and
  - (c) securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transactions.
- (3) In (1)(a), a Person operates as a CCP where it:
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- (a) ensures the performance of open contracts relating to Investments made on a facility for trading Investments; and
  - (b) does so by interposing itself between counterparties to such contracts by becoming either the buyer to every seller, or the seller to every buyer.
- (4) In (1)(b), a Person operates an SSS where it operates a system which enables Investments held in accounts to be transferred and settled by book entry according to a set of predetermined multilateral rules.
- (5) Acting as a Central Securities Depository in (1) means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions on its own facility and on any other similar facility, including an Alternative Trading Facility or a facility supervised or regulated by another Financial Services Regulator.
- (6) To the extent that any activity under (1) constitutes Dealing In Investments as Principal, Dealing in Investments as Agent, Arranging Credit or Deals in Investments, Managing Assets, or Arranging Custody or Arranging Credit, such Financial Services are taken to be incorporated within Operating a Clearing House, provided such activities are carried out as an incidental and integral part of Operating a Clearing House.

### Guidance

1. The activity of operating a Central Securities Depository may be carried on by an Authorised Market Institution licensed to Operate a Clearing House in conjunction with its regulated activities, particularly operating an SSS. An Authorised Firm which has a licence authorising it to carry on Providing Custody Services may also operate a CSD under its licence (see ~~GEN~~ Rule 2.13.1(3)). If a Clearing House were to operate a CSD through a subsidiary, that subsidiary would need to be licensed separately as an Authorised Firm Providing Custody.
2. An Authorised Market Institution ~~licensed~~ to Operate a Clearing House may also act as a Trade Repository if it has an endorsement on its Licence that permits it to do so (see Rule 2.2.134). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conducts requirements in ~~GEN~~ App 5.

## 2.19 Insurance intermediation

**2.19.1** (1) In Rule 2.2.2, Insurance Intermediation means:

- (a) advising on a Contract of Insurance;
  - (b) acting as agent for another Person in relation to the buying or selling of a Contract of Insurance for that other Person;
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- (c) making arrangements with a view to another Person, whether as principal or agent, buying a Contract of Insurance; or
  - (d) operating an Insurance Aggregation Site.
- (2) In (1)(a), 'advising' means giving advice to a Person in his capacity as a Policyholder, or in his capacity as agent for a Policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent.
- (3) In (2), 'advice' includes a statement, opinion or report:
- (a) where the intention is to influence a Person, in making a decision, to select a Contract of Insurance or insurance cover; or
  - (b) which could reasonably be regarded as being intended to have such influence.
- (4) The arrangements in (1)(c) include arrangements which do not bring about the transaction.
- ~~(5) The arrangements in (1)(c) do not include arrangements of the kind described in Rule 2.26.1 that constitute marketing.~~
- (5) The arrangements in (1)(c) do not include the mere provision of information about:
- (a) a Contract of Insurance, insurer, insurance intermediary or insurance manager to a Policyholder; or
  - (b) a Policyholder to an insurer, insurance intermediary or insurance manager,
- if the Person providing that information does not take any further steps to assist in concluding the Contract of Insurance.

### **Guidance**

1. Insurance Intermediation activities may be carried on by an Insurance Agent (i.e. a Person who acts as an agent of one or more insurers) or an Insurance Broker (i.e. a Person who acts as an agent of a policyholder), or by an Insurer itself, in relation to its own Contracts of Insurance. Generally, most activities of an Insurance Agent can be carried on by an Insurance Manager that has the authority to underwrite Contracts of Insurance in the DIFC.
2. For more information about Insurance Aggregation Sites, see Guidance items 2 to 4 under Rule 2.11.1.
3. ~~In regard to arrangements under Rule 2.19.1(5), pursuant to Rule 2.2.10, an Authorised Firm (other than a Representative Office) may carry on an activity of the kind described~~

~~in Rule 2.26.1 that constitutes marketing without the need for any additional authorisation to do so.~~

3. See the Guidance under Arranging Deals in Investments in section 2.9 for the distinction between the activities of ‘acting as agent’ and ‘arranging’.
4. A Person ‘acting as agent’ as set out in Rule 2.19.1(1)(b) for an Insurer effecting or carrying out contracts of Long-Term Insurance will need to hold an Insurance Intermediation or Insurance Management Licence.
5. If an Insurance Intermediary wishes to carry on Insurance Intermediation activities in respect of a contract of Long-Term Insurance, that is not a contract of reinsurance, it must obtain an endorsement on its Licence (see Rule 2.2.10C).
6. See also Guidance item 2 under Rule 2.9.1 for examples of activities that constitute arranging.

