

## Appendix 1

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



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# The DFSA Rulebook

General Module

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## **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;
- (z) Operating a Crowdfunding Platform;
- (aa) Operating an Employee Money Purchase Scheme; and
- (bb) Acting as the Administrator of an Employee Money Purchase Scheme;  
and
- (cc) Arranging or Advising on Money Services.

**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**

**2.2.4** Pursuant to Article 42(1)(a) of the Regulatory Law 2004 an Authorised Firm, subject to the Rules, may carry on any one or more Financial Services ~~other than Providing Money Services.~~

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**2.2.10G** An Authorised Firm must not carry on currency exchange in the DIFC unless that activity is in connection with, and a necessary part of, providing another Financial Service, including another Money Service activity referred to in paragraphs (b) to (f) of Rule 2.6.1(1).

**Guidance**

1. Providing currency exchange, although a specified Money Service under Rule 2.6.1(1)(a), cannot be provided as a stand-alone financial service in or from the DIFC. An Authorised Firm may however provide currency exchange where it is in connection with, and a necessary part of, providing another Money Service or another Financial Service (see Rule 2.2.10G). An Authorised Firm may also arrange for another person outside the DIFC to provide a currency exchange service if the Authorised Firm is authorised to Arrange or Advise on Money Services (see Rule 2.32.1).

2. An Authorised Firm that Provides Money Services is also subject to further restrictions relating to not using physical cash and the settlement of Dirham transactions (see COB section 13.2).

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## **2.6 — Providing money services**

- ~~2.6.1 (1) In Rule 2.2.2, Providing Money Services means providing currency exchange or money transmission.~~
- ~~(2) In (1) 'money transmission' means:~~
- ~~(a) selling or issuing payment instruments;~~
  - ~~(b) selling or issuing stored value; or~~
  - ~~(c) receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC.~~

## **2.6 Providing Money Services**

- 2.6.1** (1) In Rule 2.2.2, Providing Money Services means:
- (a) providing currency exchange;
  - (b) providing Money Transmission;
  - (c) providing or operating a Payment Account;
  - (d) executing Payment Transactions on a Payment Account provided or operated by another Person;
  - (e) issuing Payment Instruments; or
  - (f) issuing Stored Value.
- (2) In this Rule:
- (a) "Money Transmission" means the transmission of money or monetary value, without a Payment Account being created in the name of the payer or the payee, where funds are:
    - (i) received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another Payment Service Provider acting on behalf of the payee; or
    - (ii) received on behalf of, and made available to, the payee.
  - (b) "Payment Account" means an account held in the name of one or more Users which is used to execute Payment Transactions;
  - (c) "Payment Instrument" means a:
    - (i) personalised device; or

(ii) personalised set of procedures agreed between the User and the provider,

that is used by the User to initiate a Payment Order;

(d) “Payment Order” means an instruction by a payer or payee to their respective Payment Service Provider requesting the execution of a Payment Transaction;

(e) “Payment Service” means an activity referred to in (1)(b),(c),(d) or (e);

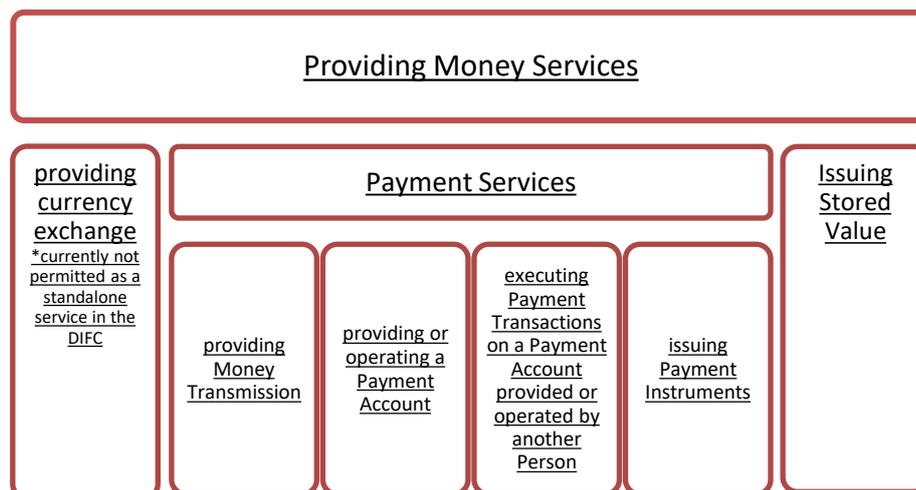
(f) “Payment Service Provider” means a Person providing a Payment Service;

(g) “Payment Transaction” means an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;

(h) “Stored Value” means any electronically (including magnetically) stored monetary value as represented by a claim on the issuer which is issued on receipt of funds or other assets for the purpose of making Payment Transactions, but does not include monetary value that can be used only to pay for goods or services referred to in Rule 2.6.4.

