The DFSA Rulebook

General Module

(GEN)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

1 INTRODUCTION

1.1 Application

1.1.1 This module (GEN) applies to every Person to whom the Regulatory Law 2004 or Markets Law 2012 applies and to the same extent in relation to every such Person as that law, except to the extent that a provision of GEN provides for a narrower application.

Guidance

Pursuant to the application provisions in each chapter, only chapters 1 to 3 inclusive of GEN apply to a Representative Office.

1.2 Overview of the module

Guidance

1. Chapter 2 prescribes, pursuant to Article 41(2) of the Regulatory Law 2004, the activities which constitute a Financial Service and, pursuant to Article 42(1) of the Regulatory Law 2004, the kind of Financial Services that may be carried on by Authorised Firms and Authorised Market Institutions. It also specifies various exclusions in relation to the 'by way of business' requirement and, where applicable, in relation to each Financial Service. Further, the appendices contain detailed definitions of what constitutes a Deposit, Investment, Collective Investment Fund and Contract of Insurance.

2. Chapter 3 sets out the requirements for a Person making or intending to make a Financial Promotion in or from the DIFC.

3. Chapter 4 sets out the Principles for Authorised Firms and Authorised Individuals.

4. Chapter 5 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Authorised Firm to apportion material responsibility among its senior management.

5. Chapter 6 contains mainly guidance in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, close links, complaints against the DFSA and the public register.

6. Chapter 7 specifies DFSA's authorisation requirements for any applicant intending to become an Authorised Firm or Authorised Individual.

7. Chapter 8 specifies, in relation to Authorised Persons, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and regulatory returns and the functions of an auditor. There are also requirements for auditors to register with the DFSA.

8. Chapter 9 prescribes the manner in which an Authorised Firm must handle Complaints made against it by Retail Clients or Professional Clients.

9. Chapter 10 contains two sets of Transitional Rules.

    a. Rules 10.1.2 and sections 10.2, 10.3, 10.4 and 10.5 impact on various modules of the Rulebook, particularly COB and CIR. These Rules enable Authorised Firms to make a smooth transition to the Current Regime that came into force on 1 July 2008 under Rulemaking Instrument No 56, following the DFSA's "Key Policy

Review" outlined in Consultation Paper 52. They also provide for the continued application of some of the provisions of the Previous Regime under the Current Regime; and

b. Section 10.6 contains Transitional Rules that allow, with effect from 4 January 2009:

i. an Authorised Person to carry on a Financial Service in respect of a Designated Investment as if that Designated Investment were a Structured Product; and

ii. a Designated Investment included in an Official List of Securities before that date to continue to be a listed Structured Product,

10. Chapter 11 specifies the DFSA's supervisory requirements for any Authorised Person being regulated by the DFSA.

2 FINANCIAL SERVICES

2.1 Application

2.1.1 This chapter applies to every Person to whom the Regulatory Law 2004 applies, and to the same extent in relation to every such Person as that law.

2.2 Financial Service activities

2.2.1 An activity constitutes a Financial Service under the Regulatory Law 2004 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 Credit or Deals in Investments;

(g) Managing Assets;

(h) Advising on Financial Products or Credit;

(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; and

(x) Operating a Credit Rating Agency.

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.

2.2.5 The Financial Services of Effecting Contracts of Insurance and Carrying Out Contracts of Insurance may be carried on only by an Authorised Firm which by virtue of its Licence is permitted to carry on such Financial Services and no other Financial Services.

2.2.6 The Financial Service of Managing a Profit Sharing Investment Account may be carried on only by an Authorised Firm which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.

2.2.7 The Financial Service of Managing a Collective Investment Fund may be carried on in respect of an Islamic Fund only by an Operator which by virtue of an appropriate endorsement on its Licence is permitted to conduct Islamic Financial Business.

2.2.8 A Financial Service may be carried on with or for a Retail Client only by an Authorised Firm which is permitted to do so by endorsement on its Licence.

2.2.9 An Authorised Firm which is licenced to carry on the Financial Service of Operating a Representative Office may not be licenced to carry on any other Financial Service.

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.

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.

Other permitted activities

2.2.13 (1) The activity of maintaining a Trade Repository may be carried on by an Authorised Person which is permitted to do so by an endorsement on its Licence.

(2) In (1), a Trade Repository is a centralised registry that maintains an electronic database containing records of transactions in Investments and over-the-counter derivatives.

Guidance

1. Maintaining a Trade Repository is not a separately licensed Financial Service, but may be carried on by an Authorised Person which has on its Licence an endorsement permitting it to do so. An Authorised Person maintaining a Trade Repository is subject to some specific requirements relating to that activity, which are set out in App 5.

2. The functions of a Trade Repository promote increased transparency and integrity of information, particularly for centrally clearing over-the-counter derivatives. Currently there are no transaction reporting requirements in the DIFC which require reporting to Trade Repositories.

3. An Authorised Person does not carry on the activities of a Trade Repository to the extent that it maintains records of transactions pursuant to the record keeping requirements applicable to that firm (such as those relating to transactions carried out on behalf of its Clients by an Authorised Firm, or transactions carried out on the facilities of an Authorised Market Institution).

2.3 By way of business

2.3.1 Subject to Rules 2.3.2 and 2.3.3, for the purpose of these Rules a Person carries on an activity by way of business if the Person:

(a) engages in the activity in a manner which in itself constitutes the carrying on of a business;

(b) holds himself out as willing and able to engage in that activity; or

(c) regularly solicits other Persons to engage with him in transactions constituting that activity.

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) and (r) 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 Corporates:

(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;

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 a Body Corporate falling within (i) or (ii); 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 Person or 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

(e) the Person is not part of a Group whose main business is the provision of financial services.

2.3.3 A Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an Investment Company or Investment Limited Liability Partnership, provided that:

(a) such Shares carry at least 50% of the voting rights or the acquisition will take an existing holding to at least 50%; or

(b) the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the Body Corporate; and

(c) he is to enter as principal into the transaction.

2.3.4 (1) A Person who is a Trustee does not carry on an activity specified under paragraphs (d), (g), and (j) of Rule 2.2.2 by way of business in circumstances where he is acting as a trustee.

(2) A Person who is an individual does not carry on an activity specified under paragraph (t) by way of business where he is acting as trustee, enforcer or protector or where he is arranging for a Person to act as trustee, in respect of less than three (3) trusts.

2.3.5 (1) A Person does not carry on an activity specified under paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (p), (t), (u) and (v) of Rule 2.2.2 by way of business if:

(a) that Person is the holder of a licence under the SFO Regulations to establish a Single Family Office in the DIFC; and

(b) the activity is carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a Single Family Office.

(2) A Private Trust Company or Family Fiduciary Structure does not carry on an activity specified under paragraph (t) of Rule 2.2.2 by way of business if it:

(a) carries on that activity exclusively for the purposes of, and only in so far as it is, providing services to a Single Family; and

(b) does not solicit trust business from, or provide trust services to, any Person outside the structure of the Single Family Office and outside the Single Family.

2.4 Accepting deposits

2.4.1 In Rule 2.2.2, Accepting Deposits means accepting Deposits where:

(a) money received by way of Deposit is lent to others; or

(b) any other activity of the Person accepting the Deposit is financed, wholly or to a material extent, out of the capital of or returns on any money received by way of Deposit.

2.5 Providing credit

2.5.1 In Rule 2.2.2, Providing Credit means providing a Credit Facility to a Person in his capacity as a borrower or potential borrower.

Exclusions

2.5.2 A Person who is an Authorised Firm does not Provide Credit where the provision of the Credit Facility is incidental to or in connection with the trading of Investments, or conducting Insurance Business.

Guidance

1. Where an Authorised Firm is providing brokerage services pursuant to its Financial Service of Dealing in Investments as Agent, it may in the ordinary course of that business also be necessary to provide margin lending facilities to its Clients. In doing so the Authorised Firm will not be considered to be Providing Credit to its Client.

2. Where an Authorised Firm is Effecting Contracts of Insurance or Carrying Out Contracts of Insurance, it may in the ordinary course of that Insurance Business be necessary to provide an instalment contract to a Client with respect to the payment of an insurance premium. In doing so the Authorised Firm will not be considered to be Providing Credit to its Client.

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.

Exclusions

2.6.2 A Person who is an Authorised Firm does not Provide Money Services 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.

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 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.

2.7.5 A Person who is an Authorised Firm does not Deal in Investments as Principal if in the course of managing the assets of a Private Equity Fund:

(a) the Person makes an initial subscription for Units of that Fund; and

(b) the Units are held by that Person for a period of more than 12 months.

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 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 that Providing Legal Services or Providing Accountancy Services; and

(c) is not remunerated separately from the other services.

2.8.3 A Person does not Deal in Investments as Agent if that Person:

(a) is merely receiving and transmitting a Client order in respect of an Investment; and

(b) does not execute the Client order for and on behalf of the Client or otherwise commit the Client to the transaction relating to the relevant Investment.

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.

Exclusions

2.9.2 There are excluded from Rule 2.9.1 any arrangements for a transaction into which the Person making the arrangements enters or is to enter whether as principal or agent for some other Person.

2.9.3 A Person does not Arrange Credit or Deals in Investments merely by providing means by which one party to a transaction is able to communicate with other such parties.

2.9.4 A Person does not Arrange Credit or Deals in Investments by making arrangements under which another Person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation which he or his principal has made or provided.

2.9.5 A Person does not Arrange Credit or Deals in Investments merely by making arrangements having as their sole purpose the provision of finance to enable a Person to buy, sell, subscribe for or underwrite Investments.

2.9.6 A Person does not Arrange Credit or Deals in Investments by making arrangements for the issue or redemption of Securities issued by it.

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 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 Services or Providing Accountancy Services; and

(c) is not remunerated separately from the other services.

2.10 Managing assets

2.10.1 In Rule 2.2.2, Managing Assets means managing on a discretionary basis assets belonging to another Person if the assets include any Investment or rights under a contract of Long-Term Insurance, not being a contract of reinsurance.

Exclusions

2.10.2 A Person who is not an Authorised Firm or an Authorised Market Institution does not Manage Assets if:

(a) he is a Person formally appointed in writing by the owner of the assets to manage the assets in question; and

(b) all day-to-day decisions relating to the Investments which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.

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 Managing Assets to the Fund. This is because the Fund Manager remains legally accountable to the Unitholders of the Fund for the proper management of the Fund in accordance with its Constitution and Prospectus.

2.11 Advising on financial products or credit

2.11.1 (1) In Rule 2.2.2, Advising on Financial Products or Credit means giving advice to a Person:

(a) 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); or

(b) in his capacity as a borrower or potential borrower or as agent for a borrower or potential borrower on the merits of his entering into a particular Credit Facility.

(2) Advice in (1)(a) and (b) 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 to enter into a particular Credit Facility; or

(b) which could reasonably be regarded as being intended to have such an influence.

(3) 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.

Exclusions

2.11.2 A Person does not Advise on Financial Products or Credit by giving advice in any newspaper, journal, magazine, broadcast service or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

(a) that of giving advice of the kind mentioned in Rule 2.11.1; nor

(b) that of leading or enabling Persons:

(i) to buy, sell, subscribe for or underwrite a particular financial product; or

(ii) to enter into a particular Credit Facility.

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 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 Services or Providing Accountancy Services; and

(c) is not remunerated separately from the other services.

2.12 Managing a collective investment fund

2.12.1 (1) In Rule 2.2.2, Managing a Collective Investment Fund means:

(a) being legally accountable to the Unitholders in the Fund for the management of the property held for or within a Fund under the Fund's Constitution; and

(b) establishing, managing or otherwise operating or winding up a Collective Investment Fund; and

(2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Credit or Deals in Investments, or Providing Custody, such a Financial Service is taken to be incorporated within Managing a Collective Investment Fund.

(3) The Person referred to in (1) is a Fund Manager.

Exclusions

2.12.2 Pursuant to Article 20(3) of the Collective Investment Law 2010, a Person is hereby prescribed by the DFSA as not Managing a Collective Investment Fund merely because that Person:

(a) is acting as an agent, employee or delegate of the Fund Manager; or

(b) takes steps to wind up or dissolve a Fund or remedy a defect that led to a Fund being deregistered.

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).

(2) In (1)(d), 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.

2.15 Effecting contracts of insurance

2.15.1 In Rule 2.2.2, Effecting Contracts of Insurance means effecting such contracts as principal.

2.16 Carrying out contracts of insurance

2.16.1 In Rule 2.2.2, Carrying Out Contracts of Insurance means carrying out such contracts as principal.

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 any activity under (1) 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.

2.18 Operating a clearing house

2.18.1 (1) In Rule 2.2.2, operating a Clearing House means operating a facility where confirmation, clearance and settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:

(a) becomes a Central Counterparty ("CCP"); or

(b) provides a book-entry Securities Settlement System ("SSS"),

regardless of whether or not such a Person also operates a Central Securities Depository.

(2) In (1), confirmation, clearance and settlement means the process of:

(a) establishing settlement positions, including the calculation of net positions arising from any transactions in Investments (the transactions);

(b) checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transactions; and

(c) securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transactions.

(3) In (1)(a), a Person operates as a CCP where it:

(a) ensures the performance of open contracts relating to Investments made on a facility for trading Investments; and

(b) does so by interposing itself between counterparties to such contracts by becoming either the buyer to every seller, or the seller to every buyer.

(4) In (1)(b), a Person operates an SSS where it operates a system which enables Investments held in accounts to be transferred and settled by book entry according to a set of predetermined multilateral rules.

(5) Acting as a Central Securities Depository in (1) means holding securities in uncertificated (dematerialised) form to enable book entry transfer of such securities for the purposes of clearing or settlement of transactions on its own facility and on any other similar facility, including an Alternative Trading Facility or a facility supervised or regulated by another Financial Services Regulator.

(6) To the extent that any activity under (1) constitutes Dealing In Investments as Principal, Dealing in Investments as Agent, Arranging Credit or Deals in Investments, Managing Assets or Arranging Custody, such Financial Services are taken to be incorporated within Operating a Clearing House, provided such activities are carried out as an incidental and integral part of Operating a Clearing House.

Guidance

1. The activity of operating a Central Securities Depository may be carried on by an Authorised Market Institution licensed to Operate a Clearing House in conjunction with its regulated activities, particularly operating an SSS. An Authorised Firm which has a licence authorising it to carry on Custody Services may also operate a CSD under its licence (see GEN Rule 2.13.1(3)). If a Clearing House were to operate a CSD through a subsidiary, that subsidiary would need to be licensed separately as an Authorised Firm Providing Custody.

2. An Authorised Market Institution Licensed to Operate a Clearing House 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 conducts requirements in GEN App 5.

2.19 Insurance intermediation

2.19.1 (1) In Rule 2.2.2, Insurance Intermediation means:

(a) advising on insurance;

(b) acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or

(c) making arrangements with a view to another Person, whether as principal or agent, buying insurance.

(2) In (1)(a), 'advising' means giving advice to a Person in his capacity as a policyholder or potential policyholder, or in his capacity as agent for a policyholder or potential policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent.

(3) In (2), 'advice' includes a statement, opinion or report:

(a) where the intention is to influence a Person, in making a decision, to select a particular Contract of Insurance or insurance cover; or

(b) which could reasonably be regarded as being intended to have such influence.

(4) The arrangements in (1)(c) include arrangements which do not bring about the transaction.

(5) The arrangements in (1)(c) do not include arrangements of the kind described in Rule 2.26.1 that constitute marketing.

Guidance

In regard to arrangements under Rule 2.19.1(5), 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.

Exclusions

2.19.2 A Person does not carry on the activities specified in Rule 2.19.1(1)(b) or (c) if he enters or is to enter into a transaction in respect of a Contract of Insurance as principal.

2.19.3 A Person does not carry on Insurance Intermediation if the activity:

(a) is carried on in the course of any professional business 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 that professional business; and

(c) is not remunerated separately from the other services.

2.19.4 A Person does not give advice in relation to a Contract of Insurance by giving advice in any newspaper, journal, magazine, broadcast service or similar

service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

(a) that of giving advice of the kind mentioned in Rule 2.19.1; nor

(b) that of leading or enabling Persons to buy types of insurance.

2.19.5 A Person does not arrange a Contract of Insurance merely by providing the means by which one party to a transaction is able to communicate with other such parties.

2.19.6 A Person who is an Authorised Firm does not advise in relation to an Insurance Contract if it is authorised under its Licence to carry on the Financial Service of Advising on Financial Products or Credit, to the extent the advice relates to a contract of Long-Term Insurance not being a contract of reinsurance.

2.19.7 A Person who is an Authorised Firm does not arrange a Contract of Insurance if it is authorised under its Licence to carry on the Financial Service of Arranging Credit or Deals in Investments, to the extent that the arranging relates to rights under a contract of Long-Term Insurance not being a contract of reinsurance.

2.20 Insurance management

2.20.1 (1) In Rule 2.2.2, Insurance Management means providing management services or exercising managerial functions for an insurer.

(2) In (1) management services and managerial functions include administration and underwriting.

(3) In (1) an 'insurer' means a Person effecting or carrying out Contracts of Insurance.

Exclusions

2.20.2 A Person does not provide Insurance Management to an insurer if he is an Employee of that insurer.

2.20.3 A Person who is an Authorised Firm does not provide Insurance Management if it is an Insurer.

2.21 Managing a profit sharing investment account

2.21.1 In Rule 2.2.2, Managing a Profit Sharing Investment Account means managing an account or portfolio which is a Profit Sharing Investment Account.

2.22 Operating an alternative trading system

2.22.1 (1) In Rule 2.2.2, Operating an Alternative Trading System means:

(a) operating a Multilateral Trading Facility ("MTF"); or

(b) operating an Organised Trading Facility ("OTF").

(2) In (1)(a), a Person operates an MTF if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such Investments.

(3) In (1)(b), a Person operates an OTF if that Person operates a system which brings together multiple third party buying and selling interests in Investments, in accordance with its discretionary rules, in a way that results in a contract in respect of such Investments.

Guidance

The main distinction between operating an MTF and operating an OTF is that the former is operated in accordance with the non-discretionary rules adopted and implemented by the operator, whereas the latter is operated in accordance with the discretionary rules of the operator. Accordingly, a Person operating an OTF has more flexibility relating to how it applies its rules to participants on its facility, whereas a Person operating an MTF is required to apply its rules in a non-discretionary manner across all participants on its facility.

Exclusion

2.22.2 A Person does not carry on the activity of the kind specified in Rule 2.22.1 if it operates a facility which is merely an order routing system where buying and selling interests in, or orders for, Investments are merely transmitted but do not interact.

2.23 Providing Trust Services

2.23.1 In Rule 2.2.2, Providing Trust Services means:

(a) the provision of services with respect to the creation of an express trust;

(b) arranging for any Person to act as a trustee in respect of any express trust;

(c) acting as trustee in respect of an express trust;

(d) the provision of Trust Administration Services in respect of an express trust; or

(e) acting as protector or enforcer in respect of an express trust.

Guidance

Providing generic advice on the desirability of using a trust does not amount to Providing Trust Services as defined in Rule 2.23.1.

Exclusions

2.23.2 A Person meeting part (1)(d) or (e) of the definition of a DNFBP does not provide Trust Services where it only:

(a) arranges for a Person to act as trustee in respect of an express trust; or

(b) provides services with respect to the creation of an express trust;

provided that:

(i) the provision of such services is solely incidental to the practice of law or accounting as the case may be; and

(ii) the DNFBP is not holding itself out as Providing Trust Services.

Guidance

Acting as trustee, protector or enforcer or Providing Trust Administration Services are not activities incidental to the practice of law or accounting and require a Licence.

2.23.3 A Person is not Providing Trust Services if that Person is the Trustee of a Fund and the activities are in connection with or arise from, acting as the Trustee of the Fund.

2.24 Providing fund administration

2.24.1 In Rule 2.2.2, Providing Fund Administration means providing one or more of the following services in relation to a Fund:

(a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements;

(b) valuing of assets and performing net asset value calculations;

(c) maintaining the share register and Unitholder registration details;

(d) performing anti money laundering requirements;

(e) undertaking transaction monitoring and reconciliation functions;

(f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange;

(g) producing financial statements, other than as the Fund's registered auditor; or

(h) communicating with participants, the Fund, the Fund Manager, and investment managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund.

2.25 Acting as the Trustee of a Fund

2.25.1 (1) In Rule 2.2.2, Acting as the Trustee of a Fund means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of an Investment Trust.

(2) To the extent that any activity under (1) constitutes Providing Fund Administration or Providing Custody, such a Financial Service is taken to be incorporated within Acting as the Trustee of a Fund.

Guidance

Rule 2.25.1(2) alleviates any requirement upon a Trustee to obtain further authorisations for certain Financial Services where the activities fall within the ordinary scope of the activity of Acting as the Trustee of a Fund. The provision also facilitates the delegation of these discrete activities under CIR section 7.3.

Exclusions

2.25.2 A Person is not Acting as the Trustee of a Fund merely because he is acting as an agent, employee or delegate of a Trustee.

2.26 Operating a Representative Office

2.26.1 (1) In Rule 2.2.2 Operating a Representative Office means the marketing of one or more financial services or financial products which are offered in a jurisdiction other than the DIFC.

(2) For the purposes of (1) 'marketing' means:

(a) providing information on one or more financial products or financial services;

(b) engaging in promotions in relation to (a); or

(c) making introductions or referrals in connection with the offer of financial services or financial products;

provided that such activities do not constitute:

(d) Advising on Financial Products or Credit; or

(e) receiving and transmitting orders in relation to a financial product.

(3) For the purposes of (1) and (2) (a), (c) and (d), the term 'financial product' means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account or a Contract of Insurance.

Exclusions

2.26.2 An Authorised Firm other than a Representative Office does not Operate a Representative Office if it undertakes any activities of the kind described in Rule 2.26.1 that constitute marketing.

2.26.3 Any communication which amounts to marketing in respect of a financial service or financial product, which is issued by or on behalf of a government or non-commercial government entity, does not constitute marketing for the purposes of Rule 2.26.1.

2.27 Operating a Credit Rating Agency

2.27.1 (1) In Rule 2.2.2, Operating a Credit Rating Agency means undertaking one or more Credit Rating Activities for the purpose of producing a Credit Rating with a view to that Credit Rating being:

(a) disseminated to the public; or

(b) distributed to a Person by subscription;

whether or not it is in fact disseminated or distributed.

(2) For the purposes of (1):

(a) Credit Rating Activities are data and information analysis relating to a Credit Rating or the evaluation, approval, issue or review of a Credit Rating; and

(b) a Credit Rating is an opinion expressed using an established and defined ranking system of rating categories regarding the creditworthiness of a Rating Subject.

(3) In (2), a Rating Subject means:

(a) a Person other than a natural person;

(b) a credit commitment; or

(c) a debt or debt-like Investment.

Exclusions

2.27.2 A Person does not Operate a Credit Rating Agency where that Person prepares any credit scores, credit scoring systems or similar assessments relating to obligations arising from consumer, commercial or industrial relationships.

Guidance

1. The effect of Rule 2.27.1 is that even if a Person undertakes from a place of business in the DIFC some but not all of the Credit Rating Activities for the purpose of producing a Credit Rating, that Person needs to have a Licence authorising it to Operate a Credit Rating Agency.

2. Where a Credit Rating Agency outsources some of its Credit Rating Activities, it will need to ensure that it meets the relevant requirements, including those relating to outsourcing, in Rule 5.3.21.

3. There is no express prohibition against carrying on the Financial Service of Operating a Credit Rating Agency by Persons who are authorised to carry on other Financial Services. However, the specific conduct requirements applicable to Credit Rating Agencies in COB chapter 8, include a prohibition against certain types of consultancy and advisory services being provided by a Credit Rating Agency. Therefore, even if a Credit Rating Agency has an appropriate Licence authorising it to provide advice on financial products, it will not be able to provide the prohibited type of consultancy and advisory services.

4. A Person may provide a private Credit Rating for the exclusive use of another Person (Second Person) without seeking a License authorising it to Operate a Credit Rating Agency where the Credit Rating is produced based on the request of the Second Person and is not intended to be disseminated to the public or distributed by subscription. Such a Person may wish to include an express warning in the Credit Rating that it is intended only for the exclusive use of the Second Person and obtain from such Second Person a prior written undertaking that the Credit Rating will not be disseminated to the public or distributed on subscription.

5. Credit scoring referred to in Rule 2.27.2 is a method of assessing creditworthiness. A credit score is primarily based on credit report information typically sourced from credit bureaus. A Person does not become a Credit Rating Agency merely by preparing or providing credit assessments. Lenders, such as banks and credit card companies, use credit scores to evaluate the potential risk posed by lending money to consumers and to mitigate losses due to bad debt. Insurance companies, and government departments also employ the same techniques.

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 2012 and the MKT Rules; or

(b) an Offer of Units under the Collective Investment Law 2010 and CIR 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 2004.

Guidance

1. Article 41A(3) of the Regulatory Law 2004 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 2004.

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 2004, "financial product" in Article 41A(3)(b) of the Regulatory Law 2004 is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance.

3.4 Scope of the Financial Promotions Prohibition

3.4.1 (1) A Person shall not, subject to (2), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.

(2) A Person other than an Authorised Person may make a Financial Promotion in or from the DIFC if, and only to the extent that, the Person:

(a) is licensed and supervised by a Financial Services Regulator in the UAE;

(b) is a Recognised Body or External Fund Manager;

(c) is a Reporting Entity and makes a Financial Promotion in or from the DIFC exclusively for the purpose of discharging its mandatory disclosure requirements; or

(d) makes an exempt Financial Promotion as specified in (3).

(3) For the purposes of (2)(d), a communication is an "exempt Financial Promotion" if it is:

(a) approved by an Authorised Firm;

(b) directed at and capable of acceptance exclusively by a Person who appears on reasonable grounds to be a Professional Client of the type specified in COB Rule 2.3.2(2);

(c) made to a Person in the DIFC (the "recipient") as a result of an unsolicited request by the recipient to receive the Financial Promotion;

(d) made or issued by or on behalf of a government or non-commercial government entity; or

(e) made in the DIFC by a Person in the course of providing legal or accountancy services and which may reasonably be

regarded as incidental to and a necessary part of the provision of such services.

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 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(c) 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.

3.5 Additional Rules for Financial Promotions

3.5.1 (1) A Person in Rule 3.4.1(2) (a) to (d) must, subject to (2), take reasonable care to ensure that any Financial Promotion it makes in or from the DIFC:

(a) is clear, fair and not misleading;

(b) includes the Person's name, address and regulatory status;

(c) if it is intended only for Professional Clients, is not sent or directed to any Person who appears on reasonable grounds not to be a Professional Client, and contains a clear statement that only a Person meeting the criteria for a Professional Client should act upon it; and

(d) which is provided to or directed at a Retail Client and contains any information or representation relating to past performance, or any forecast based on past performance or on any other assumptions:

(i) presents a balanced view of the financial products or financial services to which the Financial Promotion relates;

(ii) identifies, in an easy to understand manner, the information from which the past performance or forecast is derived and how any key facts and assumptions used in that context are drawn; and

(iii) contains a prominent warning that past performance is not necessarily a reliable indicator of future performance.

(2) A Person described in Rule 3.4.1(2)(a) who makes a Financial Promotion to an existing client in the DIFC is not required to comply with (1) provided that in making the Financial Promotion that Person complies with the requirements of the relevant Financial Services Regulator in the UAE which relate to Financial Promotions.

Guidance

1. In presenting information relating to past performance of a financial product or financial service, a Person should use a reputable independent actuarial, financial or statistical reporting service provider.

2. The effect of Rule 3.5.1(2) is that a Person who is licensed and regulated by a Financial Services Regulator in the UAE is not required to comply with Rule 3.5.1(1) when communicating with an existing client. However, when making a Financial Promotion to a prospective client in the DIFC, Rule 3.5.1(1) does apply to such Persons, as do the prohibitions on the making of offers contained in the Markets Law 2012 and Collective Investment Law 2010 respectively.

3.5.2 A Person must not, in any Financial Promotion, attempt to limit or avoid any duty or liability it may have under any DFSA-administered laws or the Rules.

3.6 Approval of Financial Promotions by an Authorised Firm

3.6.1 For the purposes of GEN Rule 3.4.1(3)(a), an Authorised Firm must not approve a Financial Promotion unless:

(a) the Financial Promotion includes a clear and prominent statement that it has been "approved by" the relevant Authorised Firm; and

(b) the Financial Promotion is made in accordance with the requirements in Section 3.5.

3.6.2 An Authorised Firm must not approve a Financial Promotion which is directed at a Person who appears on reasonable grounds to be a Retail Client unless:

(a) it has an endorsement on its License which permits it to carry on a Financial Service with or for a Retail Client; and

(b) the scope of its License includes the Financial Service and, if applicable, the particular financial product, to which the Financial Promotion relates.

3.6.3 An Authorised Firm must ensure that a Financial Promotion it has approved complies with the requirements in this chapter on an on-going basis.

Guidance

An Authorised Firm which proposes to approve a Financial Promotion where all or part of that promotion will be real time, such as a live event, will need to consider whether it is able to comply effectively with any relevant Rules in relation to the Financial Promotion or its approval

4 CORE PRINCIPLES

4.1 Principles for Authorised Firms – application

4.1.1 (1) The twelve Principles for Authorised Firms, set out in section 4.2, apply subject to (2) and (3) to every Authorised Firm in accordance with Rules 4.1.2 and 4.1.3.

(2) The twelve Principles for Authorised Firms, set out in section 4.2, do not apply to an Authorised Firm which is a Representative Office.

(3) An Authorised Firm which is a Credit Rating Agency does not have to comply with the Principles set out in Rules 4.2.6, 4.2.7, 4.2.8 and 4.2.9.

4.1.2 (1) For the purposes of Rule 4.1.3 the term 'activities' means:

(a) Financial Services business;

(b) activities carried on in connection with a Financial Service business;

(c) activities held out as being for the purpose of a Financial Service business; and

(d) in relation to any particular Principle, any activity specified in (2), (3) and (4).

(2) Principles 3 and 4 also apply in a Prudential Context to an Authorised Firm with respect to the carrying on of all its activities.

(3) Principles 3 and 4 also take into account any activities of other members of the Group of which the Authorised Firm is a member.

(4) Principles 10 and 11, to the extent that it relates to disclosing to the DFSA, also applies to an Authorised Firm with respect to the carrying on of all its activities, and takes into account any activities of other members of the Group of which the Authorised Firm is a member.

4.1.3 (1) The Principles apply to an Authorised Firm only with respect to activities carried on from an establishment maintained by it in the DIFC, unless an extension in (2), (3), (4) or (5) applies.

(2) Where another applicable Rule, which is relevant to the activity, has a wider territorial scope than that in (1), any related Principle applies with that wider scope in relation to the activity described in the Rule.

(3) Principles 1, 2 and 3 apply in a Prudential Context to an Authorised Firm with respect to activities wherever they are carried on.

(4) Principles 4 and 11 apply to an Authorised Firm with respect to activities wherever they are carried on.

(5) Principle 5 also applies to an Authorised Firm with respect to the activities carried on in or from any place outside the DIFC if and to the extent that the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the financial markets operating in the DIFC.

Guidance

1. The Principles for Authorised Firms have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules and also in new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of the Rulebook build upon these fundamental principles. Consequently the Rules and Guidance elsewhere in the Rulebook should not be seen as exhausting the implications of the Principles.

2. Breaching a Principle for Authorised Firms makes an Authorised Firm liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Financial Service or to hold a Licence and the DFSA may consider withdrawing authorisation or the Licence on that basis.

3. The onus will be on the DFSA to show that the Authorised Firm has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

4.2 The Principles for Authorised Firms

Principle 1 - Integrity

4.2.1 An Authorised Firm must observe high standards of integrity and fair dealing.

Principle 2 - Due skill, care and diligence

4.2.2 In conducting its business activities an Authorised Firm must act with due skill, care and diligence.

Principle 3 - Management, systems and controls

4.2.3 An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

Principle 4 - Resources

4.2.4 An Authorised Firm must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.

Principle 5 - Market conduct

4.2.5 An Authorised Firm must observe proper standards of conduct in financial markets.

Principle 6 - Information and interests

4.2.6 An Authorised Firm must pay due regard to the interests of its customers and communicate information to them in a way which is clear, fair and not misleading.

Principle 7 - Conflicts of interest

4.2.7 An Authorised Firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers, between its Employees and customers and between one customer and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a customer are not adversely affected.

Principle 8 - Suitability

4.2.8 An Authorised Firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who are entitled to rely upon its judgement.

Principle 9 - Customer assets and money

4.2.9 Where an Authorised Firm has control of or is otherwise responsible for assets or money belonging to a customer which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

Principle 10 - Relations with regulators

4.2.10 An Authorised Firm must deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Authorised Firm of which the DFSA would reasonably expect to be notified.

Principle 11 - Compliance with high standards of corporate governance

4.2.11 An Authorised Firm must have a corporate governance framework as appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Authorised Firm's business and to protect the interests of its customers and stakeholders.

Guidance

Corporate governance framework encompasses structural and procedural arrangements such as systems, policies and practices that are put in place to promote good governance and include the specific measures required under GEN Rule 5.3.30.

Principle 12 – Remuneration practices

4.2.12 An Authorised Firm must have a remuneration structure and strategies which are well aligned with the long term interests of the firm, and are appropriate to the nature, scale and complexity of its business.

4.3 Principles for Authorised Individuals – application

4.3.1 The six Principles for Authorised Individuals set out in section 4.4 apply to every Authorised Individual in respect of every Licensed Function.

Guidance

1. The Principles for Authorised Individuals do not apply to an Authorised Individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.

2. Breaching a Principle for Authorised Individuals makes an Authorised Individual liable to disciplinary action and may indicate that he is no longer fit and proper to perform a Licensed Function and the DFSA may consider suspending or withdrawing Authorised Individual status on that basis.

3. The onus will be on the DFSA to show that he is culpable, taking into account the standard of conduct required under the Principle in question. In determining whether or not the particular conduct of an Authorised Individual complies with the Principles for Authorised Individuals, the DFSA will take account of whether that conduct is consistent with the requirements and standards relevant to his Authorised Firm, the Authorised Individual's own role and the information available to him.

4.4 The Principles for Authorised Individuals

Principle 1 - Integrity

4.4.1 An Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function.

Principle 2 - Due skill, care and diligence

4.4.2 An Authorised Individual must act with due skill, care and diligence in carrying out every Licensed Function.

Principle 3 - Market conduct

4.4.3 An Authorised Individual must observe proper standards of conduct in financial markets in carrying out every Licensed Function.

Principle 4 - Relations with the DFSA

4.4.4 An Authorised Individual must deal with the DFSA in an open and co-operative manner and must disclose appropriately any information of which the DFSA would reasonably be expected to be notified.

Principle 5 - Management, systems and control

4.4.5 An Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Firm for which he is responsible is organised so that it can be managed and controlled effectively.

Principle 6 - Compliance

4.4.6 An Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Firm for which he is responsible complies with any legislation applicable in the DIFC.

5 MANAGEMENT, SYSTEMS AND CONTROLS

5.1 Application

5.1.1 (1) Subject to (5), this chapter applies to every Authorised Person with respect to the Financial Services carried on in or from the DIFC.

(2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.

(3) Section 5.3 also applies to an Authorised Firm in a Prudential Context with respect to its entire DIFC branch's activities wherever they are carried on.

(4) This chapter also applies to an Authorised Market Institution, if it has an endorsed Licence authorising it to maintain an Official List of Securities, with respect to such maintenance.

(5) Rules 5.3.13, 5.3.14, 5.3.15, 5.3.23, 5.3.24, 5.3.30 and 5.3.31 do not apply to an Authorised ISPV.

(6) This chapter does not apply to a Representative Office.

Guidance

1. The purpose of this chapter is to set out the requirements for the Governing Body and the senior management within an Authorised Person who are to take direct responsibility for the Authorised Person's arrangements on matters likely to be of interest to the DFSA wherever they may give rise to risks to the DFSA's objectives or they affect the DFSA's functions under the legislation applicable in the DIFC. See also the requirements relating to organisation in Rules 5.3.2 and 5.3.3.

2. In relation to an Authorised Market Institution, this chapter should be read in conjunction with the AMI module.

3. In relation to an Authorised Firm which is a Fund Manager or the Trustee, this chapter should be read in conjunction with the CIR module and construed to take into account any Fund which the Authorised Firm operates or for which it acts as the Trustee.

4. In relation to an Authorised Person which carries on Islamic Financial Business in or from the DIFC, this chapter should be read in conjunction with the IFR module.

5.2 Allocation of significant responsibilities

Apportionment of significant responsibilities

5.2.1 An Authorised Person must apportion significant responsibilities between the members of its Governing Body and its senior management and maintain such apportionment in such a way that:

(a) it meets the corporate governance requirements in Rule 5.3.30;

(b) it is appropriate with regard to:

(i) the nature, scale and complexity of the business of the Authorised Person; and

(ii) the ability and qualifications of the responsible individuals;

(c) it is clear who is responsible for which matters; and

(d) the business of the Authorised Person can be adequately monitored and controlled by the Authorised Person's Governing Body and senior management.

5.2.2 An Authorised Person must allocate to the Senior Executive Officer or to the individual holding equivalent responsibility for the conduct for the Authorised Person's business or the Governing Body, the functions of:

(a) dealing with the apportionment of responsibilities; and

(b) overseeing the establishment and maintenance of systems and controls.

Guidance

Rules 5.2.1 and 5.2.2 do not derogate from the overall responsibility of the Governing Body in Rule 5.3.30(2).

Recording of apportionment

5.2.3 (1) An Authorised Person must establish and maintain an up-to-date record of the arrangements it has made to comply with Rules 5.2.1 and 5.2.2.

(2) The record must show that the members of the Governing Body and the senior management are aware of and have accepted the responsibilities apportioned in accordance with Rule 5.2.1.

(3) Where a responsibility has been allocated to more than one individual, the record must show clearly how that responsibility is allocated between the individuals.

(4) The record must be retained for six years from the date on which it was established or superseded by a more up-to-date record.

5.3 Systems and controls

General requirement

5.3.1 (1) An Authorised Person must establish and maintain systems and controls, including but not limited to financial and risk systems and controls, that ensure that its affairs are managed effectively and responsibly by its senior management.

(2) An Authorised Person must undertake regular reviews of its systems and controls.

Guidance

The nature and extent of the systems and controls of an Authorised Person will depend upon a variety of factors including the nature, scale and complexity of its business. While all Authorised Persons, irrespective of the nature, scale, and complexity of their business and legal structure or organisation need to comply with this chapter, the DFSA will take into account these factors and the differences that exist between Authorised Persons when assessing the adequacy of an Authorised Person's systems and controls. Nevertheless, neither these factors nor the differences relieve an Authorised Person from compliance with its regulatory obligations.

Organisation

5.3.2 (1) An Authorised Person must establish and implement, taking due account of the nature, scale and complexity of its business and structure, adequate measures to ensure that:

(a) the roles and responsibilities assigned to its Governing Body and the members of that body, senior management and Persons Undertaking Key Control Functions are clearly defined;

(b) there are clear reporting lines applicable to the individuals undertaking those functions; and

(c) the roles, responsibilities and reporting lines referred to in (a) and (b) are documented and communicated to all relevant Employees.

(2) An Authorised Firm must ensure that any Employee who will be delivering Financial Services to its customers is clearly identified, together with his respective lines of accountability and supervision.

(3) An Authorised Firm which is conducting Investment Business or the Financial Services of Providing Fund Administration or Providing Trust Services, must ensure it makes publically available details of any Employee who delivers Financial Services to its customers, by including such information:

(a) in a register, maintained by the Authorised Firm at its place of business and open for inspection during business hours; or

(b) on the website of the Authorised Firm.

(4) An Authorised Firm referred to in (3), must have complete and up to date information on its register or website, including:

(a) the date on which the relevant Employee commenced delivering of Financial Services to customers; and

(b) the Financial Services which that Employee is permitted by the Authorised Firm to deliver to customers.

Guidance

1. The term Employee is defined in the GLO widely and includes members of the Governing Body or directors and senior managers of the Authorised Firm. Therefore, the requirements relating to Employees in Rules 5.3.3 and 5.3.6 apply to all Employees including those across the organisation.

2. The division of responsibilities between the Governing Body and the senior management should be clearly established and set out in writing. In assigning duties, the Governing Body should take care that no one individual has unfettered powers in making material decisions.

3. Members of the Governing Body may include individuals undertaking senior management functions (such as the chief executive of the firm) and Persons Undertaking Key Control Functions. In assigning specific functions to such individuals, care should be taken to ensure that the integrity and effectiveness of the functions they are to perform are not compromised. For example, if the Chairperson of the Governing Body is also the chief executive officer of the Authorised Person, the Governing Body should ensure that the performance assessment of that individual in his roles should be undertaken by a senior non-executive member of the Governing Body or an independent external consultant.

4. Persons Undertaking Key Control Functions are defined in GLO in an inclusive manner to encompass Persons such as the heads of risk control, compliance and internal audit functions. In the case of an Insurer, the actuary also is a Person who Undertakes a Key Control Function.

5. An example of an Employee providing Financial Services to a customer is a client relationship manager employed by an Authorised Firm providing wealth management services. In contrast, an Employee who may be employed in the back office of an Authorised Firm with responsibility for setting up client accounts would not be client facing.

5.3.3 An Authorised Person must ensure that key duties and functions are segregated. Such segregation must ensure that the duties and functions to be performed by the same individual do not conflict with each other, thereby impairing the effective discharge of those functions by the relevant individuals (such as undetected errors or any abuse of positions) and thus exposing the Authorised Person or its customers or users to inappropriate risks.

Risk management

5.3.4 An Authorised Person must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks.

5.3.5 An Authorised Person must develop, implement and maintain policies and procedures to manage the risks to which the Authorised Person and where applicable, its customers or users, are exposed.

5.3.6 (1) An Authorised Person must appoint an individual to advise its Governing Body and senior management of such risks.

(2) An Authorised Person which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

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 Firm complies with all legislation applicable in the DIFC.

5.3.8 An Authorised Person must document the organisation, responsibilities and procedures of the compliance function.

5.3.9 An Authorised Person must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.

5.3.10 An Authorised Person must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Person's Governing Body and senior management.

5.3.11 An Authorised Person must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.

5.3.12 An Authorised Person must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

Internal audit

5.3.13 (1) An Authorised Person must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.

(2) The internal audit function must be independent from operational and business functions.

Guidance

The Person appointed as the Internal Auditor of an Authorised Market Institution is a Key Individual pursuant to AMI Rule 5.3.1.

5.3.14 An Authorised Person must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the Authorised Person's Governing Body or the relevant committee, established by its Governing Body for this purpose.

5.3.15 An Authorised Person must document the organisation, responsibilities and procedures of the internal audit function.

Business plan and strategy

5.3.16 (1) An Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its customers are exposed.

(2) The business plan must take into account the Authorised Person's current business activities and the business activities forecast for the next twelve months.

(3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in the business of the Authorised Person.

Management information

5.3.17 An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise, monitor and control its activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

Staff and agents

5.3.18 An Authorised Person must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

5.3.19 (1) An Authorised Firm must ensure, as far as reasonably practical, that its Employees are:

(a) fit and proper;

(b) competent and capable of performing the functions which are to be assigned to those Employees; and

(c) trained in the requirements of the legislation applicable in the DIFC.

(2) An Authorised Firm must establish and maintain systems and controls to comply with (1). An Authorised Firm must be able to demonstrate that it has complied with these requirements through appropriate measures, including the maintenance of relevant records.

Guidance

1. When considering whether an Employee is fit and proper, competent and capable, an Authorised Firm should consider any training undertaken or required by an Employee, the nature of the Clients to whom an Employee provides Financial Services, and the type of activities performed by an Employee in the provision of such Financial Services including any interface with Clients.

2. When assessing the fitness and propriety of Employees, an Authorised Firm should be guided by the matters set out in section 2.3 of the RPP Sourcebook and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.

3. When assessing the competence and capability of an Employee, an Authorised Firm should:

a. obtain details of the skills, knowledge and experience of the Employee relevant to the nature and requirements of the role;

b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained;

c. determine, in light of the Employee's relevant skills, knowledge and experience, that the Employee is competent and capable of fulfilling the duties of the role; and

d. consider the level of responsibility that the Employee will assume within the Authorised Firm, including whether the Employee will be providing Financial Services to Retail Clients in an interfacing role.

4. An Authorised Firm should also satisfy itself that an Employee:

a. continues to be competent and capable of performing the role;

b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the role, through training or other means; and

c. is able to apply his knowledge.

5. Refer to section 2.2.13 of the RPP Sourcebook for criteria for suitability of members of the Governing Body of the Authorised Firm.

Conduct

5.3.20 An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

(a) market misconduct; or

(b) a financial crime under any applicable U.A.E. laws.

Outsourcing

5.3.21 (1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to service providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.

(2) The outsourced function under this Rule shall be deemed as being carried out by the Authorised Person itself.

(3) An Authorised Person which uses such service providers must ensure that it:

(a) has undertaken due diligence in choosing suitable service providers;

(b) effectively supervises the outsourced functions or activities; and

(c) deals effectively with any act or failure to act by the service provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

5.3.22 (1) An Authorised Person must inform the DFSA about any material outsourcing arrangements.

(2) An Authorised Person which has a material outsourcing arrangement must:

(a) establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;

(b) enter into an appropriate and written outsourcing contract; and

(c) ensure that the outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder supervision of the Authorised Person by the DFSA.

(3) An Authorised Person must ensure that the terms of its outsourcing contract with each service provider under a material outsourcing arrangement require the service provider to:

(a) provide for the provision of information under section 11.1 in relation to the Authorised Person and access to their business premises; and

(b) deal in an open and co-operative way with the DFSA.

Guidance

1. An Authorised Person's outsourcing arrangements should include consideration of:

   a. applicable guiding principles for outsourcing in financial services issued by the Joint Forum; or

   b. any equivalent principles or regulations the Authorised Person is subject to in its home country jurisdiction.

2. An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of that service would cast serious doubt on the Authorised Person's continuing ability to remain fit and proper or to comply with DFSA administered Laws and Rules.

Business continuity and disaster recovery

5.3.23 (1) An Authorised Person must have in place adequate arrangements to ensure that it can continue to function and meet its obligations under the legislation applicable in the DIFC in the event of an unforeseen interruption.

(2) These arrangements must be kept up to date and regularly tested to ensure their effectiveness.

Guidance

1. In considering the adequacy of an Authorised Person's business continuity arrangements, the DFSA will have regard to the Authorised Person's management of the specific risks arising from interruptions to its business including its crisis management and disaster recovery plans.

2. The DFSA expects an Authorised Person to have:

   a. arrangements which establish and maintain the Authorised Person's physical security and protection for its information systems for business continuity

purposes in the event of planned or unplanned information system interruption or other events that impact on its operations;

b. considered its primary data centres' and business operations' reliance on infrastructure components, for example transportation, telecommunications networks and utilities and made the necessary arrangements to minimise the risk of interruption to its operations by arranging backup of infrastructure components and service providers; and

c. considered, in its plans for dealing with a major interruption to its primary data centre or business operations, its alternative data centres' and business operations' reliance on infrastructure components and made the necessary arrangements such that these do not rely on the same infrastructure components and the same service provider as the primary data centres and operations.

Records

5.3.24 (1) An Authorised Person must make and retain records of matters and dealings, including Accounting Records and corporate governance practices which are the subject of requirements and standards under the legislation applicable in the DIFC.

(2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding 3 business days.

5.3.25 Subject to Rule 5.3.26, the records required by Rule 5.3.24 or by any other Rule in this Rulebook must be maintained by the Authorised Person in the English language.

5.3.26 If an Authorised Person's records relate to business carried on from an establishment in a territory outside the DIFC, an official language of that territory may be used instead of the English language as required by Rule 5.3.25.

5.3.27 An Authorised Person must have systems and controls to fulfil the Authorised Person's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

Fraud

5.3.28 An Authorised Person must establish and maintain effective systems and controls to:

(a) deter and prevent suspected fraud against the Authorised Person; and

(b) report suspected fraud and other financial crimes to the relevant authorities.

5.3.29 Deleted

Corporate Governance

5.3.30 (1) An Authorised Person must have a Governing Body and senior management that meet the requirements in (2) and (3) respectively.

(2) The Governing Body of the Authorised Person must:

(a) be clearly responsible for setting or approving (or both) the business objectives of the firm and the strategies for achieving

those objectives and for providing effective oversight of the management of the firm;

(b) comprise an adequate number and mix of individuals who have, among them, the relevant knowledge, skills, expertise and time commitment necessary to effectively carry out the duties and functions of the Governing Body; and

(c) have adequate powers and resources, including its own governance practices and procedures, to enable it to discharge those duties and functions effectively.

(3) The senior management of the Authorised Person must be clearly responsible for the day-to-day management of the firm's business in accordance with the business objectives and strategies approved or set by the Governing Body.

Guidance

Scope of corporate governance

1. Corporate governance is a framework of systems, policies, procedures and controls through which an entity:

   a. promotes the sound and prudent management of its business;

   b. protects the interests of its customers and stakeholders; and

   c. places clear responsibility for achieving (a) and (b) on the Governing Body and its members and the senior management of the Authorised Person.

2. Many requirements designed to ensure sound corporate governance of companies, such as those relating to shareholder and minority protection and responsibilities of the Board of Directors of companies, are found in the company laws and apply to Authorised Persons. Additional disclosure requirements also apply if they are listed companies. The requirements in this Module are tailored to Authorised Persons and are designed to augment and not to exclude the application of those requirements.

3. Whilst Rule 5.3.30 deals with two aspects of corporate governance, the requirements included in other provisions under sections 5.2 and 5.3 also go to the heart of sound corporate governance by promoting prudent and sound management of the Authorised Person's business in the interest of its customers and stakeholders. These requirements together are designed to promote sound corporate governance practices in Authorised Persons whilst also providing a greater degree of flexibility for Authorised Persons in establishing and implementing a corporate governance framework that are both appropriate and practicable to suit their operations.

4. Stakeholder groups of an Authorised Person, who would benefit from the sound and prudent management of firms, can be varied but generally encompass its owners (shareholders), customers (in the case of an AMI, its members and investors), creditors, counterparties and employees, whose interests may not necessarily be mutually coextensive. A key objective in enhancing corporate governance standards applicable to Authorised Persons is to ensure that firms are soundly and prudently managed, with the primary regard being had to its customers.

Proportionate application to firms depending on the nature of their business

5. One of the key considerations that underpins how the corporate governance requirements set out in Rule 5.3.30 apply to an Authorised Person is the nature, scale and complexity of the Authorised Person's business, and its organisational structure.

6. While requiring banks, insurers and dealers to have more detailed and complex corporate governance systems and controls, simpler systems and procedures could be required for other firms, depending on the nature and scale of their Financial Services. For example, in the case of certain types of Category 4 Financial Service providers such as arranging or advising only firms, less extensive and simpler corporate governance systems and procedures may be sufficient to meet their corporate governance obligations.

7. For example, an Authorised Person which is a small scale operation with a tightly held ownership structure may not have a Governing Body which comprises members who are fully independent of the firm's business and from each other, nor be sufficiently large to be able to form numerous committees of the Governing Body to undertake various functions such as nomination and remuneration. In such cases, whilst strict adherence to such aspects of best practice would not be required, overall measures as appropriate to achieve the sound and prudent management of the business would be needed. For example, a firm with no regulatory track record would be expected to have additional corporate governance controls in place to ensure the sound and prudent management of its business, such as the appointment of an independent director (who has relevant regulatory experience) to its Governing Body.

Application to Branches and Groups

8. As part of the flexible and proportionate application of corporate governance standards to firms, whether a firm is a Branch or a subsidiary within a Group is also taken into account. An Authorised Person which is a member of a Group may, instead of developing its own corporate governance policies, adopt group-wide corporate governance standards. However, the Governing Body of the Authorised Person should consider whether those standards are appropriate for the firm, and to the extent possible, make any changes as necessary.

9. In the case of a Branch, corporate governance practices adopted at the head office would generally apply to the Branch and are expected to be adequate. The DFSA considers, as part of its authorisation of a Branch and on-going supervision, the adequacy of regulatory and supervisory arrangements applicable in the home jurisdiction, including a corporate governance framework adopted and implemented by the head office (see section 3.2.15 of the RPP Sourcebook).

Best practice relating to corporate governance

10. In addition to the considerations noted above, best practice that an Authorised Person may adopt to achieve compliance with the applicable corporate governance standards is set out in Guidance at Appendix 3.1. An Authorised Person may, where the best practice set out in App3.1 is not suited to its particular business or structure, deviate from such best practice or any aspects thereof. The DFSA will expect the Authorised Person to demonstrate to the DFSA, upon request, what the deviations are and why such deviations are considered by the Authorised Person to be appropriate.

Remuneration structure and strategies

5.3.31 (1) The Governing Body of an Authorised Person must ensure that the remuneration structure and strategy of the firm:

(a) are consistent with the business objectives and strategies and the identified risk parameters within which the firm's business is to be conducted;

(b) provide for effective alignment of risk outcomes and the roles and functions of the Employees, taking account of:

(i) the nature of the roles and functions of the relevant Employees; and

(ii) whether the actions of the Employees may expose the firm to unacceptable financial, reputational and other risks;

(c) at a minimum, include the members of its Governing Body, the senior management, Persons Undertaking Key Control Functions and any major risk-taking Employees; and

(d) are implemented and monitored to ensure that they operate, on an on-going basis, effectively and as intended.

(2) The Governing Body must provide to the DFSA and relevant stakeholders sufficient information about its remuneration structure and strategies to demonstrate that such structure and strategies meet the requirements in (1) on an on-going basis.

(3) For the purposes of this Rule, "major risk-taking Employees" are Employees whose actions have a material impact on the risk exposure of the Authorised Person.

Guidance

Proportionate application to firms depending on the nature of their business

1. Those considerations set out in Guidance items 5 – 7 under Rule 5.3.30 apply equally to the way in which the remuneration structure and strategies related requirement in Rule 5.3.31 is designed to apply to an Authorised Person. Accordingly, whilst most Category 4 firms may have simple arrangements to achieve the outcome of aligning performance outcomes and risks associated with remuneration structure and strategies, banks, insurers and dealers are expected to have more stringent measures to address such risks.

Application to Branches and Groups

2. As part of the flexible and proportionate application of corporate governance standards to firms, whether a firm is a Branch or a subsidiary within a Group is also taken into account. As such, the considerations noted in Guidance items 8 – 9 under Rule 5.3.30 apply equally to the application of the remuneration related requirements for Branches and Groups. For example, where an Authorised Person is a member of a Group, its Governing Body should consider whether the Group wide policies, such as those relating to the Employees covered under the remuneration strategy and the disclosure relating to remuneration made at the Group level are adequate to meet its obligations under Rule 5.3.31.

Best practice relating to corporate governance

3. In addition to the considerations noted above, best practice that an Authorised Person may adopt to promote sound remuneration structure and strategies within the firm is set out as Guidance at Appendix 3.2. Where such best practice or any aspects thereof are not suited to a particular Authorised Person's business or structure, it may deviate from such best practice. The DFSA will expect the Authorised Person to demonstrate, upon request, what the deviations are and why such deviations are considered appropriate.

Disclosure of information relating to remuneration structure and strategy

4. The information which an Authorised Person provides to the DFSA relating to its remuneration structure and strategies should be included in the annual report or

accounting statements. The DFSA expects the annual report of Authorised Persons to include, at a minimum, information relating to:

a. the decision making process used to determine the firm-wide remuneration policy (such as by a remuneration committee or an external consultant if any, or by the Governing Body);

b. the most important elements of its remuneration structure (such as, in the case of performance based remuneration, the link between pay and performance and the relevant assessment criteria); and

c. aggregate quantitative information on remuneration of its Governing Body, the senior management, Persons Undertaking Key Control Functions and any major risk taking Employees.

5. The DFSA may, pursuant to its supervisory powers, require additional information relating to the remuneration structure and strategy of an Authorised Firm to assess whether the general elements relating to remuneration under Rule 5.3.31(1) are met by the firm. Any significant changes to the remuneration structure and strategy should also be notified to the DFSA before being implemented. See Rule 11.10.20.

6. The information included in the annual report is made available to the DFSA and the shareholders, and in the case of a listed company, to the public. The Governing Body of the Authorised Person should also consider what additional information should be included in the annual report. In the case of banks, insurers and dealers, more detailed disclosure of remuneration structure and strategy and its impact on the financial soundness of the firm would be required. When providing disclosure relating to remuneration in its annual report, Authorised Persons should take account of the legal obligations that apply to the firm including the confidentiality of information obligations.

6 GENERAL PROVISIONS

6.1 Application

6.1.1 (1) Sections 6.1, 6.2, 6.3 and 6.9 apply to every Person to whom any provision in the Rulebook applies.

(2) Section 6.4 applies to every Authorised Person.

(3) Sections 6.5 and 6.6 apply to every Authorised Firm, Authorised Market Institution and Person who has submitted an application for authorisation to carry on one or more Financial Services.

(4) Section 6.7 applies to any Person who has been affected by the activities of the DFSA.

(5) Section 6.8 applies to the DFSA.

(6) This chapter does not apply to a Representative Office.

6.2 Interpreting the rulebook

Guidance

Interpretation

1. Every provision in the Rulebook must be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.

2. When this section refers to a provision, this means every type of provision, including Rules and Guidance.

3. Where reference is made in the Rulebook to another provision of the Rulebook or other DIFC legislation, it is a reference to that provision as amended from time to time.

4. Unless the contrary intention appears:

   a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and

   b. words in the Rulebook in the singular include the plural and words in the plural include the singular.

5. If a provision in the Rulebook refers to a communication, notice, agreement, or other document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

6. Any reference to 'dollars' or '$' is a reference to United States Dollars unless the contrary intention appears.

7. References to Articles made throughout the Rulebook are references to Articles in the Regulatory Law 2004 unless otherwise stated.

8. Unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Friday or Saturday or an official State holiday in the DIFC, the obligation must take place on the next calendar day which is a business day.

Defined Terms

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO), however, where a word or phrase is used only in a prudential context in PIB then for convenience purposes it is only defined under Rule 1.2.1 of PIB rather than in GLO. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

6.3 Emergency

6.3.1 (1) If an Authorised Person is unable to comply with a particular Rule due to an emergency which is outside its or its Employees' control and could not have been avoided by taking all reasonable steps, the Authorised Person will not be in contravention of that Rule to the extent that, in consequence of the emergency, compliance with that Rule is impractical.

(2) This Rule applies only for so long as the consequences of the emergency continue and the Authorised Person is able demonstrate that it is taking all practical steps to deal with those consequences, to comply with the Rule, and to mitigate losses and potential losses to its customers or users.

(3) An Authorised Person must notify the DFSA as soon as practical of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.

Guidance

1. Procedures for notification to the DFSA are set out in section 11.11.

2. The Rules in section 6.3 do not affect the powers of the DFSA under Article 26 of the Markets Law 2012.

6.4 Disclosure of regulatory status

6.4.1 An Authorised Person must not misrepresent its status expressly or by implication.

6.4.2 (1) An Authorised Person must take reasonable care to ensure that every key business document which is in connection with the Authorised Person carrying on a Financial Service in or from the DIFC includes one of the disclosures under this Rule.

(2) A key business document includes letterhead whether issued by post, fax or electronic means, terms of business, client agreements, written promotional materials, business cards, prospectuses and websites but

does not include compliment slips, account statements or text messages.

(3) The disclosure required under this Rule is:

(a) 'Regulated by the Dubai Financial Services Authority'; or

(b) 'Regulated by the DFSA'.

(4) The DFSA logo must not be reproduced without express written permission from the DFSA and in accordance with any conditions for use.

(5) Rules 6.4.2(1) to (4) also apply to the operation and administration of an Official List of Securities by an Authorised Market Institution.

6.5 Location of offices

6.5.1 (1) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a Body Corporate incorporated in the DIFC, its head office and registered office must be in the DIFC.

(2) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services, is a partnership established under the DIFC Limited Partnership Law or the DIFC General Partnership Law, its head office must be in the DIFC.

Guidance

1. In considering the location of an Authorised Firm's or Authorised Market Institution's head office, the DFSA will have regard to the location of its directors, partners and senior management and to the main location of its day-to-day operational, control, management and administrative arrangements and will judge matters on a case by case basis.

2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect to the location of its offices will, on this point alone not be considered fit and proper or able to satisfy the Licensing Requirements.

6.6 Close links

6.6.1 (1) Where an Authorised Person or a Person who has submitted an application for authorisation to carry on one or more Financial Services has Close Links with another Person, the DFSA must be satisfied that those Close Links are not likely to prevent the effective supervision by the DFSA of the Authorised Person.

(2) If requested by the DFSA the Authorised Person must submit a Close Links report or notification, in a form specified by the DFSA. This may be requested on an ad hoc or periodic basis.

Guidance

1. Procedures for notification to the DFSA are set out in section 11.11.

2. Under the fit and proper test for Authorised Firms and the Licensing Requirements for Authorised Market Institutions, an Authorised Firm or Authorised Market Institution which does not satisfy the DFSA with respect of its Close Links will, on this point alone, not be considered fit and proper or able to satisfy the Licensing Requirements.

6.7 Complaints against the DFSA

Guidance

1. A Person who feels he has been adversely affected by the manner in which the DFSA has carried out its functions may make a complaint to the DFSA about its conduct or the conduct of its Employees.

2. A complaint must be in writing and should be addressed to the Chief Executive of the DFSA. The complaint will be dealt with by the DFSA in a timely manner.

6.8 Public register

Maintenance and publication

6.8.1 The registers required to be maintained and published by the DFSA pursuant to Article 62 shall be published and maintained in either or both of the following manners:

(a) by maintaining hard copy registers which are made available for inspection at the premises of the DFSA during normal business hours; or

(b) by maintaining an electronic version of the registers and making the information from those registers available through the DFSA website.

6.9 Communication with the DFSA

6.9.1 An Authorised Person must ensure that any communication with the DFSA is conducted in the English language.

7 AUTHORISATION

7.1 Application

7.1.1 (1) This chapter applies, subject to (2), to every Person who is:

(a) an Authorised Firm;

(b) an applicant for a Licence to be an Authorised Firm;

(c) an Authorised Individual;

(d) an applicant for Authorised Individual status; or

(e) a Controller of a Person referred to in (a) or (b).

(2) This chapter does not apply to a Person intending to:

(a) Operate an Exchange;

(b) Operate a Clearing House; or

(c) Operate a Representative Office.

Guidance

1. This chapter outlines DFSA's authorisation requirements for an Authorised Firm and Authorised Individual.

2. The DFSA's requirements for authorisation of:

   a. Authorised Market Institutions are covered by the AMI module; and

   b. Representative Offices are covered by the REP module.

3. The DFSA's requirements for registration of DNFBPs are found in the AML module.

4. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA's general regulatory policy and processes. Some additional processes may be outlined in other chapters of this module.

5. Chapter 2 of the RPP Sourcebook sets out DFSA's approach to the authorisation of undertakings and individuals to conduct Financial Services or Licensed Functions, as the case may be.

7.2 Application for a Licence

7.2.1 A Person, who intends to carry on one or more Financial Services in or from the DIFC must apply to the DFSA for a Licence, in accordance with the Rules in this section.

7.2.2 (1) The DFSA will only consider an application for a Licence from a Person who, subject to (2), (3) and (4), is:

(a) a Body Corporate; or

(b) a Partnership;

and who is not an Authorised Market Institution.

(2) If the application is in respect of either or both of the following Financial Services:

(a) Effecting Contracts of Insurance; or

(b) Carrying Out Contracts of Insurance,

the applicant must be a Body Corporate.

(3) If the application is in respect of the Financial Service of Accepting Deposits, the applicant must be a Body Corporate or a Partnership.

(4) If the application is in respect of the Financial Service of Managing a Collective Investment Fund or Acting as the Trustee of a Fund, the applicant must be a Body Corporate.

Guidance

Section 2.2.8 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment under Rule 7.2.2.

7.2.3 A Person licensed by the Emirates Securities and Commodities Authority to trade on an U.A.E. exchange will not be granted a Licence by the DFSA unless that Person has the prior approval of the Emirates Securities and Commodities Authority.

7.2.4 A Person applying for a Licence must complete and submit the appropriate form or forms in AFN.

Guidance

A Person submitting an application under Rule 7.2.4 is required to:

a. pay the appropriate application fee as set out in FER; and

b. include information relating to its Controllers, completed by the relevant Controllers themselves, in the appropriate form in AFN.

Consideration and assessment of applications

7.2.5 In order to become authorised to carry on one or more Financial Services, the applicant must demonstrate to the satisfaction of the DFSA that it:

(a) has adequate resources, including financial resources;

(b) is fit and proper; and

(c) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements, including the Rules.

Adequate resources

7.2.6 In assessing whether an applicant has adequate resources, the DFSA will consider:

(a) how the applicant will comply with the applicable provisions of PIB or PIN;

(b) the provision the applicant makes in respect of any liabilities, including contingent and future liabilities;

(c) the means by which the applicant and members of its Group manage risk in connection with their business; and

(d) the rationale for, and basis of, the applicant's business plan.

Guidance

A Credit Rating Agency is not subject to any specific capital requirements in PIB. Instead, it is required, pursuant to Rules 4.2.4 and 7.2.6 to have and maintain adequate financial resources to manage its affairs prudently and soundly.

Fitness and propriety

7.2.7 (1) In assessing whether an applicant is fit and proper, the DFSA will consider:

(a) the fitness and propriety of the members of its Governing Body;

(b) the suitability of the applicant's Controllers or any other Person;

(c) the impact a Controller might have on the applicant's ability to comply with the applicable requirements;

(d) the Financial Services concerned;

(e) the activities of the applicant and any associated risks that those activities pose to the DFSA's objectives described under Article 8(3) of the Regulatory Law 2004;

(f) whether the applicant's affairs will be conducted and managed in a sound and prudent manner;

(g) any matter which may harm or may have harmed the integrity or the reputation of the DFSA or DIFC; and

(h) any other relevant matters.

(2) The DFSA will, in assessing the matters in (1), consider the cumulative effect of factors which, if taken individually, may be

regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

Guidance

Section 2.2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment under Rule 7.2.7.

Compliance arrangements

7.2.8 In assessing whether an applicant has adequate compliance arrangements, the DFSA will consider whether it has:

(a) clear and comprehensive policies and procedures relating to compliance with all applicable legal requirements including the Rules;

(b) adequate means to implement those policies and procedures and monitor that they are operating effectively and as intended.

7.2.9 In assessing an application for a Licence, the DFSA may:

(a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;

(b) require the applicant to provide additional information;

(c) require the applicant to have information on how it intends to ensure compliance with a particular Rule;

(d) require any information provided by the applicant to be verified in any way that the DFSA specifies; and

(e) take into account any information which it considers relevant.

7.2.10 (1) In assessing an application for a Licence the DFSA may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.

(2) Where the DFSA thinks it appropriate it may treat an application made by one legal form or Person as having been made by the new legal form or Person.

7.2.11 In assessing an application for a Licence authorising the applicant to Operate an Alternative Trading System, the DFSA will have regard to, but is not limited to, considering the following matters:

(a) whether the establishment of an Alternative Trading System is, or is likely to be, in the interests of the Financial Services and Markets industry;

(b) whether the Alternative Trading System will or is likely to lead to more efficient price discovery of, or deepen liquidity in, an Investment; and

(c) whether there is any risk of market fragmentation, loss of liquidity or inefficiency in price discovery as a result of the proposed Alternative Trading System operation.

7.3 Application for an endorsement for Retail Clients

7.3.1 (1) An Authorised Firm may apply to the DFSA for an endorsement on its Licence, including variation of such an endorsement, to carry on a Financial Service with or for a Retail Client.

(2) The DFSA may in its absolute discretion refuse to grant an endorsement or a variation of an endorsement pursuant to an application under (1).

(3) Upon refusing to grant an endorsement or a variation to an endorsement, the DFSA must without undue delay inform the applicant in writing of such refusal and, if requested by the applicant, the reasons for such refusal.

(4) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to refuse an application for an endorsement or a variation to an endorsement made under this section.

7.4 Licensed Functions and Authorised individuals

7.4.1 (1) Pursuant to Article 43 of the Regulatory Law 2004, the functions specified in Rules 7.4.2 to 7.4.9 are Licensed Functions.

(2) An individual must not, subject to, (3), (4) and Rule 11.6.1, carry out a Licensed Function for an Authorised Firm unless he is authorised by the DFSA as an Authorised Individual to carry out that Licensed Function for that Authorised Firm.

(3) The prohibition in (2) does not apply to a function performed by a registered insolvency practitioner (subject to the restrictions defined within Article 88 of the Insolvency Law 2009) if the practitioner is:

(a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;

(b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;

(c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;

(d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or

(e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article 58 and 59 of the Insolvency Law 2009.

(4) The prohibition in (2) does not apply to individuals appointed to act as managers of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law 2004.

Senior Executive Officer

7.4.2 The Senior Executive Officer function is carried out by an individual who:

(a) has, either alone or jointly with other Authorised Individuals, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Firm's Financial Services carried on in or from the DIFC; and

(b) is a Director, Partner or Senior Manager of the Authorised Firm.

Licensed Director

7.4.3 Subject to Rule 7.5.4, the Licensed Director function is carried out by an individual who is a Director of an Authorised Firm which is a Body Corporate.

Licensed Partner

7.4.4 The Licensed Partner function is carried out, in the case of an Authorised Firm which is a Partnership or Limited Liability Partnership, by an individual specified in Rule 7.5.5.

Finance Officer

7.4.5 The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for the Authorised Firm's compliance with the applicable Rules in PIN or PIB.

Compliance Officer

7.4.6 The Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for compliance matters in relation to the Authorised Firm's Financial Services.

Senior Manager

7.4.7 The Senior Manager function is carried out by an individual who is responsible either alone or jointly with other individuals for the management, supervision or control of one or more parts of an Authorised Firm's Financial Services who is:

(a) an Employee of the Authorised Firm; and

(b) not a Director or Partner of the Authorised Firm.

Guidance

In respect of a Fund, the DFSA would expect the Fund Manager to appoint at least one individual other than the Senior Executive Officer to carry out Senior Manager functions in relation to the Fund such as managing operational risk and other internal controls.

Money Laundering Reporting Officer

7.4.8 The Money Laundering Reporting Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm and who has responsibility for the implementation of an Authorised Firm's anti money laundering policies, procedures, systems and controls and day to day oversight of its compliance with the Rules in AML and any relevant anti money laundering legislation applicable in the DIFC.

Responsible Officer

7.4.9 The Responsible Officer function is carried out by an individual who:

(a) has significant responsibility for the management of one or more aspects of an Authorised Firm's affairs;

(b) exercises a significant influence on the firm as a result of (a); and

(c) is not an Employee of the Authorised Firm.

Guidance

1. The Licensed Function of Responsible Officer applies to an individual employed by a Controller or other Group company who is not an Employee of the Authorised Firm, but who has significant responsibility for, or for exercising a significant influence on, the management of one or more aspects of the Authorised Firm's business.

2. Examples of a Responsible Officer might include an individual responsible for the overall strategic direction of an Authorised Firm or a regional manager to whom a Senior Executive Officer reports and from whom he takes direction.

7.4.10 An Authorised Individual may perform one or more Licensed Functions for one or more Authorised Firms.

Guidance

1. In considering whether to grant an individual Authorised Individual status with respect to more than one Authorised Firm, the DFSA will consider each Licensed Function to be carried out and the allocation of responsibility for that individual among the Authorised Firms.

2. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

7.5 Mandatory appointments

7.5.1 (1) An Authorised Firm must, subject to (2), make the following appointments and ensure that they are held by one or more Authorised Individuals at all times:

(a) Senior Executive Officer;

(b) Finance Officer;

(c) Compliance Officer; and

(d) Money Laundering Reporting Officer.

(2) An Authorised Firm which is a Credit Rating Agency:

(a) need not make the appointment referred to in (1)(b) and (d); and

(b) must ensure that the appointments referred to in 1(a) and (c) are held by separate Authorised Individuals at all times.

Guidance

1. This Guidance addresses a range of circumstances:

   a. one individual performing more than one function in a single firm, as contemplated in Rule 7.5.1;

   b. more than one individual performing one function in a single firm, not addressed by that Rule;

   c. one individual performing a single function in more than one firm, also not addressed by that Rule.

2. The DFSA will only authorise an individual to perform more than one Licensed Function or combine Licensed Functions with other functions where it is satisfied that the individual is fit and proper to perform each Licensed Function or combination of Licensed Functions.
3. In the above situation the DFSA will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

4. Notwithstanding this Rule, an Authorised Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not be expected to be combined with any other functions unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Authorised Firm. This may be possible in the case of a Branch, where monitoring and controlling of the individual (carrying out more than one role in the Branch) is conducted from the firm's home state by an appropriate individual for each of the relevant Licenced Functions. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible.

5. In what it considers to be exceptional circumstances, the DFSA may register more than one individual to perform the Licensed Function of Compliance Officer in respect of different internal business divisions within a large Authorised Firm. In this regard the DFSA may consider, amongst other things, the nature, scale and complexity of the activities of the firm, the clarity of demarcation between areas of responsibility, the potential for gaps in responsibility, and processes of communication with the DFSA.

6. The DFSA may also register an individual as the Compliance Officer for more than one Authorised Firm. The DFSA will only do this where it is satisfied that the individual is able to carry out his functions effectively in each firm taking into consideration factors such as the amount and nature of business conducted by the firms. Each Authorised Firm has a duty under GEN 5 to monitor its compliance

arrangements to ensure, as far as reasonably practicable, that it complies with all legislation applicable in the DIFC.

7.5.2 The Authorised Individuals referred to in Rule 7.5.1(a), (c) and (d) must be resident in the U.A.E.

Guidance

1. In appropriate circumstances, the DFSA may waive the requirement for a Compliance Officer or MLRO to be resident in the UAE. In determining whether to grant a waiver, the DFSA will consider a range of factors on a case by case basis focused on whether the firm can demonstrate that it has appropriate compliance arrangements (see GEN section 5.3). These factors may include, but are not limited to: the nature, scale and complexity of the activities of the firm; the ability of a remote officer to carry out his functions in differing time zones and a differing working week; the size, resourcing and capabilities of a remote compliance function; the ability of a remote officer to liaise and communicate readily with the DFSA; and the competency and capability of a remote officer and whether the remote officer is able effectively to undertake or supervise regular compliance monitoring and keep up to date with applicable Rules.

2. The DFSA will also take into account factors such as the relevant regulatory experience of the proposed Authorised Individual and whether the applicant firm has previously been subject to financial services regulation.

7.5.3 In the case of a Trust Service Provider, the Authorised Individuals referred to in Rule 7.5.1 (c) and (d) must not act also as trustees on behalf of the Trust Service Provider.

7.5.4 An Authorised Firm which is a Body Corporate (other than a Limited Liability Partnership) whose head office and registered office are located in the DIFC, must register with the DFSA all of its Directors as Licensed Directors.

7.5.5 (1) In the case of an Authorised Firm which is a partnership established under either the DIFC General Partnership Law or Limited Liability Partnership Law, the Licensed Partner function must be carried out by:

(a) each individual Partner who must be registered as a Licensed Partner; and

(b) in the case of a Partner which is a Body Corporate, by an individual nominated by that Body Corporate and registered as a Licensed Partner to act on its behalf.

(2) In the case of an Authorised Firm which is a partnership established under the DIFC Limited Partnership Law, the Licensed Partner function must be carried out by:

(a) each individual General Partner who must be registered as a Licensed Partner; and

(b) in the case of a General Partner which is a Body Corporate, by an individual nominated by that Body Corporate and registered as a Licensed Partner to act on its behalf.

Guidance

An Authorised Firm that is a Branch is not required to register its Directors as Licensed Directors under Rule 7.5.4 or its Partners as a Licensed Partner under Rule 7.5.5.

7.6 Application for Authorised Individual status

7.6.1 In submitting applications for Authorised Individual status, both the individual and Authorised Firm must complete and submit the appropriate form in AFN.

7.6.2 When an individual and an Authorised Firm apply to the DFSA for that individual to be an Authorised Individual, the individual must satisfy the DFSA that he is a fit and proper person to carry out the role.

Consideration and assessment of applications

7.6.3 An individual will only be authorised to carry on one or more Licensed Functions if the DFSA is satisfied that the individual is fit and proper to be an Authorised Individual. In making this assessment, the DFSA will consider:

(a) the individual's integrity;

(b) the individual's competence and capability;

(c) the individual's financial soundness;

(d) the individual's proposed role within the Authorised Firm; and

(e) any other relevant matters.

Guidance

Section 2.3 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 7.6.3.

7.6.4 In Rule 7.6.3, an individual may not be considered as fit and proper where:

(a) he is bankrupt;

(b) he has been convicted of a serious criminal offence; or

(c) he is incapable, through mental or physical incapacity, of managing his affairs.

7.6.5 In assessing an application for Authorised Individual status, the DFSA may:

(a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;

(b) require the individual or Authorised Firm to provide additional information;

(c) require any information provided by the individual or Authorised Firm to be verified in any way specified by the DFSA; and

(d) take into account any information which it considers appropriate.

7.6.6 An Authorised Firm must not permit an individual to perform a Licensed Function on its behalf, except as permitted by section 11.6, unless that individual is an Authorised Individual who has been assessed by the

Authorised Firm as competent to perform that Licensed Function in accordance with Rule 7.6.7.

7.6.7 In assessing the competence of an individual, an Authorised Firm must:

(a) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;

(b) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;

(c) determine whether the individual holds any relevant qualifications with respect to the Licensed Function or Licensed Functions performed, or proposed to be to performed, within the Authorised Firm;

(d) determine the individual's relevant experience; and

(e) determine the individual's knowledge of the Authorised Firm's relevant systems and procedures with respect to the type of business that is to be, or is being, conducted by the individual on behalf of the Authorised Firm.

7.6.8 An Authorised Firm must be satisfied that an Authorised Individual:

(a) continues to be competent in his proposed role;

(b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and

(c) is able to apply his knowledge.

7.6.9 The Authorised Firm is responsible for the conduct of its Authorised Individuals and for ensuring that they remain fit and proper to carry out their role.

Guidance

In considering whether an Authorised Individual remains fit and proper, the Authorised Firm should consider those matters in section 3.2 of the RPP Sourcebook and the notification requirements in section 11.10 of this module.

7.6.10 Before lodging an application with the DFSA, an Authorised Firm must make reasonable enquiries as to an individual's fitness and propriety to carry out a Licensed Function.

7.6.11 An Authorised Firm must not lodge an application if it has reasonable grounds to believe that the individual is not fit and proper to carry out the Licensed Function.

Systems and controls

7.6.12 An Authorised Firm must have appropriate arrangements in place to ensure that an individual assessed as being competent under Rule 7.6.6 maintains his competence.

7.6.13 An Authorised Firm must ensure, in the case of individuals seeking to perform the Licensed Functions of Senior Executive Officer, Money Laundering

Reporting Officer, or Compliance Officer, that such individuals are able to demonstrate sufficient knowledge of relevant anti money laundering requirements.

Guidance

In considering whether individuals have sufficient knowledge of relevant anti money laundering requirements, the DFSA may be satisfied where the individual can demonstrate receipt of appropriate training specifically relevant to such requirements.

7.6.14 An Authorised Firm must establish and maintain systems and controls which will enable it to comply with Rules 7.6.6 to 7.6.9.

7.6.15 (1) An Authorised Firm must keep records of the assessment process undertaken for each individual under this chapter.

(2) These records must be kept for a minimum of six years from the date of the assessment.

8 ACCOUNTING AND AUDITING

8.1 Application

8.1.1 (1) This chapter applies subject to (2) to every:

(a) Authorised Person other than a Representative Office;

(b) applicant for registration as an auditor with the DFSA; and

(c) Auditor registered with the DFSA.

(2) This chapter does not apply to applicants for registration as Auditors in relation to Public Listed Companies.

Guidance

1. Chapter 4 of the Islamic Finance Rules (IFR) contains additional accounting and audit requirements that are specific to Islamic Financial Business.

2. Chapter 5 of the Markets Rules (MKT) contains the audit requirements that are specific to a Public Listed Company including registration criteria etc.

8.1.2 In this chapter in relation to an Authorised Person which is a Domestic Firm a reference to "auditor" include references to an "Auditor".

8.2 Accounting standards

8.2.1 An Authorised Person must prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards (IFRS).

8.3 Accounting records and regulatory returns

8.3.1 Every Authorised Person must keep Accounting Records which are sufficient to show and explain transactions and are such as to:

(a) be capable of disclosing the financial position of the Authorised Person on an ongoing basis; and

(b) record the financial position of the Authorised Person as at its financial year end.

8.3.2 Accounting Records must be maintained by an Authorised Person such as to enable its Governing Body to ensure that any accounts prepared by the Authorised Person comply with the legislation applicable in the DIFC.

8.3.3 An Authorised Person's Accounting Records must be:

(a) retained by the Authorised Person for at least ten years from the date to which they relate;

(b) at all reasonable times, open to inspection by the DFSA or the auditor of the Authorised Person; and

(c) if requested by the DFSA capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in English.

8.3.4 All regulatory returns prepared by the Authorised Firm must be prepared and submitted in accordance with the requirements set out in PIB or PIN as applicable.

Changes to the financial year end

8.3.5 (1) If an Authorised Firm is a Domestic Firm and intends to change its financial year end, it must obtain the DFSA's prior consent before implementing the change.

(2) The application for consent must include reasons for the change.

(3) The DFSA may require the Authorised Firm to obtain written confirmation from its auditor that the change of financial year end would not result in any significant distortion of the financial position of the Authorised Firm.

8.3.6 If an Authorised Firm is not a Domestic Firm and intends to change its financial year, it must provide the DFSA with reasonable advance notice prior to the change taking effect.

8.4 Appointment and termination of auditors

8.4.1 An Authorised Person must:

(a) notify the DFSA of the appointment of an auditor, including the name and business address of the auditor and the date of the commencement of the appointment;

(b) prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the business of the Authorised Person for which the auditor has been appointed; and

(c) if it is a Domestic Firm, ensure that the auditor, at the time of appointment and for the duration of the engagement as auditor, is registered with the DFSA.

8.4.2 An Authorised Person must notify the DFSA immediately if the appointment of the auditor is or is about to be terminated, or on the resignation of its auditor, giving the reasons for the cessation of the appointment.

8.4.3 An Authorised Person must appoint an auditor to fill any vacancy in the office of auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

8.4.4 (1) An Authorised Person must take reasonable steps to ensure that the relevant audit staff of the auditor are independent of and not subject to any conflict of interest with respect to the Authorised Person.

(2) An Authorised Person must notify the DFSA if it becomes aware, or has reason to believe, that the relevant audit staff of the auditor are no longer independent of the Authorised Person, or have a conflict of interest which may affect their judgement in respect of the Authorised Person.

Guidance

1. The relevant staff of an auditor are independent if their appointment or retention by an Authorised Person is not contrary to any applicable ethical guidance issued by the professional supervisory body.

2. An Authorised Person should consider rotating the appointed relevant staff of the auditor every five years to ensure that the relevant staff of the auditor remains independent.

3. Additional requirements relevant to Auditors appointed for a Fund (see CIR Rule 9.3.4) apply independently of the requirements in the Rules in this Chapter.

8.4.5 If requested by the DFSA, an Authorised Person which carries on Financial Services through a Branch must provide the DFSA with information on its appointed or proposed auditor with regard to the auditor's, skills, experience and independence.

8.4.6 Where an auditor has not been appointed by an Authorised Person, the DFSA may direct an Authorised Person to appoint an auditor in accordance with the requirements in this chapter.

8.4.7 Where an auditor appointed by an Authorised Person is in the opinion of the DFSA not suitable to audit that Authorised Person, the DFSA may direct that auditor to remove itself as the auditor of that Authorised Person.

8.4.8 The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a direction made under Rule 8.4.7.

8.5 Co-operation with auditors

8.5.1 An Authorised Person must take reasonable steps to ensure that it and its Employees:

(a) provide such assistance as the auditor reasonably requires to discharge its duties;

(b) give the auditor right of access at all reasonable times to relevant records and information;

(c) do not interfere with the auditor's ability to discharge its duties;

(d) do not provide false or misleading information to the auditor; and

(e) report to the auditor any matter which may significantly affect the financial position of the Authorised Person.

8.6 Function of the auditor

8.6.1 An Authorised Firm or Authorised Market Institution, as applicable, must in writing require its auditor to:

(a) conduct an audit of the Authorised Person's accounts in accordance with the requirements of the relevant standards published by the International Auditing and Assurance Standards Board (IAASB) in respect of its financial business;

(b) produce a report on the audited accounts which states:

(i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;

(ii) in particular, whether the accounts give a true and fair view of the financial position of the Authorised Person for the financial year and of the state of the Authorised Person's affairs at the end of the financial year end; and

(iii) any other matter or opinion relating to the requirements of this chapter;

(c) produce an Auditor's Annual Report which states whether:

(i) the auditor has audited the Authorised Person's annual financial statements in accordance with the IAASB;

(ii) the auditor has carried out any other procedures considered necessary, having regard to the IAASB;

(iii) the auditor has received all necessary information and explanations for the purposes of preparing this report to the DFSA;

(iv) (in the case of an Authorised Firm) in the auditor's opinion, the regulatory returns specified by the applicable Rules in PIN or PIB have been properly prepared by the Authorised Firm and provide a true and fair representation of the financial position of the Authorised Firm, as at the date of the Authorised Firm's financial year end;

(v) in the auditor's opinion, the Authorised Person's regulatory returns to the DFSA have been properly reconciled with the appropriate audited accounts;

(vi) in the case of an Authorised Firm, in the auditor's opinion, that an Authorised Firm which is subject to an expenditure based requirement has calculated the expenditure based requirement in accordance with the Rules;

(vii) in the auditor's opinion, the Authorised Person's financial resources as at its financial year end have been properly calculated in accordance with the Rules and are sufficient to meet the relevant prudential requirements or minimum financial resources requirement; and

(viii) in the case of an Authorised Firm, in the auditor's opinion, the Authorised Firm has kept proper accounting records, in compliance with the applicable Rules in PIN or PIB;

(d) produce, if the Authorised Firm controls or holds Client Money, a Client Money Auditor's Report which states whether, in the opinion of the auditor:

(i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB chapter 6 and, if applicable, COB App 5;

(ii) the Authorised Firm's controls are such as to ensure that Client Money is identifiable and secure at all times;

(iii) any of the requirements in COB chapter 6 and the Client Money Provisions have not been met;

(iv) if applicable, Client Money belonging to Segregated Clients has been segregated in accordance with the Client Money Provisions;

(v) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Client Money in accordance with COB chapter 6 and with the Client Money Provisions as at the date on which the Authorised Firm's audited balance sheet was prepared; and

(vi) if applicable, there have been any material discrepancies in the reconciliation of Client Money;

(e) produce, if the Authorised Firm controls or holds Insurance Monies, an Insurance Monies Auditor's Report which states whether, in the opinion of the auditor:

(i) the Authorised Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COB section 7.12;

(ii) the Authorised Firm's controls are such as to ensure that Insurance Monies are identifiable and secure at all times;

(iii) any of the requirements in COB section 7.12 have not been met;

(iv) if applicable, the Authorised Firm was holding and controlling an appropriate amount of Insurance Monies in accordance with COB section 7.12 as at the date on which the Authorised Firm's audited balance sheet was prepared; and

(v) if applicable, there have been any material discrepancies in the reconciliation of Insurance Monies;

(f) produce, if the Authorised Firm holds or controls Client Investments, Arranges Custody or Provides Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, which states whether, in the opinion of the auditor:

(i) the Authorised Firm has, throughout the year, maintained systems and controls to enable it to comply with the Safe Custody Provisions in COB App6;

(ii) the Safe Custody Investments are registered, recorded or held in accordance with the Safe Custody Provisions;

(iii) there have been any material discrepancies in the reconciliation of Safe Custody Investments; and

(iv) any of the requirements of the Safe Custody Provisions have not been met;

(g) submit the reports produced pursuant to Rules 8.6.1(b)-8.6.1(f) above to the Authorised Person; and

(h) notify the DFSA in writing if he resigns due to significant concerns which have previously been raised with senior management of the Authorised Person and which have not been addressed.

Guidance

In producing a Safe Custody Auditor's Report an auditor will need to consider which parts of COB App6 are relevant to the Authorised Firm and only include an opinion to the extent relevant to the Authorised Firm's activity. For example, the application of COB App6 to an Authorised Firm carrying on the Financial Service of Arranging Custody is much more limited than its application to an Authorised Firm carrying on the Financial Service of Providing Custody. In this particular instance an auditor producing a Safe Custody Auditor's Report for an Authorised Firm carrying on the Financial Service of Arranging Custody, will generally only need to consider COB App Rules 6.5.1(1), 6.5.1(2), 6.5.1(3), 6.5.2 and 6.7.1(1).

