

Appendix 2

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



The DFSA Rulebook

Conduct of Business Module

(COB)

6 ADDITIONAL RULES - INVESTMENT BUSINESS

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6.11 Client Assets

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Holding or controlling client assets

6.11.4 Client Assets are held or controlled by an Authorised Firm if they are:

- (a) directly held by the Authorised Firm;
- (b) held in an account in the name of the Authorised Firm;
- (c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Firm; or
- (d) held in the Client's own name, but the Authorised Firm has a mandate from the Client to manage those assets on a discretionary basis.

Guidance

- 1 For the purposes of Rule 6.11.4, the DFSA would consider a Person to be controlled by an Authorised Firm if that Person is inclined to act in accordance with the instructions of the Authorised Firm.
2. The DFSA would consider an account to be controlled by an Authorised Firm if that account is operated in accordance with the instructions of the Authorised Firm.
3. If an Authorised Firm has a discretionary portfolio mandate from a Client, even though the assets are to be held in the name of the Client (for example, under a power of attorney arrangement), the firm controls those assets as it can execute transactions relating to those assets, within the parameters set out in the mandate.
4. In relation to assets referred to in Guidance item 3 that are held in the Client's name, only specific Rules in App 5 (Client Money Provisions) and App 6 (Safe Custody Provisions) are likely to be relevant, as the assets are already held in the Client's own name and the firm will control rather than hold the assets. A firm with such a discretionary mandate will also need to comply with other relevant requirements in the Rulebook, such as GEN Rule 2.2.10A requiring an endorsement to hold or control Client Assets, and GEN 8.6 section requiring an audit report relating to Client Assets.

6.12 Client money

6.12.1 All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business or the Operation of a Crowdfunding Platform in or from the DIFC is Client Money, except Money which is:

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

Guidance

1. Authorised Firms are reminded that the exemption in Rule 6.12.1(a) would not apply to Money which is passed to a third party i.e. not held in an account with the Authorised Firm itself.
2. Pursuant to Rule 6.12.1(b), examples of Money which is immediately due and payable to an Authorised Firm includes Money which is:
 - a. paid by the way of brokerage, fees and other charges to the Authorised Firm or where it is entitled to deduct such remuneration from the Client Money held or controlled;
 - b. paid by the Authorised Firm in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or
 - c. owed by the Client to the Authorised Firm in respect of unpaid purchases by or for the Client if delivery of Investments has been made to the Client or credited to his account.

3. The CIR module contains specific provisions relating to the handing of Fund Property and also provisions relating to a Fund Administrator holding or controlling monies or assets belonging to third parties.

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APP5 CLIENT MONEY PROVISIONS

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A5.5 Exceptions to holding client money in client accounts

A5.5.1 The requirement for an Authorised Firm to pay Client Money into a Client Account does not, subject to Rule A5.5.2, apply with respect to such Client Money:

- (a) received in the form of cheque, or other payable order, until the Authorised Firm, or a Person or account controlled by the Authorised Firm, is in receipt of the proceeds of that cheque;
- (b) temporarily held by an Authorised Firm before forwarding to a Person nominated by the Client; ~~or~~
- (c) in connection with a Delivery Versus Payment Transaction where:
 - (i) in respect of a Client purchase, Client Money from the Client will be due to the Authorised Firm within one day upon the fulfilment of a delivery obligation; or
 - (ii) in respect of a Client sale, Client Money will be due to the Client within one day following the Client's fulfilment of a delivery obligation; or
- (d) held in the Client's own name where the Authorised Firm has a mandate to manage the Money on a discretionary basis.

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A5.12 Auditor's reporting requirements

Guidance

In accordance with GEN chapter 8, an Authorised Firm which holds or controls Client Money for Segregated Clients must arrange for a Client Money Auditor's Report to be submitted to the DFSA on an annual basis.

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