**Guidance**

1. The following diagram illustrates the different types of Money Services:



2. A particular service provided by an Authorised Firm may involve only one of the above activities e.g. Money Transmission, or a combination of activities e.g. issuing Stored Value, issuing Payment Instruments and operating a Payment Account.

3. The term “Payment Service” is used to describe all or any of the activities in Rule 2.6.1(1) other than providing currency exchange or issuing Stored Value.

4. A Payment Account is an account that is used to execute Payment Transactions. Funds are usually expected to remain in a Payment Account only for a short period. A provider of such an account is prohibited from paying any interest or other return on funds in the account (COB Rule A7.2.16). This is because paying interest or any other return on the account is likely to result in the account being a Deposit or a Profit Sharing Investment Account (PSIA).

5. A “User” means a user of a Money Service and, in relation to a Payment Service, includes a person acting in the capacity of payer, payee or both (see the definition in GLO).
6. The reference in the “Stored Value” definition in Rule 2.6.1(2)(h) to receipt of “other assets” includes, for example, the receipt of digital currencies or any other form of assets that may be accepted by an issuer of stored value. Stored Value does not, however, include a loyalty programme where a person earns points that can be redeemed directly for goods or services of the loyalty programme provider.
7. COB Rule A7.3.3 limits the total amount of Stored Value that may be issued to an individual User at any point in time to \$5,000 and the total value of a single Payment Transaction to \$1,000.

## Exclusions

- 2.6.2** A Person who is an Authorised Firm does not Provide Money Services for the purposes of Rule 2.2.2 if it does so in relation to the carrying on of another Financial Service where Providing Money Services is in connection with and a necessary part of that other Financial Service.

### Guidance

1. Examples of activities that are likely to be excluded under Rule 2.6.2 include, for example, Money Service activities carried on in connection with, and as a necessary part of, Providing Credit, Dealing in Investments (as principal or agent), Operating an Exchange or Clearing House, Managing Assets or Providing Custody.
2. A Bank or an Islamic Financial Institution Managing a PSIA will also be able to provide many of the Money Service activities under the exclusion in Rule 2.6.2, as they will be activities provided in connection with, and as a necessary part of, other Financial Services the Bank or Islamic Financial Institution usually provides to its customers. However, if a Bank or Islamic Financial Institution wishes to provide a discrete service, such as selling a type of Payment Instrument, it will need additional authorisation for Providing Money Services.

- 2.6.3** A Person does not Provide Payment Services if the Person carries out a Payment Transaction for their own account.

- 2.6.4** (1) A Person does not Provide Money Services where the Person issues electronically stored monetary value that can be used only to pay for goods or services, other than Money Services, provided by that Person or another entity in the Person’s Group.
- (2) Where a portion of electronically stored monetary value issued by a Person can be used only to pay for goods or services referred to in (1), then the Person does not Provide Money Services in respect of that relevant portion if the conditions in (3) are met.
- (3) The conditions in (2) are that the relevant portion:
- (a) is discrete and clearly identifiable; and
  - (b) can be used only to pay for goods and services referred to in (1) and cannot be used for any other purpose.

### Guidance

1. Rule 2.6.4 is intended to exclude monetary value issued by a merchant that is accepted only by the merchant itself (i.e. a ‘closed loop’ system). Examples of services that will be excluded under this Rule include cards that can be used only to pay for goods purchased from a specific store or chain of stores or that can be used only to pay for a particular service (such as a taxi or other transport service) or to pay for goods or services offered by a specific

club or organisation. However, if a card is more generally accepted, and can be used with other third parties, it will not fall within the exclusion.

2. Where monetary value on a card or wallet can be used for a combination of purposes, all of that monetary value is likely to constitute Stored Value unless the issuer can demonstrate that there is a clear separation between amounts that can be used only for the issuer's goods and services and amounts that can be used for mixed purposes.