8.6.2 An Authorised Person must submit any auditor's reports and financial statements required by this chapter to the DFSA within four months of the Authorised Person's financial year end.

8.6.3 If requested, an Authorised Person must provide to any Person a copy of its most recent audited accounts, together with the auditor's report referred to in Rule 8.6.1(b). If the copy is made available in printed form, the Authorised Person may make a charge to cover reasonable costs incurred in providing the copy.

8.7 Registration of Auditors

Registration of an Auditor

8.7.1 A Person intending to audit Authorised Firms and Authorised Market Institutions (that are Domestic Firms), or Domestic Funds must apply to the DFSA for registration in accordance with the Rules in this Chapter.

Guidance

Applicants and Auditors are required to pay fees as prescribed in FER.

8.7.2 An applicant for registration must complete and submit the appropriate form in AFN, supported by such additional material as may be required by the DFSA.

Guidance

Applicants and Auditors are required to pay fees as prescribed in FER.

Consideration of the application

8.7.3 (1) An applicant for registration must be able to demonstrate to the DFSA's satisfaction that:

(a) it is fit and proper as provided in (2);

(b) it has professional indemnity insurance as required under Section 8.17;

(c) it has adequate systems, procedures and controls to ensure due compliance with:

(i) the International Standards on Auditing;

(ii) the International Standards on Quality Control; and

(iii) the Code of Ethics for Professional Accountants;

(d) where applicable, it has adequate systems, procedures and controls to ensure due compliance with:

(i) the Islamic Accounting and Auditing Standards; and

(ii) the Code of Ethics for Accountants and Audit Firms of Islamic Financial Institutions;

(e) it is controlled by Persons each of whom hold a Recognised Professional Qualification from a Recognised Professional Body; and

(f) it has complied with any other requirement as specified by the DFSA.

(2) For the purposes of assessing whether an applicant for registration meets the fit and proper requirement under (1)(a), the DFSA will consider:

(a) the application and submissions;

(b) background and history;

(c) the ownership and the Group structure;

(d) resources, including human and technological;

(e) whether the applicant's affairs are likely to be conducted and managed in a sound and prudent manner; and

(f) any other matter considered relevant by the DFSA.

(3) For the purposes of (1)(e):

(a) "control" means:

(i) in a body corporate, a majority of the directors and a majority of the votes of the shareholders; or

(ii) in a partnership (except a limited partnership) means a majority of the partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote; and

(iii) in a limited partnership means a majority of the general partners unless there are only two partners in which case the partner holding a Recognised Professional Qualification must have the casting vote;

(b) "majority" means:

(i) where under the Auditor's constitution matters are decided on by the exercise of voting rights, a majority of the rights to vote on all, or substantially all, matters; or

(ii) in any other case a majority of the Persons having rights under the constitution of the Auditor to enable them to direct its overall policy or alter its constitution.

8.7.4 The DFSA may impose in its absolute discretion any terms or conditions on the registration.

8.8 Regulatory appeals

8.8.1 An applicant may appeal to the Regulatory Appeals Committee against any refusal to grant registration, or any condition of registration imposed under Rule 8.7.4 and the Regulatory Appeals Committee has jurisdiction to hear any such appeal.

Guidance

Under Article 98 of the Regulatory Law 2004, the DFSA may in its absolute discretion grant or refuse to grant registration.

8.9 Obligations of Auditors and Audit Principals

8.9.1 An Auditor must:

(a) continue to comply with all its obligations including those in Chapter 8;

(b) comply with the applicable International Standards of Auditing, Quality Control and Codes of Ethics referred to in Rule 8.7.3(c) and (d);

(c) Appoint an Audit Principal in accordance with the International Standards on Quality Control; and

(d) ensure that each Audit Principal is fit and proper to conduct audit work on behalf of the Auditor.

8.9.2 An Audit Principal must:

(a) manage the conduct of audit work undertaken by the Auditor;

(b) sign audit reports on behalf of the Auditor; and

(c) sign any other report as may be required by the DFSA from time to time.

8.9.3 In assessing whether an Audit Principal is fit and proper, the Auditor must ensure that the Audit Principal at a minimum:

(a) holds a Recognised Professional Qualification;

(b) has at least five years of prior relevant experience in the past seven years in auditing financial services; and

(c) is a member in good standing of a Recognised Professional Body.

Guidance

When assessing a person's suitability to be appointed as an Audit Principal, an Auditor should ascertain matters such as whether any disciplinary action has been taken against that person by a Recognised Professional Body.

8.10 Notification of changes

8.10.1 An Auditor must notify the DFSA in writing within 30 days:

(a) of any change of its Audit Principals, including the appointment of any new Audit Principal;

(b) of any claims made against the Auditor including but not limited to those lodged against the Auditor's professional indemnity insurance;

(c) of any matter that can reasonably be regarded as having a material adverse effect on the DFSA's registration of the Auditor;

(d) of a change of name or address of the Auditor; and

(e) if it no longer meets the requirements for registration as an Auditor.

8.11 Books and records

8.11.1 An Auditor must maintain proper books and records at all times to facilitate the proper performance of its functions and discharge of its duties under these Rules.

8.11.2 An Auditor must maintain records demonstrating how it established the fitness and propriety of each Audit Principal for the purposes of Rule 8.9.

8.11.3 An Auditor must:

(a) maintain records and all relevant information relating to its professional indemnity insurance including the terms of cover and its duration; and

(b) upon a request by the DFSA, provide to the DFSA forthwith evidence of the terms of cover and the validity of those policies.

8.11.4 An Auditor must maintain records of insurance claims made under its professional indemnity insurance policy. Such records, together with each annual renewal proposal form, must be available for inspection by the DFSA.

8.11.5 An Auditor must maintain records of proof of continuing professional development undertaken by its Employees, including Audit Principals.

8.11.6 An Auditor must maintain books and records referred to in the above Rules for a period of at least 6 years. In the case of the books and records referred to in Rule 8.11.1, those records must be kept for at least a period of 6 years after the completion of each audit carried out in respect of each client that is an Authorised Firm, Authorised Market Institution or Domestic Fund.

8.12 Withdrawal of registration

Guidance

Under Article 98(3) of the Regulatory Law 2004, the DFSA may make Rules setting out how and on what grounds registration may be withdrawn.

8.12.1 (1) The DFSA may withdraw an Auditor's registration either on its own initiative or at the request of the Auditor.

(2) A request for withdrawal by an Auditor must be in writing.

8.12.2 In considering requests for the withdrawal of an Auditor's registration, the DFSA must be satisfied that:

(a) the Auditor has made appropriate arrangements with respect to its existing customers; and

(b) any other matter which the DFSA would reasonably expect to be resolved has been resolved;

before granting a request for a withdrawal.

8.12.3 An application by an Auditor to withdraw its registration does not in itself result in a cancellation of its registration. Until such time as the DFSA withdraws the registration, the Auditor remains subject to, and must comply with, the Regulatory Law 2004, Rules and any other relevant legislation administered by the DFSA.

8.12.4 Once an Auditor applies to withdraw its registration, the Auditor must not accept appointments as an Auditor nor issue any audit reports without obtaining the prior written consent of the DFSA.

8.12.5 The DFSA must take the necessary steps to withdraw the registration of an Auditor as soon as practicable after an Auditor has applied to withdraw its registration.

8.13 Withdrawal on the DFSA's initiative

8.13.1 The DFSA may withdraw the registration of an Auditor on its own initiative if it has reasonable grounds to believe that:

(a) the Auditor is no longer fit and proper; or

(b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

8.13.2 The DFSA may only withdraw the registration of an Auditor on its own initiative if it has given to the Auditor:

(a) a prior written notice setting out the DFSA's reasons for proposing to withdraw its registration; and

(b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed withdrawal.

8.13.3 Upon deciding to withdraw the registration of an Auditor, the DFSA must without delay inform the Auditor in writing of:

(a) such decision; and

(b) the date on which the decision is to take effect.

Guidance

Generally, the DFSA will only consider exercising the power to withdraw the registration of an Auditor on its own initiative after a thorough investigation. For example, the DFSA may receive a notification of termination of that Auditor of a Domestic Fund under CIR Rule 12.2.2. Whether or not the DFSA would exercise its discretion to withdraw registration of the Auditor would depend on the grounds upon which the cessation of the appointment had occurred and the DFSA's investigation.

8.13.4 An Auditor may appeal to the Regulatory Appeals Committee against a decision of the DFSA to withdraw its registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

8.14 Suspension by the DFSA

Guidance

Under Article 105 of the Regulatory Law, the DFSA may make Rules setting out how and on what grounds registration may be suspended.

8.14.1 The DFSA may suspend an Auditor's registration if it has reasonable grounds to believe that:

(a) the Auditor is no longer fit and proper; or

(b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

8.14.2 Subject to Rule 8.14.3, the DFSA may only suspend the registration of an Auditor after it has given to the Auditor:

(a) a prior written notice setting out the DFSA's reasons for proposing to suspend its registration; and

(b) a suitable opportunity for the Auditor to make representations in person and in writing to the DFSA in relation to the proposed suspension.

8.14.3 Where the DFSA forms the view that any delay likely to arise as a result of having to comply with the requirements in Rule 8.14.2 is likely to be prejudicial to the interests of the DIFC, it may suspend an Auditor's registration immediately. In such circumstances, the Auditor may make representations during the suspension period.

8.14.4 An Auditor may appeal to the Regulatory Appeals Committee in relation to the DFSA's decision to suspend the Auditor's registration, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

8.14.5 Upon deciding to exercise its powers under Rule 8.14.1, the DFSA must, without delay, inform the Auditor in writing of:

(a) its decision;

(b) the reasons for the suspension; and

(c) the date on which the decision is to take effect and, if known, the duration of the suspension.

Guidance

The decision of the DFSA to suspend an Auditor's registration remains in effect until the appeal is heard and a decision is rendered, unless the Regulatory Appeals Committee orders a stay of the suspension decision.

8.15 Continuing professional development

8.15.1 An Auditor must ensure that all Employees, including Audit Principals, engaged in audit work undertake continuing professional development in accordance with the requirements of:

(a) the Recognised Professional Body of which the Employee or Audit Principal is a member;

(b) any applicable internal standards of the Auditor; and

(c) any direction or order given by the DFSA.

8.16 Deleted

8.17 Professional indemnity insurance

8.17.1 An Auditor must hold adequate professional indemnity insurance covering all civil liability arising in connection with the conduct of the Auditor's business by Employees including its Audit Principals.

8.17.2 An Auditor must, upon request of the DFSA, provide to the DFSA any information relating to the Auditor's professional indemnity insurance policy including the terms and duration of, and any claims made under, such policy.

8.17.3 An Auditor's professional indemnity insurance may be effected with any reputable insurance company or other underwriter provided that the DFSA may require Auditors not to use certain insurance companies or underwriters or forms of insurance cover.

Run-off cover

8.17.4 An Auditor, who intends to cease operations in the DIFC, must make appropriate arrangements to cover its liability in connection with past conduct of the Auditor for a period of at least 2 years.

8.18 Register of Auditors

8.18.1 The DFSA must maintain a register of Auditors by recording the following information in respect of current and former Auditors:

(a) full name of the Auditor;

(b) names of the Audit Principals of the Auditor;

(c) address of the Auditor;

(d) contact details of the Auditor;

(e) date of registration of the Auditor;

(f) date of withdrawal of registration of the Auditor;

(g) date of any suspensions of registration applicable to an Auditor; and

(h) date of cessation of suspension or registration.

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.

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.

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.

Employees handling Complaints

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 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.

10 TRANSITIONAL RULES

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 Persons 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.

11 SUPERVISION

Introduction

Guidance

1. This chapter outlines DFSA's supervisory requirements for an Authorised Person.

2. This chapter should be read in conjunction with the RPP Sourcebook which sets out DFSA's general regulatory policy and processes.

11.1 Information gathering and DFSA access to information

11.1.1 This section applies to an Authorised Person other than a Representative Office with respect to the carrying on of all of its activities.

11.1.2 An Authorised Person must where reasonable:

(a) give or procure the giving of specified information, documents, files, tapes, computer data or other material in the Authorised Person's possession or control to the DFSA;

(b) make its Employees readily available for meetings with the DFSA;

(c) give the DFSA access to any information, documents, records, files, tapes, computer data or systems, which are within the Authorised Person's possession or control and provide any facilities to the DFSA;

(d) permit the DFSA to copy documents or other material on the premises of the Authorised Person at the Authorised Person's expense;

(e) provide any copies as requested by the DFSA; and

(f) answer truthfully, fully and promptly, all questions which are put to it by the DFSA.

11.1.3 An Authorised Person must take reasonable steps to ensure that its Employees act in the manner set out in this chapter.

11.1.4 An Authorised Person must take reasonable steps to ascertain if there is any secrecy or data protection legislation that would restrict access by the Authorised Person or the DFSA to any data required to be recorded under the DFSA's Rules. Where such legislation exists, the Authorised Person must keep copies of relevant documents or material in a jurisdiction which does allow access in accordance with legislation applicable in the DIFC.

Lead regulation

11.1.5 (1) If requested by the DFSA, an Authorised Person must provide the DFSA with information that the Authorised Person or its auditor has provided to a Financial Services Regulator.

(2) If requested by the DFSA, an Authorised Person must take reasonable steps to provide the DFSA with information that other members of the Authorised Person's Group have provided to a Financial Services Regulator.

11.2 Waivers

11.2.1 This section applies to every Authorised Person.

11.2.2 Throughout the Rulebook reference to the written notice under Article 25 will be referred to as a 'waiver'.

11.2.3 If an Authorised Person wishes to apply for a waiver, it must apply in writing and the application must be delivered to the DFSA as outlined in section 11.11.

Guidance

Waiver application forms are contained in AFN and the RPP Sourcebook sets out the DFSA's approach to considering a waiver.

11.2.4 The application must contain:

(a) the name and Licence number of the Authorised Person;

(b) the Rule to which the application relates;

(c) a clear explanation of the waiver that is being applied for and the reason why the Authorised Person is requesting the waiver;

(d) details of any other requirements; for example, if there is a specific period for which the waiver is required;

(e) the reason, if any, why the waiver should not be published or why it should be published without disclosing the identity of the Authorised Person; and

(f) all relevant facts to support the application.

11.2.5 An Authorised Person must immediately notify the DFSA if it becomes aware of any material change in circumstances which may affect the application for a waiver.

Continuing relevance of waivers

11.2.6 An Authorised Person must immediately notify the DFSA if it becomes aware of any material change in circumstances which could affect the continuing relevance of a waiver.

11.3 Application to change the scope of a Licence

11.3.1 This section applies to an Authorised Firm applying to change the scope of its Licence or, where a condition or restriction has previously been imposed, to have the condition or restriction varied or withdrawn.

11.3.2 The provisions relating to permitted legal forms, fitness and propriety, adequate resources, compliance arrangements, enquiries and the provision of additional information set out in section 7.2 also apply to an Authorised Firm making an application under this chapter, and are to be construed accordingly.

11.3.3 An Authorised Firm applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA, with written details of the proposed changes.

11.4 Withdrawal of a Licence at an Authorised Firm's request

11.4.1 An Authorised Firm seeking to have its Licence withdrawn must submit a request in writing stating:

(a) the reasons for the request;

(b) that it has ceased or will cease to carry on Financial Services in or from the DIFC;

(c) the date on which it ceased or will cease to carry on Financial Services in or from the DIFC;

(d) that it has discharged, or will discharge, all obligations owed to its customers in respect of whom the Authorised Firm has carried on, or will cease to carry on, Financial Services in or from the DIFC; and

(e) if it is providing Trust Services, that it has made appropriate arrangements for the transfer of business to a new Trust Service Provider and the appointment, where necessary, of new trustees.

Guidance

When considering a withdrawal of a Licence, the DFSA takes into account a number of matters including those outlined in the RPP Sourcebook.

11.5 Changes to an authorised individual status

Guidance

This section addresses applications or requests regarding Authorised Individuals with respect to Article 53(3), 57(2), 58(3) and 58(4).

11.5.1 An application to extend the scope of an Authorised Individual status to other Licensed Functions may be made by the Authorised Individual and Authorised Firm by the completion and submission of the appropriate form in AFN.

11.5.2 An Authorised Firm or Authorised Individual requesting:

(a) the imposition, variation or withdrawal of a condition or restriction;

(b) withdrawal of Authorised Individual status; or

(c) withdrawal of authorisation in relation to one or more Licensed Functions;

must, subject to Rule 11.5.3, for (a) submit such request in writing to the DFSA, and for (b) and (c) submit a request by completing the appropriate form in AFN.

11.5.3 A request for the variation or withdrawal of a condition or restriction may only be made after the expiry of any period within which an appeal to the Regulatory Appeals Committee relating to the relevant condition or restriction may commence under Article 28.

Guidance

1. Notification of the determination of an application under Rule 11.5.1 or request under Rule 11.5.2 will be made in accordance with Articles 55 and 57.

2. In considering the suitability of such an application or request the DFSA may take into account any matter referred to in RPP with respect to fitness and propriety for Authorised Individuals.

11.6 Temporary cover

11.6.1 (1) An Authorised Firm may, subject to (2), appoint an individual, who is not an Authorised Individual, to carry out the functions of an Authorised Individual where the following conditions are met:

(a) the absence of the Authorised Individual is temporary or reasonably unforeseen;

(b) the functions are carried out for 12 weeks maximum in any consecutive 12 months; and

(c) the Authorised Firm has assessed that the individual has the relevant skills and experience to carry out these functions.

(2) An Authorised Firm may not appoint under (1) an individual to carry out the Licensed Functions of a Licensed Director or Licensed Partner.

(3) The Authorised Firm must take reasonable steps to ensure that the individual complies with all the Rules applicable to Authorised Individuals.

(4) Where an individual is appointed under this Rule, the Authorised Firm must notify the DFSA in writing of the name and contact details of the individual appointed.

11.6.2 Where an individual is appointed under this section, the DFSA may exercise any powers it would otherwise be entitled to exercise as if the individual held Authorised Individual status.

11.7 Dismissal or resignation of an Authorised Individual

11.7.1 An Authorised Firm must request the withdrawal of an Authorised Individual status within seven days of the Authorised Individual ceasing to be employed by the Authorised Firm to perform a Licensed Function.

11.7.2 In requesting the withdrawal of an Authorised Individual status, the Authorised Firm must submit the appropriate form in AFN, including details of any circumstances where the Authorised Firm may consider that the individual is no longer fit and proper.

11.7.3 If an Authorised Individual is dismissed or requested to resign, a statement of the reason, or reasons, for the dismissal or resignation must be given to the DFSA by the Authorised Firm.

11.7.4 If the Authorised Individual was acting as a trustee, the Trust Service Provider must confirm to the DFSA in writing that a new trustee has been appointed in place of the trustee in question.

11.8 Changes relating to control

11.8.1 (1) This section applies, subject to (2) and (3), to:

(a) an Authorised Firm; or

(b) a Person who is, or is proposing to become, a Controller specified in Rule 11.8.3.

(2) This chapter does not apply to a Representative Office or a Person who is a Controller of such a firm.

(3) A Credit Rating Agency must comply with the requirements in this section as if it were a non-DIFC established company.

Guidance

The requirements in respect of notification of changes relating to control of Branches (i.e. Non-DIFC established companies) are set out in Rule 11.8.10. Although some Credit Rating Agencies may be companies established in the DIFC, such companies will only be subject to the notification requirements relating to their Controllers. Accordingly, regardless of whether a Credit Rating Agency is a company established in the DIFC or a Branch operation, it is subject to the notification requirements only and not to the requirement for prior approval by the DFSA of changes relating to its Controllers.

Definition of a Controller

11.8.2 (1) A Controller is a Person who, either alone or with any Associate:

(a) holds 10% or more of the shares in either the Authorised Firm or a Holding Company of that firm;

(b) is entitled to exercise, or controls the exercise of, 10% or more of the voting rights in either the Authorised Firm or a Holding Company of that firm; or

(c) is able to exercise significant influence over the management of the Authorised Firm as a result of holding shares or being able to exercise voting rights in the Authorised Firm or a Holding Company of that firm or having a current exercisable right to acquire such shares or voting rights.

(2) A reference in this chapter to the term:

(a) "share" means:

(i) in the case of an Authorised Firm, or a Holding Company of an Authorised Firm, which has a share capital, its allotted shares;

(ii) in the case of an Authorised Firm, or a Holding Company of an Authorised Firm, with capital but no share capital, rights to a share in its capital; and

(iii) in the case of an Authorised Firm, or a Holding Company of an Authorised Firm, without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up; and

(b) "a holding" means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Firm or a Holding Company of that firm held by that Person either alone or with any Associate.

Guidance

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the DIFC Companies Law. That definition describes when one body corporate is considered to be a holding company or a subsidiary of another body

corporate and extends that concept to the ultimate holding company of the body corporate.

2. Pursuant to Rule 11.8.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over an Authorised Firm. The ability to exert significant management influence can arise even where a Person, alone or with his Associates, controls less than 10% of the shares or voting rights of the Authorised Firm or a Holding Company of that firm. Similarly, a Person may be able to exert significant management influence where such Person does not hold shares or voting rights but has current exercisable rights to acquire shares or voting rights, such as under Options.

Disregarded holdings

11.8.3 For the purposes of determining whether a Person is a Controller, any shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with any Associate, in an Authorised Firm or a Holding Company of that firm are disregarded if:

(a) they are shares held for the sole purpose of clearing and settling within a short settlement cycle;

(b) they are shares held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or

(c) the Person is an Authorised Firm or a Regulated Financial Institution and it:

(i) acquires the shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;

(ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and

(iii) retains the shares for a period less than one year.

Requirement for prior approval of Controllers of Domestic Firms

11.8.4 (1) In the case of an Authorised Firm which is a Domestic Firm, a Person must not:

(a) become a Controller; or

(b) increase the level of control which that Person has in the firm beyond a threshold specified in (2),

unless that Person has obtained the prior written approval of the DFSA to do so.

(2) For the purposes of (1)(b), the thresholds at which the prior written approval of the DFSA is required are when the relevant holding is increased:

(a) from below 30% to 30% or more; or

(b) from below 50% to 50% or more.

Guidance

See Rules 11.8.2 and 11.8.3 for the circumstances in which a Person becomes a Controller of an Authorised Person.

Approval process

11.8.5 (1) A Person who is required to obtain the prior written approval of the DFSA pursuant to Rule 11.8.4(1) must make an application to the DFSA using the appropriate form in AFN.

(2) Where the DFSA receives an application under (1), it may:

(a) approve the proposed acquisition or increase in the level of control;

(b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or

(c) object to the proposed acquisition or increase in the level of control.

Guidance

1. A Person intending to acquire or increase control in an Authorised Firm should submit an application for approval in the appropriate form in AFN sufficiently in advance of the proposed acquisition to be able to obtain the DFSA approval in time for the proposed acquisition. Sections 3-2-34 – 3-2-37 of the RPP Sourcebook set out the matters which the DFSA will take into consideration when exercising its powers under Rule 11.8.5 to approve, object to or impose conditions of approval relating to a proposed Controller or a proposed increase in the level of control of an existing Controller.

2. The DFSA will exercise its powers relating to Controllers in a manner proportionate to the nature, scale and complexity of an Authorised Firm's business, and the impact a proposed change in control would have on that firm and its Clients. For example, the DFSA would generally be less likely to impose conditions requiring a proposed acquirer of control of an Authorised Firm whose financial failure would have a limited systemic impact or impact on its Clients to provide prudential support to the firm by contributing more capital. Most advisory and arranging firms will fall into this class.

11.8.6 (1) Where the DFSA proposes to approve a proposed acquisition or an increase in the level of control in an Authorised Firm pursuant to Rule 11.8.5(2)(a), it must:

(a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different period is considered appropriate by the DFSA and notified to the applicant in writing; and

(b) issue to the applicant, and where appropriate to the Authorised Firm, an approval notice as soon as practicable after making that decision.

(2) An approval, including a conditional approval granted by the DFSA pursuant to Rule 11.8.5(2)(a) or (b), is valid for a period of one year

from the date of the approval, unless an extension is granted by the DFSA in writing.

Guidance

1. If the application for approval lodged with the DFSA does not contain all the required information, then the 90 day period runs from the date on which all the relevant information has been provided to the DFSA.

2. If a Person who has obtained the prior DFSA approval for an acquisition or an increase in the control of an Authorised Firm is unable to effect the acquisition before the end of the period referred to in Rule 11.8.6(2), it will need to obtain fresh approval from the DFSA.

Objection or conditional approval process

11.8.7 (1) Where the DFSA proposes to exercise its objection or conditional approval power pursuant to Rule 11.8.5(2)(b) or (c) in respect of a proposed acquisition of, or an increase in the level of control in, an Authorised Firm, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:

(a) a written notice stating:

(i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and

(ii) any proposed conditions subject to which that Person may be approved by the DFSA; and

(b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.

(2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:

(a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;

(b) the Person is approved as a Controller subject to conditions specified in the notice; or

(c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.

Guidance

A final decision made by the DFSA pursuant to Rule 11.8.7(2)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

11.8.8 (1) A Person who has been approved by the DFSA as a Controller of an Authorised Firm subject to any conditions must comply with the relevant conditions of approval.

(2) A Person who has been notified by the DFSA pursuant to Rule 11.8.7(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Authorised Firm.

Guidance

A Person who acquires control of or increases the level of control in an Authorised Firm without the prior DFSA approval or breaches a condition of approval is in breach of the Rules. See Rule 11.8.13 for the actions that the DFSA may take in such circumstances.

Notification for decrease in the level of control of Domestic Firms

11.8.9 A Controller of an Authorised Firm which is a Domestic Firm must submit, using the appropriate form in AFN, a written notification to the DFSA where that Person:

(a) proposes to cease being a Controller; or

(b) proposes to decrease that Person's holding from more than 50% to 50% or less.

Requirement for notification of changes relating to control of Branches

11.8.10 (1) In the case of an Authorised Firm which is a Branch, a written notification to the DFSA must be submitted by a Controller or a Person proposing to become a Controller of that Authorised Firm in accordance with (3) in respect of any one of the events specified in (2).

(2) For the purposes of (1), a notification to the DFSA is required when:

(a) a Person becomes a Controller;

(b) an existing Controller proposes to cease being a Controller; or

(c) an existing Controller's holding is:

(i) increased from below 30% to 30% or more;

(ii) increased from below 50% to 50% or more; or

(iii) decreased from more than 50% to 50% or less.

(3) The notification required under (1) must be made by a Controller or Person proposing to become a Controller of a Branch using the appropriate form in AFN as soon as possible, and in any event, before making the relevant acquisition or disposal.

Obligations of Authorised Firms relating to its Controllers

11.8.11 (1) An Authorised Firm must have adequate systems and controls to monitor:

(a) any change or proposed change of its Controllers; and

(b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact on the fitness and propriety of the Authorised Firm or its ability to conduct business soundly and prudently.

(2) An Authorised Firm must, subject to (3), notify the DFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.

(3) An Authorised Firm need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the DFSA or notified the event to the DFSA as applicable.

Guidance

Steps which an Authorised Firm may take in order to monitor changes relating to Controllers include the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

11.8.12 (1) An Authorised Firm must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

(2) The Authorised Firm's annual report on its Controllers must include:

(a) the name of each Controller; and

(b) the current holding of each Controller, expressed as a percentage.

Guidance

1. An Authorised Firm may satisfy the requirements of Rule 11.8.12 by submitting a corporate structure diagram containing the relevant information.

2. An Authorised Firm must take account of the holdings which the Controller, either alone or with any Associate, has in the Authorised Firm or any Holding Company of the firm (see the definition of a Controller in Rule 11.8.2).

Other Powers relating to Controllers

11.8.13 (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Firm where such a Person:

(a) has acquired or increased the level of control that Person has in an Authorised Firm without the prior written approval of the DFSA as required under Rule 11.8.4;

(b) has breached the requirement in Rule 11.8.8 to comply with the conditions of approval applicable to that Person; or

(c) is no longer acceptable to the DFSA as a Controller.

(2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Firm under (1), the DFSA must provide such a Person with:

(a) a written notice stating:

(i) the DFSA's reasons for objecting to that Person as a Controller; and

(ii) any proposed conditions subject to which that Person may be approved by the DFSA; and

(b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.

(3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:

(a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;

(b) the Person is approved as a Controller subject to conditions specified in the notice; or

(c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.

(4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.

(5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller, that Person must dispose of the relevant holdings within such period as specified in the final notice.

(6) The DFSA must also notify the Authorised Firm of any decision it has made pursuant to (3).

Guidance

1. Sections 3.2.34 and 3.2.37 of the RPP Sourcebook set out the matters which the DFSA takes into consideration when exercising its powers under Rule 11.8.13.

2. A final decision made by the DFSA pursuant to Rule 11.8.13(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

11.9 Creation of additional cells of a protected cell company for an Insurer

11.9.1 This section applies to Insurers that are Protected Cell Companies.

Guidance

1. An Insurer that is a Protected Cell Company is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the DIFC Company Regulations.

2. Under the provisions of the DIFC Company Regulations dealings or transactions between Cells in relation to an Insurer may take place only with the approval of the Court.

3. An Authorised Firm which intends to apply to the Court for approval under the provisions is invited to consult with the DFSA before making the necessary application to the Court.

11.9.2 An Insurer that is a Protected Cell Company may not create a new Cell unless approval has been granted by the DFSA.

11.9.3 An application to the DFSA for the approval for the creation of a new Cell must be made on the appropriate form in AFN, and shall be accompanied by such documents and information and verified in such manner, as the DFSA may require.

11.9.4 The DFSA may:

(a) grant approval;

(b) grant approval with conditions or restrictions; or

(c) refuse approval;

for the creation of a new Cell.

Notice of the DFSA's decision

11.9.5 (1) Where the DFSA grants approval of a new Cell, the DFSA will without undue delay give the Insurer a written notice of its decision.

(2) Where the DFSA grants approval of a new Cell with conditions or restrictions, the DFSA will without undue delay give the Insurer a written notice of its decision and, where requested by the Insurer, the reasons for the conditions.

(3) Where the DFSA refuses approval of a new Cell, the DFSA will without undue delay give a written notice of its decision to the Insurer and, where requested by the Insurer, the reasons for such refusal.

Rights of representation and appeal

11.9.6 The DFSA may only exercise its power to refuse an application for a new Cell, or to grant approval with conditions or restrictions, if it has given the

Insurer a suitable opportunity to make representations in person and in writing in relation to the proposed refusal or the proposed conditions or restrictions.

11.9.7 The Insurer has the right to appeal a decision to refuse approval, or to grant approval with conditions or restrictions, to the Regulatory Appeals Committee which has the jurisdiction to hear and determine such an appeal.

11.10 Notifications

11.10.1 (1) This section applies to every Authorised Person, unless otherwise provided, with respect to the carrying on of Financial Services and any other activities whether or not financial.

(2) This section does not apply to a Representative Office.

Guidance

1. This chapter sets out Rules on specific events, changes or circumstances that require notification to the DFSA and outlines the process and requirements for notifications.

2. The list of notifications outlined in this chapter is not exhaustive. Other areas of the Rulebook may also detail additional notification requirements.

3. An Authorised Person and its auditor are also required under Article 67 to disclose to the DFSA any matter which may indicate a breach or likely breach of, or a failure or likely failure to comply with, laws or Rules. An Authorised Person is also required to establish and implement systems and procedures to enable its compliance and compliance by its auditor with notification requirements.

Core information

11.10.2 An Authorised Person must provide the DFSA with reasonable advance notice of a change in:

(a) the Authorised Person's name;

(b) any business or trading name under which the Authorised Person carries on a Financial Service in or from the DIFC;

(c) the address of the Authorised Person's principal place of business in the DIFC;

(d) in the case of a Branch, its registered office or head office address;

(e) its legal structure; or

(f) an Authorised Individual's name or any material matters relating to his fitness and propriety.

11.10.3 A Domestic Firm must provide the DFSA with reasonable advance notice of the establishment or closure of a branch office anywhere in the world from which it carries on financial services.

11.10.4 When giving notice under Rule 11.10.3 in relation to the establishment of a branch, a Domestic Firm must at the same time submit to the DFSA a detailed business plan in relation to the activities of the proposed branch.

11.10.5 (1) The DFSA may in its absolute discretion, object to the establishment of a branch office. Upon objecting to the establishment of a branch office, the DFSA must without undue delay, inform the applicant in writing of such objection, and where requested by the Domestic Firm, the reasons for such objection.

(2) If the DFSA objects to the firm establishing a branch anywhere in the world the firm may not proceed with establishment of such a branch.

11.10.6 A Domestic Firm may appeal to the Regulatory Appeals Committee against the decision of the DFSA to object to the opening of a branch office, and the Regulatory Appeals Committee has jurisdiction to hear such an appeal.

Regulatory impact

11.10.7 An Authorised Person must advise the DFSA immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

(a) the Authorised Person's failure to satisfy the fit and proper requirements;

(b) any matter which could have a significant adverse effect on the Authorised Person's reputation;

(c) any matter in relation to the Authorised Person which could result in serious adverse financial consequences to the financial system or to other firms;

(d) a significant breach of a Rule by the Authorised Person or any of its Employees;

(e) a breach by the Authorised Person or any of its Employees of any requirement imposed by any applicable law by the Authorised Person or any of its Employees;

(f) subject to Rule 11.10.8, any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the Authorised Person's risk profile or resources;

(g) any significant failure in the Authorised Person's systems or controls, including a failure reported to the Authorised Person by the firm's auditor;

(h) any action that would result in a material change in the capital adequacy or solvency of the Authorised Firm; or

(i) non-compliance with Rules due to an emergency outside the Authorised Person's control and the steps being taken by the Authorised Person.

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 Rule 1.3.3) or Category 4 (as defined in PIB Rule 1.3.4).

(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 1.3.5); 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.

Guidance

1. Examples of the kind of investments referred to in Rule 11.10.8(3)(b) include an acquisition of a stake in a small specialised trading firm that engages in high risk trades or other activities that could pose a reputational risk to the Authorised Firm.

2. The onus is on an Authorised Firm proposing to make an acquisition to consider whether it qualifies as a Major Acquisition under Rule 11.10.8(3)(b). Generally, in the case of an Authorised Firm that is not a Domestic Firm (i.e. a Branch operation in the DIFC), the significant regulatory impact referred to in Rule 11.10.8 (3)(b) should be prudential risk to the Authorised Firm as a whole. If an Authorised Firm is uncertain about whether or not a proposed acquisition qualifies as a Major Acquisition under Rule 11.10.8 (3)(b), the Authorised Firm may seek guidance from the DFSA.

3. Examples of contractual arrangements of the kind referred to in Rule 11.10.8 (4)(a) include enforcement of a security interest in the securities of the investee Body Corporate or a loan workout pursuant to a loan agreement entered into between a bank and its client.

4. Examples of the kind of investments referred to in Rule 11.10.8(4)(b) include temporary investments, such as investments included in the Authorised Firm's trading book or which are intended to be disposed of within a short term (e.g. within 12 months).

11.10.9 (1) An Authorised Firm which is a Domestic Firm must:

(a) before making a Major Acquisition:

(i) notify the DFSA in writing of the proposed Major Acquisition at least 45 days prior to the proposed date for effecting the Major Acquisition; and

(ii) give to the DFSA all the relevant information relating to that Major Acquisition to enable the DFSA to assess the impact of the proposed Major Acquisition on the Authorised Firm; and

(b) not effect the proposed Major Acquisition unless:

(i) the Authorised Firm has either received written advice from the DFSA that it has no objection to that Major Acquisition or has not received any written objection or request for additional information from the DFSA within 45 days after the date of the notification; and

(ii) if the DFSA has imposed any conditions relating to the proposed Major Acquisition, it has complied with, and has the on-going ability to comply with, the relevant conditions.

(2) The DFSA may only object to a proposed Major Acquisition if it is of the view that the proposed Major Acquisition is reasonably likely to have a material adverse impact on the Authorised Firm's ability to comply with its applicable regulatory requirements or on the financial services industry in the DIFC as a whole. The DFSA may also impose

any conditions it considers appropriate to address any concerns it may have in relation to the proposed Major Acquisition.

(3) Without limiting the generality of its powers, the factors that the DFSA may take into account for the purposes of (2) include:

(a) the financial and other resources available to the Authorised Firm to carry out the proposed Major Acquisition;

(b) the possible impact of the proposed Major Acquisition upon the Authorised Firm's resources, including its capital, both at the time of the acquisition and on an on-going basis;

(c) the managerial capacity of the Authorised Firm to ensure that the activities of the investee Body Corporate are conducted in a prudent and reputable manner;

(d) the place of incorporation or domicile of the investee Body Corporate and whether or not the laws applicable to that entity are consistent with the laws applicable to the Authorised Firm. In particular, whether there are any secrecy constraints that are likely to create difficulties in relation to the DFSA requirements including those relating to consolidated supervision by the DFSA where applicable; and

(e) any other undue risks to the Authorised Firm or the financial services industry in the DIFC as a whole arising from the proposed Major Acquisition.

Guidance

Factors which the DFSA may take into account in assessing whether there are any undue risks arising from the proposed Major Acquisition include the size and nature of the business of the investee Body Corporate, its reputation and standing, its present and proposed management structure and the quality of management, the reporting lines and other monitoring and control mechanisms available to the Authorised Firm and the past records of the Authorised Firm relating to acquisitions of a similar nature.

11.10.10 (1) An Authorised Firm which is not a Domestic Firm must:

(a) notify the DFSA in writing of any Major Acquisition in accordance with the notification requirement applying to the Authorised Firm under the requirements of the Financial Services Regulator in its home jurisdiction (the home regulator); and

(b) if there is no notification requirement applying to the Authorised Firm under (a), comply with the requirements in Rule 11.10.9 as if it were a Domestic Firm. The DFSA must follow the same procedures, and shall have the same powers, as set out in Rule 11.10.9 in relation to such a notification.

(2) An Authorised Firm which gives to the DFSA a notification under (1)(a) must:

(a) notify the DFSA of the Major Acquisition at the same time as it notifies the home regulator;

(b) provide to the DFSA the same information as it is required to provide to the home regulator; and

(c) provide to the DFSA copies of any communications it receives from the home regulator relating to the notification it has provided to the home regulator as soon as practicable upon receipt.

11.10.11 (1) The DFSA may, for the purposes of the requirements in this section, require from an Authorised Firm any additional information relating to the Major Acquisition as it may consider appropriate. An Authorised Firm must provide any such additional information to the DFSA promptly.

(2) The DFSA may, where it considers appropriate, withdraw its no objection position or modify or vary any condition it has imposed or any remedial action it has required under the Rules in this section. Where it forms the view that such an action is required, the DFSA will first give to the Authorised Firm affected by that decision prior written notice of its proposed actions and its reasons.

Guidance

The DFSA will generally not withdraw a no objection position it has conveyed to an Authorised Firm, except in very limited circumstances. An example of such a situation is where the Authorised Firm is found to have provided to the DFSA inaccurate or incomplete information and that commission or omission has a material impact on the DFSA's no objection decision.

11.10.12 An Authorised Firm may make an appeal to the Regulatory Appeals Committee for the review of a decision of the DFSA under Rules 11.10.9, 11.10.10(b) or 11.10.11(2) and the Regulatory Appeals Committee has the jurisdiction to hear any such appeal.

Fraud and errors

11.10.13 An Authorised Person must notify the DFSA immediately if one of the following events arises in relation to its activities in or from the DIFC:

(a) it becomes aware that an Employee may have committed a fraud against one of its customers;

(b) a serious fraud has been committed against it;

(c) it has reason to believe that a Person is acting with intent to commit a serious fraud against it;

(d) it identifies significant irregularities in its accounting or other records, whether or not there is evidence of fraud; or

(e) it suspects that one of its Employees who is connected with the Authorised Person's Financial Services may be guilty of serious misconduct concerning his honesty or integrity.

Other regulators

11.10.14 An Authorised Person must advise the DFSA immediately of:

(a) the granting or refusal of any application for or revocation of authorisation to carry on financial services in any jurisdiction outside the DIFC;

(b) the granting, withdrawal or refusal of an application for, or revocation of, membership of the Authorised Person of any regulated exchange or clearing house;

(c) the Authorised Person becoming aware that a Financial Services Regulator has started an investigation into the affairs of the Authorised Person;

(d) the appointment of inspectors, howsoever named, by a Financial Services Regulator to investigate the affairs of the Authorised Person; or

(e) the imposition of disciplinary measures or disciplinary sanctions on the Authorised Person in relation to its financial services by any Financial Services Regulator or any regulated exchange or clearing house.

Guidance

The notification requirement in Rule 11.10.14(c) extends to investigations relating to any employee or agent of an Authorised Person or a member of its Group, provided the conduct investigated relates to or impacts on the affairs of the Authorised Person.

Action against an Authorised Person

11.10.15 An Authorised Person must notify the DFSA immediately if:

(a) civil proceedings are brought against the Authorised Person and the amount of the claim is significant in relation to the Authorised Person's financial resources or its reputation; or

(b) the Authorised Person is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion.

Winding up, bankruptcy and insolvency

11.10.16 An Authorised Person must notify the DFSA immediately on:

(a) the calling of a meeting to consider a resolution for winding up the Authorised Person;

(b) an application to dissolve the Authorised Person or to strike it from the register maintained by the DIFC Registrar of Companies, or a comparable register in another jurisdiction;

(c) the presentation of a petition for the winding up of the Authorised Person;

(d) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Authorised Person; or

(e) the application of any person against the Authorised Person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country.

Accuracy of information

11.10.17 An Authorised Person must take reasonable steps to ensure that all information that it provides to the DFSA in accordance with any legislation applicable in the DIFC is:

(a) factually accurate or, in the case of estimates and judgements, fairly and properly based; and

(b) complete, in that it should include anything of which the DFSA would reasonably expect to be notified.

11.10.18 (1) An Authorised Person must notify the DFSA immediately it becomes aware, or has information that reasonably suggests, that it:

(a) has or may have provided the DFSA with information which was or may have been false, misleading, incomplete or inaccurate; or

(b) has or may have changed in a material particular.

(2) Subject to (3), the notification in (1) must include details of the information which is or may be false or misleading, incomplete or inaccurate, or has or may have changed and an explanation why such information was or may have been provided and the correct information.

(3) If the correct information in (2) cannot be submitted with the notification it must be submitted as soon as reasonably possible.

11.10.19 In the case of an Insurer which is a Protected Cell Company, an Insurer must advise the DFSA immediately it becomes aware of any actual or prospective significant change in the type or scale of the business conducted through a Cell, or the ownership of the Cell shares.

Information relating to corporate governance and remuneration

11.10.20 (1) Subject to (2), an Authorised Firm must provide to the DFSA notice of any significant changes to its corporate governance framework or the remuneration structure or strategy as soon as practicable.

(2) An Authorised Firm which is a Branch must provide notice of any significant changes to its corporate governance framework or the remuneration structure or strategy only if the changes are relevant to the activities and operations of the Branch.

Guidance

1. The purpose of these notifications is to ensure that the DFSA is informed of any significant changes to the Authorised Firm's corporate governance framework and remuneration structure and strategies.

2. Significant changes that the DFSA expects Authorised Firms to notify the DFSA pursuant to Rule 11.10.20 generally include:

   a. any major changes to the composition of the Governing Body;

   b. any changes relating to Persons Undertaking Key Control Functions, such as their removal or new appointments or changes in their reporting lines; and

   c. significant changes to the remuneration structure that apply to the members of the Governing Body, senior management, Persons Undertaking Key Control Functions and major risk taking Employees.

3. The DFSA expects Branches to provide to the DFSA notification of significant changes that are relevant to the Branch operations.

11.11 Provision of notifications and reports

11.11.1 (1) Unless a Rule states otherwise, an Authorised Person must ensure that each notification or report it provides to the DFSA is:

(a) in writing and contains the Authorised Person's name and Licence number; and

(b) addressed for the attention of (in the case of an Authorised Firm) the Supervision Department and (in the case of an Authorised Market Institution) the Markets Department and delivered to the DFSA by:

(i) post to the current address of the DFSA;

(ii) hand delivered to the current address of the DFSA;

(iii) electronic mail to an address provided by the DFSA; or

(iv) faxed to a fax number provided by the DFSA.

(2) In (1)(b) confirmation of receipt must be obtained.

11.12 Requirement to provide a report

11.12.1 This section applies to every Authorised Person other than a Representative Office.

Guidance

1. Under Article 74, the DFSA may require an Authorised Person to provide it with a report on any matter. The Person appointed to make a report must be a Person nominated or approved by the DFSA. This Person will be referred to throughout the Rulebook as an independent expert.

2. When requesting a report under Article 74, the DFSA may take into consideration the matters set out in the RPP Sourcebook.

Independent Expert

11.12.2 (1) The DFSA may, by sending a notice in writing, require an Authorised Person to provide a report by an independent expert. The DFSA may require the report to be in whatever form it specifies in the notice.

(2) The DFSA will give written notification to the Authorised Person of the purpose of its report, its scope, the timetable for completion and any other relevant matters.

(3) The independent expert must be appointed by the Authorised Person and be nominated or approved by the DFSA.

(4) The Authorised Person must pay for the services of the independent expert.

Guidance

1. If the DFSA decides to nominate the independent expert, it will notify the Authorised Person accordingly. Alternatively, if the DFSA is content to approve the independent expert selected by the Authorised Person it will notify it of that fact.

2. The DFSA will only approve an independent expert that in the DFSA's opinion has the necessary skills to make a report on the matter concerned.

11.12.3 When an Authorised Person appoints an independent expert, the Authorised Person must ensure that:

(a) the independent expert co-operates with the DFSA; and

(b) the Authorised Person provides all assistance that the independent expert may reasonably require.

11.12.4 When an Authorised Person appoints an independent expert, the Authorised Person must, in the contract with the independent expert:

(a) require and permit the independent expert to co-operate with the DFSA in relation to the Authorised Person and to communicate to the DFSA information on, or his opinion on, matters of which he has, or had, become aware in his capacity as an independent expert reporting on the Authorised Person in the following circumstances:

(i) the independent expert reasonably believes that, as regards the Authorised Person concerned:

(A) there is or has been, or may be or may have been, a contravention of any relevant requirement that applies to the Authorised Person concerned; and

(B) that the contravention may be of material significance to the DFSA in determining whether to exercise, in relation to the Authorised Person concerned, any

powers conferred on the DFSA under any provision of the Regulatory Law 2004;

(ii) the independent expert reasonably believes that the information on, or his opinion on, those matters may be of material significance to the DFSA in determining whether the Authorised Person concerned satisfies and will continue to satisfy the fit and proper requirements; or

(iii) the independent expert reasonably believes that the Authorised Firm is not, may not be, or may cease to be, a going concern;

(b) require the independent expert to prepare a report within the time specified by the DFSA; and

(c) waive any duty of confidentiality owed by the independent expert to the Authorised Person which might limit the provision of information or opinion by that independent expert to the DFSA in accordance with (a) or (b).

11.12.5 An Authorised Person must ensure that the contract required under Rule 11.12.4:

(a) is governed by the laws of the DIFC;

(b) expressly provides that the DFSA has a right to enforce the provisions included in the contract under Rule 11.12.4;

(c) expressly provides that, in proceedings brought by the DFSA for the enforcement of those provisions, the independent expert is not to have available by way of defence, set-off or counter claim any matter that is not relevant to those provisions;

(d) if the contract includes an arbitration agreement, expressly provides that the DFSA is not, in exercising the right in (b) to be treated as a party to, or bound by, the arbitration agreement; and

(e) provides that the provisions included in the contract under Rule 11.12.4 are irrevocable and may not be varied or rescinded without the DFSA's consent.

11.13 Imposing Restrictions on an Authorised Person's business or on an Authorised Person dealing with property

11.13.1 The DFSA has the power to impose a prohibition or requirement on an Authorised Person in relation to the Authorised Person's business or in relation to the Authorised Person's dealing with property under Article 75 or Article 76 in circumstances where:

(a) there is a reasonable likelihood that the Authorised Person will contravene a requirement of any legislation applicable in the DIFC;

(b) the Authorised Person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated;

(c) there is loss, risk of loss, or other adverse effect on the Authorised Person's customers;

(d) an investigation is being carried out in relation to an act or omission by the Authorised Person that constitutes or may constitute a contravention of any applicable law or Rule;

(e) an enforcement action has commenced against the Authorised Person for a contravention of any applicable law or Rule;

(f) civil proceedings have commenced against the Authorised Person;

(g) the Authorised Person or any Employee of the Authorised Person may be or has been engaged in market abuse;

(h) the Authorised Person is subject to a merger;

(i) a meeting has been called to consider a resolution for the winding up of the Authorised Person;

(j) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country for the Authorised Person;

(k) there is a notification to dissolve the Authorised Person or strike it from the DIFC register of Companies or the comparable register in another jurisdiction;

(l) there is information to suggest that the Authorised Person is involved in financial crime; or

(m) the DFSA considers that this prohibition or requirement is necessary to ensure customers, Authorised Persons or the financial system are not adversely affected.

APP1 DEPOSITS

A1.1 Definition of a deposit

A1.1.1 (1) A Deposit means a sum of money paid on terms:

(a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the Person making the payment and the Person receiving it; and

(b) which is not referable to the provision of property (other than currency) or services or the giving of security.

(2) In (1) money is paid on terms which are referable to the provision of property or services or the giving of security if:

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) without prejudice to (b), it is paid by way of security for the delivery up of property, whether in a particular state of repair or otherwise.

Exclusions

A1.1.2 A sum is not a Deposit if it is paid:

(a) by a Person in the course of carrying on a business consisting wholly or to a significant extent of lending money;

(b) by one company to another at a time when both are members of the same Group;

(c) by an Authorised Firm authorised under its Licence to carry on the following Financial Services:

(i) Accepting Deposits;

(ii) Effecting Contracts of Insurance; or

(iii) Carrying Out Contracts of Insurance; or

(d) by a Person who is a close relative of the Person receiving it or who is a director, manager or Controller of that Person.

A1.1.3 A sum is not a Deposit if it is received:

(a) by a lawyer registered as an Ancillary Service Provider and acting in his professional capacity;

(b) by an accountant registered as an Ancillary Service Provider and acting in his professional capacity;

(c) by an Authorised Firm or an Authorised Market Institution authorised under its Licence to carry on any one or more of the following Financial Services:

(i) Dealing in Investments as Principal;

(ii) Dealing in Investments as Agent;

(iii) Arranging Credit or Deals in Investments;

(iv) Managing Assets;

(v) Operating a Collective Investment Fund;

(vi) Effecting Contracts of Insurance;

(vii) Carrying Out Contracts of Insurance;

(viii) Operating an Exchange;

(ix) Operating a Clearing House;

(x) Insurance Broking;

(xi) Insurance Management;

(xii) Managing a Profit Sharing Investment Account; or

(xiii) Providing Trust Services.

in the course of or for the purpose of any such Financial Service disregarding any applicable exclusions in chapter 2; or

(d) by a Person as consideration for the issue by him of a Debenture.

APP2 INVESTMENTS

A2.1 General definition of investments

Investments

A2.1.1 (1) An Investment is, subject to (3), either:

(a) a Security; or

(b) a Derivative,

as defined in Rule A2.1.2 or Rule A2.1.3.

(2) Such a Security or Derivative includes:

(a) a right or interest in the relevant Security or Derivative; and

(b) any instrument declared as a Security or Derivative pursuant to Rule A2.4.1(1).

(3) Where a Rule provides that a Security or Derivative has a different classification for a specified purpose, it shall have that effect for that specified purpose and no other purpose.

Guidance

An example of the application of Rule A2.1.1 (3) is Rule A2.1.2(2), where a Derivative is treated as a Security for the purposes of the requirements in PIB.

Security

A2.1.2 (1) For the purposes of Rule A2.1.1(1)(a), a Security is:

(a) a Share;

(b) a Debenture;

(c) a Warrant;

(d) a Certificate;

(e) a Unit; or

(f) a Structured Product.

(2) For the purposes of the requirements in PIB, each Derivative specified in Rule A2.1.3 is to be treated as a Security.

Derivative

A2.1.3 For the purposes of Rule A2.1.1(1)(b), a Derivative is:

(a) an Option; or

(b) a Future.

A2.2 Definitions of specific securities

A2.2.1 For the purposes of Rule A2.1.2:

Shares

(a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

Debentures

(b) a Debenture is an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:

(i) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(ii) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);

(iii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; and

(iv) a Contract of Insurance;

Guidance

1. A Debenture may include a bond, debenture stock, loan stock or note. Certain Islamic products ("Sukuk") structured as a debt instrument can also fall within this definition.

2. If the interest or financial return component on a debt instrument is to be calculated by reference to fluctuations of an external factor such as an index, exchange rate or interest rate, that does not prevent such an instrument being characterised as a Debenture.

Warrants

(c) a Warrant is an instrument that confers on the holder a right entitling the holder to acquire an unissued Share, Debenture or Unit;

Guidance

A Warrant confers on the holder an entitlement (but not an obligation) to acquire an unissued Share, Debenture or Unit, thereby distinguishing it from a call Option which entitles the holder, upon exercise, to acquire an already issued (i.e. existing) Security.

Certificates

(d) a Certificate is an instrument:

(i) which confers on the holder contractual or property rights to or in respect of a Share, Debenture, Unit or Warrant held by a Person; and

(ii) the transfer of which may be effected by the holder without the consent of that other Person;

but excludes rights under an Option;

Guidance

Certificates confer rights over existing Shares, Debentures, Units or Warrants held by a Person and include receipts, such as Global Depository Receipts (i.e. GDRs).

Units

(e) a Unit is a unit in or a share representing the rights or interests of a Unitholder in a Fund; and

Structured Products

(f) a Structured Product is an instrument comprising rights under a contract where:

(i) the gain or loss of each party to the contract is ultimately determined by reference to the fluctuations in the value or price of property of any description, an index, interest rate, exchange rate or a combination of any of these as specified for that purpose in the contract ("the underlying factor") and is not leveraged upon such fluctuations;

(ii) the gain or loss of each party is wholly settled by cash or set-off between the parties;

(iii) each party is not exposed to any contingent liabilities to any other counterparty; and

(iv) there is readily available public information in relation to the underlying factor;

but excludes any rights under an instrument:

(v) where one or more of the parties takes delivery of any property to which the contract relates;

(vi) which is a Debenture; or

(vii) which is a Contract of Insurance.

Guidance

1. Instruments previously known as Designated Investments are now included within the definition of Structured Products.

2. The reference in Rule A2.2.1(f)(i) to "property of any description" covers tangible or intangible property, including Securities.

A2.3 Definitions of specific derivatives

A2.3.1 For the purposes of Rule A2.1.3:

Options

(a) An Option is an instrument that confers on the holder, upon exercise, rights of the kind referred to in any of the following:

(i) a right to acquire or dispose of:

(A) a Security (other than a Warrant) or contractually based investment;

(B) currency of any country or territory;

(C) a commodity of any kind;

(ii) a right to receive a cash settlement, the value of which is determined by reference to:

(A) the value or price of an index, interest rate or exchange rate; or

(B) any other rate or variable; or

(iii) a right to acquire or dispose of another Option under (i) or (ii).

Guidance

1. For example, a call Option confers on the holder, upon exercise, a right but not an obligation to acquire an issued (i.e. existing) Security, thereby distinguishing it from a Warrant which entitles the holder, upon exercise, to acquire an unissued Share, Debenture or Unit.

2. Options over a 'contractually based investment' referred to in Rule A2.3.1(a)(i)(A) covers Options over Futures.

3. Cash settled Options such as Index Options are covered under Rule A2.3.1(a)(ii). Other cash settled Options that are covered under this Rule include instruments which confer rights determined by reference to climatic variables, inflation or other official economic statistics, freight rates or emission allowances.

4. Options over Options are covered under A2.3.1(a)(iii).

Futures

(b) a Future is an instrument comprising rights under a contract:

(i) for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made, and that contract:

(A) is made or traded on a regulated exchange;

(B) is made or traded on terms that are similar to those made or traded on a regulated exchange; or

(C) would, on reasonable grounds, be regarded as made for investment and not for commercial purposes; or

(ii) where the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in:

(A) the value or price of property of any description; or

(B) an index, interest rate, any combination of these, exchange rate or other factor designated for that purpose in the contract; and

which is wholly settled by cash or set-off between the parties but excludes:

(C) rights under a contract where one or more of the parties takes delivery of any property to which the contract relates;

(D) a contract under which money is received by way of deposit or an acknowledgement of a debt on terms that any return to be paid on the sum deposited or received will be calculated by reference to an index, interest rate, exchange rate or any combination of these or other factors; or

(E) a Contract of Insurance.

Guidance

1. An over the counter (OTC) contract may qualify as a Future under Rule A2.3.1(b)(i)(C) if it can reasonably be regarded as being made for investment and not for commercial purposes. Some of the indicative factors that such a contract is reasonably likely to be made for commercial rather than investment purposes include the following:

a. a party to the contract is the producer or a user of the underlying commodity;

b. the delivery of the underlying commodity is intended to take place within 7 days of the date of the contract;

c. there is no provision made in the contract for margin arrangements; and

d. the terms of the contract are not standardised terms.

2. A contract under Rule A2.3.1(b)(i) can provide for the physical delivery of the underlying commodity or property. Further, the price agreed under such a contract can be by reference to an underlying factor, such as by reference to an index or a spot price on a given date.

3. Contracts for differences (CFDs) fall under the definition in A2.3.1(b)(ii) and may include credit default swaps (CDSs) and forward rate agreements (FRAs). More exotic types of Derivative contracts may also fall within the definition in A2.3.1(b)(ii). These can include weather or electricity derivatives where the underlying factor by reference to which the parties' entitlements are calculated can be the number of days in a period in which the temperature would reach below or above a specified level.

A2.4 Financial instrument declared as an investment

A2.4.1 (1) The DFSA may, subject to (5), declare by written notice any financial instrument or class of financial instruments to be a particular type of an existing Security or Derivative as defined in these Rules or a new type of a Security or Derivative. It may do so on such terms and conditions as it considers appropriate.

(2) The DFSA may exercise the power under (1) either upon written application made by a Person or on its own initiative.

(3) Without limiting the generality of the matters that the DFSA may consider when exercising its power under (1), it must consider the following factors:

(a) the economic effect of the financial instrument or class of financial instruments;

(b) the class of potential investors to whom the financial instrument is intended to be marketed;

(c) the treatment of similar financial instruments for regulatory purposes in other jurisdictions; and

(d) the possible impact of such a declaration on any person issuing or marketing such a financial instrument.

(4) A Person who makes an application for a declaration under (1) must address, as far as practicable, the factors specified in (3).

(5) The DFSA must publish any proposed declaration under (1) for public consultation for at least 30 days from the date of publication, except where:

(a) it declares a financial instrument to be a particular type of an existing Security or Derivative;

(b) it determines that any delay likely to result from public consultation is prejudicial to the interests of the DIFC; or

(c) it determines that there is a commercial exigency that warrants such a declaration being made without any, or shorter than 30 day, public consultation.

Guidance

1. The terms and conditions that may be imposed on a declaration made by the DFSA under Rule A2.4.1(1) can include who should be the Reporting Entity and the type of disclosure requirements that should apply to that Reporting Entity.

2. If any issuer of a new financial instrument has any doubt as to whether that instrument can be included in an Official List of Securities as a particular type of a Security, that Person should first raise those issues with the relevant Authorised Market Institution before making an application to the DFSA for the exercise of the declaration power under this Rule. The DFSA has a discrete power to object to any proposed inclusion of a Security in an Official List of Securities of an Authorised Market Institution (see Article 34(1) of the Markets Law 2012).

APP3 BEST PRACTICE RELATING TO CORPORATE GOVERNANCE AND REMUNERATION

A3.1 Best practice relating to corporate governance

Guidance

Roles of the Governing Body and the senior management

1. The Governing Body should adopt a rigorous process for setting and approving and overseeing the implementation of, the Authorised Person's overall business objectives and risk strategies, taking into account the long term financial safety and soundness of the firm as a whole, and the protection of its customers and stakeholders. These objectives and strategies should be adequately documented and properly communicated to the firm's senior management, Persons Undertaking Key Control Functions (such as the heads of risk management and compliance) and all the other relevant Employees. Senior management should ensure the effective implementation of such strategies in carrying out the day-to-day management of the Authorised Person's business.

2. The Governing Body, with the support of the senior management, should take a lead in setting the "tone at the top", including by setting the fundamental corporate values that should be pursued by the Authorised Person. These should, to the extent possible, be supported by professional standards and codes of ethics that set out acceptable and unacceptable conduct. Such professional standards and codes of ethics should be clearly communicated to those individuals involved in the conduct of business of the firm.

3. The Governing Body should review the overall business objectives and strategies at appropriate intervals (at least annually) to ensure that they remain suitable in light of any changes in the internal or external business and operating conditions.

4. The Governing Body should also ensure that the senior management is effectively discharging the day-to-day management of the Authorised Person's business in accordance with the business objectives and strategies that have been set or approved by the Governing Body. For this purpose, the Governing Body should ensure that there are clear and objective performance goals and measures (and an objective assessment against such criteria at reasonable intervals), for the Authorised Person and the members of its Governing Body and the senior management to ascertain whether the firm's business objectives and risk strategies are implemented effectively and as intended.

Internal governance of the Governing Body

5. The Governing Body should have appropriate practices and procedures for its own internal governance, and ensure that these are followed, and periodically reviewed to ensure their effectiveness and adequacy. These policies and procedures should cover a formal and transparent process for nomination, selection, and removal of the members of the Governing Body (see paragraph 2.2.14 of the RPP Sourcebook), and a specified term of office as appropriate to the roles and responsibilities of the member, particularly to ensure the objectivity of his decision making and judgement. Appropriate succession planning should also form part of the Governing Body's internal governance practices.

6. The Governing Body should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The working procedures of the Governing Body should be well defined.

7. The Governing Body should also ensure that when assessing the performance of the members of the Governing Body and its senior managers and Persons Undertaking Key Control Functions, the independence and objectivity of that process is achieved

through appropriate mechanisms, such as the assignment of the performance assessment to an independent member of the Governing Body or a committee of the Governing Body comprising a majority of independent members. See paragraph 2.2.15(b)(iii) of the RPP Sourcebook for the independence criteria for Authorised Firms and paragraphs 2.2.16 and 2.2.18 of the RPP Sourcebook for the independence criteria for Authorised Market Institutions.

Committees of the Governing Body

8. To support the effective discharge of its responsibilities, the Governing Body should establish its committees as appropriate. The committees that a Governing Body may commonly establish, depending on the nature, scale and complexity of its business and operations, include the audit, remuneration, ethics/compliance, nominations and risk management committees. Where committees are appointed, they should have clearly defined mandates, authority to carry out their respective functions, and the degree of independence and objectivity as appropriate to the role of the committee. If the functions of any committees are combined, the Governing Body should ensure such a combination does not compromise the integrity or effectiveness of the functions so combined. In all cases, the Governing Body remains ultimately responsible for the matters delegated to any such committees.

Independence and objectivity

9. The Governing Body should establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body to promote objectivity and independence in decision making by the Governing Body. See paragraph 2.2.15(b)(iii) of the RPP Sourcebook for independence criteria).

Powers of the Governing Body

10. To be able to discharge its role and responsibilities properly, the Governing Body should have adequate and well-defined powers, which are clearly set out either in the legislation or as part of the constituent documents of the Authorised Person (such as the constitution, articles of incorporation and organisational rules). These should, at a minimum, include the power to obtain timely and comprehensive information relating to the management of the firm, including direct access to relevant persons within the organisation for obtaining information such as its senior management and Persons Undertaking Key Control Functions (such as the head of compliance, risk management or internal audit).

Role of user committees

11. An Authorised Market Institution should consider all relevant stakeholders' interests, including those of its Members and other participants, and issuers, in making major decisions, such as those relating to its system's design, overall business strategy and rules and procedures. An Authorised Market Institution which has cross-border operations should ensure that full range of views across jurisdictions in which it operates is appropriately considered in its decision-making process.

12. In some instances, an Authorised Market Institution may be required under the applicable Rules to undertake public consultation in relation to certain matters, such as any proposed amendments to its Business Rules under AMI Rule 5.6.5.

13. Effective mechanisms for obtaining stakeholder input to the Authorised Market Institution's decision-making process, including where such input is mandatory, include the establishment of, and consultation with, user committees. As opinions among interested parties are likely to differ, an Authorised Market Institution should have clear processes for identifying and appropriately managing the diversity of stakeholder views and any conflicts of interest between stakeholders and the Authorised Market Institution.

14. Where an Authorised Market Institution establishes user committees to obtain stakeholder input to its decision making, to enable such committees to be effective, an Authorised Market Institution should structure such committees to:

    a. have adequate representation of the Authorised Market Institution's Members and other participants, and stakeholders including issuers. The other stakeholders of an Authorised Market Institution may include clients of its Members or participants, custodians and other service providers;

    b. have direct access to the members of the Authorised Market Institution's Governing Body and members of the senior management as appropriate;

    c. not be subject to any direct or indirect influence by the senior management of the Authorised Market Institution in carrying out their functions; and

    d. have clear terms of reference (mandates) which include matters on which the advice of user committees will be sought. For example, the criteria for selecting Members, setting service levels and pricing structures and for assessing the impact on Members and other stakeholders of any proposed material changes to the Authorised Market Institution's existing arrangements (section 4.3 of AMI) and any amendments to its Business Rules (AMI Rule 5.6.4); and

    e. have adequate internal governance arrangements (such as the regularity of committee meetings and the quorum and other operational procedures).

A3.2 Best practice relating to remuneration

Guidance

Development and monitoring of the remuneration structure

1. To ensure that the remuneration structure and strategies of the Authorised Person are appropriate to the nature, scale and complexity of the Authorised Person's business, the Governing Body should take account of the risks to which the firm could be exposed as a result of the conduct or behaviour of its Employees. The Governing Body should play an active role in developing the remuneration strategy and policies of the Authorised Person. A remuneration committee of the Governing Body could play an important role in the development of the firm's remuneration structure and strategy.

2. For this purpose, particularly where remuneration structure and strategies contain performance based remuneration (see also Guidance no 7 and 8 below), consideration should be given to various elements of the remuneration structure such as:

    a. the ratio and balance between the fixed and variable components of remuneration and any other benefits;

    b. the nature of the duties and functions performed by the relevant Employees and their seniority within the firm;

    c. the assessment criteria against which performance based components of remuneration are to be awarded; and

    d. the integrity and objectivity of the process of performance assessment against the set criteria.

3. Generally, not only the senior management but also the Persons Undertaking Key Control Functions should be involved in the remuneration policy-setting and monitoring process to ensure the integrity and objectivity of the process.

Who should be covered by remuneration policy

4. An Authorised Person's remuneration policy should, at a minimum, cover those specified in Rule 5.3.31(1)(c). Accordingly, the members of the Governing Body, the senior management, the Persons Undertaking Key Control Functions and any major risk taking Employees should be included in the firm's remuneration policy. With the exception of the 'senior management', all the other three categories attract their own definitions. Although the expression "senior management" carries its natural meaning, Rule 5.3.30(3) describes the senior management's role as the "day-to-day management of the firm's business…" Guidance No. 3 under Rule 5.3.3 gives further clarification as to who may perform senior management functions.

Remuneration of Persons Undertaking Key Control Functions

5. Any performance based component of remuneration of Persons Undertaking Key Control Functions as well as other Employees undertaking activities under the direction and supervision of those Persons should not be linked to the performance of any business units which are subject to their control or oversight. For example, where risk and compliance functions are embedded in a business unit, a clear distinction should be drawn between the remuneration structure applicable to those Persons Undertaking Key Control Functions and the Employees undertaking activities under their direction and supervision on the one hand and the other Employees in the business unit on the other hand This may be achieved by separating the pools from which remuneration is paid to the two groups of Employees, particularly where such remuneration comprises performance based variable remuneration.

Use of variable remuneration

6. Where an Authorised Person includes in its remuneration structure performance based variable components (such as bonuses, equity participation rights such as share based awards or other benefits), especially if they form a significant portion of the overall remuneration structure, or remuneration of any particular Employees or class of Employees, the Governing Body should ensure that there are appropriate checks and balances relating to their award. This is because, while such performance based remuneration is an effective tool in aligning the interests of the Employees with the interests of the firm, if used without necessary checks and balances, it could lead to inappropriate risk taking by Employees.

7. Therefore, the Governing Body should, when using any performance based variable component in the Authorised Person's remuneration structure, ensure that:

   a. the overall remuneration structure contains an appropriate mix of fixed and variable components. For example, if the fixed component of remuneration of an Employee is very small relative to the variable (eg. bonus) component, it may become difficult for the firm to reduce or eliminate bonuses even in a poor performing financial year;

   b. there are clear and objective criteria for allocating performance based remuneration (see below in Guidance note (7);

   c. there are appropriate adjustments for the material 'current' and 'future' risks associated with the performance of the relevant Employee, as the time horizon in which risks could manifest themselves may vary. For example, where practicable, the measurement of performance should be set in a multi-year framework. If this is not practicable, there should be deferral of vesting of the benefits or retention or claw-back arrangements applicable to such components as appropriate;

d. there are appropriate prudential limits, consistent with the Authorised Person's capital management strategy and its ability to maintain a sound capital base taking account of the internal capital targets or regulatory capital requirements;

e. in the case of Employees involved in the distribution of financial products whose remuneration is commission based, there are adequate controls and monitoring to mitigate marketing which is solely commission driven; and

f. the use of guaranteed bonuses is generally avoided as such payments are not consistent with sound risk management and performance based rewards. However, there may be circumstances where such guaranteed bonuses may be paid to attract new Employees (for example to compensate bonuses forfeited from the previous employer).

Performance assessment

8. The performance criteria applicable, particularly relating to the variable components of remuneration, as well as the performance assessment against such criteria, contribute to the effectiveness of the use of performance based remuneration. Therefore, the Governing Body should ensure that such criteria:

a. are clearly defined and objectively measurable;

b. include not only financial but also non-financial elements as appropriate (such as compliance with regulation and internal rules, achievement of risk management goals as well as compliance with market conduct standards and fair treatment of customers);

c. take account of not only the individual's performance, but also the performance of the business unit concerned and the overall results of the firm and if applicable the Group; and

d. do not treat growth or volume as an element in isolation from other performance measurements included in the criteria.

Severance payments

9. Where an Authorised Person provides discretionary payouts on termination of employment ("severance payments", also called "golden parachutes"), such payment should generally be subject to appropriate limits or shareholder approval. In any case, such payouts should be aligned with the firm's overall financial condition and performance over an appropriate time horizon and should not be payable in the case of failure or threatened failure of the firm, particularly to an individual whose actions may have contributed to the failure or potential failure of the firm.

APP4 CONTRACTS OF INSURANCE

A4.1 Definition of a contract of insurance

A4.1.1 A Contract of Insurance means any contract of insurance or contract of reinsurance.

A4.1.2 The classes of life insurance are as follows:

Class I – Life and annuity

(a) Contracts of insurance on human life or contracts to pay annuities on human life, but excluding, in each case, contracts within (c).

Class II – Marriage and birth

(b) Contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Class III – Linked long term

(c) Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

Class IV – Permanent health

(d) Contracts of insurance providing specified benefits against risks of individuals becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that:

(i) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the individuals concerned, or without limit of time; and

(ii) either are not expressed to be terminable by the Insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Class V - Tontines

(e) Tontines.

Class VI - Capital redemption

(f) Contracts, other than contracts in (a) to provide a capital sum at the end of a term.

Class VII – Pension fund management

(g) (i) pension fund management contracts; or

(ii) contracts of the kind mentioned in (i) that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

A4.1.3 The classes of non-life insurance are as follows:

Class 1 – Accident

(a) Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity, or a combination of both, against risks of the Person insured:

(i) sustaining injury as the result of an accident or of an accident of a specified class;

(ii) dying as the result of an accident or of an accident of a specified class; or

(iii) becoming incapacitated in consequence of disease or of disease of a specified class;

inclusive of contracts relating to industrial injury and occupational disease.

Class 2 – Sickness

(b) Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity, or a combination of the two, against risks of loss to the Persons insured attributable to sickness or infirmity.

Class 3 – Land vehicles

(c) Contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.

Class 4 – Marine, aviation and transport

(d) Contracts of insurance:

(i) against loss of or damage to railway rolling stock;

(ii) upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft;

(iii) upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels; or

(iv) against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.

Class 5 – Fire and other property damage

(e) Contracts of insurance against loss of or damage to property, other than property to which classes 3 and 4 relate, due to fire, explosion, storm, natural forces other than storm, nuclear energy, land subsidence, hail, frost or any event, such as theft.

Class 6 – Liability

(f) Contracts of insurance against risks of the Persons insured incurring liabilities to third parties, including risks of damage arising out of or in connection with the use of motor vehicles on land, aircraft and vessels on the sea or on inland water, including third-party risks and carrier's liability.

Class 7a – Credit

(g) contracts of insurance against risks of loss to the Persons insured arising from the insolvency of debtors of theirs or from the failure, otherwise than through insolvency, of debtors of theirs to pay their debts when due;

Class 7b – Suretyship

(h) (i) contracts of insurance against risks of loss to the Persons insured arising from their having to perform contracts of guarantee entered into by them; or

(ii) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee.

Class 8 – Other

(i) Contracts of Insurance:

(i) against risks of loss to the Persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;

(ii) against risks of loss to the Persons insured attributable to their incurring unforeseen expense;

(iii) against risks of loss to the Persons insured attributable to their incurring legal expenses, including costs of litigation; and

(iv) providing assistance, whether in cash or in kind, for Persons who get into difficulties, whether while travelling, while away from home, while away from their permanent residence, or otherwise.

APP5 TRADE REPOSITORY

A5.1 Requirements applicable to Trade Repositories

Disclosure of market data by Trade Repositories

A5.1.1 A Trade Repository must provide data in line with regulatory and industry expectations to relevant regulatory authorities and the public. Such information must be comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.

Guidance

1. At a minimum, a Trade Repository should provide aggregate data on open positions and transaction volumes and values and categorised data (for example, aggregated breakdowns of trading counterparties, reference entities, or currency breakdowns of products), as available and appropriate, to the public.

2. Relevant regulatory authorities should be given access to additional data recorded in a Trade Repository, including participant-level data, as relevant to the respective mandates and legal responsibilities of the relevant regulatory authority (such as market regulation and surveillance, oversight of exchanges, and prudential supervision or prevention of market misconduct).

Processes and procedures

A5.1.2 A Trade Repository must have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.

Guidance

A Trade Repository should have procedures to facilitate enhanced monitoring, special actions, or official proceedings taken by relevant authorities in relation to data on troubled or failed participants by making relevant information in the Trade Repository available in a timely and effective manner. The provision of data from a Trade Repository to relevant authorities should be supported from a legal, procedural, operational, and technological perspective.

Information systems

A5.1.3 A Trade Repository must have robust information systems that enable it to provide accurate current and historical data. Such Data should be provided in a timely manner and in a format that permits it to be easily analysed.

Guidance

A Trade Repository should collect, store, and provide data to participants, regulatory authorities, and the public in a timely manner and in a format that can facilitate prompt analysis. Data should be made available that permits both comparative and historical analysis of the relevant markets.

The DFSA Rulebook

Authorised Market Institutions

(AMI)

PART 1: INTRODUCTION

1. APPLICATION, INTERPRETATION AND OVERVIEW

1.1 Application

1.1.1 (1) This module applies to:

(a) every Person who carries on, or intends to carry on, either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC;

(b) a Key Individual, or a Person intending to be a Key Individual, of a Person referred to in (a); and

(c) a Controller, or a Person intending to be a Controller, of a Person referred to in (a).

(2) This module also applies to an Authorised Market Institution where it:

(a) carries on, or intends to carry on, the Financial Service of Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility; or

(b) acts as a Trade Repository.

(3) This module does not apply to a Recognised Body.

1.2 Overview of the module

Guidance

The regulatory framework

1. The Regulatory Law 2004 ("the Regulatory Law") and the Markets Law 2012 ("the Markets Law ") provide the framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions.

2. In particular, while Article 41 of the Regulatory Law prohibits a Person from carrying on Financial Services in or from the DIFC, Article 42 of that Law permits Persons duly authorised and Licensed to conduct Financial Services in providing their services.

3. The Markets Law establishes a framework in relation to how an Official List of Securities is maintained and administered by the Listing Authority. Either the DFSA, or an Authorised Market Institution where it has been granted an endorsement on its Licence to do so, may maintain an Official List of Securities.

4. The GEN module prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution and the detailed requirements that must be met by such firms. In addition, the GEN module also sets out the circumstances under which an Authorised Market Institution may be authorised to carry out certain functions by way of an endorsement on its Licence.

5. The RPP Sourcebook contains, amongst other things, the detailed policies and procedures relating to how the DFSA exercises its licensing and supervisory functions relating to Authorised Market Institutions.

The AMI module

6. The AMI Module is comprised of four Parts containing 12 chapters and three Appendices.

7. Part 1 contains chapter 1, which sets out the application provisions and the overview of the AMI module.

8. Part 2 contains chapters 2 and 3. Chapter 2 sets out the requirements relating to application for a Licence to Operate an Exchange or Clearing House (or both) and an endorsement to operate a Multilateral Trading Facility or to maintain an Official List of Securities. Chapter 3 sets out the assessment of application related requirements, including application to obtain Key Individual status of an Authorised Market Institution.

9. Part 3 contains chapters 4, 5, 6 and 7. These chapters set out the substantive requirements (called the "Licensing Requirements") that must be met by a Person at the point of grant of a Licence to be an Authorised Market Institution and thereafter on an on-going basis. Chapter 4 contains the provisions which prescribe what the Licensing Requirements are, and the procedures an Authorised Market Institution must follow in order to make any material changes to the arrangements it has in place to meet the Licensing Requirements. Chapter 5 contains the Licensing Requirements that are common to both Exchanges and Clearing Houses. Chapter 6 contains the additional Licensing Requirements that are specific to Exchanges and chapter 7 contains the additional Licensing Requirements that are specific to Clearing Houses.

10. Part 4 contains chapters 8, 9, 10, 11 and 12. These chapters set out a range of miscellaneous provisions covering the requirements relating to the approval of Controllers of Authorised Market Institutions (chapter 8), the provisions governing the supervision of Authorised Market Institutions (chapter 9), the procedures for withdrawal of a Licence or endorsement (chapter 10), appeal procedures from the decisions of the DFSA (chapter 11) and the transitional provisions (chapter 12).

11. There are three Appendices, Appendix 1 contains the requirements relevant to testing of technology systems, Appendix 2 contains the requirements relating to the use of price information providers and Appendix 3 contains the contract delivery specifications applicable to Derivative contracts which require physical delivery.

PART 2: APPLICATION AND AUTHORISATION

2. APPLICATION FOR A LICENCE OR ENDORSEMENT

2.1 Application

2.1.1 (1) This chapter applies to a Person who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC.

(2) This chapter also applies to a Person referred to in (1), who intends to obtain an endorsement on its Licence to:

(a) carry on the Financial Service of Operating an Alternative Trading System to the extent that such activities constitute operating a Multilateral Trading Facility; or

(b) act as a Trade Repository.

(3) A Person who intends to carry on the Financial Services and activities referred to in (1) and (2) is referred to in this chapter as an "applicant" unless the context otherwise provides.

(4) This chapter also applies to an Authorised Market Institution applying to change the scope of its Licence, or where a condition or restriction has previously been imposed on its Licence, to have such a condition or restriction varied or withdrawn. Such an Authorised Market Institution may be referred to as an "applicant" in this chapter.

Guidance

1. The activity of operating a Multilateral Trading Facility ("MTF") is an activity that falls within the definition of the Financial Service of Operating an Alternative Trading System (see GEN Rule 2.22.1). A Person needs to be Licensed as an Authorised Firm to carry on that Financial Service. However, pursuant to GEN Rule 2.2.12, a holder of a Licence to Operate an Exchange may also operate an MTF if it has obtained an endorsement on its Licence permitting it to do so.

2. Acting as a Trade Repository is not a Financial Service, and may be carried on by an Authorised Firm or Authorised Market Institution with an endorsement on its Licence permitting it to do so (see GEN Rule 2.2.13).

3. A new applicant for a Licence or an existing holder of a Licence may apply to have an endorsement on its Licence to operate a Multilateral Trading Facility or to maintain a Trade Repository.

2.2 Application for a Licence

2.2.1 An applicant who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House must apply to the DFSA for a Licence in accordance with the Rules in this section and chapter 3.

2.2.2 The DFSA will only consider an application for a Licence to Operate an Exchange or Operate a Clearing House from a Person:

(a) who is a Body Corporate; and

(b) who is not an Authorised Firm or an applicant to be an Authorised Firm.

2.2.3 A Person applying for a Licence must submit a written application to the DFSA:

(a) demonstrating how the applicant intends to satisfy the Licensing Requirements specified in Part 3 and any other applicable requirements; and

(b) with copies of any relevant agreements or other information in relation to the application.

2.3 Application for an endorsement

2.3.1 The DFSA will only consider an application for an endorsement to operate a Multilateral Trading Facility from a Person who holds a Licence to Operate an Exchange or an applicant for such a Licence.

2.3.2 An applicant for an endorsement to operate a Multilateral Trading Facility must submit an application to the DFSA:

(a) demonstrating how it intends to satisfy the requirements specified in Rule 4.2.1(3); and

(b) with copies of any relevant agreements or other information in relation to the application.

Guidance

1. Under GEN Rule 2.2.11(c), an Authorised Market Institution Licensed to Operate an Exchange may apply to obtain an endorsement to carry on the activity of operating a Multilateral Trading Facility.

2. An Exchange with an endorsement to operate an MTF needs to meet, on an on-going basis, the applicable Licensing Requirements under Rule 4.2.1(3). Accordingly, when an Exchange wishes to obtain such an endorsement, it needs to be able to demonstrate to the DFSA that it can meet each of the Licensing Requirements with respect to the proposed MTF. For example, it should demonstrate how the IT systems and human resources available to it would be utilised for the purposes of operating the MTF.

2.3.3 The DFSA will consider an application for an endorsement to act as a Trade Repository from an Authorised Market Institution, or an applicant for such a Licence.

2.3.4 An applicant for an endorsement to act as a Trade Repository must submit an application to the DFSA:

(a) demonstrating how it intends to satisfy the requirements specified in App 5 in GEN; and

(b) including copies of any relevant agreements or other information in relation to the application.

2.4 Application for a change of scope of a Licence

2.4.1 An Authorised Market Institution applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA with written details of the proposed changes including an assessment of how it intends to satisfy the Licensing Requirements in relation to the new Licence scope.

Guidance

1. Where an Authorised Market Institution applies to change the scope of its Licence, it should provide at least the following information:

   a. particulars of the new activities requiring a variation to the scope of Licence, and the date of the proposed commencement of such activities;

   b. a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;

   c. details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the Authorised Market Institution will be able to comply with any additional regulatory requirements including the applicable Licensing Requirements; and

   d. if the Authorised Market Institution is reducing its activities and it has existing Members who may be affected by the cessation of a Financial Service, details of any transitional arrangements.

2. If an application for a change of scope of Licence involves carrying on a new Financial Service, the application will be assessed against all the requirements applicable to the relevant Financial Service.

3. AUTHORISATION

3.1 Application

3.1.1 This chapter applies to every Person who is an applicant for:

(a) a Licence to be an Authorised Market Institution;

(b) an endorsement to:

(i) maintain an Official List of Securities;

(ii) operate a Multilateral Trading Facility; or

(iii) act as a Trade Repository; or

(c) Key Individual status.

Guidance

1. This chapter outlines the DFSA's authorisation requirements for an Authorised Market Institution and its Key Individuals, as well as the process for an Authorised Market Institution to obtain an endorsement on its Licence to maintain an Official List of Securities, operate a Multilateral Trading Facility or act as a Trade Repository.

2. This chapter should be read in conjunction with the RPP Sourcebook, which sets out the DFSA's general regulatory policy and processes. See chapter 2 of the RPP sourcebook.

3.2 Assessment

3.2.1 (1) In order to become authorised to carry on one or both of the Financial Services of Operating an Exchange or Operating a Clearing House, the applicant must demonstrate to the satisfaction of the DFSA that it can meet the relevant Licensing Requirements specified in chapters 5, 6 and 7, as appropriate to the Financial Services it proposes to carry on, both at the point of the grant of the Licence and thereafter on an on-going basis.

(2) In order to obtain an endorsement on its Licence to:

(a) maintain an Official List of Securities;

(b) operate a Multilateral Trading Facility; or

(c) act as a Trade Repository,

the applicant must demonstrate to the satisfaction of the DFSA that it can meet the requirements applicable to Persons undertaking the relevant activities, both at the point of the grant of the endorsement and thereafter on an on-going basis.

Guidance

1. The Licensing Requirements are specified in chapters 5, 6 and 7 of Part 3 of this module. These include the general requirements applicable to all Authorised Market Institutions (chapter 5), and the additional requirements applicable to specific types of activities of Authorised Market Institutions (chapters 6 and 7).

2. Where an Authorised Market Institution (or an applicant for a Licence) seeks to obtain an endorsement on its Licence, additional requirements relevant to the type of endorsement need to be satisfied (see, for example, App 5 of GEN for the requirements relating to Trade Repositories).

3. Currently, the function of maintaining an Official List of Securities is performed by the DFSA. However, the DFSA has the power, pursuant to Article 29 of the Markets Law, to grant an Authorised Market Institution an endorsement on its Licence permitting it to maintain an Official List of Securities.

4. Section 3.6 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when making an assessment under Rule 3.2.1.

Inquiries and information

3.2.2 In assessing an application for a Licence or an endorsement on a Licence, the DFSA may:

(a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;

(b) require the applicant to provide additional information;

(c) require the applicant to have information on how it intends to ensure compliance with a particular requirement;

(d) require any information provided by the applicant to be verified in any way that the DFSA specifies; and

(e) take into account any information which it considers relevant.

3.2.3 (1) In assessing an application for a Licence, the DFSA may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.

(2) Where the DFSA thinks it appropriate, it may treat an application made by one legal form or Person as having been made by the new legal form or Person.

3.3 Obtaining Key Individual status

Guidance

Pursuant to Rule 5.3.1, every Authorised Market Institution must have Key Individuals appointed to perform certain Regulatory Functions. Key Individuals appointed by an Authorised Market Institution to perform Regulatory Functions have to be approved by the DFSA before they are permitted to carry on such functions. This section sets out the matters that will be considered by the DFSA in approving such Key Individuals.

3.3.1 (1) In regard to an application for approval for an individual to be granted Key Individual status, both the Authorised Market Institution and the individual must complete the appropriate form in AFN.

(2) An Authorised Market Institution must be satisfied that the individual with respect to whom an application is submitted:

(a) is competent in his proposed role;

(b) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and

(c) is able to apply his knowledge.

Guidance

See paragraph 2.2.16(j) and section 2-3 of the RPP sourcebook for the details of the assessment which an Authorised Market Institution is expected to undertake.

3.3.2 In assessing whether an individual is fit and proper to be granted Key Individual Status to carry out Regulatory Functions, the DFSA may:

(a) make any enquiries which it considers appropriate, including enquiries independent of the applicant;

(b) require the Authorised Market Institution or the individual to provide additional information;

(c) require any information provided by the Authorised Market Institution or the individual to be verified in any way specified by the DFSA; and

(d) take into account any information which it considers appropriate.

Guidance

Section 2.3 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when making an assessment referred to in Rule 3.3.2.

PART 3: LICENSING REQUIREMENTS

4. GENERAL

4.1 Application

4.1.1 This chapter applies to a Person who is an Authorised Market Institution or an applicant for such a Licence.

4.2 Licensing Requirements

4.2.1 (1) An Authorised Market Institution must have adequate arrangements both at the time a Licence is granted and at all times thereafter to meet the applicable Licensing Requirements as specified in (2).

(2) The Licensing Requirements are:

(a) the general requirements specified in chapter 5, which are applicable to all Authorised Market Institutions;

(b) the additional requirements specified in chapter 6, which are applicable to an Authorised Market Institution Operating an Exchange; and

(c) the additional requirements specified in chapter 7, which are applicable to an Authorised Market Institution Operating a Clearing House.

(3) Where an Authorised Market Institution operates a Multilateral Trading Facility pursuant to an endorsement on its Licence, the Licensing Requirements specified in (2)(a) and (b) apply with respect to the operation of such a facility as if that facility is an Exchange.

4.3 Approval of material changes

4.3.1 (1) An Authorised Market Institution may, subject to (2), only make material changes to its existing arrangements to meet the Licensing Requirements where it has obtained the DFSA's prior approval to do so in accordance with the requirements in this section.