### Exclusions

**2.19.2** A Person (an ‘arranger’), does not carry on the activity of Insurance Intermediation ~~the activities~~ specified in Rule 2.19.1(1) if that Person ~~he~~ enters, or is to enter, into a transaction in respect of a Contract of Insurance as principal. This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.19.1(1).

**2.19.3** A Person does not carry on Insurance Intermediation if the activity:

- (a) is carried on in the course of any professional business which does not otherwise consist of the carrying on of Financial Services;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of that professional business;
- (c) is not remunerated separately from the other services; and
- (d) does not assist in the conclusion or performance of a Contract of Insurance.

**2.19.3A** A Person does not carry on an Insurance Intermediation activity if:

- (a) the activity is carried on in the course of a business of providing goods or services (other than Financial Services);
- (b) providing goods or services referred to in (a) is the principal business of that Person; and
- (c) the activity:
  - (i) can reasonably be regarded as being ancillary and complementary to the principal business of that Person; and
  - (ii) does not relate to a contract of Long-Term Insurance.

### Guidance

1. The exclusions in Rules 2.19.3 and 2.19.3A apply to certain Insurance Intermediation activities which occur in the course of carrying on other businesses.
2. Rule 2.19.3 applies to activities carried on as a necessary part of a professional service, such as insurance advice provided by an accountant or solicitor as part of estate planning or tax advice.
3. Rule 2.19.3A applies to activities that are ancillary and complementary to a business of providing goods or services. This might include, for example, a travel agent arranging travel insurance or a supplier of electrical goods arranging insurance of those goods. It does not apply if the main service or good is not provided to the customer, for example, if a travel agent does not provide the main travel service to the customer.

**2.19.4** A Person does not give advice in relation to a Contract of Insurance by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) that of giving advice of the kind mentioned in Rule 2.19.1; nor
- (b) that of leading or enabling Persons to buy types of insurance.

**2.19.5** A Person does not arrange a Contract of Insurance merely by providing the means by which one party to a transaction is able to communicate with other such parties.

**2.19.6** A Person who is an Authorised Firm does not advise in relation to a Contract of Insurance if it is authorised under its Licence to carry on the Financial Service of Advising on Financial Products ~~or Credit~~, to the extent the advice relates to a contract of Long-Term Insurance, that is not a contract of reinsurance.

**2.19.7** A Person who is an Authorised Firm does not arrange a Contract of Insurance if it is authorised under its Licence to carry on the Financial Service of Arranging ~~Credit or Deals in Investments~~, to the extent that the arranging relates to rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

**2.19.8** An Insurance Manager does not carry on Insurance Intermediation to the extent that it carries on an activity that constitutes Insurance Management.

**2.19.9** A Person does not carry on Insurance Intermediation by reason only of providing either or both of the following services:

- (a) an insurance loss adjustment service; or
- (b) the expert appraisal of insurance claims.

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## 2.26 Operating a Representative Office

**2.26.1** (1) In Rule 2.2.2, Operating a Representative Office means the marketing of one or more financial services or financial products, provided such services or products which are those offered;

- (a) in a jurisdiction other than the DIFC; and
- (b) by a related party of the Representative Office.

(2) For the purposes of (1) 'marketing' means:

- (a) providing information on one or more financial products or financial services;
- (b) engaging in Financial Promotions in relation to (a); or
- (c) making introductions or referrals in connection with the offer of financial services or financial products;

provided that such activities do not constitute:

- (d) Advising on Financial Products or credit;
- (e) Advising on Credit; or
- (ef) 'arranging' under Rules 2.9.1, 2.14.1, 2.19.1(1)(c) and 2.28.1(1)(a), including receiving and transmitting orders in relation to a financial product.