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## **2.32 Arranging or Advising on Money Services**

**2.32.1** (1) In Rule 2.2.2, Arranging or Advising on Money Services means:

- (a) making arrangements for another Person to receive Money Services;
  - (b) giving advice to another Person on the merits of using a particular Money Services Provider;
  - (c) providing an Account Information Service; or
  - (d) providing a Payment Initiation Service.
- (2) Advice in (1)(b) includes a statement, opinion or report:
- (a) intended to influence a Person, in making a decision, to use or select a particular Money Services Provider; or
  - (b) which could reasonably be regarded as being intended to have such an influence.
- (3) In 1(c), "Account Information Service" means an online service that provides consolidated information on one or more accounts held by the User with one or more account providers, and includes such a service whether information is provided:
- (a) in its original form or after processing; and
  - (b) to the User or to another person in accordance with the User's instructions.
- (4) In 1(d), "Payment Initiation Service" means an online service that initiates a Payment Order at the request of the User with respect to a Payment Account held at another Payment Service Provider, but does not include:
- (a) a service that involves contact with any funds at any stage of the Payment Transaction; or
  - (b) the issue of a Payment Instrument.

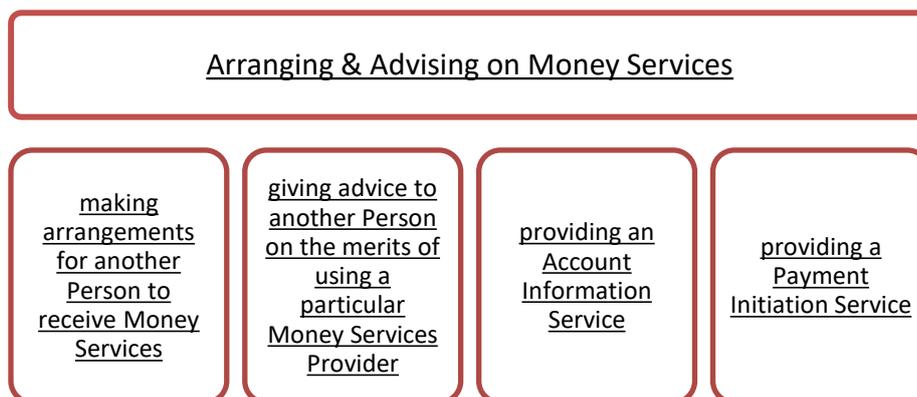
### **Exclusion**

**2.32.2** An Authorised Firm does not Arrange or Advise on Money Services under Rule 2.32.1(a) or (b) if it is the relevant Money Services Provider.

**Guidance**

**Activities that constitute ‘Arranging or Advising on Money Services’**

1. The following diagram summarises the activities that constitute Arranging and Advising on Money Services:



2. Making arrangements for another Person to receive Money Services under Rule 2.32.1(1)(a) includes the following activities:
  - (a) introducing a potential user to a Money Services Provider (whether the provider is in the DIFC or outside the DIFC);
  - (b) arranging currency exchange, including spot and forward contracts;
  - (c) assisting a potential user to use Money Services, for example by completing application forms and other processes relevant to the transaction;
  - (d) negotiating terms related to Money Services, including any fees payable to the arranger; and
  - (e) arranging assurances, incidentals or other arrangements required from a potential user to use Money Services.
3. A Person Arranging or Advising on Money Services should not be ‘holding or controlling’ Client Money (as defined in COB Rule 6.11.4), including any Stored Value or other funds.
4. An Account Information Service enables users to have access to a single source of aggregated information so they can view information from various accounts in a single place. Users may also expressly consent to that information being shared with another person such as their financial adviser or a credit reference agency.
5. A Payment Initiation Service is a service that establishes a software ‘bridge’ between the website of the merchant and the online banking platform of a payer’s Payment Account, which allows the user to initiate the payment. This type of service would typically be made available as a payment option on a merchant’s website.
6. A provider of Payment Initiation Services should not receive funds at any stage of the Payment Transaction or issue Payment Instruments. The provider of a Payment Initiation Service provides independent verification to the relevant merchant that the user has sufficient funds in his Payment Account and has made a payment by selecting that account to make a payment to the merchant.

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### 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 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.

**Guidance**

1. Article 41A(3) of the Regulatory Law 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.
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, "financial product" in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance or a Crowdfunding Loan Agreement.

### **3.4 Scope of the Financial Promotions Prohibition**

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- 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 Person makes a Financial Promotion relating to an Employee Share Scheme and that Person or another entity in its Group is the employer to whom the scheme relates; or
- (ed) the Financial Promotion is not made for a commercial or business purpose.