(2) In the case of any changes to the Business Rules of an Authorised Market Institution, such changes must be made in accordance with the requirements in section 5.6.

Guidance

1. Existing arrangements to meet the Licensing Requirements are those arrangements which an Authorised Market Institution has in place at the time it is initially granted a Licence, and includes any subsequent changes made to such arrangements in accordance with the requirements in this Rule.

2. If an Authorised Market Institution is unsure, it may seek the DFSA views on whether a proposed change to its existing arrangements constitutes a material change. Such clarification should be sought as soon as possible when it becomes reasonably apparent

to the Authorised Market Institution that some changes to its existing arrangements are needed.

4.3.2 (1) An Authorised Market Institution proposing to make material changes to its existing arrangements to meet the Licensing Requirements must provide to the DFSA a notice setting out:

(a) the proposed change;

(b) the reasons for the proposed change; and

(c) what impact the proposed change might have on its ability to discharge its Regulatory Functions.

(2) The notice referred to in (1) must, subject to (3), be submitted to the DFSA at least 30 days before the proposed change is expected to come into effect.

(3) The DFSA may, in circumstances where a material change to existing arrangements is shown on reasonable grounds to be urgently needed, accept an application for approval of such a change on shorter notice than the 30 days referred to in (2).

4.3.3 The DFSA will, upon receipt of a notice referred to in Rule 4.3.2, approve or not approve the proposed change as soon as practicable and in any event within 30 days of the receipt of the notice, unless that period has been extended by notification to the applicant.

4.3.4 Where the DFSA does not approve a proposed change, it must give to the Authorised Market Institution reasons for its decision. Such a decision may be appealed to the Regulatory Appeals Committee.

Guidance

1. The period of 30 days will commence from the time the DFSA has received all the relevant information to assess the application.

2. An Authorised Market Institution should consider submitting its application for DFSA approval well in advance of the date on which the proposed change is expected to come into effect, especially in the case of significant material changes to its existing arrangements, to allow the DFSA sufficient time to consider the application. Such timely submission would generally tend to avoid any extension of time being sought by the DFSA to assess properly the impact of a proposed change, due to its nature, scale and complexity. Such an extension would be made in consultation with the applicant.

3. If a proposed material change remains not approved by the DFSA within the 30 day period and the DFSA has not expressly extended the period beyond 30 days, an Authorised Market Institution may treat the proposed change as not being approved by the DFSA, and on that basis, appeal such a decision to the Regulatory Appeals Committee.

4. An Authorised Market Institution may use the results of consultation with its user committees to identify the impact the proposed change would have on its ability to meet the Licensing Requirements, including any impact such a change would have on its Members and other stakeholders. See GEN App 3 – Guidance No. 9 – 12 for best practice relating to user committees.

5. GENERAL LICENSING REQUIREMENTS APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

5.1 Application

5.1.1 This chapter applies to an Authorised Market Institution and its Key Individuals.

5.2 Organisational Requirements

Guidance

Every Authorised Market Institution must comply with the requirements in GEN chapter 5, which relate to the management and systems and controls, which form an essential part of the organisational requirements of an Authorised Market Institution. The requirements set out below augment the organisational requirements applicable to an Authorised Market Institution set out in GEN chapter 5.

Fitness and propriety

5.2.1 An Authorised Market Institution must:

(a) be fit and proper;

(b) be appropriately constituted; and

(c) take appropriate measures to:

(i) satisfy the Licensing Requirements; and

(ii) perform its Regulatory Functions.

Guidance

See Chapter 5 of GEN and paragraphs 2-2-16 to 2-2-18 of the RPP Sourcebook which set out matters which the DFSA takes into consideration when making an assessment under Rule 5.2.1.

Human resources

5.2.2 (1) An Authorised Market Institution must have and maintain sufficient human resources to operate and supervise its facilities.

(2) An Authorised Market Institution must ensure, as far as reasonably practicable, that its Employees are:

(a) fit and proper;

(b) appropriately trained for the duties they perform; and

(c) trained in the requirements of the legislation applicable in the DIFC.

(3) An Authorised Market Institution must:

(a) have appropriate arrangements in place to ensure that its Employees maintain their fitness and propriety; and

(b) keep records of the assessment process undertaken for each Employee for a minimum of six years from the date on which an individual ceases to be an Employee.

Guidance

1. In assessing whether an Authorised Market Institution's systems and controls are adequate to ensure the on-going maintenance of fitness and propriety of its Employees, the DFSA will take into account:

   a. the distribution of duties and responsibilities among its Key Individuals and the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;

   b. the staffing and resources of the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;

   c. the arrangements made to enable Key Individuals to supervise the departments for which they are responsible;

   d. the arrangements for supervising the performance of Key Individuals and their departments; and

   e. the arrangements by which the Governing Body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of, Key Individuals under review.

2. See also GEN Rule 5.3.18 which sets out the requirements relating to the suitability of Employees and section 2.3 of the RPP Sourcebook which sets out in more detail the matters which the DFSA takes into consideration when making its assessment under GEN Rule 5.3.18 and Rule 5.2.2 above.

Governance

5.2.3 (1) An Authorised Market Institution must have:

(a) a corporate governance framework appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Authorised Market Institution's business and to protect the interests of its stakeholders; and

(b) a remuneration structure and strategies which are well aligned with the long term interests of the Authorised Market Institution, and appropriate to the nature, scale and complexity of its business.

(2) Without limiting the generality of the requirements in GEN chapter 5, an Authorised Market Institution must ensure that its Governing Body has a sufficient number of independent members at all times.

Guidance

1. Detailed corporate governance and remuneration related requirements applicable to an Authorised Market Institution are contained in GEN Rules 5.3.30 and 5.3.31. See the

best practice standards relating to corporate governance and remuneration set out under those Rules and App 3 of GEN. These are designed to promote sound governance and remuneration practices whilst providing flexibility for application taking into account the nature, scale and complexity of operations of an Authorised Market Institution.

2. The independence criteria for the members of the Governing Body are set out in paragraphs 2.2.16 to 2.2.18 of the RPP sourcebook.

5.3 Regulatory Functions and Key Individuals

Regulatory Functions and Key Individuals

5.3.1 (1) Pursuant to Article 23(2)(f)(ii) and (iii) of the Regulatory Law, the DFSA prescribes the Regulatory Functions of an Authorised Market Institution as those functions which directly contribute to the satisfaction by the Authorised Market Institution of its Licensing Requirements.

(2) Without limiting the generality of the Regulatory Functions prescribed in (1), an Authorised Market Institution must, for the purpose of proper discharge of its Regulatory Functions, have at all times individuals appointed to carry out the functions of the:

(a) Governing Body;

(b) Senior Executive Officer;

(c) Finance Officer;

(d) Compliance Officer;

(e) Risk Officer;

(f) Money Laundering Reporting Officer; and

(g) Internal Auditor.

(3) An individual appointed by an Authorised Market Institution to carry on any one or more functions specified in (2)(a) to (g) is a Key Individual of the Authorised Market Institution.

5.3.2 (1) Subject to (2), (3) and (4), an Authorised Market Institution must not permit a Key Individual to carry on any Regulatory Function for or on behalf of the Authorised Market Institution, and a Key Individual must not carry out such a function, unless the particular individual:

(a) has been assessed by the Authorised Market Institution to be competent to perform the relevant Regulatory Function; and

(b) has been given the DFSA's approval to carry out that function.

(2) The prohibition in (1) does not apply to a registered insolvency practitioner where such a practitioner performs any Regulatory Function and does so subject to the restrictions in Article 88 of the Insolvency Law 2009 and if the practitioner is:

(a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 8 of the Insolvency Law 2009;

(b) appointed as a receiver or administrative receiver within the meaning of Article 14 of the Insolvency Law 2009;

(c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009;

(d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 32 of the Insolvency Law 2009; or

(e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Articles 58 and 59 of the Insolvency Law 2009.

(3) The prohibition in (1) does not apply to an insolvency practitioner where such a practitioner performs any Regulatory Function and does so in accordance with the applicable requirements equivalent to those specified in (2)(a) – (e) in another jurisdiction.

(4) The prohibition in (1) does not apply to an individual appointed to act as a manager of the business of an Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law.

Guidance

1. See section 2.3 of the RPP sourcebook for details of the assessment that the Authorised Market Institution and the DFSA undertake to assess whether an individual is fit and proper to undertake Key Individual functions.

2. An Authorised Market Institution may apply for the DFSA's in-principle approval of an individual as soon as the individual is identified as a potential appointee to avoid any delays in formalising the appointment. However, an Authorised Market Institution should submit to the DFSA, as far as reasonably practicable, all the relevant information, including the results of its own assessment, when seeking such in-principle approval.

Members of the Governing Body

5.3.3 Every member of the Governing Body of an Authorised Market Institution carries on the function of a Key Individual.

Senior Executive Officer

5.3.4 The Senior Executive Officer function is carried out by an individual who:

(a) has, either alone or jointly with the other Key Individuals, the ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Market Institution's Financial Services carried on in or from the DIFC; and

(c) is either a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Finance Officer

5.3.5 The Finance Officer function is carried out by an individual who:

(a) has the overall responsibility for the Authorised Market Institution's compliance with the financial resources requirements in Rule 5.5.4; and

(b) is either a Member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Compliance Officer

5.3.6 The Compliance Officer function is carried out by an individual who:

(a) has the overall responsibility for the Authorised Market Institution's compliance with the Licensing Requirements and other applicable requirements in carrying out Financial Services; and

(b) is either a Member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Risk Officer

5.3.7 The Risk Officer function is carried out by an individual who:

(a) has the overall responsibility for the risk management function in relation to the Financial Services carried on by the Authorised Market Institution; and

(b) is a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Money Laundering Reporting Officer

5.3.8 The Money Laundering Reporting Officer function is carried out by an individual who:

(a) has the overall responsibility for the Authorised Market Institution's compliance with the requirements in Rule 5.11.2, AML and any other relevant anti money laundering legislation applicable in the DIFC; and

(b) is either a member of the Governing Body or a Senior Manager of the Authorised Market Institution.

Internal Auditor

5.3.9 The Internal Auditor function is carried out by an individual who is responsible for the internal audit matters in relation to the Financial Services carried on by the Authorised Market Institution.

Residency of Key Individuals

5.3.10 The Key Individual functions of a Senior Executive Officer, Compliance Officer and Money Laundering Reporting Officer must be carried out by an individual resident in the U.A.E.

Combining roles

5.3.11 (1) To the extent practicable, an Authorised Market Institution must not assign to its Key Individuals any commercial functions which conflict with their Key Individual functions or which impair, or are likely to impair, their ability to perform the relevant functions.

(2) Before an Authorised Market Institution assigns to a Key Individual any commercial functions, the Authorised Market Institution must:

(a) form a view on a reasonable basis that the commercial functions to be assigned to any Key Individual do not, as far as reasonably practicable, conflict with the relevant Key Individual functions or impair his ability to discharge those functions effectively; and

(b) to the extent there are such conflicts inherent in the relevant functions, there are adequate procedures and controls to mitigate such conflicts.

(3) The Authorised Market Institution must maintain records of its decisions and procedures as applicable under (2) above.

Guidance

The DFSA does not expect Key Individuals who are Persons undertaking control functions such as those relating to risk, compliance and audit to be assigned any functions or roles which are to further the Authorised Market Institution's commercial interests or objectives (such as business promotional activities) .

5.4 Conflicts of interests

5.4.1 Without limiting the generality of the obligations under section 5.2 of GEN, an Authorised Market Institution must take all reasonable steps to ensure that any conflicts of interest, including those:

(a) between itself and its shareholders, Members or other users of its facilities; and

(b) between its Members and other users of its facilities, and, among themselves,

are promptly identified and then prevented or managed, or disclosed, in a manner that does not adversely affect the sound functioning and operation of the Authorised Market Institution.

5.4.2 Without limiting the generality of the requirement in Rule 5.4.1, an Authorised Market Institution must establish and maintain adequate policies and procedures to ensure that its Employees do not undertake personal account

transactions in Investments in a manner that creates or has the potential to create conflicts of interest.

5.4.3 An Authorised Market Institution must establish a code of conduct that sets out the expected standards of behaviour for its Employees, including clear procedures for addressing conflicts of interest. Such a code must be:

(a) binding on Employees; and

(b) to the extent appropriate and practicable, made publicly available.

Guidance

1. In assessing whether an Authorised Market Institution's policies and procedures are adequate to address conflicts of interests, the DFSA will consider whether those include:

    a. policies on the use of confidential information received in carrying out its Regulatory Functions to ensure it is only used for proper purposes;

    b. arrangements for transferring decisions or responsibilities to alternates in individual cases;

    c. arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters to which the conflict is relevant; and

    d. requirements and procedures included in contracts of employment, staff rules, letters of appointment for members of the Governing Body and other Key Individuals and other guidance given to individuals on handling conflicts of interest relating to:

        i. the need for prompt disclosure of a conflict of interest to enable others who are not affected by the conflict to assist in deciding how it may need to be addressed;

        ii. the circumstances in which a general disclosure of a conflict of interest in advance may be sufficient;

        iii. the circumstances in which a general advance disclosure may not be adequate;

        iv. the circumstances in which it would be appropriate for a conflicted individual to withdraw from any involvement in the matter concerned, without disclosing the interests; and

        v. the circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-making process or from access to relevant information.

2. See also the best practice standards relating to corporate governance and remuneration standards set out under in GEN Rules 5.3.30 and 5.3.31 and GEN App 3, which cover conflicts of interest issues that need to be addressed in order to promote sound governance and remuneration practices within an Authorised Market Institution.

Performance of Regulatory Functions

5.4.4 An Authorised Market Institution must take all reasonable steps to ensure that the performance of its Regulatory Functions is not adversely affected by its commercial interests.

5.4.5 For the purposes of the requirement in Rule 5.4.4, an Authorised Market Institution must have adequate systems and controls, including policies and procedures, to ensure that the pursuit of its commercial interests (including its profitability) does not adversely impact on the performance of its Regulatory Functions.

Guidance

An Authorised Market Institution should have systems for identifying, and drawing to the attention of its senior management, situations where its commercial interests conflict, or may potentially conflict, with the proper performance of its Regulatory Functions. This would enable its senior management to take appropriate steps to ensure that such conflicts do not adversely affect the proper performance by the Authorised Market Institution of its Regulatory Functions. In particular, senior management should ensure that adequate human, financial and other resources (both in quantity and quality) are provided for risk management, regulatory, compliance and other similar functions.

5.5 Operational efficiency and resilience

Systems and controls

5.5.1 (1) Without limiting the generality of the obligations relating to systems and controls in section 5.3 of GEN, an Authorised Market Institution must ensure that its systems and controls are:

(a) adequate to ensure that its operations are conducted at all times in accordance with the applicable requirements, including legislation;

(b) sufficiently flexible and robust to ensure continuity and regularity in the performance of its functions relating to the operation of its facilities; and

(c) appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), the systems and controls of an Authorised Market Institution must be adequate to enable it to meet the Licensing Requirements on an on-going basis. In particular, they must include adequate arrangements in relation to:

(a) the assessment and management of all risks;

(b) financial and technology resources;

(c) the fitness and propriety of its Employees;

(d) the operation of its functions;

(e) outsourcing;

(f) the safeguarding and administration of assets belonging to its Members and other participants on its facilities;

(g) the transmission of information to Members and other participants on its facilities; and

(h) the supervision and monitoring of transactions on its facilities.

(3) An Authorised Market Institution must undertake regular reviews of its systems and controls to ensure that they remain adequate and operate as intended.

Guidance

The systems and controls requirements in Rule 5.5.1 augment the systems and controls requirements in GEN chapter 5.

5.5.2 Risk management

Guidance

1. An Authorised Market Institution is subject to the risk management requirements in GEN Rules 5.3.5 – 5.3.7. Additional risk management requirements are prescribed for Authorised Market Institutions Operating a Clearing House in sections 7.2 and 7.3.

2. The individual appointed pursuant to GEN Rule 5.3.7(1) to advise the Governing Body and the senior management of the Authorised Market Institution relating to risks and management of such risks is the Key Individual performing the function of the Risk Officer pursuant to Rule 5.3.7; Key Individuals.

3. In assessing the adequacy of an Authorised Market Institution's systems and controls for identifying, assessing and managing risks, the DFSA may also have regard to the extent to which such systems and controls enable the Authorised Market Institution to:

   a. identify all the general, operational, legal and market risks wherever they arise in its activities;

   b. measure and control the different types of risk;

   c. allocate responsibility for risk management to persons with appropriate levels of knowledge and expertise; and

   d. provide sufficient and reliable information to Key Individuals and, where relevant, the Governing Body of the Authorised Market Institution.

4. As part of assessing the adequacy of risk controls, the DFSA will also consider how internal and external audits operate in the context of systems and controls. In doing so the following factors may be considered:

   a. the size, composition and terms of reference of any audit committee of the Authorised Market Institution;

   b. the frequency and scope of external audit;

   c. the provision and scope of internal audit;

   d. the staffing and resources of the Authorised Market Institution's internal audit department;

e. the internal audit department's access to the Authorised Market Institution's records and other relevant information; and

f. the position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the Authorised Market Institution.

5. In addition, the DFSA will also consider the adequacy of the risk management function, in particular:

a. the access which the individuals performing risk management function have to the Authorised Market Institution's records and other relevant information; and

b. the position, responsibilities and reporting lines of the risk management department and its relationship with other departments of the Authorised Market Institution.

Outsourcing

5.5.3 (1) Without limiting the generality of the requirements in GEN Rules 5.3.21 and 5.3.22, an Authorised Market Institution must, before entering into any material outsourcing arrangements with a service provider, obtain the DFSA's prior approval to do so.

(2) For avoidance of doubt, the requirement in (1) applies to any outsourcing arrangements which were not in existence at the time the Authorised Market Institution was granted its Licence.

(3) In order to obtain the DFSA's prior approval for outsourcing arrangements referred to in (1), an Authorised Market Institution must follow those procedures for obtaining the DFSA's prior approval for material changes specified in Rule 4.3.1(1).

Guidance

1. The requirements in GEN Rules 5.3.22 and 5.3.23 set out the requirements applicable when an Authorised Market Institution outsources its functions and activities.

2. In assessing the adequacy of an Authorised Market Institution's systems and controls for identifying, assessing, and managing risks arising from functions which are outsourced, the DFSA will have regard to:

a. due diligence procedures for selecting service providers and monitoring the performance of the relevant functions by them;

b. whether the Authorised Market Institution has in place legally binding contracts with its service providers;

c. the business continuity and disaster recovery arrangements of the Authorised Market Institution's service provider;

d. whether the security and confidentiality of information provided to the service provider of the Authorised Market Institution is guaranteed in accordance with the applicable legislation;

e. the concentration of outsourcing functions with one or more service providers;

f. the agreed procedures for terminating the outsourcing arrangements; and

g. whether the access to books and records of the service providers is granted to the Authorised Market Institution and the DFSA, including rights of inspection.

3. If an Authorised Market Institution wishes to make any material changes to its outsourcing arrangements which were in existence at the time of the grant of its Licence, or any subsequent outsourcing arrangements made in accordance with the requirements in Rule 5.5.3, such changes require the DFSA's prior written approval pursuant to Rule 4.3.1(1).

Financial resources

5.5.4 (1) An Authorised Market Institution must, subject to (3) and (4), have and maintain at all times:

(a) the minimum financial resource requirement in (2); and

(b) additional financial resources of a type acceptable to the DFSA which are adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due.

(2) The minimum financial resource requirement referred to in (1)(a) is:

(a) an amount equal to one half of the estimated gross operating costs of the Authorised Market Institution for the next twelve-month period; or

(b) such other capital amount as may be specified by the DFSA.

(3) The assets held by an Authorised Market Institution for the purposes of meeting the financial resources requirements in (1):

(a) must be of high quality and sufficiently liquid in order to allow the Authorised Market Institution to meet its current and projected operating expenses under a range of adverse scenarios, including in adverse market conditions; and

(b) must be held, where it comprises cash, by an entity which is a Bank, or a financial institution authorised and supervised by a Financial Services Regulator acceptable to the DFSA with respect to the activity of deposit taking.

(4) An Authorised Market Institution must have systems and controls to enable it to determine and monitor whether its financial resources are sufficient for the purposes of the requirement in (1). For this purpose, the systems and controls of an Authorised Market Institution must address the following factors, with any other factors that are relevant and appropriate to its operations model:

(a) the nature, scale, and complexity of the activities and risks associated with its operations;

(b) the operational, counterparty, market and settlement risks to which it is exposed;

(c) the amount, composition and legal position of its available financial resources; and

(d) its ability to access additional financial resources if required.

(5) An Authorised Market Institution must monitor and manage the concentration of credit and liquidity exposures to commercial banks and clearing Members.

Guidance

1. The minimum financial resource requirement under Rule 5.5.4(1) is designed to ensure that an Authorised Market Institution not only has sufficient financial resources to meet its liabilities as they fall due, but also to allow, if circumstances require, for the orderly wind-down of the Authorised Market Institution's business, while still allowing the institution to meet the applicable requirements, including conditions on its Licence.

2. The systems and controls should enable the Authorised Market Institution to assess whether the financial resources required for it to conduct its affairs are in place at all times. Such assessments should be made periodically or after any significant change or event, whether internal or external, that would have an impact on the operations of the Authorised Market Institution. These assessments are necessary to demonstrate to the DFSA that the Licensing Requirements are being satisfied on an on-going basis.

3. In determining whether to set a minimum capital amount pursuant to Rule 5.5.4(2)(b), the DFSA will take into account the risks that the Authorised Market Institution poses to the DIFC market and the products which are, or are intended to be, traded, cleared or settled.

Technology resources

5.5.5 (1) An Authorised Market Institution must have sufficient technology resources to operate, maintain and supervise its facilities.

(2) The Authorised Market Institution must be able to satisfy the DFSA that its technology resources are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain.

(3) An Authorised Market Institution must ensure that its Members and other participants on its facilities have sufficient technology resources which are compatible with its own.

(4) For the purposes of meeting the requirement in (1), an Authorised Market Institution must have adequate procedures and arrangements for the evaluation, selection and on-going monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

(a) problem management and system change;

(b) testing information technology systems before live operations in accordance with the requirements in Rule 5.5.6;

(c) monitoring and reporting on system performance, availability and integrity; and

(d) adequate measures to ensure:

(i) the information technology systems are resilient and not prone to failure;

(ii). business continuity in the event that an information technology system fails;

(iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and

(iv) the integrity of data forming part of, or being processed through, information technology systems.

(5) An Authorised Market Institution must meet the applicable requirements in App 1 for the purposes of:

(a) testing the adequacy and effectiveness of its own information technology systems; and

(b) assessing the adequacy and effectiveness of information technology systems of its Members.

Guidance

1. In assessing an Authorised Market Institution's systems and controls used to operate and carry on its functions, the DFSA recognises that an Authorised Market Institution is likely to have significant reliance on its information technology systems. In assessing the adequacy of these systems, the DFSA will consider:

   a. the organisation, management and resources of the information technology department of the Authorised Market Institution;

   b. the arrangements for controlling and documenting the design, development, implementation and use of technology systems; and

   c. the performance, capacity and reliability of information technology systems.

2. In particular, when assessing whether an Authorised Market Institution has adequate information technology resourcing, the DFSA will consider:

   a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

   b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

Regular review of systems and controls

5.5.6 (1) An Authorised Market Institution must undertake regular review and updates of its information technology systems and controls as appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), an Authorised Market Institution must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

Guidance

Through the use of such testing methodologies, the Authorised Market Institution should be able to ensure, amongst other things, that:

a. its systems and controls are compatible with its operations and functions;

b. compliance and risk management controls embedded in its system operate as intended (for example, by generating error reports automatically); and

c. it can continue to work effectively in stressed market conditions.

5.6 Business Rules

Content of Business Rules

5.6.1 (1) An Authorised Market Institution must establish and maintain Business Rules in accordance with the requirements in this section. Such rules must include:

(a) criteria governing the admission of Members and any other Persons to whom access to its facilities is provided;

(b) criteria governing the admission of Investments to trading, or clearing and settlement, as appropriate to its facilities;

(c) Default Rules; and

(d) any other matters necessary for the proper functioning of the Authorised Market Institution and the facilities operated by it.

(2) An Authorised Market Institution's Business Rules must:

(a) be based on objective criteria and non-discriminatory;

(b) be clear and fair;

(c) set out the Members' and other participants' obligations:

(i) arising from the Authorised Market Institution's constitution and other administrative arrangements;

(ii) when undertaking transactions on its facilities; and

(iii) relating to professional standards that must be imposed on staff and agents of the Members and other participants when undertaking transactions on its facilities;

(d) be legally binding and enforceable against the Members and other participants;

(e) be made publicly available free of charge;

(f) contain provisions for the resolution of Members' and other participants' disputes and an appeal process from the decisions of the Authorised Market Institution; and

(g) contain disciplinary proceedings, including any sanctions that may be imposed by the Authorised Market Institution against its Members and other participants.

Guidance

1. The DFSA assesses, at the point of grant of a Licence to an Authorised Market Institution, the adequacy of its Business Rules and its systems and controls to ensure effective monitoring of compliance with such rules. Thereafter, any amendment to the Business Rules can only be made in accordance with the requirements set out in Rules 5.6.4 to 5.6.7 in this section.

2. Persons other than Members may have access to an Authorised Market Institution's facilities. See Rule 6.9.1(1)(a)(ii).

Default Rules

5.6.2 An Authorised Market Institution must have Default Rules which, in the event of a Member or other participant on its facilities being, or appearing to be, unable to meet its obligations in respect of one or more contracts, enable action to be taken in respect of unsettled market contracts to which the Member or that other participant is a party.

Guidance

The DFSA requires all Authorised Market Institutions to have Default Rules under Article 28 of the Markets Law. Default Rules allow an Authorised Market Institution to close-out open positions by discharging the appropriate rights and liabilities of transactions which a Member or any other Person granted access to its facilities cannot, or may not be able to, fulfil.

Monitoring compliance with Business Rules

5.6.3 An Authorised Market Institution must have adequate compliance procedures in place to ensure that:

(a) its Business Rules are monitored and enforced;

(b) any complaints relating to its operations or regarding Members and other participants on its facilities are promptly investigated;

(c) where appropriate, disciplinary action resulting in financial and other types of penalties can be taken;

(d) appeal procedures are in place; and

(e) referrals can be made to the DFSA in appropriate circumstances.

Guidance

1. In determining whether an Authorised Market Institution can effectively monitor its Business Rules, the DFSA will consider:

   a. the oversight of activity conducted on its facilities;

b. the range of powers it retains over Members and other Persons granted access to its facilities, which should include the ability to modify, revoke or suspend access; and

c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

2. In determining whether an Authorised Market Institution can effectively oversee the activities conducted on its facilities, the DFSA will consider how non-compliance is identified and how the significance of any non-compliance is assessed.

Amendments to Business Rules

5.6.4 (1) An Authorised Market Institution may only adopt new Business Rules or make any amendments to existing Business Rules in accordance with the requirements in Rules 5.6.5, 5.6.6 and 5.6.7.

(2) A reference to an amendment in Rules 5.6.5, 5.6.6 and 5.6.7 includes the introduction of a new Business Rule or a change to an existing Business Rule or a proposal to do so.

Public consultation

5.6.5 (1) An Authorised Market Institution must, subject to Rule 5.6.6, before making any amendment to its Business Rules, undertake public consultation on the proposed amendment in accordance with the requirements in this Rule.

(2) For the purposes of (1), an Authorised Market Institution must:

(a) publish a consultation paper setting out:

(i) the text of both the proposed amendment and the Business Rules that are to be amended;

(ii) the reasons for proposing the amendment; and

(iii) a reasonable consultation period, which must not be less than 30 days from the date of publication, within which Members and other stakeholders may provide comments; and

(b) lodge with the DFSA the consultation paper referred to in (a) no later than the time at which it is released for public comment.

(3) The DFSA may, where it considers on reasonable grounds that it is appropriate to do so, require the Authorised Market Institution to extend its proposed period of public consultation specified in the consultation paper. An Authorised Market Institution must comply with such a requirement.

(4) An Authorised Market Institution must:

(a) facilitate, as appropriate, informal discussions on the proposed amendment with Members and other stakeholders including any appropriate representative bodies of such Persons;

(b) consider the impact the proposed amendment has on the interests of its Members and other stakeholders;

(c) have proper regard to any public comments received.

(5) Following public consultation, an Authorised Market Institution must, before the date on which the proposed amendment comes into effect, lodge with the DFSA:

(a) a summary of any public comments received, and how any issues raised by those comments have been addressed; and

(b) any changes made to the initial proposals as a result of the public comments, and if no changes have been made, a statement to that effect.

Dispensation of public consultation

5.6.6 (1) The DFSA may, on written application by an Authorised Market Institution, dispense with the requirement in Rule 5.6.5 for public consultation where:

(a) any delay resulting from public consultation is likely to be detrimental to the interests of the DIFC markets; or

(b) either the proposed amendment:

(i) is purely administrative or immaterial; or

(ii) the Authorised Market Institution can demonstrate to the satisfaction of the DFSA that it had taken into account the views and interests of its Members and other stakeholders as appropriate in developing the proposed amendment; and

(c) the Authorised Market Institution complies with the requirements in (2) or (3) as applicable.

(2) An Authorised Market Institution which seeks to dispense with public consultation on the ground referred to in (1)(a) must lodge with the DFSA a statement setting out:

(a) the text of both the proposed amendment and the Business Rules that are to be amended:

(b) the reasons for proposing the amendment;

(c) the grounds on which it believes that a delay resulting from public consultation is likely to be detrimental to the DIFC markets; and

(d) whether any rights or obligations of any Members of the Authorised Market Institution or other participants on its facilities are to be materially adversely affected by the proposed amendment, and if so, what measures are proposed to address such concerns.

(3) An Authorised Market Institution which seeks to dispense with public consultation on the ground referred to in (1)(b) must lodge with the DFSA a statement setting out:

(a) the text of both the proposed amendment and the Business Rules that are to be amended; and

(b) either:

(i) the reasons it believes that the proposed amendment is purely administrative or immaterial; or.

(ii) that it had taken into account the views and interests of its Members and other stakeholders as appropriate in developing the proposed amendment.

Guidance

For the purposes of demonstrating to the DFSA that the Authorised Market Institution had taken into account the views and interests of its Members and other relevant stakeholders, an Authorised Market Institution may rely on the input provided by its user committees where the user committees meet best practice set out in GEN App3, Guidance No. 9 – 12.

DFSA approval

5.6.7 (1) An Authorised Market Institution must seek the DFSA's approval of any proposed amendment to the Business Rules before the rules are to come into effect.

(2) The DFSA will approve the proposed amendment to the Business Rules unless it has reasonable grounds to believe that the proposed amendment is reasonably likely to be detrimental to the interests of the DIFC markets.

(3) Where the DFSA has any concerns about the proposed amendment, it may:

(a) either reject the proposed amendment or request the Authorised Market Institution to withdraw the proposed amendments; or

(b) require the Authorised Market Institution to make appropriate changes to the proposed amendment, with or without public consultation.

(4) The DFSA must give to the Authorised Market Institution reasons for its decisions under (3)(a) or (b) as applicable.

(5) An Authorised Market Institution must, as soon as practicable after receiving the DFSA approval, notify the Members and the public of the amendment to its Business Rules and the date on which the amendment becomes effective.

(6) An Authorised Market Institution may appeal a decision of the DFSA under (3)(a) or (b) to the Regulatory Appeals Committee.

Guidance

1. The DFSA does not formally approve the proposed amendments at the point of release of the proposed amendment for public consultation; instead that approval occurs at the end of the public consultation period because the DFSA can properly take into account any public comments and changes resulting from public comments only at the end of the public consultation period.

2. However, the DFSA may, upon receipt of the proposed amendment, request an extension of the public consultation period if it considers on reasonable grounds that such an extension is appropriate. The circumstances in which the DFSA may require an extended period of public consultation beyond 30 days include where the proposed amendment is likely to have a significant adverse impact on the Members' rights and obligations or the interests of other participants in the DIFC markets. An Authorised Market Institution may rely on the results of soft consultation with Members and other stakeholders, or with any user committees it has established, to demonstrate that the proposed amendment does not warrant public consultation.

3. Generally, the DFSA expects to have a quick turnaround time in granting formal approval where no public comments have been received on public consultation or the proposed amendment are not extensive.

5.7 Access to facilities

Member criteria

5.7.1 (1) An Authorised Market Institution must not grant access to its facilities to a Person except in accordance with the requirements in this module and its Business Rules.

(2) A Person who has been granted access to the facilities of an Authorised Market Institution pursuant to its Business Rules is a Member of the Authorised Market Institution, except where otherwise provided.

Guidance

1. Generally only Persons admitted as Members in accordance with the Business Rules will have access to the facilities of an Authorised Market Institution.

2. However, in certain circumstances, an Authorised Market Institution may permit access to its facilities to Persons other than Members (see Rules 5.7.3). Such access would generally be provided through a Member and subject to adequate controls put into place by the Member.

5.7.2 (1) An Authorised Market Institution may only, subject to (2) and (3), admit as a Member a Person which is:

(a) an Authorised Person;

(b) a Person who is admitted to the list of Recognised Persons pursuant to Article 37 of the Markets Law 2012; or

(c) a Person who meets the criteria in GEN Rule 2.3.2(2).

(2) An Authorised Market Institution must not admit as a Member a Person referred to in (1)(c) unless such Person:

(a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution;

(b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facilities of the Authorised Market Institution; and

(d) appoints and maintains at all times, an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.

(3) Prior to admitting a Person referred to in (1) as a Member, an Authorised Market Institution must undertake due diligence to ensure that such a Person:

(a) is of sufficient good repute;

(b) has a sufficient level of competence and experience, including appropriate standards of conduct for its staff who will be permitted to use its order entry system; and

(c) has organisational arrangements, including financial and technological resources, which are no less than those of an Authorised Firm carrying out similar Financial Services.

Guidance

1. A Person who can be admitted under the criterion in Rule 5.7.2(1)(c) (i.e. a Person referred to in GEN Rule 2.3.2(2)) is a Person undertaking Commodity Derivative transactions on the relevant Authorised Market Institution only on its own behalf or on behalf of a wholly owned holding company or subsidiary of such company.

2. In assessing the membership criteria used by an Authorised Market Institution to permit access to its facilities, the DFSA will consider:

   a. whether the Business Rules can be enforced contractually against Members;

   b. whether the criteria are objective and applied in a non-discriminatory manner; and

   c. the financial resource requirements for those not authorised by the DFSA.

3. Pursuant to Rule 5.7.2(3)(c), an Authorised Market Institution is required to assess the adequacy of the organisational arrangements of a candidate to become a Member, if it is not an Authorised Firm, against the organisational requirements that would apply to such a Person had it been an Authorised Firm undertaking similar activities. For example, a Person which is not an Authorised Firm should have organisational resources that are equivalent to a firm Licensed to carry on the Financial Service of Dealing as Agent and/or Dealing as Principal.

Direct electronic access

5.7.3 (1) An Authorised Market Institution may only permit a Member to provide its clients Direct Electronic Access to the Authorised Market Institution's trading facilities where:

(a) the clients meet the suitability criteria established by the Member in order to meet the requirements in (2):

(b) the Member retains responsibility for the orders and trades executed by the clients who are using Direct Electronic Access; and

(c) the Member has adequate mechanisms to prevent the clients placing or executing orders using Direct Electronic Access in a manner that would result in the Member exceeding its position or margin limits.

(2) An Authorised Market Institution which permits its Members to allow their clients to have Direct Electronic Access to its trading facilities must:

(a) set appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;

(b) be able to identify orders and trades made through Direct Electronic Access; and

(c) if necessary, be able to stop orders or trades made by a client using Direct Electronic Access provided by the Member without affecting the other orders or trades made or executed by that Member.

(3) For the purposes of this Rule and elsewhere in the Rulebook, Direct Electronic Access means any arrangement, such as the use of the Member's trading code, through which a Member or the clients of that Member are able to transmit orders relating to Investments directly to the facility provided by the Authorised Market Institution.

(4) For avoidance of doubt, a Person who is permitted to have Direct Electronic Access to an Authorised Market Institution's facilities through a Member is not, by virtue of such permission, a Member of the Authorised Market Institution.

Guidance

In assessing the adequacy of the criteria used by an Authorised Market Institution to permit its Members to allow their clients to have Direct Electronic Access to Authorised Market Institution's facilities, the DFSA will consider:

a. whether such criteria include contractually binding arrangements between the Member and the clients;

b. whether such clients are subject to adequate training, competence and experience requirements and checks;

c. how electronic access is approved and secured and the measures taken to prevent or resolve problems which would arise from the failure of such access;

d. the rules and guidance governing the Person's, procedures, controls and security arrangements for inputting instructions into the system;

e. the rules and guidance governing facilities offered to Person's permitted for inputting instructions into the system and restrictions placed on the use of those systems;

f. the rules and practices to detect, identify and halt or remove instructions breaching any relevant instructions;

g. the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and

h the procedures to determine whether to suspend trading by those systems or access to them by or through individual Members.

5.8 Admission of Investments to trading or clearing

Investment criteria

5.8.1 (1) An Authorised Market Institution must have clear and objective criteria ("investment criteria") included in its Business Rules according to which Investments can be admitted to trading, or traded, on its facilities, or cleared and settled on its facilities, or both, as relevant to its operations. The investment criteria must include the requirements in (2)(a) and (b) as relevant.

(2) An Authorised Market Institution must ensure that only Investments which meet either (a) or (b) are admitted to trading or traded or cleared and settled, on the facilities of an Authorised Market Institution:

(a) in the case of Securities, such Securities are either:

(i) admitted to an Official List of Securities; or

(ii) admitted to trading on a Regulated Exchange in a jurisdiction acceptable to the DFSA; and

(b) in the case of Derivative Contracts, such contracts meet the contract design specifications in Rule 6.3.2.

(3) Where an Authorised Market Institution admits to trading or clearing or trades on its facilities Investments the value of which is determined by reference to an underlying benchmark or index provided by a Price Information Provider, it must only do so in accordance with the requirements in App 2.

Guidance

1. Investment criteria are only one aspect of requirements applicable to an Authorised Market Institution when trading or clearing and settling Investments on its facilities. There are other requirements applicable to such activities, which are contained in this module.

2. Any Securities that are admitted to the Official List of Securities maintained by the DFSA meet the requirement in Rule 5.8.1(2)(a)(i).

5.9 Integrity and transparency

Integrity and fair dealing

5.9.1 An Authorised Market Institution must be able and willing to:

(a) promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities; and

(b) co-operate with the DFSA or other appropriate regulatory authorities with regard to regulatory matters when required.

Guidance

1. In determining whether an Authorised Market Institution is able and willing to promote high standards of integrity and fair dealing, the DFSA will consider:

   a. the extent to which an Authorised Market Institution seeks to promote and encourage such standards through its rules, policies, procedures and practices;

   b. the extent to which Members are required to, and do, adhere to such standards; and

   c. any other Rules and principles which apply to the carrying on of business on or through its facilities.

2. In assessing the ability and willingness of an Authorised Market Institution to co-operate with the DFSA and other regulatory authorities, the DFSA will consider:

   a. the agreements in place, including those between Members and other participants granted access to the facilities and the relevant Authorised Market Institution, for sharing information, such as information regarding large open positions; and

   b. how diligently the Authorised Market Institution responds to enquiries from the DFSA or other regulatory authorities.

Transparency

5.9.2 (1) An Authorised Market Institution must have clear and comprehensive policies and procedures for providing sufficient information to enable Members and other participants on its facilities to have an accurate understanding of the risks, fees, and other material costs of using its facilities.

(2) An Authorised Market Institution must make the policies and procedures referred to in (1) publicly available.

Guidance

In assessing whether an Authorised Market Institution has adequate policies and procedures for disclosing sufficient information to enable its Members and other participants to fully understand the risks, fees and other material costs in using its facilities, the DFSA will consider whether such information:

a. includes explanatory material relating to the system's design and operations, to the rights and obligations of Members and other participants, and to any risks in participating in such facilities;

b. includes its fees at the level of individual services it offers as well as its policies on any available discounts;

c. is provided in a clear and easy to understand manner and is accurate, up-to-date, and readily available to all current and prospective Members and other participants on its facilities; and

d. is made public, through placing such information on its website and other appropriate means.

Transaction recording

5.9.3 Without limiting the requirements in GEN Rules 5.3.24 to 5.3.27, an Authorised Market Institution must ensure that satisfactory arrangements are made for:

(a) recording the activities and transactions, including orders and order audit trails, effected on or through its facilities;

(b) maintaining the activity and transaction records for at least 6 years from the date of the transaction or order entry;

(c) providing the DFSA with these records in a timely manner if required by the DFSA; and

(d) due observance of the applicable data protection and associated requirements.

Guidance

1. The type of information that requires recording will vary according to the activity and type of transactions conducted on or through the facilities of the Authorised Market Institution.

2. In general, for an Authorised Market Institution Licensed to Operate an Exchange, the type of information which should be recorded will include:

   a. the name of the relevant Investment and the price, quantity and date of the transaction, including the order audit trail (i.e. orders entered into the system and subsequently amended or cancelled);

   b. the order type, time of instruction and expiry date;

   c. the identities and, where appropriate, the roles of the counterparties to the transaction;

   d. the facilities on which the transaction was effected and is to be cleared and settled; and

   e. the date and manner of settlement of the transaction.

3. In general, for an Authorised Market Institution Licensed to Operate a Clearing House, the type of information which should be recorded will include:

   a. the name of the relevant Investment and the price, quantity and date of the transaction;

b. the identities and, where appropriate, the roles of the counterparties to the transaction;

c. the facilities on which the transaction was effected and is to be cleared;

d. where applicable, the time novation takes place; and

e. the date and manner of settlement of the transaction.

4. In addition to the DFSA requirements in this module and in GEN, the requirements in the Data Protection Law 2007, DIFC Law No 1 of 2007, apply to an Authorised Market Institution. Therefore, in complying with the DFSA requirements relating to record keeping, an Authorised Market Institution should consider its obligations under the Data Protection Law 2007.

5.10 Safeguarding and administration of assets

5.10.1 An Authorised Market Institution must ensure that, where its obligations include making provision for the safeguarding and administration of assets belonging to Members and other participants on its facilities:

(a) satisfactory arrangements ("safe custody arrangements") are made for that purpose in accordance with Rules 5.10.2 and 5.10.3; and

(b) are provided on clear terms of agreement between the Members and other participants on the facility and the Authorised Market Institution.

Guidance

1. In determining whether an Authorised Market Institution has satisfactory arrangements for safeguarding and administering assets, the DFSA will consider:

a. the terms of the agreement under which safe custody arrangements are made and whether they adequately provide for the matters specified in Rule 5.10.2;

b. the level of protection provided to Members and other participants on its facilities against the risk of theft, fraud, defalcation or other types of loss through such arrangements; and

c. the degree of monitoring the Authorised Market Institution would be undertaking relating to custodians, and if relevant, sub-custodians.

2. At the point of granting a Licence to an Authorised Market Institution, the DFSA assesses the adequacy of an applicant's safe custody arrangements. Any subsequent changes to the safe custody arrangements that have been in place at the time of granting the Licence, where they are material changes, would require the DFSA's prior approval in accordance with the requirements in Rule 4.3.2.

5.10.2 An Authorised Market Institution must ensure that the safe custody arrangements, at a minimum, provide for:

(a) the segregation of assets belonging to every Member and other participant on its facilities from the assets belonging to the Authorised Market Institution and the other Members and participants on its facilities;

(b) the prompt access by the Authorised Market Institution to the assets held under the safe custody arrangements;

(c) the use or transfer of asset belonging to the Members and other participants on its facilities to be made only in accordance with the instructions of the relevant owners of those assets or in accordance with the terms of the agreement referred to in Rule 5.10.1(b) and any applicable legislation;

(d) the reconciliation at appropriate intervals and frequency between the assets and accounts held under the safe custody arrangements; and

(e) accurate records relating to the assets held under the safe custody arrangements to be kept, including:

(i) the identity of the legal and beneficial owners of the relevant assets, and where appropriate, any Persons who have charges over, or other interests in, those assets;

(ii) records of any additions, reductions and transfers in each individual account of assets; and

(iii) the identity of the assets owned by (or where appropriate on behalf of) different Persons, including, where appropriate, the assets owned by Members and other participants on its facilities.

Guidance

In assessing whether an Authorised Market Institution's safe custody arrangements meet the requirements in Rule 5.10.2, the DFSA would particularly look at:

a. the frequency with which statements of the holdings are provided to the Members and other participants on its facilities whose assets are held under the safe custody arrangements;

b. the records of the assets held and the identity of the beneficial and legal owners and any other persons with rights over such assets, and whether the Authorised Market Institution maintains a register of charges over Investments traded or cleared on its facility;

c. the records of any instructions given in relation to those assets;

d. the records of the carrying out of those instructions;

e. the records of any movements in those assets (or any corporate actions or other events in relation to those assets); and

f. how the Authorised Market Institution reconciles its records of assets held with the records of any custodian or sub-custodian used to hold those assets, and with the record of beneficial or legal ownership of those assets.

5.10.3 An Authorised Market Institution must not appoint any Person as a third party custodian unless that Person:

(a) is appropriately authorised under its Licence or subject to regulation and supervision by a Financial Services Regulator acceptable to the DFSA for the activity of deposit taking or providing custody and depository services; and

(b) is prohibited from appointing sub-custodians except where the sub-custodians meet the requirements in (a).

Guidance

1. An Authorised Market Institution should undertake due diligence to ensure, in the case of any custodians or sub-custodians which are not regulated by the DFSA, that they are appropriately licensed and supervised for the activity of deposit taking or custody and depository services by a Financial Services Regulator in their home jurisdiction.

2. In order to meet the requirements relating to sub-custody arrangements, an Authorised Market Institution should include clear provisions in the contract with its appointed custodians whether or not sub-custodians may be appointed and if so, the procedures for appointing the sub-custodians, in accordance with the requirements in Rule 5.10.3(b). There should also be contractual requirements for advance notification to the Authorised Market Institution of any changes to the sub-custodians.

3. If an Authorised Market Institution proposes to make new custody arrangements or make any material changes to its existing custody arrangements, such changes trigger the prior DFSA approval requirements in Rule 4.3.2. This requirement would be triggered, for example, if the appointed custodians at the time of the grant of the Licence had not used sub-custodians but subsequently propose to do so.

5.11 Promotion and maintenance of standards

Orderly conduct on facilities

5.11.1 An Authorised Market Institution must have an effective market surveillance program to:

(a) ensure that business conducted on or through its facilities is conducted in an orderly manner and in accordance with the applicable Business Rules and other applicable requirements so as to afford proper protection to investors; and

(b) monitor for conduct which may amount to Market Abuse, financial crime or money laundering.

Guidance

1. To satisfy the DFSA that Rule 5.11.1(a) is met, an Authorised Market Institution should have rules and procedures in place for:

   a. preventing and detecting the use of its facilities for abusive, improper or fraudulent purposes; and

   b. preventing the improper, reckless or negligent use of its facilities.

2. In determining whether an Authorised Market Institution is ensuring that business conducted on its facilities is conducted in an orderly manner, the DFSA will consider:

   a. arrangements for pre and post trade transparency, taking into account the nature and liquidity of the Investments traded; and

   b. the need to provide anonymity for trading participants.

3. An Authorised Market Institution Operating an Exchange will also have appropriate procedures allowing it to influence trading conditions, impose a trading halt promptly when required, and to support or encourage liquidity when necessary to maintain an orderly market. The DFSA will consider the transparency of such procedures and the fairness of their application and potential application.

4. In addition, Members who are Authorised Firms should be able to satisfy any other legal obligations they may have, including those to Clients that may exist under COB.

5. AML module contains AML obligations of an Authorised Market Institution.

Prevention of Market Abuse, money laundering and financial crime

5.11.2 (1) Without limiting the generality of Rule 5.11.1, an Authorised Market Institution must:

(a) operate appropriate measures to identify, deter and prevent Market Abuse, money laundering and financial crime on and through the Authorised Market Institution's facilities; and

(b) report promptly to the DFSA any Market Abuse, money laundering and financial crime, as required.

(2) For the purposes of (1)(a), an Authorised Market Institution must:

(a) include in its Business Rules a regime to prevent Market Abuse, money laundering and financial crime that meets the requirements in (3), which is applicable to its Members; and

(b) implement adequate measures to ensure that its Members comply with that regime.

(3) The regime referred to in (2)(a) must, at a minimum, include rules and procedures in relation to:

(a) compliance arrangements to prevent Market Abuse, money laundering and financial crime;

(c) transaction monitoring;

(d) risk assessment; and

(e) training.

Guidance

1. Abusive, improper and fraudulent purposes include:

a. trades intended to create a false appearance of trading activity;

b trades which one party does not intend to close out or settle;

c. conduct which is likely to result in disorderly trading in the market; and

d. any contravention of the provisions in Part 6: Prevention of Market Abuse in the Markets Law.

2. An Authorised Market Institution must have an effective surveillance system in place for:

   a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments conducted elsewhere; and

   b. communicating information about Market Misconduct and financial crime to the DFSA or appropriate regulatory authorities.

5.11.3 (1) An Authorised Market Institution must:

   (a) before accepting a prospective Member, ensure that the applicant has in place adequate arrangements including systems and controls to comply with the Authorised Market Institution's regime for preventing Market Abuse, money laundering and financial crime referred to in Rule 5.11.2(2)(a);

   (b) monitor and regularly review compliance by its Members with that regime; and

   (c) take appropriate measures to ensure that its Members rectify any contraventions without delay.

(2) An Authorised Market Institution must promptly notify the DFSA of any:

   (a) material breach of its regime by a Member; and

   (b) circumstances in which a Member will not or cannot rectify a breach of its regime.

Guidance

1. An Authorised Market Institution is subject to the requirements in the DFSA's AML module. Members of an Authorised Market Institution which are Authorised Firms are also subject, by virtue of being Authorised Firms, to the requirements in the DFSA's AML module.

2. In determining whether an Authorised Market Institution's measures are adequate and appropriate to reduce the extent to which its facilities can be used for Market Abuse, money laundering and financial crime, the DFSA will consider:

   a. whether the Authorised Market Institution has appropriate staff, surveillance systems, resources and procedures for this purpose;

   b. the monitoring conducted for possible patterns of normal, abnormal or improper use of those facilities;

   c. how promptly and accurately information is communicated about Market Abuse, financial crime and money laundering to the DFSA and other appropriate organisations; and

   d. how the Authorised Market Institution co-operates with relevant bodies in the prevention, investigation and pursuit of Market Abuse, money laundering and financial crime.

3. An Authorised Market Institution shall have regard to Part 8 of the Markets Law in relation to Market Abuse and the relevant provisions of the Regulatory Law. Examples of practices that amount to market manipulation (which is one form of Market Abuse)

in an automated trading environment that should be identified and prevented by an Authorised Market Institution to promote Proper Markets include the following:

a. entering small orders in order to ascertain the level of hidden orders, particularly used to assess what is resting on a dark platform, known as Ping Orders;

b. entering large numbers of orders and/or cancellations/updates to orders to create uncertainty for other market participants, slowing down their process and to camouflage its own strategy, known as Quote Stuffing;

c. entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price, known as Moment Ignition; and

d. submitting multiple orders often away from one side of the order book with the intention of executing a trade on the other side of the order book, where once that trade has taken place, the manipulative orders will be removed, known as Layering and Spoofing.

5.12 Miscellaneous requirements

Whistleblowing

5.12.1 An Authorised Market Institution must have appropriate procedures and protections for enabling Employees to disclose any information to the DFSA or to other appropriate bodies involved in the prevention of Market Abuse, money laundering or other financial crime or any other breaches of relevant legislation.

Guidance

An Authorised Market Institution's policies and procedures should enable Employees to make protected disclosures, in good faith, of information which, in the reasonable belief of the Employee making the disclosure, tends to show that one or more of the following has been, is being, or is likely to be, committed:

a. a criminal offence;

b. a failure to comply with any legal obligation;

c. a miscarriage of justice;

d. the putting of the health and safety of any individual in danger; or

e. a deliberate concealment relating to any of (a) to (d),

irrespective of whether the relevant conduct or failure occurred, occurs or would occur.

Handling of complaints

5.12.2 (1) An Authorised Market Institution must have effective arrangements in place for the investigation and resolution of complaints made against it.

(2) An Authorised Market Institution must establish and maintain a register of complaints made against it and their resolution. Records of the complaints must be maintained for a minimum of six years.

Guidance

1. Procedures should be in place to acknowledge a complaint promptly, for making an objective consideration of the complaint and for a timely response to be sent to the complainant. The response should inform the complainant that, if he is not satisfied with the response, he should contact the DFSA.

2. Complaints should be fairly and impartially investigated by a person not involved in the conduct about which the complaint has been made. At the conclusion of the investigation, a report should be prepared and provided to the relevant Key Individuals.

6. ADDITIONAL LICENSING REQUIREMENTS FOR OPERATING AN EXCHANGE

6.1 Application

6.1.1 (1) This chapter applies to an Authorised Market Institution Operating an Exchange or an applicant for such a Licence.

(2) In this chapter, a reference to an "Exchange" is a reference to a Person referred to in (1).

6.2 Proper Markets

6.2.1 (1) An Exchange must have rules and procedures for fair, orderly and efficient operation of trading of Investments on its facilities. For this purpose, an Exchange must ensure that only Investments in which there is a Proper Market are traded on its facilities.

(2) For a Proper Market to exist in Investments:

(a) Derivatives traded on its facilities must meet the contract design specifications in Rule 6.3.2;

(b) relevant market information must be made available to Persons engaged in dealing on an equitable basis, including pre-trade and post-trade disclosure of orders, in accordance with the requirements in section 6.4.

(c) there must be adequate mechanisms to discontinue, suspend or remove from trading on its facilities any Investments in circumstances where the requirements relating to Proper Markets are not met;

(d) there must be in place controls to prevent volatility in the markets that is not the result of market forces, in accordance with the requirements in section 6.5;

(e) error trades must be managed, in accordance with the requirements in section 6.6;

(f) short selling and position concentration must be monitored and managed, in accordance with the requirements in section 6.7;

(g) there must be a fair and non-discretionary algorithm operating in respect of the matching of orders on its facilities;

(h) there must be in place adequate controls, to monitor and manage any foreign ownership restrictions applying to Investments traded on its facilities, in accordance with the requirements in section 6.8; and

(i) any liquidity incentive schemes must be offered only in accordance with the requirements in section 6.9.

Guidance

Rules and procedures referred to in Rule 6.2.1(2) should generally form part of the Business Rules of an Authorised Market Institution (see the content of Business Rules in Rule 5.6.1).

6.3 Specifications relating to design and trading of Derivatives

6.3.1 (1) An Exchange which trades Derivative contracts on its facilities must:

(a) have clear and transparent rules and procedures for the trading of Derivative contracts, which are made publicly available; and

(b) ensure that the trading in Derivative contracts on its facilities is undertaken in a fair, orderly and efficient manner.

(2) The rules and procedures must promote transparency by ensuring that there is sufficient information made available to the markets relating to the terms and conditions of the Derivative contracts traded on its facilities. Such information must include, where relevant, information relating to delivery and pricing of Derivative contracts.

Contract design specifications

6.3.2 (1) An Exchange must ensure that the Derivative contracts traded on its facilities:

(a) have a design that enables the orderly pricing and effective settlement of the obligations arising under the contract; and

(b) where they are Commodity Derivative contracts which require physical delivery, have terms and conditions which:

(i) promote price discovery of the underlying commodity;

(ii) ensure, to the extent possible, that there is a correlation to the operation of the physical market in the underlying commodity;

(iii) include contract delivery specifications which address matters specified in App 3; and

(iv) provide for legally enforceable settlement and delivery procedures.

(2) For the purposes of meeting the requirement in (1)(a), an Exchange must include in its Business Rules contract design specifications relating to Derivative contracts traded on its facilities which, at a minimum, include:

(a) minimum price fluctuations (price ticks);

(b) maximum price fluctuations (daily price limits), if any;

(c) last trading day;

(d) settlement or delivery procedures as applicable;

(e) trading months;

(f) position limits, if any;

(g) reportable levels; and

(h) trading hours.

On-going review

6.3.3 An Exchange must:

(a) establish and implement clear procedures relating to the development and review of contract design for Derivative contracts traded on its facilities;

(b) have adequate process through which the views of potential users of Derivative contracts can be taken into account when developing and reviewing contract design for Derivative contracts;

(c) have adequate powers which enable it to eliminate contractual terms which produce, or are likely to produce, manipulative or disorderly conditions in the markets generally, or in relation to the particular class or type of Derivative contracts; and

(d) have adequate mechanisms to monitor and evaluate whether the settlement and delivery procedures reflect the underlying physical market and promote reliable pricing relationship between the two markets.

Guidance

1. When assessing whether an Exchange's rules and procedures are adequate, the DFSA will consider, among other things:

   a. the criteria adopted by the Exchange for Derivative contracts to be traded on its facilities;

   b. what powers the Exchange has in order to eliminate manipulative or disorderly conduct, including powers to vary, remove or rescind conditions of any Derivative contracts already traded where these are found to cause manipulative or disorderly conditions; and

   c. what mechanisms are established by the Exchange to monitor and review market activities relating to Derivative contracts traded on its facilities.

2. When designing and reviewing the design of Commodity Derivative contracts, an Exchange should consider the following physical market characteristics, including differences within a commodity market with regard to the commodity in question:

   a. size and structure of the physical market;

b. commodity characteristics (such as grade, quality, weight, class, growth, origin, source etc.);

c. historical patterns of production, consumption and supply, including seasonality, growth, market concentration in the production chain, domestic or international export focus and logistics;

d. extent of distribution or dispersal of production and consumption of the underlying physical commodity among producers, merchants and consumers;

e. accepted market practice at the physical commodity market in question, including loading tolerances and delivery of alternative supply under the contract terms;

f. adequacy, nature and availability of supply of the underlying physical commodity, including an estimate of the deliverable supplies for the delivery month specified in the relevant commodity contract;

g. movement or flow of the underlying physical commodity;

h. the liquidity of the underlying physical market;

i. the spot market pricing system including transparency, availability, reliability and frequency of cash pricing;

j. price volatility; and

k. the existence of price controls, embargoes, export restrictions or other regulation or controls affecting the price or supply of the underlying physical commodity.

6.4 Transparency and disclosure

6.4.1 An Exchange must have adequate arrangements for providing to the markets adequate information about Investments traded on its facilities, and its trading activities, for the purposes of promoting:

(a) pre-trade transparency; and

(b) post-trade transparency.

Pre-trade transparency

6.4.2 (1) An Exchange must disclose the information specified in (2) relating to trading of Investments on its facilities in the manner specified in (3).

(2) The information required to be disclosed pursuant to (1) is:

(a) the current bid and offer prices and volume;

(b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Investments; and

(c) any other information relating to Investments which would promote transparency relating to trading.

(3) The information referred to in (2) must be made available to the public on a continuous basis during normal trading.

Guidance

1. When making disclosure, an Exchange should adopt a technical mechanism by which the public can differentiate between transactions that have been transacted in the central order book and transactions that have been reported to the Exchange as off-order book transactions. Any transactions that have been cancelled pursuant to its rules should also be identifiable.

2. The reference to trading interest in Rule 6.4.2(2)(b) includes any actionable indications of interests. Actionable interests are messages from one Member to another in a trading system about available trading interest that contains all necessary information to agree on a trade.

3. An Exchange should use adequate mechanisms so that pre-trade information is available to the public in an easy to access and uninterrupted manner at least during business hours. An Exchange may charge a reasonable fee for the information which it makes available to the public.

4. An Exchange will be able to withhold pre-trade disclosure only if it has obtained a waiver or modification to Rule 6.4.2. An Exchange may seek a waiver or modification from the disclosure requirement in Rule 6.4.2(1) in relation to certain transaction orders where:

   a. the order size is pre-determined and exceeds a pre-set and published threshold level; and

   b. the details of the exemption are included in its Business Rules.

5. In assessing whether an exemption from pre-trade disclosure should be allowed, the DFSA will take into account factors such as:

   a. the level of order threshold compared with normal market size for the Investment;

   b. the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;

   c. whether there is sufficient transparency relating to trades executed without pre-trade disclosure as a result of dark orders whether or not they are entered in transparent markets;

   d. whether the Exchange supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and

   e. whether there is adequate disclosure of details relating to dark orders available to Members and other participants on the facilities of the Exchange to enable them to understand the manner in which their orders will be handled and executed on those facilities.

6. Dark orders are orders executed on execution platforms without pre-trade transparency.

Post-trade transparency

6.4.3 (1) An Exchange must disclose the post-trade information specified in (2) relating to trading of Investments on its facilities in the manner specified in (3).

(2) The post-trade information required to be disclosed pursuant to (1) is the price, volume and time of the transactions executed in respect of the Investments traded on its facilities.

(3) The information referred to in (2) must be:

(a) made available in real-time on reasonable commercial terms and on a non-discriminatory basis; and

(b) made available, as soon as practicable thereafter, to the public.

Guidance

An Exchange should use appropriate mechanisms to enable post-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An Exchange may charge a reasonable fee for the information which it makes available to the public.

6.5 Volatility controls

6.5.1 (1) An Exchange must have in place effective systems, controls and procedures to ensure that its trading systems:

(a) are resilient;

(b) have adequate capacity to deal with peak orders and message volumes; and

(c) are able to operate in an orderly manner under conditions of market stress.

(2) Without limiting the generality of its obligations arising under (1) or any other Rule, an Exchange's rules, systems, controls and procedures must enable it to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or that are clearly erroneous;

(b) temporarily halt trading of Investments traded on its facility if there is a significant price movement in relation to those Investments on its facility or a related market during a short period; and

(c) where appropriate, cancel, vary or correct any transaction.

Guidance

An Exchange should test its trading systems to ensure that they are resilient and capable of operating orderly trading under conditions of market stress and other contingencies.

6.5.2 (1) An Exchange must have adequate arrangements, including technology, which:

(a) are capable of preventing capacity limits relating to messaging being breached;

(b) require its Members to apply pre-trade controls to their clients; and

(c) permit only its Members to modify the parameters of any pre-trade controls.

(2) An Exchange must make publicly available the details of arrangements it has in place in order to meet the requirement in (1).

Guidance

1. In order to meet the requirements in Rule 6.5.2(1), an Exchange may, within its arrangements:

   a. include a mechanism for "throttling" orders to prevent breaches of its capacity;

   b. prohibit "naked" or "unfiltered" access to its facilities by Members' clients where the client orders do not pass through pre-trade controls; and

   c. include requirements for Members to have appropriate pre-trade controls on the orders of their clients, which include in-built and automatic rejection of orders outside of certain pre-set parameters.

2. Pre-trade controls which an Authorised Market Institution requires from its Members should contain:

   a. price or size parameters: Members should be able to automatically block or cancel orders that do not meet the set price or size parameters either or both on an order-by-order basis or over a specified period of time;

   b. controls around permission to trade: Members should be able to block or cancel orders immediately as soon as they are made aware that trade permissions of a trader have been breached;

   c. effective risk management: Members should be able to block or cancel orders automatically where the trades pose risks that compromise the Member's own risk management thresholds. Such controls should be applied as necessary and appropriate to exposures to individual clients or financial instruments or groups of clients or financial instruments, exposures of individual traders, trading desks or the Member as a whole;

   d. reporting obligations: Members should be obliged to notify the Exchange about significant risks that may affect fair and orderly trading and major incidents as soon as they become aware of such risks or incidents;

   e. overriding of pre-trade controls: Members should have procedures and arrangements for dealing with orders which have been automatically blocked by the Member's pre-trade controls but which the Member may re-submit. Such procedures and arrangements should serve to alert compliance and risk management staff of the Member that controls have been overridden and require their approval for the overriding of these controls;

f. training on order entry procedures: Members should ensure that employees using the order entry system have adequate training on order entry procedures before they are allowed to use Members' order entry systems;

g. monitoring and accessibility of knowledgeable and mandated staff: Members should monitor their orders to the Exchange in as close to real time as possible, including from a cross-market perspective, for potential signs of disorderly trading. Such monitoring should be conducted by Member's staff who understand its trading flow. They should be accessible to the Exchange and have necessary authority to take necessary and appropriate remedial action. Members should ensure that compliance staff are able to follow closely the Member's electronic trading activity so that they can quickly respond to and correct any failures or regulatory infractions that may take place; and

h. control of messaging traffic: Members should have control of messaging traffic to the Exchange particularly to ensure any messaging limits imposed by the Exchange on the Members are not exceeded. Messaging limits are limits imposed by an Exchange on its Members for the transmission of orders such as buy or sell to ensure that the Exchange's capacity to deal with such orders is not exceeded.

6.6 Error Trade policy

6.6.1 (1) An Exchange must be able to cancel, amend or correct any Error Trades.

(2) An Error Trade is the execution of an order resulting from:

(a) an erroneous order entry;

(b) malfunctioning of the system of a Member or of the Authorised Market Institution; or

(c) a combination of (a) and (b).

(3) For the purposes of (1), an Exchange's Business Rules must include a comprehensive Error Trade policy which sets out clearly the extent to which transactions can be cancelled by the Exchange at its sole discretion, at the request of a Member or by mutual consent of the Members involved.

(4) An Exchange must have adequate systems and controls to:

(a) prevent or minimise Error Trades;

(b) promptly identify and rectify Error Trades where they occur; and

(c) identify whether Error Trades are related to disorderly market activity.

Guidance

When assessing whether an Exchange has an appropriate and adequate Error Trade policy, the DFSA will consider whether the rules and procedures included in the Business Rules:

a. are adequate and, where prevention is not possible, minimise the impact of Error Trades;

b. are sufficiently flexible in the design to address varying scenarios;

c. establish a predictable and timely process for dealing with Error Trades, including measures specifically designed to detect and identify Error Trade messages to market users;

d. promote transparency to market users with regard to any cancellation decisions involving material transactions resulting from the invocation of the Error Trade policy;

e. include adequate surveillance conducted in the markets to detect Error Trades;

f. promote predictability, fairness and consistency of actions taken under the Error Trade policy; and

g. enable sharing of information with other markets, when possible, concerning the cancellation of trades.

6.7 Short selling and position management

6.7.1 (1) An Exchange must have in place effective systems, controls and procedures to monitor and manage:

(a) Short Selling in Securities; and

(b) risks arising from position concentrations.

(2) For the purposes of (1), an Exchange must have adequate powers over its Members to address risks to an orderly functioning of its facilities arising from unsettled positions in Investments.

(3) Short Selling for the purposes of this Rule constitutes the sale of a Security by a Person who does not own the Security at the point of entering into the contract to sell.

Guidance

1. An Exchange should, when developing its controls and procedures with regard to Short Selling and position management, have regard to:

   a. its own settlement cycle, in order to ensure that any Short Selling activities on its facilities do not result in any delay or prevent effective settlement within such cycle; and

   b. orderly functioning of its facilities, to ensure that any long or short position concentration on Investments that remain unsettled does not interrupt such functioning.

2. Examples of circumstances that would not be treated as short selling in Rule 6.7.1(3) include where the seller:

   a. has entered into an unconditional contract to purchase the relevant Securities but has not received their delivery at the time of the sale;

b. has title to other securities which are convertible or exchangeable for the Securities to which the sale contract relates;

c. has exercised an option to acquire the Securities to which the sale contract relates;

d. has rights or warrants to subscribe and receive Securities to which the sale contract relates; and

e. is making a sale of Securities that trades on a "when issued" basis and has entered into a binding contract to purchase such Securities, subject only to the condition of issuance of the relevant Securities.

6.8 Foreign ownership restrictions

6.8.1 (1) An Exchange may admit to trading on its facilities Investments which are subject to foreign ownership restrictions where it has in place adequate and effective arrangements to:

(a) monitor applicable foreign ownership restrictions; and

(b) promptly identify and take appropriate action where any breaches, or likely breaches, of such restrictions occur or are about to occur, so as to ensure that there is no undue interruption or negative impact on its trading activities.

(2) For the purposes of (1), the arrangements of an Exchange must include:

(a) requirements applicable to issuers and other Persons responsible for the relevant Investments to:

(i) make available to the Exchange information relating to any ownership restrictions applicable to the Investments; and

(ii) take such action as appropriate to remedy any breaches as soon as practicable;

(b) mechanisms to access current information relating to ownership of the relevant Investments, including any beneficial owners;

(c) appropriate public disclosure of information where ownership restrictions are, or are about to be, breached;

(d) mechanisms to suspend trading in the relevant Investments where the ownership restrictions are, or are about to be, breached; and

(e) mechanisms to reinstate trading where ownership restrictions are no longer in breach.

Guidance

1. An Exchange is required, as part of information to be provided to the DFSA, to promptly inform the DFSA where breaches of the ownership restrictions occur. See section 9.8.

2. An Exchange should establish appropriate thresholds at which an early warning system and subsequent public disclosure is triggered relating to foreign ownership restrictions. Such thresholds should be set at intervals/levels, taking into account the patterns of trading in the relevant Investments and other factors which enable the Exchange to take preventative measures before the breaches occur.

6.9 Liquidity incentive schemes

6.9.1 (1) An Exchange must not introduce a liquidity incentive scheme unless:

(a) participation in such a scheme is limited to:

(i) a Member of the Exchange; or

(ii) any other Person where:

(A) the Exchange has undertaken due diligence to ensure that the Person is of sufficient good repute and has adequate competencies and organisational arrangements; and

(B) the Person has agreed in writing to comply with the Business Rules of the Exchange so far as those rules are applicable to that Person's activities; and

(b) it has obtained the DFSA's prior written approval for the scheme.

(2) For the purposes of this section, a liquidity incentive scheme means an arrangement designed to provide liquidity in the market or in relation to a particular Investment or class of Investments.

(3) An Exchange must, at least 10 business days prior to the introduction of a liquidity incentive scheme referred to in (1), lodge with the DFSA a notification containing:

(a) the details of the relevant scheme;

(b) the benefits to the Exchange and its Members and other users resulting from the scheme;

(c) a certification by it that the requirements in (1)(a) have been fully met; and

(d) the date on which the scheme is intended to become operative.

(4) The DFSA will, within 10 business days of receiving the notification referred to in (3), approve the proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme is reasonably likely to be detrimental to the existence of Proper Markets. Where the DFSA does not approve the proposed liquidity incentive scheme, it will notify the Exchange of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.

(5) An Exchange may appeal a decision of the DFSA not to approve a liquidity incentive scheme to the Regulatory Appeals Committee.

(6) An Exchange must, as soon as practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.

Guidance

1. Examples of liquidity incentive schemes are arrangements under which an Exchange offers to market makers rebates, stipends, waivers of membership or transaction fees and other financial incentives, including payments for routing order flows or other forms of soft dollar benefits.

2. The period of 10 business days referred to in Rule 6.9.1(4) will commence to run from the date on which all the information relating to the liquidity incentive scheme as specified in Rule 6.9.1(3) has been provided to the DFSA.

3. For the purposes of certifying that a Person meets the criteria set out in Rule 6.9.1(a)(ii), an Exchange should undertake:

   a. a verification of the identity of the relevant Person and its beneficial owners and directors for the purposes of applicable AML requirements;

   b. an assessment of the character and good standing, as well as the knowledge, experience and skills, of the Person and its directors and relevant Employees; and

   c. the adequacy of the control framework created by the Person in respect of the liquidity incentive scheme to ensure that trading occurs in accordance with the Business Rules of the Exchange.

4. An Exchange is not required, pursuant to Rule 6.9.1(6), to make public disclosure of any details about the liquidity incentive scheme where such information is reasonably regarded as commercially sensitive information. However, is should make such disclosure as it deems appropriate to keep its market well informed about the introduction of the scheme.

6.10 Clearing and settlement arrangements

6.10.1 An Exchange must:

(a) ensure that there are satisfactory arrangements in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facilities; and

(b) inform its Members and other participants of the arrangements referred to in (a).

6.11 Listing Rules

Application

6.11.1 (1) The requirements in this section apply, subject to (2), to an Exchange which maintains or proposes to maintain its own Official List of Securities.

(2) The requirement in Rule 6.11.8(1) applies to a Person who wishes to have Securities included in an Official List of Securities.

General requirements relating to listing rules

6.11.2 (1) An Exchange wishing to admit Securities to its own Official List of Securities must:

(a) have listing rules which meet the requirements in Rule 6.11.3; and

(b) ensure that its listing rules are approved by the DFSA.

(2) Any amendment to an Exchange's listing rules must, prior to the amendment becoming effective, have been:

(a) made available for a reasonable period of time to the market for consultation; and

(b) approved by the DFSA.

(3) In urgent cases, the DFSA may, on written application by the Authorised Market Institution, dispense with requirement in (2)(a).

Publication of listing rules

6.11.3 (1) An Exchange must publish, and make freely available, its listing rules.

(2) Where an Exchange has made any amendments to its listing rules, it must have adequate procedures for notifying users of such amendments.

Content of listing rules

6.11.4 (1) The listing rules of an Exchange must be clear, fair and legally enforceable and contain provisions dealing with:

(a) procedures for admission of Securities to its Official List of Securities including;

(i) requirements to be met before Securities may be granted admission to its Official List of Securities; and

(ii) agreements in connection with admitting Securities to its Official List of Securities;

(b) effective enforcement of the agreements referred to in (a)(ii);

(c) procedures for suspension and delisting of Securities from its Official List of Securities;

(d) the imposition on any Person of obligations to observe specific standards of conduct or to perform, or refrain from performing, specified acts, reasonably imposed in connection with the admission of Securities to its Official List of Securities or continued admission of Securities to its Official List of Securities;

(e) penalties or sanctions which may be imposed by an Exchange or the DFSA for a breach of the listing rules;

(f) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the listing rules;

(g) actual or potential conflicts of interest that have arisen or might arise when a Person seeks to have Securities admitted to its Official List of Securities; and

(h) such other matters as are necessary or desirable for the proper operation of the listing rules and process.

(2) Without prejudice to the requirements in (1), the listing rules of the Exchange must also include, where appropriate to the type the Securities being admitted to its Official List of Securities, requirements in respect of:

(a) an issuer's financial reporting and, in particular how regular reports are made and the international accounting standards to which they comply;

(b) auditing standards;

(c) an issuer's track record in terms of profit or operating history;

(d) the percentage of Securities in a class of Securities which can be considered as in free float;

(e) any restrictions that may exist on transferability; and

(f) any other matter deemed necessary by the DFSA.

6.11.5 An Exchange must have adequate systems and controls to comply with the requirements that are applicable to it in respect of an Official List of Securities maintained by itself or by the DFSA for the purposes of trading of Securities using its facilities.

Compliance with listing rules

6.11.6 (1) An Exchange which has an endorsement on its Licence authorising it to maintain an Official List of Securities must ensure the function is properly and independently operated.

(2) An Exchange must have procedures in place to ensure that:

(a) its listing rules are monitored and enforced; and

(b) complaints regarding Persons subject to the listing rules are investigated.

6.11.7 An Exchange must ensure that:

(a) where appropriate, disciplinary action can be carried out and financial and other types of penalties can be imposed on Persons subject to the listing rules; and

(b) adequate appeal procedures are in place.

Guidance

In determining whether an Exchange can effectively monitor its listing rules, the DFSA will consider amongst other things:

a. the oversight of the Official List of Securities;

b. the range of powers the Exchange retains over Persons with Securities admitted to its Official List of Securities which should include the ability to suspend, restore from suspension and de-list Securities from the Official List of Securities in accordance with this module; and

c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

Admission to an Official List of Securities

Guidance

1. The DFSA has the powers under Article 34 of the Markets Law in relation to the admission of Securities to an Official List of Securities maintained by an Authorised Market Institution. Under that Article the DFSA may:

   a. object to an admission of Securities to an Official List of Securities; or

   b. impose conditions or restrictions on an admission of Securities to an Official List of Securities .

2. Where the DFSA objects to an application for an admission of Securities to an Official List of Securities, the Exchange is prohibited from admitting Securities to its Official List of Securities by virtue of Article 34 of the Markets Law.

3. Where the DFSA does so, the applicant may make representations within fourteen days of the date of the notification. If representations are made, the DFSA shall provide a response and make any consequential variants or withdrawals without undue delay.

4. Pursuant to Article 36 of the Markets Law, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision by the DFSA to object or impose conditions or restrictions upon an admittance of Securities to an Official List of Securities.

5. The DFSA expects to exercise these powers rarely. An Exchange is responsible for assessing applications to its Official List of Securities. This section sets out the process for dealing with applications for admission.

Application for admission of Securities to an Official List of Securities

6.11.8 (1) Applications for the admission of Securities to an Official List of Securities must be made by the issuer of the Securities, or by a third party on behalf of and with the consent of the issuer of the Securities.

(2) An Exchange must, before granting admission of any Securities to an Official List of Securities maintained by it:

(a) be satisfied that the applicable requirements, including those in its listing rules, have been or will be fully complied with in respect of those Securities; and

(b) comply with the requirements relating to notification to the DFSA in Rule 6.11.9(1).

(3) An Exchange must notify an applicant in writing of its decision in relation to the application for admission of Securities to its Official List of Securities.

6.11.9 (1) Subject to (2), at least 5 business days prior to an admission of Securities to its Official List of Securities, an Exchange must provide the DFSA with notice of the decision and include the following information in the notification:

(a) a copy of the listing application;

(b) a copy of the assessment of the listing application carried out by the Exchange; and

(c) any information requested by the DFSA.

(2) An Exchange must immediately notify the DFSA of any decision to suspend, restore from suspension or de-list any Securities from its Official List of Securities and the reasons for the decision.

7. ADDITIONAL LICENSING REQUIREMENTS FOR OPERATING A CLEARING HOUSE

7.1 Application

7.1.1 (1) This chapter applies, subject to (3), to an Authorised Market Institution Operating a Clearing House and an applicant for such a Licence.

(2) In this chapter, a reference to a "Clearing House" is a reference to a Person in (1), except where specific reference is made to:

(a) a Central Counterparty (CCP);

(b) a Securities Settlement System (SSS); or

(c) a Central Securities Depository (CSD).

(3) Specific references in this chapter to a Clearing House undertaking any of the functions specified in (2)(a) to (c) apply only in respect of that function.

Guidance

1. The Financial Service of Operating a Clearing House is defined in GEN Rule 2.18.1(1). This definition provides that Operating a Clearing House can be carried on by either the operator becoming a Central Counterparty (CCP) or by operating a Securities Settlement System (SSS) (i.e. a system that enables Investments to be transferred and settled by book entry), regardless of whether or not such a Person also acts as a Central Securities Depository (CSD) in respect of Securities cleared or settled on its facility and similar facilities.

2. Where a Clearing House undertakes the function of acting as a CSD under its own Licence, the additional requirements in section 7.4 apply to it. The function of CSD may also be carried out by an Authorised Firm licensed to carry on the Financial Service of Providing Custody. See GEN definition in Rule 2.13.1(3). Such a firm is subject to similar requirements as in section 7.4, which are set out in COB section 10.2.

3. Where a Clearing House which did not at the time of licensing carry on CSD functions wishes to do so subsequently, it needs to apply to the DFSA for approval under Rule 4.3.1, as it is a material change to its current arrangements.

7.2 Risk management

Guidance

1. An Authorised Market Institution which operates a Clearing House is subject to the management, systems and controls requirements in GEN chapter 5. These provisions require such an Authorised Market Institution to establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor the risks to which it is exposed and to develop and implement policies and procedures to manage the risks to which it and the users of its facilities are exposed.

2. The requirements set out below augment the GEN obligations referred to in 1.

Risk management framework

7.2.1. (1) A Clearing House must have a comprehensive risk management framework (i.e. detailed policies, procedures and systems) capable of managing legal, credit, liquidity, operational and other risks to which it is exposed.

(2) The risk management framework in (1) must:

(a) encompass a regular review of material risks to which the Clearing House is exposed and the risks posed to other market participants resulting from its operations; and

(b) be subject to periodic review as appropriate to ensure that it is effective and operating as intended.

Guidance

1. The risk management framework should, for the purposes of Rule 7.2.1(2)(a), identify scenarios that may potentially prevent a Clearing House from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down.

2. A Clearing House should prepare appropriate plans for resumption of its operations in such scenarios and, where it is not possible to do so, for an orderly wind-down of the operations of the Clearing House premised on the results of such assessments.

3. Such procedures should also include appropriate early notification to the DFSA and other regulators as appropriate. See also the requirements in section 9.8 relating to disclosure to the DFSA.

4. A Clearing House should also, to the extent possible, provide incentives to Members and other market participants to manage and contain the risks they pose to the orderly and efficient operations of the Clearing House. Those may include financial penalties to Members and other participants that fail to settle Investments in a timely manner or to repay intraday credit by the end of the operating day.

Legal risk

7.2.2 (1) A Clearing House must have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

(2) A Clearing House must have adequate rules and procedures, including contractual arrangements, which are legally enforceable.

(3) A Clearing House that operates in multiple jurisdictions must:

(a) identify and mitigate the risks arising from doing business in the relevant jurisdictions, including those arising from conflicting laws applicable in such jurisdictions; and

(b) ensure the arrangements referred to in (2) provide a high degree of certainty that actions taken by the Clearing House under its rules and procedures will not be reversed, stayed or rendered void.

Guidance

1. This Rule is designed to address legal risks faced by a Clearing House, particularly where it operates in multiple jurisdictions. For example, an unexpected application of a law or regulation may render a contract between itself and a counterparty void or unenforceable, thereby leading to a loss.

2. A Clearing House should be able to demonstrate to the DFSA that the legal basis on which it operates, including in multiple jurisdictions, is well founded. A well founded legal basis would generally include well defined rights and obligations of the Clearing House, its Members and other users, including its service providers such as custodians and settlement banks, or would provide a mechanism by which such rights and obligations can be ascertained. This would enable the Clearing House to identify and address risks that arise from its operations involving such parties.

3. A Clearing House should, in order to form clear views about the legally binding nature of its contractual arrangements in the relevant jurisdictions, obtain independent legal opinions as appropriate to its activities. Such legal opinions should, to the extent practicable, confirm the enforceability of the rules and procedures of the Clearing House in the relevant jurisdictions and be made available to the DFSA upon request.

4. A Clearing House may be conducting its activities in multiple jurisdictions in circumstances such as:

   a. where it operates through linked CCPs, SSSs or CSDs;

   b. where its Members and other participants are incorporated, located, or otherwise conducting business in jurisdictions outside the DIFC; or

   c. where any collateral provided is located or held in a jurisdiction outside the DIFC.

Liquidity risk

7.2.3 (1) A Clearing House must:

(a) determine the amount of its minimum liquid resources;

(b) maintain sufficient liquid resources to be able to effect same-day, intra-day or multi-day settlement, as applicable, of its payment obligations with a high degree of confidence under a wide range of potential stress scenarios;

(c) ensure that all resources held for the purposes of meeting its minimum liquid resource requirement are available when needed;

(d) have a well-documented rationale to support the amount and form of total liquid resources it maintains for the purposes of (b) and (c); and

(e) have appropriate arrangements in order to be able to maintain, on an on-going basis, such amount and form of its total liquid resources.

(2) A Clearing House must have a robust framework for managing its liquidity risks. Such a framework must enable it to manage liquidity risks arising from its Members and other participants on its facilities, and any other involved parties, such as settlement banks, custodian banks,

liquidity providers ("Members and other involved parties"). For that purpose, the framework must, at a minimum, include:

(a) rules and procedures that:

(i) enable it to meet its payment obligations on time following any individual or combined default of its Members and other involved parties; and

(ii) address unforeseen and potentially uncovered liquidity shortfalls to avoid unwinding, revoking, or delaying the settlement of its payment obligations arising under the same-day, intraday or multiday settlement obligations, as applicable;

(b) effective operational and analytical tools to identify, measure and monitor its settlement and funding flows on an on-going and timely basis; and

(c) rigorous due diligence procedures relating to its liquidity providers to obtain a high degree of confidence that each provider (whether the provider is a Member or other participant using its facilities or an external party) has:

(i) sufficient information to assess, understand and manage its own liquidity risks; and

(ii) the capacity to perform as required under their commitment.

(3) A Clearing House must regularly:

(a) review the adequacy of the amount of its minimum liquid resources as determined in accordance with (1);

(b) test the sufficiency of its liquid resources maintained to meet the relevant amount through rigorous stress testing; and

(c) test its procedures for accessing its liquid resources at a liquidity provider.

Guidance

1. A Clearing House should be able to effectively measure, monitor, and manage its liquidity risk. Some of the systems, controls and procedures set out under Rule 7.2.3 above to address liquidity risk are also commonly used to address credit risks, and therefore, the same procedures, adjusted as appropriate, can be used for both purposes.

Acceptable types of liquid resources

2. For the purposes of meeting its minimum liquid resource requirement referred to above, a Clearing House's qualifying liquid assets/resources may include cash held in appropriate currencies at a central bank in its or other relevant jurisdiction, or at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps and repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions.

3. If a Clearing House has access to a routine line of credit made available by a central bank in its or other relevant jurisdiction, it may count such access as part of its liquid resources to the extent it has collateral that is eligible for pledging to (or for conducting other appropriate forms of transactions with) the relevant central bank. Even if it does not have access to a routine line of credit made available by a central bank, it should still take account of what collateral is typically accepted by the relevant central bank as such assets may be more likely to be liquid in stressed circumstances. However, a Clearing House should not assume the availability of emergency central bank credit as a part of its liquidity plan.

4. A Clearing House may supplement its qualifying liquid resources with other forms of liquid resources. If it does so, then such liquid resources should be in the form of assets that are likely to be saleable, or acceptable as collateral, for lines of credit, swaps, or repos on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions.

5. Where a Clearing House has access to a central bank lines of credit or accounts, payment services, or securities services, it should use those services as far as practicable, as such use is likely to enhance its ability to manage liquidity risk more effectively.

Review

6. A Clearing House should have clear procedures to report the results of its stress tests undertaken for the purposes of this Rule to its Governing Body and senior management as appropriate. It should use the results of stress testing to evaluate the adequacy of its liquidity risk-management framework and make any appropriate adjustments as needed.

7. In conducting stress testing, a Clearing House should consider a wide range of relevant scenarios. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios should also take into account the design and operation of the Clearing House, and include all entities that may pose material liquidity risks to the Clearing House (such as settlement banks, custodian banks, liquidity providers, and other involved entities), and where appropriate, cover a multi-day period.

8. A Clearing House should record the results of such stress testing and the rationale for any adjustments made to the amount and form of total liquid resources it maintains.

Participant default

9. A Clearing House's rules and procedures should also indicate any liquidity resources it may deploy, in the event of default by a Member or other involved parties, during a stress event to replenish the available liquid resources and the associated process, so that it can continue to operate in a safe and sound manner.

Custody and investment risk

7.2.4 (1) A Clearing House must have effective means to address risks relating to:

(a) custody of its own assets, in accordance with (2); and

(b) investments, in accordance with (3).

(2) For the purposes of (1)(a), a Clearing House must:

(a) hold its own assets with entities which are Licensed by the DFSA or a Financial Services Regulator for holding deposits or providing custody, as appropriate;

(b) be able to have prompt access to its assets when required; and

(c) regularly evaluate and understand its exposures to entities which hold its assets.

(3) For the purposes of (1)(b), a Clearing House must ensure that:

(i) it has an investment strategy which is consistent with its overall risk-management strategy and is fully disclosed to its Members and other participants using its facilities; and

(ii) its investments comprise instruments with minimal credit, market, and liquidity risks. For this purpose, the investments must be secured by, or be claims on, high-quality obligors, allowing for quick liquidation with little, if any, adverse price effect.

Guidance

A Clearing House which holds assets for its Members and other participants is subject to the "safe custody" requirements in section 5.10. In addition to those requirements, a Clearing House is required to manage risks associated with custody of its own assets (which may comprise cash) under Rule 7.2.4.

Money settlement

7.2.5 (1) Where a Clearing House conducts its money settlements using commercial bank money, it must adopt appropriate measures to minimise and strictly control the credit and liquidity risk arising from such use.

(2) For the purposes of (1), a Clearing House must:

(a) conduct its money settlements using only such settlement assets with little or no credit or liquidity risk;

(b) monitor, manage, and limit its credit and liquidity risks arising from commercial settlement banks. In particular, it must establish and monitor adherence to strict criteria for the use of settlement banks, which take into account, among other things, the regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability of the relevant settlement banks;

(c) monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks; and

(d) ensure that its legal agreements with any settlement banks, at a minimum:

(i) specify clearly when transfers on the books of individual settlement banks are expected to occur and when they are final; and

(ii) ensure that funds received are transferable as soon as possible, if not intra-day, at least by the end of the day to enable it and its Members and other participants on its facilities to manage their credit and liquidity risks.