(3) For the purposes of ~~(1) and (2), (a), (c) and (d)~~, this Rule, the term:

- (a) a 'financial product' means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account or a Contract of Insurance; and
- (b) a 'related party' of a Representative Office means:
  - (i) the same Body Corporate as the Representative Office, including its head office or any other branch; and
  - (ii) a member of the same Group as the Body Corporate referred to in (i).

## Exclusions

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**2.26.2** An Authorised Firm other than a Representative Office does not Operate a Representative Office if it undertakes any activities of the kind described in Rule 2.26.1 that constitute marketing.

**2.26.3** Any communication which amounts to marketing in respect of a financial service or financial product, which is issued by or on behalf of a government or non-commercial government entity, does not constitute marketing for the purposes of Rule 2.26.1.

**Guidance**

Refer to Guidance under REP section 1.3 for the scope of the activities which a Representative Office can conduct under its Licence.

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**2.28 Arranging Credit and Advising on Credit**

**Definition of Financial Product (for misleading and deceptive conduct prohibition)**

**2.28.1** Pursuant to Article 41B(2) of the Regulatory Law, a “Financial Product” in Article 41B of that Law is prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account or a Contract of Insurance.

**2.28.1** (1) In Rule 2.2.2, Arranging Credit and Advising on Credit means:

- (a) making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility; or
- (b) giving advice to a Person in his capacity as a borrower or potential borrower or as agent for a borrower or potential borrower on the merits of his entering into a particular Credit Facility.

(2) Advice in (1)(b) includes a statement, opinion or report:

- (a) where the intention is to influence a Person, in making a decision, to enter into a particular Credit Facility; or
- (b) which could reasonably be regarded as being intended to have such an influence.

**Guidance**

**Activities that constitute ‘Arranging Credit’**

1. Generally, the following activities constitute Arranging Credit:

- a. Introducing potential borrowers to a credit provider (who can be in the DIFC or outside the DIFC);

- b. Assisting a potential borrower to obtain credit, such as completing application forms and other processes relevant to the transaction;
  - c. Negotiating terms of credit, including any fees payable to the arranger; and
  - d. Arranging collateral or other assurances needed by the potential borrower to obtain credit.
2. The Guidance under 'Arranging Deals in Investments' is generally relevant for 'Arranging Credit', although the activities relate to 'credit' in this context, instead of 'Investments'. Therefore, a reference to Investment in that Guidance should be read as 'credit' for the purposes of 'Arranging Credit'.

### **Exclusions**

**2.28.2** A Person does not carry on the activity of Arranging Credit under Rule 2.28.1(1)(a) if that Person enters, or is to enter, into the transaction to Provide Credit. This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.28.1(1)(a).

**2.28.3** A Person does not make arrangements referred to in Rule 2.28.1(1)(a) merely by providing means by which one party to a transaction is able to communicate with other such parties.

**2.28.4** A Person does not carry on the activity referred to in Rule 2.28.1(1)(a) by making arrangements under which another Person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which he or his principal has made or provided.

**2.28.5** A Person does not Arrange Credit merely by making arrangements having as their sole purpose the provision of finance to enable a Person to buy, sell, subscribe for or underwrite Investments.

**2.28.6** A Person does not carry on the activities in Rule 2.28.1(1)(a) or (b) if the activity:

- (a) is carried on in the course of Providing Legal Services or Providing Accountancy Services, which does not otherwise consist of the carrying on of Financial Services;
- (b) may reasonably be regarded as a necessary part of any other services provided in the course of Providing Legal Services or Providing Accountancy Services; and
- (c) is not remunerated separately from the other services.

**2.28.7** A Person does not carry on the activity in Rule 2.28.1(1)(b) by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) that of giving advice of the kind mentioned in Rule 2.28.1(1)(b); nor

- (b) that of leading or enabling Persons to enter into a particular Credit Facility.

**Guidance**

The Guidance relating to the exclusions from the activity of ‘Arranging Deals in Investments’ is generally relevant for the exclusions from ‘Arranging Credit’, although the activities relate to ‘credit’ in this context, instead of ‘Investments’. To the extent relevant, a reference to an Investment in that Guidance should be read as ‘credit’ for the purposes of Guidance on exclusions from ‘Arranging Credit’.