#### **Guidance**

1. Examples of a mere conduit would include a newspaper or magazine, a website carrying third-party banner ads, a postman or courier, a person paid to hand out promotional material to the public and an event venue - unless in each case they were the originator i.e the Person who makes the Financial Promotion.

2. In Rule 3.4.2(b) the DFSA considers that the following non-exhaustive list of factors may each be indicative of whether or not a Financial Promotion is “intended to be acted upon by, or targeted at, Persons in the DIFC”:
  - i. whether it is expressed to be for a Person or type of Person in the DIFC;
  - ii. whether it is sent to an address (including a P.O. Box) in the DIFC;
  - iii. whether it is physically distributed to Persons in the DIFC;
  - iv. whether it takes place in the DIFC;
  - v. whether it makes reference to the DIFC;
  - vi. whether it appears in a DIFC publication;
  - vii. whether it appears on a DIFC-based or related website or other media
  - viii. whether it is sent to the email of a Person in the DIFC; or
  - ix. whether it contains a prominent and clear disclaimer on its face that it is not intended to be acted upon by Persons in the DIFC.
  
3. The DFSA in applying Rule 3.4.2(ed) will generally consider that for a communication to be made “for a commercial or business purpose” there must be a commercial element to the Financial Promotion, whether or not the Financial Promotion actually leads to the provision of any financial service. However, the DFSA considers that “for a commercial or business purpose” requires a commercial or business interest on the part of the communicator and the nature of the communicator’s business need not be related to any specific financial service.
  
4. The DFSA considers that a Person located outside the DIFC who makes a Financial Promotion into the DIFC, makes that communication in the DIFC. The DFSA considers that the prohibition in Article 41A(1) applies irrespective of where the communicator of the Financial Promotion is located.

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## 6 GENERAL PROVISIONS

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### 6.5 Location of offices

- 6.5.1**
- (1) Where an Authorised Person is a Body Corporate incorporated in the DIFC, its head office and registered office must be in the DIFC.
  - (2) Where an Authorised Person is a partnership established under the Limited Partnership Law 2004 or the General Partnership Law 2006, its head office and registered office must be in the DIFC.
  - (3) Where an Authorised Person operates in the DIFC through a Branch:
    - (a) it must have a place of business in the DIFC that is the principal place where it carries on the activities for which it is authorised by the DFSA; and
    - (b) that place of business must be its address in the DIFC to which communications and notices may be addressed.
  - (4) An applicant for authorisation to carry on one or more Financial Services must satisfy the DFSA that it will meet the requirements in this Rule when the authorisation is granted.
  - (5) In this Rule:
    - (a) “head office” means the principal place where an Authorised Person carries on:
      - (i) the day-to-day management and control of its business, wherever that business may be conducted; and
      - (ii) the activities for which it is authorised by the DFSA; and
    - (b) “registered office” has the meaning given in the Companies Law 2009, Limited Partnership Law 2004 or General Partnership Law 2006, as applicable.

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## 8 ACCOUNTING AND AUDITING

### 8.1 Application

**8.1.1** This chapter applies to every Authorised Person other than a Representative Office.

**8.1.2** Pursuant to Article 99(5) of the Regulatory Law, an Authorised Person which is a Representative Office is hereby exempt from the requirements in Article 99 of the Regulatory Law relating to the appointment of an Auditor.

#### Guidance

The DFSA has exercised its power under Article 99(5) of the Regulatory Law to exempt an Authorised Person which is a Representative Office from the requirements in that Article. As a result, in accordance with the terms of Article 99(5), the Representative Office also does not need to comply with other requirements in chapters 4, 5 and 6 of Part 8 of that Law.

### 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 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; and
- (f) provide a Money Services Auditor's Report in accordance with the Rules in AUD App7, if the Authorised Firm is Providing Money Services, Account Information Services or Payment Initiation Services.

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## 9 COMPLAINTS HANDLING AND DISPUTE RESOLUTION

### 9.1 Application

**9.1.1** This chapter applies to every Authorised Firm, other than a Representative Office and a Credit Rating Agency, carrying on a Financial Service in or from the DIFC as follows:

- (a) Section 9.2 applies to an Authorised Firm carrying on a Financial Service with or for a Retail Client; ~~and~~
- (b) Section 9.3 applies to an Authorised Firm carrying on a Financial Service with or for a Professional Client; and
- (c) Section 9.4 sets out additional requirements that apply to an Authorised Firm carrying on the Financial Service of Providing Money Services or Arranging or Advising on Money Services.