Physical delivery

7.2.6 (1) A Clearing House incurring obligations that require physical delivery of commodities must:

(a) provide adequate information to its Members and other participants using its facilities relating to its obligations with respect to physical delivery of commodities. Such information must also be made publicly available;

(b) identify, monitor, and manage the risks associated with such physical deliveries; and

(c) identify, monitor, and manage the risks and costs associated with the storage and delivery of commodities.

(2) A Clearing House must have adequate arrangements, including service agreements, which enable it to meet its physical delivery obligations.

Collateral

7.2.7 (1) A Clearing House which requires collateral to manage its own, its Members' or other participants' credit risks arising in the course of or for the purposes of its payment, clearing, and settlement processes must:

(a) only accept collateral with low credit, liquidity, and market risks; and

(b) set and enforce appropriately conservative haircuts and concentration limits.

(2) A Clearing House must, for the purposes of meeting the requirement in (1), establish and implement a collateral management system that is well designed and operationally flexible. Such a system must, at a minimum:

(a) limit the assets it accepts as collateral to those with low credit, liquidity, and market risks;

(b) establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions;

(c) to reduce the need for procyclical adjustments, establish, to the extent practicable and prudent, stable and conservative haircuts that are calibrated to include periods of stressed market conditions;

(d) avoid concentrated holdings of certain assets where that would significantly impair the ability to liquidate such assets quickly without significant adverse price effects; and

(e) mitigate, if it accepts cross-border collateral, the risks associated with such use. Such measures must ensure that the collateral can be used in a timely manner.

Settlement finality

7.2.8 (1) A Clearing House must have adequate arrangements to ensure clear and certain final settlement of payments, transfer instructions or other obligations of Members and other participants using its facilities and where relevant, its own obligations.

(2) For the purposes of (1), a Clearing House's arrangements for final settlement must:

(a) ensure that, if intra-day or real-time settlement is not feasible, settlement occurs at least by the end of the value date of the relevant transaction; and

(b) clearly define:

(i) the point at which the final settlement occurs; and

(ii) the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by the parties to the underlying contract.

(3) For the purposes of this Rule:

(a) "final settlement" is the irrevocable and unconditional transfer of an asset or financial instrument, or the discharge of obligations arising under the underlying contract by the parties to the contract; and

(b) "value date" is the day on which the payment, transfer instruction, or other obligation arising under the underlying contract is due and, accordingly, the associated funds or Investments are available to the respective parties under the contract.

Guidance

1. Final settlement is usually dependent on the legal environment of where the settlement occurs. Generally, in the case of certain assets, final settlement includes the transfer of title.

2. Completing final settlement by the end of the value date is important because deferring final settlement to the next-business day can create both credit and liquidity pressures for a Clearing House's Members and other participants on its facilities and stakeholders. This may also be a potential source of systemic risk. Therefore, where possible, a Clearing House should provide intra-day or real-time settlement finality to reduce settlement risk.

7.3 Additional requirements for a CCP

Credit Risk

7.3.1 (1) A Clearing House acting as a CCP must establish and implement a robust process to manage:

(a) its current and potential future credit and market risk exposures to market counterparties, including Members and other participants on its facilities; and

(b) credit risks arising from its payment, clearing, and settlement processes.

(2) For the purposes of (1), a CCP must, on a regular basis as appropriate to the nature, scale and complexity of its operations:

(a) perform stress tests using models containing standards and predetermined parameters and assumptions; and

(b) carry out comprehensive and thorough analysis of stress testing models, scenarios, and underlying parameters and assumptions used to ensure that they are appropriate for determining the required level of default protection in light of current and evolving market conditions.

(3) A CCP must:

(a) undertake the analysis referred to in (2)(b) at least on a two-month basis, unless more frequent analysis is warranted because the Investments cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increase significantly; and

(b) perform a full validation of its risk-management models at least annually.

Guidance

1. A robust assessment process should enable a CCP to effectively measure, monitor, and manage its risks and exposures effectively. In particular, it should be able to identify sources of credit risk and routinely measure and monitor its credit exposures. Generally, a CCP should have daily stress testing to measure and monitor its risk exposures, especially if its operations are complex or widely spread over multiple jurisdictions. It should use appropriate risk management tools to control the identified credit risks. A CCP should use margin and other prefunded financial resources in order to do so.

2. In particular, a CCP should establish explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its Members and other participants with respect to any of their obligations to the CCP. Such rules and procedures should address how any potentially uncovered credit losses would be allocated, including the repayment of any funds the CCP may borrow from its liquidity providers. They should also indicate the CCP's process to replenish any financial resources that it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

3. A CCP should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount of total financial resources it

maintains. It should also have clear procedures to report the results of its stress tests to its Governing Body and senior management as appropriate, and use those results to evaluate the adequacy of its total financial resources and make any adjustments as appropriate.

Margin requirements

7.3.2 (1) Without limiting the generality of Rule 7.3.1, a Clearing House operating as a CCP must, for the purposes of managing its credit and market risk:

(a) have a margin system which meets the requirements in (2) and (3);

(b) mark participant positions to market and collect variation margin at least daily to limit the build-up of current exposures;

(c) have necessary authority and operational capacity to make intra-day margin calls and payments, both scheduled and unscheduled, to participants; and

(d) regularly review and validate its margin system to ensure that it operates effectively and as intended.

(2) The margin system of a CCP must, at a minimum:

(a) establish margin levels which are commensurate with the risks and particular attributes of each product, portfolio, and market it serves;

(b) use a reliable source of timely price data for its margin system, and also procedures and sound valuation models for addressing circumstances in which pricing data is not readily available or reliable; and

(c) adopt initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to Members and other participants using its facilities in the interval between the last margin collection and the close-out of positions following a participant default.

(3) The initial margins established pursuant to (2)(c) must:

(a) if the CCP calculates margins:

(i) at the Member's portfolio level, be applied in respect of each portfolio's distribution of future exposure; and

(ii) at more granular levels, meet the corresponding distribution of future exposures; and

(b) use models which, among other things:

(i) rely on conservative estimates of the time horizons for the effective hedging or close out of the particular types of products cleared by the CCP, including in stressed market conditions; and

(ii) have an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and, to the extent practicable and prudent, limit the need for destabilising procyclical changes.

Guidance

1. A CCP should adopt comprehensive and stringent measures to ensure that it has adequate total financial resources to effectively manage its credit risk and exposures.

2. A CCP should determine the amount of the total financial resources available to it and regularly test the sufficiency of such amount, particularly in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing.

3. In conducting stress testing, a CCP should consider the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

4. A CCP which is involved in activities with a more-complex risk profile, or is systemically important in multiple jurisdictions, should maintain additional financial resources to cover a wide range of potential stress scenarios. These should include the default of the two of its market counterparties (including their affiliates) that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. In all other cases, a CCP should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios, which include the default of the market counterparty (including its affiliates) that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions.

5. An effective margining system is a key risk-management tool for an Authorised Market Institution operating as a CCP to manage the credit exposures posed by open positions of its Members or other participants using its facilities. Therefore, it should adopt and implement an effective margin system, which is risk-based and regularly reviewed, in order to cover its credit exposures to its Members and other participants in respect of all Investments and other products.

6. In calculating margin requirements, a CCP may allow offsets or reductions in required margin across products that it clears or between products that it and another CCP clear, if the risk of one product is significantly and reliably correlated with the risk of the other product. Where two or more CCPs are authorised to offer cross-margining, they must have appropriate safeguards and harmonised overall risk-management systems.

7. A CCP should analyse and monitor its model performance and overall margin coverage by conducting rigorous back testing regularly, and sensitivity analysis at least monthly and, where appropriate, more frequently. A CCP should regularly conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of the model's coverage, a CCP should take into account a wide range of parameters and assumptions that reflect possible market conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.

Segregation and portability

7.3.3 (1) A Clearing House acting as a CCP must have systems and procedures to enable segregation and portability of positions of the customers of its Members and other participants on its facilities, and any collateral provided to it with respect to those positions.

(2) For the purposes of (1), a CCP's systems and controls must, at a minimum, provide for the following:

(a) the segregation and portability arrangements that effectively protect the positions and related collateral of the customers of the Members or other participants on its facilities from the default or insolvency of the relevant Member or other participants;

(b) if the CCP offers additional protection of the customer positions and related collateral against the concurrent default of both the relevant Member or other participants or other customers, the adoption of necessary measures to ensure that the additional protection offered is effective; and

(c) the use of account structures that enable the CCP to readily identify positions of the customers of the relevant Member or other participant, and to segregate their related collateral.

(3) A CCP must make available to its Members and other participants using its facilities, its rules, policies and procedures relating to the segregation and portability of the positions and related collateral of the customers of its Members and other participants using its facilities.

Guidance

1. A CCP should:

a. maintain the customer positions and any related collateral referred to in Rule 7.3.3 in individual customer accounts or in omnibus customer accounts; and

b. structure its portability arrangements so that the positions and collateral of a defaulting Member's or other participant's customers can be transferred to one or more other Members or participants.

2. A CCP should also disclose whether the customers' collateral is protected on an individual or omnibus basis. In addition, it should disclose any constraints, such as legal or operational, that may impair its ability to segregate or transfer a Member's or other participant's customers' positions and related collateral.

7.4 Additional requirements for a CSD

7.4.1 (1) Where a Clearing House operates a Central Securities Depository (CSD), it must have rules and procedures, including robust accounting practices and controls to:

(a) ensure the integrity of securities issues; and

(b) minimise and manage risks associated with the safekeeping and transfer of securities.

(2) A CSD must ensure that securities referred to in (1)(a) are recorded in book-entry form prior to the trade date.

(3) For the purposes of (1)(a), a CSD's systems and controls must ensure that:

(a) the unauthorised creation or deletion of securities is prevented;

(b) appropriate intra-day reconciliation is conducted to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the Members and other participants of the CSD;

(c) where entities other than the CSD are involved in the reconciliation process for a securities issue, such as the issuer, registrars, issuance agents, transfer agents or other CSDs, the CSD has adequate arrangements for cooperation and information exchange between all involved parties so that the integrity of the issue is maintained; and

(d) there are no securities overdrafts or debit balances in securities accounts .

CSD links

7.4.2 (1) A CSD must not establish any link with another CSD (CSD link) unless:

(a) it has:

(i) prior to establishing the CSD link, identified and assessed potential risks, for itself and its Members and other participants using its facilities, arising from establishing such a link;

(ii) adequate systems and controls to effectively monitor and manage, on an on-going basis, risks identified under (a) above; and

(iii) complied with the requirement in (2); and

(b) it is satisfied, on reasonable grounds, that the contractual arrangement establishing the CSD link:

(i) provides to the CSD and its Members and other participants using its facilities adequate protection relating to possible risks arising from using the other CSDs to which it is linked (linked CSDs);

(ii) in the case of a provisional transfer of securities between the CSD and linked CSDs, ensure intra-day finality by prohibiting the retransfer of securities before the first transfer of securities becomes final;

(iii) sets out the respective rights and obligations of the CSD and linked CSDs and their respective Members and other participants using their facilities; and

(iv) in the case of a linked CSD outside the DIFC, sets out clearly the applicable laws that govern each aspect of the CSD's and the linked CSD's operations.

(2) The CSD must be able to demonstrate to the DFSA, prior to the establishment of any CSD link, that:

(a) the link arrangement between the CSD and all linked CSDs, contains adequate mitigants against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;

(b) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;

(c) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the additional risks arising from the use of the intermediary;

(d) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs, and where such settlement is not practicable or feasible, reasons for non-DVP settlement is notified to the DFSA; and

(e) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are:

(i) identical moments established for the entry of transfer orders into the system;

(ii) irrevocable transfer orders; and

(iii) finality of transfers of securities and cash.

Guidance

A CSD should include in its notification to the DFSA relating to the establishment of CSD links the results of due diligence undertaken in respect of the matters specified in Rule 7.4.2(2) to demonstrate that those requirements are met. Where a CSD changes any existing CSD arrangements, fresh notification relating to such changes, along with its due diligence relating to the new CSD link, should be provided to the DFSA in advance of the proposed change.

PART 4 OTHER REQUIREMENTS

8 CONTROLLERS

8.1 Application

8.1.1 This chapter applies to:

(a) an Authorised Market Institution; or

(b) a Person who is a Controller as defined in Rule 8.1.2.

Definition of a Controller

8.1.2 (1) A Controller is a Person who, either alone or with any Associate:

(a) holds 10% or more of the shares in either the Authorised Market Institution or a Holding Company of that institution;

(b) is entitled to exercise, or control the exercise of, 10% or more of the voting rights in either the Authorised Market Institution or a Holding Company of that institution; or

(c) is able to exercise significant influence over the management of the Authorised Market Institution as a result of holding shares or being able to exercise voting rights in the Authorised Market Institution or a Holding Company of that institution or having a current exercisable right to acquire such shares or voting rights.

(2) A reference in this chapter to:

(a) a share means:

(i) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution which has a share capital, its allotted shares;

(ii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution with capital but no share capital, rights to a share in its capital; and

(iii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up.

(b) "a holding" means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Market Institution or a Holding Company of that institution held by that Person either alone or with any Associate.

Guidance

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the DIFC Companies Law. That definition provides when one body corporate is considered to be a holding company or a subsidiary of another body corporate and extends that concept to the ultimate holding company of the body corporate.

2. Pursuant to Rule 8.1.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over an Authorised Market Institution. The ability to exert significant management influence can arise even where a Person, alone or with Associates, controls less than 10% of the shares or voting rights of the Authorised Market Institution or a Holding Company of that institution. Similarly, a Person may be able to exert significant management influence where such Person does not hold shares or voting rights but has exercisable rights to acquire shares or voting rights, such as under Options.

Disregarded holdings

8.1.3 For the purposes of determining whether a Person is a Controller, shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with an Associate, in an Authorised Market Institution or a Holding Company of that institution are disregarded if:

(a) the shares are held for the sole purpose of clearing and settling within a short settlement cycle;

(b) the shares are held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or

(c) the Person is an Authorised Firm or a Regulated Financial Institution and it:

(i) acquires a holding of shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;

(ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and

(iii) retains the holding for a period less than one year.

8.2 Changes relating to control

Requirement for prior approval of Controllers of an Authorised Market Institution incorporated under DIFC law

8.2.1 (1) In the case of an Authorised Market Institution which is incorporated under DIFC law, a Person must not:

(a) become a Controller of the Authorised Market Institution; or

(b) increase the level of control which that Person has in the Authorised Market Institution beyond a threshold specified in (2),

unless that Person has obtained the prior written approval of the DFSA to do so.

(2) For the purposes of (1)(b), the thresholds at which the prior written approval of the DFSA is required are when the relevant holding is increased:

(a) from below 30% to 30% or more; or

(b) from below 50% to 50% or more.

Guidance

See Rule 8.1.2 for the circumstances in which a Person becomes a Controller of an Authorised Market Institution.

Approval process

8.2.2 (1) A Person who is required to obtain the prior written approval of the DFSA pursuant to Rule 8.2.1(1) must make an application to the DFSA using the appropriate form in AFN.

(2) Where the DFSA receives an application under (1), it may:

(a) approve the proposed acquisition or increase in the level of control;

(b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or

(c) object to the proposed acquisition or increase in the level of control.

Guidance

1. A Person intending to acquire or increase control in an Authorised Market Institution should submit an application for approval in the appropriate form in AFN sufficiently in advance of the proposed acquisition to be able to obtain the DFSA approval in time for the proposed acquisition.

2. Paragraph 3.6.7 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when exercising its powers under Rule 8.2.2 to approve, object to or impose conditions of approval relating to a proposed Controller or an increase in the level of control of an existing Controller.

8.2.3 (1) Where the DFSA proposes to approve a proposed acquisition of or an increase in the level of control in an Authorised Market Institution pursuant to Rule 8.2.2(2)(a), it must:

(a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different period is considered appropriate by the DFSA and notified to the applicant in writing; and

(b) issue to the applicant, and where appropriate to the Authorised Market Institution, an approval notice as soon as practicable after making that decision.

(2) An approval, including a conditional approval granted by the DFSA pursuant to Rule 8.2.2(2)(a) or (b), is valid for a period of one year from the date of the approval, unless an extension is granted by the DFSA in writing.

Guidance

1. If the application for approval lodged with the DFSA does not contain all the required information, then the 90 day period runs from the date on which all the relevant information is provided to the DFSA.

2. If a Person who has obtained prior DFSA approval for an acquisition of or an increase in the control in an Authorised Market Institution is unable to effect the acquisition before the end of the period referred to in Rule 8.2.3(2), it will need to obtain fresh approval from the DFSA.

Objection or conditional approval process

8.2.4 (1) Where the DFSA proposes to exercise its objection or conditional approval power pursuant to Rule 8.2.4(2)(b) or (c) in respect of a proposed acquisition or an increase in the level of control in an Authorised Market Institution, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:

(a) a written notice stating;

(i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and

(ii) any proposed conditions subject to which that Person may be approved by the DFSA; and

(b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.

(2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:

(a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;

(b) the Person is approved as a Controller subject to conditions specified in the notice; or

(c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.

Guidance

A final decision made by the DFSA pursuant to Rule 8.2.5(4)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

8.2.5 (1) A Person who has been approved by the DFSA as a Controller of an Authorised Market Institution subject to any conditions must comply with the relevant conditions of approval.

(2) A Person who has been notified by the DFSA pursuant to Rule 8.2.4(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Authorised Market Institution.

Guidance

A Person who acquires control of or increases the level of control in an Authorised Market Institution without the prior DFSA approval or breaches a condition of approval is in breach of the Rules. See Rule 8.2.10 for the actions that the DFSA may take in such circumstances.

Notification for decrease in the level of control of an AMI incorporated under DIFC law

8.2.6 A Controller of an Authorised Market Institution which is incorporated under DIFC law must submit, using the appropriate form in AFN, a written notification to the DFSA where that Person:

(a) proposes to cease being a Controller; or

(b) proposes to decrease the existing holding from more than 50% to 50% or less.

Notification for changes in control relating to an Authorised Market Institution incorporated under non-DIFC law

8.2.7 (1) In the case of an Authorised Market Institution which is incorporated other than under DIFC law, a written notification to the DFSA must be submitted by a Controller or a Person proposing to become a Controller in accordance with (3) in respect of any one of the events specified in (2).

(2) For the purposes of (1), a notification to the DFSA is required when:

(a) a Person becomes a Controller;

(b) an existing Controller proposes to cease being a Controller; or

(c) an existing Controller's holding is:

(i) increased from below 30% to 30% or more;

(ii) increased from below 50% to 50% or more; or

(iii) decreased from more than 50% to 50% or less.

(3) The notification required under (1) must be made using the appropriate form in AFN as soon as possible, and in any event, before making the relevant acquisition or disposition.

Obligations of an Authorised Market Institution relating to its Controllers

8.2.8 (1) An Authorised Market Institution must have adequate systems and controls to monitor:

(a) any change or proposed change of its Controllers; and

(b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact the fitness and propriety of the Authorised Market Institution or its ability to conduct business soundly and prudently.

(2) An Authorised Market Institution must, subject to (3), notify the DFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.

(3) An Authorised Market Institution need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the DFSA or notified the event to the DFSA as applicable.

Guidance

Steps which an Authorised Market Institution may take in order to monitor changes relating to its Controllers include the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

8.2.9 (1) An Authorised Market Institution must submit to the DFSA an annual report on its Controllers within four months of its financial year end.

(2) The Authorised Market Institution's annual report on its Controllers must include:

(a) the name of each Controller; and

(b) the current holding of each Controller, expressed as a percentage.

Guidance

1. An Authorised Market Institution may satisfy the requirements of Rule 8.2.9 by submitting a corporate structure diagram containing the relevant information.

2. An Authorised Market Institution must take account of the holdings which the Controller, either alone or with an Associate, has in the Authorised Market Institution or any Holding Company of that institution (see the definition of a Controller in Rule 8.1.2).

Other powers relating to Controllers

8.2.10 (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Market Institution where such a Person:

(a) has acquired or increased the level of control that Person has in an Authorised Market Institution without the prior written approval of the DFSA as required under Rule 8.2.1;

(b) has breached the requirement in Rule 8.2.5 to comply with conditions of approval applicable to that Person; or

(c) is no longer acceptable to the DFSA as a Controller.

(2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Market Institution, the DFSA must provide such a Person with:

(a) a written notice stating:

(i) the DFSA's reasons for objecting to that Person as a Controller; and

(ii) any proposed conditions subject to which that Person may be approved by the DFSA; and

(b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.

(3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:

(a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller; or

(b) the Person is approved as a Controller subject to conditions specified in the notice; or

(c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.

(4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.

(5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller that Person must dispose of the relevant holdings within such period as specified in the final notice.

Guidance

Refer to section 3.6 of the RPP Sourcebook for matters which the DFSA takes into consideration when exercising its powers under Rule 6.2.10. A final decision made by the DFSA pursuant to Rule 6.2.10(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

9 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

9.1 Application

9.1.1 This chapter applies to every Authorised Market Institution.

9.2 Relations with regulators and the risk based approach

9.2.1 An Authorised Market Institution must deal with regulatory authorities in an open and co-operative manner and keep the DFSA promptly informed of significant events or activities, wherever they are carried on, relating to the Authorised Market Institution, of which the DFSA would reasonably expect to be notified.

9.2.2 An Authorised Market Institution must advise the DFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach of a Rule or Licensing Requirement by the Authorised Market Institution or any of its Employees may have occurred or may be about to occur.

9.3 Notifications

9.3.1 Unless otherwise provided, notifications in this section may be made orally or in writing, whichever is more appropriate in the circumstances, but where the Authorised Market Institution gives notice or information orally, it must confirm that notice or information in writing without delay.

9.4 Key Individuals and Regulatory Functions

Notifications

9.4.1 An Authorised Market Institution must, where an individual ceases or is reasonably likely to cease to be a Key Individual of the Authorised Market Institution, give written notice to the DFSA of that event and take prompt action to replace the Key Individual who has ceased to perform the relevant functions.

Guidance

1. An Authorised Market Institution must lodge with the DFSA the relevant applications for the approval of the proposed Key Individual in accordance with the requirements in section 3.3.

2. An Authorised Market Institution should ensure that functions that are assigned to Key Individuals as per the definitions of those functions are carried out by the relevant Key Individuals or other individuals subject to appropriate oversight and control of the relevant Key Individuals.

3. The DFSA does not need to be notified where minor changes are made to the responsibilities of a Key Individual, but where major changes in responsibilities are made, such as a significant re-alignment of responsibilities, then the DFSA should be

notified with the appropriate information. Such changes may also require the DFSA prior approval if they are material changes. See section 4.3.

Disciplinary action and events relating to Key Individuals

9.4.2 Where any Key Individual of an Authorised Market Institution:

(a) is the subject of any:

(i) disciplinary action arising out of alleged misconduct; or

(ii) criminal prosecution arising out of alleged misconduct involving fraud or dishonesty;

(b) resigns as a result of an investigation into alleged misconduct; or

(c) is dismissed for misconduct;

the Authorised Market Institution must immediately give the DFSA notice of that event and give the following information:

(d) the name of the Key Individual and his responsibilities within the Authorised Market Institution;

(e) details of the alleged acts of misconduct by that Key Individual; and

(f) details of any disciplinary action which has been imposed or is proposed to be taken by that body in relation to that Key Individual.

9.4.3 Where an Authorised Market Institution becomes aware that any of the following events have occurred in relation to a Key Individual, it must immediately give the DFSA notice of that event:

(a) a petition of bankruptcy is presented against a Key Individual;

(b) a bankruptcy order is made against a Key Individual; or

(c) a Key Individual entering into a voluntary arrangement with his creditors.

9.5 Constitution and governance

9.5.1 Where an Authorised Market Institution is to circulate any notice or other document proposing any amendment to its memorandum or articles of association, or other document relating to its constitution, to:

(a) its shareholders or any group or class of them;

(b) persons granted access to its facilities or any group or class of them; or

(c) any other group or class of persons which has the power to make that amendment or whole consent or approval is required before it may be made:

that Authorised Market Institution must give notice of that proposed amendment to the DFSA setting out the following information:

(d) the proposed amendment;

(e) the reasons for the proposal; and

(f) a description of the group or class of persons to whom the proposal is to be circulated.

9.5.2 Where an Authorised Market Institution makes an amendment to its memorandum or articles of association, or other document relating to its constitution, that Authorised Market Institution must immediately give the DFSA notice of that event, setting out written particulars of that amendment and of the date on which it is to become or became effective.

9.5.3 (1) Where any significant change is made to an agreement which relates to the constitution, or to the corporate governance framework or the remuneration structure or strategy, of an Authorised Market Institution, that Authorised Market Institution must give the DFSA a notice as provided in (2).

(2) Where any significant change is made to:

(a) an agreement which relates to the constitution of an Authorised Market Institution, the Authorised Market Institution must give the DFSA notice of that change as soon as it becomes aware of it, and the date on which it is to become or became effective; or

(b) the corporate governance framework or the remuneration structure or strategy of an Authorised Market Institution, the Authorised Market Institution must give the DFSA notice of that change as soon as practicable before making such a change.

Guidance

1. Key aspects of the corporate governance framework of an Authorised Market Institution encompass a range of matters. These include the composition of its Governing Body, any committees of the Governing Body, the senior management and the Persons Undertaking Key Control Functions, the reporting lines between the Governing Body, senior management and the Persons Undertaking Key Control Functions and any key policies and practices relating to the internal governance of the firm, such as codes of ethics or its remuneration practices. Significant changes relating to such arrangements and policies need to be notified to the DFSA pursuant to Rule 9.5.3(2)(b) before making any changes.

3. Notification relating to proposed changes to corporate governance and remuneration referred to in Rule 9.5.3(2)(b) must be given sufficiently in advance of effecting the proposed change. If there are any concerns that an Authorised Market Institution may not be able to meet the applicable requirements relating to corporate governance and remuneration set out in GEN Rules 5.3.30 and 5.3.31 as a result of a proposed change, the DFSA may require the Authorised Market Institution to address those concerns effectively before implementing such a change.

9.6 Financial and other information

9.6.1 An Authorised Market Institution must give the DFSA:

(a) a copy of its annual report and accounts; and

(b) a copy of any consolidated annual report and accounts of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

(c) three months after the end of the financial year to which the document relates;

(d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or

(e) the time when the document is sent to a Holding Company of the Authorised Market Institution.

9.6.2 Where an audit committee of an Authorised Market Institution has received a report in relation to any period or any matter relating to any Regulatory Functions of that Authorised Market Institution, the Authorised Market Institution must immediately give the DFSA a copy of that report.

9.6.3 An Authorised Market Institution must give the DFSA a copy of its quarterly management accounts within one month of the end of the period to which they relate.

9.6.4 An Authorised Market Institution must give the DFSA:

(a) a statement of its anticipated income, expenditure and cash flow for each financial year; and

(b) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

at least 15 days before the beginning of that financial year.

Guidance

An Authorised Market Institution is subject to GEN 8 and the requirements imposed by those Rules.

Fees and charges

9.6.5 An Authorised Market Institution must give the DFSA a summary of:

(a) any proposal for changes to the fees or charges levied on users of its facilities, or any group or class of them, at the same time as the proposal is communicated to the relevant users; and

(b) any such change, no later than the date when it is published and notified to relevant parties.

9.7 Complaints

9.7.1 Where an Authorised Market Institution has investigated a complaint arising in connection with the performance of, or failure to perform, any of its Regulatory Functions, and the conclusion is, that the Authorised Market Institution should:

(a) make a compensatory payment to any person; or

(b) remedy the matter which was the subject of that complaint,

the Authorised Market Institution must immediately notify the DFSA of that event and give the DFSA a copy of the report and particulars of the recommendation as soon as that report or those recommendations are available to it.

9.8 Notification

Notification in respect of trading

9.8.1 Where an Authorised Market Institution proposes to remove from trading or admit to trading, by means of its facilities, a class of Investment which it has not previously traded, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholders, with the following information;

(a) a description of the Investment to which the proposal relates;

(b) where that Investment is a derivative product, the proposed terms of that derivative; and

(c) the name of any clearing or settlement facility in respect of that Investment.

9.8.2 Where an Authorised Market Institution decides to suspend, restore from suspension or cease trading any Investment, it must immediately notify the DFSA and any person granted access to its facilities of the decision.

9.8.3 Where a Clearing House proposes to cease clearing or settling, or to commence clearing or settling, by means of its facilities, a class of Investment which it has not previously cleared or settled, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholders, with the following information;

(a) a description of the Investment to which the proposal relates;

(b) where that Investment is a derivative product, the proposed terms of that derivative; and

(c) the name of any trading facility in respect of that Investment.

Delisting or suspension of Securities from an Official List of Securities

Guidance

An Authorised Market Institution which maintains an Official List of Securities has the power under Article 35(1) of the Markets Law 2012 to delist or suspend Securities from its Official List of Securities.

9.8.4 Where an Authorised Market Institution suspends, restores or delists from suspension any Securities from an Official List of Securities it maintains under an endorsement on its Licence, it must immediately notify the DFSA of its decision and the reasons for the decision.

9.9 Information technology systems

9.9.1 Where an Authorised Market Institution changes any of its plans for action in response to a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately give the DFSA notice of that event, and a copy of the revised or new plan.

9.9.2 Where any reserve information technology system of an Authorised Market Institution fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that body must immediately give the DFSA notice of that event, and inform the DFSA of:

(a) what action that Authorised Market Institution is taking to restore the operation of the reserve information technology system; and

(b) when it is expected that the operation of that system will be restored.

Inability to discharge regulatory functions

9.9.3 Where, because of the occurrence of any event or circumstances, an Authorised Market Institution is unable to discharge any Regulatory Function, it must immediately give the DFSA written notice of its inability to discharge that function, and inform the DFSA of:

(a) what event or circumstance has caused it to become unable to do so;

(b) which of its Regulatory Functions it is unable to discharge; and

(c) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that Regulatory Function.

9.10 Investigations and disciplinary action

9.10.1 Where an Authorised Market Institution becomes aware that a person other than the DFSA has been appointed by any regulatory authority to investigate:

(a) any business transacted on or through its facilities; or

(b) any aspect of the clearing or settlement services which it provides,

it must immediately give the DFSA notice of that event.

Guidance

An Authorised Market Institution need not give the DFSA notice of:

a. routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of theme visits;

b. routine requests for information; or

c. investigations into the conduct of Persons granted access to the facilities of an Authorised Market Institution where the use of its facilities is a small or incidental part of the subject matter of the investigation.

Disciplinary action relating to persons granted access to its facilities

9.10.2 Where an Authorised Market Institution has taken disciplinary action against a Member or any other Person granted access to its facilities, or any Employee of such Person, in respect of a breach of its Business Rules, trading rules or Listing Rules, the Authorised Market Institution must immediately notify the DFSA of that event, and give:

(a) the name of the Person concerned;

(b) details of the disciplinary action taken by the Authorised Market Institution; and

(c) the Authorised Market Institution's reasons for taking that disciplinary action.

9.10.3 Where an appeal is lodged against any disciplinary action referred to in Rule 9.10.2, the Authorised Market Institution must immediately give the DFSA notice of that event and:

(a) the name of the appellant and the grounds on which the appeal is based, immediately; and

(b) the outcome of the appeal, when known.

Criminal offences and civil prohibition

9.10.4 Where an Authorised Market Institution has information tending to suggest that any person has:

(a) been carrying on Financial Services in the DIFC in contravention of the general prohibition;

(b) engaged in Market Misconduct; or

(c) engaged in financial crime or money laundering;

it must immediately give the DFSA notice of that event, along with full details of that information in writing. In regard to (c) the AMI must immediately inform the appropriate authorities in the U.A.E.

Directions by an Authorised Market Institution

9.10.5 Where an Authorised Market Institution:

(a) decides to limit the open position of any Person in Investments; or

(b) issues directions to any Person to close out his position in any Investment;

that Authorised Market Institution must immediately give the DFSA notice of that event, and the Person's name, the Investment and size of any position to be limited or closed-out and the reasons for the Authorised Market Institution's decision.

9.11 Supervisory directions

Guidance

1. Article 9 of the Markets Law provides as follows:

"(1) Without limiting the application of the Regulatory Law 2004, the DFSA may by written notice, direct an Authorised Market Institution to do or not do specified things that the DFSA considers are necessary or desirable to comply with the Regulatory Law or ensure the integrity of the financial services industry in the DIFC, including but not limited to, directions:

(a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution;

(b) requiring an Authorised Market Institution to act in a specified manner in relation to transactions conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or

(c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made.

(2) Without limiting the application of Article 75 of the Regulatory Law 2004, the DFSA may, by written notice direct an Authorised Market Institution to:

(a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period;

(b) suspend transactions on the market or through the facilities operated by an Authorised Market Institution;

(c) suspend transactions in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;

(d) prohibit trading in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;

(e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by an Authorised Market Institution;

(f) prohibit a specified person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or

(g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the DFSA's objectives.

(3) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under this Article 26."

2. The DFSA expects to use these powers only in exceptional circumstances. Factors the DFSA will consider in exercising these powers include:

a. what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;

b. the impact on the DFSA's objectives if a direction were not issued; or

c. whether it is in the interests of the DIFC.

3. The written notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers. Though the DFSA is not required to do so under the Markets Law, in most cases, the DFSA will contact the Authorised Market Institution prior to issuing such a direction.

9.12 Reports

9.12.1 For the purposes of Article 74(2) of the Regulatory Law 2004, an Authorised Market Institution must deliver to the DFSA a report in writing at such times as the DFSA may direct addressing those matters contained in Article 74(2)(a)-(d) of the Regulatory Law and such other matters as the DFSA may reasonably require.

9.13 Listing directions

Guidance

Article 35(2) of the Markets Law 2012 allows the DFSA to direct an Authorised Market Institution to suspend or restore from suspension or delist Securities from its Official List of Securities. Such directions may take immediate effect or from a date and time as may be specified in the directive.

9.14 Public disclosures of decisions in relation to an Official List of Securities of an Authorised Market Institution

9.14.1 (1) An Authorised Market Institution must make a market disclosure:

(a) on the website of the Authorised Market Institution; and

(b) to the DFSA,

of decisions in relation to the following events:

(c) an admission of Securities to its Official List of Securities;

(d) a suspension of Securities from its Official List of Securities;

(e) a restoration from suspension of Securities from its Official List of Securities;

(f) a delisting of Securities from its Official List of Securities; and

(g) a suspension, restoration from suspension or decision to cease trading of any Investment.

(2) The disclosure made in accordance with (1) should also indicate whether the event was made under a direction made to the Authorised Market Institution by the DFSA.

Guidance

Disclosures made in accordance with Rule 9.14.1 are designed to help ensure that an orderly market exists in relation to Securities admitted to an Official List of Securities of an Authorised Market Institution.

10 WITHDRAWAL OF A LICENCE

10.1 Application

10.1.1 This chapter applies to an Authorised Market Institution.

10.2 Withdrawal of a licence at an Authorised Market Institution's request

10.2.1 (1) An Authorised Market Institution must continue to carry on every Financial Service it is authorised to conduct under its Licence until its Licence is withdrawn or the DFSA consents in writing.

(2) An Authorised Market Institution seeking to have its Licence withdrawn must submit a request in writing stating:

(a) the reasons for the request;

(b) the date on which it will cease to carry on Financial Services in or from the DIFC;

(c) how Persons using facilities maintained by it for trading, clearing or settlement, as applicable, are affected and any alternative arrangements made for the trading, clearing or settlement;

(d) where applicable, how persons with Securities admitted to an Official List of Securities maintained by it are affected and any alternative arrangements made for the listing and trading of the relevant Securities; and

(e) that it has discharged, or will discharge, all obligations owed to its users in respect of whom the Authorised Market Institution has carried on Financial Services in or from the DIFC.

Guidance

1. The DFSA will need to be satisfied when considering requests under Rule 10.2.1, that an Authorised Market Institution has made appropriate arrangements with respect to its existing users (including the receipt of consent where required) and, in particular:

   a. whether there may be a long period in which the business will be wound down or transferred;

   b. whether money and other assets belonging to users must be returned to them; and

   c. whether there is any other matter which the DFSA would reasonably expect to be resolved before granting a request for the withdrawal of a Licence.

2. In determining a request for the withdrawal of a Licence, the DFSA may require additional procedures or information as appropriate including evidence that the Authorised Market Institution has ceased to carry on Financial Services.

3. Detailed plans should be submitted where there may be an extensive period of wind-down. It may not be appropriate for an Authorised Market Institution to immediately request a withdrawal of its Licence in all circumstances, although it may wish to consider reducing the scope of its Licence during this period. Authorised Market Institutions should discuss these arrangements with the DFSA.

4. The DFSA may refuse a request for the withdrawal of a Licence where it appears that users and customers may be adversely affected.

5. The DFSA may also refuse a request for the withdrawal of a Licence where:

   a. the Authorised Market Institution has failed to settle its debts to the DFSA; or

   b. it is in the interests of a current or pending investigation by the DFSA, or by another regulatory body or Financial Services Regulator.

6. Under Article 63 where the DFSA grants a request for the withdrawal of a Licence, the DFSA may continue to exercise any power under the Regulatory Law, the Markets Law or Rules in relation to an Authorised Market Institution for two years from the date on which the Licence was withdrawn.

10.3 Withdrawal of a licence on the DFSA's initiative

Guidance

In section 10.2 above, an application to withdraw a Licence will be at the Authorised Market Institution's request. Under Article 51 of the Regulatory Law, the DFSA may act on its own initiative to withdraw an Authorised Market Institution's Licence in cases when the Authorised Market Institution no longer has authority to carry on any Financial Service, is no longer meeting the conditions of its Licence or has failed to remove a Controller in the circumstances described in Article 64 of the Regulatory Law.

11 APPEALS OF AUTHORISED MARKET INSTITUTION DECISIONS

11.1 Application

11.1.1 (1) Pursuant to Article 68(2)(d) of the Markets Law, any Person who:

(a) is aggrieved by a decision of the Authorised Market Institution;

(b) has a right to a further appeal of the Authorised Market Institution decision to a tribunal under the Business Rules of that Authorised Market Institution; and

(c) has exhausted the internal appeal process of that Authorised Market Institution;

may appeal the Authorised Market Institution decision to the Financial Markets Tribunal by a notice in writing sent to the Financial Markets Tribunal within 30 days after the date on which the Authorised Market Institution sent the notice of the decision to the Person.

(2) The grounds on which an appeal may lie under this Rule are limited to the following:

(a) an error of law or jurisdiction;

(b) a breach of the rules of natural justice; or

(c) the decision is manifestly unreasonable.

(3) The Financial Markets Tribunal has jurisdiction to hear and determine an appeal of an Authorised Market Institution decision filed under this Rule and may uphold, vary or reverse the Authorised Market Institution decision under appeal or refer the matter back to the Authorised Market Institution for further reconsideration.

(4) The powers of the Financial Markets Tribunal prescribed under Article 69 of the Markets Law 2012 apply to appeals brought under this Rule.

12. TRANSITION AND SAVING

12.1 Application and interpretation

12.1.1 This chapter applies to every Person to whom a provision of the Previous Regime applied.

12.1.2 For the purposes of the provisions in this chapter:

"Commencement Date" means the date on which these Rules came into force;

"Current Regime" means the provisions in the AMI module, and any provisions associated with the AMI module in GEN, GLO and other modules of the DFSA Rulebook, in force on the Commencement Date; and

"Previous Regime" means the provisions in the AMI module, and any provisions associated with the AMI module in GEN, GLO and other modules of the DFSA Rulebook, in force immediately prior to the Commencement Date.

12.2 Transitional Rules

12.2.1 (1) An Authorised Market Institution Licensed under the Previous Regime to carry on one or both the Financial Services of Operating an Exchange and Operating a Clearing House may, subject to (2) and (3), continue to carry on those Licensed activities subject to the Previous Regime for a period of not more than 6 months after the Commencement Date without breaching any of the requirements of the Current Regime.

(2) An Authorised Market Institution referred to in (1) may, at any time during the 6 month period referred to in (1), move to the current Regime.

(3) An Authorised Market Institution referred to in (1) is not required to obtain the DFSA's approval in accordance with Rule 5.3.2(1)(b) for any individual who performs a Key Individual function where that individual performed the duties of the relevant Key Individual function immediately prior to the Commencement Date.

(4) An individual referred to in (3) is deemed to be a Key Individual for the purposes of the Current Regime subject to continuing to meet the fitness and propriety criteria to perform the functions of the relevant role.

12.3 Saving Rules

12.3.1 (1) Save as provided in Rule 12.2.1, anything done or omitted to be done pursuant to or for the purposes of the Previous Regime is deemed to be done or omitted to be done pursuant to or for the purposes of the Current Regime.

(2) Without prejudice to (1):

(a) any right, privilege, remedy, obligation or liability accrued to or incurred by any Person; and

(b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any right, privilege, remedy, obligation or liability,

under the Previous Regime continues and is enforceable under the Current Regime.

APP1 TESTING OF TECHNOLOGY SYSTEMS

A1.1 Application

A1.1.1 An Authorised Market Institution must, for the purposes of meeting the requirements in Rule 5.5.5 relating to the testing of its information technology systems, comply with the requirements in this Appendix.

A1.2 Testing of technology systems

A1.2.1 An Authorised Market Institution must, before commencing live operation of its information technology systems or any updates thereto, use development and testing methodologies in line with internationally accepted testing standards in order to test the viability and effectiveness of such systems. For this purpose, the testing must be adequate for the Authorised Market Institution to obtain reasonable assurances that the systems, among other things:

(a) enable it to comply with all the applicable requirements, including legislation, on an on-going basis;

(b) can continue to operate effectively in stressed market conditions; and

(c) any risk management controls embedded within the systems, such as generating automatic error reports, work as intended.

Guidance

In assessing whether an Authorised Market Institution has adequate information technology resourcing, the DFSA will consider:

a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

A1.3 Testing relating to Members' technology systems

A1.3.1 (1) An Authorised Market Institution must implement standardised conformance testing procedures to ensure that the systems which its Members are using to access facilities operated by it have a minimum level of functionality that is compatible with the Authorised Market Institution's information technology systems and will not pose any threat to fair and orderly conduct of its facilities.

(2) An Authorised Market Institution must also require its Members, before commencing live operation of any electronic trading system, user interface or a trading algorithm, including any updates to such arrangements, to use adequate development and testing methodologies to test the viability and effectiveness of their systems.

(3) For the purposes of (2), an Authorised Market Institution must require its Members:

(a) to adopt trading algorithm tests, including tests in a simulation environment which are commensurate with the risks that such a strategy may pose to itself and to the fair and orderly functioning of the facility operated by the Authorised Market Institution; and

(b) not to deploy trading algorithms in a live environment except in a controlled and cautious manner.

Guidance

When assessing whether the trading algorithm testing plan of its Members is adequate and appropriate and implemented effectively, an Authorised Market Institution should consider whether:

a. it includes testing where the markets in which the algorithm is to be used change in structure;

b. the Member has taken into account any limits that are being placed on the number of Investments to be traded on, and the value and number of orders to be sent to, the facility operated by the Authorised Market Institution;

c. the algorithm works effectively in stressed market conditions, including whether it can be switched off in appropriate circumstances; and

d. it includes adequate independent auditing of the Member's testing procedures.

APP2 USE OF PRICE INFORMATION PROVIDERS

A2.1 Application

A2.1.1 This Appendix applies to an Authorised Market Institution referred to in Rule 5.8.1(3).

Use of price information providers

A2.1.2 (1) An Authorised Market Institution may only admit to trading or clearing or trade on its facilities Investments that reference to an underlying benchmark or index provided by a Price Information Provider where it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).

(2) A Price Information Provider is a price reporting agency or an index provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, rates, indices, commodities or figures, which are made available to users.

(3) For the purposes of (1), the Price Information Provider must:

(a) have fair and non-discriminatory procedures for establishing prices of Investments which are made public.

(b) demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations;

(c) where appropriate, give priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;

(d) be of good standing and repute as an independent and objective price reporting agency or index provider;

(e) have a sound corporate governance framework;

(f) have adequate arrangements to avoid its staff having any conflicts of interest where such conflicts are, or are likely to have, a material adverse impact on price establishment process; and

(g) adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

Guidance

An Authorised Market Institution, when assessing the suitability of a Price Information Provider (the provider), should take into account factors such as:

a. the provider's standing and reliability in the relevant physical or derivatives markets as a credible price reporting agency;

b. the quality of corporate governance adopted, covering areas such as independent members of the board, independence of its internal audit and risk management function;

c. whether the methodologies and processes (including any material changes to such methodologies and processes) adopted by the provider for the purposes of pricing are made publicly available;

d. whether there are adequate procedures adopted to ensure that conflicts of interests between the provider's commercial interests and that of users of its services, including that of its Employees involved in pricing process, are adequately addressed, including through codes of ethics;

e. whether there is a clear conveyance to its users of the economic realities of the underlying interest the Price Information Provider seeks to measure; and,

f. the degree to which the Price Information Provider has given consideration to the characteristics of underlying interests measured, such as:

- **the size and liquidity**: Whether the size of the market informs the selection of an appropriate compilation mechanism and governance processes. For example, a benchmark or index that measures a smaller market may be impacted by single trades and therefore be more prone to potential manipulation, whereas a benchmark for a larger market may not be well represented by a small sample of participants;

- **the relative market size**. Where the size of a market referencing a benchmark is significantly larger than the volume of the underlying market, the potential incentive for benchmark manipulation to increase; and

- **Transparency**: Where there are varying levels of transparency regarding trading volumes and positions of market participants, particularly in non-regulated markets and instruments, whether the benchmark represents the full breadth of the market, the role of specialist participants who might be in a position to give an overview of the market, and the feasibility, costs and benefits of providing additional transparency in the underlying markets.

APP3 CONTRACT DELIVERY SPECIFICATIONS

A3.1 Application

A3.1.1 This Appendix applies to an Authorised Market Institution which trades, or clears or settles, on its facilities Commodity Derivative contracts which require physical delivery of the underlying commodity.

A3.2 Deliverability of the underlying commodity

A3.2.1 An Authorised Market Institution referred to in A3.1.1 must, for the purposes of meeting the requirement in Rule 6.3.2(1)(b), ensure that the terms and conditions of the Commodity Derivative contracts which are to be traded, or cleared or settled, on its facilities, are designed to include the matters specified in Rules A3.2.2 – A3.2.9.

Quality or deliverable grade

A3.2.2 A Commodity Derivative contract must include specifications of commodity characteristics for par delivery, including those relating to grade, class, and weight. The quality or grade specified must conform to the prevailing practices in the underlying physical market relating to the relevant commodity.

Guidance

1. Par delivery envisages delivery of commodities which are of a comparable quality or grade as specified in the contract. Contracts that call for delivery of a specific quality of commodity may provide commercial participants with a clearer, more efficient hedging and price-basing contracts than a contract that permits delivery of a broad range of commodity grades or classes.

2. However, as contracts that permit delivery of only a specific grade of commodity may be susceptible to manipulation if that grade of the commodity is in short supply or controlled by a limited number of sellers, an Authorised Market Institution should require appropriate measures to mitigate such risks.

Size of delivery unit

A3.2.3 A Commodity Derivative contract must contain provisions relating to size or composition of delivery units which conform to the prevailing market practice in the underlying physical market to ensure that it does not constitute a barrier to delivery or otherwise impede the performance of the contract.

Guidance

An Authorised Market Institution should, where the provisions relating to size and delivery units of the Commodity Derivatives contract deviate from the underlying physical market, examine the reasons for such deviation and ensure that the risks arising from such deviation can be effectively addressed by the contract parties.

Delivery instruments

A3.2.4 A Commodity Derivative contract must specify the acceptable form or type of delivery instruments, and whether such instruments are negotiable or assignable and, if so, on what conditions.

Guidance

Acceptable delivery instruments include warehouse receipts, bills of lading, shipping certificates, demand certificates, or collateralized depository receipts.

The delivery process and facilities

A3.2.5 A Commodity Derivative contract must specify:

(a) the delivery process, including timing, location, manner and form of delivery, and

(b) the delivery and/or storage facilities available,

which conform to the prevailing practices in the underlying physical market to permit effective monitoring and to reduce the likelihood of disruption.

Guidance

1. An Authorised Market Institution should consider issues associated with the delivery process, including those relating to acceptable delivery locations. Such issues include:

    a. the level of deliverable supplies normally available, including the seasonal distribution of such supplies;

    b. the nature of the physical market at the delivery point (e.g., auction market, buying station or export terminal);

    c. the number of major buyers and sellers; and

    d. normal commercial practices in establishing cash commodity values.

2. The delivery months specified in the Commodity Derivative contract should take into account cyclical production and demand and accord with when sufficient deliverable supplies are expected to exist in the underlying physical market. Seasonality of a commodity should also be taken into account in relation to transport and storage, as it may affect the availability of warehouse space and transportation facilities.

3. Consistent with the grade differentials noted above, Commodity Derivative contracts that permit delivery in more than one location should set delivery premiums or discounts consistent with those observed in the underlying physical market. The adequacy of transportation links to and from the delivery point should also be taken into account when setting delivery premiums.

4. The delivery facilities available can include oil or gas storage facilities, warehouses or elevators for agricultural commodities and bank or vault depositories for precious metals.

5. An Authorised Market Institution should consider issues relating to the selection of delivery facilities under the contract which include:

    a. the number and total capacity of facilities meeting contract requirements;

b. the proportion of such capacity expected to be available for short traders who may wish to make delivery against Commodity Derivative contracts and seasonal changes in such proportions;

c. the extent to which ownership and control of such facilities is dispersed or concentrated; and

d. its ability to access necessary information from such facility.

Inspection and certification procedures

A3.2.6 A Commodity Derivative contract must specify applicable inspection or certification procedures for verifying that the delivered commodity meets the quality or grade specified in the contract, which conform to the prevailing practices in the underlying physical market.

Guidance

If the commodity is perishable, the Commodity Derivative contract should specify if there are any limits on the duration of the inspection certificate and the existence of any discounts applicable to deliveries of a given age.

Payment for transportation or storage

A3.2.7 A Commodity Derivative contract must specify:

(a) the respective responsibilities of the parties to the contract regarding costs associated with transporting the commodity to and from the designated delivery point and any applicable storage costs; and

(b) how and when title to the commodity transfers, including from any short to long position holder.

Legal enforceability

A3.2.8 A Commodity Derivative contract must, where any one or more of the activities of trading, clearing or settlement under the contract take place in different jurisdictions, contain adequate arrangements to mitigate risks arising from any disparity between governing laws applicable in the relevant jurisdictions.

Guidance

An Authorised Market Institution should, when assessing whether the contractual terms adequately provide for addressing jurisdictional risks, take into account whether the contract:

a. clearly identifies the different legal requirements applicable in the relevant jurisdictions and any differences, including those relating to the manner in which standard clauses are interpreted; and

b. the impact such differences may have in dealing with matters such as delivery disputes, and determination of rights in insolvency proceedings; and

c. contains effective measures to address risk of unenforceability of the contractual terms, particularly those relating to cargos and storage where jurisdictional differences could have a significant impact on the deliverability.

Default provisions and force majeure

A3.2.9 A Commodity Derivative contract must specify:

(a) the rights and obligations of the parties to the contract in the event of default by the parties, or in the event of frustration of the contract due to force majeure or other specified event; and

(b) whether any Clearing House or Exchange guarantees the settlement of the transaction in an event specified in (a), and if so, the manner in which such settlement will occur.

Guidance

1. An Authorised Market Institution when considering whether a Commodities Derivative contract adequately provides for contract certainty in the event of default or force majeure, should take into account:

   a. whether any collateral provided by the contracting parties would be sufficient to address the replacement risk in the performance of the contract; and

   b. whether there are any monetary consequences attaching to defaulting parties that would act as a disincentive against default.

2. The contract terms should clearly specify which jurisdictional laws are applicable to the governing law, including where there are any significant variations in the rights and liabilities attaching to the contracting parties for the event that occur in the relevant jurisdiction.

The DFSA Rulebook

Conduct of Business Module

(COB)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

1 INTRODUCTION

1.1 Application

1.1.1 This module (COB) applies to every Authorised Firm with respect to the carrying on, in or from the DIFC, of any:

(a) Financial Service; or

(b) activity which is carried on, or held out as being carried on, in connection with or for the purposes of such a Financial Service;

except to the extent that a provision of COB provides for a narrower application.

1.1.2 COB does not apply to a Representative Office.

Guidance

An Authorised Firm may be able to rely on the Transitional Rules in chapter 10 of GEN for the purposes of complying with some of the provisions in this module. The Rules enable Authorised Firms to make a smooth transition to the new regime that came into force 1 July 2008 under rule-making instrument No. 56, following the DFSA's "Key Policy Review" outlined in Consultation Paper 52. Examples of the provisions to which the Transitional Rules apply are the Client classification (Rule 2.3.3(1)), consent and notifications to be treated as a Market Counterparty (Rule 2.3.4), statements required to be included in marketing material (Rule 3.2.4(1)(c)) and requirements for Client Agreement and key information (Rule 3.2.2(1)(b)).

2 CLIENT CLASSIFICATION

2.1 Application

2.1.1 (1) This chapter applies, subject to (3) and (4), to an Authorised Firm, carrying on or intending to carry on any Financial Service with or for a Person.

(2) For the purposes of this chapter, a Person includes a Fund or trust, even if it does not have a separate legal personality.

(3) This chapter applies to a Credit Rating Agency only if and to the extent that it intends to carry on, or carries on, a Financial Service other than Operating a Credit Rating Agency.

(4) This chapter does not apply to an Authorised ISPV.

2.2 Overview

Guidance

1. This chapter describes the manner in which an Authorised Firm classifies and treats its Clients. The modules of the Rulebook may apply to an Authorised Firm differently depending on whether the Person with or for whom it is carrying on Financial Services is, or is to be treated as, a Retail Client, Professional Client, or Market Counterparty.

2. An Authorised Firm may choose to provide Financial Services and products to both Retail Clients and Professional Clients. In these circumstances, the Authorised Firm must determine the appropriate classification of its Clients. As a consequence of the analysis under Rule 2.3.2, it may be that a Client is:

   a. a Retail Client;

   b. a Professional Client; or

   c. a Professional Client in relation to certain services and products and a Retail Client in relation to other services and products.

3. An Authorised Firm may choose to treat all Persons with whom it deals as Retail Clients. In these circumstances, Rule 2.3.1(2)(a) provides that the Authorised Firm is not required to undertake the determination in Rule 2.3.1(1).

4. An Authorised Firm may choose to deal only with Professional Clients provided the Authorised Firm is able to classify those Persons as such. See Rule 2.3.2. In such case a Person who is classified as a Professional Client in relation to any Financial Service or product offered by the Authorised Firm cannot be a Client of the Authorised Firm in relation to other Financial Services or products, in relation to which he does not have the necessary expertise.

5. A firm may treat as a Market Counterparty a Professional Client referred to in Rule 2.3.2(2), provided that in respect of some of those Persons, the firm must obtain their prior written consent before treating them as a Market counterparty. The others only require notification by the firm of the classification as a Market Counterparty. See Rule 2.3.4. Treatment as a Market Counterparty means that, for example, Rules relating to Client Agreements, suitability, inducements, best execution, aggregation and allocation do not apply to such Clients.

2.3 Types of Client

2.3.1 (1) Subject to (2), before carrying on a Financial Service with or for a Person, an Authorised Firm must determine whether such a Person is a Professional Client in accordance with Rule 2.3.2, in respect of all or particular Financial Services or products offered by the Authorised Firm.

(2) An Authorised Firm is not required to comply with (1) in relation to a particular Person where it:

(a) treats that Person as a Retail Client; or

(b) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing with that Person and provides no other Financial Service to that Person.

(3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person (the 'second person') in relation to a particular Transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat that second person as its Client in relation to that Transaction.

Guidance

Pursuant to GEN Rule 3.2.7, an Authorised Firm which is not a Representative Office may carry on activities which constitute marketing financial services and financial products offered in a jurisdiction other than the DIFC. The effect of Rule 2.3.1(2)(b) is to provide a carve out for an Authorised Firm from the requirements under Rule 2.3.1(1) when the firm is carrying on such marketing activities. Under other provisions in this module, an Authorised Firm is also exempt from other specific requirements when carrying on such marketing activities under Rules 3.3.1(d) and 3.4.1(d).

Professional Client

2.3.2 (1) An Authorised Firm may classify a Person as a Professional Client only if such a Person:

(a) either:

(i) has net assets of at least $500,000 calculated in accordance with Rule 2.4.1; or

(ii) is, or has been in the previous 2 years:

(A) an Employee of the Authorised Firm; or

(B) an Employee in a professional position in another Authorised Firm;

(b) subject to (2), appears, on reasonable grounds, to the Authorised Firm, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks following the analysis specified in Rule 2.5.1; and

(c) has not elected to be treated as a Retail Client in accordance with Rule 2.3.3.

(2) An Authorised Firm may consider the following Persons as possessing the necessary degree of experience and understanding of relevant financial markets, products or transactions without having to undertake the analysis referred to in (1)(b):

(a) a Collective Investment Fund or a regulated pension fund;

(b) an Authorised Firm, a Regulated Financial Institution or the management company of a regulated pension fund;

(c) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;

(d) a public authority or state investment body;

(e) a supranational organisation whose members are either countries, central banks or national monetary authorities;

(f) an Authorised Market Institution, regulated exchange or regulated clearing house;

(g) a Body Corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country;

(h) a Body Corporate which has called up share capital of at least $10,000,000; or

(i) any other institutional investor whose main activity is to invest in financial instruments, including an entity dedicated to the securitisation of assets or other financial transactions.

(3) A personal investment vehicle may be classified as a Professional Client without having to meet the requirements in (1)(a)(i) if it is established and operated for the sole purpose of facilitating the management of the investment portfolio of an existing Professional Client.

Guidance

1. A Professional Client is responsible for keeping an Authorised Firm informed about any changes that could affect his current classification. Should the Authorised Firm become aware that a Professional Client no longer fulfils the conditions which made him eligible to be classified as a Professional Client, the Authorised Firm should take appropriate action.

2. A personal investment vehicle may be a Body Corporate, Partnership, trust or foundation.

Option of a Professional Client to be treated as a Retail Client

2.3.3 (1) Subject to (4), the purpose of Rule 2.3.2(1)(c), an Authorised Firm must, when first establishing a relationship with a Person as a Professional Client for the purposes of carrying on a Financial Service, inform that Person of his option to be treated as a Retail Client, the higher level of protection

available to Retail Clients, and the time within which the Person may elect to be treated as a Retail Client.

(2) If the Person does not expressly elect to be treated as a Retail Client within the time specified by the Authorised Firm, the Authorised Firm may, pursuant to Rule 2.3.2, classify that Person as a Professional Client.

(3) Subject to (4), an Authorised Firm must, during the course of its dealings with a Professional Client, treat such a Client as a Retail Client if he expressly requests the Authorised Firm to do so.

(4) In the event that an Authorised Firm only carries on Financial Services with or for Professional Clients, it must inform the Person of this fact and any relevant consequences.

Guidance

1. The obligation in Rule 2.3.3(1) applies to an Authorised Firm when it deals for the first time with a Professional Client.

2. For the purposes of Rule 2.3.3 (3), it is the responsibility of a Professional Client to ask for a higher level of protection as a Retail Client.

Market Counterparty

2.3.4 (1) An Authorised Firm may treat a Professional Client referred to in Rule 2.3.2(2) as a Market Counterparty provided that the firm:

(a) in the case of a Professional Client referred to in Rule 2.3.2(2)(a) to (f), has given to that Client a prior written notification of the classification as a Market Counterparty and that Client has not requested to be treated otherwise; and

(b) in the case of a Professional Client referred to in Rule 2.3.2(2)(g), (h), or (i), has obtained the prior written consent of that Client to be treated as a Market Counterparty.

(2) The notification and consent referred to in (1) may be given in respect of all services or in respect of each individual Transaction.

(3) The notification in (1)(a) need only be given to one of:

(a) a Fund or its Fund Manager; or

(b) a pension fund or its management company.

Retail Client

2.3.5 A Client is a Retail Client to the extent he is not a Professional Client.

2.4 Net assets

2.4.1 An Authorised Firm, when calculating net assets of a Person who is an individual for the purposes of the requirement under Rule 2.3.2(1)(a)(i):

(a) must exclude the value of the primary residence of that Person; and

(b) may include any assets held directly or indirectly by that Person.

Guidance

The reference to "assets held directly or indirectly" is designed to include assets held by direct legal ownership, by beneficial ownership (for example, as a beneficiary in a trust), or by both legal and beneficial ownership. Such assets may be held, for instance, through a special purpose or personal investment vehicle, a foundation, or the like.

2.5 Analysis

2.5.1 (1) For the purpose of Rule 2.3.2(1)(b), the analysis undertaken by an Authorised Firm must include, where applicable, consideration of the following matters:

(a) the Person's knowledge and understanding of the relevant financial markets, types of financial products or arrangements and the risks involved either generally or in relation to the proposed Transaction;

(b) the length of time the Person has participated in relevant financial markets, the frequency of dealings and the extent to which the Person has relied on financial advice from financial institutions;

(c) the size and nature of transactions that have been undertaken by or on behalf of the Person in relevant financial markets;

(d) the Person's relevant qualifications relating to financial markets;

(e) the composition and size of the Person's existing financial investment portfolio;

(f) in the case of credit or insurance transactions, relevant experience in relation to similar transactions to be able to understand the risks associated with such transactions; and

(g) any other matters which the Authorised Firm considers relevant.

(2) Where the analysis is being carried out in respect of an Undertaking, the analysis must be applied to those individuals who are authorised to undertake transactions on behalf of the Undertaking.

Guidance

Generally, an Authorised Firm may consider a Person to have relevant experience and understanding where such a Person:

a. has been involved in similar transactions in a professional or personal capacity sufficiently frequently to give the Authorised Firm reasonable assurance that the Person is able to make decisions of that kind, understanding the type of risks involved;

b. in the case of an Employee, has worked in the financial services industry for at least one year in a professional capacity which requires knowledge of the transactions or services involved; or

c. is found to be acting in relation to the particular transaction involved, on reliance of a recommendation made by an Authorised Firm or Regulated Financial Institution.

2.6 Record keeping

2.6.1 An Authorised Firm must keep records of:

(a) the process undertaken under the Rules in this chapter including any documents which evidence the Client's classification; and

(b) any notice sent to the Client under the Rules in this chapter and evidence of despatch.

2.6.2 These records must be kept for at least six years from the date on which the business relationship with a Client has ended. If the date on which the business relationship ended remains unclear, it may be taken to have ended on the date of the completion of the last Transaction.

3 CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT AND PROVIDING TRUST SERVICES

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; or

(d) Providing Trust Services,

except where it is expressly provided otherwise.

3.2 Communication of information and marketing material

General

3.2.1 When communicating information to a Person in relation to a financial product or financial service, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.

3.2.2 An Authorised Firm must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the Regulatory Law 2004 or Rules.

3.2.3 Where a Rule in COB requires information to be sent to a Client, the Authorised Firm must provide that information directly to the Client and not to another Person, unless it is on the written instructions of the Client.

Marketing material

3.2.4 (1) An Authorised Firm must ensure that any marketing material communicated to a Person contains the following information:

(a) the name of the Authorised Firm communicating the marketing material or, on whose behalf the marketing material is being communicated;

(b) the Authorised Firm's regulatory status as required under GEN section 6.4; and

(c) if the marketing material is intended only for Professional Clients, a clear statement to that effect and that no other Person should act upon it.

(2) In (1), marketing material includes any invitation or inducement to enter into an agreement:

(a) in relation to a financial product or to engage in a Financial Service with the Authorised Firm; or

(b) in relation to a financial product or financial service offered by a Person other than the Authorised Firm.

(3) An Authorised Firm which communicates marketing material in (2)(b) must:

(a) ensure that the marketing material complies with the applicable Rules and any legislation administered by the DFSA; and

(b) not distribute such marketing material if it becomes aware that the Person offering the financial product or financial service to which the material relates is in breach of the regulatory requirements that apply to that Person in relation to that product or service.

3.2.5 An Authorised Firm must take reasonable steps to ensure that:

(a) any marketing material intended for Professional Clients is not sent or directed to any Persons who are not Professional Clients; and

(b) no Person communicates or otherwise uses the marketing material on behalf of the Authorised Firm in a manner that amounts to a breach of the requirements in this section.

Past performance and forecasts

3.2.6 An Authorised Firm must ensure that any information or representation relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to or targeted at Retail Clients:

(a) presents a fair and balanced view of the financial products or financial services to which the information or representation relates;

(b) identifies, in an easy to understand manner, the source of information from which the past performance is derived and any key facts and assumptions used in that context are drawn; and

(c) contains a prominent warning that past performance is not necessarily a reliable indicator of future results.

Guidance

In presenting information relating to past performance of a financial product or financial service, the Authorised Firm should follow, to the extent relevant, the Global Investment Performance Standards (GIPS) issued by Institute of Chartered Financial Analysts of the USA or a reputable independent actuarial, financial or statistical reporting service provider.

3.3 Key information and Client Agreement

Application

3.3.1 The Rules in this section do not apply to an Authorised Firm when it is:

(a) carrying on a Financial Service with or for a Market Counterparty;

(b) Accepting Deposits;

(c) Providing Credit;

(d) carrying on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing; or

(e) a Fund Manager of a Fund Offering the Units of a Fund it manages.

3.3.2 (1) Subject to (2), an Authorised Firm must not carry on a Financial Service with or for a Person unless:

(a) there is a Client Agreement entered into between the Authorised Firm and that Person containing the key information specified in App2; and

(b) before entering into the Client Agreement with the Person, the Authorised Firm has provided to that Person the key information referred to in (a) in good time to enable him to make an informed decision relating to the relevant Financial Service.

(2) An Authorised Firm may provide a Financial Service to a Client without having to comply with the requirement in (1);

(a) subject to (3), where it is, on reasonable grounds, impracticable to comply; or

(b) where the Client has expressly agreed to dispense with the requirement in regard to a personal investment vehicle.

(3) When (2)(a) applies, an Authorised Firm providing the Financial Service must:

(a) first explain to the Person why it is impracticable to comply; and

(b) enter into a Client Agreement as soon as practicable thereafter.

Guidance

1. App 2 sets out the core information that must be included in every Client Agreement and additional disclosure for certain types of activities to which this chapter applies. The information content for Client Agreements with Retail Clients is more detailed than for Professional Clients.

2. For the purposes of Rule 3.3.2(1)(b), an Authorised Firm may either provide a Person with a copy of the proposed Client Agreement, or give that information in a separate form. If there are any changes to the terms and conditions of the proposed agreement, the Authorised Firm should ensure that the Client Agreement to be signed with the Person accurately incorporates those changes.

3. For the purposes of Rule 3.3.2(2)(a), an Authorised Firm may consider it is reasonably impracticable to provide the key information to a Person if that Person requests the Authorised Firm to execute a Transaction on a time critical basis. Where an Authorised Firm has given the explanation referred to in Rule 3.3.2(3)(a) verbally, it should maintain records to demonstrate to the DFSA that it has provided that information to the Client.

Changes to the client agreement

3.3.3 If the Client Agreement provided to a Retail Client allows an Authorised Firm to amend the Client Agreement without the Client's prior written consent, the Authorised Firm must give at least 14 days notice to the Client before providing a Financial Service to that Client on any amended terms, unless it is impracticable to do so.

3.4 Suitability

Application

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

(a) undertakes a Transaction with 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), 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).

Guidance

1. 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.

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.

3.5 Conflicts of interest

Fair treatment

3.5.1 (1) An Authorised Firm must take reasonable steps to ensure that conflicts and potential conflicts of interest between itself and its Clients and between one Client and another are identified and then prevented or managed in such a way that the interests of a Client are not adversely affected and to ensure that all its Clients are fairly treated and not prejudiced by any such conflicts of interest.

(2) Where an Authorised Firm is aware of a conflict or potential conflict of interest, it must prevent or manage that conflict of interest by using one or more of the following arrangements as appropriate:

(a) establishing and maintaining effective Chinese Walls to restrict the communication of the relevant information;

(b) disclosing the conflict of interest to the Client in writing either generally or in relation to a specific Transaction; or

(c) relying on a written policy of independence, which requires an Employee to disregard any conflict of interest when advising a Client or exercising a discretion.

(3) If an Authorised Firm is unable to prevent or manage a conflict or potential conflict of interest as provided in (2), it must decline to act for that Client.

Attribution of knowledge

3.5.2 When a COB Rule applies to an Authorised Firm that acts with knowledge, the Authorised Firm will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved for on behalf of the Authorised Firm acts with that knowledge as a result of a Chinese Wall arrangement established under Rule 3.5.1(2)(a).

Inducements

3.5.3 (1) An Authorised Firm must have systems and controls including policies and procedures to ensure that neither it, nor an Employee or Associate of it, offers, gives, solicits or accepts inducements such as commissions or other direct or indirect benefits where such inducements are reasonably likely to conflict with any duty that it owes to its Clients.

(2) Subject to (3), an Authorised Firm must, before recommending a financial product as defined in GEN Rule 2.11.1(5) to, or Executing a Transaction for, a Retail Client, disclose to that Client any commission or other direct or indirect benefit which it, or any Associate or Employee of it, has received or may or will receive, in connection with or as a result of the firm making the recommendation or executing the Transaction.

(3) An Authorised Firm need not disclose to a Retail Client under (2) any details about inducements where it:

(a) believes on reasonable grounds that the Retail Client is already aware of the relevant inducements;

(b) is undertaking an Execution-Only Transaction for that Retail Client; or

(c) is executing a Transaction pursuant to the terms of a Discretionary Portfolio Management Agreement for that Retail Client.

(4) An Authorised Firm may provide the information required under (2) in summary form, provided it informs the Client that more detailed information

will be provided to the Client upon request and complies with such a request.

Guidance

In relation to Rule 3.5.3 (1), in circumstances where an Authorised Firm believes on reasonable grounds that the Client's interests are better served by a Person to whom the referral is to be made, any commission or other benefit which the firm or any of its Employees or Associates receives in respect of such a referral would not be a prohibited inducement under that Rule.

3.5.4 An Authorised Firm may only accept goods and services under a Soft Dollar Agreement if the goods and services are reasonably expected to:

(a) assist in the provision of Investment Business services to the Authorised Firm's Clients by means of:

(i) specific advice on dealing in, or on the value of, any Investment;

(ii) research or analysis relevant to (i) or about Investments generally; or

(iii) use of computer or other information facilities to the extent that they are associated with specialist computer software or research services, or dedicated telephone lines;

(b) provide custody services relating to Investments belonging to, or managed for, Clients;

(c) provide services relating to portfolio valuation or performance measurement services; or

(d) provide market price services.

Guidance

An Authorised Firm should undertake a thorough assessment of the nature of the goods and services and the terms upon which they are to be provided under a Soft Dollar Agreement to ensure that the receipt of such goods and services provide commensurate value. This is particularly the case if any costs of such goods and services are to be passed through to Clients. Where the Client bears the cost of the goods and services, the disclosure obligation relating to costs and charges under Rule 3.3.2 (see App 2) will apply to such costs.

3.5.5 An Authorised Firm must not Deal in Investments as Agent for a Client, either directly or indirectly, through any broker under a Soft Dollar Agreement, unless:

(a) the agreement is a written agreement for the supply of goods or services described in Rule 3.5.4, which do not take the form of, or include, cash or any other direct financial benefit;

(b) Transaction execution by the broker is consistent with any best execution obligations owed to the Client;

(c) the Authorised Firm has taken reasonable steps to ensure that the services provided by the broker are competitive, with no comparative price disadvantage, and take into account the interests of the Client;

(d) for Transactions in which the broker acts as principal, the Authorised Firm has taken reasonable steps to ensure that Commission paid under the agreement will be sufficient to cover the value of the goods or services to be received and the costs of execution; and

(e) the Authorised Firm makes adequate disclosure in accordance with Rules 3.5.6 and 3.5.7.

3.5.6 Before an Authorised Firm enters into a Transaction for or on behalf of a Retail Client or Professional Client, either directly or indirectly, with or through the agency of another Person, in relation to which there is a Soft Dollar Agreement which the Authorised Firm has, or knows that another member of its Group has, with that other Person, it must disclose to its Client:

(a) the existence of a Soft Dollar Agreement; and

(b) the Authorised Firm's or its Group's policy relating to Soft Dollar Agreements.

3.5.7 (1) If an Authorised Firm or member of its Group has a Soft Dollar Agreement under which either the Authorised Firm or member of its Group Deals for a Client, the Authorised Firm must provide that Client with the following information:

(a) the percentage paid under Soft Dollar Agreements of the total Commission paid by or at the direction of:

(i) the Authorised Firm; and

(ii) any other member of the Authorised Firm's Group which is a party to those agreements;

(b) the value, on a cost price basis, of the goods and services received by the Authorised Firm under Soft Dollar Agreements, expressed as a percentage of the total Commission paid by or at the direction of:

(i) the Authorised Firm; or

(ii) other members of the Authorised Firm's Group;

(c) a summary of the nature of the goods and services received by the Authorised Firm under the Soft Dollar Agreements; and

(d) the total Commission paid from the portfolio of that Client.

(2) The information in (1) must be provided to that Client at least once a year, covering the period since the Authorised Firm last reported to that Client.

3.6 Record Keeping

3.6.1 An Authorised Firm must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Authorised Firm. These must include, where applicable, the following:

(a) any marketing material issued by, or on behalf of, the Authorised Firm;

(b) any financial products or Financial Services provided to a Client and each advice or recommendation made to a Client,

(c) a record of each Client Agreement including any subsequent amendments to it as agreed with the Client;

(d) records relating to the suitability assessment undertaken by the Authorised Firm to demonstrate compliance with Rule 3.4.2;

(e) records to demonstrate compliance with the requirements relating to inducements under section 3.5, including any disclosure made to Clients under that section and if any goods and services are received by the Authorised Firm under a Soft Dollar Agreement, the details relating to those agreements; and

(f) any other disclosures made to Clients.

3.6.2 For the purposes of Rule 3.6.1, the six year period commences:

(a) in the case of the requirement in Rule 3.6.1(a), from the date on which the marketing material was last provided to a Person;

(b) in the case of the requirement in Rule 3.6.1(b) to (d), from the date the Client ceases to be a Client of the Authorised Firm; and

(c) in the case of the requirement in Rule 3.6.1(e), from the date on which the relevant inducements were last received.

4 ADDITIONAL RULES - ACCEPTING DEPOSITS AND PROVIDING CREDIT

4.1 Application

4.1.1 The Rules in this chapter apply to an Authorised Firm with respect to Accepting Deposits or Providing Credit through an establishment maintained by it in the DIFC.

4.2 Accepting Deposits

4.2.1 A Bank, in the course of Accepting Deposits, must not:

(a) Accept Deposits from the State's markets;

(b) Accept Deposits in the U.A.E. Dirham;

(c) undertake currency or foreign exchange transactions involving the U.A.E. Dirham; or

(d) Accept Deposits from Retail Clients.

4.3 Providing Credit

4.3.1 (1) An Authorised Firm may, subject to (2), Provide Credit to a:

(a) Professional Client; and

(b) Retail Client, but only where:

(i) the Retail Client is an Undertaking; and

(ii) the Credit Facility is provided to the Retail Client for a business purpose.

(2) An Authorised Firm, in the course of Providing Credit, must not:

(a) Provide Credit in the U.A.E. Dirham; or

(b) undertake currency or foreign exchange transactions involving the U.A.E. Dirham.

5 ADDITIONAL RULES – PROVIDING TRUST SERVICES

5.1 Application

5.1.1 This chapter applies to a Trust Service Provider with respect to the conduct of Providing Trust Services.

Guidance

The requirements in chapter 3 also apply to Trust Service Providers.

5.2 General

5.2.1 For the purposes of this chapter, a settlor, a trustee or a named beneficiary of a trust in respect of which the Trust Service Provider is engaged in Providing Trust Services may be treated as a Client of the Authorised Firm.

5.2.2 A Trust Service Provider must maintain adequate knowledge of, and comply with, all applicable DIFC laws, Rules and Regulations relevant to Providing Trust Services.

5.2.3 A Trust Service Provider must be able to demonstrate that it is in compliance with appropriate standards of corporate governance.

5.2.4 A Trust Service Provider must transact its business (including the establishing, transferring or closing of business relationships with its Clients) in an expeditious manner where appropriate unless there are reasonable grounds to do otherwise.

Exercise of Discretion

5.2.5 Where a Trust Service Provider is responsible for exercising discretion for, or in relation to, its Clients, it must take all reasonable steps to obtain sufficient information in order to exercise, subject to Rule 5.2.6, its discretion or other powers in a proper manner.

5.2.6 A Trust Service Provider must only exercise its power or discretion for a proper purpose.

5.2.7 The Trust Service Provider must ensure that its understanding of a Client's business is refreshed by means of regular reviews.

5.2.8 The Trust Service Provider must ensure that any trustee exercises his discretion in accordance with his fiduciary and other duties under the laws governing the trust of which he is a trustee.

Delegation of duties or powers

5.2.9 Any delegation of duties or powers by a Trust Service Provider, whether by Power of Attorney or otherwise, must only be entered into for a proper purpose, permissible by law and limited and monitored as appropriate.

5.3 Reviews

5.3.1 A Trust Service Provider must ensure that adequate procedures are implemented to ensure that regular reviews at appropriate intervals are conducted in respect of Providing Trust Services to its Clients.

5.4 Professional indemnity insurance cover

5.4.1 A Trust Service Provider must maintain professional indemnity insurance cover appropriate to the nature and size of the Trust Service Provider's business.

5.4.2 A Trust Service Provider must:

(a) provide the DFSA with a copy of its professional indemnity insurance cover; and

(b) notify the DFSA of any changes to the cover including termination and renewal.

5.4.3 A Trust Service Provider must provide the DFSA on a yearly basis, with the details of the arrangements in force together with evidence of the cover. Any claims in excess of $10,000 or changes to the arrangements previously notified to the DFSA under this Rule must be notified to the DFSA as they arise.

5.5 Dual control

5.5.1 The Trust Service Provider must have adequate internal controls, including having two Persons with appropriate skills and experience managing the business.

5.5.2 While a Trust Service Provider may have a single Person with overall responsibility, at least another Person must have the skills and experience to be able to run the business of the Trust Service Provider in the absence of the senior Person and must be in a position to challenge the actions of the senior Person where they consider that those actions may be contrary to the provisions of DIFC Laws, Rules or Regulations or any other applicable legislation, may not be in the interests of the Client, or may be contrary to sound business principles.

5.6 Internal reporting

5.6.1 A Trust Service Provider must have arrangements for internal reporting to ensure that the directors or the partners can satisfy themselves that:

(a) the requirements of the relevant legislation are being met on an on going basis;

(b) the Trust Service Provider's business is being managed according to sound business principles and, in particular, that it can meet its financial commitments as they fall due;

(c) the affairs of its Clients are being managed in accordance with the service agreements;

(d) the trustees are acting in accordance with their fiduciary and other duties;

(e) the affairs of its Clients are being properly monitored and in particular that the Client is not using the trust structure to hide assets from legitimate enquiry, to avoid proper obligations in other jurisdictions or to engage in illegal activities in other jurisdictions;

(f) the assets of its Clients are properly managed and safeguarded; and

(g) the recruitment, training and motivation of staff is sufficient to meet the obligations of the business.

5.7 Recording of Selection Criteria

5.7.1 Where the Trust Service Provider seeks the advice of a third party in connection with a Client's affairs, for example to advise on or manage investments, the Trust Service Provider must record the criteria for selection of the adviser and the reasons for the selection made.

5.7.2 The Trust Service Provider must monitor the performance of the adviser and ensure that it is in a position to change advisers if it is in the interests of the Client.

5.8 Qualification and experience of Trust Service Provider staff

5.8.1 Staff employed or Persons recommended by the Trust Service Provider must have appropriate qualifications and experience.

5.8.2 A Trust Service Provider must ensure that all transactions or decisions entered into, taken by or on behalf of Clients are properly authorised and handled by Persons with an appropriate level of knowledge, experience, qualifications and status according to the nature and status of the transactions or decisions involved (this applies also to decisions taken by trustees who are recommended by, but not employed by, a Trust Service Provider).

5.8.3 A Trust Service Provider must ensure that, each of its officers and employees, agents, Persons acting with its instructions and Persons it recommends to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.

5.8.4 A Trust Service Provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.

5.9 Books and records

5.9.1 The books and records of a Trust Service Provider must be sufficient to demonstrate adequate and orderly management of Clients' affairs. A Trust Service Provider must prepare proper accounts, at appropriately regular intervals on the trusts and underlying companies administered for its Clients. Where trusts and underlying companies are governed by the laws of a jurisdiction that require accounts to be kept in a particular form, the Trust Service Provider must meet those requirements. In any case, the Trust Service Provider's books and records must be sufficient to allow the recreation of the transactions of the business and its Clients and to demonstrate what assets are due to each Client and what liabilities are attributable to each Client.

5.10 Due diligence

5.10.1 A Trust Service Provider must, at all times, have verified documentary evidence of the settlors, trustees (in addition to the Trust Service Provider itself) and principal named beneficiaries of trusts for which it Provides Trust Services. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, a Trust Service Provider must also have verified, where reasonably possible, documentary evidence of any Person who receives a distribution from the trust and any other Person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust.

5.10.2 A Trust Service Provider must demonstrate that it has knowledge of the source of funds that have been settled into trusts or have been used to provide capital to companies, or have been used in transactions with which the Trust Service Provider has an involvement.

5.11 Fitness and Propriety of Persons acting as trustees

5.11.1 Where a Trust Service Provider arranges for a Person who is not an employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.

5.11.2 A Trust Service Provider must notify the DFSA of the appointment of a Person under Rule 5.11.1, including the name and business address if applicable and the date of commencement of the appointment.

5.11.3 Prior to the appointment of such a Person to act as a trustee, the Trust Service Provider must take reasonable steps to ensure that the Person has the required skills, experience and resources to act as a trustee for a Client of the Trust Service Provider.

5.11.4 A Trust Service Provider must notify the DFSA immediately if the appointment of such a Person is or is about to be terminated, or on the resignation of such Person, giving the reasons for the resignation and the measures which have been taken to ensure that a new trustee has been appointed.

5.11.5 A Person appointed to act as trustee for a Client of a Trust Service Provider who is not an Employee of the Trust Service Provider, must agree in writing to be bound by and comply with the same legal and regulatory requirements as if he were an Employee of the Trust Service Provider.

6 ADDITIONAL RULES - INVESTMENT BUSINESS

6.1 Application

6.1.1 The Rules in this chapter apply to an Authorised Firm when conducting Investment Business. The requirements in this chapter apply to an Authorised Firm regardless of the classification of the Client, unless expressly provided otherwise.

Guidance

The requirements in chapter 3 also apply to the conduct of Investment Business.

6.2 Personal account transactions

Conditions for personal account transactions

6.2.1 An Authorised Firm must establish and maintain adequate policies and procedures so as to ensure that:

(a) an Employee does not undertake a Personal Account Transaction unless:

(i) the Authorised Firm has, in a written notice, drawn to the attention of the Employee the conditions upon which the Employee may undertake Personal Account Transactions and that the contents of such a notice are made a term of his contract of employment or services;

(ii) the Authorised Firm has given its written permission to that Employee for that transaction or to transactions generally in Investments of that kind; and

(iii) the transaction will not conflict with the Authorised Firm's duties to its Clients;

(b) it receives prompt notification or is otherwise aware of each Employee's Personal Account Transactions; and

(c) if an Employee's Personal Account Transactions are conducted with the Authorised Firm, each Employee's account must be clearly identified and distinguishable from other Clients' accounts.

6.2.2 The written notice in Rule 6.2.1(a)(i) must make it explicit that, if an Employee is prohibited from undertaking a Personal Account Transaction, he must not, except in the proper course of his employment:

(a) procure another Person to enter into such a Transaction; or

(b) communicate any information or opinion to another Person if he knows, or ought to know, that the Person will as a result, enter into such a Transaction or procure some other Person to do so.

6.2.3 Where an Authorised Firm has taken reasonable steps to ensure that an Employee will not be involved to any material extent in, or have access to information about, the Authorised Firm's Investment Business, then the Authorised Firm need not comply with the requirements in Rule 6.2.1 in respect of that Employee.

6.2.4 An Authorised Firm must establish and maintain procedures and controls so as to ensure that an Investment Analyst does not undertake a Personal Account Transaction in an Investment if the Investment Analyst is preparing Investment Research:

(a) on that Investment or its Issuer; or

(b) on a related investment, or its Issuer;

until the Investment Research is published or made available to the Authorised Firm's Clients.

Record Keeping

6.2.5 (1) An Authorised Firm must maintain and keep a record of:

(a) the written notice setting out the conditions for Personal Account Transactions under Rule 6.2.1(a)(i);

(b) each permission given or denied by the Authorised Firm under Rule 6.2.1(a)(ii);

(c) each notification made to it under Rule 6.2.1(b); and

(d) the basis upon which the Authorised Firm has ascertained that an Employee will not be involved in to any material extent, or have access to information about, the Authorised Firm's Investment Business for the purposes of Rule 6.2.3.

(2) The records in (1) must be retained for a minimum of six years from the date of:

(a) in (1)(a) and (1)(d), termination of the employment contract of each Employee;

(b) in (1)(b), each permission given or denied by the Authorised Firm; and

(c) in (1)(c), each notification made to the Authorised Firm.

6.3 Investment research and offers of securities

Application

6.3.1 This section applies to an Authorised Firm preparing or publishing Investment Research.

Guidance

Investment Research is seen as a significant potential source of conflicts of interest within an Authorised Firm and therefore an Authorised Firm preparing or publishing investment research is expected to have adequate procedures, systems and controls to manage effectively any conflicts that arise.

6.3.2 An Authorised Firm that prepares and publishes Investment Research must have adequate procedures and controls to ensure:

(a) the effective supervision and management of Investment Analysts;

(b) that the actual or potential conflicts of interest are proactively managed in accordance with section 3.5 ;

(c) that the Investment Research issued to Clients is impartial; and

(d) that the Investment Research contains the disclosures described under Rules 6.3.3 and 6.3.4.

Guidance

An Authorised Firm's procedures, controls and internal arrangements, which may include Chinese Walls, should limit the extent of Investment Analysts participation in corporate finance business and sales and trading activities, and ensure remuneration structures do not affect their independence.

Disclosures in investment research

6.3.3 When an Authorised Firm publishes Investment Research, it must take reasonable steps to ensure that the Investment Research:

(a) clearly identifies the types of Clients for whom it is principally intended;

(b) distinguishes fact from opinion or estimates, and includes references to sources of data and any assumptions used;

(c) specifies the date when it was first published;

(d) specifies the period the ratings or recommendations are intended to cover;

(e) contains a clear and unambiguous explanation of the rating or recommendation system used;

(f) includes a distribution of the different ratings or recommendations, in percentage terms:

(i) for all Investments;

(ii) for Investments in each sector covered; and

(iii) for Investments, if any, where the Authorised Firm has undertaken corporate finance business with or for the Issuer over the past 12 months; and

(g) if intended for use only by a Professional Client or Market Counterparty, contains a clear warning that it should not be relied upon by or distributed to Retail Clients.

Guidance

An Authorised Firm may consider including a price chart or line graph depicting the performance of the Investment for the period that the Authorised Firm has assigned a rating or recommendation for that investment, including the dates on which the ratings were revised for the purposes of the requirements such as in (d) and (e) of Rule 6.3.3.

6.3.4 For the purposes of this section, an Authorised Firm must take reasonable steps to ensure that when it publishes Investment Research, and in the case where a representative of the Authorised Firm makes a Public Appearance, disclosure is made of the following matters:

(a) any financial interest or material interest that the Investment Analyst or a Close Relative of the analyst has, which relates to the Investment;

(b) the reporting lines for Investment Analysts and their remuneration arrangements where such matters give rise to any conflicts of interest which may reasonably be likely to impair the impartiality of the Investment Research;

(c) any shareholding by the Authorised Firm or its Associate of 1% or more of the total issued share capital of the Issuer;

(d) if the Authorised Firm or its Associate acts as corporate broker for the Issuer;

(e) any material shareholding by the Issuer in the Authorised Firm;

(f) any corporate finance business undertaken by the Authorised Firm with or for the Issuer over the past 12 months, and any future relevant corporate finance business initiatives; and

(g) that the Authorised Firm is a Market Maker in the Investment, if that is the case.