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

**Definition of Financial Product in the general prohibition against misconduct.**

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

## 3. FINANCIAL PROMOTIONS

### 3.1 Application

**3.1.1** This chapter applies to any Person who approves, makes or intends to make a Financial Promotion in or from the DIFC.

**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 2012 and the MKT Rules; or
- (b) an Offer of Units under the Collective Investment Law 2010 and CIR Rules.

#### Guidance

The purpose of the exclusion in Rule 3.1.2 is to ensure that a Person who makes an Offer referred to in that Rule is not subject to duplicative requirements under this chapter. The exclusion applies only to a communication by a Person making an Offer and if that communication is subject to requirements specified in the relevant laws or Rules.

### 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. 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.
6. Depending on the nature and scale of the activities, if a Person makes Financial Promotions on a regular basis or for a prolonged period while physically located in the DIFC, for example by way of a booth, meetings or conferences, the DFSA may consider such activities as constituting the carrying on of a Financial Service, such as Operating a Representative Office. The DFSA considers that in the context of Financial Promotions, "a regular basis" would be anything more than occasional and "a prolonged period" would usually be anything more than 3 consecutive days.

### 3.3 Definition of a Financial Product

- 3.3.1** Pursuant to Article 41A(4) of the Regulatory Law 2004, "financial product" in Article 41A(3)(b) of the Regulatory Law 2004 is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance.

### 3.4 Scope of the Financial Promotions Prohibition

- 3.4.1** (1) A Person shall not, subject to (2) and (23), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.
- (2) A Representative Office may make a Financial Promotion in or from the DIFC only in relation to a financial service or financial product offered:
- (a) in a jurisdiction other than the DIFC; and
  - (b) by a related party (as defined in Rule 2.26.1(3)) of the Representative Office.
- (23) 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 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 ~~(34)~~.
- ~~(34)~~ For the purposes of ~~(23)~~(d), a communication is an “exempt Financial Promotion” if it is:
- ~~(a)~~ approved by an Authorised Firm other than a Representative Office;
  - ~~(b)~~ approved by a Representative Office and it is a communication relating to a financial service or financial product offered by a related party (as defined in Rule 2.26.1(3)) of the Representative Office;
  - ~~(bc)~~ directed at and capable of acceptance exclusively by a Person who appears on reasonable grounds to be a Professional Client of the type specified in COB Rule 2.3.4;
  - ~~(ed)~~ made to a Person in the DIFC (the “recipient”) as a result of an unsolicited request by the recipient to receive the Financial Promotion;
  - ~~(de)~~ made or issued by or on behalf of a government or non-commercial government entity; or
  - ~~(ef)~~ made in the DIFC by a Person in the course of providing legal or accountancy services and may reasonably be regarded as incidental to and a necessary part of the provision of such services.

**Guidance**

If a Person proposes to conduct Financial Promotions in or from the DIFC other than as permitted under (3) and (4), that Person should consider obtaining an appropriate Licence.

- 3.4.2** A Person does not breach the Financial Promotions Prohibition if:
- (a) the Person causes a Financial Promotion to be made in the course of providing a facility which is a mere conduit for the making of the Financial Promotion;
  - (b) the Person is located outside the DIFC and makes a Financial Promotion which appears, on reasonable grounds, to be a communication which is not directed at or intended to be acted upon by a Person in the DIFC; or
  - (c) the Financial Promotion is not made for a commercial or business purpose.

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### 3.5 Additional Rules for Financial Promotions

- 3.5.1** (1) A Person in Rule 3.4.1(23) (a) to (d) must, subject to (2), take reasonable care to ensure that any Financial Promotion it makes in or from the DIFC:
- (a) is clear, fair and not misleading;
  - (b) includes the Person's name, address and regulatory status;
  - (c) .....
- (2) A Person described in Rule 3.4.1(23)(a) who makes a Financial Promotion to an existing client in the DIFC is not required to comply with (1) provided that in making the Financial Promotion that Person complies with the requirements of the relevant Financial Services Regulator in the UAE which relate to Financial Promotions.

