

## Appendix 2

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

Note: some text that is not being amended is included for reference only.



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# The DFSA Rulebook

## Conduct of Business Module

### **(COB)**

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### **3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, PROVIDING TRUST SERVICES AND OPERATING A CROWDFUNDING PLATFORM**

#### **Guidance**

1. The Rules in this chapter give support to the Principles in GEN section 4.2 and in particular Principles 1, 2, 6 and 7.
2. There are additional Rules that apply to Authorised Firms in other chapters of this module, which are more specific to the nature of the Financial Service conducted by the Authorised Firm.

#### **3.1 Application**

**3.1.1** This chapter applies to an Authorised Firm which carries on or intends to carry on:

- (a) Investment Business;
- (b) Accepting Deposits;
- (c) Providing Credit;
- (d) Providing Trust Services; or
- (e) Operating a Crowdfunding Platform,

except where it is expressly provided otherwise.

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#### **3.4 Suitability**

##### **Application**

**3.4.1** The Rules in this section do not apply where the Authorised Firm:

- (a) ~~undertakes a Transaction~~ carries on a Financial Service with or for a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits or Providing Credit;
- (d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing, or
- (e) carries on the activity of operating an MTF.

**Suitability assessment**

- 3.4.2** (1) Subject to (2), an Authorised Firm must not recommend to a Client a financial product or financial service, or execute a Transaction on a discretionary basis for a Client, unless the Authorised Firm has a reasonable basis for considering the recommendation or Transaction to be suitable for that particular Client. For this purpose, the Authorised Firm must:
- (a) undertake an appropriate assessment of the particular Client's needs and objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and
  - (b) take into account any other relevant requirements and circumstances of the Client of which the Authorised Firm is, or ought reasonably to be aware.
- (2) An Authorised Firm may, subject to (3) and (4), limit the extent to which it will consider suitability when making a recommendation to, or undertaking a Transaction on a discretionary basis for or on behalf of, a Professional Client if, prior to carrying on that activity, the Authorised Firm:
- (a) has given a written warning to the Professional Client in the form of a notice clearly stating ~~either that the Authorised Firm will not consider suitability, or~~ will consider suitability only to the extent specified in the notice; and
  - (b) the Professional Client has given his express consent, after a proper opportunity to consider the warning, by signing that notice.
- (3) Where an Authorised Firm manages a Discretionary Portfolio Management Account for a Professional Client, it must ensure that the

account remains suitable for the Professional Client, having regard to the matters specified in (1) (a) and (b).

- (4) If an Authorised Firm has, before the Commencement Date, given a written warning to a Professional Client in the form of a notice stating that it will not consider suitability, the firm must, no later than 6 months after the Commencement Date, either:
- (a) issue a new warning that meets the requirements in (2); or
  - (b) carry out a full suitability assessment in accordance with (1).
- (5) In (4), Commencement Date means the day on which Rule-Making Instrument No. 259 of 2019 comes into force.

### **Guidance**

#### **Information a firm needs to have for a suitability assessment**

1. When carrying out a suitability assessment under Rule 3.4.2 (1), an Authorised Firm should have, or obtain, certain minimum information about the Client. For example, the information about the Client's:
  - a. needs and objectives should include, where relevant, information about the length of time the Client wishes to hold the financial product. The age of a Client that is an individual may also be relevant;
  - b. financial situation should include, where relevant, the assets, liabilities (including tax), income and expenses, and general capacity to withstand losses arising from investing in financial products; and
  - c. knowledge and experience should include, where relevant, the nature, volume and frequency of previous investments made by the Client, and the Client's level of familiarity with relevant financial products and financial services. The Client's occupation or profession, former professional experience, and level of financial education may also be relevant.

#### **Overall suitability for the Client's portfolio**

2. When recommending a financial product to a Client, or executing a discretionary transaction for a Client, an Authorised Firm should consider the overall effect the recommendation or discretionary transaction would have on the Client's investment portfolio. For example, for a Client with a low or medium risk profile, a proportion of high-risk financial products in the Client's portfolio may be suitable, provided this is consistent with the risk-return profile of the portfolio, and the firm is satisfied that any financial products that are recommended to the Client, or invested in, on behalf of the Client, are likely to meet the Client's investment objectives and financial circumstances.

