

Appendix 1

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



The DFSA Rulebook

General Module

(GEN)

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2 FINANCIAL SERVICES

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2.2 Financial Service activities

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- 2.2.10A** (1) An Authorised Firm may hold or control Client Assets only if it is permitted to do so by an endorsement on its Licence.
- (2) In (1), the expression “hold or control Client Assets” has the meaning given in COB Rule 6.11.4.
- (3) An endorsement under (1) is not required by an Authorised Firm that has an authorisation for Providing Custody.

2.2.10B An Insurance Intermediary or Insurance Manager may hold Insurance Monies only if it is permitted to do so by an endorsement on its Licence.

Permitted Financial Services for Authorised Market Institutions

2.2.11 Pursuant to Article 42(1)(b) of the Regulatory Law 2004 and subject to Rule 2.2.12, an Authorised Market Institution may carry on any one or more of the following Financial Services:

- (a) Operating an Exchange;
- (b) Operating a Clearing House; or
- (c) Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility as defined in Rule 2.22.1(1)(a).

2.2.12 The Financial Service of Operating an Alternative Trading System, to the extent that such activities constitute operating a Multilateral Trading Facility, may be carried on by an Authorised Market Institution which is permitted to do so by an endorsement on its Licence.

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2.8 Dealing in investments as agent

2.8.1 In Rule 2.2.2, Dealing in Investments as Agent means buying, selling, subscribing for or underwriting any Investment as agent.

Exclusions

- 2.8.2** A Person does not Deal in Investments as Agent if the activity:
- (a) is carried on in the course of providing legal or accountancy services ~~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 or accountancy services ~~that Providing Legal Services or Providing Accountancy Services~~; and
 - (c) is not remunerated separately from the other services.

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- 2.8.4** An Exchange does not Deal in Investments as Agent merely by taking action in accordance with its Default Rules.

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; 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.

Guidance

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.

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Exclusions

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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~~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 or accountancy services~~Providing Legal Services or Providing Accountancy Services~~; and
- (c) is not remunerated separately from the other services.

2.9.8 An Exchange does not make arrangements referred to in Rule 2.9.1(a), 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.

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2.11 Advising on financial products or credit

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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~~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 or accountancy services~~Providing Legal Services or Providing Accountancy Services~~; and
- (c) is not remunerated separately from the other services.

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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 Investments belonging to another Person;~~
- ~~(b) in the case of a Fund, safeguarding Fund Property;~~
- ~~(c) acting as a Central Securities Depository; or~~
- ~~(d) administering Investments or Fund Property for the purpose of (a) and (b).~~
- (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)(d)~~(a) and (b), the following activities do not constitute the ~~'administration of such 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

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.

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.

Exclusions

2.14.2 (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.

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2.17 Operating an exchange

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.
- (3) ~~To the extent that a Person carries on an activity under (1), the Person is not taken to be carrying on any other Financial Services. constitutes Dealing in Investments as Agent, Arranging Credit or Deals in Investments or Arranging Custody, such Financial Services are taken to be incorporated within Operating an Exchange, provided such activity is carried out as an incidental and integral part of the activities of Operating an Exchange.~~

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 2.2.14). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conduct requirements in GEN App 5.

7 AUTHORISATION

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7.3 Applications for endorsements

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Endorsement to hold Client Assets or Insurance Monies

7.3.3 An Authorised Firm applying for an endorsement to hold or control Client Assets must satisfy the DFSA that it has in place adequate systems and controls to meet the applicable requirements in COB sections 6.11 to 6.14.

7.3.4 An Insurance Intermediary or Insurance Manager applying for an endorsement to hold Insurance Monies must satisfy the DFSA that it has in place adequate systems and controls to meet the applicable requirements in COB section 7.12.

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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 165 of 2016 comes into force;

“endorsement” means an endorsement under:

- (a) Rule 2.2.10A permitting an Authorised Firm to hold or control Client Assets; or
- (b) Rule 2.2.10B permitting an Authorised Firm to hold Insurance Monies;

“transitional period” means the period starting on the commencement date and ending six months after that day.

Endorsement not required during transitional period

10.1.2 An Authorised Firm is not required to hold an endorsement before the end of the transitional period.

Grant of endorsement for Firms that already hold or control Client Assets

10.1.3 (1) This Rule applies to an Authorised Firm that has, in the 12 months before the commencement date, submitted to the DFSA under Rule 8.6.2:

- (a) an Auditor’s Report referred to in Rule 8.6.1(c) (a Client Money Auditor’s Report); or
- (b) an Auditor’s Report referred to in Rule 8.6.1(e) (a Safe Custody Auditor’s Report).

