

Appendix 1

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



The DFSA Rulebook

General Module

(GEN)

2 FINANCIAL SERVICES

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2.2 Financial Service activities

2.2.1 An activity constitutes a Financial Service under the Regulatory Law 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 Deals in Investments;
- (g) Managing Assets;
- (h) Advising on Financial Products;
- (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;
- (x) Operating a Credit Rating Agency;
- (y) Arranging Credit and Advising on Credit; and
- (z) Operating a Crowdfunding Platform.

[The above text is included for reference only and is not being amended]

2.3 By way of business

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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) (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), (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~~ that Person or a customer of 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) A Person who is a Body Corporate does not carry on the activity specified under paragraph (d) or (e) of Rule 2.2.2 by way of business, if:
- (a) the Person carries on such activities as a member of an Authorised Market Institution or Recognised Body;
 - (b) the Person carries on such activities for its own account or for another Body Corporate which is in the same Group as the Person, provided that any such member of the Group for which the Person acts is a wholly-owned Subsidiary of a Holding Company within the Group or is the Holding Company itself;
 - (c) the Person restricts such activities to transactions involving or relating only to Commodity Derivatives on that Authorised Market Institution or Recognised Body;
 - (d) the main business of the Person is dealing in relation to Commodity Derivatives; and
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- (e) the Person is not part of a Group whose main business is the provision of financial services.

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2.7 Dealing in investments as principal

- 2.7.1** In Rule 2.2.2, Dealing in Investments as Principal means buying, selling, subscribing for or underwriting any Investment as principal.

Exclusions

- 2.7.2** A Person does not Deal in Investments as Principal merely by accepting an instrument, creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which that person has made or provided.

- 2.7.3** A Person does not Deal in Investments as Principal by issuing or redeeming Securities issued by that person.

- 2.7.4** (1) A Person who is not an Authorised Firm or an Authorised Market Institution does not Deal in Investments as Principal in relation to an Investment by entering into a transaction with or through an Authorised Firm or a Regulated Financial Institution.

- (2) The exclusion in (1) does not apply if the Person holds itself out as:

- (a) willing to enter into transactions in Investments of the kind to which the transaction relates; or
- (b) engaging in the business of buying, selling, subscribing for or underwriting Investments.

Guidance

1. The exclusion in Rule 2.7.4 is intended to apply, for example, to a Person who executes proprietary trades through a duly authorised broker, or to a Person who is carrying on a commercial business and enters into a transaction with a firm for a purpose related to that business, such as to hedge a risk. It does not apply to a Person that holds itself out as willing to enter into transactions relating to Investments of that kind or as engaging in the business of dealing in Investments, such as a market maker or an online trading platform operator (even if it enters into transactions only with Authorised Firms or Regulated Financial Institutions).

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2. A Person may hold itself out as carrying on an activity by various means including, for example, on its webpage, in an advertisement or through representations made by its staff. However, merely placing orders with a broker or on a market will not amount to holding out.

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2.11 Advising on financial products

- 2.11.1** (1) In Rule 2.2.2, Advising on Financial Products means giving advice to a Person 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).
- (2) Advice in (1) 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
 - (b) which could reasonably be regarded as being intended to have such an influence.
- (3) Giving advice to a Person under (1) 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, ~~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 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).

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5.3 Systems and controls

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Compliance

- 5.3.7** An Authorised Person must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Person ~~Firm~~ complies with all legislation applicable in the DIFC.