**Written warnings about limited suitability assessments**

3. Under Rule 3.4.2(2), an Authorised Firm may limit the extent to which it will consider suitability when making a recommendation to, or undertaking a discretionary transaction for or on behalf of, a Professional Client. However, the DFSA does not consider that this Rule permits a firm to limit its consideration of suitability to such a degree that under Rule 3.4.2(1) there is no meaningful basis for the recommendation or transaction.
4. The DFSA expects a written warning given to a Professional Client under Rule 3.4.2(2) to:
  - a. be in a stand-alone document (for example, not be included in the Client Agreement or other communication issued to the Client);
  - b. be given in good time before providing the financial service;
  - c. clearly state how the suitability assessment will be limited, for example what the firm would consider, or would not consider, as part of the limited assessment, such as any specified investment objectives, needs or circumstances of the Client, or a limited range of financial products from which the firm would be choosing;
  - d. specify any risks associated with undertaking a suitability assessment that is limited in scope; and
  - e. provide for a clear acknowledgement by the Client that they have received and understood the warning and consent to the limited suitability assessment that will be undertaken by the firm, as set out in that warning.
5. A firm should consider the need to provide a fresh warning to a Professional Client in some circumstances. For example, where the firm becomes aware of significant changes to:
  - a. the financial needs or circumstances of the Client; or
  - b. the types of financial products or financial services covered by an existing warning.

**Suitability assessment when Providing Trust Services**

- ~~6. An Authorised Firm Providing Trust Services does not have to undertake an assessment of the factors such as risk tolerance, knowledge and experience of a Client when assessing the suitability of the service to a particular Client. This is because those considerations are not relevant to the activity of Providing Trust Services.~~
- ~~2. The extent to which an Authorised Firm needs to carry out a suitability assessment for a Professional Client depends on its agreement with such a Client. The agreement may limit the suitability assessment to a specified extent, or may dispense with the suitability assessment completely. To the extent a limited suitability assessment is agreed upon, the firm must carry out the suitability assessment as agreed. Limitations may, for example, relate to the objectives of the Client or the product range in respect of which the recommendations are to be made.~~

**Suitability assessment when recommending a Credit Facility**

7. An Authorised Firm that recommends to a Client a particular Credit Facility as suitable for that Client, needs to consider whether the facility is suitable for the Client in terms of its affordability by the Client. An Authorised Firm acting as a credit broker for a Client would need to consider not only the affordability of the facility for the Client, but also whether

the product is suitable compared to other credit products available in the market. However, a provider of a Credit Facility is only required to assess the suitability for a particular Client if it makes a recommendation to that Client.

- 3.4.3** An Authorised Firm must take reasonable steps to ensure the information it holds about a Client is accurate, complete and up to date.

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## **7.8 Suitability**

- 7.8.1** An Insurer or an Insurance Intermediary must comply with the suitability requirement set out in section 3.4 when conducting any Insurance or Insurance Intermediation Business with or for a Retail Client in respect of Direct Long-Term Insurance.

- 7.8.2** (1) Subject to Rule 7.8.3, an Insurer or Insurance Intermediary must only make a recommendation to a Retail Client to enter into a Contract of Insurance that is General Insurance where it has taken reasonable steps to ensure that the recommended Contract of Insurance is suitable in light of the Client's demands and needs.
- (2) The Insurer or Insurance Intermediary must obtain from a Retail Client such information as is necessary to identify the Client's circumstances and objectives, and consider whether the terms of the particular contract of General Insurance meet the requirements identified.

### **Guidance**

Simple and easy to understand general insurance products, such as motor insurance, do not require a detailed suitability assessment. However, in other cases, the information which an Insurer or Insurance Intermediary would generally need to have about the Client's needs and demands, before making a recommendation about a product, include:

- a. details relating to the purpose for which the Client is seeking to obtain insurance cover (e.g., what risks the Client wishes to cover);
  - b. the Client's circumstances, including financial, to assess the type of exclusions and level of excess the Client wishes to accept, or is suitable for the particular Client; and
  - c. any other matters relevant to the particular type of insurance product or market.
- 7.8.3** An Insurer and an Insurance Intermediary may only recommend to a Client a contract of General Insurance that does not meet all the Client's requirements if it clearly explains to the Client, at the point of making the recommendation, that

the contract does not fully meet the Client's requirements and the differences in the insurance recommended.

**Guidance**

When deciding what level of explanation is appropriate for a Client to whom a contract of insurance that does not fully meet that Client's requirements is recommended, the Insurer or Insurance Intermediary should take into consideration the knowledge held by the Client in relation to the type of insurance in question. The explanation should include sufficient information so that the Client can understand easily the differences between what is recommended and the Client's requirements, and the advantages and disadvantages of the recommended insurance, including any financial or other risks the Client may face if the recommended policy does not fully meet the Client's requirements.

- 7.8.4** Where an Insurance Intermediary is instructed to obtain insurance which is contrary to the advice that it has given to a Client, the Insurance Intermediary must obtain from the Client written confirmation of the Client's instructions before arranging or buying the relevant insurance.