(2) An Authorised Firm to which this Rule applies may, within the transitional period, send a written notification to the DFSA confirming that it:

- (a) wishes to obtain an endorsement to hold or control Client Assets;

- (b) has submitted to the DFSA an Auditor's Report referred to in (1) in the 12 months before the commencement date; and
 - (c) has in place adequate systems and controls to meet the applicable requirements in COB sections 6.11 to 6.14.
- (3) The DFSA may require the notification in (2) to be in such form and verified in such manner as it thinks fit.
- (4) If an Authorised Firm provides a duly completed notification to the DFSA in accordance with (2) and (3) within the transitional period:
 - (a) the DFSA must grant it an endorsement to hold or control Client Assets; and
 - (b) it is not required to apply for an endorsement under Rule 7.3.3 or pay the fee prescribed in FER 2.2.6 for such an application.

Grant of endorsement for Firms that already hold Insurance Monies

- 10.1.4** (1) This Rule applies to an Authorised Firm that has, in the 12 months before the commencement date, submitted to the DFSA under Rule 8.6.2 an Auditor's Report referred to in Rule 8.6.1(d) (an Insurance Monies Auditor's Report).
- (2) An Authorised Firm to which this Rule applies may, within the transitional period, send a written notification to the DFSA confirming that it:
- (a) wishes to obtain an endorsement to hold Insurance Monies;
 - (b) has submitted to the DFSA an Auditor's Report referred to in (1) in the 12 months before the commencement date; and
 - (c) has in place adequate systems and controls to meet the applicable requirements in COB section 7.12.
- (3) The DFSA may require the notification in (2) to be in such form and verified in such manner as it thinks fit.
- (4) If an Authorised Firm provides a duly completed notification to the DFSA in accordance with (2) and (3) within the transitional period:
- (a) the DFSA must grant it an endorsement to hold Insurance Monies; and
 - (b) it is not required to apply for an endorsement under Rule 7.3.4 or pay the fee prescribed in FER 2.2.6 for such an application.

DFSA's powers not affected

10.1.5 The grant of an endorsement under this section is without prejudice to the DFSA's ability to impose conditions or restrictions on the endorsement when it is granted or after it has been granted, or to suspend or withdraw the endorsement after it has been granted.

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;~~
- ~~(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;~~
- ~~(e) Rule 10.8.1 applies to an Authorised Person who has been authorised to conduct Islamic Financial Business as an Islamic Financial Institution or to operate an Islamic Window; and~~
- ~~(f) Section 10.9 applies to a Person who is the subject of a notice issued by the DFSA under Article 90 or 91 of the Regulatory Law 2004 prior to the date on which this rule came into force.~~

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 must continue to maintain any records required to be maintained under the Previous Regime as if any such requirements continued to apply.

10.3 ~~Specific relief – COB Module~~

~~10.3.1~~ An Authorised Firm, when carrying on Investment Business, Accepting Deposits, Providing Credit or Providing Trust Services under chapters 3 to 6 of COB:

~~(a)~~ may treat a Person as a Professional Client without having to undertake the determination referred to in COB Rule 2.3.1(1) where the Authorised Firm:

~~(i)~~ had determined that Person to be a Client under the Previous Regime, including where such determination had been made under a waiver or modification in force under the Previous Regime; and

~~(ii)~~ carries on the same Financial Service it had carried on with or for that Person under the Previous Regime;

~~(b)~~ may treat a Person as a Market Counterparty without having to comply with the requirements in COB Rule 2.3.4(1) if that Person was so treated by the firm under the Previous Regime;

~~(c)~~ may, for a period of not more than 6 months after that Commencement Date, distribute marketing material that was produced in accordance with the requirements under the Previous Regime to a Person:

~~(i)~~ to whom it could have distributed such material under the Previous Regime; or

~~(ii)~~ who is a Professional Client pursuant to this Rule or pursuant to COB chapter 2; and

~~(d)~~ may carry on a Financial Service with or for a Person without having to comply with COB Rule 3.3.2(1) where the Authorised Firm carries on the same Financial Service it carried on with or for that Person under the Previous Regime and there is a client agreement in force in respect of that service.