### 9.2 Complaints handling procedures for Retail Clients

#### Written Complaints handling procedures

**9.2.1** An Authorised Firm must have adequate policies and procedures in place for the investigation and resolution of Complaints made against it by Retail Clients, and the manner of redress (including compensation for acts or omissions of the Authorised Firm).

**9.2.2** The policies and procedures for handling Complaints must be in writing and provide that Complaints are handled fairly, consistently and promptly.

#### Guidance

1. In establishing adequate Complaints handling policies and procedures, an Authorised Firm should have regard to:
  - a. the nature, scale and complexity of its business; and
  - b. its size and organisational structure.
2. In handling Complaints, an Authorised Firm should consider its obligations under the Data Protection Law 2007.
3. An Authorised Firm should consider its obligations under GEN Rule 5.3.19 and accompanying guidance.
4. The DFSA considers 60 days from the receipt of a Complaint to be an appropriate period in which an Authorised Firm should be able to resolve most Complaints. However, Complaints related to the Provision of Money Services or Arranging or Advising on Money Services should generally be resolved within 15 business days – see Rule 9.4.3.
5. In accordance with COB Rule 2.1.2(5), a Member, Beneficiary or Participating Employer of an Employee Money Purchase Scheme is treated as a Retail Client of an Operator or Administrator of the Scheme. Therefore, the complaints handling procedures in this chapter relating to Retail Clients will apply to those persons.

- 9.2.3** On receipt of a Complaint, an Authorised Firm must:
- (a) acknowledge the Complaint promptly in writing;
  - (b) provide the complainant with:
    - (i) the contact details of any individual responsible for handling the Complaint;
    - (ii) key particulars of the Authorised Firm's Complaints handling procedures; and
    - (iii) a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11; and
  - (c) consider the subject matter of the Complaint.

**9.2.4** Where appropriate, an Authorised Firm must update the complainant on the progress of the handling of the Complaint.

**Guidance**

1. The DFSA considers 7 days to be an adequate period in which an Authorised Firm should be able to acknowledge most Complaints.
2. The DFSA expects an update to be provided to the complainant in circumstances where the resolution of the Complaint is taking longer than 30 days.

**Resolution of Complaints**

**9.2.5** Upon conclusion of an investigation of a Complaint, an Authorised Firm must promptly:

- (a) advise the complainant in writing of the resolution of the Complaint;
- (b) provide the complainant with clear terms of redress, if applicable; and
- (c) comply with the terms of redress if accepted by the complainant.

**9.2.6** If the complainant is not satisfied with the terms of redress offered by the Authorised Firm, the Authorised Firm must inform the complainant of other avenues, if any, for resolution of the Complaint and provide him with the appropriate contact details upon request.

**Guidance**

Other avenues for resolution of a Complaint may include an external dispute resolution scheme, arbitration or the DIFC Court. Under Rule 9.4.4 an Authorised Firm Providing Money Services or Arranging or Advising on Money Services is required to ensure that Clients have access to an independent complaints handling service.

**Employees handling Complaints**

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**9.2.7** Where appropriate, taking into account the nature, scale and complexity of an Authorised Firm's business, an Authorised Firm must ensure that any individual handling the Complaint is not or was not involved in the conduct of the Financial Service about which the Complaint has been made, and is able to handle the Complaint in a fair and impartial manner.

**9.2.8** An Authorised Firm must ensure that any individual responsible for handling the Complaint has sufficient authority to resolve the Complaint or has access to individuals with the necessary authority.

### **Complaints involving other Authorised Firms or Regulated Financial Institutions**

**9.2.9** If an Authorised Firm considers that another Authorised Firm or a Regulated Financial Institution is entirely or partly responsible for the subject matter of a Complaint, it may refer the Complaint, or the relevant part of it, to the other Authorised Firm or Regulated Financial Institution in accordance with Rule 9.2.10.

**9.2.10** To refer a Complaint, an Authorised Firm must:

- (a) inform the complainant promptly and in writing that it would like to refer the Complaint, either entirely or in part, to another Authorised Firm or Regulated Financial Institution, and obtain the written consent of the complainant to do so;
- (b) if the complainant consents to the referral of the Complaint, refer the Complaint to the other Authorised Firm or Regulated Financial Institution promptly and in writing;
- (c) inform the complainant promptly and in writing that the Complaint has been referred and include adequate contact details of any individual at the other Authorised Firm or Regulated Financial Institution responsible for handling the Complaint; and
- (d) continue to deal with any part of the Complaint not referred to the other Authorised Firm or Regulated Financial Institution, in accordance with this chapter.