Guidance

The requirements in Rule 6.3.4(a) and (b) apply to an Authorised Firm in addition to other requirements in the DFSA Rulebook. For example, an Authorised Firm is required to take reasonable steps to identify actual or potential conflicts of interest and then prevent or manage them under GEN Rule 4.2.7 (Principle 7 – Conflicts of Interest). Further, COB Rule 6.3.2 requires an Authorised Firm to have adequate procedures and controls when it prepares or publishes Investment Research.

Restrictions on publication

6.3.5 If an Authorised Firm acts as a manager or co-manager of an initial public offering or a secondary offering, it must take reasonable steps to ensure that:

(a) it does not publish Investment Research relating to the Investment during a Quiet Period; and

(b) an Investment Analyst from the Authorised Firm does not make a Public Appearance relating to that Investment during a Quiet Period.

Guidance

The DFSA does not consider the same conflicts of interest mentioned in this section arise if an Investment Analyst prepares Investment Research solely for an Authorised Firm's own use and not for publication. For example, if the research material is prepared solely for the purposes of the Authorised Firm's proprietary trading then the use of this information would fall outside the restrictions placed on publications.

Restriction on own account transactions

6.3.6 (1) Unless Rule 6.2.2 applies, an Authorised Firm or its Associate must not knowingly execute an Own Account Transaction in an Investment or related Investments, which is the subject of Investment Research, prepared either by the Authorised Firm or its Associate, until the Clients for whom the Investment Research was principally intended have had a reasonable opportunity to act upon it.

(2) The restriction in (1) does not apply if:

(a) the Authorised Firm or its Associate is a Market Maker in the relevant Investment;

(b) the Authorised Firm or its Associate undertakes an Execution-Only Transaction for a Client; or

(c) it is not expected to materially affect the price of the Investment.

Guidance

The exceptions in Rule 6.3.6(2) allow an Authorised Firm to continue to provide key services to the market and to its Clients even if the Authorised Firm would be considered to have knowledge of the timing and content of the Investment Research which is intended for publication to Clients, for example when it is impractical for an Authorised Firm to put in place a Chinese Wall because the Authorised Firm has few Employees or cannot otherwise separate its functions.

Offers of securities

6.3.7 When an Authorised Firm carries out a mandate to manage an Offer of Securities, it must implement adequate internal arrangements, in accordance with section 3.5, to manage any conflicts of interest that may arise as a result of the Authorised Firm's duty to two distinct sets of Clients namely the corporate finance Client and the investment Client.

Disclosure

6.3.8 For the purposes of Rule 6.3.7, when an Authorised Firm accepts a mandate to manage an Offer, it must take reasonable steps to disclose to its corporate finance Client:

(a) the process the Authorised Firm proposes to adopt in order to determine what recommendations it will make about allocations for the Offer;

(b) details of how the target investor group, to whom it is planned to Offer the Securities, will be identified;

(c) the process through which recommendations are prepared and by whom; and

(d) (if relevant) that it may recommend placing Securities with a Client of the Authorised Firm for whom the Authorised Firm provides other services, with the Authorised Firm's own proprietary book, or with an Associate, and that this represents a potential conflict of interest.

Guidance

It is the DFSA's expectation that an Authorised Firm's procedures to identify and manage conflicts of interest should extend to the allocation process for an offering of Securities.

6.4 Best execution

Application

6.4.1 (1) The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which:

(a) it undertakes with a Market Counterparty;

(b) it carries out for the purposes of managing a Fund of which it is the Fund Manager;

(c) is an Execution-Only Transaction; or

(d) it undertakes on an MTF which it operates.

(2) Where an Authorised Firm undertakes an Execution-Only Transaction with or for a Client, the Authorised Firm is not relieved from providing best execution in respect of any aspect of that Transaction which lies outside the Client's specific instructions.

Providing best execution

6.4.2 (1) When an Authorised Firm agrees, or decides in the exercise of its discretion, to Execute any Transaction with or for a Client in an Investment, it must provide best execution.

(2) An Authorised Firm provides best execution if it takes reasonable care to determine the best overall price available for that Investment under the prevailing market conditions and deals at a price which is no less advantageous to that Client.

(3) An Authorised Firm which is an ATS Operator is not required to provide best execution for Persons who are its Clients in circumstances where such Persons are dealing with each other on the Authorised Firm's ATS and the Authorised Firm is not acting for or on behalf of any such Persons in relation to a deal on that ATS.

Requirements

6.4.3 In determining whether an Authorised Firm has taken reasonable care to provide the best overall price for a Client in accordance with Rule 6.4.2, the DFSA will have regard to whether an Authorised Firm has:

(a) discounted any fees and charges previously disclosed to the Client;

(b) not taken a Mark-up or Mark-down from the price at which it Executed the Transaction, unless this is disclosed to the Client; and

(c) had regard to price competition or the availability of a range of price sources for the execution of its Clients' Transactions. In the case where the Authorised Firm has access to prices of different Authorised Market Institutions, other regulated financial markets or alternative trading systems, it must Execute the Transaction at the best overall price available having considered other relevant factors.

6.4.4 If another Person is responsible for the execution of a Transaction an Authorised Firm may rely on that Person to provide best execution where that Person has undertaken to provide best execution in accordance with this section.

Guidance

When determining best execution, an Authorised Firm should consider the direct costs and indirect costs and the relevant order type and size, settlement arrangements and timing of a Client's order that could affect decisions on when, where and how to trade.

6.5 Non-market price transactions

Application

6.5.1 (1) Subject to (2), this section applies to an Authorised Firm conducting Investment Business regardless of the classification of the Client.

(2) This section does not apply to a Client to whom a Person operating an MTF provides its MTF services.

General prohibition

6.5.2 (1) An Authorised Firm must not enter into a non-market price Transaction in any capacity, with or for a Client, unless it has taken reasonable steps to ensure that the Transaction is not being entered into by the Client for an improper purpose.

(2) The requirement in (1) does not apply in relation to a non-market price Transaction subject to the Rules of an Authorised Market Institution or regulated exchange.

Record keeping

6.5.3 An Authorised Firm must make and retain, for a minimum of six years, a record of the steps it has taken in relation to each Transaction under this section.

Guidance

1. A non-market price Transaction is a Transaction where the dealing rate or price paid by the Authorised Firm or its Client differs from the prevailing market rate or price to a material extent or the Authorised Firm or its Client gives materially more or less in value than it receives in return.

2. In general, Authorised Firms should undertake transactions at the prevailing market price. Failure to do this may result in an Authorised Firm participating, whether deliberately or unknowingly, in the concealment of a profit or loss, or in the perpetration of a fraud.

6.6 Aggregation and allocation

Application

6.6.1 The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which:

(a) it undertakes with a Market Counterparty;

(b) it carries out for the purposes of managing a Fund of which it is the Fund Manager; or

(c) is undertaken on an MTF which it operates.

Aggregation of orders

6.6.2 An Authorised Firm may aggregate an order for a Client with an order for other Clients or with an order for its own account only where:

(a) it is unlikely that the aggregation will operate to the disadvantage of any of the Clients whose Transactions have been aggregated;

(b) the Authorised Firm has disclosed in writing to the Client that his order may be aggregated and that the effect of the aggregation may operate on some occasions to his disadvantage;

(c) the Authorised Firm has made a record of the intended basis of allocation and the identity of each Client before the order is effected; and

(d) the Authorised Firm has in place written standards and policies on aggregation and allocation which are consistently applied and should include the policy that will be adopted when only part of the aggregated order has been filled.

Allocation of investments

6.6.3 Where an Authorised Firm has aggregated a Client order with an order for other Clients or with an order for its own account, and part or all of the aggregated order has been filled, it must:

(a) promptly allocate the Investments concerned;

(b) allocate the Investments in accordance with the stated intention;

(c) ensure the allocation is done fairly and uniformly by not giving undue preference to itself or to any of those for whom it dealt; and

(d) make and maintain a record of:

(i) the date and time of the allocation;

(ii) the relevant Investments;

(iii) the identify of each Client concerned; and

(iv) the amount allocated to each Client and to the Authorised Firm recorded against the intended allocation as required in (b).

Record keeping

6.6.4 An Authorised Firm must retain the records required in Rules 6.6.2 (d) and 6.6.3 for six years from the date on which the order is allocated.

6.7 Record keeping – voice and electronic communications

6.7.1 (1) An Authorised Firm must, subject to (2), take reasonable steps to ensure that it makes and retains recordings of its voice and electronic communications when such communications are with a Client or with another Person in relation to a Transaction, including the receiving or passing of related instructions.

(2) The obligation in (1) does not apply in relation to voice and electronic communications which are not intended to lead to the conclusion of a specific Transaction and are general conversations or communications about market conditions.

Guidance

The effect of Rule 6.7.1 is that an Authorised Firm may conduct the kind of business contemplated in (1) over a mobile phone or other handheld electronic communication device but only if the Authorised Firm is able to record such communications. Further, mere transmission of instructions by front office personnel to back office personnel within an Authorised Firm would not ordinarily be subject to this Rule.

6.7.2 (1) An Authorised Firm must be able to demonstrate prompt accessibility of all records.

(2) Records must be maintained in comprehensible form or must be capable of being promptly so reproduced.

(3) The Authorised Firm must make and implement appropriate procedures to prevent unauthorised alteration of its records.

6.7.3 Voice and electronic communication recordings must be retained for a minimum of six months.

Records of orders and transactions

6.7.4 (1) When an Authorised Firm receives a Client order or in the exercise of its discretion decides upon a Transaction, it must promptly make a record of the information set out in App1 under Rule A1.1.1.

(2) When an Authorised Firm Executes a Transaction, it must promptly make a record of the information set out in App1 under Rule A1.1.2.

(3) When an Authorised Firm passes a Client order to another Person for Execution, it must promptly make a record of the information set out in App 1 under Rule A1.1.3.

6.7.5 The records referred to in Rule 6.7.4 must be retained by an Authorised Firm for a minimum of six years.

6.8 Other dealing rules

Application

6.8.1 (1) Subject to (2), the Rules in this section, other than Rule 6.8.7, do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

(b) carries out for the purposes of managing a Fund of which it is the Fund Manager.

(2) The Rules in this section do not apply to an Authorised Firm in respect of any Transactions which it undertakes on an MTF which it operates.

Churning

6.8.2 (1) An Authorised Firm must not Execute a Transaction for a Client in its discretion or advise any Client to transact with a frequency or in amounts to the extent that those Transactions might be deemed to be excessive.

(2) The onus will be on the Authorised Firm to ensure that such Transactions were fair and reasonable at the time they were entered into.

Timely execution

6.8.3 (1) Once an Authorised Firm has agreed or decided to enter into a Transaction for a Client, it must do so as soon as reasonably practical.

(2) An Authorised Firm may postpone the execution of a Transaction in (1) if it has taken reasonable steps to ensure that it is in the best interests of the Client.

Fairly and in due turn

6.8.4 An Authorised Firm must deal with Own Account Transactions and Client Transactions fairly and in due turn.

Averaging of prices

6.8.5 (1) An Authorised Firm may execute a series of Transactions on behalf of a Client within the same trading day or within such other period as may be agreed in writing by the Client, to achieve one investment decision or objective, or to meet Transactions which it has aggregated.

(2) If the Authorised Firm does so, it may determine a uniform price for the Transactions executed during the period, calculated as the weighted average of the various prices of the Transactions in the series.

Timely allocation

6.8.6 (1) An Authorised Firm must ensure that a Transaction it Executes is promptly allocated.

(2) The allocation must be:

(a) to the account of the Client on whose instructions the Transaction was executed;

(b) in respect of a discretionary Transaction, to the account of the Client or Clients with or for whom the Authorised Firm has made and recorded, prior to the Transaction, a decision in principle to execute that Transaction; or

(c) in all other cases, to the account of the Authorised Firm.

Direct Electronic Access

6.8.7 Where an Authorised Firm provides a Client (including a Market Counterparty) with direct electronic access to an Authorised Market Institution, Alternative Trading System, Regulated Exchange or regulated multilateral trading facility, the Authorised Firm must:

(a) establish and maintain policies, procedures, systems and controls to limit or prevent a Client from placing an order that would result in the Authorised Firm exceeding its existing position limits or credit limits; and

(b) ensure that such policies, procedures, systems and controls remain appropriate and effective on an on-going basis.

Guidance

An Authorised Firm should undertake on-going monitoring of its systems and controls to ensure that they are operating effectively and as intended and remain appropriate.

6.9 Confirmation notes

Application

6.9.1 The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

(b) carries out for the purposes of managing a Fund of which it is the Fund Manager.

Sending confirmation notes

6.9.2 (1) When an Authorised Firm Executes a Transaction in an Investment for a Client, it must ensure a confirmation note is sent to the Client as soon as possible and in any case no later than 2 business days following the date of Execution of the Transaction.

(2) Where an Authorised Firm has executed a Transaction or series of Transactions in accordance with Rule 6.8.5, the Authorised Firm must send a confirmation note relating to those Transactions as soon as possible, but no later than 2 business days following the last Transaction.

(3) The confirmation note must include the details of the Transaction in accordance with App3 section A3.1.

(4) An Authorised Firm is not required to issue a confirmation note where a Professional Client has advised in writing that he does not wish to receive such confirmation notes.

Record keeping

6.9.3 An Authorised Firm must retain a copy of each confirmation note sent to a Client and retain it for a minimum of six years from the date of despatch.

6.10 Periodic statements

Application

6.10.1 The Rules in this section do not apply to an Authorised Firm with respect to any Transaction which it:

(a) undertakes with a Market Counterparty; or

(b) carries out for the purposes of managing a Collective Investment Fund of which it is the Fund Manager.

Investment management and contingent liability investments

6.10.2 (1) When an Authorised Firm:

(a) acts as an Investment Manager for a Client; or

(b) operates a Client's account containing uncovered open positions in a Contingent Liability Investment;

it must promptly and at suitable intervals in accordance with (2) provide the Client with a written statement ("a periodic statement") containing the matters referred to in App4 section A4.1.

(2) For the purposes of (1), a "suitable interval" is:

(a) six-monthly;

(b) monthly, if the Client's portfolio includes an uncovered open position in Contingent Liability Investments; or

(c) at any alternative interval that a Client has on his own initiative agreed with the Authorised Firm but in any case at least annually.

Record keeping

6.10.4 An Authorised Firm must make a copy of any periodic statement provided to a Client and retain it for a minimum of six years from the date on which it was provided.

6.11 Client Assets

Application

6.11.1 This section applies to an Authorised Firm which:

(a) holds or controls Client Assets; or

(b) Provides Custody or Arranges Custody.

Guidance

1. Client Assets is defined in the GLO Module as "Client Money and Client Investments".

2. Principle 9 of the Principles for Authorised Firms (Customer assets and money) requires an Authorised Firm to arrange proper protection for Clients' Assets when the firm is responsible for them. An essential part of that protection is that an Authorised Firm must properly safeguard Client Money and Client Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the DIFC.

3. Rule 6.11.3 requires an Authorised Firm to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets, or of rights in connection with Client Assets, as a result of, for example, the Authorised Firm's or a third party's insolvency, fraud, poor administration, inadequate record-keeping or negligence.

General requirements

6.11.2 (1) An Authorised Firm which holds or controls Client Money must comply with sections 6.12 and 6.14.

(2) An Authorised Firm which holds or controls Client Investments or Provides Custody or Arranges Custody must comply with sections 6.13 and 6.14.

6.11.3 (1) An Authorised Firm must have systems and controls to ensure that Client Assets are identifiable and secure at all times.

(2) Where the Authorised Firm holds a mandate, or similar authority over an account with a third party, in the Client's own name, its systems and controls must:

(a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Firm on the use of the mandate;

(b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and

(c) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Firm entering into such Transactions.

Guidance

Authorised Firms are reminded that they must ensure that their auditor produces a Client Money Auditor's Report and a Safe Custody Auditor's Report as applicable, in accordance with GEN 8.6.

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; or

(c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Firm.

Guidance

1 For the purposes pf 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.

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 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 who is in compliance with Rule 6.11.3 (2);

(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.

Client money provisions

6.12.2 (1) An Authorised Firm in Category 4 must not hold Client Money.

(2) An Authorised Firm which holds or controls Client Money for a Client must, subject to (3), comply with the Client Money Provisions in App5.

(3) Where the Client is a Market Counterparty, an Authorised Firm may exclude the application of the Client Money Provisions but only where it has obtained the prior written consent of the Market Counterparty to do so.

Guidance

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

Client disclosure

6.12.3 (1) If an Authorised Firm holds or controls Client Money which is not subject to the Client Money Provisions pursuant to Rule 6.12.2 (2), it must disclose to that Market Counterparty in writing that:

(a) the protections conferred by the Client Money Provisions do not apply to such Client Money;

(b) as a consequence of (a), such Client Money may be mixed with Money belonging to the Authorised Firm, and may be used by the Authorised Firm in the course of the Authorised Firm's business; and

(c) in the event of insolvency, winding up or other Distribution Event stipulated by the DFSA:

(i) in the case of a Domestic Firm, such Client Money will be subject to and distributed in accordance with the DFSA Client Money Distribution Rules; and

(ii) in the case of a non-Domestic Firm, such Client Money will be subject to a regime which may differ from the regime applicable in the DIFC.

(2) The Authorised Firm must obtain that Market Counterparty's written acknowledgement of the disclosures made in (1) prior to holding or controlling Client Money for that Market Counterparty.

Distribution event

6.12.4 Following a Distribution Event, an Authorised Firm must comply with the Client Money Distribution Rules and all Client Money will be subject to such Rules.

Record keeping

6.12.5 (1) An Authorised Firm must maintain records:

(a) which enable the Authorised Firm to demonstrate compliance with Rule 6.11.2;

(b) which enable the Authorised Firm to demonstrate and explain all entries of Money held or controlled in accordance with this chapter; and

(c) of all cheques received and forwarded in accordance with Rule 6.12.1(e).

(2) Records must be kept for a minimum of six years.

Guidance

The DFSA expects an Authorised Firm to maintain proper books and accounts based on the double-entry booking principle. They should be legible, up to date and contain narratives with the entries which identify and provide adequate information about each transaction. Entries should be made in chronological order and the current balance should be shown on each of the Authorised Firm's ledgers.

6.13 Client investments

6.13.1 An Authorised Firm must treat all Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business as Client Investments.

6.13.2 An Authorised Firm which holds or controls Client Investments must have systems and controls in place to ensure the proper safeguarding of Client Investments.

Guidance

Instead of safeguarding Client Investments, an Authorised Firm may choose to safeguard Client Money equal to the value of the Client Investments.

6.13.3 (1) Subject to (2), an Authorised Firm:

(a) holding or controlling Client Investments;

(b) Providing Custody; or

(c) Arranging Custody

in or from the DIFC must do so in accordance with the Safe Custody Provisions in App6.

(2) The Safe Custody Provisions in App6 do not apply to Client Investments held as Collateral unless stated otherwise.

Holding collateral

6.13.4 Before an Authorised Firm holds Collateral from a Client it must disclose to that Client:

(a) the basis and any terms governing the way in which the Collateral will be held, including any rights which the Authorised Firm may have to realise the Collateral;

(b) if applicable, that the Collateral will not be registered in that Client's own name;

(c) if applicable, that the Authorised Firm proposes to return to the Client Collateral other than the original Collateral, or original type of Collateral; and

(d) that in the event of the insolvency, winding up or other Distribution Event stipulated by the DFSA:

(i) of a Domestic Firm, any excess Collateral will be sold and the resulting Client Money shall be distributed in accordance with the DFSA Client Money Distribution Rules; or

(ii) of a non-Domestic Firm, that Collateral will be subject to a regime which may differ from the regime applicable in the DIFC.

6.13.5 Before an Authorised Firm deposits Client's Collateral with a third party it must notify the third party that:

(a) the Collateral does not belong to the Authorised Firm and must therefore be held by the third party in a segregated Client Account in a name that clearly identifies it as belonging to the Authorised Firm's Clients; and

(b) the third party is not entitled to claim any lien or right of retention or sale over the Collateral except to cover the obligations owed to the third party which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the Collateral.

6.13.6 (1) An Authorised Firm may only permit Client's Collateral to be held by a third party where it has reasonable grounds to believe that the third party is, and remains, suitable to hold that Collateral.

(2) An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which it considers the third party to be suitable to hold Client's Collateral.

6.13.7 (1) An Authorised Firm must take reasonable steps to ensure that the Collateral is properly safeguarded.

(2) An Authorised Firm must withdraw the Collateral from the third party where the Collateral is not being properly safeguarded unless the Client has indicated otherwise in writing.

6.13.8 An Authorised Firm holding Client's Collateral must send a statement every six months to the Client in accordance with section A6.8.

6.13.9 An Authorised Firm must reconcile the Client's Collateral in accordance with section A6.9.

6.14 Record keeping

6.14.1 (1) An Authorised Firm must maintain records:

(a) which enable the Authorised Firm to demonstrate compliance with Rule 6.11.2; and

(b) which enable the Authorised Firm to demonstrate and explain all entries of Client Investments and Collateral held or controlled in accordance with this chapter.

(2) Records must be kept for a minimum of six years.

7 CORE RULES - INSURANCE

7.1 Application

7.1.1 (1) The Rules in this chapter apply to an Authorised Firm with respect to the conduct in or from the DIFC of Insurance Business, Insurance Intermediation or Insurance Management to the extent specified in any Rule.

(2) The Rules in this chapter do not apply to an Insurer that is an Authorised ISPV with the exception of the Rules in section 7.2.

7.2 Insurance business and intermediation restrictions

7.2.1 An Authorised Firm may only conduct Insurance Business or Insurance Intermediation with or for a Client to the extent specified in this section.

7.2.2 An Authorised Firm must ensure that it does not:

(a) if it is an Insurer, Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC; or

(b) if it is an Insurance Intermediary, act in relation to a Contract of Insurance;

where the contract is in relation to a risk situated within the U.A.E, unless the risk is situated in the DIFC, or the contract is one of re-insurance.

Guidance

The classes of insurance are set out in GEN App4.

7.2.3 An Insurer must ensure that it does not carry on, through an establishment maintained by it in the DIFC, both Long-Term Insurance Business and General Insurance Business unless the General Insurance Business is restricted to Class 1 or Class 2 or both.

7.2.4 An Insurer which is a Protected Cell Company must ensure that all Insurance Business is attributable to a particular Cell of that Insurer.

7.2.5 An Insurer must not carry on any activity other than Insurance Business unless it is an activity in direct connection with or for the purposes of such business. For the purposes of this Rule, Managing Assets is not an activity in connection with or for the purposes of Insurance Business.

Guidance

1. The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:

   a. investing, reinvesting or trading, as investor or rabb ul maal and for the Insurer's own account, that of its Subsidiary, its Holding Company or any Subsidiary of its Holding Company but not any other party, in Securities, loans, investment accounts, units or

shares in collective investment funds, certificates of mudaraba, certificates of musharaka or other forms of investments that are intended to earn profit or return for the investor;

b. rendering other services related to Insurance Business operations including, but not limited to, actuarial, risk assessment, loss prevention, safety engineering, data processing, accounting, claims handling, loss assessment, appraisal and collection services;

c. acting as agent for another insurer in respect of contracts of insurance in which both insurers participate; and

d. establishing Subsidiaries or Associates engaged or organised to engage exclusively in one or more of the businesses specified above.

2. The DFSA may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.

7.3 Communication of information and marketing material

General obligation

7.3.1 (1) When communicating any information in relation to Insurance Business, Insurance Intermediation or Insurance Management to a Person, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.

(2) An Insurer, Insurance Intermediary or Insurance Manager must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under the Regulatory Law 2004 or Rules.

(3) An Insurer or Insurance Intermediary must, when providing or directing marketing material to a Retail Client, comply with the requirements in section 3.2, if the marketing material relates to a Direct Long-Term Insurance Contract.

7.4 Client's duty of disclosure

7.4.1 An Insurer or Insurance Intermediary must explain to a Client:

(a) the Client's duty to disclose all circumstances material to the insurance both before the insurance commences and during the continuance of the policy; and

(b) the consequence of any failure by the Client to make such disclosures.

7.4.2 An Insurance Intermediary must explain to a Client that all answers or statements given on a proposal form, claim form or any other relevant document are the Client's own responsibility and that the Client is responsible for checking the accuracy of such information.

7.4.3 If an Insurance Intermediary believes that any disclosure of material facts by a Client is not true, fair or complete, it must request the Client to make the necessary true, fair or complete disclosure, and if this is not forthcoming must consider declining to continue acting on that Client's behalf.

7.5 Authorised Firm's duty of disclosure

7.5.1 (1) An Insurer or Insurance Intermediary must disclose to a Client:

(a) the name and address of the insurer or insurers effecting the Contract of Insurance;

(b) its own name and address where different; and

(c) contact details of the Person to whom a claim is to be notified.

(2) The disclosures in (1) must be made before effecting or placing the Contract of Insurance, or as soon as reasonably practicable thereafter.

7.5.2 (1) An Insurance Intermediary must, before providing any Insurance Intermediation service to a Person as a Retail Client, disclose whether any advice or information is or will:

(a) be provided on the basis of a fair analysis of the market;

(b) not be provided on the basis of a fair analysis of the market because of any contractual agreement it has with any particular insurer or insurers to deal with only their products; or

(c) even if there are no contractual agreements of the type referred to in (b), not be provided on the basis of a fair analysis of the market.

(2) If (1) (b) or (c) applies, the Insurance Intermediary must, if requested by the Retail Client, provide to that Client a list of insurers with whom it deals or may deal in relation to the relevant Contracts of Insurance.

(3) An Insurance Intermediary must, before providing any Insurance Intermediation service to a Client, disclose to that Client whether it acts on behalf of an insurer or any other Person or acts independently on behalf of Clients.

Guidance

An Insurance Intermediary should not represent itself as providing advice or information on the basis of a fair analysis of the market unless it has considered a sufficiently broad range of Contracts of Insurance and based its decision on an adequate analysis of those contracts.

7.6 Disclosure of costs and remuneration

7.6.1 An Insurer, Insurance Intermediary or Insurance Manager must provide details of the costs of each Contract of Insurance or Insurance Intermediation service or Insurance Management service offered to a Client.

Guidance

1 The disclosure required by this Rule should include any premiums, fees, charges or taxes payable by the Client, whether or not these are payable to the Authorised Firm.

2 The disclosure should be made in terms readily understandable by the Client, taking into account the knowledge held by that Client in relation to the type of insurance in question.

7.6.2 An Insurer or Insurance Intermediary must, where any premium is payable through a Credit Facility made available to a Retail Client, disclose any interest, profit rate or charges payable by the Client for using that facility.

7.6.3 An Insurer, Insurance Intermediary or Insurance Manager must ensure that it does not impose any new costs, fees or charges without first disclosing the amount and the purpose of those charges to the Client.

7.6.4 (1) An Insurer, Insurance Intermediary or Insurance Manager must, on the request of any Client, disclose to that Client all commissions and other economic benefits accruing to the Authorised Firm or any member of the same Group from:

(a) any Insurance Intermediation business;

(b) any Insurance Management business; or

(c) any other business connected to or related to the provision of such business;

transacted by the Authorised Firm on behalf of that Client.

(2) The requirement to disclose the information under (1) does not apply where an Insurance Intermediary acts solely on behalf of a single insurer, and this fact has been disclosed to the Client.

7.7 Information about the proposed insurance

7.7.1 An Insurer or Insurance Intermediary must provide adequate information in a comprehensive and timely manner to enable a Client to make an informed decision about the Contract of Insurance that is being proposed.

7.7.2 Without limiting the generality of the disclosure obligation under section 7.5, an Insurer or Insurance Intermediary must, for the purpose of complying with the obligation under that section:

(a) provide to a Client information about the key features of any insurance proposed including the essential cover and benefits, any significant or

unusual restrictions, exclusions, conditions or obligations, and the applicable period of cover; and

(b) explain, except where the insurance cover is sourced from a single insurer, the differences in and the relative costs of similar types of insurance as proposed.

Guidance

When deciding to what extent it is appropriate to explain the terms and conditions of a particular insurance the Insurer or Insurance Intermediary should take into consideration the knowledge held by the Client in relation to the type of insurance in question.

Specific disclosure for Long-Term Insurance

7.7.3 Where an Insurer or an Insurance Intermediary proposes Direct Long-Term Insurance to a Retail Client, the disclosure for the purposes of this section must include:

(a) the method of calculation of any bonuses;

(b) an indication of surrender values and paid-up values, and the extent to which any such values are guaranteed;

(c) for unit-linked insurance contracts, definition of the units to which they are linked, and a description of the underlying assets;

(d) the basis of any projections included in the information; and

(e) any facts that are material to the decision to invest, including risks associated with the investment and factors that may adversely affect the performance of the investments.

7.7.4 Deleted

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.

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.

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.

7.9 Managing conflicts of interest

7.9.1 (1) An Insurance Intermediary or Insurance Manager must manage any conflict of interest to ensure that all its Clients are fairly treated and not prejudiced by any such interests.

(2) An Insurance Intermediary or Insurance Manager must manage the conflict of interest by disclosing such conflict to the Clients in writing either generally or in relation to a specific Transaction.

(3) If an Insurance Intermediary or Insurance Manager is unable to manage a conflict of interest, it must decline to act for the Client.

7.10 Placement of Insurance

Instructions

7.10.1 An Insurance Intermediary must not place a Contract of Insurance with or on behalf of an insurer unless it has satisfied itself on reasonable grounds that the insurer may lawfully effect that contract under the laws of the jurisdictions in which the insurer and the risk are located.

Quotations

7.10.2 When giving a quotation, an Insurance Intermediary must take due care to ensure the accuracy of the quotation and its ability to obtain the insurance at the quoted terms.

Confirmation of cover

7.10.3 (1) An Insurer, in Effecting Contracts of Insurance, must promptly document the principal economic and coverage terms and conditions agreed upon under any Contract of Insurance and finalise such contract in a timely manner.

(2) An Insurer or Insurance Intermediary must, as soon as reasonably practicable, provide a Client with written confirmation and details of the insurance which it has effected for the Client or has obtained on behalf of the Client, including any changes to an existing Contract of Insurance.

(3) An Insurer or Insurance Intermediary must, as soon reasonably practicable, provide the Client with the full policy documentation where this was not included with the confirmation of cover.

7.11 Providing an ongoing service

Amendments to and renewal of insurance

7.11.1 (1) An Insurer or Insurance Intermediary must deal promptly with a Client's request for an amendment to the insurance cover and provide the Client with full details of any premium or charges to be paid or returned.

(2) An Insurer or Insurance Intermediary must provide a Client with written confirmation when the amendment is made and remit any return premium or charges due to the Client without delay.

7.11.2 An Insurer or Insurance Intermediary must give adequate advance notification to a Client of the renewal or expiration date of an existing insurance policy so as to allow the Client sufficient time to consider whether continuing cover is required.

7.11.3 On expiry or cancellation of the insurance, at the request of the Client, an Insurer or Insurance Intermediary must promptly make available all documentation and information to which the Client is entitled.

Claims

7.11.4 Where an Insurance Intermediary handles insurance claims it must:

(a) on request, give the Client reasonable guidance in pursuing a claim under the relevant policy;

(b) handle claims fairly and promptly and keep the Client informed of progress;

(c) inform the Client in writing, with an explanation, if it is unable to deal with any part of a claim; and

(d) forward settlement of any claim, as soon as reasonably practicable, once it has been agreed.

7.11.5 An Insurer must:

(a) handle claims fairly and promptly;

(b) keep the Client informed of the progress of the claim;

(c) not reject a claim unreasonably;

(d) if only part of a claim is accepted:

(i) provide a clear statement about the part of the claim that is accepted; and

(ii) give clear reasons for rejecting that part of the claim that has not been accepted; and

(e) settle the claim promptly.

7.12 Insurance monies

Application

7.12.1 This section applies to an Insurance Intermediary and an Insurance Manager, in respect of activities carried on in or from the DIFC.

General

7.12.2 (1) Insurance Monies are, subject to (2), any monies arising from Insurance Intermediation or the Insurance Management business which are any of the following:

(a) premiums, additional premiums and return premiums of all kinds;

(b) claims and other payments due under Contracts of Insurance;

(c) refunds and salvages;

(d) fees, charges, taxes and similar fiscal levies relating to Contracts of Insurance;

(e) discounts, commissions and brokerage; or

(f) monies received from or on behalf of a Client of an Insurance Manager, in relation to his Insurance Management business.

(2) Monies are not Insurance Monies where there is a written agreement in place between the Insurance Intermediary or Insurance Manager and the insurer to whom the relevant monies are to be paid (or from whom they have been received) under which the insurer agrees that:

(a) the Insurance Intermediary or Insurance Manager, as the case may be, holds as agent for the insurer all monies received by it in connection with Contracts of Insurance effected or to be effected by the insurer;

(b) insurance cover is maintained for the Client once the monies are received by the Insurance Intermediary or the Insurance Manager, as the case may be; and

(c) the insurer's obligation to make a payment to the Client is not discharged until actual receipt of the relevant monies by the Client.

7.12.3 In this section, a Client of an Insurance Manager means:

(a) any insurer for which the Insurance Manager provides Insurance Management;

(b) any shareholder of an insurer mentioned in (a); or

(c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.

7.12.4 For the purposes of Rule 7.12.3:

(a) an Insurer includes a Cell of a Protected Cell Company which is an Insurer; and

(b) a shareholder includes a holder of Cell Shares.

Insurance money segregation

7.12.5 An Insurance Intermediary or Insurance Manager when dealing with Insurance Monies must:

(a) maintain one or more separate Insurance Bank Accounts with an Eligible Bank in the U.A.E.;

(b) ensure that each Insurance Bank Account contains in its title the name of the Authorised Firm, together with the designation Insurance Bank Account (or IBA);

(c) prior to operating an Insurance Bank Account, give written notice to, and receive written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the Authorised Firm, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;

(d) pay all Insurance Monies directly and without delay into an Insurance Bank Account;

(e) use an Insurance Bank Account only for the following purposes:

(i) the receipt of Insurance Monies;

(ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Firm with any conditions or requirements prescribed by the DFSA;

(iii) the payment to Clients or to insurers of monies due under Insurance Intermediation Business transactions;

(iv) the payment of all monies payable by the Authorised Firm in respect of the acquisition of or otherwise in connection with Approved Assets;

(v) the withdrawal of brokerage, management fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;

(vi) the withdrawal of monies paid into the Insurance Bank Account in error; and

(vii) the withdrawal of any monies credited to the Insurance Bank Account in excess of those required by any conditions and requirements prescribed by the DFSA;

(f) ensure that any amount held in the Insurance Bank Account or other Approved Assets, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and

(g) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.

7.12.6 An Insurance Intermediary or Insurance Manager may not obtain a loan or overdraft for any purpose relating to an Insurance Bank Account unless that advance:

(a) is on a bank account which is designated as an Insurance Bank Account, and the loan or overdraft is used for payment to Clients or to insurers of monies due under Insurance Intermediation transactions;

(b) does not give rise to a breach of the requirements of Rule 7.12.5(e); and

(c) is of a temporary nature and is repaid as soon as reasonably practicable.

7.12.7 An Insurance Intermediary or Insurance Manager must hold Insurance Monies either in an Insurance Bank Account or in Approved Assets.

7.12.8 An Insurance Intermediary must ensure that Approved Assets are:

(a) registered in the name of the Insurance Intermediary or Insurance Manager and designated 'Insurance Bank Account'; or

(b) held for the Insurance Bank Account of the Insurance Intermediary or Insurance Manager at the bank at which such Insurance Bank Account is held.

7.12.9 An Insurance Intermediary or Insurance Manager must ensure that monies, other than interest, arising from Approved Assets or their realisation, sale or disposal are paid into an Insurance Bank Account.

7.12.10 An Insurance Intermediary or Insurance Manager may not hold Insurance Monies in Approved Assets until it has given written notice to and received written notice from the bank referred to in Rule 7.12.8(b) that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against Approved

Assets held for the Insurance Intermediary's or Insurance Manager's Insurance Bank Account.

7.12.11 An Insurance Intermediary or Insurance Manager may only use Approved Assets as security for a loan or overdraft where that loan or overdraft is for a purpose relating to an Insurance Bank Account as permitted by Rule 7.12.6.

7.12.12 Where Insurance Monies are held in Approved Assets whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an Approved Asset and the Insurance Intermediary or Insurance Manager must dispose of the investment or asset as soon as possible and no later than within 30 days of the rating change.

7.12.13 An Insurance Intermediary or Insurance Manager may not use derivatives in the management of Insurance Monies except for the prudent management of foreign exchange risks.

7.12.14 An Insurance Intermediary who has a credit balance for a Client who cannot be traced should not take credit for such an amount except where:

(a) he has taken reasonable steps to trace the Client and to inform him that he is entitled to the money;

(b) at least six years from the date the credit was initially notified to the Client; and

(c) Rule 7.12.5(f) will continue to be satisfied after the withdrawal of such money.

7.12.15 An Insurance Intermediary must keep records of all sums withdrawn from the Insurance Bank Account or realised Approved Assets as a result of credit taken under Rule 7.12.14 for at least six years from the date of withdrawal or realisation.

8 SPECIFIC RULES – OPERATING A CREDIT RATING AGENCY

8.1 Application

8.1.1 (1) This chapter applies to every Person who carries on, or intends to carry on, the Financial Service of Operating a Credit Rating Agency in or from the DIFC.

(2) In this chapter, where a reference is made to a Rating Subject which is a credit commitment, a debt or a debt-like Investment referred to in GEN Rule 2.27.1(3)(b) or (c), that reference is to be read, where the context requires, as a reference to the Person responsible for obtaining the Credit Rating.

Guidance

1. The Financial Service of Operating a Credit Rating Agency is defined in GEN Rule 2.27.1. This chapter contains the specific conduct requirements that apply to Persons carrying on the Financial Service of Operating a Credit Rating Agency.

Code of conduct/ethics

2. The outcome intended by some of the specific conduct requirements in this chapter can be achieved by adopting a code of conduct/ethics. Whilst not proposing to prescribe that a Credit Rating Agency must have a code of conduct/ethics, a Credit Rating Agency should consider, particularly where noted in relation to specific Rules, adopting such a code as a means of achieving the outcome intended by the relevant requirements. However, where a Credit Rating Agency does not adopt such a code, the onus is on the Credit Rating Agency to demonstrate how it achieves compliance with the relevant requirements through other means.

Persons responsible for obtaining a Credit Rating

3. Not all Rating Subjects are bodies corporate. For example, Credit Ratings can be provided in respect of a credit commitment given by a Person, or a debt or debt-like Investment. In such instances, where a Rule in this chapter requires the Rating Subject to carry out some activity, such a reference is to be read, pursuant to Rule 8.1.1(2), as a reference to the Person who is responsible for obtaining the Credit Rating. Such a Person would generally be the originator, arranger or sponsor of the relevant financial product which is being rated. The Credit Rating Agency should clearly identify the Person responsible for a Rating Subject before proceeding with its Credit Rating Activities relating to that Rating Subject.

4. However, there is no restriction against more than one Person being identified as Persons responsible for obtaining a Credit Rating relating to a Rating Subject. In such cases, a Credit Rating Agency should clearly identify those Persons as responsible Persons relating to the relevant Rating Subject.

8.2 Additional Principles for Credit Rating Agencies

Guidance

Credit Rating Agencies are required to comply with, in addition to the Principles in GEN sections 4.1 and 4.2, three further Principles set out in this section.

Principle 1 – Quality and integrity

8.2.1 A Credit Rating Agency must take all reasonable steps to ensure that its Credit Ratings are well founded and are based on a fair and thorough analysis of all relevant information which is reasonably known or available to the Credit Rating Agency.

Principle 2 – Independence and conflicts of interest

8.2.2 A Credit Rating Agency must take all reasonable steps to ensure that its decisions relating to Credit Ratings are independent and free from political or economic pressures and not affected by conflicts of interest arising due to its ownership structure or business or other activities or conflicts of interest of its Employees.

Principle 3 – Transparency and disclosure

8.2.3 A Credit Rating Agency must take all reasonable steps to ensure that it conducts its Credit Rating Activities in a transparent and responsible manner.

Guidance

Acting in a responsible manner means that a Credit Rating Agency undertakes the level of due diligence and care expected of an entity undertaking similar business in conducting its Credit Rating Activities. What is reasonable would depend on the nature, scale and complexity of its operations, including models and methodologies it has adopted in order to formulate Credit Ratings.

8.3 Quality of the rating process

Policies and procedures

8.3.1 (1) A Credit Rating Agency must adopt, implement and enforce policies, procedures and controls that are adequate to ensure that:

(a) its Credit Ratings are based on a thorough and fair analysis of all the Relevant Information;

(b) it has clearly defined methodologies and models for the purposes of preparing and reviewing Credit Ratings; and

(c) its Rating Analysts, in preparing and reviewing Credit Ratings, adhere to the relevant methodologies and models adopted by the Credit Rating Agency, including any updates of such methodologies and models.

(2) For the purposes of (1)(a), Relevant Information is information which is:

(a) reasonably known or available to the Credit Rating Agency; and

(b) required, pursuant to the established rating methodologies and models adopted by the Credit Rating Agency.

(3) For the purposes of (1)(c), a Rating Analyst means an Employee of a Credit Rating Agency who performs analytical functions in relation to the preparation or review of a Credit Rating.

(4) A Credit Rating Agency must have adequate mechanisms to monitor whether its policies, procedures and controls are implemented in such a way so as to ensure that they operate, on an on-going basis, effectively and as intended.

Guidance

Application to Groups and Branches

1. Where a Credit Rating Agency is a member of a Group, the Credit Rating Agency may rely on the policies, procedures and controls adopted at the group-wide level. Where this is the case, the Credit Rating Agency should ensure that the group-wide policies, procedures and controls are consistent with the requirements applicable to it and do not constrain its ability to comply with the applicable requirements in the DIFC.

2. In the case of Branch operations, the DFSA will only grant an authorisation to conduct the Financial Service of Operating a Credit Rating Agency where it is satisfied with the adequacy of the home jurisdiction regulation of the relevant legal entity.

3. Considerations set out in Guidance No 1 and 2 are equally relevant to the other requirements applicable to CRAs which are set out in this chapter.

Periodic review

4. A Credit Rating Agency should ensure that there is a formal and rigorous periodic review (at least annually) of the effectiveness of its systems and controls, including the methodologies and models it uses, to ensure that they remain effective and adequate in light of factors such as changing market conditions and practices and matters that have a material impact on the users of Credit Ratings.

5. Such a review should be carried out by individuals who are not involved in the day-to-day management or operations of the Credit Rating Agency. Taking into account the nature, scale and complexity of its business, a Credit Rating Agency may undertake such a review through a designated function at the group-wide level, or using external consultants. The DFSA expects the findings of such a review to be made available to the Governing Body and the senior management of the Credit Rating Agency, and that any inadequacies identified are promptly and effectively addressed.

Analysts

6. By definition, the Employees of a Credit Rating Agency include Rating Analysts who are either employed by the Credit Rating Agency or appointed under a contract for services to perform analytical functions in relation to the preparation of Credit Ratings. Such appointed Rating Analysts may, in the case of a Credit Rating Agency which is part of a Group, be employed by another entity within the Group. In that case, the Credit Rating Agency should ensure that such Rating Analysts comply with the applicable DFSA Rules when conducting Credit Rating Activities on its behalf.

Relevant Information

7. See Guidance under Rule 8.3.4.

Methodologies and models

8.3.2 For the purposes of producing and reviewing Credit Ratings, a Credit Rating Agency must adopt and use rating methodologies and models, including any key rating assumptions, which:

(a) are rigorous and systematic;

(b) to the extent possible, result in Credit Ratings that can be subjected to some form of objective validation based on historical experience;

(c) are subject to periodic review as appropriate; and

(d) are made public, including any changes made to such methodologies and models.

Guidance

1. A Credit Rating Agency will need to establish proper procedures for the regular review of its methodologies and models, including any key rating assumptions used in such methodologies and models, in order to be able to properly assess the Relevant Information and prepare credible and high quality Credit Ratings. Any changes to the methodologies and models should incorporate cumulative experience gained through on-going market surveillance.

2. Where any material modifications are made to the methodologies or models used by the Credit Rating Agency, it should make prior disclosure to the public of such modifications before applying the modified methodologies and models, especially to existing Credit Ratings.

3. A Credit Rating Agency should assess whether existing methodologies and models for providing a Credit Rating in respect of structured financial products remain appropriate where the risk characteristics of the assets underlying a structured product change materially.

Rating Analysts

8.3.3 A Credit Rating Agency must ensure that its Rating Analysts:

(a) have adequate and appropriate knowledge and experience to carry out Credit Rating Activities assigned to them;

(b) have access to, and use, all the Relevant Information;

(c) apply the relevant methodologies and models in a transparent and consistent manner;

(d) act without bias in carrying out their functions; and

(e) observe high standards of integrity.

Guidance

1. See GEN Rules 5.3.18 and 5.3.19 with regard to the assessment that a Credit Rating Agency, as an Authorised Firm, needs to undertake to ensure that its Employees (including Rating Analysts) are fit and proper and have adequate competencies in order to carry out their functions.

2. A Credit Rating Agency should structure its rating teams in such a way so as to promote continuity of adequate skills and expertise within a relevant team, and avoidance of bias in the preparation or review of a Credit Rating. For the purpose of promoting objectivity and lack of bias in preparing or reviewing Credit Ratings, measures such as periodic rotation of Rating Analysts, as appropriate, should be considered.

Credit Ratings

8.3.4 A Credit Rating Agency must ensure that:

(a) the role and responsibility of assigning a Credit Rating rests clearly on the Credit Rating Agency and not on any of its Rating Analysts;

(b) the information it uses for the purposes of preparing or reviewing a Credit Rating is of sufficient quality to support a credible Credit Rating;

(c) its Credit Ratings:

(i) reflect all the Relevant Information;

(ii) do not contain any misrepresentations, and are not misleading in respect of the creditworthiness of the Rating Subject; and

(iii) contain clear and prominent statements if they are premised on limited historical data, are not subject to on-going surveillance or are subject to any other limitation which has or may have a material impact on the relevant Credit Rating; and

(d) it does not produce a Credit Rating where it has reasonable doubts as to whether a credible Credit Rating can be produced due to the complexity of, or the lack of adequate information relating to, a potential Rating Subject.

Guidance

Relevant Information is defined in Rule 8.3.1(2). A Credit Rating Agency should adopt adequate measures to ensure that the quality of information it uses is reliable to support a credible Credit Rating. Such measures may include:

a. relying on independently audited financial statements and public disclosures where available;

b. conducting random sampling examination of the information received; and

c. having contractual arrangements with Persons who request a Credit Rating, or any third party source from whom information is obtained, that render such Persons liable if they knowingly provide materially false or misleading information, or fail to conduct due diligence they are reasonably expected to carry out to verify the accuracy of the Relevant Information.

On-going monitoring and review of the Credit Ratings

8.3.5 (1) Unless a Credit Rating clearly states that it will not be subject to on-going review, a Credit Rating Agency must:

(a) have adequate personnel and financial resources committed for the on-going surveillance of the creditworthiness of the Rating Subject;

(b) ensure a review of a Credit Rating is undertaken regularly, and in any case, promptly upon becoming aware of information reasonably likely to result in a Rating Action; and

(c) take any appropriate Rating Action promptly.

(2) For the purposes of (1), a Rating Action is an upward or downward move of a Credit Rating, a confirmation of an existing Credit Rating or a withdrawal of a Credit Rating.

(3) Following the review in (1)(b), a Credit Rating Agency must issue a notice of its Rating Action. Such a notice must:

(a) be promptly disseminated to the public or distributed by subscription, as applicable; and

(b) contain a clear and prominent statement specifying:

(i) the date on which the Credit Rating was last updated; and

(ii) the date on which the new Credit Rating is effective; or

(iii) if the Credit Rating is withdrawn, the effective date from which it is withdrawn and the reasons for such withdrawal.

(4) Without prejudice to the obligation to conduct on-going surveillance and review of a Credit Rating, where a Credit Rating Agency forms an opinion on reasonable grounds that it does not have adequate or credible Relevant Information, it must not support an existing Credit Rating, and must withdraw such a Credit Rating immediately. Where it does so, it must issue a notice of withdrawal of the Credit Rating in accordance with (3).

Guidance

1. A Credit Rating Agency may use separate teams of Rating Analysts for determining initial Credit Ratings and subsequent review of such ratings. It should ensure that each team has the requisite level of expertise and resources to perform its functions effectively.

2. A Credit Rating Agency should undertake both periodic and ad hoc reviews of its Credit Ratings as appropriate to the nature of the Rating Subject, the market conditions and reasonable expectations of users of such Credit Ratings. Such reviews should apply any changes in its rating methodologies and models, including rating assumptions.

3. A Credit Rating Agency should have clear and published parameters relating to the review of Credit Ratings, including, to the extent possible, when it will undertake any ad hoc reviews. Such parameters should include any material change in the risk characteristics of the Rating Subject or significant changes in the markets which relate to, or affect, the Rating Subject.

4. A Credit Rating Agency may place under surveillance a Rating Subject upon becoming aware of any material changes relating to, or affecting, it. A Credit Rating Agency should consider whether, in such circumstances, it is appropriate to give any prior notice that the relevant Rating Subject is under surveillance.

8.4 Integrity of the credit rating process

Policies and procedures

8.4.1 To promote integrity of its credit rating process, a Credit Rating Agency must implement adequate policies, procedures and controls to ensure that it and its Employees:

(a) comply with all the applicable legal and other requirements, including those relating to its Credit Rating Activities, regardless of where such activities are carried on;

(b) deal fairly and honestly with Rating Subjects and Persons using or relying on its Credit Ratings, such as investors and other market participants, including the public; and

(c) do not, either expressly or implicitly, give any assurances or guarantees of a particular rating outcome before undertaking a full analysis of the Relevant Information in accordance with the applicable methodologies and models.

Guidance

1. Where a Credit Rating Agency undertakes activities in a number of jurisdictions, the effect of Rule 8.4.1 is that it will need to ensure that respective obligations arising in all those jurisdictions are effectively met as appropriate. In doing so, it will need to take account of the application of the DFSA regime to Group and Branch operations (see Guidance 1 and 2 under Rule 8.3.1).

2. A Credit Rating Agency is required, under GEN Rule 7.5.1(2), to have an Authorised Individual as its Compliance Officer. It is the responsibility of the Compliance Officer to ensure proper observance by the Credit Rating Agency and its Employees, particularly Rating Analysts, of the applicable legal and other obligations, including any code of conduct/ethics adopted by the Credit Rating Agency. Such a code should generally set out matters relating to unacceptable and unethical behaviour which should be avoided by its Employees. See also Guidance 2 under section 8.1.1.

8.5 Conflicts of interest and independence

Guidance

1. There is a significant overlap between conflicts of interest and lack of independence of Employees (who include Rating Analysts). Therefore, some of the requirements set out in this section, while promoting independence of Credit Rating Agencies, are equally relevant for the purpose of addressing conflicts of interest. For convenience, they are set out under distinct headings.

2. The more detailed requirements set out in this section are designed to enable a Credit Rating Agency to meet the requirements set out under COB Rule 8.2.2 (Principle 2 – Independence and transparency). For this purpose, a Credit Rating Agency should have a detailed code of conduct/ethics that sets out its policies and procedures for meeting the requirements including those in this module covering aspects relating to conflicts of interest, as well as independence, of its Employees. See also Guidance 2 under section 8.1.1.

Policies and procedures

8.5.1 A Credit Rating Agency must have adequate, clear and well documented policies, procedures and controls to:

(a) promote high standards of care, independence and objectivity in decision making by its Employees;

(b) ensure that its Credit Ratings are not influenced by any considerations other than those which are relevant in accordance with its published methodologies and models as applicable to the particular Rating Subject; and

(c) identify, and eliminate or manage, as appropriate, including through disclosure, any conflicts of interest that may influence its Credit Ratings, including those conflicts of interest which may influence its Employees who are involved in producing or reviewing Credit Ratings.

Guidance

1. A Credit Rating Agency should neither take, nor forbear or refrain from taking, any Rating Action based on its potential effect (economic, political or otherwise) on the Credit Rating Agency, its Rating Subjects, investors or any other market participants (for example, the existence or non-existence of business relationship between the Credit Rating Agency or a member of its Group and the Rating Subject).

2. The determination of a Credit Rating should be influenced only by factors relevant to the credit assessment in accordance with its published methodologies and models as applicable to the particular Rating Subject.

3. A Credit Rating Agency should, at a minimum, set out clearly when conflicts of interest arise and, in relation to what type of business or commercial dealings or transactions, and between whom, such conflicts of interest can arise.

4. Where the Rating Subject (such as a government) has, or is simultaneously pursuing, any oversight function relating to the Credit Rating Agency, the Credit Rating Agency should avoid assigning Employees involved in the Credit Rating of the Rating Subject for also discharging any function relating to the Credit Rating Agency's oversight.

Provision of consultancy and ancillary services

8.5.2 (1) A Credit Rating Agency must not provide to a Rating Subject or a Related Party of a Rating Subject consultancy or advisory services relating to the corporate or legal structure, assets, liabilities or activities of such Rating Subject or Related Party.

(2) For the purposes of (1), a Related Party of a Rating Subject is:

(a) an undertaking which is in the same Group as the Rating Subject;

(b) any Person who interacts with the Credit Rating Agency in respect of the Credit Rating; or

(c) any Person who has a significant business or other relationship with the Rating Subject or any Person referred to in (a) or (b).

(3) Without prejudice to (1), a Credit Rating Agency may provide services which are ancillary to its Credit Rating Activities to a Rating Subject or a Related Party of the Rating Subject where it:

(a) has a clear definition of what services it considers as ancillary services;

(b) documents why such services are considered not to raise any conflicts of interest with its Credit Rating Activities; and

(c) has in place adequate mechanisms to minimise the potential for any conflicts of interest arising.

(4) If a member of the Group in which the Credit Rating Agency is also a member provides services of the kind referred to in (1) to a Rating Subject of the Credit Rating Agency or a Related Party of such a Rating Subject, such services must be operationally and functionally separated from the business of the Credit Rating Agency.

Guidance

1. The prohibition in Rule 8.5.2(1) includes, for example, making proposals or recommendations regarding the design or structure of Rating Subjects, including suggestions as to how a desired rating could be achieved. Therefore, such services cannot be provided.

2. Some of the activities which are prohibited under Rule 8.5.2(1) may constitute a Financial Service other than Operating a Credit Rating Agency. Even if a Credit Rating Agency has an authorisation to provide such a Financial Service, it is prevented from providing such services to a Rating Subject or a Related Party because of the prohibition in Rule 8.5.2(1).

3. Ancillary services referred to in Rule 8.5.2(3) include, for example, market forecasts, estimates of economic trends, pricing analysis and other general data analysis as well as related distribution services. These services can be provided to Rating Subjects and their Related Parties where the requirements in Rule 8.5.2(3) are met. These services are also unlikely to constitute other Financial Services.

4. A Credit Rating Agency should separate operationally its Credit Rating Activities from any ancillary services it provides in accordance with Rule 8.5.2(3). For example, Rating Analysts and other key individuals involved in Credit Rating Activities should not also be involved in the provision of such services.

5. Where a Group member provides to a Rating Subject of a Credit Rating Agency any ancillary services, the Credit Rating Agency and the Group member should not share Employees or premises to ensure operational separation.

Credit Rating Agency fees

8.5.3 A Credit Rating Agency must not enter into fee arrangements for providing Credit Ratings where the fee depends on the rating outcome or on any other result or outcome of the Credit Rating Activities.

Other conflicts of interest

8.5.4 A Credit Rating Agency must not engage in any securities or derivatives transactions with, relating to, or in respect of, a Rating Subject or its Related Party in circumstances where such a transaction would amount to, or pose a risk of, a conflict of interest with respect to its Credit Rating Activities.

Guidance

Examples of investments which would not present conflicts of interest include investments in collective investment funds which might contain investments in a Rating Subject or its Related Party.

8.6 Independence of Rating Analysts and other Employees

Policies and procedures

8.6.1 A Credit Rating Agency must have adequate policies, procedures and controls to ensure that its Employees, as far as practicable, avoid relationships which compromise or are reasonably likely to compromise the independence and objectivity of its Credit Rating Activities.

8.6.2 (1) A Credit Rating Agency must ensure that its Employees who are directly involved in preparing or reviewing a Credit Rating of a Rating Subject do not initiate, or participate in, discussions regarding fees or payments with the Rating Subject or a Related Party of the Rating Subject.

(2) A Credit Rating Agency must ensure that its Employees who are directly involved in preparing or reviewing a Credit Rating of a Rating Subject, and their Close Relatives, do not engage in any securities or derivative transactions with, relating to, or in respect of, the Rating Subject or a Related Party of the Rating Subject in circumstances where such a transaction would amount to, or pose a risk of, a conflict of interest with respect to the activities of the relevant Employee.

Guidance

This Rule should be read in conjunction with Rule 8.2.2, pursuant to which, Employees of a Credit Rating Agency need to be independent and free from conflicts of interest. Such conflicts of interest include the appearance of being compromised as result of a personal relationship which he or his Close Relatives have with a Rating Subject or a Related Party of a Rating Subject. The Credit Rating Agency's policies and procedures should clearly set out where a personal relationship should be considered to create the potential for any real or apparent conflicts of interest and therefore be subject to the conflicts of interest provisions.

8.6.3 (1) A Credit Rating Agency must ensure that its Employees who have a relevant material interest in a Rating Subject or its Related Party are not involved in the preparation or review of the relevant Credit Rating or able to influence that process.

(2) For the purposes of Rule 8.6.3(1), an Employee of a Credit Rating Agency has a material interest in a Rating Subject if the Employee:

(a) owns a security or a derivative relating to a Rating Subject or its Related Party, other than holdings in diversified collective investment funds;

(b) has had a recent employment or other significant business relationship with a Rating Subject or its Related Party which may cause, or may be perceived as causing, conflicts of interest; or

(c) has a Close Relative who is currently employed by a Rating Subject or its Related Party.

Guidance

A Credit Rating Agency should, where it has a code of conduct/ethics, set out unacceptable conduct for Employees, such as soliciting money, gifts, or favours from anyone with whom the Credit Rating Agency does business, or accepting gifts offered in the form of cash or any gifts which are reasonably capable of influencing their opinions or decisions relating to Credit Ratings. There should also be guidance relating to minimal value of gifts or benefits that may be accepted, and clearance and disclosure procedures relating to such gifts and benefits. See also Guidance 2 under Rule 8.1.1.

8.6.4 A Credit Rating Agency must establish policies and procedures for reviewing the past work of a Rating Analyst who leaves the employment of the firm to join a Rating Subject or its Related Party where the Rating Analyst had been involved in producing or reviewing the Credit Rating assigned to such Rating Subject or Related Party.

Remuneration and reporting lines

Guidance

A Credit Rating Agency is required, pursuant to GEN Rule 5.3.31, to have remuneration structures and strategies which, amongst other things, are consistent with the business objectives and identified risk parameters within which the firm operates, and provide for effective alignment of risk outcomes and the roles and functions of the relevant Employees. The requirements set out in this section are designed to augment those remuneration requirements set out in GEN.

8.6.5 A Credit Rating Agency must ensure that Employees involved in the provision of Credit Ratings have reporting lines and remuneration arrangements that are designed to eliminate, or effectively manage, actual and potential conflicts of interest.

8.6.6 A Credit Rating Agency must ensure that its Employees are not remunerated, or their performance evaluated, based on the amount of revenue generated or expected from the Credit Ratings in which the Employee was involved.

Guidance

The Employees intended to be covered by this Rule are Rating Analysts and other Employees who are directly involved in producing or reviewing a Credit Rating, or who are able to influence the credit rating process (such as the senior management).

8.6.7 A Credit Rating Agency must conduct formal and periodic reviews of its remuneration policies and practices relating to Employees who participate in, or who might otherwise have an effect on, the rating process to ensure that those policies and practices do not compromise the objectivity of the Credit Rating Activities.

8.7 Transparency and disclosure

Policies and procedures

8.7.1 (1) A Credit Rating Agency must, subject to (2), have adequate policies, procedures and controls to ensure that it discloses in a timely manner:

(a) its Credit Ratings and any updates thereof;

(b) its policies for distributing Credit Ratings and updates thereof;

(c) the methodologies and models used and key assumptions made in preparing its Credit Ratings and any updates thereof; and

(d) any other significant element relating to (a), (b) or (c) above.

(2) A Credit Rating Agency is not required to disclose information where the information is subject to confidentiality requirements.

Guidance

1. The level of detail required in the disclosure of information concerning methodologies, models and key assumptions should be such as to give adequate information to the users of Credit Ratings to enable them to perform their own due diligence when assessing whether, or to what extent, reliance can be placed on those Credit Ratings (see Rule 8.8.1). Disclosure of information must not, however, reveal confidential information of, or relating to, the Rating Subject or its Group pursuant to Rule 8.9.1.

2. The information referred to in Guidance No. 1 should generally include the meaning of each rating category and the definition of default or recovery, and the time horizon the Credit Rating Agency used when making a Credit Rating.

3. A Credit Rating Agency should adequately and clearly disclose applicable risks which may affect a Credit Rating, including a sensitivity analysis of the relevant assumptions and an explanation of how various market developments affect the parameters built into the methodologies and models and may influence or impinge on the Credit Rating (for example volatility).

4. If the nature of a Credit Rating or other circumstances make a historical default rate inappropriate or otherwise likely to mislead investors, the Credit Rating Agency should provide appropriate clarifications.

5. A Credit Rating Agency should provide information to assist users of its Credit Ratings to develop a greater understanding of what a Credit Rating is, and the limitations on the use of Credit Ratings with respect to the particular type of financial product that the Credit Rating Agency rates. A Credit Rating Agency should clearly indicate the attributes and limitations of each Credit Rating, and the limits to which the firm verifies information provided to it by the Rating Subject, its Related Party or any external source.

Communication of information

8.7.2 A Credit Rating Agency must ensure that its communications relating to its Credit Ratings, Credit Rating Activities and its other business are clear, fair and not misleading.

Guidance

1. A Credit Rating Agency should, taking into account the nature, scale and complexity of its operations, have a function within its organisation charged with the responsibility for communicating with market participants and the public on questions, concerns or complaints it receives.

2. The objective of this function should be to help ensure that the Credit Rating Agency's officers and management are informed of those issues that such officers and management would reasonably need to be informed about when setting and implementing the Credit Rating Agency's systems and controls.

8.8 Disclosure and presentation of Credit Ratings

General Disclosure

8.8.1 (1) Subject to the confidentiality requirements applicable to a Credit Rating Agency, it must ensure that its Credit Ratings:

(a) are published promptly, and as far as practicable, on a non-selective basis and free of charge;

(b) contain sufficient information to enable users of such Credit Ratings to understand how the Credit Rating was reached, including information relating to the methodologies, models and key underlying assumptions used;

(c) contain a clear statement if the Credit Rating is initiated by the Credit Rating Agency on its own initiative (unsolicited), and information relating to the Credit Rating Agency's policy relating to providing unsolicited Credit Ratings;

(d) contain sufficient information about the historical default rates of its Credit Ratings which are of the same category as the Credit Rating being published so that interested parties can understand the historical performance of its Credit Ratings; and

(e) include any other information relevant to the particular Credit Rating, as specified in this module.

(2) A Credit Rating Agency must ensure that any press release which accompanies a Credit Rating contains key elements underlying the Credit Rating.

(3) Before publishing a new or an updated Credit Rating or withdrawing a Credit Rating, the Credit Rating Agency must, to the extent practicable and appropriate, give to the Rating Subject sufficient advance notice to enable that Person to draw to the attention of the Credit Rating Agency any factual errors on which the Credit Rating Agency may have based the relevant Credit Rating.

(4) Subject to the confidentiality requirements applicable to a Credit Rating Agency, any information which the Credit Rating Agency is required to publish pursuant to any Rules must also be made available on the website of the relevant Credit Rating Agency.

Guidance

In relation to Rule 8.8.1(3), a Credit Rating Agency should inform the Rating Subject at least 12 hours before publication of a new Credit Rating or an update or withdrawal of an existing Credit Rating of the principal grounds on which such Credit Rating is based in order to give the Rating Subject an opportunity to draw to the attention of the Credit Rating Agency any factual errors. The Rating Subject has the meaning given to it in GEN Rule 2.27.1(3) and should be read in conjunction with Rule 8.1.1(2).

Specific Disclosure - Fees and Charges

8.8.2 (1) A Credit Rating Agency must include in its announcements relating to Credit Ratings and its annual report the general nature of its arrangements relating to fees and charges with, or relating to, the Rating Subject including:

(a) whether the Credit Rating Agency or any member of its Group receives any fees, charges or other monetary benefits which are unrelated to the provision by the Credit Rating Agency of its Credit Ratings, and if so, the proportion of such benefits relating to the aggregate fees and charges in respect of the provision of Credit Ratings; and

(b) if the Credit Rating Agency receives 10% or more of its aggregate annual revenue from a single Rating Subject or its Related Party, information about that source.

(2) Where a Credit Rating Agency is a member of a Group, the 10% aggregate annual income referred to in (1)(b) may be calculated by aggregating the net revenue of all Credit Rating Agencies within the Group.

Specific Disclosure – Structured financial products

8.8.3 A Credit Rating Agency must, where the Rating Subject is a structured financial product disclose in its Credit Ratings whether the Relevant Information is made publicly available by the Rating Subject, or whether all, or some of, such information remains non–public.

Guidance

1. The information which a Credit Rating Agency provides relating to structured financial products should include sufficient information such as information relating to the profit and loss statement and cash flow analysis to enable users of the Credit Ratings to understand the basis of the Credit Rating. Such information should also include the degree to which, in accordance with its analysis, the Credit Rating is sensitive to changes in market conditions.

2. A Credit Rating Agency should differentiate ratings of structured finance products from traditional corporate bond ratings, preferably through a different rating symbology. A Credit Rating Agency must also disclose how this differentiation operates.

3. A Credit Rating Agency should use reasonable efforts to encourage the Rating Subject to disclose to the public all Relevant Information to enable investors and users of the Credit Ratings to conduct their own due diligence relating to that product.

8.9 Confidential information

8.9.1 A Credit Rating Agency must have policies, procedures and controls to ensure that it and its Employees do not:

(a) use any information given to or obtained by the Credit Rating Agency on a confidential basis (“Confidential Information”) for a purpose other than that for which it was given or obtained;

(b) disclose the Confidential Information to any other Person, except:

(i) in accordance with (a);

(ii) with the prior written consent of the Person to whom a duty of confidentiality in respect of such Confidential Information is owed; or

(iii) where obliged to do so by any legislation applicable to the Credit Rating Agency; and

(c) disclose any pending Rating Action except to the Rating Subject or as agreed with the Rating Subject.

8.9.2 Subject to Rule 8.9.1(b), a Credit Rating Agency and its Employees must not disclose Confidential Information in any manner, including in press releases, through research conferences, to future employers, or in conversations with investors, other issuers, other persons, or by other means.

8.9.3 A Credit Rating Agency must have adequate measures to ensure that it and its Employees:

(a) take all reasonable steps to protect all property and records belonging to or in possession of the Credit Rating Agency against fraud, theft or misuse; and

(b) do not share Confidential Information entrusted to the Credit Rating Agency with any third parties except where permitted under Rule 8.9.1(b).

8.10 Record keeping

8.10.1 (1) A Credit Rating Agency must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Credit Rating Agency and, where appropriate, audit trails of its Credit Rating Activities. These must include, where applicable, the following:

(a) for each Credit Rating:

(i) the identity of the Rating Analysts participating in the determination of the Credit Rating;

(ii) the identity of the individuals who have approved the Credit Rating;

(iii) information as to whether the Credit Rating was solicited or unsolicited;

(iv) information to support the Credit Rating;

(v) the Accounting Records relating to fees and charges received from or in respect of the Rating Subject;

(vi) the internal records and files, including non-public information and working papers, used to form the basis of any Credit Rating; and

(vii) credit analysis and credit assessment reports including any internal records and non-public information and working papers used to form the basis of the opinions expressed in such reports;

(b) the Accounting Records relating to fees received from any person in relation to services provided by the Credit Rating Agency;

(c) the Accounting Records for each subscriber to the Credit Rating Agency's services;

(d) the records documenting the established procedures, methodologies, models and assumptions used by the Credit Rating Agency to determine Credit Ratings; and

(e) copies of internal and external communications, including electronic communications, received and sent by the Credit Rating Agency and its Employees that relate to Credit Rating Activities.

(2) For the purposes of (1), the six year period commences from the date the Credit Rating is disclosed to the public or distributed by subscription.

Guidance

1. Information to support a Credit Rating includes information received from the Rating Subject or information obtained through publicly available sources or third parties and verification procedures adopted in relation to information such as those obtained from public sources or third parties. In accordance with GEN Rule 5.3.24, records should be kept in such a manner as to be readily accessible.

2. Where a Credit Rating is subject to on-going surveillance and review, the Credit Rating Agency should retain records required under Rule 8.10.1 in relation to the initial Credit Rating as well as subsequent updates where such records are required to support the latest Credit Rating.

9 ADDITIONAL RULES: OPERATING AN ALTERNATIVE TRADING SYSTEM

9.1 Application and interpretation

9.1.1 This chapter applies to an Authorised Firm which Operates an Alternative Trading System (ATS Operator).

Guidance

The Financial Service of Operating an Alternative Trading System can be either operating a Multilateral Trading Facility (MTF) or operating an Organised Trading Facility (OTF). See GEN Rule 2.22.1.

9.1.2 In this chapter:

(a) a reference to a "member" is a reference to a Client of the ATS Operator who has been granted access to its facilities in accordance with the requirements in this chapter;

(b) a reference to a "facility" is a reference to a Multilateral Trading Facility (MTF) and an Organised Trading Facility (OTF), except where specific reference is made only to an MTF or OTF;

(c) a reference to an "ATS Operator" is a reference to a Person operating an MTF and a Person operating an OTF, except where specific reference is made only to a Person operating an MTF or a Person operating an OTF; and

(d) where a Rule in this chapter conflicts with any other provision in the DFSA Rulebook, the Rule in this chapter prevails over those other provisions.

9.2 Main requirements relating to trading on the facility

9.2.1 (1) An ATS Operator must, at the time a Licence is granted and at all times thereafter, have:

(a) transparent and non-discriminatory rules and procedures to ensure fair and orderly trading of Investments on its facility ("Operating Rules");

(b) objective criteria governing access to its facility ("Access Criteria");

(c) objective and transparent criteria for determining the Investments that can be traded on its facility ("Investment Criteria");

(d) adequate technology resources ("Technology Resources"); and

(e) rules and procedures to ensure only Investments in which there is a Proper Market are traded on its facilities ("Proper Markets").

(2) A breach of the Operating Rules of an ATS Operator is a prescribed matter for the purposes of Article 67(1)(b) of the Regulatory Law 2004.

Guidance

Pursuant to Article 67(1) of the Regulatory Law 2004, an Authorised Firm is required to disclose to the DFSA anything which reasonably tends to show breaches or likely breaches of requirements as prescribed in Rules. Rule 9.2.1(2) prescribes a breach of Operating Rules as a the matter which is reportable to the DFSA by an ATS Operator.

Operating Rules

9.2.2 (1) The Operating Rules of an ATS Operator must be:

(a) based on objective criteria;

(b) non-discriminatory;

(c) clear and fair;

(d) legally binding and enforceable against each member and where relevant, any other Person who has been allowed access to the facility through the member; and

(e) in the case of a Person operating an MTF, non-discretionary and made publicly available.

(2) The Operating Rules of an ATS Operator must place obligations upon Persons who are admitted to trading on its facility ("members"):

(i) when undertaking transactions on its facilities; and

(iii) relating to professional standards applicable to staff and other Persons allowed access to the facility through such a member.

(3) Without limiting the generality of (1) and (2), the Operating Rules of an ATS Operator must contain:

(a) criteria for admission of members to its facility, in accordance with Rule 9.3.1;

(b) criteria relating to Investments traded on its facility, in accordance with Rule 9.4.1;

(c) the rules and procedures governing trading on the facility;

(d) default rules;

(e) the rules and procedures for the clearing and settlement of transactions executed on the facility; and

(f) any other matters necessary for the proper functioning of its facility.

Material changes to Current Arrangements

9.2.3 (1) An ATS Operator may only make material changes to its existing arrangements to meet the requirements in this chapter in accordance with the requirements in this Rule.

(2) The reference to "Existing Arrangements" in (1) is a reference to both the arrangements which were in place at the time of the initial grant of the Licence and any changes made to such arrangements in accordance with the requirements in this Rule.

(3) For the purposes of obtaining the DFSA approval, an ATS Operator must provide to the DFSA, at least 30 days before the proposed change is intended to come into effect, a notice setting out:

(a) the proposed change;

(b) the reasons for the proposed change; and

(c) what impact the proposed change would have on its members and its ability to operate the facility.

(4) The DFSA will, upon receipt of a notice referred to in (1), approve or disapprove the proposed change as soon as practicable and in any event within 30 days of the receipt of the notice, unless that period has been extended by notification to the applicant.

(5) The DFSA may, in circumstances where a material change to Current Arrangements is shown on reasonable grounds to be urgently needed, accept an application for approval of such a change on shorter notice than 30 days.

(6) Where the DFSA does not approve a proposed change, it must give to the ATS Operator reasons for its decision. Such a decision is appealable to the Regulatory Appeals Committee.

Guidance

1. The period of 30 days will commence to run from the time the DFSA has received all the relevant information to assess the application.

2. An ATS Operator should consider submitting its application for the DFSA approval well in advance of the date on which a proposed amendment is intended to come into effect, especially in the case of significant material changes to its existing arrangements, to allow the DFSA sufficient time to consider the application. If additional time is reasonably required to properly assess the impact of a proposed change due to its nature, scale and complexity, the DFSA may make an appropriate extension of time beyond 30 days. Such an extension would be made in consultation with the applicant.

3. If a proposed material change remains not approved by the DFSA within the 30 day period and the DFSA has not expressly extended the period beyond 30 days, the ATS Operator may treat the proposed change as not being approved by the DFSA, and on that basis, appeal such a decision to the Regulatory Appeals Committee.

9.3 Member access criteria

9.3.1 (1) An ATS Operator may, subject to (2) and (3), only accept as a member a Person if that Person:

(a) is an Authorised Firm;

(b) is a Recognised Member;

(c) meets the criteria in GEN Rule 2.3.2(2); or

(d) is classified as a Professional Client pursuant to COB Rule 2.3.2(2)(g), (h) and (i).

(2) An ATS Operator must not admit a Person referred to in (1)(c) or (d), unless such Person:

(a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facility;

(b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facility;

(c) agrees in writing to subject itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facility; and

(d) appoints and maintains at all times an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.

(3) Prior to admitting a Person referred to in (1)(c) or (d) as a member, an ATS Operator must undertake due diligence to ensure that such a Person:

(a) is of sufficiently good repute;

(b) has a sufficient level of competence and experience; and

(c) has adequate organisational arrangements, including financial and technological resources, which are no less than those required of an Authorised Firm appropriate to the nature of its operations.

Direct electronic access

9.3.2 An ATS Operator must have adequate rules and procedures to ensure that its members do not allow any other Person to have Direct Electronic Access to the facility unless such other Person meets the requirements in Rule 9.3.1(1).

9.3.3 An ATS Operator must, where it permits its members to provide to another Person Direct Electronic Access to its facilities, have adequate systems and controls including:

(a) appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;

(b) mechanisms to identify and distinguish orders placed by those Persons who are allowed to place orders through Direct Electronic Access; and

(c) if necessary, the ability to stop orders of, or trading by, the Persons allowed Direct Electronic Access.

Monitoring of compliance

9.3.4 An ATS Operator must establish and maintain adequate and effective systems and controls, including policies and procedures, to ensure that its members and other Persons to whom access to its facility is provided through members comply with its Operational Rules and where any gaps or deficiencies are identified, they are promptly addressed.

9.4 Investment criteria

9.4.1 An ATS Operator must ensure in respect of every Investment traded on its facility that:

(a) only Investments which meet the requirements in (i) or (ii) are permitted to be traded on its facility:

(i) in the case of Securities, only Securities which are admitted to trading on an Authorised Market Institution or other Regulated Exchange; or

(ii) in the case of Derivatives, only instruments that meet the contract specification criteria set out in AMI Rule 6.3.2;

(b) there is sufficient information relating to the Investments traded on the facility available to members and other Persons having access to the facility through such members to enable such Persons to make informed decisions relating to such Investments; and

(c) if it is an Investment that references to an underlying benchmark or index provided by a Price Information Provider, the requirements in Rule 9.4.2 are met.

Use of price information providers

9.4.2 (1) An ATS Operator may only trade Investments that reference to an underlying benchmark or index provided by a Price Information Provider where it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (3).

(2) A Price Information Provider is a price reporting agency or an index provider which constructs, compiles, assesses or reports, on a regular and systematic basis, prices of Investments, rates, indices, commodities or figures, which are made available to users.

(3) For the purposes of (1), the Price Information Provider must:

(a) have fair and non-discriminatory procedures for establishing prices of Investments which are made public.

(b) demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations;

(c) where appropriate, give priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;

(d) be of good standing and repute as an independent and objective price reporting agency or index provider;

(e) have a sound corporate governance framework;

(f) have adequate arrangements to avoid its staff having any conflicts of interest where such conflicts have, or are likely to have, a material adverse impact on price establishment process; and

(g) adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

Guidance

An ATS Operator, when assessing the suitability of a Price Information Provider (the provider), should take into account factors such as:

a. the provider's standing and reliability in the relevant physical or derivatives markets as a credible price reporting agency;

b. the quality of corporate governance adopted, covering areas such as independent members of the board, independence of its internal audit and risk management function;

c. whether the methodologies and processes (including any material changes to such methodologies and processes) adopted by the provider for the purposes of pricing are made publicly available;

d. whether there are adequate procedures adopted to ensure that conflicts between the provider's commercial interests and those of users of its services, including those of its Employees involved in pricing process, are adequately addressed, including through codes of ethics;

e. whether there is a clear conveyance to its users of the economic realities of the underlying interest the Price Information Provider seeks to measure; and,

f. the degree to which the Price Information Provider has given consideration to the characteristics of the underlying interests measured, such as:

- **the size and liquidity:** Whether the size of the market informs the selection of an appropriate compilation mechanism and governance processes. For example, a benchmark or index that measures a smaller market may be impacted by single trades and therefore be more prone to potential manipulation, whereas a benchmark for a larger market may not be well represented by a small sample of participants;

- **the relative market size.** Where the size of a market referencing a benchmark is significantly larger than the volume of the underlying market, the potential incentive for benchmark manipulation to increase; and

- **Transparency:** Where there are varying levels of transparency regarding trading volumes and positions of market participants, particularly in non-regulated markets and instruments, whether the benchmark represents the full breadth of the market, the role of specialist participants who might be in a position to give an overview of the market, and the feasibility, costs and benefits of providing additional transparency in the underlying markets.

9.5 Technology resources

9.5.1 (1) An ATS Operator must:

(a) have sufficient technology resources to operate, maintain and supervise the facility it operates;

(b) be able to satisfy the DFSA that its technology resources are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain; and

(c) ensure that its members and other participants on its facility have sufficient technology resources which are compatible with its own.

(2) For the purposes of meeting the requirement in (1)(c), an ATS Operator must have adequate procedures and arrangements for the evaluation, selection and on-going monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

(a) problem management and system change;

(b) adequate procedures for testing information technology systems before live operations, which are in conformity with the requirements that would apply to an Authorised Market Institution under App 1 of AMI;

(c) monitoring and reporting on system performance, availability and integrity; and

(d) adequate measures to ensure:

(i) the information technology systems are resilient and not prone to failure;

(ii) business continuity in the event that an information technology system fails;

(iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and

(iv) the integrity of data forming part of, or being processed through, information technology systems.

Guidance

1. In assessing the adequacy of an ATS Operator's systems and controls used to operate and carry on its functions, the DFSA will consider:

   a. the organisation, management and resources of the information technology department of the firm;

   b. the arrangements for controlling and documenting the design, development, implementation and use of technology systems; and

   c. the performance, capacity and reliability of information technology systems.

2. The DFSA will also, during its assessment of technology systems, have regard to the:

   a. procedure for the evaluation and selection of information technology systems;

   b. procedures for problem management and system change;

   c. arrangements for testing information technology systems before live operations;

   d. arrangements to monitor and report system performance, availability and integrity;

   e. arrangements made to ensure information technology systems are resilient and not prone to failure;

   f. arrangements made to ensure business continuity in the event that an information technology system fails;

   g arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access;

   h. arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems; and

   i. third party outsourcing arrangements.

3. In particular, when assessing whether an ATS Operator has adequate information technology resourcing, the DFSA will consider:

   a. whether its systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders, and

   b. whether such systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility.

Regular review of systems and controls

9.5.2 (1) An ATS Operator must undertake regular review and updates of its systems and controls as appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), an ATS Operator must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

Guidance

Through the use of such testing methodologies, the ATS Operator should be able to ensure, amongst other things, that:

a. its systems and controls are compatible with its operations and functions;

b. compliance and risk management controls embedded in its system operate as intended (for example by generating error reports automatically); and

c. it can continue to work effectively in stressed market conditions.

9.6 Proper Markets

9.6.1 (1) Without limiting the generality of the other requirements in this chapter, an ATS Operator must, for the purposes of meeting the requirement in Rule 9.2.1(e) relating to Proper Markets, ensure that:

(a) if Derivatives are traded on its facilities, such Derivatives meet the contract design specifications in AMI Rule 6.3.2;

(b) relevant market information is made available to Persons engaged in dealing on an equitable basis, including pre-trade and post-trade orders, in accordance with Rules 9.6.2 and 9.6.3;

(c) there are adequate mechanisms to discontinue, suspend or remove from trading on its facilities any Investments in circumstances where the requirements in this chapter are not met;

(d) there are controls to prevent volatility in the markets that is not caused by market forces, in accordance with Rule 9.6.4;

(e) error trades are managed, in accordance with Rule 9.6.5;

(f) Short Selling and position concentration are monitored and managed, in accordance with Rule 9.6.5;

(g) there are fair and non-discretionary algorithm operating in respect of matching of orders on its facilities;

(h) there are adequate controls to monitor and manage any foreign ownership restrictions applying to Investments traded on its facilities, in accordance with Rule 9.6.7;

(i) liquidity incentive schemes are offered only in accordance with Rule 9.6.8; and

(j) there are adequate rules and procedures to address Market Abuse and financial crime, in accordance with Rules 9.6.9 and 9.6.10.

Pre-trade transparency

9.6.2 (1) An ATS Operator must disclose the information specified in (2) relating to trading of Investments on its facility in the manner prescribed in (3).

(2) The information required to be disclosed pursuant to (1) includes:

(a) the current bid and offer prices and volume;

(b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Investments; and

(c) any other information relating to Investments which would promote transparency relating to trading.

(3) The information referred to in (2) must be made available to members and the public as appropriate on a continuous basis during normal trading.

Guidance

1. When making disclosure, an ATS Operator should adopt a technical mechanism by which the public can differentiate between transactions that have been transacted in the central order book and transactions that have been reported to the facility as off-order book transactions. Any transactions that have been cancelled pursuant to its rules should also be identifiable.

2. An ATS Operator should use appropriate mechanisms to enable pre-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An ATS Operator may charge a reasonable fee for the information which it makes available to the public.

3. An ATS Operator may seek a waiver or modification from the disclosure requirement in Rule 9.6.1(1) in relation to certain transactions where the order size is pre-determined, exceeds a pre-set and published threshold level and the details of the exemption are made available to its members and the public.

4. In assessing whether an exemption from pre-trade disclosure should be allowed, the DFSA will take into account factors such as:

   a. the level of order threshold compared with normal market size for the Investment;

   b. the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;

   c. whether there is sufficient transparency relating to trades executed without pre-trade disclosure as a result of dark orders, whether or not they are entered in transparent markets;

   d. whether the ATS Operator supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and

   e. whether there is adequate disclosure of details relating to dark orders available to members and other participants on the facility to enable them to understand the manner in which their orders will be handled and executed on the facility.

5. Dark orders are orders executed on execution platforms without pre-trade transparency.

Post-trade transparency requirements

9.6.3 (1) An ATS Operator must disclose the information specified in (2) in the manner prescribed in (3).

(2) The information required to be disclosed pursuant to (1) is the price, volume and time of the transactions executed in respect of Investments.

(3) The information referred to in (2) must be made available to the public as close to real-time as is technically possible on reasonable commercial terms and on a non-discretionary basis.

Guidance

An ATS Operator should use adequate mechanism to enable post-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An ATS Operator may charge a reasonable fee for the information which it makes available to the public.

Volatility controls

9.6.4 (1) An ATS Operator's Operating Rules must include effective systems, controls and procedures to ensure that its trading systems:

(a) are resilient;

(b) have adequate capacity to deal with peak orders and message volumes; and

(c) are able to operate in an orderly manner under conditions of market stress.

(2) Without limiting the generality of its obligations arising under (1) or any other Rule, an ATS Operator must be able under its rules, systems, controls and procedures to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or are clearly erroneous;

(b) temporarily halt trading of Investments traded on its facility if there is a significant price movement in relation to those Investments on its market or a related market during a short period; and

(c) where appropriate, cancel, vary or correct any transaction.

Guidance

An ATS Operator should test its trading systems to ensure that they are resilient and capable of operating orderly trading under conditions of market stress and other contingencies.

Error Trade policy

9.6.5 (1) An ATS Operator must be able to cancel, amend or correct any error trades.

(2) An "Error Trade" is the execution of an order resulting from:

(a) an erroneous order entry;

(b) malfunctioning of the system of a member or of the ATS Operator; or

(c) a combination of (a) and (b).

(3) For the purposes of (1), an ATS Operator must include a comprehensive error trade policy in its Operating Rules, which sets out clearly the extent to which transactions can be cancelled by it at its sole discretion, at the request of a member or by mutual consent of members involved.

(4) An ATS Operator must have adequate systems and controls to:

(a) prevent or minimise error trades;

(b) promptly identify and rectify error trades where they occur; and

(c) identify whether error trades are related to disorderly market activity.

Guidance

When assessing whether an ATS Operator has an appropriate and adequate error trade policy, the DFSA will consider whether the rules and procedures included in its Operating Rules:

a. are adequate to minimise the impact of error trades where prevention of such trades is not possible;

b. are sufficiently flexible in the design to address varying scenarios;

c. establish a predictable and timely process for dealing with Error Trades, including measures specifically designed to detect and identify Error Trade messages to market users;

d. promote transparency to market users with regard to any cancellation decisions involving material transactions resulting from the invocation of the Error Trade policy;

e. include adequate surveillance conducted in the markets to detect Error Trades;

f. promote predictability, fairness and consistency of actions taken under the Error Trade policy; and

g. enable sharing of information with other markets when possible concerning the cancellation of trades.

Short Selling

9.6.6 (1) An ATS Operator must have in place effective systems, controls and procedures to monitor and manage:

(a) Short Selling in Securities; and

(b) position concentrations.

(2) For the purposes of (1), an ATS Operator must have adequate powers over its members to address risks to an orderly functioning of its facility arising from unsettled positions in Investments.

(3) Short Selling for the purposes of this Rule constitutes the sale of a Security by a Person who does not own the Security at the point of entering into the contract to sell.

Guidance

1. An ATS Operator should, when developing its controls and procedures with regard to short selling and position management, have regard to:

   a. its own settlement cycle, so that any short selling activities on its facilities do not result in any delay or prevent effective settlement within such cycle; and

   b. orderly functioning of its facilities, so that any long or short position concentration on Investments that remain unsettled does not interrupt such functioning;

2. Examples of circumstances that would not be treated as short selling in Rule 6.7.1(3) include where the seller:

   a. has entered into an unconditional contract to purchase the relevant Securities but has not received their delivery at the time of the sale;

   b. has title to other securities which are convertible or exchangeable for the Securities to which the sale contract relates;

   c. has exercised an option to acquire the Securities to which the sale contract relates;

   d. has rights or warrants to subscribe and receive Securities to which the sale contract relates; and

   e. is making a sale of Securities that trades on a "when issued" basis and has entered into a binding contract to purchase such Securities, subject only to the condition of issuance of the relevant Securities.

Foreign ownership restrictions

9.6.7 An ATS Operator must not permit its facility to be used for trading Investments which are subject to foreign ownership restrictions unless it has adequate and effective arrangements to:

(a) monitor applicable foreign ownership restrictions;

(b) promptly identify and take appropriate action where any breaches of such restrictions occur without any undue interruption or negative impact to its trading activities; and

(c) suspend trading in the relevant Investments where the ownership restrictions are, or are about to be, breached and reinstate trading when the breaches are remedied.

Guidance

The kind of arrangements an ATS Operator should implement to meet the requirements in Rule 9.6.7 are such as those specified in AMI Rule 6.8.1(2).