~~10.3.2~~ (1) An Authorised Firm, when carrying on Insurance Business, Insurance Intermediation or Insurance Management as provided under chapter 7, may treat a Person it had treated as a Commercial Customer under the Previous Regime as a Professional Client without having to undertake the determination referred to in COB Rule 2.3.1(1) to the extent that it

~~carries on the same Financial Service as it had carried on with or for that Person under the Previous Regime.~~

- ~~(2) For the purposes of (1), a “Commercial Customer” means in relation to an Insurer, Insurance Manager or Insurance Intermediary, a customer who was an Undertaking or natural person carrying on a trade or business, with or without a view for profit.~~

~~10.4 — Not currently in use~~

~~10.5 — Specific relief — IFR Module~~

- ~~10.5.1 An Authorised Firm may distribute marketing material without having to comply with the requirements in IFR Rule 2.1.2 provided the marketing material complies with the Previous Regime and is distributed no later than 6 months after the Commencement Date.~~

~~10.6 — Specific relief — Designated Investments~~

- ~~10.6.1 In this section, the term Designated Investment has the meaning that it had under this module immediately prior to 4 January 2009.~~

- ~~10.6.2 An Authorised Person that is authorised under its Licence to carry on a Financial Service in respect of a Designated Investment may carry on that Financial Service as if that Designated Investment were a Structured Product.~~

- ~~10.6.3 For the purposes of the requirements in MKT 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.~~

~~Guidance~~

~~Under Rule 10.6.3, a Reporting Entity which had its Designated Investments included in an Official List of Securities of an Authorised Market Institution prior to 4 January 2009 will be treated as the Reporting Entity of Structured Products. Therefore, OSR and AMI Rules that apply to a Reporting Entity in relation to a Structured Product will apply to that Reporting Entity.~~

~~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.

~~10.8 Specific relief – IFR Module – Accounting Standards~~

~~10.8.1~~ An Authorised Person who is authorised to conduct Islamic Financial Business as an Islamic Financial Institution or to operate an Islamic Window and who applies the accounting and auditing standards of the Accounting and Auditing Organisation for Islamic Financial Institutions immediately prior to the date on which the rule-making instrument No 105 came into force may continue to apply such standards for a period of not more than 2 years from such date.

~~10.9 Specific relief – ENF Module~~

~~10.9.1~~ (1) Any matter commenced by the DFSA by way of notice under Article 90 or 91 of the Regulatory Law 2004 to impose an administrative fine or censure under the previous regime where the matter remains to be concluded on the date this rule came into force may be continued under the relevant requirements prescribed under the previous regime.

(2) For the purposes of (1), the “previous regime” means the regime specified under Articles 90 and 91 of the Regulatory Law 2004 in force immediately prior to the coming into force of the DIFC Laws Amendment Law 2012 and the ENF module of the DFSA’s Rulebook prior to the coming into force of this Rule.

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11 SUPERVISION

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11.10 Notifications

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Major acquisitions

11.10.8 (1) Subject to (2), an Authorised Firm which makes or proposes to make a Major Acquisition as defined in (3) must:

- (a) if it is a Domestic Firm, comply with the requirements in Rule 11.10.9; and
 - (b) if it is not a Domestic Firm, comply with the requirements in Rule 11.10.10.
- (2) The requirement in (1) does not apply to an Authorised Firm which is a Credit Rating Agency or a firm in Category 3 (as defined in PIB Rules 1.3.3 to 1.3.5) or Category 4 (as defined in PIB Rule 1.3.46).
- (3) Subject to (4), an Authorised Firm makes a Major Acquisition if it makes or proposes to directly or indirectly acquire a shareholding in a Body Corporate where that acquisition:
- (a) is of a value (whether by one acquisition or a series of acquisitions) of 10% or more of:
 - (i) the Authorised Firm's Capital Resources, if it is a Domestic Firm which is a Category 1 Authorised Firm (as defined in PIB Rule 1.3.1), Category 2 Authorised Firm (as defined in PIB Rule 1.3.2) or Category 5 Authorised Firm (as defined in PIB Rule 1.3.57); or
 - (ii) the Authorised Firm's Adjusted Capital Resources, if it is a Domestic Firm conducting Insurance Business; or
 - (iii) the capital resources of the Authorised Firm calculated in accordance with the requirements of the Financial Services Regulator in its home jurisdiction, if it is not a Domestic Firm; or
 - (b) even if it does not exceed the 10% threshold referred to in (a), it is reasonably likely to have a significant regulatory impact on the Authorised Firm's activities.
- (4) An acquisition is not a Major Acquisition for the purposes of (3) if it is an investment made by an Authorised Firm:
- (a) in accordance with the terms of a contract entered into by the Authorised Firm as an incidental part of its ordinary business; or
 - (b) as a routine transaction for managing the Authorised Firm's own investment portfolio and therefore can reasonably be regarded as made for a purpose other than acquiring management or control of a Body Corporate either directly or indirectly.

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