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### 3.6 Approval of Financial Promotions by an Authorised Firm

- 3.6.1** For the purposes of GEN Rule 3.4.1(34)(a) and (b), an Authorised Firm must not approve a Financial Promotion unless:
- (a) the Financial Promotion includes a clear and prominent statement that it has been "approved by" the relevant Authorised Firm; and
  - (b) the Financial Promotion is made in accordance with the requirements in Section 3.5.

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### 5.3 Systems and controls

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#### Conduct

- 5.3.20** 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~~ market abuse, whether in the DIFC or elsewhere;  
or
  - (b) a financial crime under any applicable U.A.E. laws.

### 7.3 Applications for endorsements

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#### Endorsement relating to Long-Term Insurance

**7.3.5** An Insurance Intermediary applying for an endorsement to conduct activities relating to contracts of Long-Term Insurance must satisfy the DFSA that it has adequate skills and knowledge relating to underlying investments of Long-Term Insurance.

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### 7.5 Mandatory appointments

- 7.5.1** (1) An Authorised Firm must, subject to (2), make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:
- (a) Senior Executive Officer;
  - (b) Finance Officer;
  - (c) Compliance Officer; and
  - (d) Money Laundering Reporting Officer.
- (2) An Authorised Firm which is a Credit Rating Agency:
- (a) need not make the appointment referred to in (1)(b) and (d); and
  - (b) must ensure that the appointments referred to in 1(a) and (c) are held by separate Authorised Individuals at all times.

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**7.5.2** The Authorised Individuals referred to in Rule 7.5.1 (1)(a), (c) and (d) must be resident in the U.A.E.

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## **8.6 Audit reports**

**8.6.1** An Authorised Person must, in writing, require its Auditor to:

- (a) conduct an audit of and produce a Financial Statement Auditor's Report on the Authorised Person's financial statements in accordance with the International Standards on Auditing;
- (b) produce a Regulatory Returns Auditor's Report in accordance with the Rules in AUD App1 as relevant;
- (c) produce, if the Authorised Firm is permitted to control or hold Client Money, a Client Money Auditor's Report in accordance with the Rules in AUD App2;
- (d) produce, if the Authorised Firm is permitted to control or hold Insurance Monies, an Insurance Monies Auditor's Report in accordance with the Rules in AUD App3; and
- (e) produce, if the Authorised Firm is permitted to hold or control Client Investments, ~~Arrange Custody~~ or Provide Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, in accordance with the Rules in AUD App4.

### **Guidance**

For the purposes of Rule 8.6.1(a) the financial statements of an Authorised Person which is a Branch may be the financial statements prepared for the Authorised Person's head office.

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## **10 TRANSITIONAL RULES**

### **10.1 Endorsements to hold client assets and insurance monies**

#### **Interpretation**

##### **10.1.1** In this section:

“commencement date” means the day on which Rule-Making Instrument No 1656 of 2016 comes into force;

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### **10.2 Safe Custody Auditor’s Report**

#### **Report not required for firms arranging custody**

**10.2.1** An Authorised Firm which has an authorisation for Arranging Custody is not required, in relation to carrying on that Financial Service, to submit a Safe Custody Auditor’s Report under Rule 8.6.1(e) in respect of its financial years ending in 2016 or 2017, or any part of those financial years.

### **10.3 Re-classification of certain Financial Services**

#### **Interpretation**

##### **10.3.1** In this section:

“authorisation” means authorisation to carry on a Financial Service under a Licence;

“commencement date” means the day on which Rule-Making Instrument No 184 of 2016 comes into force; and

“re-classification” means the re-classification of a Financial Service under Rules 10.3.2 to 10.3.7.

#### **Arranging Credit or Deals in Investments**

**10.3.2** An Authorised Firm which, immediately before the commencement date, had an authorisation for ‘Arranging Credit or Deals in Investments’ in respect of both credit and Investments is, on the commencement date, taken to have the following authorisations:

(a) ‘Arranging Credit and Advising on Credit’ so far as that authorisation relates to Arranging Credit; and

(b) 'Arranging Deals in Investments', but only with respect to the Investments specified on its Licence immediately before the commencement date.

**10.3.3** An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Arranging Credit or Deals in Investments' only in respect of credit (and not Investments) is, on the commencement date, taken to have an authorisation for 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Arranging Credit.