Liquidity providers

9.6.8 (1) An ATS Operator must not introduce a liquidity incentive scheme unless:

(a) participation of such a scheme is limited to:

(i) a member as defined in Rule 9.3.1(1); or

(ii) any other Person where:

(A) it has undertaken due diligence to ensure that the Person is of sufficient good repute and has adequate competencies and organisational arrangements; and

(B) the Person has agreed in writing to comply with its Operating Rules so far as those rules are applicable to that Person's activities; and

(b) it has obtained the prior approval of the DFSA.

(2) For the purposes of this section, a "liquidity incentive scheme" means an arrangement designed to provide liquidity to the market in relation to Investments traded on the facility.

(3) Where an ATS Operator proposes to introduce or amend a liquidity incentive scheme, it must lodge with the DFSA, at least 10 days before the date by which it expects to obtain the DFSA approval, a statement setting out:

(a) the details of the relevant scheme, including benefits to the ATS and members arising from that scheme; and

(b) the date on which the scheme is intended to become operative.

(4) The DFSA must within 10 days of receiving the notification referred to in (3), approve a proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme would be detrimental to the facility or markets in general. Where the DFSA does not approve the proposed liquidity incentive scheme, it must notify the ATS Operator of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.

(5) An ATS Operator must, as soon practicable, announce the introduction of the liquidity incentive scheme, including the date on which it becomes operative and any other relevant information.

(6) An ATS Operator may appeal a decision of the DFSA not to approve a liquidity incentive scheme to the Regulatory Appeals Committee.

Prevention of Market Abuse

9.6.9 (1) An ATS Operator must:

(a) implement and maintain appropriate measures to identify, deter and prevent Market Abuse on and through its facility; and

(b) report promptly to the DFSA any Market Abuse.

(2) For the purposes of (1)(a), an ATS Operator must:

(a) include in its Operating Rules a regime to prevent Market Abuse, which is applicable to its members and their Clients; and

(b) implement and maintain adequate measures to ensure that its members comply with that regime.

(3) The regime to prevent Market Abuse referred to in (2)(a) must, at a minimum, include rules and procedures in relation to compliance with the applicable requirements in Part 6 of the Market Law, including adequate compliance arrangements applicable to its members and staff and the clients of members, record keeping, transaction monitoring, risk assessment and appropriate training.

Guidance

1. An ATS Operator should have an effective surveillance system in place for:

   a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments conducted elsewhere; and

   b. communicating information about Market Abuse or suspected abuse, to the DFSA or appropriate regulatory authorities.

2. In determining whether an ATS Operator is ensuring that business conducted on its facilities is conducted in an orderly manner, the DFSA will consider:

   a. arrangements for pre and post trade transparency taking into account the nature and liquidity of the Investments traded; and

   b. the need to provide anonymity for trading participants.

3. An ATS Operator will also have appropriate procedures allowing it to influence trading conditions, suspend trading promptly when required, and to support or encourage liquidity when necessary to maintain an orderly market. The DFSA will consider the transparency of such procedures and the fairness of their application and potential application.

9.6.10 (1) An ATS Operator must:

(a) before accepting a prospective member, ensure that the applicant has in place adequate arrangements, including systems and controls to comply with its regime for preventing Market Abuse;

(b) monitor and regularly review compliance by its members with that regime; and

(c) take appropriate measures to ensure that its members rectify to the extent feasible any contraventions of its regime without delay.

(2) An ATS Operator must promptly notify the DFSA of any:

(a) material breach of its regime to prevent Market Abuse by a member, or by staff or clients of the member; and

(b) circumstances in which a member will not or cannot rectify a breach of its regime.

Guidance

1. An Authorised Firm is subject to the requirements in the DFSA's AML module. Members of an Authorised Firm which are themselves Authorised Firms are also subject, by virtue of being Authorised Firms, to the requirements in the DFSA's AML module.

2. In determining whether an ATS Operator's measures are adequate and appropriate to reduce the extent to which its facilities can be used for Market Abuse, the DFSA will consider:

   a. whether the ATS Operator has appropriate staff, surveillance systems, resources and procedures for this purpose;

   b. the monitoring conducted for possible patterns of normal, abnormal or improper use of those facilities;

   c. how promptly and accurately information is communicated about Market Abuse to the DFSA and other appropriate organisations; and

   d. how the ATS Operator co-operates with relevant bodies in the prevention, investigation and pursuit of Market Abuse.

3. An ATS Operator must have regard to Part 6 of the Markets Law in relation to forms of Market Abuse. Practices that amount to market manipulation (which is Market Abuse) in an automated trading environment which an ATS should be able to identify and prevent in order to promote proper markets include the following:

   a. entering small orders in order to ascertain the level of hidden orders, particularly used to assess what is resting on a dark platform, called Ping Orders;

   b. entering large numbers of orders and/or cancellations/updates to orders to create uncertainty for other market participants, to slow down their process and to camouflage the ATS Operator's own strategy, called Quote Stuffing;

   c. entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price, called Moment Ignition; and

   d. submitting multiple orders often away from one side of the order book with the intention of executing a trade on the other side of the order book, where once that trade has taken place, the manipulative orders will be removed, called Layering and Spoofing.

Clearing and settlement arrangements

9.6.11 (1) An ATS Operator must:

(a) ensure that there are satisfactory arrangements in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facility; and

(b) inform its members and other Persons having access to its facility through members of details relating to such arrangements.

(2) For the purposes of (1)(a), an ATS Operator must ensure that:

(a) the Person who provides clearing and settlement services to a member is either:

(i) an Authorised Person appropriately licensed to carry on clearing or settlement services; or

(ii) an entity which is authorised and supervised by a Financial Services Regulator acceptable to the DFSA for the activity of clearing and settlement services and is operating under broadly equivalent standards as defined under Chapter 7 of the AMI module; and

(b) notification of such arrangements (including any changes thereto) is provided to the DFSA at least 30 days before making the arrangements and the DFSA has not objected to such arrangements within that period.

Guidance

An ATS Operator is not authorised under its Licence to provide clearing and settlement services. Therefore, it must make suitable arrangements relating to clearing and settlement of transactions that are undertaken on its facility. For this purpose, it may arrange for its members to obtain such services from an appropriately licensed Person.

9.7 Specific requirements applicable to Persons operating an OTF

9.7.1 A Person operating an OTF must not execute any orders made on the facility against its own proprietary capital.

10 CUSTODY PROVIDERS ACTING AS A CENTRAL SECURITIES DEPOSITORY ("CSD")

10.1 Application and interpretation

10.1.1 (1) This chapter applies to an Authorised Firm which operates a Central Securities Depository (CSD).

(2) Such an Authorised Firm is referred to in this chapter as a CSD.

Guidance

The Financial Service of Providing Custody includes the activity of operating a CSD. See GEN Rule 2.13.1(1)(c) and (3).

10.2 Additional requirements for CSDs

10.2.1 (1) A CSD must have rules and procedures, including robust accounting practices and controls that:

(a) ensure the integrity of the securities issues; and

(b) minimise and manage risks associated with the safekeeping and transfer of securities.

(2) A CSD must ensure that securities referred to in (1)(a) are recorded in book-entry form prior to the trade date.

(3) For the purposes of (1)(a), a CSD's systems and controls must ensure that:

(a) the unauthorised creation or deletion of securities is prevented;

(b) appropriate intraday reconciliation is conducted to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the Members and other participants of the CSD;

(c) where entities other than the CSD are involved in the reconciliation process for a securities issue, such as the issuer, registrars, issuance agents, transfer agents or other CSDs, the CSD has adequate arrangements for cooperation and information exchange between all involved parties so that the integrity of the issue is maintained; and

(d) there are no securities overdrafts or debit balances in securities accounts.

CSD links

10.2.2 (1) A CSD must not establish any link with another CSD (CSD link) unless it:

(a) has, prior to establishing the CSD link, identified and assessed potential risks, for itself and its members and other participants using its facilities, arising from establishing such a link:

(b) has adequate systems and controls to effectively monitor and manage, on an on-going basis, the risks identified under (a) above; and

(c) is able to demonstrate to the DFSA, prior to the establishment of the CSD link, that the CSD link satisfies the requirements referred to in (2).

(2) The requirements referred to in (1)(c) are that:

(a) the link arrangement between the CSD and all linked CSDs contains adequate mitigants against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;

(b) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;

(c) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the additional risks arising from the use of the intermediary;

(d) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs, and where such settlement is not practicable or feasible, reasons for non-DVP settlement are notified to the DFSA; and

(e) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are:

(i) identical moments established for the entry of transfer orders into the system;

(ii) irrevocable transfer orders; and

(iii) finality of transfers of securities and cash.

Guidance

A CSD should include in its notification to the DFSA relating to the establishment of CSD links the results of due diligence undertaken in respect of the matters specified in Rule 10.2.2(2) to demonstrate that those requirements are met. Where a CSD changes any existing CSD arrangements, fresh notification relating to such changes, along with its due diligence relating to the new CSD link, should be provided to the DFSA in advance of the proposed change.

APP1 RECORDS OF ORDERS AND TRANSACTIONS

A1.1 Minimum contents of transaction records

Receipt of client order or discretionary decision to transact

A1.1.1 An Authorised Firm must, pursuant to Rule 6.7.4(1), make a record of the following:

(a) the identity and account number of the Client;

(b) the date and time in the jurisdiction in which the instructions were received or the decision was taken by the Authorised Firm to deal;

(c) the identity of the Employee who received the instructions or made the decision to deal;

(d) the Investment, including the number of or its value and any price limit; and

(e) whether the instruction relates to a purchase or sale.

Executing a transaction

A1.1.2 An Authorised Firm must, pursuant to Rule 6.7.4(2), make a record of the following:

(a) the identity and account number of the Client for whom the Transaction was Executed, or an indication that the Transaction was an Own Account Transaction;

(b) the name of the counterparty;

(c) the date and time in the jurisdiction in which the Transaction was Executed;

(d) the identity of the Employee executing the Transaction;

(e) the Investment, including the number of or its value and price; and

(f) whether the Transaction was a purchase or a sale.

Passing a client order to another person for execution

A1.1.3 An Authorised Firm must, pursuant to Rule 6.7.4(3), make a record of the following:

(a) the identity of the Person instructed;

(b) the terms of the instruction; and

(c) the date and time that the instruction was given.

APP2 KEY INFORMATION AND CLIENT AGREEMENT

A2.1 Key Information and content of the Client Agreement

General

A2.1.1 The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

(a) the core information set out in:

(i) Rule A2.1.2 (1) if it is a Retail Client; and

(ii) Rule A2.1.2(2) if it is a Professional Client; and

(b) where relevant, the additional information required under Rules A2.1.3 and A2.1.4.

Core information

A2.1.2 (1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:

(a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;

(b) the regulatory status of the Authorised Firm;

(c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;

(d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;

(e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;

(f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);

(g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and

(h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11.

(2) In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).

Additional information for Investment Business

A2.1.3 The additional information required under A2.1.1(b) for Investment Business is:

(a) the arrangements for giving instructions to the Authorised Firm and acknowledging those instructions;

(b) information about any agreed investment parameters;

(c) the arrangements for notifying the Client of any Transaction Executed on his behalf;

(d) if the Authorised Firm may act as principal in a Transaction, when it will do so;

(e) the frequency of any periodic statements and whether those statements will include some measure of performance, and if so, what the basis of that measurement will be;

(f) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Firm does not owe a duty of best execution or the circumstances in which it does not owe such a duty; and

(g) where applicable, the basis on which assets comprised in the portfolio are to be valued.

Additional information for investment management activities

A2.1.4 The additional information required under A2.1.1(b) where an Authorised Firm acts as an Investment Manager is:

(a) the initial value of the managed portfolio;

(b) the initial composition of the managed portfolio;

(c) the period of account for which periodic statements of the portfolio are to be provided in accordance with section 6.10; and

(d) in the case of discretionary investment management activities:

(i) the extent of the discretion to be exercised by the Authorised Firm, including any restrictions on the value of any one Investment or the proportion of the portfolio which any one Investment or any particular kind of Investment may constitute; or that there are no such restrictions;

(ii) whether the Authorised Firm may commit the Client to supplement the funds in the portfolio, and if it may include borrowing on his behalf:

(A) the circumstances in which the Authorised Firm may do so;

(B) whether there are any limits on the extent to which the Authorised Firm may do so and, if so, what those limits are;

(C) any circumstances in which such limits may be exceeded; and

(D) any margin lending arrangements and terms of those arrangements;

(iii) that the Authorised Firm may enter into Transactions for the Client, either generally or subject to specified limitation; and

(iv) where the Authorised Firm may commit the Client to any obligation to underwrite or sub-underwrite any issue or offer for sale of Securities:

(A) whether there are any restrictions on the categories of Securities which may be underwritten and, if so, what these restrictions are; and

(B) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are.

APP3 CONFIRMATION OF TRANSACTIONS

A3.1 Content of confirmation notes

General information

A3.1.1 (1) For the purposes of Rule 6.9.2, an Authorised Firm must include the following general information:

(a) the Authorised Firm's name and address;

(b) whether the Authorised Firm Executed the Transaction as principal or agent;

(c) the Client's name, account number or other identifier;

(d) a description of the Investment or Fund, including the amount invested or number of units involved;

(e) whether the Transaction is a sale or purchase;

(f) the price or unit price at which the Transaction was Executed;

(g) if applicable, a statement that the Transaction was Executed on an Execution-Only basis;

(h) the date and time of the Transaction;

(i) the total amount payable and the date on which it is due;

(j) the amount of the Authorised Firms charges in connection with the Transaction, including Commission charges and the amount of any Mark-up or Mark-down, Fees, taxes or duties;

(k) the amount or basis of any charges shared with another Person or statement that this will be made available on request; and

(l) for Collective Investment Funds, at statement that the price at which the Transaction has been Executed is on a Historic Price or Forward Price basis, as the case may be.

(2) An Authorised Firm may combine items (f) and (j) in respect of a Transaction where the Client has requested a note showing a single price combining both of these items.

Additional information: derivatives

A3.1.2 For the purposes of Rule 6.9.2, and in relation to Transactions in Derivatives, an Authorised Firm must include the following additional information:

(a) the maturity, delivery or expiry date of the Derivative;

(b) in the case of an Option, the date of exercise or a reference to the last exercise date;

(c) whether the exercise creates a sale or purchase in the underlying asset;

(d) the strike price of the Option; and

(e) if the Transaction closes out an open Futures position, all essential details required in respect of each contract comprised in the open position and each contract by which it was closed out and the profit or loss to the Client arising out of closing out that position (a difference account).

APP4 PERIODIC STATEMENTS

A4.1 Content of periodic statements: investment management

General information

A4.1.1 Pursuant to section 6.10, a periodic statement, as at the end of the period covered, must contain the following general information:

(a) the number, description and value of each Investment;

(b) the amount of cash held;

(c) the total value of the portfolio; and

(d) a statement of the basis on which the value of each Investment has been calculated.

Additional information: discretionary investment management activities

A4.1.2 In addition to Rule A4.1.1, where an Authorised Firm acts as an Investment Manager on a discretionary basis, the periodic statement must also include the following additional information:

(a) a statement of which Investments, if any, were at the closing date loaned to any third party and which Investments, if any, were at that date charged to secure borrowings made on behalf of the portfolio;

(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period;

(c) details of each Transaction which have been entered into for the portfolio during the period;

(d) the aggregate of Money and details of all Investments transferred into and out of the portfolio during the period;

(e) the aggregate of any interest payments, including the dates of their application and dividends or other benefits received by the Authorised Firm for the portfolio during that period;

(f) a statement of the aggregate Charges of the Authorised Firm and its Associates; and

(g) a statement of the amount of any Remuneration received by the Authorised Firm or its Associates or both from a third party.

Additional information: contingent liability investments

A4.1.3 In addition to Rules A4.1.1 and A4.1.1.2, in the case where Contingent Liability Investments are involved, an Authorised Firm must include the following additional information:

(a) the aggregate of Money transferred into and out of the portfolio during the valuation period;

(b) in relation to each open position in the account at the end of the account period, the unrealised profit or loss to the Client (before deducting or adding any Commission which would be payable on closing out);

(c) in relation to each Transaction Executed during the account period to close out a Client's position, the resulting profit or loss to the Client after deducting or adding any Commission;

(d) the aggregate of each of the following in, or relating to, the Client's portfolio at the close of business on the valuation date:

(i) cash;

(ii) Collateral value;

(iii) management fees; and

(iv) commissions; and

(e) Option account valuations in respect of each open Option contained in the account on the valuation date stating:

(i) the Share, Future, index or other Investment involved;

(ii) the trade price and date for the opening Transaction, unless the valuation statement follows the statement for the period in which the Option was opened;

(iii) the market price of the contract; and

(iv) the exercise price of the contract.

APP5 CLIENT MONEY PROVISIONS

A5.1 Application

A5.1.1 This appendix applies to an Authorised Firm, in accordance with Rule 6.12.2

A5.2 General requirements

A5.2.1 (1) The provisions of this appendix are referred to as the Client Money Provisions.

(2) The types of Client described in Rule 6.12.2 are referred to in this appendix as Segregated Clients.

A5.2.2 An Authorised Firm which holds or controls Client Money for a Segregated Client must:

(a) comply with the Client Money Provisions in relation to that Client Money; and

(b) have systems and controls in place to be able to evidence compliance with the Client Money Provisions.

A5.3 Payment of client money into client accounts

A5.3.1 Where an Authorised Firm holds or controls Client Money it must ensure, except where otherwise provided in section A5.5 that the Client Money is paid into one or more Client Accounts within one day of receipt.

A5.3.2 Subject to Rule A5.3.3, an Authorised Firm must not deposit its own Money into a Client Account.

A5.3.3 (1) An Authorised Firm may deposit its own Money in a Client Account where:

(a) it is a minimum sum required to open the account, or to keep it open;

(b) the Money is received by way of mixed remittance provided the Authorised Firm transfers out that part of the payment which is not Client Money within one day of the day on which the Authorised Firm would normally expect the remittance to be cleared;

(c) interest credited to the account exceeds the amount payable to Segregated Clients, provided that the Money is removed within twenty five days; or

(d) it is to meet a shortfall in Client Money.

(2) Where an Authorised Firm deposits any Money into a Client Account such Money is Client Money until such time as the Money is withdrawn from the Client Account in accordance with the Client Money Provisions.

A5.3.4 An Authorised Firm must maintain systems and controls for identifying Money which must not be in a Client Account and for transferring it without delay.

A5.3.5 Where an Authorised Firm is aware that a Person may make a payment of Client Money to the Authorised Firm, it must take reasonable steps:

(a) to ensure that such payment of Client Money is directed to a Client Account; and

(b) to ensure that the Authorised Firm is notified by that Person of such payment as soon as reasonably practicable.

Guidance

An Authorised Firm should have procedures for identifying Client Money received by the Authorised Firm, and for promptly recording the receipt of the Money either in the books of account or a register for later posting to the Client cash book and ledger accounts. The procedures should cover Client Money received by the Authorised Firm through the mail, electronically or via agents of the Authorised Firm or through any other means.

A5.4 Client accounts

A5.4.1 A Client Account in relation to Client Money is an account which:

(a) is held with a Third Party Agent;

(b) is established to hold Client Assets;

(c) is maintained in the name of;

(i) if a Domestic Firm, the Authorised Firm; or

(ii) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Firm; and

(d) includes the words 'Client Account' in its title.

A5.4.2 (1) An Authorised Firm must maintain a master list of all Client Accounts.

(2) The master list must detail:

(a) the name of the account;

(b) the account number;

(c) the location of the account;

(d) whether the account is currently open or closed; and

(e) the date of opening or closure.

(3) The details of the master list must be documented and maintained for at least six years following the closure of an account.

Guidance

1. An Authorised Firm may hold or control Client Money belonging to a Segregated Client in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client Money in a Client Account containing Client Money of more than one Segregated Client.

2. The purpose of controlling or holding Client Money in a Client Account is to ensure that Money belonging to Segregated Clients is readily identifiable from Money belonging to the Authorised Firm such that, following a Distribution Event, Segregated Clients will rank highest in line in terms of any subsequent distribution of Client Money in proportion to each Client's valid claim over that that Money.

3. Following a Distribution Event, a Segregated Client may not have a valid claim over Client Money held or controlled in a Client Account if that Client Account was not established to hold or control Client Money for that Client or a pool of Clients of which that Client was a part.

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.

A5.5.2 An Authorised Firm must pay Client Money of the type described in Rule A5.5.1(b) or (c) into a Client Account where it has not fulfilled its delivery or payment obligation within three days of receipt of the Money or Investments unless in the case of the type of Client Money referred to in Rule A5.5.1(c)(ii) it instead safeguards Client Investments at least equal to the value of such Client Money.

A5.5.3 (1) An Authorised Firm must maintain adequate records of all cheques and payment orders received in accordance with Rule A5.5.1(a) including, in respect of each payment, the:

(a) date of receipt;

(b) name of the Client for whom payment is to be credited; and

(c) date when the cheque or payment order was presented to the Authorised Firm's Third Party Agent.

(2) The records must be kept for a minimum of six years.

A5.6 Appointment of a third party agent

A5.6.1 (1) An Authorised Firm may only pay, or permit to be paid, Client Money to a Third Party Agent in accordance with Rule A5.7.1 where it has undertaken a prior assessment of the suitability of that agent and concluded on reasonable grounds that the Third Party Agent is suitable to hold that Client Money in a Client Account.

(2) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred by this appendix.

(3) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

A5.6.2 An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent to be suitable to hold that Client Money.

Guidance

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

a. its credit rating;

b. its capital and financial resources in relation to the amount of Client Money held;

c. the insolvency regime of the jurisdiction in which it is located;

d. its regulatory status and history;

e. its Group structure; and

f. its use of agents and service providers.

A5.7 Payment of client money to a third party agent

A5.7.1 (1) Subject to Rule A5.7.3, an Authorised Firm may only pass, or permit to be passed, a Segregated Client's Money to a Third Party Agent if:

(a) the Client Money is to be used in respect of a Transaction or series or Transactions for that Client;

(b) the Client Money is to be used to meet an obligation of that Client; or

(c) the Third Party Agent is a bank or a Regulated Financial Institution which is authorised to accept or take Deposits.

(2) In respect of (1)(a) and (b), an Authorised Firm must not hold any excess Client Money with the Third Party Agent longer than necessary to effect a Transaction or satisfy the Client's obligation.

A5.7.2 When an Authorised Firm opens a Client Account with a Third Party Agent it must obtain, within a reasonable period, a written acknowledgement from the Third Party Agent stating that:

(a) all Money standing to the credit of the account is held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Money in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

(b) the title of the account sufficiently distinguishes that account from any account containing Money that belongs to the Authorised Firm, and is in the form requested by the Authorised Firm.

Guidance

The DFSA would consider twenty days as being a reasonable period for an Authorised Firm to receive a written acknowledgement from the Third Party Agent.

A5.7.3 If the Third Party Agent does not provide the acknowledgement referred to in Rule A5.7.2 within a reasonable period, the Authorised Firm must refrain from making further deposits of Client Money with that Third Party Agent and withdraw any Client Money standing to the credit of that Client Account.

A5.8 Payment of client money from client accounts

A5.8.1 An Authorised Firm must have procedures for ensuring all withdrawals from a Client Account are authorised.

A5.8.2 Subject to Rule A5.8.3, a Segregated Client's Client Money must remain in a Client Account until it is:

(a) due and payable to the Authorised Firm;

(b) paid to the Client on whose behalf the Client Money is held;

(c) paid in accordance with a Client instruction on whose behalf the Client Money is held;

(d) required to meet the payment obligations of the Client on whose behalf the Client Money is held; or

(e) paid out in circumstances that are otherwise authorised by the DFSA.

A5.8.3 Money paid out by way of cheque or other payable order under Rule A5.8.2 must remain in a Client Account until the cheque or payable order is presented to the Client's bank and cleared by the paying agent.

A5.8.4 An Authorised Firm must not use Client Money belonging of one Client to satisfy an obligation of another Client.

Guidance

The effect of Rule A5.8.4 is that an Authorised Firm would be required to deposit its own Money into a Client Account to remedy a shortfall arising from a client debit balance.

A5.8.5 An Authorised Firm must have a system for ensuring no off-setting or debit balances occur on Client Accounts.

A5.9 Client disclosure

A5.9.1 Before, or as soon as reasonably practicable after, an Authorised Firm receives Client Money belonging to a Segregated Client, it must disclose to the Client on whose behalf the Client Money is held:

(a) the basis and any terms governing the way in which the Client Money will be held;

(b) that the Client is subject to the protection conferred by the DFSA's Client Money Provisions and as a consequence:

(i) this Money will be held separate from Money belonging to the Authorised Firm; and

(ii) in the event of the Authorised Firm's insolvency, winding up or other Distribution Event stipulated by the DFSA, the Client's Money will be subject to the DFSA's Client Money Distribution Rules;

(c) whether interest is payable to the Client and, if so, on what terms;

(d) if applicable, that the Client Money may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;

(e) if applicable, details about how any Client Money arising out of Islamic Financial Business are to be held;

(f) if applicable, that the Authorised Firm holds or intends to hold the Client Money in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

(g) details of any rights which the Authorised Firm may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise, and of any rights which the Authorised Firm may have to close out or liquidate contracts or positions in respect of any of the Client's Investments.

A5.10 Client reporting

A5.10.1 (1) In relation to a Client to whom the Client Money Provisions are applicable, an Authorised Firm must send a statement to a Retail Client at least monthly or in the case of a Professional Client, at other intervals as agreed in writing with the Professional Client.

(2) The statement must include:

(a) the Client's total Client Money balances held by the Authorised Firm reported in the currency in which the Client Money is held, or the relevant exchange rate if not reported in the currency in which the Money is held;

(b) the amount, date and value of each credit and debit paid into and out of the account since the previous statement; and

(c) any interest earned or charged on the Client Account since the previous statement.

(3) The statement sent to the Client must be prepared within 25 days of the statement date.

A5.11 Reconciliation

A5.11.1 (1) An Authorised Firm must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out at least every 25 days.

(2) The reconciliation must include:

(a) a full list of individual Segregated Client credit ledger balances, as recorded by the Authorised Firm;

(b) a full list of individual Segregated Client debit ledger balances, as recorded by the Authorised Firm;

(c) a full list of unpresented cheques and outstanding lodgements;

(d) a full list of Client Account cash book balances; and

(e) formal statements from Third Party Agents showing account balances as at the date of reconciliation.

(3) An Authorised Firm must:

(a) reconcile the individual credit ledger balances, Client Account cash book balances, and the Third Party Agent Client Account balances;

(b) check that the balance in the Client Accounts as at the close of business on the previous day was at least equal to the aggregate

balance of individual credit ledger balances as at the close of business on the previous day; and

(c) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the Third Party Agent and the Authorised Firm, are investigated and, where applicable, corrective action taken as soon as possible.

(4) An Authorised Firm must perform the reconciliations in (3) within 10 days of the date to which the reconciliation relates.

Guidance

When performing the reconciliations, an Authorised Firm should:

a. include in the credit ledger balances:

i. unallocated Client Money;

ii. dividends received and interest earned and allocated;

iii. sale proceeds which have been received by the Authorised Firm and the Client has delivered the Investments or the Authorised Firm holds or controls the Investment; and

iv. Money paid by the Client in respect of a purchase where the Authorised Firm has not remitted the Money to the counterparty or delivered the Investment to the Client; and

b. deduct from the credit ledger balances:

i. Money owed by the client in respect of unpaid purchases by or for the Client if delivery of those Investments has been made to the Client; and

ii. Money remitted to the Client in respect of sales transactions by or for the Client if the Client has not delivered the Investments.

A5.11.2 An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

Guidance

When performing reconciliations, an Authorised Firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has the authority to make payments, does not perform the reconciliations under Rule A5.11.1

A5.11.3 (1) Reconciliation performed in accordance with Rule A5.11.1 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The individual referred to in (1) must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.

A5.11.4 The Authorised Firm must notify the DFSA where there has been a material discrepancy with the reconciliation which has not been rectified.

Guidance

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

A5.12 Auditor's reporting requirements

Guidance

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

A5.13 Client money distribution rules

A5.13.1 This section is referred to as the Client Money Distribution Rules and to the extent that these Rules are inconsistent with part 4.13 of the Insolvency Regulations, these Rules will prevail.

A5.13.2 Following a Distribution Event, the Authorised Firm must distribute Money in the following order of priorities:

(a) firstly, in relation to Client Money held in a Client Account on behalf of Segregated Clients, claims relating to that Money must be paid to each Segregated Client in full or, where insufficient funds are held in a Client Account, proportionately, in accordance with each Segregated Client's valid claim over that Money;

(b) secondly, where the amount of Client Money in a Client Account is insufficient to satisfy the claims of Segregated Clients in respect of that Money, or not being immediately available to satisfy such claims, all other Money held by the Authorised Firm must be used to satisfy any outstanding amounts remaining payable to Segregated Clients but not satisfied from the application of (a) above;

(c) thirdly, upon resolution of claims in relation to Segregated Clients, any Money remaining with the Authorised Firm must be paid to each Client in full or, where insufficient funds are held by the Authorised Firm, proportionately, in accordance with each Client's valid claim over that Money; and

(d) fourthly, upon satisfaction of all claims in (a), (b) and (c) above, in the event of:

(i) the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy over the Authorised Firm, payment must be made accordance with the Insolvency Law 2004; or

(ii) all other Distribution Events, payment must be made in accordance with the direction of the DFSA.

Guidance

A Segregated Client would not have a valid claim over Client Money held in a Client Account if that Client Account was not established to hold Client Money for that Client.

A5.13.3 Following a Distribution Event, an Authorised Firm must sell all Collateral and use the proceeds of the sale to satisfy claims made in accordance with Rule A5.13.2

A5.14 Failure to comply with this appendix

A5.14.1 An Authorised Firm which becomes aware that it does not comply with any Rule in this appendix must, within one day, give notice of that fact to the DFSA.

APP6 SAFE CUSTODY PROVISIONS

A6.1 Application

A6.1.1 This appendix applies to an Authorised Firm in accordance with Rule 6.13.3.

A6.2 General requirements

A6.2.1 The provisions of this appendix are referred to as the Safe Custody Provisions.

A6.2.2 An Authorised Firm must:

(a) comply with the Safe Custody Provisions; and

(b) have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.

A6.3 Recording, registration and holding requirements

A6.3.1 An Authorised Firm which Provides Custody or holds or controls Client Investments must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property.

A6.3.2 Subject to Rule A6.4.1, an Authorised Firm which Provides Custody or holds or controls Client Investments must record, register and hold Safe Custody Investments separately from its own Investments.

A6.4 Client accounts in relation to Client Investments

A6.4.1 An Authorised Firm which Provides Custody or holds or controls Client Investments must register or record all Safe Custody Investments in the legal title of:

(a) a Client Account; or

(b) the Authorised Firm where, due to the nature of the law or market practice, it is not feasible to do otherwise.

A6.4.2 A Client Account in relation to Client Investments is an account which:

(a) is held with a Third Party Agent or by an Authorised Firm which is authorised under its Licence to provide Custody;

(b) is established to hold Client Assets;

(c) when held by a Third Party Agent, is maintained in the name of;

(i) if a Domestic Firm, the Authorised Firm; or

(ii) if not a Domestic Firm, a Nominee Company controlled by the Authorised Firm; and

(d) includes the words 'Client Account' in its title.

A6.4.3 (1) An Authorised Firm must maintain a master list of all Client Accounts.

(2) The master list must detail:

(a) the name of the account;

(b) the account number;

(c) the location of the account;

(d) whether the account is currently open or closed; and

(e) the date of opening or closure.

(3) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.

Guidance

1. An Authorised Firm may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Firm may choose to pool that Client's Investment in a Client Account containing Investments of more than one Client.

2. The purpose of recording, registering or holding Investments in a Client Account is to ensure that Investments belonging to Clients are readily identifiable from Investments belonging to the Authorised Firm such that, following a Distribution Event, any subsequent distribution of Investments may be made in proportion to each Client's valid claim over those Investments.

3. Following a Distribution Event, a Client may not have a valid claim over Investments registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments for that Client or a pool of Clients of which that Client was a part.

A6.4.4 An Authorised Firm must not use a Client's Safe Custody Investment for its own purpose or that of another Person without that Client's prior written permission.

A6.4.5 An Authorised Firm which intends to use a Client's Safe Custody Investments for its own purpose or that of another Person, must have systems and controls in place to ensure that:

(a) it obtains that Client's prior written permission;

(b) adequate records are maintained to protect Safe Custody Investments which are applied as collateral or used for stock lending activities;

(c) the equivalent assets are returned to the Client Account of the Client; and

(d) the Client is not disadvantaged by the use of his Safe Custody Investments.

A6.5 Holding or arranging custody with third party agents

A6.5.1 (1) Before an Authorised Firm holds a Safe Custody Investment with a Third Party Agent or Arranges Custody through a Third Party Agent, it must undertake an assessment of that Third Party Agent and have concluded on reasonable grounds that the Third Party Agent is suitable to hold those Safe Custody Investments.

(2) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

(3) When assessing the suitability of the Third Party Agent, the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred in this appendix.

A6.5.2 An Authorised Firm must be able to demonstrate to the DFSA's satisfaction the grounds upon which the Authorised Firm considers the Third Party Agent to be suitable to hold Safe Custody Investments.

Guidance

When assessing the suitability of a Third Party Agent, an Authorised Firm should have regard to:

a. its credit rating;

b. its capital and financial resources in relation to the amount of Safe Custody Investments held;

c. the insolvency regime of the jurisdiction in which it is located;

d. its arrangements for holding the Investments;

e. its regulatory status, expertise, reputation and history;

f. its Group structure;

g. its use of agents and service providers; and

h. any other activities of the agent.

A6.6 Safe custody agreements with third party agents

A6.6.1 Before an Authorised Firm passes, or permits to be passed, Safe Custody Investments to a Third Party Agent it must have procured a written acknowledgement from the Third Party Agent stating:

(a) that the title of the account sufficiently distinguishes that account from any account containing Investments belonging to the Authorised Firm, and is in the form requested by the Authorised Firm;

(b) that the Client Investment will only be credited and withdrawn in accordance with the instructions of the Authorised Firm;

(c) that the Third Party Agent will hold Client Investments separately from assets belonging to the Third Party Agent;

(d) the arrangements for recording and registering Client Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;

(e) that the Third Party Agent will deliver a statement to the Authorised Firm (including the frequency of such statement), which details the Client Investments deposited to the account;

(f) that all Investments standing to the credit of the account are held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

(g) the extent of liability of the Third Party Agent in the event of default.

A6.6.2 (1) An Authorised Firm must maintain records of all Safe Custody Agreements and any instructions given by the Authorised Firm to the Third Party Agent under the terms of the agreement.

(2) The records must be maintained for at least of six years.

A6.7 Client disclosure

A6.7.1 (1) Before an Authorised Firm Arranges Custody for a Client it must disclose to that Client, if applicable, that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC.

(2) Before an Authorised Firm Provides Custody for a Client it must disclose to the Client on whose behalf the Safe Custody Investments will be held:

(a) a statement that the Client is subject to the protections conferred by the Safe Custody Provisions;

(b) the arrangements for recording and registering Safe Custody Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody Investments;

(c) the obligations the Authorised Firm will have to the Client in relation to exercising rights on behalf of the Client;

(d) the basis and any terms governing the way in which Safe Custody Investments will be held, including any rights which the Authorised Firm may have to realise Safe Custody Investments held on behalf of the Client in satisfaction of a default by the Client;

(e) the method and frequency upon which the Authorised Firm will report to the Client in relation to his Safe Custody Investments;

(f) if applicable, a statement that the Authorised Firm intends to mix Safe Custody Investments with those of other Clients;

(g) if applicable, a statement that the Client's Safe Custody Investments may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the DIFC;

(h) if applicable, a statement that the Authorised Firm holds or intends to hold Safe Custody Investments in a Client Account with a Third Party Agent which is in the same Group as the Authorised Firm; and

(i) the extent of the Authorised Firm's liability in the event of default by a Third Party Agent.

A6.8 Client reporting

A6.8.1 (1) An Authorised Firm which Provides Custody or which holds or controls Client Investments for a Client must send a statement to a Retail Client at least every six months or in the case of a Professional Client at other intervals as agreed in writing with the Professional Client.

(2) The statement must include:

(a) a list of that Client's Safe Custody Investments as at the date of reporting;

(b) a list of that Client's Collateral and the market value of that Collateral as at the date of reporting; and

(c) details of any Client Money held by the Authorised Firm as at the date of reporting.

(3) The statement sent to the Client must be prepared within 25 business days of the statement date.

A6.9 Reconciliation

A6.9.1 An Authorised Firm must:

(a) at least every 25 business days, reconcile its records of Client Accounts held with Third Party Agents with monthly statements received from those Third Party Agents;

(b) at least every six months, count all Safe Custody Investments physically held by the Authorised Firm, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Firm; and

(c) at least every six months, reconcile individual Client ledger balances with the Authorised Firm's records of Safe Custody Investment balances held in Client Accounts.

A6.9.2 An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.

Guidance

An Authorised firm should maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has authority over Safe Custody Investments, should not perform the reconciliations under Rule A6.9.1.

A6.9.3 (1) Reconciliation performed in accordance with section A6.9 must be reviewed by a member of the Authorised Firm who has adequate seniority.

(2) The individual referred to in (1) must provide a written statement confirming that the reconciliation has been undertaken in accordance with the requirements of this section.

A6.9.4 The Authorised Firm must notify the DFSA where there have been material discrepancies with the reconciliation which have not been rectified.

Guidance

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

A6.10 Auditor's reporting requirements

Guidance

In accordance with GEN chapter 8, an Authorised Firm to which this appendix applies must arrange for a Safe Custody Auditor's Report to be submitted to the DFSA on an annual basis.

The DFSA Rulebook

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module

(AML)

Contents

The contents of this module are divided into the following chapters, sections and appendices:

1 INTRODUCTION

1.1 Application

1.1.1 (1) This module (AML) applies to:

(a) every Relevant Person in respect of all its activities carried on in or from the DIFC;

(b) the persons specified in Rule 1.2.1 as being responsible for a Relevant Person's compliance with this module; and

(c) a Relevant Person, which is a DIFC entity, to the extent required by Rule 14.1.

except to the extent that a provision of AML provides for a narrower application.

(2) For a dealer in precious metals or precious stones, or a dealer in any saleable item of a price equal to or greater than $15,000, chapters 6 to 8 of this module apply only if it engages in any cash or cash-equivalent transaction with a customer equal to or above $15,000, whether the transaction is executed as a single operation or in several connected operations.

1.1.2 For the purposes of these Rules, a Relevant Person means:

(a) an Authorised Firm other than a Credit Rating Agency;

(b) an Authorised Market Institution;

(c) a DNFBP; or

(d) an Auditor.

1.2 Responsibility for compliance with this module

1.2.1 (1) Responsibility for a Relevant Person's compliance with this module lies with every member of its senior management.

(2) In carrying out their responsibilities under this module every member of a Relevant Person's senior management must exercise due skill, care and diligence.

(3) Nothing in this Rule precludes the DFSA from taking enforcement action against any person including any one or more of the following persons in respect of a breach of any Rule in this module:

(a) a Relevant Person;

(b) members of a Relevant Person's senior management; or

(c) an Employee of a Relevant Person.

1.3 Application table

Guidance

* Partially applicable. Relevant Persons should consider these chapters and determine which provisions apply.

Relevant Person	Applicable Chapters			
Authorised Person	**1 - 14**			
Representative Office	**1 - 5**	**10- 14**		
Auditor	**1 -8**	**10 - 14**		
Real estate developer or agency	**1 - 8**	**10 - 16**		
Law firm, notary firm, or other independent legal business	**1 - 8**	**10 - 16**		
Accounting firm, audit firm or insolvency firm	**1 - 8**	**10 - 16**		
Company service provider	**1 - 8**	**10 - 16**		
Single Family Office	**1 - 8**	**10 - 16**		
Dealer in precious metals or precious stones	**1 - 8**	**12**	**13***	**14 - 16**
Dealer in high-value goods	**1 - 8**	**12**	**13***	**14 - 16**

2 OVERVIEW AND PURPOSE OF THE MODULE

Guidance

1. The AML module has been designed to provide a single reference point for all persons and entities (collectively called Relevant Persons) who are supervised by the DFSA for Anti-Money Laundering (AML), Counter-Terrorist Financing (CTF) and sanctions compliance. Accordingly it applies to Authorised Firms, Authorised Market Institutions, Designated Non-Financial Businesses and Professions (DNFBP), and Auditors, but to each in different degrees. The AML module takes into consideration the fact that Relevant Persons have differing AML risk profiles. A Relevant Person should familiarise itself with this module, and assess the extent to which the chapters and sections apply to it.

2. The AML module cannot be read in isolation from other relevant legislation or developments in international policy and best practice and, to the extent applicable, Relevant Persons need to be aware of, and take into account, how these aforementioned matters may impact on the Relevant Person's day to day operations. This is particularly relevant when considering United Nations Security Council Resolutions (UNSCRs) which apply in the DIFC, and unilateral sanctions imposed by other jurisdictions which may apply to a Relevant Person depending on the Relevant Person's jurisdiction of origin, its business and/or customer base.

3. Chapter 1 of this module contains an application table which should assist a Relevant Person to navigate through the module and to determine which chapters are applicable to it. Chapter 1 also specifies who is ultimately responsible for a Relevant Person's compliance with the AML module. The DFSA expects the senior management of a Relevant Person to establish a robust and effective AML/CTF and sanctions compliance culture for the business.

4. Chapter 2 provides an overview of the AML module and chapter 3 sets out the key definitions in the module. Note that not all definitions used in this module are capitalised.

5. Chapter 4 explains the meaning of the risk-based approach (RBA), which should be applied when complying with this module. The RBA requires a risk-based assessment of a Relevant Person's business (in chapter 5) and its customers (in chapter 6). A risk-based assessment should be a dynamic process involving regular review, and the use of these reviews to establish the appropriate processes to match the levels of risk. No two Relevant Persons will have the same approach, and implementation of the RBA and the AML module permits a Relevant Person to design and implement systems that should be appropriate to their business and customers, with the obvious caveat being that such systems should be reasonable and proportionate in light of the AML risks. The DFSA expects the RBA to determine the breadth and depth of the CDD which is undertaken for a particular customer under chapter 7, though the DFSA understands that there is an inevitable overlap between the risk-based assessment of the customer in chapter 6 and CDD in chapter 7. This overlap may occur at the initial stages of client on-boarding but may also occur when undertaking on-going CDD.

6. Chapter 8 sets out when and how a Relevant Person may rely on a third party to undertake all or some of its CDD obligations. Reliance on a third-party CDD reduces the need to duplicate CDD already performed for a customer. Alternatively, a Relevant Person may outsource some or all of its CDD obligations to a service provider.

7. Chapter 9 sets out certain obligations in relation to correspondent banking, wire transfers and other matters which are limited to Authorised Persons, and, in particular, to banks.

8. Chapter 10 sets out a Relevant Person's obligations in relation to United Nations Security Council resolutions and sanctions, and government, regulatory and international findings (in relation to AML, terrorist financing and the financing of weapons of mass destruction).

9. Chapter 11 sets out the obligation for a Relevant Person (other than certain DNFBPs) to appoint an MLRO and the responsibilities of such a person.

10. Chapter 12 sets out the requirements for AML training and awareness. A Relevant Person should adopt the RBA when complying with chapter 12, so as to make its training and awareness proportionate to the AML risks of the business and the employee role.

11. Chapter 13 contains the obligations applying to all Relevant Persons concerning Suspicious Activity Reports, which are required to be made under Federal Law No. 4 of 2002.

12. Chapter 14 contains the general obligations applying to all Relevant Persons, including Group policies, notifications, record-keeping requirements and the annual AML Return.

13. Chapter 15 sets out specific Rules applying to DNFBPs, including the requirement to register with the DFSA, and Chapter 16 contains certain transitional Rules.

The U.A.E. criminal law

14. Under Article 70(3) of the Regulatory Law 2004 (the "Law"), the DFSA has jurisdiction for the regulation of anti-money laundering in the DIFC. This module sets out the regulatory requirements imposed by the DFSA under Article 72 of the Law. The U.A.E. criminal law applies in the DIFC and, therefore, persons in the DIFC must be aware of their obligations in respect of the criminal law as well as these Rules. Relevant U.A.E. criminal laws include Federal Law No. 4 of 2002 regarding the Criminalisation of Money Laundering, Federal Law No. 1 of 2004 regarding Combating Terrorism Offences and the Penal Code of the United Arab Emirates. The Rules in this module should not be relied upon to interpret or determine the application of the criminal laws of the U.A.E.

15. Under Article 3 of the Federal Law No.4 of 2002, a Relevant Person may be criminally liable for the offence of money laundering if such an activity is intentionally committed in its name or for its account. Relevant Persons are also reminded that:

    a. the failure to report suspicions of money laundering;

    b. "tipping off"; and

    c. assisting in the commission of money laundering,

    may each constitute a criminal offence that is punishable under the laws of the U.A.E.

Financial Action Task Force

16. The Financial Action Task Force is an inter-governmental body whose purpose is the development and promotion of international standards to combat money laundering and terrorist financing.

17. The DFSA has had regard to the FATF Recommendations in making these Rules. A Relevant Person may wish to refer to the FATF Recommendations and interpretive notes to assist it in complying with these Rules. However, in the event that a FATF Recommendation or interpretive note conflicts with a Rule in this module, the relevant Rule takes precedence.

18. A Relevant Person may also wish to refer to the FATF typology reports which may assist in identifying new money laundering threats and which provide information on money laundering and terrorist financing methods. The FATF typology reports cover many pertinent topics for Relevant Persons, including corruption, new payment methods, money laundering using trusts and company service providers, and vulnerabilities of free trade zones. These typology reports can be found on the FATF website www.fatf-gafi.org.

19. The U.A.E., as a member of the United Nations, is required to comply with sanctions issued and passed by the United Nations Security Council (UNSC). These UNSC obligations apply in the DIFC and their importance is emphasised by specific obligations contained in this module requiring Relevant Persons to establish and maintain effective systems and controls to make appropriate use of UNSC sanctions and resolutions (See chapter 10).

20. The FATF has issued guidance on a number of specific UNSC sanctions and resolutions regarding the countering of the proliferation of weapons of mass destruction. Such guidance has been issued to assist in implementing the targeted financial sanctions and activity based financial prohibitions. This guidance can be found on the FATF website www.fatf-gafi.org.

21. In relation to unilateral sanctions imposed in specific jurisdictions such as the European Union, the U.K. (HM Treasury) and the U.S. Office of Foreign Assets Control, the DFSA expects a Relevant Person to consider and take positive steps to ensure compliance where required or appropriate.

3 INTERPRETATION AND TERMINOLOGY

3.1 Interpretation

3.1.1 A reference in this module to "money laundering" in lower case includes a reference to terrorist financing unless the context provides or implies otherwise.

Guidance

Chapter 6, section 6.2, of the General (GEN) module sets out how to interpret the Rulebook, including this module.

3.2 Glossary for AML

Guidance

1. A Relevant Person should note that, in order to make this module easier to read, some of the defined terms in this module have not had the initial letter of each word capitalised in the same way as in other Rulebook modules.

2. Some of the defined terms and abbreviations in this module may also be found in the DFSA's Glossary module (GLO). Where a defined term in this module does not appear in Rule 3.2.1, a Relevant Person should look in GLO to find the meaning.

3.2.1 In this module, the terms and abbreviations listed in the table below have the following meanings:

AML	Means either "anti-money laundering" or this Anti-Money Laundering, Counter-Terrorist Financing and Sanctions module depending on the context.
AMLSCU	Means the Anti-Money Laundering Suspicious Cases Unit of the U.A.E. Central Bank.
Auditor	Means a partnership or company that is registered by the DFSA to provide audit services to: (a) an Authorised Person; (b) a Domestic Fund; or (c) a Public Listed Company.
Authorised Person	Means an Authorised Firm or an Authorised Market Institution.
beneficial owner	Means, in relation to a customer, a natural person: (a) who ultimately controls, directly or indirectly, a customer; (b) who, in relation to a customer which is a legal person or arrangement, exercises (whether directly or indirectly) ultimate effective control over the person or arrangement, or the management of such person or arrangement;

	(c) who ultimately owns or has an ownership interest in the customer, whether legally or beneficially, directly or indirectly; (d) on whose behalf or for whose benefit a transaction is being conducted; or (e) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act. A person not falling into (a) or (b) is not a beneficial owner by reason of (c) or (d) if, having regard to a risk-based assessment of the customer, the ownership interest is small and in the circumstances poses no or negligible risk of money laundering. In (a) to (e), a reference to a "customer" includes a customer account, customer assets and the underlying legal person or arrangements which constitute or make up the customer, customer account or customer assets.
Branch	Means a place of business within the DIFC: (a) which has no separate legal personality; (b) which forms a legally dependant part of a Relevant Person whose principal place of business and head office is in a jurisdiction other than the DIFC; and (c) through which the Relevant Person carries on business in or from the DIFC.
Client	Has the meaning in chapter 2 of the Conduct of Business module.
company service provider	Means a person, not falling into parts (1)(a) to (e) or (g) of the definition of a DNFBP that, by way of business, provides any of the following services to a customer: (a) acting as a formation agent of legal persons; (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; or (d) acting as (or arranging for another person to act as) a nominee shareholder for another person.
Contract of Insurance	Has the meaning in GEN Rule A4.1.1.
CTF	Means counter-terrorist financing.
customer	Unless otherwise provided, means:

	(a) a person where, in relation to a business relationship between the person and a Relevant Person, there is a firm intention or commitment by each party to enter into a contractual relationship or where there is a firm commitment by each party to enter into a transaction, in connection with a product or service provided by the Relevant Person; (b) a Client of an Authorised Firm; (c) a Member or prospective Member of, or an applicant for admission of Securities to trading on, an Authorised Market Institution; (d) in relation to a Single Family Office, a member of the Single Family; or (e) a person with whom a Relevant Person is otherwise establishing or has established a business relationship.
Customer Due Diligence (CDD)	Has the meaning in Rule 7.3.1.
Designated Non-Financial Business or Profession (DNFBP)	Means: (1) The following class of persons whose business or profession is carried on in or from the DIFC: (a) a real estate developer or agency which carries out transactions with a customer involving the buying or selling of real property; (b) a dealer in precious metals or precious stones; (c) a dealer in any saleable item of a price equal to or greater than $15,000; (d) a law firm, notary firm, or other independent legal business; (e) an accounting firm, audit firm or insolvency firm; (f) a company service provider; or (g) a Single Family Office. (2) A person who is an Authorised Person or an Auditor is not a DNFBP.
DIFC entity	Means a legal person which is incorporated or registered in the DIFC (excluding a registered Branch).
Domestic Fund	A Fund established or domiciled in the DIFC.
Employee	Means an individual: (a) who is employed or appointed by a person in connection with that person's business, whether under a contract of service or for services or

	otherwise; or (b) whose services, under an arrangement between that person and a third party, are placed at the disposal and under the control of that person.
Enhanced Customer Due Diligence	Means undertaking Customer Due Diligence and the enhanced measures under Rule 7.4.1.
FATF	Means the Financial Action Task Force.
FATF Recommendations	Means the publication entitled the "International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation" as published and amended from time to time by FATF.
Federal Law No. 1 of 2004	Means UAE Federal Law No. 1 of 2004 regarding Combating Terrorism Offences.
Federal Law No. 4 of 2002	Means UAE Federal Law No. 4 of 2002 regarding the Criminalisation of Money Laundering.
Financial Institution	A regulated or unregulated entity, whose activities are primarily financial in nature.
Financial Services Regulator	Means a regulator of financial services activities established in a jurisdiction other than the DIFC.
Governing Body	Means the board of directors, partners, committee of management or other governing body of: (a) a Body Corporate or Partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to profit.
Group	Means a Group of entities which includes an entity (the 'first entity') and: (a) any parent of the first entity; and (b) any subsidiaries (direct or indirect) of the parent or parents in (a) or the first entity; or (c) for a legal person which is not a body corporate, refers to that person and any other associated legal persons who are in an equivalent relationship to that in (a) and (b).
Law	Means the Regulatory Law 2004.
legal person	Means any entity other than a natural person that can establish a customer relationship with a Relevant Person or otherwise own property. This can include companies, bodies corporate or unincorporate, trusts, foundations, anstalten, partnerships, associations, states and governments and other relevantly similar entities.

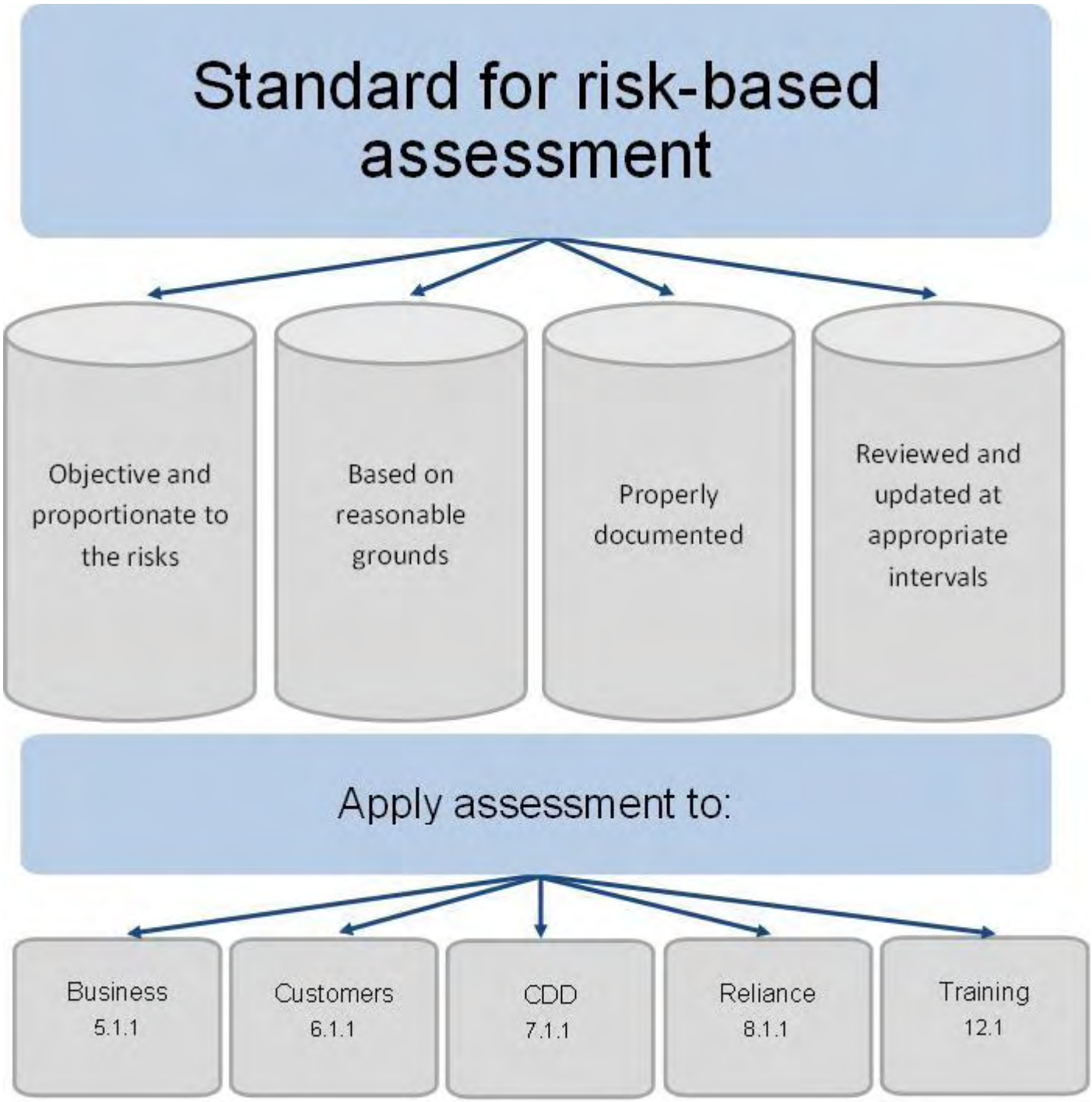
Member	A person admitted as a member of an Authorised Market Institution in accordance with its Business Rules.
Money Laundering Reporting Officer (MLRO)	Means the person appointed by a Relevant Person pursuant to Rule 11.2.1(1).
natural person	Means an individual.
person	Means a natural or legal person.
Politically Exposed Person (PEP)	Means a natural person (and includes, where relevant, a family member or close associate) who is or has been entrusted with a prominent public function, including but not limited to, a head of state or of government, senior politician, senior government, judicial or military official, ambassador, senior executive of a state owned corporation, or an important political party official, but not middle ranking or more junior individuals in these categories.
Prescribed Low Risk Customer	Means any of the following customer types: (a) an Authorised Firm; (b) an Authorised Market Institution; (c) a Financial Institution whose entire operations are subject to regulation, including AML, by a Financial Services Regulator or other competent authority in a jurisdiction with AML regulations which are equivalent to the standards set out in the FATF Recommendations and it is supervised for compliance with such regulations; (d) a Subsidiary of a Financial Institution referred to in (c), provided that the law that applies to the parent company ensures that the Subsidiary also observes the same AML standards as its Parent; (e) a law firm, notary firm, or other independent legal business or an equivalent person in another jurisdiction whose entire operations are subject to AML regulation and supervision by a competent authority in a jurisdiction with AML regulations which are equivalent to the standards set out in the FATF Recommendations; (f) an accounting firm, Auditor or other audit firm or insolvency firm or an equivalent person in another jurisdiction whose entire operations are subject to AML regulation and supervision by a competent authority in a jurisdiction with AML regulations which are equivalent to the standards set out in the FATF Recommendations; (g) a company whose Securities are listed on a Regulated Exchange and which is subject to disclosure obligations broadly equivalent to those set

	out in the Markets Rules; (h) a government body or a non-commercial government entity in the U.A.E. or a FATF member country; and (i) a customer where the business relationship is limited to the provision of one or more of the following products or services: (i) a Contract of Insurance which is non-life insurance; (ii) a Contract of Insurance which is a life insurance product with no investment return or redemption or surrender value; (iii) a Contract of Insurance which is life insurance where the annual premium is no more than $1,000 or where a single premium of no more than $2,500 is paid; (iv) a Contract of Insurance for the purposes of a pension scheme where the contract contains no surrender clause and cannot be used as collateral; (v) a Contract of Insurance which is a reinsurance contract not falling into (i) to (iv) which is ceded by an insurer who is a regulated Financial Institution; (vi) a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an Employee's wages and the scheme rules do not permit the assignment of a member's interest under the scheme; or (vii) arbitration, litigation or advice on litigation prospects.
Public Listed Company	Has the meaning given in Article 97(2) of the Regulatory Law 2004.
Regulated Exchange	Means an exchange regulated by a Financial Services Regulator.
Regulated Financial Institution	A person who does not hold a Licence but who is authorised in a jurisdiction other than the DIFC to carry on any financial service by another Financial Services Regulator.
Relevant Person	Has the meaning in Rule 1.1.2.
senior management	Means, in relation to a Relevant Person every member of the Relevant Person's executive management and includes: (a) for a DIFC entity, every member of the Relevant Person's Governing Body;

	(b) for a Branch, the person or persons who control the day to day operations of the Relevant Person in the DIFC and would include, at a minimum, the SEO or equivalent, such as the managing director; or (c) for an Auditor, every member of the Relevant Person's executive management in the U.A.E.
Simplified Customer Due Diligence	Means Customer Due Diligence as modified under Rule 7.5.1.
Single Family	Has the meaning given to that term in the DIFC Single Family Office Regulations.
Single Family Office	Has the meaning given to that term in the DIFC Single Family Office Regulations.
source of funds	Means the origin of customer's funds which relate to a transaction or service and includes how such funds are connected to a customer's source of wealth.
source of wealth	Means how the customer's global wealth or net worth is or was acquired or accumulated.
Subsidiary	Has the meaning given in Schedule 1 to the DIFC Companies Law.
Suspicious Activity Report (SAR)	Means a report in the prescribed format regarding suspicious activity (including a suspicious transaction) made to the AMLSCU under Rule 13.3.1(c).
transaction	Means any transaction undertaken by a Relevant Person for or on behalf of a customer in the course of carrying on a business in or from the DIFC.

4 APPLYING A RISK-BASED APPROACH

Figure 1. The Risk-Based Approach (RBA)



4.1 The risk-based approach

4.1.1 A Relevant Person must:

(a) assess and address its AML risks under this module by adopting an approach which is proportionate to the risks to which the person is exposed as a result of the nature of its business, customers, products, services and any other matters which are relevant in the context of money laundering; and

(b) ensure that, when undertaking any risk-based assessment for the purposes of complying with a requirement of this module, such assessment is:

(i) objective and proportionate to the risks;

(ii) based on reasonable grounds;

(iii) properly documented; and

(iv) reviewed and updated at appropriate intervals.

Guidance

1. Rule 4.1.1 requires a Relevant Person to adopt an approach to AML which is proportionate to the risks. This is called the "risk-based approach" ("RBA") and is illustrated in figure 1 above. The DFSA expects the RBA to be a key part of the Relevant Person's money laundering compliance culture and to cascade down from the senior management to the rest of the organisation. Embedding the RBA within its business allows a Relevant Person to make decisions and allocate AML resources in the most efficient and effective way.

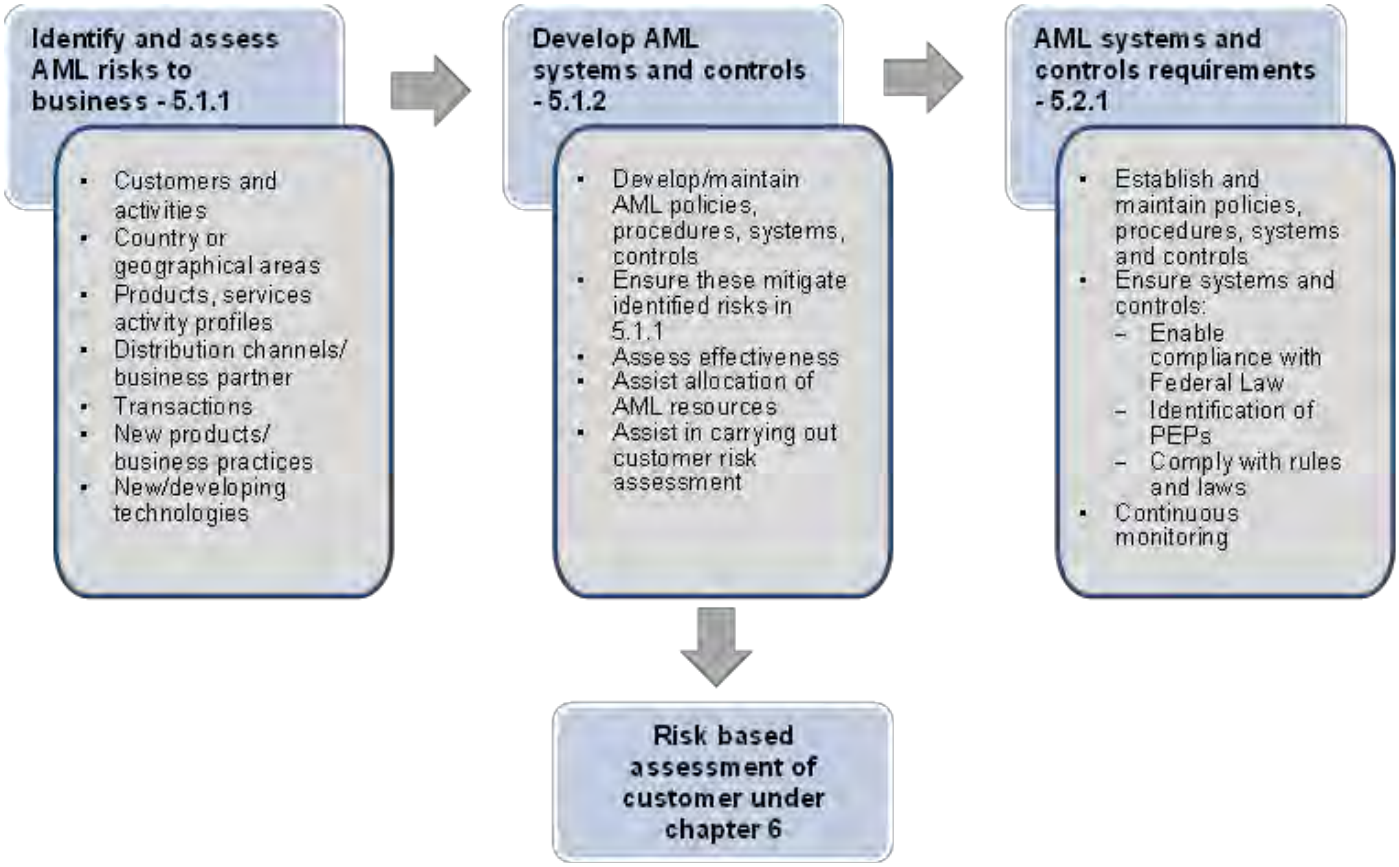
2. In implementing the RBA, a Relevant Person is expected to have in place processes to identify, assess, monitor, manage and mitigate money laundering risks. The general principle is that where there are higher risks of money laundering, a Relevant Person is required to take enhanced measures to manage and mitigate those risks, and that, correspondingly, when the risks are lower, simplified measures are permitted. Simplified measures are not permitted where there is a suspicion of money laundering.

3. The RBA discourages a "tick-box" approach to AML. Instead a Relevant Person is required to assess relevant money laundering risks and adopt a proportionate response to such risks. The outcome of using the RBA is akin to using a sliding scale, where the type of CDD undertaken on each customer will ultimately depend on the outcome of the risk-based assessment made of such customer under this chapter.

4. The Rules regarding record-keeping for the purposes of this module are in section 14.4. These Rules apply in relation to Rule 4.1.1(b)(iii).

5 BUSINESS RISK ASSESSMENT

Figure 2. Business risk-based assessment



5.1 Assessing business AML risks

5.1.1 A Relevant Person must:

(a) take appropriate steps to identify and assess money laundering risks to which its business is exposed, taking into consideration the nature, size and complexity of its activities;

(b) when identifying and assessing the risks in (a), take into account, to the extent relevant, any vulnerabilities relating to:

(i) its type of customers and their activities;

(ii) the countries or geographic areas in which it does business;

(iii) its products, services and activity profiles;

(iv) its distribution channels and business partners;

(v) the complexity and volume of its transactions;

(vi) the development of new products and new business practices, including new delivery mechanisms, channels and partners; and

(vii) the use of new or developing technologies for both new and pre-existing products;

(c) take appropriate measures to ensure that any risk identified as part of the assessment in (a) is taken into account in its day to day operations, including in relation to:

(i) the development of new products;

(ii) the taking on of new customers; and

(iii) changes to its business profile.

5.1.2 A Relevant Person must use the information obtained in undertaking its business risk assessment to:

(a) develop and maintain its AML policies, procedures, systems and controls required by Rule 5.2.1;

(b) ensure that its AML policies, procedures, systems and controls adequately mitigate the risks identified as part of the assessment in Rule 5.1.1;

(c) assess the effectiveness of its AML policies, procedures, systems and controls as required by Rule 5.2.1(c);

(d) assist in allocation and prioritisation of AML resources; and

(e) assist in the carrying out of the customer risk assessment under chapter 6.

Guidance

1. Unless a Relevant Person understands the money laundering risks to which it is exposed, it cannot take appropriate steps to prevent its business being used for the purposes of money laundering. Money laundering risks vary from business to business depending on the nature of the business, the type of customers a business has, and the nature of the products and services sold.

2. Using the RBA, a Relevant Person should assess its own vulnerabilities to money laundering and to take all reasonable steps to eliminate or manage such risks. The results of this assessment will also feed into the Relevant Person's risk assessment of its customers under chapter 6. For instance, if a Relevant Person reasonably concludes that a particular business line poses a negligible risk of money laundering, it may decide, using the RBA, that all its customers in that business line should be treated as posing a lower risk of money laundering, and it may apply Simplified Customer Due Diligence.

5.2 AML systems and controls

5.2.1 A Relevant Person must:

(a) establish and maintain effective policies, procedures, systems and controls to prevent opportunities for money laundering in relation to the Relevant Person and its activities;

(b) ensure that its systems and controls in (a):

(i) include the provision to the Relevant Person's senior management of regular management information on the operation and effectiveness of

its AML systems and controls necessary to identify, measure, manage and control the Relevant Person's money laundering risks;

(ii) enable it to determine whether a customer or a beneficial owner is a Politically Exposed Person; and

(iii) enable the Relevant Person to comply with these Rules, Federal Law No.4 of 2002, Federal Law No.1 of 2004 and any other relevant Federal laws; and

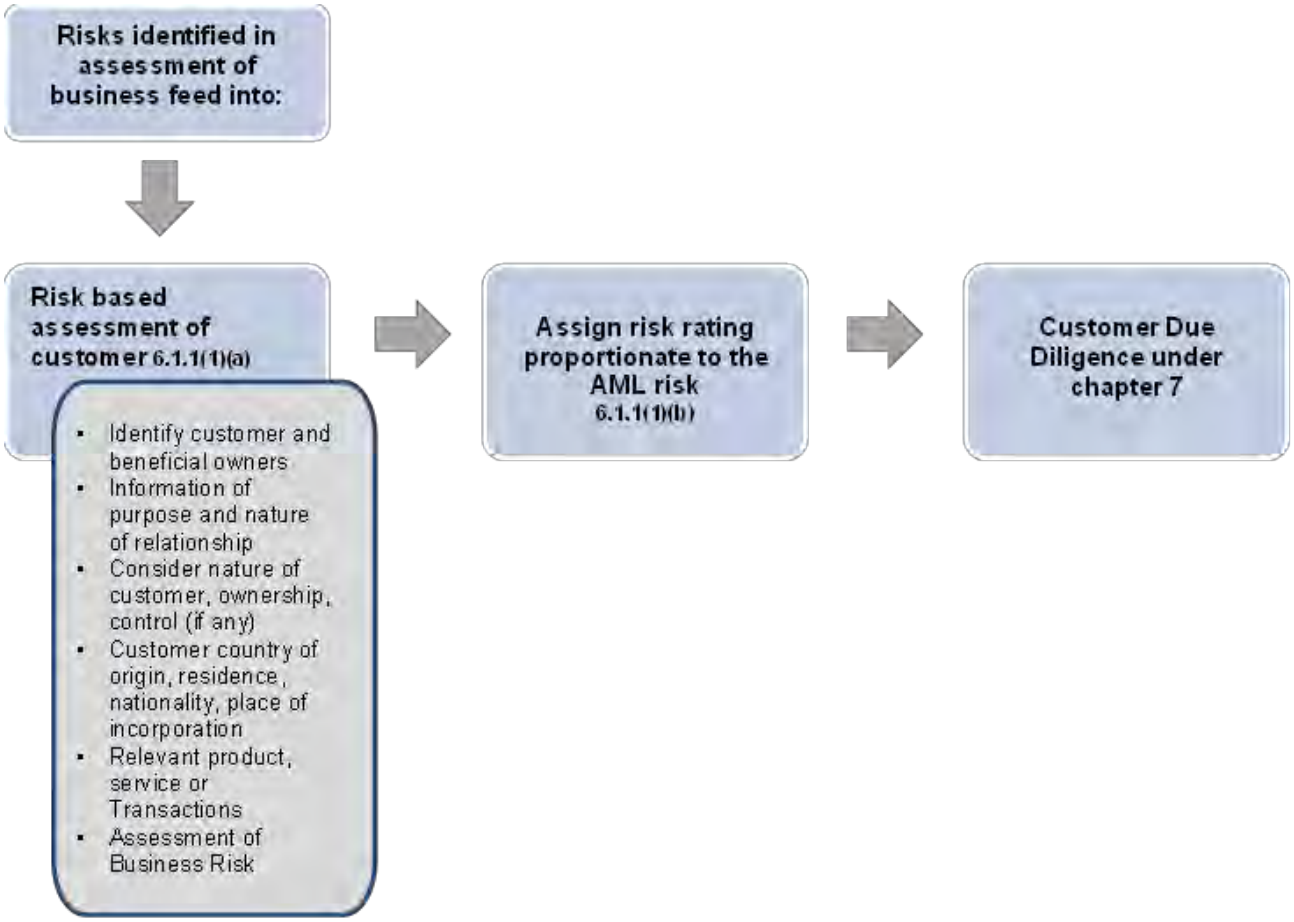
(c) ensure that regular risk assessments are carried out on the adequacy of the Relevant Person's AML systems and controls to ensure that they continue to enable it to identify, assess, monitor and manage money laundering risk adequately, and are comprehensive and proportionate to the nature, scale and complexity of its activities.

Guidance

In Rule 5.2.1(c) the regularity of risk assessments will depend on the nature, size and complexity of the Relevant Person's business.

6 CUSTOMER RISK ASSESSMENT

Figure 3. Customer risk-based assessment



Guidance

1. This chapter prescribes the risk-based assessment that must be undertaken by a Relevant Person on a customer and the proposed business relationship, transaction or product. The outcome of this process is to produce a risk rating for a customer, which determines the level of Customer Due Diligence (CDD) which will apply to that customer under chapter 7. That chapter prescribes the requirements of CDD and of Enhanced CDD for high risk customers and Simplified CDD for low risk customers.

2. CDD in the context of AML refers to the process of identifying a customer, verifying such identification and monitoring the customer's business and money laundering risk on an on-going basis. CDD is required to be undertaken following a risk-based assessment of the customer and the proposed business relationship, transaction or product.

3. Relevant Persons should note that the ongoing CDD requirements in Rule 7.6.1 require a Relevant Person to ensure that it reviews a customer's risk rating to ensure that it remains appropriate in light of the AML risks.

4. The DFSA is aware that in practice there will often be some degree of overlap between the customer risk assessment and CDD. For example, a Relevant Person may undertake some aspects of CDD, such as identifying a beneficial owner, when it performs a risk assessment of the customer. Conversely, a Relevant Person may also obtain relevant information as part of CDD which has an impact on its customer risk assessment. Examples of such relevant information include information on the source of funds or wealth or information on the ownership and control structure of the customer. Where information obtained as part of CDD

of a customer affects the risk rating of a customer, the change in risk rating should be reflected in the degree of CDD undertaken.

6.1 Assessing customer AML risks

6.1.1 (1) A Relevant Person must:

(a) undertake a risk-based assessment of every customer; and

(b) assign the customer a risk rating proportionate to the customer's money laundering risks.

(2) The customer risk assessment in (1) must be completed prior to undertaking Customer Due Diligence for new customers, and whenever it is otherwise appropriate for existing customers.

(3) A Relevant Person may assign a low risk rating to a Prescribed Low Risk Customer without the need to undertake the risk-based assessment of the customer under (1)(a).

(4) Where a Relevant Person has assigned a customer a low risk rating under (3) and the customer ceases to meet the criteria to be a Prescribed Low Risk Customer the Relevant Person must undertake the risk-based assessment of the customer under (1)(a).

(5) When undertaking a risk-based assessment of a customer under (1)(a) a Relevant Person must:

(a) identify the customer and any beneficial owner;

(b) obtain information on the purpose and intended nature of the business relationship;

(c) take into consideration the nature of the customer, its ownership and control structure, and its beneficial ownership (if any);

(d) take into consideration the nature of the customer business relationship with the Relevant Person;

(e) take into consideration the customer's country of origin, residence, nationality, place of incorporation or place of business;

(f) take into consideration the relevant product, service or transaction; and

(g) take into consideration the outcomes of business risk assessment under chapter 5.

6.1.2 A Relevant Person must not establish a business relationship with the customer which is a legal person if the ownership or control arrangements of the customer prevent the Relevant Person from identifying one or more of the customer's beneficial owners.

Guidance on the customer risk assessment

1. In assessing the nature of a customer, a Relevant Person should consider such factors as the legal structure of the customer, the customer's business or occupation, the location of the customer's business and the commercial rationale for the customer's business model.

2. In assessing the customer business relationship, a Relevant Person should consider how the customer is introduced to the Relevant Person and how the customer is serviced by the Relevant Person, including for example, whether the Person will be a private banking client, will open a bank account or whether the business relationship will be purely advisory.

3. The risk assessment of a customer, which is illustrated in figure 3 above, requires a Relevant Person to allocate an appropriate risk rating to every customer. The DFSA would expect risk ratings to be either descriptive, such as "low", "medium" or "high", or a sliding numeric scale such as 1 for the lowest risk to 10 for the highest. Depending on the outcome of a Relevant Person's assessment of its customer's money laundering risk, a Relevant Person should decide to what degree CDD will need to be performed.

4. Using the RBA, a Relevant Person could, when assessing two customers with near identical risk profiles, consider that one is high risk and the other low risk. This may occur, for example, where both customers may be from the same high risk country, but one customer may be a customer in relation to a low risk product, such as those in part (i) of the definition of a Prescribed Low Risk Customer, or may be a long-standing customer of a Group company who has been introduced to the Relevant Person.

5. In Rule 6.1.2, ownership arrangements which may prevent the Relevant Person from identifying one or more beneficial owners include bearer shares and other negotiable instruments in which ownership is determined by possession.

Guidance on the term "customer"

6. The point at which a person becomes a customer will vary from business to business. However, the DFSA considers that it would usually occur at or prior to the business relationship being formalised, for example, by the signing of a client agreement or the acceptance of terms of business.

7. The DFSA does not consider that a person would be a customer of a Relevant Person merely because such person receives marketing information from a Relevant Person or where a Relevant Person refers a person who is not a customer to a third party (including a Group member).

8. The DFSA considers that a counterparty would generally be a "customer" for the purposes of this module and would therefore require a Relevant Person to undertake CDD on such a person. However, this would not include a counterparty in a transaction undertaken on a Regulated Exchange. Nor would it include suppliers of ordinary business services, for consumption by the Relevant Person such as cleaning, catering, stationery, IT or other similar services.

9. A Representative Office should not have any customers in relation to its DIFC operations.

Guidance on high risk customers

10. In complying with Rule 6.1.1, the DFSA considers that a Relevant Person should consider the following factors, which may indicate that a customer poses a higher risk of money laundering:

    a. the business relationship is conducted in unusual circumstances (e.g. significant unexplained geographic distance between the location of the Relevant Person and the customer);

    b. legal persons or arrangements that are personal investment vehicles;

    c. companies that have nominee shareholders or directors or shares in bearer form;

d. businesses that are cash-intensive;

e. the ownership structure of the legal person appears unusual or excessively complex given the nature of the legal person's business or activities;

f. countries identified by credible sources, such as mutual evaluation or detailed assessment reports or published follow-up reports, as not having adequate AML systems;

g. countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations Security Council or identified by credible sources as having significant levels of corruption or other criminal activity;

h. countries or geographic areas identified by credible sources as providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country;

i. a person not meeting the definition of a PEP but whose high profile or influence poses an elevated risk of corruption;

j. anonymous transactions (which may include cash);

k. private banking relationships;

l. non-face-to-face business relationships or transactions;

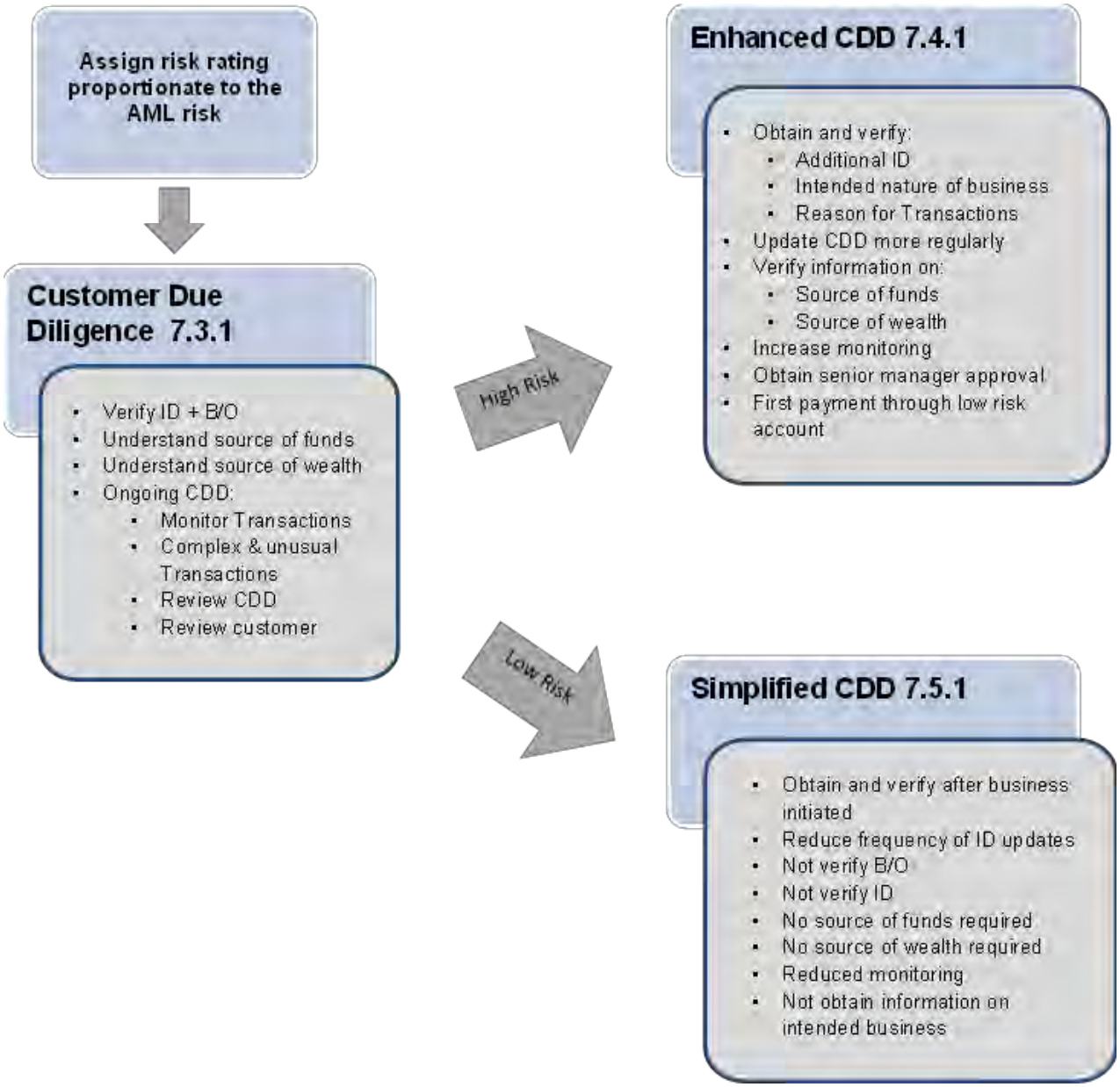
m. payment received from unknown or un-associated third parties;

n. discretionary trusts; and

o. charitable trusts and waqfs.

7 CUSTOMER DUE DILIGENCE

Figure 4. CDD



7.1 Requirement to undertake customer due diligence

7.1.1 (1) A Relevant Person must:

(a) undertake Customer Due Diligence under Rule 7.3.1 for each of its customers; and

(b) in addition to (a), undertake Enhanced Customer Due Diligence under Rule 7.4.1 in respect of any customer it has assigned as high risk.

(2) A Relevant Person may undertake Simplified Customer Due Diligence in accordance with Rule 7.5.1 by modifying Customer Due Diligence under Rule 7.3.1 for any customer it has assigned as low risk.

Guidance

A Relevant Person should undertake CDD in a manner proportionate to the customer's money laundering risks identified under Rule 6.1.1(1). This means that all customers are subject to CDD under Rule 7.3.1. However, for high risk customers, additional Enhanced CDD measures should also be undertaken under Rule 7.4.1. For low risk customers, Rule 7.3.1 may be modified according to the risks in accordance with Rule 7.5.1.

7.2 Timing of customer due diligence

7.2.1 (1) A Relevant Person must:

(a) undertake the appropriate Customer Due Diligence under Rule 7.3.1 (a) to (c) when it is establishing a business relationship with a customer; and

(b) undertake the appropriate Customer Due Diligence under Rule 7.3.1(d) after establishing a business relationship with a customer.

(2) A Relevant Person must also undertake appropriate Customer Due Diligence if, at any time:

(a) in relation to an existing customer, it doubts the veracity or adequacy of documents, data or information obtained for the purposes of Customer Due Diligence;

(b) it suspects money laundering in relation to a person; or

(c) there is a change in risk-rating of the customer, or it is otherwise warranted by a change in circumstances of the customer.

(3) A Relevant Person may establish a business relationship with a customer before completing the verification required by Rule 7.3.1 if the following conditions are met:

(a) deferral of the verification of the customer or beneficial owner is necessary in order not to interrupt the normal conduct of a business relationship;

(b) there is little risk of money laundering occurring and any such risks identified can be effectively managed by the Relevant Person;

(c) in relation to a bank account opening, there are adequate safeguards in place to ensure that the account is not closed and transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder) before verification has been completed; and

(d) subject to (4), the relevant verification is completed as soon as reasonably practicable and in any event no later than 30 days after the establishment of a business relationship.

(4) Where a Relevant Person is not reasonably able to comply with the 30 day requirement in (3)(d), it must, prior to the end of the 30 day period:

(a) document the reason for its non-compliance;

(b) complete the verification in (3) as soon as possible; and

(c) record the non-compliance event in its annual AML Return.

(5) The DFSA may specify a period within which a Relevant Person must complete the verification required by (3) failing which the DFSA may direct the Relevant Person to cease any business relationship with the customer.

Guidance

1. For the purposes of Rule 7.2.1(2)(a), examples of situations which might lead a Relevant Person to have doubts about the veracity or adequacy of documents, data or information previously obtained could be where there is a suspicion of money laundering in relation to that customer, where there is a material change in the way that the customer's account is operated, which is not consistent with the customer's business profile, or where it appears to the Relevant Person that a person other than the customer is the real customer.

2. In Rule 7.2.1(3)(a), situations that the Relevant Person may take into account include, for example, accepting subscription monies during a short offer period or executing a time critical transaction, which if not executed immediately, would or may cause a customer to incur a financial loss due to price movement or loss of opportunity or when a customer seeks immediate insurance cover.

3. When complying with Rule 7.2.1, a Relevant Person should also, where relevant, consider Rule 7.7.1 regarding failure to conduct or complete CDD and chapter 13 regarding SARs and tipping off.

4. For the purposes of Rule 7.2.1(3)(d), the DFSA considers that in most situations as soon as reasonably practicable would be within 30 days after the establishment of a business relationship. However, it will depend on the nature of the customer business relationship.

7.3 Customer due diligence requirements

7.3.1 (1) In undertaking Customer Due Diligence required by Rule 7.1.1(1)(a) a Relevant Person must:

(a) verify the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source;

(b) understand the customer's source of funds;

(c) understand the customer's source of wealth; and

(d) undertake on-going due diligence of the customer business relationship under Rule 7.6.1.

(2) In complying with (1)(a) for life insurance or other similar policies, a Relevant Person must:

(a) verify the identity of any named beneficiaries of the insurance policy; and

(b) verify the identity of the persons in any class of beneficiary, or where these are not identifiable, ensure that it obtains sufficient information to be able to verify the identity of such persons at the time of payout of the insurance policy.

(3) Where a customer, or a beneficial owner of the customer, is a Politically Exposed Person, a Relevant Person must ensure that, in addition to (1) it also:

(a) increases the degree and nature of monitoring of the business relationship, in order to determine whether the customer's transactions or activities appear unusual or suspicious; and

(b) obtains the approval of senior management to commence a business relationship with the customer,

unless the customer is a Prescribed Low Risk Customer.

Guidance on CDD

1. A Relevant Person should, in complying with Rule 7.3.1(1)(a), and adopting the RBA, obtain, verify and record, for every customer who is a natural person, the following identification information:

   a. full name (including any alias);

   b. date of birth;

   c. nationality;

   d. legal domicile; and

   e. current residential address (not a P.O. box).

2. Items (a) to (c) above should be obtained by sighting a current valid passport or, where a customer does not own a passport, an official identification document which includes a photograph. The concept of domicile generally refers to the place which a person regards as his permanent home and with which he has the closest ties or which is his place of origin.

3. A Relevant Person should, in complying with Rule 7.3.1(1)(a), and adopting the RBA, obtain, verify and record, for every customer which is a legal person, the following identification information:

   a. full business name and any trading name;

   b. registered or business address;

   c. date of incorporation or registration;

   d. place of incorporation or registration;

e. a valid commercial or professional licence;

f. the identity of the directors, partners, trustees or equivalent persons with executive authority of the legal person; and

g. for a trust, a certified copy of the trust deed to ascertain the nature and purpose of the trust and documentary evidence of the appointment of the current trustees.