#### **Guidance**

The referral of a Complaint may involve the transfer of Personal Data, as defined under the Data Protection Law 2007, DIFC Law No 1 of 2007. In this respect, an Authorised Firm should consider its obligations under the Data Protection Law 2007.

#### **Retail Client awareness**

**9.2.11** An Authorised Firm must ensure that a copy of its Complaints handling procedures is available free of charge to any Retail Client upon request.

#### **Retention of records**

**9.2.12** An Authorised Firm must maintain a record of all Complaints made against it for a minimum period of six years from the date of receipt of a Complaint.

**9.2.13** This record must contain the name of the complainant, the substance of the Complaint, a record of the Authorised Firm's response, and any other

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relevant correspondence or records, and the action taken by the Authorised Firm to resolve each Complaint.

### **Systems and controls**

- 9.2.14** In accordance with GEN Rules 5.3.4 and 5.3.5, an Authorised Firm must put in place adequate systems and controls in order for it to identify and remedy any recurring or systemic problems identified from Complaints.

#### **Guidance**

An Authorised Firm should consider whether it is required to notify the DFSA, pursuant to Rule 11.10.7, of any recurring or systemic problems identified from Complaints.

### **Outsourcing**

#### **Guidance**

An Authorised Firm may outsource the administration of its Complaints handling procedures in accordance with GEN Rule 5.3.21.

## **9.3 Complaints recording procedures for Professional Clients**

- 9.3.1** An Authorised Firm must have adequate policies and procedures in place for the recording of Complaints made against it by Professional Clients.
- 9.3.2** An Authorised Firm must maintain a record of any Complaint made against it for a minimum period of six years from the date of receipt of the Complaint.

#### **Guidance**

Depending on the nature, scale and complexity of its business, it may be appropriate for an Authorised Firm to have in place a suitable Complaints handling procedure for Professional Clients in order to ensure that such Complaints are properly handled and remedial action is taken promptly. Such Complaints handling procedures would be expected to include provisions about the independence of staff investigating the Complaint and bringing the matter to the attention of senior management.

## **9.4 Additional requirements for complaints related to Money Services**

- 9.4.1** This section applies to a complaint made by a Client against an Authorised Firm relating to the Financial Service of:
- (a) Providing Money Services; or
  - (b) Arranging or Advising on Money Services.

- 9.4.2** A requirement in this section does not apply in relation to a Market Counterparty, if the Market Counterparty has given prior notice in writing to the Authorised Firm that it has elected to waive the requirement.

### **Complaints to be resolved within 15 business days**

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- 9.4.3**
- (1) An Authorised Firm must, except as provided in (2), advise the complainant in writing of the resolution of the Complaint and, if applicable, provide the complainant with clear terms of redress no later than 15 business days after the day on which it received the Complaint.
  - (2) If the Authorised Firm cannot comply with (1) for reasons beyond its control, it must send a holding reply, clearly indicating the reasons for the delay and specifying the deadline by which the complainant will receive a full reply.
  - (3) When the Authorised Firm advises the complainant of the outcome of a Complaint, it must inform the Client in writing:
    - (a) that the Client may refer the matter to the independent complaints handling service referred to in Rule 9.4.4 if the Client is not satisfied with the outcome;
    - (b) details of the independent complaints handling scheme and how the Client may access the service; and
    - (c) that the firm will pay the costs of the application fee to the scheme in the circumstances specified in Rule 9.4.4 (c).

**Independent complaints handling service**

- 9.4.4** An Authorised Firm must:
- (a) ensure that Clients have access to an independent complaints handling service that can determine Complaints where a Client is not satisfied with the outcome of the firm's resolution of a Complaint;
  - (b) ensure that the service referred to in (a) is easily accessible to its Clients; and
  - (c) bear the cost of any application fee payable for the use of the service referred to in (a), unless the Complaint is found to be unsuccessful, in which case the firm may recover the cost of that fee from the Client.

**Guidance**

An independent complaints handling service referred to in Rule 9.4.4 may be a small claims tribunal provided that the tribunal has jurisdiction to hear and determine disputes of the nature covered under this section i.e. relating to money services.