**10.3.4** An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Arranging Credit or Deals in Investments' in respect of Investments (and not credit), is, on the commencement date, taken to have an authorisation for 'Arranging Deals in Investments', but only with respect to the Investments specified on its Licence immediately before the commencement date.

#### **Advising on Financial Products or Credit**

**10.3.5** An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Advising on Financial Products or Credit' in respect of Financial Products and credit is, on the commencement date, taken to have the following authorisations:

(a) 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Advising on Credit; and

(b) 'Advising on Financial Products', but only with respect to Financial Products specified on its Licence immediately before the commencement date.

**10.3.6** An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Advising on Financial Products or Credit' only in respect of credit (and not Financial Products) is, on the commencement date, taken to have an authorisation for 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Advising on Credit.

**10.3.7** An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Advising on Financial Products or Credit' only in respect of Financial Products (and not credit) is, on the commencement date, taken to have an authorisation for 'Advising on Financial Products', but only with respect to the Financial Products specified on its Licence immediately before the commencement date.

**Public Register to be updated**

**10.3.8** The DFSA will amend the Public Register as soon as practicable after the commencement date to reflect the re-classifications under this section.

**Certain things not affected**

**10.3.9** For the avoidance of doubt, re-classification under this section does not affect:

- (a) any condition or restriction imposed on a Licence before the commencement date;
- (b) the DFSA's ability to impose any condition or restriction on a Licence, or to withdraw or suspend an authorisation, after the commencement date;
- (c) the classification of a Client, any Client Agreement entered into with a Client, or any procedure adopted or action taken by an Authorised Firm before the commencement date, in respect of a Financial Service provided to a Client; or
- (d) any other right, remedy, privilege, obligation or liability arising in relation to the conduct of a Financial Service by an Authorised Firm before the commencement date.

**Disclosure not required for Long-Term Insurance**

**10.3.10** An Authorised Firm is not required to comply with COB Rule 6.15.1 (relating to disclosure of certain information) in respect of any advice on Long-Term Insurance it provided, or any Long-Term Insurance it arranged, before the commencement date.

**11 SUPERVISION**

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**11.10 Notifications**

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**Suspected Market Abuse**

**11.10.12A** (1) An Authorised Firm must notify the DFSA immediately if it:

- (a) receives an order from a Client, or arranges or executes a transaction with or for a Client; and
  - (b) has reasonable grounds to suspect that the order or transaction may constitute Market Abuse.
- (2) The notification under (1) must specify:
  - (a) sufficient details of the order or transaction; and
  - (b) the reasons for the Authorised Firm suspecting that the order or transaction may constitute Market Abuse.
- (3) An Authorised Firm must not inform the Client, or any other Person involved in the order or transaction, of a notification under this Rule.

#### **Guidance**

1. Under Rule 5.3.20, an Authorised Firm must establish and maintain systems and controls that ensure that it and its employees do not engage in market abuse or facilitate others to engage in market abuse, whether in the DIFC or elsewhere. Rule 11.10.12A requires the firm to notify the DFSA if it reasonably suspects that a client's order or transaction may constitute Market Abuse under Part 6 of the Markets Law.
2. In some cases, a suspicion of Market Abuse may arise when an order is received. In other cases, it may not be apparent until a transaction is executed or when viewed in the context of later information, behaviour or transactions. When a firm submits a notification, it should be able to explain to the DFSA its reasons for suspecting that the order or transaction may constitute Market Abuse.
3. The details of the order or transaction provided with the notification should include the date and time of the order or transaction, the relevant Investment, the client and other parties involved, the nature of the order (e.g. limit order or market order), the nature of the transaction (e.g. on-exchange or OTC) and if the client was acting on its own account or for a third party.
4. If a firm reasonably suspects that a client's order or transaction may constitute market abuse under the laws in another jurisdiction, it will also need to consider if it needs to notify the regulator in that other jurisdiction (under any corresponding obligation to notify).
5. If an Authorised Firm becomes aware that the firm itself, or an employee of the firm, (rather than a client) has engaged in conduct that may constitute market abuse in the DIFC or elsewhere, it has a separate obligation to notify the DFSA under Article 67 of the Regulatory Law and Rule 11.10.7.

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## APP1 DEPOSITS

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

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

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

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

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