4. In complying with Rule 7.3.1(1)(a), it may not always be possible to obtain original documents. Where identification documents cannot be obtained in original form, for example, because a Relevant Person has no physical contact with the customer, the Relevant Person should obtain a copy certified as a true copy by a person of good standing such as a registered lawyer or notary, a chartered accountant, a bank manager, a police officer, an Employee of the person's embassy or consulate, or other similar person. The DFSA considers that downloading publicly-available information from an official source (such as a regulator's or other official government website) is sufficient to satisfy the requirements of Rule 7.3.1(1)(a). The DFSA also considers that CDD information and research obtained from a reputable company or information-reporting agency may also be acceptable as a reliable and independent source as would banking references and, on a risk-sensitive basis, information obtained from researching reliable and independent public information found on the internet or on commercial databases.

5. For higher risk situations the DFSA would expect identification information to be independently verified, using both public and non-public sources. For lower risk situations, not all of the relevant identification information would need to be verified.

6. In complying with Rule 7.3.1(1) (b) and (c), a Relevant Person is required to "understand" a customer's source of funds and wealth. This would mean obtaining information from the customer or from a publicly-available source on the source of funds and wealth. For a public company, this might be achieved by looking at their published accounts. For a natural or legal person, this might involve including a question on source of funds and wealth in an application form or client questionnaire. Understanding a customer's source of funds and wealth is also important for the purposes of undertaking ongoing due diligence under Rule 7.3.1(1)(d).

7. An insurance policy which is similar to a life policy would include life-related protection, or a pension, or investment product which pays out to the policy holder or beneficiary upon a particular event occurring or upon redemption.

Guidance on verification of beneficial owner

8. In determining whether an individual meets the definition of a beneficial owner or controller, regard should be had to all the circumstances of the case, in particular the size of an individual's legal or beneficial ownership in a transaction. The question of what is a "small" ownership interest for the purposes of the definition of a beneficial owner will depend on the individual circumstances of the customer. The DFSA considers that the question of whether an ownership interest is small should be considered in the context of the Relevant Person's knowledge of the customer and the customer risk assessment and the risk of money laundering.

9. When verifying beneficial owners under Rule 7.3.1(1)(a), a Relevant Person is expected to adopt a substantive (as opposed to form over substance) approach to CDD for legal persons. Adopting a substantive approach means focusing on the money laundering risks of the customer and the product/service and avoiding an approach which focusses purely on the legal form of an arrangement or sets fixed percentages at which beneficial owners are identified (or not). It should take all reasonable steps to establish and understand a corporate customer's legal ownership and control and to identify the beneficial owner. The DFSA does not set explicit ownership or control thresholds in defining the beneficial owner because the DFSA considers that the applicable threshold to adopt will ultimately depend on the risks associated with the customer, and so the DFSA expects a Relevant Person to adopt the RBA and justify on reasonable grounds an approach which is proportionate to the risks identified. A Relevant Person should not set fixed thresholds for identifying the beneficial owner without objective and documented justification as required by Rule 4.1.1. An overly formal approach to defining the beneficial owner may result in a criminal "gaming" the system by always keeping his financial interest below the relevant threshold.

10. The DFSA considers that in some circumstances no threshold should be used when identifying beneficial owners because it may be important to identify all underlying beneficial owners in order to ensure that they are not associated or connected in some way. This may be appropriate where there are a small number of investors in an account or fund, each with a significant financial holding and the customer-specific risks are higher. However, where the customer-specific risks are lower, a threshold can be appropriate. For example, for a low-risk corporate customer which, combined with a lower-risk product or service, a percentage threshold may be appropriate for identifying "control" of the legal person for the purposes of the definition of a beneficial owner.

11. For a retail investment fund which is widely-held and where the investors invest via pension contributions, the DFSA would not expect the manager of the fund to look through to any underlying investors where there are none with any material control or ownership levels in the fund. However, for a closely-held fund with a small number of investors, each with a large shareholding or other interest, the DFSA would expect a Relevant Person to identify and verify each of the beneficial owners, depending on the risks identified as part of its risk-based assessment of the customer. For a corporate health policy with defined benefits, the DFSA would not expect a Relevant Person to identify the beneficial owners.

12. Where a Relevant Person carries out identification and verification in respect of actual and potential beneficial owners of a trust, this should include the trustee, settlor, the protector, the enforcer, beneficiaries, other persons with power to appoint or remove a trustee and any person entitled to receive a distribution, whether or not such person is a named beneficiary.

Guidance on politically exposed persons

13. Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to a Relevant Person as their position may make them vulnerable to corruption. This risk also extends to members of their families and to known close associates. Politically Exposed Person ("PEP") status itself does not, of course, incriminate individuals or entities. It does, however, put the customer into a higher risk category.

14. Generally, a foreign PEP presents a higher risk of money laundering because there is a greater risk that such person, if he was committing money laundering, would attempt to place his money offshore where the customer is less likely to be recognised as a PEP and where it would be more difficult for law enforcement agencies in his home jurisdiction to confiscate or freeze his criminal property.

15. Corruption-related money laundering risk increases when a Relevant Person deals with a PEP. Corruption may involve serious crimes and has become the subject of increasing global concern. Corruption offences are predicate crimes under the Federal Law No. 4 of 2002. A Relevant Person should note that customer relationships with family members or close associates of PEPs involve similar risks to those associated with PEPs themselves.

16. The DFSA considers that after leaving office a PEP may remain a higher risk for money laundering if such person continues to exert political influence or otherwise pose a risk of corruption.

7.4 Enhanced customer due diligence

7.4.1 Where a Relevant Person is required to undertake Enhanced Customer Due Diligence under Rule 7.1.1(1)(b) it must, to the extent applicable to the customer:

(a) obtain and verify additional:

(i) identification information on the customer and any beneficial owner;

(ii) information on the intended nature of the business relationship; and

(iii) information on the reasons for a transaction;

(b) update more regularly the Customer Due Diligence information which it holds on the customer and any beneficial owners;

(c) verify information on:

(i) the customer's source of funds;

(ii) the customer's source of wealth;

(d) increase the degree and nature of monitoring of the business relationship, in order to determine whether the customer's transactions or activities appear unusual or suspicious; and

(e) obtain the approval of senior management to commence a business relationship with a customer; and

(f) where applicable, require that any first payment made by a customer in order to open an account with a Relevant Person must be carried out through a bank account in the customer's name with a Prescribed Low Risk Customer of type (a), (c) or (d).

Guidance

1. In Rule 7.4.1 Enhanced CDD measures are only mandatory to the extent that they are applicable to the relevant customer or the circumstances of the business relationship and to the extent that the risks would reasonably require it. Therefore, the extent of additional measures to conduct is a matter for the Relevant Person to determine on a case by case basis.

2. In Rule 7.4.1 (e), senior management approval may be given by an individual member of the Relevant Person's senior management or by a committee of senior managers appointed to consider high risk customers. It may also be outsourced within the Group.

3. For high risk customers, a Relevant Person should, in order to mitigate the perceived and actual risks, exercise a greater degree of diligence throughout the customer relationship and should endeavour to understand the nature of the customer's business and consider whether it is consistent and reasonable.

4. A Relevant Person should be satisfied that a customer's use of complex legal structures and/or the use of trust and private investment vehicles, has a genuine and legitimate purpose.

5. For enhanced CDD, where there is a beneficial owner, verification of the customer's source of funds and wealth may require enquiring into the beneficial owner's source of funds and wealth because the source of the funds would normally be the beneficial owner and not the customer.

6. The DFSA considers that verification of source of funds includes obtaining independent corroborating evidence such as proof of dividend payments connected to a shareholding, bank statements, salary/bonus certificates, loan documentation and proof of a transaction which gave rise to the payment into the account. A customer should be able to demonstrate and document how the relevant funds are connected to a particular event which gave rise to the payment into the account or to the source of the funds for a transaction.

7. The DFSA considers that verification of source of wealth includes obtaining independent corroborating evidence such as share certificates, publicly-available registers of ownership, bank or brokerage account statements, probate documents, audited accounts and financial statements, news items from a reputable source and other similar evidence.

8. A Relevant Person may commission a third party vendor report to obtain further information on a customer or transaction or to investigate a customer or beneficial owner in very high risk cases. A third party vendor report may be particularly useful where there is little or no

publicly-available information on a person or on a legal arrangement or where a Relevant Person has difficulty in obtaining and verifying information.

9. In Rule 7.4.1(f), circumstances where it may be applicable to require the first payment made by a customer in order to open an account with a Relevant Person to be carried out through a bank account in the customer's name with a Prescribed Low Risk Customer of type (a), (c) or (d) include:

   a. where, following the use of other Enhanced CDD measures, the Relevant Person is not satisfied with the results of due diligence; or

   b. as an alternative measure, where one of the measures in (a) to (e) cannot be carried out.

7.5 Simplified customer due diligence

7.5.1 (1) Where a Relevant Person is permitted to undertake Simplified Customer Due Diligence under Rule 7.1.1(2), modification of Rule 7.3.1 may include:

(a) verifying the identity of the customer and any beneficial owners after the establishment of the business relationship under Rule 7.2.1(3);

(b) deciding to reduce the frequency of, or as appropriate not undertake, customer identification updates;

(c) deciding, not to verify a beneficial owner;

(d) deciding not to verify an identification document other than by requesting a copy;

(e) not enquiring as to a customer's source of funds or source of wealth;

(f) reducing the degree of on-going monitoring of transactions, based on a reasonable monetary threshold or on the nature of the transaction; or

(g) not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but infering such purpose and nature from the type of transactions or business relationship established.

(2) The modification in (1) must be proportionate to the customer's money laundering risks.

Guidance

1. Rule 7.5.1(1) provides examples of Simplified CDD measures. Other measures may also be used by a Relevant Person to modify CDD in accordance with the customer risks.

2. A Relevant Person should not use a "one size fits all" approach for all its low risk customers. Notwithstanding that the risks may be low for all such customers, the degree of CDD undertaken needs to be proportionate to the specific risks identified on a case by case basis. For example, for customers where the money laundering risks are very low, a Relevant Person may decide to simply identify the customer and verify such information only to the extent that this is commercially necessary. On the other hand, a low risk customer which is undertaking a complex transaction might require more comprehensive Simplified CDD.

3. An example of circumstances where a Relevant Person might reasonably reduce the frequency of or, as appropriate, eliminate customer identification updates would be where the money laundering risks are low and the service provided does not offer a realistic opportunity for money laundering.

4. An example of where a Relevant Person might reasonably reduce the degree of on-going monitoring and scrutinising of transactions, based on a reasonable monetary threshold or on the nature of the transaction, would be where the transaction is a recurring, fixed contribution to a savings scheme, investment portfolio or fund or where the monetary value of the transaction is not material for money laundering purposes given the nature of the customer and the transaction type.

7.6 Ongoing customer due diligence

7.6.1 When undertaking ongoing Customer Due Diligence under Rule 7.3.1(1)(d), a Relevant Person must, using the risk-based approach:

(a) monitor transactions undertaken during the course of its customer relationship to ensure that the transactions are consistent with the Relevant Person's knowledge of the customer, his business and risk rating;

(b) pay particular attention to any complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or legitimate purpose;

(c) enquire into the background and purpose of the transactions in (b);

(d) periodically review the adequacy of the Customer Due Diligence information it holds on customers and beneficial owners to ensure that the information is kept up to date, particularly for customers with a high risk rating; and

(e) periodically review each customer to ensure that the risk rating assigned to a customer under Rule 6.1.1(1)(b) remains appropriate for the customer in light of the money laundering risks.

Guidance

1. In complying with Rule 7.6.1(d), a Relevant Person should undertake a periodic review to ensure that non-static customer identity documentation is accurate and up-to-date. Examples of non-static identity documentation include passport number and residential/business address and, for a legal person, its share register or list of partners.

2. A Relevant Person should undertake a review under Rule 7.6.1 (d) and (e) particularly when:

   a. the Relevant Person changes its CDD documentation requirements;

   b. an unusual transaction with the customer is expected to take place;

   c. there is a material change in the business relationship with the customer; or

   d. there is a material change in the nature or ownership of the customer.

3. The degree of the on-going due diligence to be undertaken will depend on the customer risk assessment carried out under Rule 6.1.1.

4. A Relevant Person's transaction monitoring policies, procedures, systems and controls, which may be implemented by manual or automated systems, or a combination thereof, are one of the most important aspects of effective CDD. Whether a Relevant Person should undertake the

monitoring by means of a manual or computerised system (or both) will depend on a number of factors, including:

a. the size and nature of the Relevant Person's business and customer base; and

b. the complexity and volume of customer transactions.

7.6.2 A Relevant Person must review its customers, their business and transactions against United Nations Security Council sanctions lists and against any other relevant sanctions list when complying with Rule 7.6.1(d).

Guidance

In Rule 7.6.2, a "relevant sanctions list" may include EU, U.K. HM Treasury, U.S. OFAC and any other list which may apply to a Relevant Person.

7.7 Failure to conduct or complete customer due diligence

7.7.1 (1) Where, in relation to any customer, a Relevant Person is unable to conduct or complete the requisite Customer Due Diligence in accordance with Rule 7.1.1 it must, to the extent relevant:

(a) not carry out a transaction with or for the customer through a bank account or in cash;

(b) not open an account or otherwise provide a service;

(c) not otherwise establish a business relationship or carry out a transaction;

(d) terminate or suspend any existing business relationship with the customer;

(e) return any monies or assets received from the customer; and

(f) consider whether the inability to conduct or complete Customer Due Diligence necessitates the making of a Suspicious Activity Report under Rule 13.3.1(c).

(2) A Relevant Person is not obliged to comply with (1) (a) to (e) if:

(a) to do so would amount to "tipping off" the customer, in breach of Article 16 of the Federal Law No. 4 of 2002; or

(b) the AMLSCU directs the Relevant Person to act otherwise.

Guidance

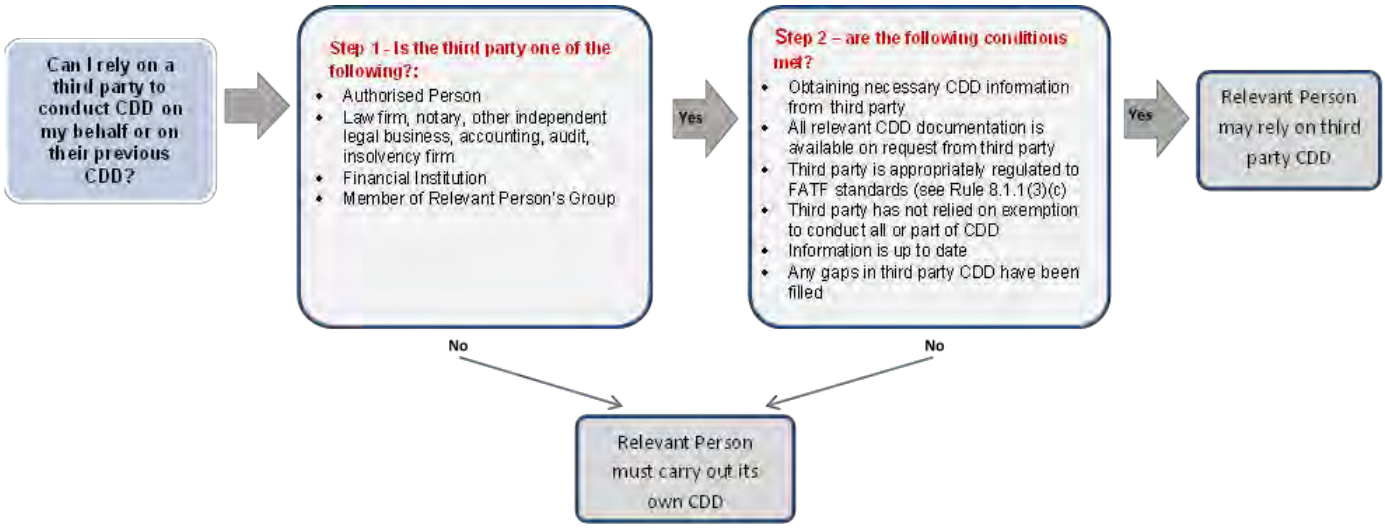
1. In complying with Rule 7.7.1(1) a Relevant Person should apply one or more of the measures in (a) to (f) as appropriate in the circumstances. Where CDD cannot be completed, it may be appropriate not to carry out a transaction pending completion of CDD. Where CDD cannot be conducted, including where a material part of the CDD, such as identifying and verifying a beneficial owner cannot be conducted, a Relevant Person should not establish a business relationship with the customer.

2. A Relevant Person should note that Rule 7.7.1 applies to both existing and prospective customers. For new customers it may be appropriate for a Relevant Person to terminate the business relationship before a product or service is provided. However, for existing customers, while termination of the business relationship should not be ruled out, suspension may be

more appropriate depending on the circumstances. Whichever route is taken, the Relevant Person should be careful not to tip off the customer.

3. A Relevant Person should adopt the RBA for CDD of existing customers. For example, if a Relevant Person considers that any of its existing customers (which may include customers which it migrates into the DIFC) have not been subject to CDD at an equivalent standard to that required by this module, it should adopt the RBA and take remedial action in a manner proportionate to the risks and within a reasonable period of time whilst complying with Rule 7.7.1.

8 RELIANCE AND OUTSOURCING



8.1 Reliance on a third party

8.1.1 (1) A Relevant Person may rely on the following third parties to conduct one or more elements of Customer Due Diligence on its behalf:

(a) an Authorised Person;

(b) a law firm, notary, or other independent legal business, accounting firm, audit firm or insolvency practitioner or an equivalent person in another jurisdiction;

(c) a Financial Institution; or

(d) a member of the Relevant Person's Group.

(2) In (1), a Relevant Person may rely on the information previously obtained by a third party which covers one or more elements of Customer Due Diligence.

(3) Where a Relevant Person seeks to rely on a person in (1) it may only do so if and to the extent that:

(a) it immediately obtains the necessary Customer Due Diligence information from the third party in (1);

(b) it takes adequate steps to satisfy itself that certified copies of the documents used to undertake the relevant elements of Customer Due Diligence will be available from the third party on request without delay;

(c) the person in (1)(b) to (d) is subject to regulation, including AML, by a Financial Services Regulator or other competent authority in a country with AML regulations which are equivalent to the standards set out in the FATF Recommendations and it is supervised for compliance with such regulations;

(d) the person in (1) has not relied on any exception from the requirement to conduct any relevant elements of Customer Due Diligence which the Relevant Person seeks to rely on; and

(e) in relation to (2), the information is up to date.

(4) Where a Relevant Person relies on a member of its Group, such Group member need not meet the condition in (3)(c) if:

(a) the Group applies and implements a Group-wide policy on Customer Due Diligence and record keeping which is equivalent to the standards set by FATF; and

(b) where the effective implementation of those Customer Due Diligence and record keeping requirements and AML programmes are supervised at Group level by a Financial Services Regulator or other competent authority in a country with AML regulations which are equivalent to the standards set out in the FATF Recommendations.

(5) If a Relevant Person is not reasonably satisfied that a customer or beneficial owner has been identified and verified by a third party in a manner consistent with these Rules, the Relevant Person must immediately perform the Customer Due Diligence itself with respect to any deficiencies identified.

(6) Notwithstanding the Relevant Person's reliance on a person in (1), the Relevant Person remains responsible for compliance with, and liable for any failure to meet the Customer Due Diligence requirements in this module.

Guidance

1. In complying with Rule 8.1.1(3)(a), "immediately obtaining the necessary CDD information" means obtaining all relevant CDD information, and not just basic information such as name and address. However, compliance can be achieved by having the information sent in an email or other appropriate means. For the avoidance of doubt, it does not necessarily require a Relevant Person to immediately obtain the underlying certified documents used by the third party to undertake its CDD because under Rule 8.1.1(3)(b), these need only be available on request without delay.

2. The DFSA would expect a Relevant Person, in complying with Rule 8.1.1(5), to fill any gaps in the CDD process as soon as it becomes aware that a customer or beneficial owner has not been identified and verified in a manner consistent with these Rules.

3. If a Relevant Person acquires another business, either in whole or in part, the DFSA would permit the Relevant Person to rely on the CDD conducted by the business it is acquiring but would expect the Relevant Person to have done the following:

   a. as part of its due diligence for the acquisition, to have taken a reasonable sample of the prospective customers to assess the quality of the CDD undertaken; and

   b. to undertake CDD on all the customers to cover any deficiencies identified in a. as soon as possible following the acquisition, prioritising high risk customers.

4. Where a particular jurisdiction's laws (such as secrecy or data protection legislation) would prevent a Relevant Person from having access to CDD information upon request without delay as referred to in Rule 8.1.1(3)(b), the Relevant Person should undertake the relevant CDD itself and should not seek to rely on the relevant third party.

8.2 Outsourcing

8.2.1 A Relevant Person which outsources any one or more elements of its Customer Due Diligence to a service provider (including within its Group) remains responsible for compliance with, and liable for any failure to meet, such obligations.

Guidance

1. Prior to appointing an outsourced service provider to undertake CDD, a Relevant Person should undertake appropriate due diligence to assure itself of the suitability of the outsourced service provider and should ensure that the outsourced service provider's obligations are clearly documented in a binding agreement.

2. An Authorised Person should be mindful of its obligations regarding outsourcing set out in GEN Rules 5.3.21 and 5.3.22.

9 CORRESPONDENT BANKING, WIRE TRANSFERS, ANONYMOUS ACCOUNTS AND AUDIT

9.1 Application

9.1.1 This chapter applies only to an Authorised Person other than a Representative Office.

9.2 Correspondent banking

9.2.1 An Authorised Firm proposing to have a correspondent banking relationship with a respondent bank must:

(a) undertake appropriate Customer Due Diligence on the respondent bank;

(b) as part of (a), gather sufficient information about the respondent bank to understand fully the nature of the business, including making appropriate enquiries on its management, its major business activities and the countries or jurisdictions in which it operates;

(c) determine from publicly-available information the reputation of the respondent bank and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or relevant regulatory action;

(d) assess the respondent bank's AML controls and ascertain if they are adequate and effective in light of the FATF Recommendations;

(e) ensure that prior approval of the Authorised Firm's senior management is obtained before entering into a new correspondent banking relationship;

(f) ensure that the respective responsibilities of the parties to the correspondent banking relationship are properly documented; and

(g) be satisfied that, in respect of any customers of the respondent bank who have direct access to accounts of the Authorised Firm, the respondent bank:

(i) has undertaken Customer Due Diligence (including ongoing Customer Due Diligence) at least equivalent to that in Rule 7.3.1 in respect of each customer; and

(ii) is able to provide the relevant Customer Due Diligence information in (i) to the Authorised Firm upon request; and

(h) document the basis for its satisfaction that the requirements in (a) to (g) are met.

9.2.2 An Authorised Firm must:

(a) not enter into a correspondent banking relationship with a shell bank; and

(b) take appropriate measures to ensure that it does not enter into, or continue a corresponding banking relationship with, a bank which is known to permit its accounts to be used by shell banks.

Guidance

A shell bank would be a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial Group that is subject to effective consolidated supervision. The DFSA does not consider that the existence of a local agent or low level staff constitutes physical presence.

9.3 Wire transfers

9.3.1 In this section:

(a) "beneficiary" means the natural or legal person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer;

(b) "originator" means the account holder who instructs the wire transfer from the relevant account, or where there is no account, the natural or legal person that places the order with the ordering Financial Institution to perform the wire transfer; and

(c) "wire transfer" includes any value transfer arrangement.

9.3.2 (1) An Authorised Person must:

(a) when it sends or receives funds by wire transfer on behalf of a customer, ensure that the wire transfer and any related messages contain accurate originator and beneficiary information;

(b) ensure that, while the wire transfer is under its control, the information in (a) remains with the wire transfer and any related message throughout the payment chain; and

(c) monitor wire transfers for the purpose of detecting those wire transfers that do not contain originator and beneficiary information and take appropriate measures to identify any money laundering risks.

(2) The requirement in (1) does not apply to an Authorised Person which transfers funds to another Financial Institution where both the originator and the beneficiary are Financial Institutions acting on their own behalf.

(3) An Authorised Person must ensure that information accompanying all wire transfers contains at a minimum:

(a) the name of the originator;

(b) the originator account number where such an account is used to process the transaction;

(c) the originator's address, or national identity number, or customer identification number, or date and place of birth;

(d) the name of the beneficiary; and

(e) the beneficiary account number where such an account is used to process the transaction.

Guidance

1. In the absence of an account number, a unique transaction reference number should be included which permits traceability of the transaction.

2. The DFSA considers that concealing or removing in a wire transfer any of the information required by Rule 9.3.2(3) would be a breach of the requirement to ensure that the wire transfer contains accurate originator and beneficiary information.

9.4 Audit

9.4.1 An Authorised Person must ensure that its audit function, established under GEN Rule 5.3.13, includes regular reviews and assessments of the effectiveness of the Authorised Person's money laundering policies, procedures, systems and controls, and its compliance with its obligations in this AML module.

Guidance

1. The review and assessment undertaken for the purposes of Rule 9.4.1 may be undertaken:

   a. internally by the Authorised Person's internal audit function; or

   b. by a competent firm of independent auditors or compliance professionals.

2. The review and assessment undertaken for the purposes of Rule 9.4.1 should cover at least the following:

   a. sample testing of compliance with the Authorised Person's CDD arrangements;

   b. an analysis of all notifications made to the MLRO to highlight any area where procedures or training may need to be enhanced; and

   c. a review of the nature and frequency of the dialogue between the senior management and the MLRO.

9.5 Anonymous and nominee accounts

9.5.1 An Authorised Person must not establish or maintain:

(a) an anonymous account or an account in a fictitious name; or

(b) a nominee account which is held in the name of one person, but which is controlled by or held for the benefit of another person whose identity has not been disclosed to the Authorised Person.

10 SANCTIONS AND OTHER INTERNATIONAL OBLIGATIONS

10.1 Application

10.1.1 This chapter does not apply to a person meeting part (1) (b) or (c) of the definition of a DNFBP.

10.2 Relevant United Nations resolutions and sanctions

10.2.1 (1) A Relevant Person must establish and maintain effective systems and controls to obtain and make appropriate use of relevant resolutions or sanctions issued by the United Nations Security Council.

(2) A Relevant Person must immediately notify the DFSA when it becomes aware that it is:

(a) carrying on or about to carry on an activity;

(b) holding or about to hold money or other assets; or

(c) undertaking or about to undertake any other business whether or not arising from or in connection with (a) or (b);

for or on behalf of a person, where such carrying on, holding or undertaking constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.

(3) A Relevant Person must ensure that the notification stipulated in (2) above includes the following information:

(a) a description of the relevant activity in (2) (a), (b) or (c); and

(b) the action proposed to be taken or that has been taken by the Relevant Person with regard to the matters specified in the notification.

Guidance

1. In relation to the term "make appropriate use" in Rule 10.2.1, this may mean that a Relevant Person cannot undertake a transaction for or on behalf of a person or that it may need to undertake further due diligence in respect of a person.

2. Relevant resolutions or sanctions mentioned in Rule 10.2.1 may, among other things, relate to money laundering, terrorist financing or the financing of weapons of mass destruction or otherwise be relevant to the activities carried on by the Relevant Person. For example:

   a. a Relevant Person should exercise due care to ensure that it does not provide services to, or otherwise conduct business with, a person engaged in money laundering, terrorist financing or the financing of weapons of mass destruction; and

   b. an Authorised Market Institution should exercise due care to ensure that it does not facilitate fund raising activities or listings by persons engaged in money laundering or terrorist financing or financing of weapons of mass destruction.

10.3 Government, regulatory and international findings

10.3.1 (1) A Relevant Person must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

(a) the government of the U.A.E. or any government departments in the U.A.E.;

(b) the Central Bank of the U.A.E. or the AMLSCU;

(c) FATF;

(d) U.A.E. enforcement agencies; and

(e) the DFSA,

concerning the matters in (2).

(2) For the purposes of (1), the relevant matters are:

(a) arrangements for preventing money laundering, terrorist financing or the financing of weapons of mass destruction in a particular country or jurisdiction, including any assessment of material deficiency against relevant countries in adopting international standards; and

(b) the names of persons, groups, organisations or entities or any other body where suspicion of money laundering or terrorist financing or the financing of weapons of mass destruction exists.

Guidance

1. The purpose of this Rule is to ensure that a Relevant Person takes into consideration the broad range of tools used by competent authorities and international organisations to communicate AML/CTF risks to stakeholders.

2. A Relevant Person should examine and pay special attention to any transactions or business relationship with persons located in countries or jurisdictions mentioned by the persons in Rule 10.3.1(a) to (e).

3. Relevant Persons considering transactions or business relationships with persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments, or the specific recommendations have been made. These circumstances should be taken into account in respect of introduced business from such jurisdictions, and when receiving inward payments for existing customers or in respect of inter-bank transactions.

4. The Relevant Person's MLRO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU if they do not qualify as suspicious under Federal Law No. 4 of 2002. See chapter 13 on Suspicious Activity Reports.

5. Transactions with counterparties located in countries or jurisdictions which are no longer identified as deficient or have been relieved from special scrutiny (for example, taken off sources mentioned in this Guidance) may nevertheless require attention which is higher than normal.

6. In order to assist Relevant Persons, the DFSA will, from time to time, publish U.A.E., FATF or other findings, guidance, directives or sanctions. However, the DFSA expects a Relevant Person to take its own steps in acquiring relevant information from various available sources. For example, a Relevant Person may obtain relevant information from the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and the Office of Foreign Assets Control (OFAC) of the United States Department of Treasury.

7. In addition, the systems and controls mentioned in Rule 10.3.1 should be established and maintained by a Relevant Person taking into account its risk assessment under chapters 5 and 6. In relation to the term "make appropriate use" in Rule 10.3.1, this may mean that a Relevant Person cannot undertake a transaction for or on behalf of a person or that it may need to undertake further due diligence in respect of such a person.

8. A Relevant Person should be proactive in obtaining and appropriately using available national and international information, for example, suspect lists or databases from credible public or private sources with regard to money laundering, including obtaining relevant information from sources mentioned in Guidance 6 above. The DFSA encourages Relevant Persons to perform checks against their customer databases and records for any names appearing on such lists and databases as well as to monitor transactions accordingly.

9. The risk of terrorists entering the financial system can be reduced if Relevant Persons apply effective AML strategies, particularly in respect of CDD. Relevant Persons should assess which countries carry the highest risks and should conduct an analysis of transactions from countries or jurisdictions known to be a source of terrorist financing.

10. The DFSA may require Relevant Persons to take any special measures it may prescribe with respect to certain types of transactions or accounts where the DFSA reasonably believes that any of the above may pose a money laundering risk to the DIFC.

11 MONEY LAUNDERING REPORTING OFFICER

11.1 Application

11.1.1 This chapter does not apply to a person meeting part (1) (b) or (c) of the definition of a DNFBP.

11.2 Appointment of a MLRO

11.2.1 (1) A Relevant Person must appoint an individual as MLRO, with responsibility for implementation and oversight of its compliance with the Rules in this module, who has an appropriate level of seniority and independence to act in the role.

(2) The MLRO in (1) and Rule 11.2.5 must be resident in the U.A.E.

11.2.2 The individual appointed as the MLRO of a Representative Office must be the same individual who holds the position of Principal Representative of that Representative Office.

Guidance

1. Authorised Firms are reminded that under GEN Rule 7.5.1, the MLRO function is a mandatory appointment. For the avoidance of doubt, the individual appointed as the MLRO of an Authorised Firm, other than a Representative Office, is the same individual who holds the Licensed Function of Money Laundering Reporting Officer of that Authorised Firm. Authorised Firms are also reminded that the guidance under GEN Rule 7.5.2 sets out the grounds under which the DFSA will determine whether to grant a waiver from the residence requirements for an MLRO. The same guidance would apply by analogy to other Relevant Persons seeking a waiver from the MLRO residence requirements.

2. The individual appointed as the MLRO of an Authorised Market Institution is the same individual who holds the position of Money Laundering Reporting Officer of that Authorised Market Institution under the relevant AMI Rule.

11.2.3 An Authorised Firm, other than a Representative Office, must appoint an individual to act as a deputy MLRO of the Authorised Firm to fulfil the role of the MLRO in his absence.

11.2.4 A Relevant Person's MLRO must deal with the DFSA in an open and co-operative manner and must disclose appropriately any information of which the DFSA would reasonably be expected to be notified.

Guidance

1. The individual appointed as the deputy MLRO of an Authorised Firm need not apply for Authorised Individual status for performing the Licensed Function of Money Laundering Reporting Officer, subject to Rules in GEN section 11.6.

2. A Relevant Person other than an Authorised Firm should make adequate arrangements to ensure that it remains in compliance with this module in the event that its MLRO is absent. Adequate arrangements would include appointing a temporary MLRO for the period of the MLRO's absence or making sure that the Relevant Person's AML systems and controls allow it to continue to comply with these Rules when the MLRO is absent.

11.2.5 A Relevant Person may outsource the role of MLRO to an individual outside the Relevant Person provided that the relevant individual under the outsourcing agreement is and remains suitable to perform the MLRO role.

Guidance

Where a Relevant Person outsources specific AML tasks of its MLRO to another individual or a third party provider, including within a corporate Group, the Relevant Person remains responsible for ensuring compliance with the responsibilities of the MLRO. The Relevant Person should satisfy itself of the suitability of anyone who acts for it.

11.3 Qualities of a MLRO

11.3.1 A Relevant Person must ensure that its MLRO has:

(a) direct access to its senior management;

(b) sufficient resources including, if necessary, an appropriate number of appropriately trained Employees to assist in the performance of his duties in an effective, objective and independent manner;

(c) a level of seniority and independence within the Relevant Person to enable him to act on his own authority; and

(d) timely and unrestricted access to information sufficient to enable him to carry out his responsibilities in Rule 11.4.1.

Guidance

The DFSA considers that a Relevant Person will need to consider this Rule when appointing an outsourced MLRO. Any external MLRO that is appointed will need to have the actual or effective level of seniority that the role requires.

11.4 Responsibilities of a MLRO

11.4.1 A Relevant Person must ensure that its MLRO implements and has oversight of and is responsible for the following matters:

(a) the day-to-day operations for compliance by the Relevant Person with its AML policies, procedures, systems and controls;

(b) acting as the point of contact to receive notifications from the Relevant Person's Employees under Rule 13.2.2;

(c) taking appropriate action under Rule 13.3.1 following the receipt of a notification from an Employee ;

(d) making, in accordance with Federal Law No. 4 of 2002, Suspicious Activity Reports;

(e) acting as the point of contact within the Relevant Person for competent U.A.E. authorities and the DFSA regarding money laundering issues;

(f) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;

(g) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in chapter 10; and

(h) establishing and maintaining an appropriate money laundering training programme and adequate awareness arrangements under chapter 12.

12 AML TRAINING AND AWARENESS

12.1 Training and awareness

12.1.1 A Relevant Person must

(a) provide AML training to all relevant Employees at appropriate and regular intervals;

(b) ensure that its AML training enables its Employees to:

(i) understand the relevant legislation relating to money laundering, including Federal Law No. 4 of 2002, Federal Law No. 1 of 2004 and any other relevant Federal laws;

(ii) understand its policies, procedures, systems and controls related to money laundering and any changes to these;

(iii) recognise and deal with transactions and other activities which may be related to money laundering;

(iv) understand the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged and that may warrant a notification to the MLRO under Rule 13.2.2;

(v) understand its arrangements regarding the making of a notification to the MLRO under Rule 13.2.2;

(vi) be aware of the prevailing techniques, methods and trends in money laundering relevant to the business of the Relevant Person;

(vii) understand the roles and responsibilities of Employees in combating money laundering, including the identity and responsibility of the Relevant Person's MLRO and deputy, where applicable; and

(viii) understand the relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in chapter 10; and

(c) ensure that its AML training:

(i) is appropriately tailored to the Relevant Person's activities, including its products, services, customers, distribution channels, business partners, level and complexity of its transactions; and

(ii) indicates the different levels of money laundering risk and vulnerabilities associated with the matters in (c)(i).

Guidance

1. The DFSA considers it appropriate that all new relevant Employees of a Relevant Person be given appropriate AML training as soon as reasonably practicable after commencing employment with the Relevant Person.

2. Relevant Persons should take a risk-based approach to AML training. The DFSA considers that AML training should be provided by a Relevant Person to each of its relevant Employees at intervals appropriate to the role and responsibilities of the Employee. In the case of an Authorised Firm the DFSA expects that training should be provided to each relevant Employee at least annually.

3. The manner in which AML training is provided by a Relevant Person need not be in a formal classroom setting, rather it may be via an online course or any other similarly appropriate manner.

4. A relevant Employee would include a member of the senior management or operational staff, any Employee with customer contact or which handles or may handle customer monies or assets, and any other Employee who might otherwise encounter money laundering in the business.

13 SUSPICIOUS ACTIVITY REPORTS

13.1 Application and definitions

13.1.1 In this chapter, a person meeting part (1) (b) or (c) of the definition of a DNFBP is only required to comply with Rule 13.3.4 and section 13.4.

13.1.2 In this chapter:

(a) "money laundering" means the criminal offence defined in Federal Law No 4 of 2002; and

(b) "terrorist financing" means the criminal offence defined in Federal Law No 1 of 2004.

13.2 Internal reporting requirements

13.2.1 A Relevant Person must establish and maintain policies, procedures, systems and controls in order to monitor and detect suspicious activity or transactions in relation to potential money laundering or terrorist financing.

13.2.2 A Relevant Person must have policies, procedures, systems and controls to ensure that whenever any Employee, acting in the ordinary course of his employment, either:

(a) knows;

(b) suspects; or

(c) has reasonable grounds for knowing or suspecting;

that a person is engaged in or attempting money laundering or terrorist financing, that Employee promptly notifies the Relevant Person's MLRO and provides the MLRO with all relevant details.

Guidance

1. Circumstances that might give rise to suspicion or reasonable grounds for suspicion include:

   a. Transactions which have no apparent purpose, which make no obvious economic sense, or which are designed or structured to avoid detection;

   b. Transactions requested by a person without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of a Relevant Person in relation to a particular customer;

   c. where the size or pattern of transactions, without reasonable explanation, is out of line with any pattern that has previously emerged or are deliberately structured to avoid detection;

   d. where a customer's refusal to provide the information requested without reasonable explanation;

   e. where a customer who has just entered into a business relationship uses the relationship for a single transaction or for only a very short period of time;

f. an extensive use of offshore accounts, companies or structures in circumstances where the customer's economic needs do not support such requirements;

g. unnecessary routing of funds through third party accounts; or

h. unusual transactions without an apparently profitable motive.

2. The requirement for Employees to notify the Relevant Person's MLRO should include situations when no business relationship was developed because the circumstances were suspicious.

3. A Relevant Person may allow its Employees to consult with their line managers before sending a report to the MLRO. The DFSA would expect that such consultation does not prevent making a report whenever an Employee has stated that he has knowledge, suspicion or reasonable grounds for knowing or suspecting that a person may be involved in money laundering. Whether or not an Employee consults with his line manager or other Employees, the responsibility remains with the Employee to decide for himself whether a notification to the MLRO should be made.

4. An Employee, including the MLRO, who considers that a person is engaged in or engaging in activity that he knows or suspects to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime of money laundering or terrorist financing.

5. CDD measures form the basis for recognising suspicious activity. Sufficient guidance must therefore be given to the Relevant Person's Employees to enable them to form a suspicion or to recognise when they have reasonable grounds to suspect that money laundering or terrorist financing is taking place. This should involve training that will enable relevant Employees to seek and assess the information that is required for them to judge whether a person is involved in suspicious activity related to money laundering or terrorist financing.

6. A transaction that appears unusual is not necessarily suspicious. Even customers with a stable and predictable transaction profile will have periodic transactions that are unusual for them. Many customers will, for perfectly good reasons, have an erratic pattern of transactions or account activity. So the unusual is, in the first instance, only a basis for further inquiry, which may in turn require judgement as to whether it is suspicious. A transaction or activity may not be suspicious at the time, but if suspicions are raised later, an obligation to report then arises.

7. Effective CDD measures may provide the basis for recognising unusual and suspicious activity. Where there is a customer relationship, suspicious activity will often be one that is inconsistent with a customer's known legitimate activity, or with the normal business activities for that type of account or customer. Therefore, the key to recognising 'suspicious activity' is knowing enough about the customer and the customer's normal expected activities to recognise when their activity is abnormal.

8. A Relevant Person may consider implementing policies and procedures whereby disciplinary action is taken against an Employee who fails to notify the Relevant Person's MLRO.

13.3 Suspicious activity report

13.3.1 A Relevant Person must ensure that where the Relevant Person's MLRO receives a notification under Rule 13.2.2, the MLRO, without delay:

(a) investigates and documents the circumstances in relation to which the notification made under Rule 13.2.2 was made;

(b) determines whether in accordance with Federal Law No. 4 of 2002 a Suspicious Activity Report must be made to the AMLSCU and documents such determination;

(c) if required, makes a Suspicious Activity Report to the AMLSCU as soon as practicable; and

(d) notifies the DFSA of the making of such Suspicious Activity Report immediately following its submission to the AMLSCU.

13.3.2 Where, following a notification to the MLRO under 13.2.2, no Suspicious Activity Report is made, a Relevant Person must record the reasons for not making a Suspicious Activity Report.

13.3.3 A Relevant Person must ensure that if the MLRO decides to make a Suspicious Activity Report, his decision is made independently and is not subject to the consent or approval of any other person.

13.3.4 When a person meeting part (1) (b) or (c) of the definition of a DNFBP either:

(a) knows;

(b) suspects; or

(c) has reasonable grounds for knowing or suspecting;

that a person is engaged in or attempting money laundering or terrorist financing, it must make a Suspicious Activity Report to the AMLSCU as soon as practicable and notify the DFSA of the making of such report immediately following its submission to the AMLSCU.

Guidance

1. Relevant Persons are reminded that the failure to report suspicions of money laundering or terrorist financing may constitute a criminal offence that is punishable under the laws of the U.A.E.

2. SARs under Federal Law No. 4 of 2002 should be emailed or faxed to the AMLSCU. The dedicated email address and fax numbers, and the template for making a SAR are available on the DFSA website.

3. In the preparation of a SAR, if a Relevant Person knows or assumes that the funds which form the subject of the report do not belong to a customer but to a third party, this fact and the details of the Relevant Person's proposed course of further action in relation to the case should be included in the report.

4. If a Relevant Person has reported a suspicion to the AMLSCU, the AMLSCU may instruct the Relevant Person on how to continue its business relationship, including effecting any transaction with a person. If the customer in question expresses his wish to move the funds before the Relevant Person receives instruction from the AMLSCU on how to proceed, the Relevant Person should immediately contact the AMLSCU for further instructions.

13.4 Tipping-off

Guidance

1. Relevant Persons are reminded that in accordance with Article 16 of the Federal Law No. 4 of 2002, Relevant Persons or any of their Employees must not tip-off any person, that is, inform any person that he is being scrutinised for possible involvement in suspicious activity related to money laundering, or that any other competent authority is investigating his possible involvement in suspicious activity relating to money laundering.

2. If a Relevant Person reasonably believes that performing CDD measures will tip-off a customer or potential customer, it may choose not to pursue that process and should file a SAR. Relevant Persons should ensure that their Employees are aware of and sensitive to these issues when considering the CDD measures.

14 GENERAL OBLIGATIONS

14.1 Groups, branches and subsidiaries

14.1.1 (1) A Relevant Person which is a DIFC entity must ensure that its policies, procedures, systems and controls required by Rule 5.2.1 apply to:

(a) any of its branches or Subsidiaries; and

(b) any of its Group entities in the DIFC.

(2) The requirement in (1) does not apply if the Relevant Person can satisfy the DFSA that the relevant branch, Subsidiary or Group entity is subject to regulation, including AML, by a Financial Services Regulator or other competent authority in a country with AML regulations which are equivalent to the standards set out in the FATF Recommendations and is supervised for compliance with such regulations.

(3) Where the law of another jurisdiction does not permit the implementation of policies, procedures, systems and controls consistent with those of the Relevant Person, the Relevant Person must:

(a) inform the DFSA in writing; and

(b) apply appropriate additional measures to manage the money laundering risks posed by the relevant branch or Subsidiary.

Guidance

A Relevant Person which is a DIFC entity should conduct a periodic review to verify that any branch or Subsidiary operating in another jurisdiction is in compliance with the obligations imposed under these Rules.

14.1.2 A Relevant Person must:

(a) communicate the policies and procedures which it establishes and maintains in accordance with these Rules to its Group entities, branches and Subsidiaries; and

(b) document the basis for its satisfaction that the requirement in Rule 14.1.1(2) is met.

Guidance

In relation to an Authorised Firm, if the DFSA is not satisfied in respect of AML compliance of its branches and Subsidiaries in a particular jurisdiction, it may take action, including making it a condition on the Authorised Firm's Licence that it must not operate a branch or Subsidiary in that jurisdiction.

14.2 Group policies

14.2.1 A Relevant Person which is part of a Group must ensure that it:

(a) understands the policies and procedures covering the sharing of information between Group entities, particularly when sharing Customer Due Diligence information;

(b) has in place adequate safeguards on the confidentiality and use of information exchanged between Group entities, including consideration of relevant data protection legislation;

(c) remains aware of the money laundering risks of the Group as a whole and of its exposure to the Group and takes active steps to mitigate such risks;

(d) contributes to a Group-wide risk assessment to identify and assess money laundering risks for the Group; and

(e) provides its Group-wide compliance, audit and AML functions with customer account and transaction information from branches and subsidiaries when necessary for AML purposes.

14.3 Notifications

14.3.1 A Relevant Person must inform the DFSA in writing as soon as possible if, in relation to its activities carried on in or from the DIFC or in relation to any of its branches or Subsidiaries, it:

(a) receives a request for information from a regulator or agency responsible for AML, counter-terrorism financing, or sanctions regarding enquiries into potential money laundering or terrorist financing or sanctions breaches;

(b) becomes aware, or has reasonable grounds to believe, that a money laundering event has occurred or may have occurred in or through its business;

(c) becomes aware of any money laundering or sanctions matter in relation to the Relevant Person or a member of its Group which could result in adverse reputational consequences to the Relevant Person; or

(d) becomes aware of any a significant breach of a Rule in this module or breach of Federal Law No. 4 of 2002 or Federal Law No. 1 of 2004 by the Relevant Person or any of its Employees.

14.4 Record keeping

14.4.1 A Relevant Person must, where relevant, maintain the following records:

(a) a copy of all documents and information obtained in undertaking initial and ongoing Customer Due Diligence;

(b) the supporting records (consisting of the original documents or certified copies) in respect of the customer business relationship, including transactions;

(c) notifications made under Rule 13.2.2;

(d) Suspicious Activity Reports and any relevant supporting documents and information, including internal findings and analysis;

(e) any relevant communications with the AMLSCU; and

(f) the documents in Rule 14.4.2,

for at least six years from the date on which the notification or report was made, the business relationship ends or the transaction is completed, whichever occurs last.

14.4.2 A Relevant Person must document, and provide to the DFSA on request, any of the following:

(a) the risk assessment of its business undertaken under Rule 5.1.1;

(b) how the assessment in (a) was used for the purposes of complying with Rule 6.1.1(1);

(c) the risk assessment of the customer undertaken under Rule 6.1.1(1)(a); and

(d) the determination made under Rule 6.1.1(1)(b).

Guidance

1. The records required to be kept under Rule 14.4.1 may be kept in electronic format, provided that such records are readily accessible and available to respond promptly to any DFSA requests for information. Authorised Persons are reminded of their obligations in GEN Rule 5.3.24.

2. If the date on which the business relationship with a customer has ended remains unclear, it may be taken to have ended on the date of the completion of the last transaction.

3. The records maintained by a Relevant Person should be kept in such a manner that:

   a. the DFSA or another competent authority is able to assess the Relevant Person's compliance with legislation applicable in the DIFC;

   b. any transaction which was processed by or through the Relevant Person on behalf of a customer or other third party can be reconstructed;

   c. any customer or third party can be identified; and

   d. the Relevant Person can satisfy, within an appropriate time, any regulatory enquiry or court order to disclose information.

14.4.3 Where the records referred to in Rule 14.4.1 are kept by the Relevant Person outside the DIFC, a Relevant Person must:

(a) take reasonable steps to ensure that the records are held in a manner consistent with these Rules;

(b) ensure that the records are easily accessible to the Relevant Person; and

(c) upon request by the DFSA, ensure that the records are available for inspection within a reasonable period of time.

14.4.4 A Relevant Person must:

(a) verify if there is secrecy or data protection legislation that would restrict access without delay to the records referred to in Rule 14.4.1 by the Relevant Person, the DFSA or the law enforcement agencies of the U.A.E.; and

(b) where such legislation exists, obtain without delay certified copies of the relevant records and keep such copies in a jurisdiction which allows access by those persons in (a).

14.4.5 A Relevant Person must be able to demonstrate that it has complied with the training and awareness requirements in chapter 12 through appropriate measures, including the maintenance of relevant training records.

Guidance

1. In complying with Rule 14.4.3, Authorised Persons are reminded of their obligations in GEN Rule 5.3.24.

2. The DFSA considers that "appropriate measures" in Rule 14.4.5 may include the maintenance of a training log setting out details of:

   a. the dates when the training was given;

   b. the nature of the training; and

   c. the names of Employees who received the training.

14.5 Annual AML return

14.5.1 A Relevant Person which is:

(a) an Authorised Person;

(b) a real estate developer or agency;

(c) a law firm, notary firm, or other independent legal business;

(d) an accounting firm, audit firm or insolvency firm; or

(e) a company service provider,

must complete the AML Return form in AFN on an annual basis and submit such form to the DFSA within four 4 months of its financial year end.

14.6 Communication with the DFSA

14.6.1 A Relevant Person must:

(a) be open and cooperative in all its dealings with the DFSA; and

(b) ensure that any communication with the DFSA is conducted in the English language.

14.7 Employee disclosures

14.7.1 A Relevant Person must ensure that it does not prejudice an Employee who discloses any information regarding money laundering to the DFSA or to any other relevant body involved in the prevention of money laundering.

Guidance

The DFSA considers that "relevant body" in Rule 14.7.1 would include the AMLSCU or another financial intelligence unit, the police, or a Dubai or Federal ministry.

15 DNFBP REGISTRATION AND SUPERVISION

Guidance

1. A DNFBP should ensure that it complies with and has regard to relevant provisions of the Regulatory Law 2004. The Regulatory Law 2004 gives the DFSA a power to supervise DNFBPs', compliance with relevant AML laws in the U.A.E. It also gives the DFSA a number of other important powers in relation to DNFBPs, including powers of enforcement. This includes a power to obtain information and to conduct investigations into possible breaches of the Regulatory Law 2004. The DFSA may also impose fines for breaches of the Law or the Rules.

2. The DFSA takes a risk-based approach to regulation of persons which it supervises. Generally, the DFSA will work with DNFBPs to identify, assess, mitigate and control relevant risks where appropriate. RPP describes the DFSA's enforcement powers under the Regulatory Law 2004 and outlines its policy for using these powers.

15.1 Registration and notifications

15.1.1 A DNFBP must register with the DFSA by way of a notification by completing and submitting the appropriate form in the AFN Sourcebook.

15.1.2 A DNFBP must promptly notify the DFSA of any change in its:

(a) name;

(b) legal status;

(c) address; or

(d) if applicable, its MLRO.

15.2 Withdrawal of registration

15.2.1 A DNFBP must notify the DFSA in writing when it proposes to cease carrying on its business activities in or from the DIFC.

15.2.2 A DNFBP which proposes to cancel its registration as a DNFBP must provide the DFSA with 14 days' written notice of such cancellation and provide written evidence of the basis of its withdrawal.

15.2.3 The DFSA may cancel the registration of a DNFBP:

(a) if the DNFBP notifies the DFSA of the cancellation in accordance with Rule 15.2.2;

(b) if the DNFBP's commercial licence is cancelled or expires and a reasonable time has passed without such licence being renewed;

(c) following a request by the ROC;

(d) in the event of the insolvency or the entering into administration of the DNFBP; or

(e) if the DFSA considers it necessary or desirable in the interests of the DIFC.

15.2.4 (1) The DFSA may only cancel the registration of a DNFBP under Rule 15.2.3 (b) to (e) if it has given the person an opportunity to make representations in relation to the proposed cancellation.

(2) If the DFSA cancels the registration of a DNFBP under Rule 15.2.3, the DFSA shall without delay inform the DNFBP in writing of:

(a) such decision;

(b) the reasons for the decision; and

(c) the date on which the decision shall be deemed to take effect.

15.2.5 A DNFBP may appeal to the DFSA's Regulatory Appeals Committee against any decision of the DFSA to cancel its registration under Rule 15.2.3 (b) to (e).

Guidance

1. A DNFBP may request a cancellation of its registration because, for example, it no longer meets the definition of a DNFBP, becomes insolvent or enters into administration, or proposes to leave the DIFC.

2. The DFSA would expect to use the power to cancel the registration of a DNFBP under Rule 15.2.3(e) once its supervisory tools have been exhausted. Examples of when it might use this power include where a DNFBP commits serious or persistent breaches of the AML Rules which it fails to rectify, or where the DNFBP or its activities in or from the DIFC create risks to the DFSA's regulatory objectives.

3. Under Article 28 of the Regulatory Law, a person wishing to appeal to the Regulatory Appeals Committee a decision of the DFSA must submit a written notice of appeal within 30 days of the notification of the relevant decision. The form of submission that an appeal must take is specified in the rules of procedures of the Regulatory Appeals Committee. Information on the DFSA's Regulatory Appeals Committee can be found on the DFSA website.

15.3 Disclosure of regulatory status

15.3.1 A DNFBP must not:

(a) misrepresent its regulatory status with respect to the DFSA expressly or by implication; or

(b) use or reproduce the DFSA logo without express written permission from the DFSA and in accordance with any conditions for use.

16 TRANSITIONAL RULES

16.1 Application

16.1.1 This chapter applies to every person to whom a provision of the Previous Regime applied.

16.1.2 For the purposes of this chapter:

(a) "Ancillary Service Provider" has the meaning that it had under the Previous Regime;

(b) "Commencement Date" means the date on which the Rules in this module came into force;

(c) "Current Regime" means the Rules in force on the Commencement Date;

(d) "DNFBP" has the meaning that it had in DNF chapter 2 under the Previous Regime; and

(e) "Previous Regime" means the Rules that were in force immediately prior to the Commencement Date.

16.2 General

16.2.1 A Relevant Person must continue to maintain any records required to be maintained under the Previous Regime until such time as the requirement to hold such record would have expired had the Previous Regime still been in force.

16.3 Specific relief – Ancillary Service Provider and DNFBPs

16.3.1 A person who, immediately prior to the Commencement Date, was an Ancillary Service Provider or was registered as a DNFBP is deemed, on the Commencement Date, to be registered as a DNFBP for the purposes of the Current Regime.

The DFSA Sourcebook

Regulatory Policy and Process

(RPP Sourcebook)

(JULY 2013 EDITION)

RPP SOURCEBOOK

CONTENTS

1 INTRODUCTION

1-1 PURPOSE

1-1-1 The purpose of the Regulatory Policy and Process (RPP) Sourcebook is to provide readers with an understanding of how the Dubai Financial Services Authority (DFSA) functions and operates and what we expect from the regulated community.

1-1-2 The RPP contains:

(a) statements of DFSA's regulatory policy;

(b) descriptions of the regulatory processes that we follow when exercising our statutory powers;

(c) information as to DFSA's risk based approach to authorisation, supervision and enforcement; and

(d) information on matters which the DFSA may assess when considering to exercise specific discretionary powers. For example, this would include those matters which the DFSA may take into consideration when making an assessment of whether an Authorised Person or Authorised Individual is fit and proper.

1-1-3 RPP is therefore relevant to a Person who is:

(a) seeking to be authorised or registered by the DFSA;

(b) already subject to applicable laws, Rules and policies administered by the DFSA such as Authorised Persons (i.e. Authorised Firms or Authorised Market Institutions), DNFBPs, Auditors, Authorised Individuals, Principal Representatives and any other Persons subject to the DFSA's regulatory oversight; and

(c) otherwise subject to the jurisdiction of the DFSA such as by reason of the DFSA's authority under a delegated power.

1-1-4 RPP also concerns Persons who have made or intend to make:

(a) an Offer of Securities; or

(b) a Financial Promotion;

in or from the DIFC.

1-1-5 The types of Person mentioned above to whom RPP is relevant are not intended to be exhaustive and such Persons are generally referred to in this Sourcebook as a "firm" unless the context provides otherwise.

1-2 STATUS

1-2-1 The information in RPP is issued under Article 116(2) of the Regulatory Law 2004. RPP is for information purposes only and forms one of the DFSA's Sourcebook modules. RPP contains policy and process information which is indicative and non-binding.

1-2-2 RPP is not an exhaustive source of the DFSA's policy on the exercise of its statutory powers and discretion. To the extent that it sets out how the DFSA may act in certain circumstances, the information in RPP does not bind the DFSA and nor does it necessarily create a legitimate expectation for Persons who might reasonably seek to rely upon it. RPP should not be relied upon as a safe harbour by any Person.

1-2-3 Anyone reading RPP should also refer to the:

(a) DIFC laws, including DFSA administered laws ("Laws");

(b) DFSA Rulebook ("Rules"); and

(c) other parts of the DFSA Sourcebook ("Sourcebook");

that may have an impact on them.

1-2-4 The Laws and Rules set out the precise scope and effect of any particular provision referred to in RPP. If you have any doubt about a legal or other provision or your responsibilities under the Law, Rules or other relevant requirements, you should seek appropriate legal advice.

1-2-5 The Sourcebook comprises a number of modules such as the Prudential Returns (PRU) module and the Application, Forms and Notices (AFN) module.

1-3 UPDATING THE RPP

1-3-1 We shall take reasonable steps to review the RPP to ensure that it remains current. We shall also make amendments where there are changes in our policy or processes in light of our regulatory experience and to reflect legal and market developments in the DIFC or in the relevant standards and practices set by international regulatory bodies. This may result in new chapters being added or existing chapters being amended or merged or deleted, as is necessary.

1-4 DEFINED TERMS

1-4-1 In order to be consistent and accurate when referring to terms that have specific meaning elsewhere, defined terms are identified throughout RPP by the capitalisation of the initial letter of a word or each word of a phrase and are defined in the Glossary module (GLO) of the DFSA's Rulebook. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

1-5 DFSA'S REGULATORY MANDATE

1-5-1 The DFSA is the independent regulator of financial and ancillary services conducted in or from the Dubai International Financial Centre (DIFC), a purpose-built financial free-zone in Dubai.

1-5-2 The DFSA's regulatory oversight includes asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, an international equities and derivatives exchange and an international commodities derivatives exchange.

1-5-3 The DFSA's mandate is to ensure that the DIFC is one of the best regulated international financial centres in the world, a centre based on principles of integrity, transparency and efficiency.

1-5-4 The international standards adopted and applied by the DFSA in the DIFC are those set by leading international organisations such as IOSCO (International Organisation of Securities Commissions), BCBS (Basel Committee on Banking Supervision), IAIS (International Association of Insurance Supervisors) and FATF (Financial Action Task Force).

1-6 DFSA'S OBJECTIVES AND GUIDING PRINCIPLES

1-6-1 In discharging its regulatory mandate, the DFSA has a statutory obligation under Article 8(3) of the Regulatory Law 2004 to pursue the following objectives:

(a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;

(b) to foster and maintain confidence in the financial services industry in the DIFC;

(c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;

(d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means, including the imposition of sanctions;

(e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;

(f) to promote public understanding of the regulation of the financial services industry in the DIFC; and

(g) to pursue any other objectives as the Ruler of Dubai may from time to time set under DIFC Law.

1-6-2 In exercising its powers and performing its functions, the DFSA has regard to the following guiding principles as set out in Article 8(4) of the Regulatory Law 2004, being the desirability of:

(a) pursuing the objectives of the DIFC as set out under Dubai Law in so far as it is appropriate and proper for the DFSA to do so;

(b) fostering the development of the DIFC as an internationally respected financial centre;

(c) co-operating with and providing assistance to regulatory authorities in the United Arab Emirates and other jurisdictions;

(d) minimising the adverse effects of the activities of the DFSA on competition in the financial services industry;

(e) using its resources in the most efficient way;

(f) ensuring the cost of regulation is proportionate to its benefit;

(g) exercising its powers and performing its functions in a transparent manner; and

(h) complying with relevant generally accepted principles of good governance.

1-7 DFSA'S REGULATORY STRUCTURE

1-7-1 The DFSA is structured into a number of divisions and departments. For the purpose of this Sourcebook, the most relevant are as follows:

Supervision

(a) The Supervision Division authorises firms and individuals to conduct Financial Services in or from the DIFC. This Division also registers DNFBPs and Auditors (see Chapter 2).

(b) This Division also conducts supervisory oversight on all Authorised Firms, DNFBPs and Auditors, including by conducting risk assessments. The scope and frequency of such assessments are dictated by the nature of the firm's activities and its perceived risks. From time to time, Supervision carries out thematic reviews inspired by topical events which have both local and international relevance (see Chapter 3).

Markets

(c) The Markets Division licenses and supervises Authorised Market Institutions in the DIFC (see Chapters 2 and 3).

(d) The Division also recognises those financial markets who operate an exchange or clearing house outside the DIFC without having a physical presence in the DIFC but make their services available to Persons in the DIFC. Trading and Clearing members of an Authorised Market Institution who operate in a jurisdiction other than the DIFC and do not have a physical presence in the DIFC are also recognised by the Division.

(e) The Division is also responsible for regulating Offers of Securities in or from the DIFC, and supervises Reporting Entities by monitoring their on-going market disclosures and compliance with Rules.

Enforcement

(f) The primary function of the Enforcement Division is to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC. Consequently, the Enforcement Division is responsible for:

(i) liaising and co-operating with international regulatory and enforcement agencies pursuant to a relevant multilateral memorandum of understanding or bi-lateral arrangement in relation to investigation and enforcement matters;

(ii) conducting investigations commenced pursuant to Article 78 of the Regulatory Law 2004 in respect of contraventions of DFSA administered Laws and Rules; and

(iii) the taking of enforcement action in circumstances where contraventions of DFSA administered Laws and Rules pose an unacceptable risk to the DIFC.

(g) The DFSA has a range of remedies to enforce the legislation that we administer (see Chapters 4 and 5).

Policy and Legal

(h) The Policy and Legal Services Division is responsible for developing DFSA administered Laws, Rules and policies, as approved by the DFSA Board of Directors. The Division also assists in the drafting of certain DIFC Laws. This Division is also responsible for providing regulatory legal advice and managing the business of the Regulatory Policy Committee and the Rules and Waivers Committee and advises on the disclosure of confidential regulatory information.

2 AUTHORISATION - BECOMING REGULATED

2-1 DFSA'S APPROACH TO AUTHORISATION

Introduction

2-1-1 This chapter outlines the DFSA's approach to assessing an applicant or registrant to become:

(a) an Authorised Person, that is, an Authorised Market Institution or an Authorised Firm (an Authorised Firm includes a Representative Office);

(b) an Authorised Individual;

(c) a Principal Representative;

(d) a Key Individual;

(e) a DNFBP; or

(f) an Auditor.

2-1-2 Prior to submitting an application to the DFSA, the relevant applicant should contact the DFSA Enquiries Team on +971 (0)4 362 1500 or via e-mail info@dfsa.ae. In preparing an application, this chapter should be read in conjunction with the forms and notes in the AFN Sourcebook, and relevant Laws and Rules.

2-1-3 In assessing whether a relevant applicant is and remains fit and proper, the DFSA may also consider the degree to which an applicant is ready, willing and able to conduct the relevant activities in accordance with the Laws and Rules and other legislation applicable in the DIFC.

2-1-4 An applicant must not provide information to the DFSA which is false, misleading or deceptive, or conceal information where the concealment of such information is likely to mislead or deceive the DFSA (see Article 66 of the Regulatory Law 2004).

2-1-5 If an applicant becomes aware of a material change in circumstances that is reasonably likely to be relevant to an application which is under consideration by the DFSA, then it must inform the DFSA of the change, in writing, without delay (see Article 46 of the Regulatory Law 2004).

2-2 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED PERSONS

Introduction

2-2-1 This section sets out matters which the DFSA takes into consideration when assessing the fitness and propriety of an Authorised Person (including applicants). There are some matters in this section which apply to all Authorised Persons and some which are specific to either an Authorised Firm or an Authorised Market Institution. Such matters

should be read in conjunction with those requirements relating to Authorised Firms (see chapter 7 of the GEN module) and Authorised Market Institutions (see chapters 2 and 9 of the AMI module).

2-2-2 The DFSA may have regard to all relevant matters, whether arising in the DIFC or elsewhere. The DFSA may determine the materiality of any information for the purposes of considering whether an Authorised Person has demonstrated, or continues to demonstrate, that it is fit and proper.

2-2-3 The DFSA may request or require any information which it considers relevant to its consideration of an application by an Authorised Person.

2-2-4 In considering any specific matters, the DFSA may request reviews by an appropriately skilled third party on any aspect of the Authorised Person's proposed or actual activities or the environment in which the applicant predominantly operates. The DFSA will normally agree to the scope of any reviews performed. Such reviews will ordinarily be at the applicant's sole expense.

Background and history

2-2-5 In respect of the background and history of an Authorised Person, the DFSA may have regard to any matters including, but not limited to, the following:

(a) any matter affecting the propriety of the Authorised Person's conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;

(b) whether an Authorised Person has ever been the subject of disciplinary procedures by a government body or agency or any self-regulatory organisation or other professional body;

(c) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self-regulatory organisation, Financial Services Regulator or regulated exchange or clearing house;

(d) whether an Authorised Person has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;

(e) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by an Authorised Person in excess of $10,000 or awards that total more than $10,000;

(f) whether an Authorised Person has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; and

(g) whether an Authorised Person has been open and truthful in all its dealings with the DFSA.

Locations of offices

2-2-6 An Authorised Person should be able to satisfy the DFSA that it is in compliance with chapter 6 of the GEN module. In particular, section 6.5 of GEN module requires that if an Authorised Person is a Body Corporate constituted under the laws of the DIFC it should maintain its head office and registered office within the boundaries of the DIFC. In considering the location of an Authorised Person's head office, the DFSA may have regard to the location of its directors, partners, and senior management with respect to its strategic, operational and administrative arrangements. Where an Authorised Firm is a Partnership with its head office in the DIFC, it must carry on business in the DIFC.

Close Links

2-2-7 GEN section 6.6 concerns Close Links. The DFSA should be satisfied that the existence of Close Links do not prevent the effective supervision of the Authorised Person by the DFSA.

Legal status of Authorised Firms

2-2-8 The DFSA will only consider an application for authorisation where the legal status of the proposed entity meets the requirements set out in section 7.2 of the GEN module or chapter 5 of the AMI module. In the case of non-DIFC firms other than companies limited by shares, the DFSA will consider whether the legal form is appropriate for the activities proposed.

2-2-9 In respect of Effecting Contracts of Insurance, Carrying Out Contracts of Insurance, Acting as the Trustee of a Fund, or Operating a Collective Investment Fund, an Authorised Firm has to be a Body Corporate in accordance with GEN Rules 7.2.2(2) and 7.2.2(4) respectively.

2-2-10 In respect of Accepting Deposits or seeking to Accept Deposits, an Authorised Firm has to be a Body Corporate or Partnership in accordance with GEN Rule 7.2.2(3).

Ownership and Group

2-2-11 In respect of the ownership and Group structure of an Authorised Person, the DFSA may have regard to:

(a) the Authorised Person's position within its Group, including any other relationships that may exist between the Authorised Person's affiliates, Controllers, Associates or other Persons that may be considered a Close Link (see paragraph 2-2-12 for considerations relating to Controllers and paragraph 2-2-7 for considerations relating to Close Links);

(b) the financial strength of the Group and its implications for the Authorised Person;

(c) whether the Group has a structure which makes it possible to:

  (i) exercise effective supervision;

  (ii) exchange information among regulators who supervise Group members; and

(iii) determine the allocation of responsibility among the relevant regulators;

(d) any information provided by other regulators or third parties in relation to the Authorised Person or any entity within its Group; and

(e) whether the Authorised Person or its Group is subject to any adverse effect or considerations arising from a country or countries of incorporation, establishment and operations of any member of its Group. In considering such matters, the DFSA may also have regard to the type and level of regulatory oversight in the relevant country or countries of the Group members, the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

Controllers

2-2-12 In respect of the Controllers of an Authorised Person, the DFSA may, taking into account the nature, scale and complexity of the firm's business and organisation, have regard to:

(a) the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Authorised Person, and the degree of influence that they are, or may be, able to exert over the Authorised Person and/or its activities;

(b) where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller;

(c) the financial strength of a Controller and its implications for the Authorised Person's ability to ensure the sound and prudent management of its affairs, in particular where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Person; and

(d) whether the Authorised Person is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a Controller. In considering such matters, the DFSA may have regard to, among other things, the type and level of regulatory oversight which the Controller is subject to in the relevant country or countries and the regulatory infrastructure and adherence to internationally held conventions and standards that the DFSA may have adopted in its Rules.

2-2-13 Where the DFSA has any concerns relating to the fitness and propriety of an applicant for a licence stemming from a Controller of such a person, the DFSA may consider imposing licence conditions designed to address such concerns. For example, the DFSA may impose, in the case of a start-up, a licence condition that there should be shareholder agreement to resort to an effective shareholder dispute resolution mechanism.

Resources, Systems and Controls

2-2-14 The DFSA may have regard to whether the Authorised Person has sufficient resources, including the appropriate systems and controls (including those set out in chapter 5 of the GEN module and AMI Rule 5.5.4), such as:

(a) the Authorised Person's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Person appears in a position to be able to continue to comply with such Rules;

(b) the extent to which the Authorised Person is or may be able to secure additional capital in a form acceptable to the DFSA where this appears likely to be necessary at any stage in the future;

(c) the availability of sufficient competent human resources to conduct and manage the Authorised Person's affairs, in addition to the availability of sufficient Authorised Individuals or Key Individuals, as applicable, to conduct and manage the Authorised Person's Financial Services;

(d) whether the Authorised Person has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;

(e) whether the Authorised Person has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering and counter terrorism legislation, and relevant UN Security Council sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;

(f) the impact of other members of the Authorised Person's Group on the adequacy of the Authorised Person's resources and in particular, though not exclusively, the extent to which the Authorised Person is or may be subject to consolidated prudential supervision by the DFSA or another Financial Services Regulator;

(g) whether the Authorised Person is able to provide sufficient evidence about the source of funds available to it, to the satisfaction of the DFSA. This is particularly relevant in the case of a start-up entity; and

(h) the matters specified in paragraph 2-2-12(c).

Authorised Firms - Collective suitability of individuals or other persons connected to the Authorised Firm

2-2-15 Notwithstanding that individuals performing Licensed Functions are required to be Authorised Individuals and that an Authorised Firm is required to appoint certain Authorised Individuals to certain functions as stated in chapter 7 of the GEN module, the DFSA will also consider:

(a) the collective suitability of all of the Authorised Firm's staff taken together, and whether there is a sufficient range of individuals with appropriate knowledge, skills and experience to understand, operate and manage the Authorised Firm's affairs in a sound and prudent manner;

(b) the composition of the Governing Body of the Authorised Firm. The factors that would be taken into account by the DFSA in this context include, depending on the nature, scale and complexity of the firm's business and its organisational structure, whether:

(i) the Governing Body has a sufficient number of members with relevant knowledge, skills and expertise among them to provide effective leadership, direction and oversight of the Authorised Firm's business. For this purpose, the members of the Governing Body should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the firm's business to be able to fulfil their roles;

(ii) the individual members of the Governing Body have the commitment necessary to fulfil their roles, demonstrated, for example, by a sufficient allocation of time to the affairs of the firm and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Firm and its customers and stakeholders; and

(iii) there is a sufficient number of independent members on the Governing Body. The DFSA will consider a member of the Governing Body to be "Independent" if he is found, on reasonable grounds by the Governing Body, to be independent in character and judgement and able to make decisions in a manner that is consistent with the best interests of the Authorised Firm;

(c) the position of the Authorised Firm in any Group to which it belongs;

(d) the individual or collective suitability of any Person or Persons connected with the Authorised Firm;

(e) the extent to which the Authorised Firm has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities;

(f) whether the Authorised Firm has appointed auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the Authorised Firm's activities; and

(g) whether the remuneration structure and strategy adopted by the Authorised Firm is consistent with the requirements in GEN Rule 5.3.31(1).

Authorised Market Institutions – Other Considerations

2-2-16 In determining whether an Authorised Market Institution has satisfied its Licensing Requirements set out in chapter 5 of the AMI module, including in chapter 5 of GEN, the DFSA will consider:

(a) its arrangements, policies and resources for fulfilling its obligations under the Licensing Requirements prescribed in AMI Rule 4.2.1;

(b) its arrangements for managing conflicts and potential conflicts between its commercial interest and applicable regulatory requirements in section 5.4 of the AMI module;

(c) the extent to which its constitution and organisation provide for effective governance;

(d) the arrangements made to ensure that the Governing Body has effective oversight of its Regulatory Functions;

(e) the fitness and propriety of its Key Individuals and the access the Key Individuals have to the Governing Body;

(f) the size and composition of the Governing Body including:

  (i) the number of independent members on the Governing Body;

  (ii) the number of members of the Governing Body who represent Members of the Authorised Market Institution or other persons and the types of persons whom they represent; and

  (iii) the number and responsibilities of any members of the Governing Body with executive roles within the Authorised Market Institution.

(g) the structure and organisation of its Governing Body, including any distribution of responsibilities among its members and committees;

(h) the integrity, relevant knowledge, skills and expertise of the members of the Governing Body to provide effective leadership, direction and oversight of the Authorised Market Institution's business. For this purpose, such individuals should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the Authorised Market Institution's business to be able to fulfil their roles;

(i) the commitment necessary by the members of the Governing Body to fulfil their roles effectively, demonstrated, for example, by a sufficient allocation of time to the affairs of the Authorised Market Institution and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the DFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to conflict with the interests of the Authorised Market Institution and its stakeholders;

(j) the integrity, qualifications and competence of its Key Individuals;

(k) its arrangements for ensuring that it employs individuals who are honest and demonstrate integrity;

(l) the independence of its regulatory and listings departments from its commercial departments; and

(m) whether the remuneration structure and strategy adopted by the Authorised Market Institution is consistent with the requirements in GEN Rule 5.3.31(1).

2-2-17 The DFSA will consider a Director to be "independent" if the Director is found, on the reasonable determination by the Governing Body, to:

(a) be independent in character and judgement; and

(b) have no relationships or circumstances which are likely to affect or could appear to affect the Director's judgement in a manner other than in the best interests of the Authorised Market Institution.

2-2-18 In forming a determination the Governing Body should consider the length of time the Director has served as a member of the Governing Body and whether the relevant Director:

(a) has been an employee of the Authorised Market Institution or group within the last five years;

(b) has or has had, within the last three years, a material business relationship with the Authorised Market Institution, either directly or as a Partner, shareholder, Director or senior employee of a body that has such a relationship with the Authorised Market Institution;

(c) receives or has received, in the last three years, additional remuneration or payments from the Authorised Market Institution apart from a Director's fee, participates in the Authorised Market Institution's share option, or a performance-related pay scheme, or is a member of the Authorised Market Institution's pension scheme;

(d) is or has been a Director, Partner or Employee of a firm which is the Authorised Market Institution's auditor;

(e) has close family ties with any of the Authorised Market Institution's advisors, Directors or senior employees;

(f) holds cross directorships or has significant links with other Directors through involvement in other bodies; or

(g) represents a significant shareholder.

2-3 ASSESSING THE FITNESS AND PROPRIETY OF AUTHORISED INDIVIDUALS, PRINCIPAL REPRESENTATIVES AND KEY INDIVIDUALS

Introduction

2-3-1 This section sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of:

(a) in the case of an Authorised Firm, an Authorised Individual or Principal Representative under section 7.6 of the GEN module and section 4.2 of the REP module, respectively; and

(b) in the case of an Authorised Market Institution, a Key Individual under chapter 5 of the AMI module.

2-3-2 In order to assess the fitness and propriety of a proposed Authorised Individual, Key Individual or Principal Representative, the DFSA may request an interview with the proposed individual.

2-3-3 In respect of Authorised Individuals, Article 53(2) of the Regulatory Law 2004 provides that applications for Authorised Individual status in respect of Licensed Function roles must be made by both the individual seeking to be authorised and the Authorised Firm for which that individual is to perform services. Under Articles 55 & 56 of the Regulatory Law 2004, the DFSA may reject an application for Authorised Individual status or extension to such status or grant Authorised Individual status or extension to such status with or without conditions and restrictions.

2-3-4 AMI Rule 3.3.1(1) requires applications for Key Individual to be made by both the individual seeking to be authorised and the Authorised Market Institution for which that individual is to perform a Key Individual function. In assessing whether an individual meets the fitness and propriety criteria to be able to perform the role of a Key Individual, the DFSA takes into account the considerations noted in paragraphs 2-3-5 to 2-3-7 below.

Integrity

2-3-5 In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:

(a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;

(b) a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;

(c) whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self-regulatory organisation or other professional body;

(d) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self-regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;

(e) a refusal or restriction of the right to carry on a trade, business or profession requiring a licence, registration or other authority;

(f) a dismissal or a request to resign from any office or employment;

(g) whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;

(h) an adverse finding in a civil proceeding by any court of competent jurisdiction of fraud, misfeasance or other misconduct, whether in connection with the formation or management of a corporation or otherwise;

(i) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against the individual in excess of $10,000 or awards that total more than $10,000;

(j) an order of disqualification as a director or to act in the management or conduct of the affairs of a corporation by a court of competent jurisdiction or regulator;

(k) whether the individual has been a director, or concerned in the management of, a body corporate which has gone into liquidation or administration whilst that person was connected with that body corporate or within one year of such a connection;

(l) whether the individual has been a partner or concerned in the management of a partnership where one or more partners have been made bankrupt whilst that person was connected with that partnership or within a year of such a connection;

(m) whether the individual has been the subject of a complaint in connection with a financial service, which relates to his integrity, competence or financial soundness;

(n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, the DFSA, or any officially appointed inquiry, or Financial Services Regulator; and

(o) whether the individual has been candid and truthful in all his dealings with the DFSA.

Competence and capability

2-3-6 In determining the competence and capability of an individual to perform the role of an Authorised Individual, Principal Representative or Key Individual as relevant, the DFSA may have regard to any factors, whether in the U.A.E. or elsewhere including, whether an individual is capable of performing functions which he has to perform within the Authorised Firm or Authorised Market Institution which employs or intends to employ him. A relevant factor may also include evidence of appropriate qualifications, including for example, the bespoke examination offered by the Chartered Institute for Securities and Investment in respect of DIFC Laws and Rules.

Financial soundness

2-3-7 In determining the financial soundness of an individual, the DFSA may have regard to any factors including, but not limited to, the following:

(a) whether an individual is able to meet his debts as they fall due; and

(b) whether an individual has been adjudged bankrupt, had a receiver or an administrator appointed, had a bankruptcy petition served on him, had his estate

sequestrated, entered into a deed of arrangement (or any contract in relation to a failure to pay due debts) in favour of his creditors or, within the last 10 years, has failed to satisfy a judgement debt under a court order, whether in the U.A.E. or elsewhere.

2-4 WAIVERS DURING AUTHORISATION

2-4-1 An applicant for authorisation may request a waiver whilst its application for authorisation is being processed. In some circumstances, the applicant may need to work with the DFSA in developing the waiver and may not be required to use the formal application process. However, the written consent to the waiver by the Authorised Person will then be required once the applicant is authorised.

2-5 START-UP ENTITIES IN THE DIFC

General

2-5-1 This section replaces DFSA Policy Statement 2/2005 on Start Up Entities in the DIFC — as amended on 16 February 2006.

What are "Start up Entities"?

2-5-2 Start up entities are, either:

(a) new financial services businesses; or

(b) existing financial services businesses which have never been subject to financial services regulation, for whatever reason.

2-5-3 This section is designed to serve as a guide to assist start up entities which are interested in applying for authorisation by the DFSA to conduct Financial Services in or from the DIFC. This section sets out the information required to support an application and indicates the criteria that the DFSA may apply in the authorisation process. Start ups, as with any other applicants, will be required to satisfy all relevant aspects of the DFSA's rules and authorisation process prior to being granted a licence.

2-5-4 Considering the restriction in Article 4(1) (a) of the Federal Law No 8 of 2004, the DFSA may not authorise a new entity proposing to form in the DIFC to carry out banking activities, unless it is a branch or a wholly owned subsidiary of an existing bank or a joint venture between parties, in which each party must be an existing bank. In formulating this policy the DFSA recognises that it is not practical to provide information on the application of the policy to every possible scenario. Therefore, interested parties are invited to contact the DFSA if they have questions about the application of the policy to their particular circumstances.

The DFSA's Risk Based Approach to Start Up Entities: Broad Risk Categories

2-5-5 Any consideration of an application for authorisation received by the DFSA is likely to involve an assessment of the risks posed to the objectives of the DFSA by the proposed activities of the applicant. Whilst the broad categories of risks for all applicants will be the same, the nature of those risks within start up entities will be unique, as start ups do not

have a regulatory track record upon which the DFSA may place reliance. In the case of a new business, even where senior management has substantial experience and relevant competence in the business sector, this does not necessarily imply an ability to create and sustain an adequate management control environment and compliance culture, particularly when faced with all the other issues of establishing a new business.

2-5-6 In the case of an existing, but previously unregulated business, any existing control environment and compliance culture may not have been subject to external independent regulatory scrutiny and the additional regulatory reporting requirements which apply to an authorised firm.

2-5-7 The broad categories of risk and some of the unique elements of those risk categories that apply to start up entities include financial risk, governance risk, business/operational risk and compliance risk.

Financial Risk

2-5-8 All applicants are required to demonstrate a sound initial capital base and funding and to meet the relevant prudential requirements of the DFSA rulebook, on an on-going basis. This may include holding sufficient capital to cover expenses on a zero revenue basis. Inevitably, start up entities face greater financial risks as they seek to establish and grow a new business.

2-5-9 In addition to the risks associated with the financial viability of the start up entity, particular attention may be focussed on the clarity and the verifiable source of the initial capital funding. Start up entities may be required to disclose the source of their funds and the history of those funds for at least the previous 12 months.

Governance Risk

2-5-10 All applicants are required to demonstrate robust governance arrangements together with the fitness and integrity of all controllers, directors and senior management. The DFSA is aware that management control, in smaller start ups especially, may lie with one or two dominant individuals who may also be amongst the owners of the firm. In such circumstances, the DFSA would expect the key business and control functions (i.e. risk management, compliance and internal audit) to be subject to appropriate oversight arrangements which reflect the size and complexity of the business. Applicants can assist the DFSA by describing in detail the ownership structure, high level controls and clear reporting lines which demonstrate an adequate segregation of duties.

2-5-11 The DFSA may request details of the background, history and ownership of the start up entity and, where applicable, its Group. Similar details relating to the background, history and other interests of the directors of the start up entity may also be required. Where it considers it necessary to do so, the DFSA may undertake independent background checks on such material. A higher degree of due diligence will apply to individuals involved in start up entities and there would be an expectation that the entity itself will have conducted detailed background checks, which may then be verified by the DFSA.

Business/Operational Risk

2-5-12 All applicants are required to establish appropriate systems and control environment to demonstrate that the affairs of the firm are managed and controlled effectively. The nature

of the systems and controls may depend on the nature, size and complexity of the business. Start up entities may wish to consider which additional systems and controls may be appropriate in the initial period of operation following launch, such as increased risk or compliance monitoring. Due to the unproven track record of start up entities, the DFSA may impose restrictions on the business activities of the entity or a greater degree and intensity of supervision until such a track record is established.

Compliance Risk

2-5-13 The Senior Executive Officer within all Authorised Firms is expected to take full responsibility for ensuring compliance with the DFSA rules by establishing a strong compliance culture which is fully embedded within the organisation. To this end, a start up entity will be required to appoint a UAE resident Compliance Officer and Money Laundering Reporting Officer (MLRO) with the requisite skills and relevant experience in compliance and anti money laundering duties. The individuals fulfilling these roles within start up entities may be expected to demonstrate to the DFSA their competence to perform the proposed role and adequate knowledge of the relevant sections of the DFSA rulebook and, in the case of the MLRO, the wider anti-money laundering legislation and related provisions.

Main Information Requirements

2-5-14 The main information requirements are the same for all applicants, including start ups, and each application will be assessed on its own merits. It may help if start up applicants consider the risk categories set out above and how they will address the particular risks raised by their start up proposition.

2-5-15 A key document will be the regulatory business plan submitted in support of the application. It will facilitate the application process if applicants cover the following areas within this submission:

(a) An Introduction and background;

(b) Strategy and rationale for establishing in the DIFC;

(c) Organisational structure;

(d) Management structure;

(e) Proposed resources;

(f) High level controls;

(g) Risk management;

(h) Operational controls;

(i) Systems overview; and

(j) Financial projections.

2-5-16 Start up applicants may find it useful to include diagrams illustrating corporate structures, and, where applicable, group relationships, governance arrangements, organisational design, clear reporting lines, business process flows and systems environments.

2-5-17 Comprehensively addressing these areas and detailing how the key risks will be identified, monitored and controlled may significantly assist the DFSA in determining applications from start up entities.

2-6 APPLICATION FOR A RETAIL ENDORSEMENT

2-6-1 Section 7.3 of the GEN module provides that an applicant intending to carry on a Financial Service with a Retail Client requires an endorsement on its Licence.

2-6-2 When assessing an application for a Retail Endorsement, the DFSA may consider, among other things, the following:

(a) the adequacy of an applicant's systems and controls for carrying on Financial Services with a Retail Client;

(b) whether the applicant is able to demonstrate that its systems and controls (including policies and procedures) adequately provide for, among other things, compliance with the requirements specifically dealing with Retail Clients in the COB module, in particular:

  (i) marketing materials intended for Retail Clients;

  (ii) the content requirements for Client Agreements for Retail Clients;

  (iii) the suitability assessment for recommending a financial product for a Retail Client;

  (iv) the disclosure of fees and commissions, and any inducements, to a Retail Client; and

  (v) the segregation of Client Money and/or Client Investments, where relevant;

(c) whether the applicant has adequate systems and controls to ensure, on an on-going basis, that its Employees remain competent and capable to perform the functions which are assigned to them, including any additional factors that may be relevant if their functions involve interfacing with Retail Clients; and

(d) the adequacy of the applicant's Complaints handling policies and procedures. An applicant's policies and procedures must provide for fair, consistent and prompt handling of complaints. In addition to the matters set out in Chapter 9 of the GEN module, the policies and procedures should explicitly deal with how the applicant ensures that:

  (i) Employees dealing with Complaints have adequate training and competencies to handle Complaints, as well as impartiality and sufficient authority (see GEN Rules 5.3.19, 9.2.7 and 9.2.8);

(ii) a Retail Client is made aware of the firm's Complaints handling policies and procedures before obtaining its services (see COB Rule A2.1.2(1)(h)); and

(iii) the applicant's Complaints handling policies and procedures are freely available to any Retail Client upon request (see COB Rule 9.2.11).

2-7 APPLICATION FOR AN ISLAMIC ENDORSEMENT

2-7-1 Pursuant to Article 9 of the Law Regulating Islamic Financial Business 2004, in order to conduct Islamic Financial Business, an Authorised Person must have an endorsed Licence authorising it to conduct business either as an Islamic Financial Institution or as an Islamic Window. Conducting Islamic Financial Business means carrying on one or more Financial Services in accordance with Shari'a.

2-7-2 An Authorised Person who is granted an endorsement to operate an Islamic Window may conduct some of its Financial Service activities in a conventional manner while conducting its Islamic Financial Business through the Islamic Window.

2-7-3 The DFSA may grant an Islamic Endorsement only if it is satisfied that the applicant has demonstrated that it has the systems and controls in place to undertake Islamic Financial Business. In deliberating over the granting of an Islamic Endorsement, the DFSA may consider, among other things, those matters set out in the IFR module of DFSA's Rulebook.

2-8 APPLICATION TO BE A REPRESENTATIVE OFFICE

2-8-1 An applicant seeking to become a Representative Office will need to comply with requirements including those set out in the REP module and take note of any applicable matters set out in section 2-2 of the RPP.

2-8-2 In assessing an application for a Representative Office, the DFSA is likely to assess matters including whether:

(a) the proposed activities to be undertaken by the applicant are consistent with the Financial Service activity of Operating a Representative Office as described in section 2.26 of the GEN module; and

(b) the applicant is incorporated and regulated by a Financial Services Regulator in a jurisdiction other than the DIFC.

2-8-3 Further general information in relation to the DFSA's Representative Office regime can be located in a Question and Answer document accessible on:

http://www.dfsa.ae/Pages/DFSALibrary/DFSAPublications/Publications.aspx

2-9 REGISTERING AS A DNFBP

2-9-1 Chapter 15 of the AML module sets out the registration requirements for a DNFBP. A DNFBP must register with the DFSA by way of a notification by completing and submitting the DNFBP1 form in the AFN module of the DFSA Sourcebook.

2-9-2 At the time of registration the DFSA expects a DNFBP to be in full compliance with its obligations set out in the AML module of the DFSA Rulebook.

2-10 APPLICATION TO BE AN AUDITOR

2-10-1 An applicant seeking to become an Auditor will need to comply with requirements including those set out in chapter 8 of the GEN module and Part 8 of the Regulatory Law 2004.

2-10-2 Authorised Firms and Authorised Market Institutions that are Domestic Firms and Operators of Domestic Funds are required to appoint and retain Auditors who are registered for the duration of the audit. A Person intending to audit Authorised Firms or Authorised Market Institutions (that are Domestic Firms), or Domestic Funds, must apply to the DFSA for registration in accordance with the GEN module.

2-10-3 An applicant for registration should be able to demonstrate to the DFSA's satisfaction that:

(a) it has professional indemnity insurance as required in section 8.17 of the GEN module;

(b) it has adequate systems, procedures and controls to ensure due compliance with:

  (i) the International Standards on Auditing;

  (ii) the International Standards on Quality Control; and

  (ii) the Code of Ethics for Professional Accountants;

(c) where applicable, it has adequate systems, procedures and controls to ensure due compliance with:

  (i) the Islamic Accounting and Auditing Standards; and

  (ii) the Code of Ethics for Accountants and Audit Firms of Islamic Financial Institutions;

(d) it is controlled by Persons each of whom holds a Recognised Professional Qualification from a Recognised Professional Body; and

(e) it has complied with any other requirement as specified by the DFSA.

2-11 APPLICATION FOR AN ENDORSEMENT TO OPERATE A MULTILATERAL TRADING FACILITY OR ACT AS A TRADE REPOSITORY

2-11-1 An applicant seeking to obtain an endorsement on its Licence to operate a Multilateral Trading Facility pursuant to GEN Rule 2.2.12 or act as a Trade Repository pursuant to GEN Rule 2.2.13 will need to comply with the applicable requirements including those set out set out in the GEN and AMI modules.

2-11-2 An applicant seeking to obtain an endorsement on its Licence to operate a Multilateral Trading Facility has to be an Authorised Market Institution which is Licensed to Operate an Exchange, or an applicant for such a Licence (see GEN Rule 2.2.12). In order to obtain such an endorsement, an applicant needs to demonstrate to the DFSA that it can meet the requirements specified in AMI Rule 4.2.1(3). Pursuant to that Rule, all the Licensing Requirements applicable with respect to operating an Exchange apply with respect to the operation of a Multilateral Trading Facility as if though such a facility is an Exchange.

2-11-3 An applicant seeking to obtain an endorsement on its Licence to act as a Trade Repository must be an Authorised Firm or an Authorised Market Institution, or an applicant for such a Licence (see GEN Rule 2.2.13(1). Such an applicant needs to demonstrate to the DFSA its ability to meet the requirements set out in App 5 of the GEN module.

3 SUPERVISION - BEING REGULATED

3-1 DFSA'S APPROACH TO SUPERVISION

Introduction

3-1-1 Chapter 3 focuses on the DFSA's risk-based approach to supervision and the on-going relationship between the DFSA and an Authorised Person, DNFBP or Auditor (collectively referred to as firms in this Chapter unless otherwise stated).

3-1-2 Whilst section 3-1 outlines the DFSA's general approach to risk based supervision, the remaining sections (3-2 to 3-6) provide additional information in relation to the DFSA's approach to the supervision of a particular type of firm.

3-1-3 The appropriate use of the DFSA's supervisory powers plays an important part in ensuring that the DFSA achieves its statutory objectives and has regard to its guiding principles which are set out in chapter 1.

Supervision philosophy

3-1-4 The DFSA has adopted a risk-based approach to the regulation and supervision of a firm in order to concentrate its resources on the mitigation of risks to its objectives. The DFSA will work with an entity to identify, assess, mitigate and control these risks where appropriate.

3-1-5 The DFSA's supervisory approach is based upon:

(a) developing a strong relationship with a firm and its senior management, as set out in paragraphs 3-1-7 to 3-1-9;

(b) where applicable, considering any lead or consolidated supervision which a firm or its Group may be subject to in other jurisdictions, taking into account the DFSA's relationship with other regulators, set out in paragraphs 3-1-10 to 3-1-11;

(c) utilising its risk-based approach to supervision, including the risk assessment and classification of a firm, as part of the DFSA's continuous risk management cycle, set out in paragraphs 3-1-12 to 3-1-19; and

(d) using appropriate supervisory tools, set out in sections 3-2 to 3-6.

3-1-6 The DFSA's risk-based approach to the supervision of a firm may vary depending upon the size, scale, nature and circumstances of each individual firm and the specific risks it poses to the DFSA's objectives.

DFSA's Relationship with firms

3-1-7 In order to meet its objectives, the DFSA requires an open, transparent and co-operative relationship between itself and a firm. The DFSA expects to establish and maintain an on-going dialogue with the firm's senior management in order to develop and sustain a thorough understanding of the firm's business, systems and controls and, through this relationship, to be aware of all areas of risk to its objectives.

3-1-8 The DFSA seeks to maintain an up-to-date knowledge of a firm's business. However, a firm is also required to keep the DFSA informed of significant events, or anything related to the firm of which the DFSA would reasonably expect to be notified.

3-1-9 The nature and intensity of the DFSA's relationship with a firm may depend on a number of factors. The DFSA's level of supervision will be proportionate to the risks which the firm poses to the DFSA's objectives and will emphasise the responsibilities of the firm's senior management in identifying, assessing, mitigating and controlling its risks. The greater the impact and probability of the firm's perceived risks, the more intensive the supervisory relationship may be.

Co-operation with other regulators

3-1-10 The DFSA views co-operation with other regulators as an important component of its supervisory activities. Effective co-operation arrangements with other regulators will provide for prompt exchange of information in relation to supervision, investigation and enforcement matters. Usually, co-operation arrangements will be in the form of memoranda of understanding or other arrangements. The information exchange may enhance, for example, the DFSA's understanding of the operations of an Authorised Firm's Group and the effect on the firm.

3-1-11 The DFSA may exercise its powers for the purposes of assisting other regulators or agencies (see Article 39 of the Regulatory Law 2004). The DFSA may also delegate functions and power to representatives of other regulators or agencies (see Article 40 of the Regulatory Law 2004).

Risk management cycle

3-1-12 The DFSA has adopted a continuous risk management cycle. This comprises the identification, assessment, prioritisation and mitigation of risks. This is determined by the use of a risk matrix which covers two factors: Impact and Probability.

Impact and Probability

3-1-13 The Impact Rating is an assessment of the potential adverse consequences that could follow from the failure of, or significant misconduct by, a firm. The potential adverse consequences of failure and misconduct encompass not only the direct financial impact on such firm's customers and stakeholders, but also the potential for damage to the reputation and objectives of the DFSA.

3-1-14 The Probability Rating covers four broad risk groups:

(a) Corporate Governance, Strategy and Business Model Risks;

(b) Financial and Operational Risks;

(c) Conduct of Business Risks to Clients and Markets; and

(d) AML/CTF and Financial Crime.

3-1-15 Within these risk groups are risk elements which the DFSA may review, according to the type of firm, to identify risks that could inhibit the achievement of its objectives.

Risk prioritisation and mitigation

3-1-16 A risk assessment enables the DFSA to allocate its resources in such a way that its supervisory tools are targeted towards those firms and activities which pose a higher risk to the DFSA's objectives.

3-1-17 Whenever appropriate, the DFSA may inform the firm of the steps the firm needs to take in relation to specific risks. Subsequently, the DFSA expects the firm to demonstrate that it has taken appropriate steps to mitigate the risks it poses to the DFSA's objectives.

3-1-18 Where necessary, risk mitigation programmes may be developed with a firm in order to mitigate or remove identified areas of risk.

3-1-19 Whilst the DFSA may discuss certain information with a firm, in particular the specific risks that lead it to assign an overall risk classification to the firm and any necessary remedial actions, it will not usually disclose the final risk classification.

Supervisory Tools

3-1-20 For the purpose of supervision, the DFSA will select those supervisory tools which are most suitable and effective to identify and address particular risks in a specific situation.

3-1-21 Some of the supervisory tools are discussed in varying detail in sections 3-2 to 3-6 and chapter 4.

Notifications to the DFSA

3-1-22 Section 11.10 of the GEN module sets out Rules on specified events, changes or circumstances that require notification to the DFSA by an Authorised Person (other than a Representative Office). The list of notifications outlined in section 11.10 is not exhaustive and other areas of the Rulebook may also specify additional notification requirements.

3-1-23 An Authorised Firm and Authorised Market Institution are required to comply with the high level principles in GEN Rule 4.2.10 and AMI Rule 9.2.1 respectively. These Rules require an Authorised Person to deal with the DFSA in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to such person of which the DFSA would reasonably expect to be notified.

3-2 SUPERVISION OF AUTHORISED FIRMS

Introduction

3-2-1 Section 3-2 provides additional information in relation to DFSA's approach to the supervision of an Authorised Firm. Where relevant, some of these requirements may apply to a Representative Office.

3-2-2 In supervising an Authorised Firm, the DFSA expects an Authorised Firm to comply with a number of high level principles in relation to its activities.

3-2-3 An Authorised Firm, other than a Representative Office, must comply with the twelve principles set out in section 4.2 of the GEN module. In brief, these are:

(a) Principle 1 – Integrity;

(b) Principle 2 – Due skill, care and diligence;

(c) Principle 3 – Management, systems and controls;

(d) Principle 4 – Resources;

(e) Principle 5 – Market Conduct;

(f) Principle 6 – Information and Interests;

(g) Principle 7 – Conflicts of Interest;

(h) Principle 8 – Suitability;

(i) Principle 9 – Customer assets and money;

(j) Principle 10 – Relations with regulators;

(k) Principle 11 – Compliance with high standards of corporate governance; and

(l) Principle 12 – Remuneration practices.

3-2-4 A Representative Office must comply with the four principles set out in section 3.2 of the REP module. In brief, these are:

(a) Principle 1 – Integrity;

(b) Principle 2 – Due skill, care and diligence;

(c) Principle 3 – Resources; and

(d) Principle 4 – Relations with regulators

Group supervision

3-2-5 When the DFSA licenses an Authorised Firm, it takes into consideration the relationship with any wider Group to which the firm may belong or with other Persons closely linked to it. The DFSA may also take into account lead or consolidated supervision to which an Authorised Firm or its Group may be subject in another jurisdiction.

3-2-6 An Authorised Firm is expected to provide information as required or reasonably requested under legislation applicable in the DIFC relating to the Authorised Firm and, where applicable, its consolidated or lead regulatory arrangements. This information may include prudential information, reports on systems and controls relating to an Authorised Firm's Group, internal and external audit reports, details of disciplinary proceedings or any matters

which may have financial consequences, reputational impact or pose any significant risk to the DIFC or to the Authorised Firm and the group-wide corporate governance practices and policies and the remuneration structure and strategies adopted. This information may initially be taken into account as part of DFSA's fit and proper test as set out in section 2-2 and may subsequently be utilised in the supervision of the Authorised Firm. Further Rules and Guidance with regard to obtaining information from an Authorised Firm's lead regulator are set out in GEN Rule 11.1.5.

3-2-7 The DFSA has an interest in the relationship of an Authorised Firm with other regulators, particularly in order to determine the level of reliance the DFSA may place on a regulator in another jurisdiction concerning any lead supervision arrangements. Depending on the legal structure of an Authorised Firm and the relationship of the DFSA with the regulator in question, the DFSA may place appropriate reliance on the supervision undertaken by this regulator.

Domestic firm's group with DIFC head office

3-2-8 The DFSA will usually be the lead and consolidated regulator of any Group headed by a Domestic Firm. Members of the Group, that is any of the Authorised Firm's Subsidiaries or branches, will be either subject to DFSA's exclusive supervision or, where members of the Group are located in a jurisdiction outside the DIFC, generally subject to lead or consolidated supervision by the DFSA in co-operation with another regulator.

Subsidiary of a non-DIFC firm

3-2-9 The DFSA will routinely be the lead regulator for the purpose of prudential supervision of an Authorised Firm which is a DIFC incorporated Subsidiary of a non-DIFC firm.

3-2-10 Where the Authorised Firm is a Subsidiary of a regulated non-DIFC parent company, the DFSA may have regard to any consolidated prudential supervision arrangements to which the Subsidiary is subject and will liaise with other regulators as necessary to ensure that these are adequately carried out, taking into account the Subsidiary's activities. The DFSA may place appropriate reliance on the Subsidiary's consolidated regulator in another jurisdiction if it is satisfied that it meets appropriate regulatory criteria and standards.

3-2-11 An Authorised Firm carrying on Financial Services as a Subsidiary of an unregulated non-DIFC parent company may be subject to DFSA's consolidated prudential supervision, taking into account the parent's activities.

Branch of a non-DIFC firm

3-2-12 An Authorised Firm carrying on Financial Services through a Branch will be subject to supervision by both the DFSA and the regulator in its head office jurisdiction.

3-2-13 The DFSA will have regard to any lead or consolidated prudential supervision arrangements to which a Branch is subject. The DFSA may place appropriate reliance on a Branch's lead regulator in another jurisdiction and, where appropriate, its consolidated prudential regulator if it is satisfied that it meets appropriate regulatory criteria and standards. Where an Authorised Firm is subject to lead regulation arrangements with a foreign

regulator, the DFSA will usually not seek to impose consolidated prudential supervision on the Authorised Firm's Group.

3-2-14 During the authorisation process the DFSA will take into account the nature and scope of the regulation and supervision to which the applicant is subject in its head office jurisdiction. Notwithstanding that an Authorised Firm may be subject to lead or consolidated regulatory arrangements, the DFSA requires it to remain fit and proper in respect of its Group and Controllers. Certain changes or events will require notification to, or prior approval from, the DFSA.

3-2-15 The DFSA will determine the level of regulatory and supervisory oversight which is subsequently required for a specific Branch. As part of DFSA's risk assessment process, during the authorisation process the DFSA undertakes a two-tier approach to the risks to its objectives posed by the Branch, thereby taking into account the characteristics of the applicant and its head office. The first part of this assessment includes a judgement on the degree of home country supervision and considers the strength of support, both financial and managerial, which the head office is capable of providing to the Branch, taking into account the Branch's activities and the adequacy of, among other things, the corporate governance framework and practices and remuneration structure and strategies adopted at the head office. The second part of the assessment considers the risk and control mechanisms within the Branch itself.

3-2-16 As a result of the assessment, the DFSA may consider granting a waiver or modification notice in respect of specific prudential or other regulatory requirements relating to a Branch.

Prudential returns for Authorised Firms

3-2-17 An Authorised Firm is required to submit periodic prudential returns. In addition, an Authorised Firm may be required to submit copies of its Group's annual interim and audited accounts. The DFSA may also require an Authorised Firm to provide copies of Group returns which are sent to any other regulator.

On-going risk analysis

3-2-18 The DFSA conducts an on-going analysis of risks relating to each Authorised Firm, although the information required may vary from firm to firm. Authorised Firms with a higher risk classification may be subject to closer regulatory attention and would typically be subject to supervisory reviews specifically designed to address particular causes of risk.

3-2-19 All Authorised Firms will be subject to an individual on-site risk assessment, except where more than one Authorised Firm belongs to the same Group, in which case the DFSA may decide to carry out a Group risk assessment.

3-2-20 The risk assessment process is on-going and it is expected that the risks of each Authorised Firm may be reviewed on at least an annual basis. Notifications, reporting of information, an on-going dialogue with senior management and visits to the Authorised Firm will ensure that the DFSA has current information on key risk areas of the Authorised Firm.

3-2-21 There are also a number of trigger events which may affect the frequency of a risk assessment and the Authorised Firm's overall risk classification. Examples include:

(a) a notification from a non-DIFC regulator or other authority of an issue concerning the Authorised Firm or its Group;

(b) a material change in an Authorised Firm's business and new business activities;

(c) a change in the Authorised Firm's Controllers;

(d) an Authorised Firm's development of high risk products or business lines;

(e) an Authorised Firm's development of business areas with characteristics such as unusual profitability;

(f) an Authorised Firm's appointment of new personnel in key business areas;

(g) an Authorised Firm's acquisition of new or revised information systems or new technology;

(h) a rapid growth in specific areas of activity of an Authorised Firm;

(i) an Authorised Firm's corporate restructuring, merger or acquisitions;

(j) an Authorised Firm's expansion or acquisition of non-DIFC operations including the impact of changes in related economic and regulatory environments; or

(k) the DFSA's response to industry-wide concerns or themes.

Review of risk management systems

3-2-22 Pursuant to GEN Rule 5.3.4, an Authorised Firm must ensure that its risk management systems provide the Authorised Firm with the means to identify, assess, mitigate and control its risks. In addition to undertaking its own assessment of the Authorised Firm, the DFSA may review the results of the Authorised Firm's internal risk assessment and determine the extent to which each of the Authorised Firm's risks impacts on DFSA's objectives, the likelihood of the risk occurring and then will consider the controls and mitigation programmes the firm has in place.

Desk based reviews

3-2-23 The DFSA may undertake desk based reviews in order to review compliance with legislation applicable in the DIFC. They assist the DFSA's understanding of an Authorised Firm's operations. For example, monitoring its financial position and detecting emerging problems or concerns to be explored in greater detail through prudential meetings, examinations, or otherwise. A desk based review may involve analysing information provided by the firm through supervisory returns, internal management information or published financial information.

3-2-24 The DFSA may, from time to time, issue a Controls questionnaire to Authorised Firms who will be asked to complete and return this to the DFSA. A Controls questionnaire focuses on key areas of risk identified by the DFSA at that time. An Authorised Firm must evaluate

itself against each of the risk areas and score itself in terms of its own arrangements and the systems and controls it has in place for mitigating the particular risks.

On-site visits

3-2-25 On-site visits provide the DFSA with an overview of the Authorised Firm's operations and enable it to form a first hand view of the personnel, systems and controls and compliance culture within the Authorised Firm as well as identifying and evaluating the risks to the DFSA's objectives, taking into account any mitigation by the Authorised Firm. They enable the DFSA to test the soundness of the Authorised Firm's systems and controls and the extent to which the DFSA can continue to rely on them and the Authorised Firm's senior management to prevent or mitigate risks to the DFSA's objectives. On-site visits will also assist the DFSA to assess the extent of supervision and the use of other supervisory tools required to address certain key risk areas.

3-2-26 There are various types of on-site visits by the DFSA to an Authorised Firm which differ in their objective and frequency:

(a) Periodic visits are undertaken at frequencies determined by the DFSA and focus on the main risk areas within an Authorised Firm as well as providing the DFSA with a thorough understanding of the Authorised Firm, its business and any major changes that have taken place within the Authorised Firm since a previous visit or risk assessment and their probable effects;

(b) Theme visits are designed to address a current or topical risk or issue either within a particular type of Authorised Firm or the market place in general. They tend to be short in duration and are focused in their approach. Examples of theme visits are anti money laundering, client assets and conflict management;

(c) Follow–up visits are often required to assess the implementation of any action that may have been agreed as part of a risk mitigation programme or to satisfy the DFSA that the Authorised Firm has taken appropriate action arising from a previous visit or communication;

(d) Special visits are unique to a particular Authorised Firm and are generally scheduled following a particular event or notification from an Authorised Firm. They are generally short, focused visits usually targeted to a particular area of an Authorised Firm. These visits allow the DFSA to review certain high risk areas of an Authorised Firm's business in isolation. Occasionally, special visits may be unannounced. These assist in keeping firms alert to the need to maintain a continuously high quality of compliance; and

(e) The DFSA may, from time to time, hold high level meetings with an Authorised Firm's senior management. Such meetings enable the DFSA to assess issues including any prudential concerns arising from desk based reviews or elsewhere.

Periodic Communications

3-2-27 The DFSA is committed to open and transparent communication with Authorised Firms. From time to time, the DFSA may issue letters to Senior Executive Officers or equivalent persons across the DIFC (commonly referred to as 'Dear SEO Letters'). Frequently, these letters will be issued as a means of communicating findings arising from completed thematic visits. However, they may also be issued in response to other major events or changes. For example, such a letter may include an update from relevant United

Nations Security Council Sanctions or Resolutions or the Financial Action Task Force, in relation to the prevention of money laundering and combating the financing of terrorism.

3-2-28 In addition to the Senior Executive Officer letters, the DFSA may issue alerts and warnings in response to particular matters of concern. An example of this could be in relation to matters concerning fraudulent activity that the DFSA has become aware of.

3-2-29 The DFSA holds outreach sessions from time to time, to interact with firms operating in the DIFC. These sessions are held to discuss regulatory matters in an open manner.

3-2-30 From time to time, the DFSA may consider a particular item of communication to an Authorised Firm to be of key regulatory importance. For this reason, the DFSA may consider it necessary to issue such communications directly to a senior member of staff at the Board level of the DIFC entity copied (where appropriate) to the group's home state regulator. For entities established as a Branch in the DIFC, these communications will likely be delivered to the Chairman of the Board at the DIFC Branch entity's head or Parent office. For DIFC incorporated entities, communications will likely be delivered directly to the Chairman of the firm's Board or head office. These communications may include, for example, the results of DFSA's risk assessment visits where a risk mitigation plan has been sent that contains significant matters of concern to DFSA's objectives.

External auditor reports, statements and tripartite meetings

3-2-31 The DFSA requires an Authorised Firm's registered external auditor to co-operate with the DFSA in a number of ways, including the submission of specific audit reports and statements. As part of an audit, the DFSA would expect an auditor to review any relevant correspondence between the DFSA and the Authorised Firm. Further, tripartite meetings between the Authorised Firm's senior management, the auditor, and the DFSA may be requested at the DFSA's initiative. Finally, an auditor is required to disclose to the DFSA those matters outlined in Article 104(3) of the Regulatory Law 2004.

Requiring information and documents

3-2-32 Apart from reports such as regular prudential returns, the DFSA may from time to time also request from an Authorised Firm additional supplementary information and documents, including non-financial information such as an Authorised Firm's internal policies on particular areas of risk or its organisational chart.

Requirements relating to Change in Control

3-2-33 Article 64 of the Regulatory Law 2004 and section 11.8 of the GEN module set out the DFSA's requirements governing Controllers of Authorised Firms.

DFSA approval

3-2-34 A Person who proposes to become a Controller of a Domestic Firm or an existing Controller who proposes to increase the level of control which that Person has in a Domestic Firm beyond the threshold of 30% or 50% is required to obtain the DFSA's prior approval before doing so. The DFSA's assessment of a proposed acquisition or increase in control of a Domestic Firm is a review of such a firm's continued fitness and propriety and ability to conduct business soundly and prudently. Accordingly, the DFSA takes into account the

considerations specified in paragraph 2-2-12 relating to Controllers when making such an assessment.

3-2-35 Pursuant to GEN Rule 11.8.5(1), a Person who proposes either to acquire or increase the level of control in a Domestic Firm must lodge with the DFSA an application for approval in the appropriate form in AFN. The DFSA may approve of, object to or impose conditions relating to the proposed acquisition or the proposed increase in the level of control of the Authorised Firm. If the information in the application form lodged with the DFSA is incomplete or unclear, the DFSA may in writing request further clarification or information. The DFSA may do so at any time during the processing of such an application. The period of 90 days within which the DFSA will make a decision will not commence until such clarification or additional information is provided to the satisfaction of the DFSA. The DFSA may, in its absolute discretion, agree to a shorter period for processing an application where an applicant requests for such a period, provided all the information required is available to the DFSA.

3-2-36 Where the DFSA proposes to object to or impose conditions relating to a proposed acquisition of or increase in the level of control in a Domestic Firm, the DFSA will first notify the applicant in writing of its proposal to do so and its reasons. The DFSA will take into account any representations made by an applicant before making its final decision.

3-2-37 The DFSA may consider whether a Person has become an unacceptable Controller as a result of any notification given by an Authorised Firm pursuant to Rule 11.8.11(2) or as a result of its own supervisory work. The considerations which the DFSA will take into account in assessing whether a Person is an acceptable Controller are those set out in paragraph 3-2-34 above.

Application for a Change of Scope of Licence

3-2-38 Where an Authorised Firm applies to change the scope of its Licence, it should provide the following information:

(a) a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;

(b) details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the Authorised Firm will be able to comply with any additional regulatory requirements; and

(c) descriptions of the Authorised Firm's senior management responsibilities (see GEN chapter 5) where these have changed from those previously disclosed, including any up-dated staff organisation charts and internal and external reporting lines.

(d) details of any transitional arrangements where the Authorised Firm is reducing its activities and where it has existing customers who may be affected by the cessation of a Financial Service;

(e) the appropriate financial reporting statement where the variation may result in a change to the Authorised Firm's prudential category or the application of additional or different financial rules. If a capital increase is required in order to demonstrate

compliance with additional financial rules but such capital is not paid up or available at the time of application, proposed or forecast figures may be used;

(f) details of the effect of the proposed variation on the Authorised Individuals including, where applicable, submitting any application forms for individuals to perform additional or new Licensed Functions, or to remove existing Licensed Functions; and

(g) revised pro forma financial statements.

3-2-39 An Insurer which wishes to vary its Licence to remove the Financial Service of Effecting Contracts of Insurance or to reduce the classes of insurance should refer to the run-off provisions in PIN chapter 9.

3-2-40 In considering whether an Authorised Firm is fit and proper with respect to a change in the scope of its Licence, the DFSA may take into account those matters in Chapter 2 of the RPP Sourcebook, which provides Guidance on fitness and propriety for Authorised Firms.

3-2-41 When considering a change to the scope of a Licence, the DFSA may also consider one or more of the matters outlined in paragraphs 3-2-42 to 3-2-47 below relating to the withdrawal of a Licence.

Application for a Withdrawal of Licence

3-2-42 In considering requests under GEN Rule 11.4.1, an Authorised Firm will need to satisfy the DFSA that it has made appropriate arrangements with respect to its existing customers, including the receipt of any customers' consent where required and, in particular:

(a) whether there may be a long period in which the business will be run-off or transferred;

(b) whether deposits must be returned to customers;

(c) whether money and other assets belonging to customers must be returned to them; and

(d) whether there is any other matter which the DFSA would reasonably expect to be resolved before granting a request for the withdrawal of a Licence.

3-2-43 In determining a request for the withdrawal of a Licence, the DFSA may require additional procedures or information as appropriate including evidence that the Authorised Firm has ceased to carry on Financial Services.

3-2-44 An Authorised Firm should submit detailed plans where there may be an extensive period of wind-down. It may not be appropriate for an Authorised Firm to immediately request a withdrawal of its Licence in all circumstances, although it may wish to consider reducing the scope of its Licence during this period. Authorised Firms should discuss these arrangements with the DFSA.

3-2-45 The DFSA may refuse a request for the withdrawal of a Licence where it appears that customers may be exposed to adverse effect.

3-2-46 The DFSA may also refuse a request for the withdrawal of a Licence where:

(a) the Authorised Firm has failed to settle its debts to the DFSA; or

(b) it is in the interests of a current or pending investigation by the DFSA, or by another regulatory body or Financial Services Regulator.

3-2-47 Some other matters which an Authorised Firm should be mindful of in relation to the withdrawal of its Licence include:

(a) Under Article 63 of the Regulatory Law 2004 where the DFSA grants a request for the withdrawal of a Licence, the DFSA may continue to exercise any power under the Regulatory Law 2004 or Rules in relation to an Authorised Firm or Authorised Individual for two years from the date on which the Licence was withdrawn;

(b) Article 43(2) of the Regulatory Law 2004 states that Licensed Functions of an Authorised Firm shall be carried out by its Authorised Individuals. Accordingly, where an Authorised Firm's Licence is withdrawn, the authorised status of its Authorised Individuals will also be withdrawn from the same date. However, this does not remove the obligation on an Authorised Firm to provide a statement under GEN Rule 11.7.3 where an Authorised Individual has been dismissed or requested to resign; and

(c) Where a Fund Manager or the Trustee makes a request under GEN Rule 11.4.1, the Fund Manager or the Trustee will need to satisfy the DFSA that it has made appropriate arrangements in accordance with the requirements under the Collective Investment Law 2010 and the CIR module with respect to the continuing management of the Fund for which it is the Fund Manager or the Trustee, as the case may be.

Notification to the DFSA relating to a Major Acquisition

3-2-48 GEN Rule 11.10.8 provides that an Authorised Firm which makes or proposes to make a Major Acquisition as defined must comply with either GEN Rule 11.10.9 or 11.10.10, depending on whether it is a Domestic Firm.

3-2-49 An Authorised Firm should provide to the DFSA information that would enable the DFSA to consider factors noted in GEN Rule 11.10.9(3). Although the DFSA does not prescribe the form in which such information is to be provided to the DFSA, Authorised Firms should consider any relevant industry and international practices when providing information to the DFSA for similar purposes.

3-2-50 The 45 day notice period referred to in GEN Rule 11.10.9(1) commences to run from the first business day after the date on which the DFSA receives the notification. However, if any critical information that the DFSA requires in order to assess the notification has not been provided to the DFSA at the time of the notification, the relevant notice period for considering that notification will only commence to run after the Authorised Firm has provided to the DFSA that information upon a request made by the DFSA under its powers in GEN Rule 11.10.11(1).

3-2-51 Upon the request of an Authorised Firm, the DFSA may, at its sole discretion, agree to consider a notification within a shorter period than the 45 days referred to above. The onus is on an Authorised Firm which wishes to obtain a DFSA decision under this Rule within a shorter period to make a request to that effect to the DFSA and provide all the information that the DFSA requires to enable the DFSA to process the notification within a shorter timeframe.

3-2-52 Where the DFSA exercises its powers under this provision to object to a proposed Major Acquisition or impose any conditions relating to such a Major Acquisition, a Person affected by such a decision may make an appeal relating to that decision to the DFSA's Regulatory Appeals Committee. Appeal provisions are in GEN Rule 11.10.12.

3-2-53 Where the DFSA receives a notification under GEN Rule 11.10.10(1)(b), it will to the extent necessary, liaise with the home regulator in taking any appropriate action relating to the proposed Major Acquisition.

Outsourcing

3-2-54 An Authorised Person must comply with those requirements in GEN Rules 5.3.21 and 5.3.22 when outsourcing functions or activities. In relation to Funds, there are additional outsourcing and delegation requirements applicable for Fund Managers and Trustees in section 8.12 of the CIR module.

3-2-55 The DFSA requires an Authorised Person to notify it of any material outsourcing arrangements. In the case of an Authorised Market Institution, any material outsourcing arrangements require the DFSA's prior approval pursuant to AMI Rule 5.5.3(1). An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of the service would cast serious doubt on the Authorised Firm's continuing ability to remain fit and proper or comply with applicable Laws and Rules.

3-2-56 The outsourcing of functions or activities does not absolve management or Governing Body of responsibility and accountability for ensuring proper administration and execution of these functions or activities.

3-3 SUPERVISION OF REPRESENTATIVE OFFICES

3-3-1 The DFSA expects to undertake periodic visits to Representative Offices as part of its risk based approach to supervising firms. The DFSA may also include Representative Offices in thematic visits.

3-3-2 Onsite visits to Representative Offices are likely to focus on issues including:

(a) confirming that activities undertaken by the Representative office are allowed under its licence;

(b) reviewing the adequacy of its systems and controls to comply with its AML responsibilities;

(c) any solvency concerns with the head office or Group; and

(d) the firm's disclosure of its regulated status.

3-3-3 The onsite visit is likely to include interviews with the Principal Representative and a review of relevant records.

3-4 SUPERVISION OF DNFBPs

3-4-1 The DFSA expects to undertake periodic visits to the place of business of a DNFBP as part of its risk based approach to supervising firms. The DFSA may also include DNFBPs in thematic visits.

3-4-2 Onsite visits to DNFBPs will generally focus on their compliance with relevant AML/CTF laws and the Rules contained in the AML module. This may include the DFSA testing the firm's systems and controls for conducting a money laundering risk assessment, customer due diligence and complying with relevant United Nations Security Council Sanctions and Resolutions.

3-4-3 The onsite visit is likely to include interviews with senior management and a review of relevant records. Depending on the outcome of the visit, the DFSA may provide a letter to the firm to discuss its findings.

3-4-4 The DFSA will also receive an Annual AML Return from a DNFBP (see AML Rule 14.5.1) which will assist the DFSA in its supervision of DNFBPs.

3-5 SUPERVISION OF AUDITORS

3-5-1 The DFSA expects to undertake periodic visits of Auditors as part of its risk based approach to supervising firms. The DFSA may include Auditors in some thematic visits.

3-5-2 The DFSA is likely to request an annual information report from all Auditors. The information report will request details such as:

(a) outcome of a fit and proper assessment undertaken by the Auditor;

(b) any professional indemnity insurance obtained by the Auditor;

(c) names of the Authorised Firms audited;

(d) continuing professional development undertaken by relevant employees of the Auditor;

(e) any other activities undertaken by the Auditor; and

(f) complaints received by the Auditor.

3-5-3 The DFSA is likely to undertake a desk based review of the content of the annual information report it receives from an Auditor. Prior to scheduling an onsite visit, the DFSA is likely to make a request for further information from the Auditor.

3-5-4 The onsite visit is likely to include interviews with senior management and a review of files/documentation.

3-6 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

Introduction

3-6-1 The Regulatory Law 2004 establishes a principles-based framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions. This framework is supplemented by supervisory powers and other requirements in the Markets Law 2012.

3-6-2 The Markets Law 2012 establishes a framework in relation to how an Authorised Market Institution may administer and operate an Official List of Securities and stipulates some specific Rule requirements in respect of this.

Official list of securities

3-6-3 Where an Exchange administers and operates an Official List of Securities, the risk-based approach to supervision also applies to the carrying on of this activity.

Group supervision

3-6-4 When the DFSA licenses an Authorised Market Institution, it takes into consideration the relationship with any wider Group to which the Authorised Market Institution may belong or with other Persons closely linked to it. The DFSA will also take into account lead or consolidated supervision to which an Authorised Market Institution or its Group may be subject in another jurisdiction. This may lead to the DFSA placing some reliance on the supervisory arrangements in another jurisdiction or creating and participating in special arrangements for the supervision of the Authorised Market Institution and its Group. The Authorised Market Institution is expected to provide information required or reasonably requested in relation to these consolidated or lead supervisory arrangements before final supervisory arrangements are established.

3-6-5 Each relationship will be considered on a case by case basis and according to the risks posed by the Authorised Market Institution's activities identified during supervisory arrangements. Such supervisory arrangements may include a process to be agreed by the DFSA, the Authorised Market Institution itself and other relevant regulators.

3-6-6 Effective co-operation with regulators will provide for prompt exchange of information and co-operation in relation to supervision and enforcement between jurisdictions. This may include exchanges of information and co-operation in respect of activity conducted by an Authorised Market Institution. Usually co-operation arrangements will be in the form of memoranda of understanding. The information exchange will enhance the DFSA's understanding of the operations of the Group and the effect on the Authorised Market Institution.

Application for a Change in Control

3-6-7 Chapter 8 of the AMI module sets out the requirements relating to a change in control. These requirements are similar to those for an Authorised Firm which are set out at paragraphs 3-2-33 to 3-2-37.

Directions Power

3-6-8 Article 26 of the Markets Law 2012 empowers the DFSA to give an Authorised Market Institution certain directions in relation to the Authorised Market Institution's duties under DFSA-administered laws. It also gives the DFSA a power to direct an Authorised Market Institution to do specified things including closing the market, suspending transactions and prohibiting trading in Investments. Article 26 also empowers the DFSA to exercise the powers contained in the Authorised Market Institution's Rules for participants as though it was the Authorised Market Institution where it considers that the Authorised Market Institution has not exercised the powers under those Rules.

3-6-9 In considering whether to exercise such powers, the DFSA may take into account factors including:

(a) what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;

(b) the impact on the DFSA's objectives if a direction were not issued; or

(c) whether it is in the interests of the DIFC.

3-6-10 The written notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers. Though the DFSA is not required to do so under the Markets Law 2012, in most cases the DFSA will contact the Authorised Market Institution prior to issuing such a direction.

3-6-11 Article 35 of the Markets Law 2012 allows the DFSA to direct an Authorised Market Institution to suspend or delist Securities from its Official List of Securities. Such directions may take effect immediately or from a date and time as may be specified in the direction. Chapter 9 of the MKT contains details in this regard.

4 SUPERVISORY AND ENFORCEMENT POWERS

4-1 INTRODUCTION

4-1-1 This chapter provides information on how the DFSA will generally exercise its powers when conducting supervisory or enforcement activities. These powers can be exercised in respect of any Persons, including an Authorised Person, DNFBP or Auditor (collectively referred to as "firms" in this chapter unless otherwise stated), an Authorised Individual or Principal Representative.

4-1-2 Chapter 5 of the RPP describes how the DFSA will exercise additional powers when conducting enforcement activities.

4-1-3 A reference to:

(a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and

(b) the Law in this chapter is a reference to any legislation administered by the DFSA.

4-1-4 The range of powers available to the DFSA is primarily set out in the Regulatory Law 2004. Some of the key powers in this chapter include the power to:

(a) request information and documents and access premises (see Article 73);

(b) require an Authorised Peron to provide a report from an independent expert (see Article 74);

(c) impose restrictions on an Authorised Person's business (see Article 75) or dealings with relevant property (see Article 76);

(d) impose conditions and restrictions on an Authorised Person's Licence (see Article 49);

(e) impose conditions and restrictions on an Authorised Individual's status (see Article 57);

(f) withdraw an authorisation or Licence of an Authorised Person (see Articles 50 and 51);

(g) restrict a person from performing any functions in connection with provision of Financial Services or Ancillary Services (see Article 58(1)), or restrict, suspend or withdraw an Authorised Individual's status (see Article 58(2); and

(h) suspend, vary or withdraw the registration of an Ancillary Service Provider (see Article 60) or Auditor (see Articles 98 and 105).

4-1-5 When the DFSA exercises a power specified in this chapter, it will generally follow the decision making procedures set out in chapter 6 of this Sourcebook (except for sections 4-2 and 4-3). Chapter 6 also sets out, among other matters, whether a Person will:

(a) receive prior written notice and have a suitable opportunity to make representations prior to the DFSA's exercising a power;

(b) receive reasons of any decision to exercise such power; and

(c) have a right of appeal to the Regulatory Appeals Committee.

4-2 POWER TO REQUEST INFORMATION AND DOCUMENTS

4-2-1 In order to supervise the conduct and activities of an Authorised Person, DNFBP, Fund, Auditor or any director, officer, employee or agent of such person, the DFSA requires access to a broad range of information relating to a Person's business. Such information is usually provided to the DFSA on a voluntary basis. In particular, an Authorised Person and Authorised Individual is expected to deal with the DFSA in an open and cooperative manner and disclose to the DFSA any information of which the DFSA would reasonably expect to be notified.

4-2-2 Pursuant to Article 73 of the Regulatory Law 2004, the DFSA may require a relevant Person to give information and produce documents about its business, transactions or employees to the DFSA. When the DFSA requires the giving of information or production of documents, it will give the Person a written notice specifying what is required to be given or produced.

4-2-3 The DFSA may also apply to the Court to make an order for information and documents under Article 73 from specified Persons located outside the jurisdiction of the DIFC.[1]

4-3 POWER TO ACCESS PREMISES

4-3-1 The DFSA may enter the premises of an Authorised Person, DNFBP, Fund or Auditor during normal business hours or at any other time as may be agreed, for the purpose of inspecting and copying information or documents (at the relevant Person's expense) stored in any form on such premises, as it considers necessary or desirable to meet the objectives of the DFSA.[2]

4-3-2 The DFSA will provide reasonable notice to an Authorised Person, DNFBP, Fund or Auditor when it seeks information, documents or access to premises. In exceptional circumstances, such as where any delay may be prejudicial to the interests of the DIFC, the DFSA may seek access to premises without notice.

4-4 POWER TO REQUIRE A REPORT

4-4-1 The DFSA may require an Authorised Person to provide it with a report from an independent expert on specified matters under Article 74 of the Regulatory Law 2004.

[1] Article 73(3) of the Regulatory Law 2004
[2] Article 73(2) of the Regulatory Law 2004, GEN Rule 11.1.2.(d)

4-4-2 There are a variety of circumstances where the DFSA may consider it appropriate to require the production of a report. These circumstances include, but are not limited to:

(a) where the DFSA has concerns as to the adequacy of systems and controls (such as compliance, internal audit, anti money laundering, risk management and record keeping);

(b) where the DFSA seeks verification of information submitted to it; or

(c) where remedial action is required to ensure the Authorised Person complies with DFSA Laws and Rules.

4-4-3 GEN section 11.12 sets out various requirements relating to the appointment of an independent expert. In particular, it is noted that:

(a) the DFSA will give written notification to the Authorised Person concerning the purpose of the proposed report, the scope, the timetable for completion and any other relevant matters;

(b) the independent expert is required to be appointed by the Authorised Person and be nominated or approved by the DFSA;

(c) an Authorised Person is required to include specific requirements in a contract with an independent expert;

(d) an Authorised Person is required to ensure it provides all assistance that the independent expert may reasonably require and ensure that the independent expert co-operates with the DFSA; and

(e) an Authorised Person is required to pay for the services of the independent expert.

4-4-4 The DFSA notes that any information given or documents produced under Article 74 are admissible in evidence in administrative and civil proceedings, provided that any such information or documents also comply with any requirements relating to the admissibility of evidence in such proceedings.

4-5 POWER TO RESTRICT AN AUTHORISED PERSON'S BUSINESS OR PROPERTY

4-5-1 The DFSA has a power under Article 75 to impose restrictions on an Authorised Person's business. This includes prohibiting an Authorised Person from entering into specific types of transactions, from soliciting business from specific types of persons or from carrying on business in a specific manner. The DFSA may also require an Authorised Person to carry on business in, and only in, a specified manner.

4-5-2 Pursuant to Article 76, the DFSA is also empowered to prohibit or require an Authorised Person to deal with any relevant property in a certain manner.[3] The terms "dealing" and "relevant property" are defined in Article 76 as follows:

[3] Article 76 of the Regulatory Law 2004

(a) "dealing" in relation to property includes the maintaining, holding, disposing and transferring of property; and

(b) "relevant property" in relation to an Authorised Person means:

(i) any property held by the person, acting within the capacity for which it holds a Licence, on behalf of any of the clients of the person, or held by any other person on behalf of or to the order of the person acting within such capacity; or

(ii) any other property which the DFSA reasonably believes to be owned or controlled by the person.

4-5-3 In determining whether to exercise its Article 75 and 76 powers, the DFSA will take into account the circumstances set out in GEN Rule 11.13.1 (a) to (m).

4-6 POWER TO IMPOSE CONDITIONS AND RESTRICTIONS ON AN AUTHORISED PERSON'S LICENCE

4-6-1 Pursuant to Article 49 of the Regulatory Law 2004, the DFSA may at any time by written notice to an Authorised Person on its own initiative, or at the request of an Authorised Person:

(a) impose conditions and restrictions or additional conditions and restrictions on a Licence; and

(b) vary or withdraw conditions and restrictions imposed on a Licence.[4]

4-6-2 In determining whether to exercise its Article 49 power, the DFSA will take into account the circumstances including, but not limited to, the following:

(a) where the Authorised Person's resources (including financial resources as well as human resources) are inadequate for the scale or type of activity which the firm is licensed to undertake;

(b) where the Authorised Person has not conducted its business in compliance with the Laws and Rules;

(c) where the Authorised Person has conducted its business in such a way that it has not ensured full compliance with applicable money laundering and counter terrorism legislation; or

(d) where the DFSA has some concern about the fitness and propriety of the Authorised Person, but not such as to warrant the withdrawal of its Licence.

[4] Article 49(1) of the Regulatory Law 2004

4-7 POWER TO WITHDRAW AN AUTHORISATION IN RESPECT OF ONE OR MORE FINANCIAL SERVICES OR A LICENCE

4-7-1 The DFSA may exercise its powers under Article 50(1) to withdraw the authorisation under a Licence to carry on one or more Financial Services where:

(a) the Authorised Person is or has been in breach of one or more restrictions or conditions applicable to its Licence;

(b) the Authorised Person is in breach of the Regulatory Law 2004, Rules or other legislation administered by the DFSA;

(c) the Authorised Person is no longer fit and proper to carry on a Financial Service;

(d) the Authorised Person has failed for a period of at least twelve consecutive months to carry on one or more Financial Services for which it is authorised under a Licence;

(e) the Authorised Person requests the withdrawal; or

(f) the DFSA considers that the exercise of the power is necessary or desirable in the pursuit of its objectives.

4-7-2 The DFSA may exercise its powers under Article 51 to withdraw a Licence where:

(a) as a consequence of withdrawal of authorisation in relation to one or more Financial Services under Article 50, the Authorised Person is no longer authorised to carry on a Financial Service;

(b) the Authorised Person is no longer fit and proper to hold a Licence;

(c) the Authorised Person has failed to remove a Controller or take such other action as required by the DFSA under Article 64; or

(d) the Authorised Person requests the withdrawal.

4-7-3 In determining whether to exercise its Article 50 and 51 powers, the DFSA will have regard to all relevant matters. These include, but are not limited to, the following:

(a) when the DFSA has serious concerns about the manner in which the business of the Authorised Person has been or is being conducted;

(b) when the DFSA considers it necessary to protect regulated entities and customers in the DIFC;

(c) whether any alleged contraventions affect or have the potential to affect DFSA objectives;

(d) the nature, seriousness and impact of any alleged contravention and whether the alleged contravention is on-going;

(e) when the Authorised Person no longer satisfies the relevant criteria set out in chapter 7 of the GEN module, chapters 2 and 7 of the AMI module and section 2-2 of this module in respect of the fitness and propriety to carry on a Financial Service or hold a Licence;

(f) when the activities of the Authorised Person have ceased; and

(g) when the Authorised Person's resources seem to the DFSA inadequate for the scale or type of activity which the firm is authorised to undertake.

4-7-4 Where an Authorised Person requests the DFSA to withdraw its Licence, then such a Person should complete and submit the relevant form to the DFSA (see SUP 6 Form - AFN Sourcebook). This form sets out a number of matters which the DFSA will consider before processing such an application to withdraw a Licence.

4-8 POWER TO IMPOSE CONDITIONS AND RESTRICTIONS ON THE STATUS OF AN AUTHORISED INDIVIDUAL

4-8-1 Pursuant to Article 57 of the Regulatory Law 2004, the DFSA may at any time by a written notice to an Authorised Individual and the Authorised Firm in relation to which the Authorised Individual is an officer, employee or agent:

(a) impose conditions and restrictions or additional conditions and restrictions on the grant of Authorised Individual status; and

(b) vary or withdraw conditions and restrictions imposed on the grant of such status.[5]

4-8-2 The DFSA may exercise this power in circumstances including, but not limited to, the following:

(a) where the Authorised Individual has not acted effectively and responsibly or has not exercised the expected level of skill, care and diligence in carrying out the Licensed Function;

(b) where the conduct of the Authorised Individual falls below the standards expected; or

(c) where the DFSA has some concern about the fitness and propriety of the Authorised Individual, but not such as to warrant the suspension or withdrawal of an Authorised Individual's status.

4-9 POWER TO RESTRICT, SUSPEND AND WITHDRAW THE STATUS OF AN AUTHORISED INDIVIDUAL

4-9-1 Pursuant to Article 58(2) of the Regulatory Law 2004, the DFSA has the power to restrict a Person from performing Licensed Functions, or to suspend or withdraw a Person's Authorised Individual status, if it reasonably concludes that:

[5] Article 57 of the Regulatory Law 2004

(a) the Person is in breach or has been in breach of an obligation that applies as a result of such Person's Authorised Individual status; or

(b) a Person is no longer fit and proper to perform the Licensed Function role for which he requires status as an Authorised Individual.[6]

4-9-2 In determining whether to exercise its Article 58(2) power, the DFSA will have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of an Authorised Individual as set out in chapter 7 of GEN and section 2-3 of this Sourcebook.

4-9-3 The DFSA may also withdraw the Authorised Individual status of a Person pursuant to Article 58(3) if:

(a) the Person becomes bankrupt;

(b) the Person is convicted of a serious criminal offence;

(c) the Person becomes incapable, through mental or physical incapacity, of managing his affairs;

(d) the Person or the relevant Authorised Firm asks the DFSA to withdraw the status; or

(e) the Licence of the relevant Authorised Firm is withdrawn.

4-9-4 In determining whether to exercise its power under Article 58(3)(b), the DFSA will give particular consideration to offences involving dishonesty, fraud or a financial crime.

4-10 POWER TO RESTRICT INDIVIDUALS

4-10-1 If the DFSA reasonably concludes that a natural person is not fit and proper to perform any functions in connection with the provision of Financial Services or Ancillary Services (whether or not they are Licensed Functions), it may restrict that Person from performing any or all such functions.[7]

4-10-2 Article 58(1) of the Regulatory Law 2004 enables the DFSA to impose a restriction in respect of all functions or in respect of specific functions. Whether a general restriction or a more specific restriction is imposed by the DFSA may depend on the facts of the matter, including:

(a) the concerns upon which the DFSA determines that a natural person is not fit and proper to perform any functions; and

(b) the need to protect the integrity of the DIFC and ensure the confidence of participants in the market.

[6] Article 58(2) of the Regulatory Law 2004
[7] Article 58(1) of the Regulatory Law 2004

4-10-3 In determining whether to exercise its power under Article 58(1), the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN and section 2-3 of this Sourcebook.

4-11 Deleted

4-12 POWER TO VARY, SUSPEND OR WITHDRAW THE REGISTRATION OF AN AUDITOR

4-12-1 The DFSA has the power in respect of an Auditor to:

(a) withdraw its registration;[8] or

(b) suspend its registration.[9]

4-12-2 The DFSA may exercise such powers where it has reasonable grounds to believe that:

(a) the Auditor is no longer fit and proper; or

(b) the Auditor has breached, or is breaching, the Regulatory Law 2004, Rules or other legislation administered by the DFSA.

4-12-3 In determining whether to exercise such powers, the DFSA will have regard to all relevant matters including, but not limited to, the circumstances as relevant to an Auditor specified in paragraph 4-7-3.

4-13 MISCELLANEOUS POWERS

Endorsements

4-13-1 The DFSA has the power to:

(a) impose conditions and restrictions or additional conditions and restrictions;[10] or

(b) withdraw or vary conditions and restrictions,[11]

on an endorsement to conduct Islamic Financial Business.

4-13-2 In respect of an endorsement on a Licence to conduct business with Retail Clients, the DFSA has the power to impose conditions and restrictions, or withdraw or vary conditions and restrictions pursuant to Article 49 (see section 4-6 of this chapter).

[8] Article 98(3) of the Regulatory Law 2004
[9] Article 105 of the Regulatory Law 2004
[10] Article 12 of the Law Regulating Islamic Financial Business 2004
[11] Article 12 of the Law Regulating Islamic Financial Business 2004

4-13-3 In determining whether to exercise such powers, the DFSA will have regard to all relevant matters including, but not limited to, one or more of those circumstances specified in 4-6-2 in respect of imposing, varying or withdrawing conditions and restrictions.

Funds

4-13-4 The DFSA has the power to withdraw the registration of a Public Fund in one or more of the circumstances set out in Article 32 of the Collective Investment Law.[12] In determining whether to exercise this power, the DFSA can withdraw the registration of a Public Fund only if it considers that:

(a) the withdrawal is in the interests of the Unitholders of the Fund; or

(b) appropriate steps have been taken or may reasonably be taken to protect the interests of the Unitholders.

Auditors

4-13-5 The DFSA may direct[13] an Authorised Person or Public Listed Company to appoint an auditor, where an auditor has not been appointed by such person.

4-13-6 Where an auditor appointed by an Authorised Person and Public Listed Company is not suitable in the opinion of the DFSA, the DFSA may direct[14] the auditor to remove itself as auditor from such person.

Directions Powers for Prudential Purposes

4-13-7 Pursuant to Article 75A of the Regulatory Law 2004, the DFSA may for, prudential purposes, issue a direction to a particular Authorised Firm, or Authorised Firms within a specified class, to:

(a) comply with any specified additional capital or liquidity requirements;

(b) apply a specific provisioning policy or treatment of specified assets;

(c) comply with specified limits on material risk exposures;

(d) comply with specified limits on exposures to related parties;

(e) meet additional or more frequent reporting requirements; or

(f) take such other action as is specified in the direction.

4-13-8 Where the DFSA proposes to issue a direction under Article 75A to Authorised Firms within a specified class, the direction will remain in force for a period of no more than 12 months in the first instance, unless the DFSA specifies a shorter period of time in the notice. The DFSA considers that such a direction should remain in force for a limited period as it has a Rule making power under the Regulatory Law 2004 at its disposal, which the DFSA would

[12] Article 32 of the Collective Investment Law 2010
[13] GEN Rule 8.4.6 and MKT Rule 5.2.6
[14] GEN Rule 8.4.7 and MKT Rule 5.2.7

ordinarily use where it was proposing to change its Rules relating to Authorised Firms within a specified class.

5 ENFORCEMENT

5-1 THE DFSA'S APPROACH TO ENFORCEMENT

Introduction

5-1-1 This chapter sets out the DFSA's approach to enforcement and how it commences and conducts investigations, and exercises its powers to address any misconduct or contravention of the Law or Rules.

5-1-2 A reference to:

(a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and

(b) the Law in this chapter is a reference to any legislation administered by the DFSA.

Enforcement philosophy

5-1-3 The DFSA's enforcement philosophy is guided by the following principles which govern the DFSA's approach to fulfilling its objectives as set out in Article 8:

(a) the DFSA adopts a risk based approach to regulation. This means that the DFSA will focus its efforts on those activities that it perceives as posing the greatest risk to the fulfilment of its objectives;

(b) the DFSA will act swiftly and decisively to stop conduct which threatens the integrity of the DIFC or the stability of the financial services industry in the DIFC, minimise its effects, and prevent such conduct re-occurring;

(c) the DFSA works closely with home regulators of international firms to ensure that there is a co-ordinated approach to regulation;

(d) the DFSA will act fairly, openly, accountably and proportionally in the exercise of its enforcement powers; and

(e) the DFSA will not publicise details of the commencement or conduct of investigations, unless it is in the furtherance of the DFSA's objectives or the public interest to do so. The DFSA will generally publish details of the outcome of an enforcement action in keeping with its fair and transparent approach and to maintain the integrity of the DIFC by deterring contraventions of Laws or Rules or other misconduct.

5-2 ENFORCEMENT FRAMEWORK

Introduction

5-2-1 The DFSA will take an enforcement action in line with its objectives and enforcement philosophy, and may conduct investigations where there is a suspected contravention of a Law or Rule.

General contravention provisions

5-2-2 A Person contravenes the Law or the Rules when that Person:

(a) does an act or thing that the Person is prohibited from doing by or under the Law or Rules;

(b) does not do an act or thing that the Person is required or directed to do by or under the Law or Rules; or

(c) otherwise contravenes a provision of the Law or Rules.[15]

Involvement in contravention

5-2-3 If a Person is knowingly concerned in a contravention by another Person of the Law or Rules, then both Persons may be held liable for committing a contravention pursuant to Article 86.

5-2-4 A Person is "knowingly concerned" in a contravention[16] if the Person:

(a) has aided, abetted, counselled or procured the contravention;

(b) has induced, whether by threats or promises or otherwise, the contravention;

(c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or

(d) has conspired with another or others to effect the contravention.

Enforcement process

5-2-5 When taking enforcement action, the DFSA will adopt the enforcement process described in this chapter. The DFSA's enforcement process is comprised of the following elements:

(a) Assessment of complaints and referrals (see section 5-3);

[15] Article 85 of the Regulatory Law 2004
[16] Article 86 (7) of the Regulatory Law 2004

(b) Commencement of an investigation (see section 5-4);

(c) Information gathering (see section 5-5);

(d) Consideration of investigative findings (see section 5-6);

(e) Remedies (see section 5-6); and

(f) Conclusion of the Investigation (see section 5-21).

5-3 ASSESSMENT OF COMPLAINTS AND REFERRALS

5-3-1 The assessment of complaints and referrals concerning potential misconduct or suspected contravention of the Law or Rules is a key function of the DFSA's regulatory remit and Enforcement framework. Every complaint and referral, regardless of source, is assessed to determine whether an investigation or other action ought to take place.

Sources of complaints and referrals

5-3-2 The DFSA may become aware of potential misconduct or suspected contraventions of Laws or Rules from a variety of sources including:

(a) members of the public;

(b) its supervisory activities; and

(c) other external regulatory authorities or law enforcement agencies.

Complaints

5-3-3 The DFSA receives and assesses two types of complaints:

(a) regulatory complaints; and

(b) complaints against the DFSA and its employees.

5-3-4 A Person wishing to lodge a complaint with the DFSA should do so in writing. A complaint can be lodged:

(a) electronically via the complaints portal on the DFSA website (see http://www.dfsa.ae);

(b) by facsimile to 04 362 0801; or

(c) by sending the complaint to PO Box 75850 Dubai, UAE or delivering the complaint to the DFSA at Level 13, The Gate Building, DIFC.

5-3-5 When a complaint is received, the DFSA will send an acknowledgement letter to the complainant which will include details of the DFSA officer assigned to assess the complaint.

Regulatory Complaints

5-3-6 Complaints received by the DFSA from members of the public which relate to:

(a) any conduct or dissatisfaction with any Person regulated by the DFSA;

(b) a contravention of a Law or Rule; or

(c) any conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC;

are classified as regulatory complaints and are assessed through the DFSA's complaints management function.

5-3-7 If, during the assessment of a regulatory complaint, the DFSA identifies a potential contravention of a Law or Rule, it will refer the complaint to the relevant DFSA division for further consideration. Thereafter, the relevant division assumes responsibility for the complaint.

5-3-8 All complaints lodged with the DFSA are held in confidence in accordance with the Regulatory Law 2004. However, in order to assess a complaint properly, the DFSA may need to speak to third parties including any Person who is the subject of the complaint.

Referrals

5-3-9 There are two types of referrals, internal and external. Internal referrals originate from the DFSA's supervisory activities conducted by the Supervision or Markets Division. The DFSA's supervisory framework is designed to detect and mitigate risks to the DIFC and the financial services industry in the DIFC. An internal referral occurs when a DFSA supervisory division refers conduct to the Enforcement Division, where the supervisory division has identified possible contraventions of Laws and Rules.

5-3-10 When Enforcement receives an internal referral, the referring division may continue to be responsible for the on-going supervision of the Person who is the subject of the referral.

5-3-11 The DFSA may also receive allegations of misconduct through an external referral from other regulatory authorities and law enforcement agencies. Such allegations are generally received pursuant to the IOSCO or IAIS Multilateral Memorandum of Understanding (MMoU), or bi-lateral arrangements for the exchange of information between the DFSA and other regulatory and enforcement agencies.

Complaints against the DFSA and its employees

5-3-12 Complaints received by the DFSA about the conduct and activities of the DFSA and its employees are administered and assessed separately by the DFSA's Office of General Counsel.

5-3-13 Information on how the DFSA's Office of General Counsel assesses complaints against the DFSA and its employees can be found on the DFSA's website (see http://www.dfsa.ae).

5-4 COMMENCEMENT OF INVESTIGATIONS

Introduction

5-4-1 Upon receipt of an internal or external referral, the allegation will be assessed to determine if there is a suspicion of a contravention of the Law or Rules. If a suspicion arises, then the Enforcement Division may make a recommendation to the Enforcement Committee to commence an investigation. The Enforcement Committee is a management committee of the DFSA whose primary function is to consider enforcement matters and to make recommendations to the Chief Executive in relation to such enforcement matters.

5-4-2 In determining whether to recommend the commencement of an investigation, the Enforcement Committee will consider a number of factors including, but not limited to:

(a) the nature, seriousness and impact of the suspected contravention and whether the suspected contravention is on-going;

(b) whether the suspected contravention affects, or has the potential to affect, the DFSA objectives;

(c) whether those involved in the suspected contravention are likely to co-operate;

(d) whether it is likely that the suspected contravention may be proven;

(e) the disciplinary record and compliance history of the Person or Persons involved in the suspected contravention;

(f) whether, if proven, a suitable remedy is available;

(g) the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude toward the matter;

(h) the nature of any request for assistance made by another regulator or body pursuant to Article 39; and

(i) whether any party who may have suffered some detriment as a result of the suspected contravention is able to take his own remedial action.

5-4-3 The Chief Executive of the DFSA, or his delegate, is the only individual authorised to commence an investigation. The Chief Executive or his delegate can exercise his discretion unilaterally but will generally consider the recommendations of the Enforcement Committee.

Investigation determination

5-4-4 Article 78 empowers the DFSA to conduct such investigations as the Chief Executive or his delegate consider expedient:

(a) where he has reason to suspect that there is being or may have been committed a contravention of the Laws or Rules; or

(b) further to a request for assistance.[17]

5-4-5 Whether a matter is expedient is determined by reference to factors such as those set out in paragraph 5-4-2.

5-4-6 Whether the Chief Executive or his delegate has "reason to suspect" a contravention of the Law or Rules, is a question which the Chief Executive will determine on the facts and circumstances, available at the time, of each particular matter.

5-4-7 The DFSA is not bound to disclose, to any party, that an investigation is on-going or the basis upon which an investigation is commenced. However, the DFSA may notify a Person who is the subject of an investigation that an investigation has commenced, and the general nature of the investigation.

5-4-8 However, the DFSA will not make such a notification if it is likely to compromise or prejudice the investigation. The DFSA will not advise a Person at the conclusion of an investigation unless the Person has earlier been notified of its commencement.

5-4-9 The decision to commence an investigation is not a decision which is appealable to the Regulatory Appeals Committee.

5-5 INFORMATION GATHERING

Introduction

5-5-1 Once an investigation is commenced, the DFSA may exercise its powers to gather information to advance its objectives.

5-5-2 Those powers may only be exercised by delegates of the Chief Executive. The delegation need not be limited to DFSA employees. The Chief Executive may delegate DFSA powers to non-DFSA staff who are able to assist with a DFSA investigation.

[17] Article 39 of the Regulatory Law 2004

5-5-3 Similarly, where the DFSA is exercising its powers on behalf of another regulator, it may also delegate powers to a representative of that regulator[18].

Article 80 Powers

5-5-4 Article 80(1) is a key component of the DFSA's investigative powers. Without the compulsory powers in Article 80(1), the DFSA would not be able to conduct effective and thorough investigations into potential misconduct or suspected contraventions of the Law or Rules, and consequently would not be able to meet its objectives.

5-5-5 During an investigation, the DFSA may obtain relevant information and documents on a compulsory basis, principally through the exercise of its powers under Article 80(1), and on a voluntary basis.

5-5-6 The powers under Article 80(1) are different from the non-investigation powers under Article 73(1). The key distinctions are that the Article 80 powers may be used:

(a) only for the purposes of an investigation; and

(b) in circumstances where the DFSA considers that a Person is or may be able to give information or produce a document which is or may be relevant to an investigation.

5-5-7 In comparison, the Article 73(1) power permits the DFSA to request information and documents from an Authorised Firm, Authorised Market Institution, DNFBP, auditor and any director, officer, employees or agent of such person, which the DFSA considers is necessary or desirable to meet the objectives of the DFSA.

5-5-8 When it exercises its powers under Article 80(1) (b), (c), (d) or (e), the DFSA will provide a written notice to the Person on whom the requirement is being imposed.

Inspection

5-5-9 Article 80(1)(a) empowers the DFSA to enter business premises of a Person during the course of an investigation for the purpose of inspecting and copying information or documents. This power will be exercised when the DFSA considers that such Person is or may be able to provide information or documents that are or may be relevant to an investigation.

5-5-10 The DFSA will generally not provide prior notice of an inspection in circumstances where the provision of prior notice may prejudice the investigation.

5-5-11 When exercising its power to enter business premises pursuant to Article 80(1)(a), the DFSA may[19]:

(a) require any appropriate Person to:

[18] Article 40 of the Regulatory Law 2004
[19] Article 80 (2) of the Regulatory Law 2004

(i) make available any relevant information stored at the business premises for inspection or copying; or

(ii) convert any relevant information into a physical form capable of being copied; and

(b) use the facilities of the occupier of the business premises, free of charge, to make copies.

Production of information

5-5-12 Article 80(1)(b) empowers the DFSA to require a Person to give or procure the giving of information. The DFSA considers that the term "information" should be interpreted broadly, in accordance with its ordinary meaning.

5-5-13 Information may include, for example, the following:

(a) knowledge communicated or received concerning a particular matter, fact or circumstance;

(b) knowledge gained through work, commerce, study, communication, research or instruction;

(c) data obtained as output from a computer by means of processing input data with a program or any data at any stage of processing including input, output, storage or transmission data;

(d) an explanation or statement about a matter;

(e) the identification of a Person, matter or thing; and

(f) the provision of a response to a question.

5-5-14 The DFSA will allow a reasonable period for compliance with the requirement to give information. The reasonableness of the requirement will depend upon the circumstances of each case. The DFSA may, in some circumstances, require the giving of information forthwith where the giving of prior notice may prejudice the investigation.

Production of documents

5-5-15 Article 80(1)(c) empowers the DFSA to require a Person to produce or procure the production of specified documents. The DFSA considers that the term "document" should be interpreted broadly, in accordance with its ordinary meaning. Specified documents may include, for example, any record of information, including:

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols or perforations having a meaning for Persons qualified to interpret them;

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or

(d) a map, plan, drawing or photograph.

5-5-16 This power can only be used when an investigation has commenced and the DFSA considers that the Person to whom the notice is addressed is, or may be, able to produce documents which are relevant to the investigation pursuant to Article 80(1)(e).

5-5-17 Article 80(1)(c) empowers the DFSA to require production of original documents or copies. Whether original or copy documents are required by the DFSA will be determined taking into account the facts and circumstances of the investigation.

5-5-18 When exercising its Article 80(1)(c) power, the DFSA may retain possession of any document for so long as is necessary for the investigation to which the notice relates. When a Person is unable to produce documents in compliance with a requirement made by the DFSA, the DFSA may require the Person to state, to the best of that Person's knowledge or belief, where the documents may be found and who last had possession, custody or control of those documents.

5-5-19 The DFSA will allow a reasonable period of time for compliance with the requirement to produce documents. The reasonableness of the requirement will depend upon the circumstances of each case. The DFSA may, in some circumstances, require the production of documents forthwith, where the giving of prior notice may prejudice the investigation.

Compulsory interview

5-5-20 Article 80(1) (d) empowers the DFSA to require a Person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) a compulsory interview and provide oral evidence relevant to an investigation it is conducting.

5-5-21 During the course of an investigation, not all interviews will be conducted under compulsion. The DFSA may, where appropriate, conduct voluntary interviews. The decision as to whether a compulsory or voluntary interview will be conducted will depend upon the circumstances of the particular case.

5-5-22 Persons attending a compulsory interview must first be served with a written notice requiring his attendance. An interviewee is not entitled to refuse or fail to answer a question on the basis that his answers may incriminate him or make him liable for a penalty.[20]

5-5-23 A compulsory interview will be conducted in private and the interviewer may give directions[21] to the interviewee regarding:

[20] Article 82 of the Regulatory Law 2004
[21] Article 80 (3) of the Regulatory Law 2004

(a) who may be present during the interview;

(b) swearing an oath or giving an affirmation that the answers provided will be true;

(c) what, if any, information may be disclosed by the interviewee or any other Person present at the interview to any third party;

(d) the conduct of any Person and the manner in which they will participate during the interview; and

(e) answering any question which is relevant to the investigation.

5-5-24 An interviewee is entitled to legal representation during the course of a compulsory or voluntary interview. At the conclusion of the interview, the lawyer will be permitted to address any issues with the interviewer or interviewee relevant to the investigation. However, the lawyer is not permitted to answer questions on behalf of the interviewee or obstruct the investigation.

5-5-25 All compulsory interviews will be recorded. The DFSA will, upon a written request from the interviewee at the conclusion of the interview, provide the interviewee or his lawyer with a copy of the recording or an accurate transcript of the interview. The provision of a recording or transcript may be subject to any reasonable conditions imposed by the DFSA.

Assistance

5-5-26 Article 80(1)(e) empowers the DFSA to require a Person to give it any assistance in relation to an investigation which the Person is able to give.

5-5-27 The DFSA considers that providing assistance may include requiring a Person to do a physical act or provide information to advance an investigation. For example, this may include the situation where the DFSA requires a Person to provide assistance by commenting on the accuracy of a document or compiling information that had been stored in a different manner.

5-5-28 The power under Article 80(1)(e) can be used independently, or in conjunction with the exercise of other Article 80(1) powers. For example, the DFSA can exercise its powers under Article 80(1)(d), to require a Person to attend a compulsory interview and Article 80(1)(e), to require the interviewee to provide reasonable assistance during the interview. The interviewee may be required, during the interview to draw a diagram or locate and produce a document referred to in an answer to a question.

Confidentiality

5-5-29 When carrying out its regulatory functions, the DFSA must maintain confidentiality of information, unless disclosure is expressly sanctioned by Article 38. The DFSA's Policy Statement with respect to Confidential Regulatory Information outlines its policy in respect of the treatment of information and documents.

5-5-30 The DFSA may also impose obligations of confidentiality in respect of information and documents provided during the exercise of its powers under Article 80(1).

5-5-31 The DFSA can make directions[22] to protect the confidentiality of information and documents which are part of a compulsory interview.

5-5-32 The DFSA can direct the recipient of an Article 80(1) (b), (c), (d) or (e) notice not to disclose the receipt of the notice, or any information relating to compliance therewith, to any other Person, other than his legal representative, if it considers that such disclosure may hinder an investigation[23].

5-5-33 Confidentiality directions are made to ensure that an investigation is not prejudiced by the disclosure of the nature of the information sought or the questions asked during an investigation. In each case, the DFSA needs to consider whether or not such directions are appropriate in the circumstances of that matter.

Protections

5-5-34 Parties who are required to comply with a requirement made by the DFSA during the course of an investigation, and Persons who are the subject of an investigation, benefit from certain protections in the Regulatory Law 2004, including:

(a) Article 81 which ensures that a Person who is required to comply with a requirement made during the course of an investigation cannot be subject to any liability or liable in any proceeding because of that Person's compliance with the requirement;

(b) Article 80(9) which provides that where a Person takes part in a compulsory interview, any statements made during the interview cannot be disclosed to a law enforcement agency for the purpose of criminal proceedings unless the Person consents to the disclosure or the DFSA is required by law or court order to disclose the statement; and

(c) Article 38 which provides that confidential information provided to the DFSA must not be disclosed except in certain limited circumstances.

[22] Article 80 (3)(b) of the Regulatory Law 2004
[23] Article 80 (13) of the Regulatory Law 2004

Claims of privilege and other protections

5-5-35 A claim by a Person that information is a Privileged Communication is not of itself an excuse for failing to comply with a requirement made by the DFSA during the course of an investigation[24].

5-5-36 A lawyer may refuse to comply with a requirement to provide information where, to comply, would require the lawyer to disclose a Privileged Communication made by, to or on behalf of the lawyer in his capacity as a lawyer.

5-5-37 Should a lawyer refuse to disclose a Privileged Communication, the lawyer must disclose sufficient information to identify the Person entitled to claim the privilege and the document which contains the privileged information. In such a case, the DFSA considers it appropriate for a lawyer to secure those documents, pending the resolution of any claim for privilege.

Enforcement of the DFSA's investigative powers

5-5-38 The DFSA will enforce compliance with its requirements under Articles 73, 74 or 80, whenever there is less than full compliance by seeking orders in the DIFC Court[25].

5-5-39 Article 84(2) empowers the DFSA to make application to the Court for the issue of a search warrant in circumstances where:

(a) information or documents were required to be given or produced by the exercise of a compulsory power;

(b) the documents or information required to be produced have not been given or produced; and

(c) the DFSA has reasonable grounds to suspect that within the next 3 business days, the information or those documents are or may be on particular premises.

5-5-40 Should the Court exercise its discretion to issue a search warrant, it must be addressed to a named Dubai Police Officer together with any other individual, including a DFSA officer or third party, named in the warrant.

5-5-41 The DFSA may exercise its right to make application for a search warrant rather than seeking compliance of its requirement through some other process only where it is satisfied that:

(a) the preconditions in Article 84(2) for the issue of a warrant are met;

(b) there is no legitimate basis for non-compliance; and

[24] Article 82 of the Regulatory Law 2004
[25] Article 84 (1) of the Regulatory Law 2004

(c) in the absence of the execution of a search warrant, the information or documents sought may be removed or destroyed or otherwise not made available.

5-5-42 Any material seized by officers of the DFSA pursuant to a search warrant issued under Article 84 may be dealt with by the DFSA as if such material had been produced to it pursuant to a notice to produce documents.

Obstruction of the DFSA

5-5-43 A Person must not, without reasonable excuse, engage in conduct that is intended to obstruct the DFSA in the exercise of its investigative powers by any means including the following:

(a) the destruction of documents;

(b) the failure to give or produce information or documents specified by the DFSA;

(c) the failure to attend before the DFSA at a specified time and place to answer questions;

(d) the giving of information that is false or misleading; or

(e) the failure to give any assistance in relation to an investigation which the Person is able to give[26].

5-5-44 Any breach of Article 83 will be regarded seriously by the DFSA and appropriate action will be taken.

Return of information and documents

5-5-45 Where the DFSA[27] has obtained original copies of information and documents during the course of an investigation, the DFSA will usually return such information and documents to the Person from whom the information and documents were received, as soon as practicable, after the conclusion of the investigation or related proceedings.

5-5-46 Where information and documents have been produced to the DFSA in the course of an investigation to assist another regulator or agency, the DFSA may[28] release the information and documents to that other regulator or agency. The information and documents will usually be returned to the Person from whom the information and documents were received, as soon as practicable, after receiving them back from the other regulator or agency.

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[26] Article 83 of the Regulatory Law 2004
[27] Article 80 (10) of the Regulatory Law 2004
[28] Article 38 of the Regulatory Law 2004

5-6 REMEDIES

5-6-1 At the conclusion of an investigation, the Enforcement Committee considers the findings of the investigation and may resolve to recommend to the Chief Executive to:

(a) appoint a Decision Maker;

(b) refer a matter to the Financial Markets Tribunal ("FMT")[29];

(c) accept an Enforceable Undertaking[30];

(d) accept a settlement;

(e) commence Court proceedings[31];

(f) exercise a power on behalf of another regulator[32]; and

(g) delegate power to another regulator[33].

5-6-2 A Decision Maker is an individual delegated by the Chief Executive to exercise a power on behalf of the DFSA. A Decision Maker will be appointed by the Chief Executive, generally upon receiving a recommendation from the Enforcement Committee.

5-6-3 Whilst not an exhaustive list, the Enforcement Committee may recommend to the Chief Executive that a matter be referred to a Decision Maker for the:

(a) imposition of a fine[34];

(b) imposition of a censure[35];

(c) imposition of conditions or restrictions on a Licence[36];

(d) withdrawal of an authorisation under a Licence[37];

(e) withdrawal of a Licence[38];

(f) imposition of conditions or restrictions on an Authorised Individual[39];

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[29] Article 33 of the Regulatory Law 2004
[30] Article 89 of the Regulatory Law 2004
[31] Articles 84, 92, 93, 94 and 95 of the Regulatory Law 2004
[32] Article 39 of the Regulatory Law 2004
[33] Article 40 of the Regulatory Law 2004
[34] Article 90 of the Regulatory Law 2004
[35] Article 91 of the Regulatory Law 2004
[36] Article 49 of the Regulatory Law 2004
[37] Article 50 of the Regulatory Law 2004
[38] Article 51 of the Regulatory Law 2004
[39] Article 57 of the Regulatory Law 2004

(g) restriction or suspension of an Authorised Individual, or the withdrawal of his or her authorisation[40];

(h) withdrawal of the registration of a DNFBP;

(i) revocation of recognition[41];

(j) appointment of a manager[42];

(k) withdrawal of the registration of an Auditor[43]; and

(l) suspension of the registration of an Auditor[44].

5-6-4 There is a range of remedies which the DFSA may pursue to achieve its objectives and the DFSA may pursue more than one remedy. The types of remedies, along with an indication of the DFSA's approach to the use of such remedies, are set out in sections 5-7 to 5-18 of this chapter and in chapter 4.

5-6-5 When the DFSA exercises a power specified in sections 5-7 to 5-9 in this chapter, it will follow the decision making procedures set out in chapter 6 of this Sourcebook. Chapter 6 sets out whether a Person will:

(a) receive prior written notice and have a suitable opportunity to make representations prior to the DFSA exercising a power;

(b) receive reasons for any decision to exercise such power; and

(c) have a right of appeal to the Regulatory Appeals Committee.

5-6-6 When the DFSA exercises a power specified in sections 5-10 to 5-18 in this chapter, it will follow the procedures set out in the relevant section.

5-6-7 The DFSA does not exercise criminal jurisdiction. Should criminal conduct be identified, then it will be referred to the appropriate law enforcement agency.

5-7 APPOINTMENT OF MANAGERS

5-7-1 Pursuant to Article 88, the DFSA may require an Authorised Person to appoint one or more individuals to act as a manager of the business of the Person on such terms as the DFSA may stipulate. Such individuals must be nominated or approved by the DFSA.

[40] Article 58 of the Regulatory Law 2004
[41] Article 60 of the Regulatory Law 2004
[42] Article 61 of the Regulatory Law 2004
[43] Article 88 of the Regulatory Law 2004
[44] Article 98 of the Regulatory Law 2004

5-7-2 The types of circumstances in which the DFSA may exercise this power are set out in Article 88(3). For example, the DFSA may require an Authorised Person to appoint a manager where it has concerns about the solvency or the level of compliance with prudential requirements of an Authorised Person.

5-7-3 An Authorised Person may receive an opportunity to make representations prior to being required to appoint a manager in accordance with the procedures set out in chapter 6. However, in circumstances of urgency, the DFSA may not give advance notice of the proposed requirement and may not provide the relevant Authorised Person with the opportunity to make representations prior to the imposition of the requirement.

5-7-4 When the DFSA does require an Authorised Person to appoint a manager, it will do so in writing, setting out:

(a) that the Authorised Person is required to appoint a manager;

(b) the time by which such manager must be appointed;

(c) the reasons for the Authorised Person being required to appoint a manager;

(d) the individual nominated by the DFSA to be the manager or the process by which approval may be given by the DFSA; and

(e) the fact that the Authorised Person may appeal to the Regulatory Appeals Committee in respect of the decision.

5-7-5 The DFSA recognises that the use of its Article 88 power to appoint a manager is likely to have a significant impact on an Authorised Person. Accordingly, the DFSA is likely to exercise such power only in exceptional circumstances.

5-7-6 In considering whether a manager should be appointed, the DFSA may take into consideration all relevant circumstances, including but not limited to, the following matters:

(a) the nature and extent of the business of the Authorised Person;

(b) the nature of the DFSA's concerns in relation to the Authorised Person and whether they affect, or have the potential to affect, the DFSA's objectives;

(c) whether the DFSA's concerns in relation to the Authorised Person may be addressed by the appointment of a manager;

(d) where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;

(e) whether an appropriately qualified manager may be available and willing to undertake the appointment;

(f) the likely duration of the appointment; and

(g) the likely impact of costs associated with the appointment of a manager.

5-8 FINES

5-8-1 The DFSA may seek to impose a fine upon a Person whom it considers has contravened a provision of the Law or Rules. The DFSA may seek to impose such a fine[45] through:

(a) exercising its power pursuant to Article 90; or

(b) commencing proceedings before the FMT[46] (see section 5-10 of this chapter).

5-8-2 A fine imposed by the DFSA pursuant to Article 90 is referred to as an administrative fine. In some circumstances, the DFSA may seek to impose a fine by commencing proceedings before the FMT or the Court.

5-8-3 In determining whether to impose a fine and the quantum of the fine, the DFSA may take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in section 5-16 of this chapter.

5-8-4 Generally, the DFSA will not seek to impose more than one fine on a Person in respect of:

(a) multiple contraventions which are closely connected to the same set of facts and circumstances; or

(b) the same contravention.

5-8-5 Where the DFSA decides to commence proceedings in the FMT or the Court for the imposition of a fine or any other remedy, it will follow the procedures set out in section 5-10 of this chapter. The FMT and the Court may impose a fine in any amount considered appropriate.

Administrative fine

5-8-6 The DFSA will generally seek to impose an Article 90 fine in respect of less serious conduct. The DFSA considers that the seriousness of the conduct can vary, depending on the particular facts and circumstances. Isolated, one-off, or unintended breaches would generally be considered as being less serious, whilst repeated, systemic and intentional breaches would be considered as being more severe and aggravated in nature. When determining whether to impose an administrative fine and the quantum of such a fine, the DFSA will take into account a number of circumstances and factors, including, but not limited

[45] Article 105 of the Regulatory Law 2004
[46] Article 87 (1) of the Regulatory Law 2004

to, whether the conduct was deliberate or reckless, and whether the contravention is continuing.

5-8-7 Where the circumstances and factors in a matter are of a more serious nature, the DFSA would not consider proceeding by way of administrative fine. Instead, the DFSA would consider commencing proceedings in either the FMT or the Court, unless the matter is settled by way of an Enforceable Undertaking.

5-8-8 The Enforcement Committee will generally make a recommendation to the Chief Executive to appoint a Decision Maker to consider whether a fine should be imposed against a Person.

5-8-9 A Decision Maker is an individual delegated by the Chief Executive to exercise a power on behalf of the DFSA. Prior to making a decision, the Decision Maker will follow the process set out in Article 90(3) and Chapter 6 of the RPP Sourcebook.

5-8-10 The Decision Maker may impose a fine, in any amount, up to the maximum prescribed in Article 90(2) (i.e. $20,000 in respect of a natural person and $100,000 in respect of a body corporate).

5-8-11 If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

5-9 ADMINISTRATIVE CENSURE

5-9-1 The DFSA may seek to impose a censure upon a Person whom it considers has contravened a provision of the Law and Rules it administers. The DFSA may seek to impose such a censure through:

(a) exercising its power pursuant to Article 91; or

(b) commencing proceedings before the FMT[47] or Court (see section 5-10 of this chapter).

5-9-2 The Enforcement Committee will generally make a recommendation to the Chief Executive to appoint a Decision Maker to consider whether a censure should be imposed against a Person. Prior to making a decision, the Decision Maker will follow the process prescribed in Article 91 and Chapter 6 of the RPP Sourcebook.

5-9-3 In determining whether to impose a censure, the DFSA may take into consideration the circumstances of the conduct and will be guided by the Penalty guidance set out in section 5-16 of this chapter.

[47] Articles 33 and 34 of the Regulatory Law 2004

5-10 THE INSTITUTION OF PROCEEDINGS BEFORE THE FINANCIAL MARKETS TRIBUNAL OR COURT

5-10-1 The Chief Executive or his delegate is the only individual authorised to institute proceedings before the FMT. He may institute proceedings where it appears reasonably likely to him that there has been a breach of the Law or Rules (see Article 33).

5-10-2 The Chief Executive will consider the facts and circumstances of each case, and where appropriate, any recommendation of the Enforcement Committee, in determining whether to commence proceedings before the FMT.

5-10-3 In considering whether to commence proceedings before the FMT or Court, the Chief Executive may take into consideration all relevant circumstances, including but not limited to, the following matters:

(a) the nature, seriousness and impact of the suspected contravention and whether the suspected contravention is on-going;

(b) the remedies available to the FMT, should the contravention be proven;

(c) the conduct of the Person after the contravention, including action taken by the Person to minimise the effect of the contravention and to bring the issue to the attention of the DFSA;

(d) the previous disciplinary record and compliance history of the Person;

(e) action taken by the DFSA in previous similar cases; and

(f) action taken by a Financial Services Regulator in respect of the conduct of the Person giving rise to the breach or any related conduct.

5-10-4 The DFSA may, prior to the commencement of proceedings before the FMT or Court, send a preliminary findings letter to the Person or Persons who are the subject of the proposed proceedings. Such a letter would generally:

(a) set out the DFSA's preliminary view that proceedings should be commenced, the remedies the DFSA is minded to seek and the general facts upon which the DFSA has relied upon in forming its preliminary view;

(b) provide an opportunity to make submissions on the accuracy of the general facts upon which the DFSA has relied and any proposal to commence proceedings; and

(c) where appropriate, invite the commencement of settlement discussions (in accordance with the settlement guidance in section 5-17 of this chapter).

5-10-5 The DFSA will take into account any submissions received in response to a preliminary findings letter before making a recommendation to the Enforcement Committee

and, ultimately, the Chief Executive about whether to commence proceedings before the FMT or Court.

5-10-6 If satisfied that the alleged contravention is proven the FMT may make any order including those set out in Article 34. The orders include fines, censures, compensation, disgorgement and cease and desist orders.

5-11 INJUNCTIONS AND ORDERS

5-11-1 The DFSA has a broad power to make application to the Court for injunctive relief and other orders (see Article 92). The DFSA may seek orders including, but not limited to:

(a) an order restraining a Person that is engaging in conduct that would constitute a contravention of the Law or Rules;

(b) an order requiring a Person to do an act or thing to remedy a contravention or to minimise loss or damage; or

(c) any other order as the Court sees fit, including an order restraining the transfer of assets or the movement of individuals.

5-11-2 In deciding whether an application for an injunction or other order is appropriate in any given case, the DFSA will consider all relevant circumstances including, but not limited to, the following matters:

(a) the nature, seriousness and impact of the contravention and whether the contravention is on-going;

(b) whether the contravention affects, or has the potential to affect, the DFSA's objectives;

(c) whether any party who may have suffered some detriment as a result of the contravention is able to take their own remedial action;

(d) where the DFSA considers it necessary to protect regulated entities and customers in the DIFC;

(e) whether there is a danger of assets being dissipated or removed from the jurisdiction of the Court;

(f) whether there is a danger that the Person or Persons may leave the jurisdiction, and if so, the effect that the Person's or Persons' absence may have on the effectiveness of the Court's orders;

(g) the costs the DFSA would incur in applying for and enforcing an injunction or other orders and the likely effectiveness of such an injunction or other order;

(h) the disciplinary record and compliance history of the Person;

(i) whether, if proven, a suitable remedy is available;

(j) the extent to which another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter; and

(k) whether there is information to suggest that the Person who is the subject of the possible application is or has been involved in money laundering, terrorist financing or other form of financial crime or criminal conduct.

5-12 CIVIL PROCEEDINGS

5-12-1 Article 94 provides that where a Person has:

(a) intentionally, recklessly or negligently committed a breach of duty, requirement, prohibition, obligation or responsibility imposed under the Law or Rules ; or

(b) committed fraud or other dishonest conduct in connection with the matter arising under the Law or Rules;

the Person is liable to compensate any other Person for any loss or damage caused to that other Person as a result of such conduct.

5-12-2 Article 94(2) provides that the Court may, on application of the DFSA, or of a Person who has suffered the loss or damage, make orders for the recovery of damages or for compensation or for the recovery of property or other order as the Court sees fit, except where such liability is excluded under the Law and Rules administered by the DFSA.

5-12-3 Article 94 gives the DFSA, and any aggrieved Persons, broad powers to make application for recovery of damages and other orders where there has been an identified contravention of the Laws and Rules administered by the DFSA. An aggrieved Person may exercise rights provided under Article 94 independently or contemporaneously with, and exclusively of, the DFSA.

5-12-4 The DFSA may not commence proceedings in every case where there may have been a relevant contravention. This does not prevent, however, any aggrieved Person from commencing his own proceedings.

5-12-5 In determining whether to commence proceedings, the DFSA may take into account all relevant circumstances. It is not possible to provide an exhaustive list of the circumstances that may be taken into account, as they may depend on the facts of the particular matter. However, the following list indicates some of those matters that may be considered:

(a) the nature, seriousness and impact of the suspected contravention and whether the alleged contravention is on-going;

(b) whether the conduct and contravention affects, or has the potential to affect, the DFSA objectives;

(c) whether any party who may have suffered some detriment as a result of the alleged contravention is able to take his own remedial action;

(d) in circumstances where more than one Person has suffered loss or damage:

(i) the number of those that have suffered loss or damage and the amount of loss or damage involved; and

(ii) whether it is convenient or possible for a class of aggrieved Persons to run a proceeding;

(e) the cost that the DFSA would incur in applying for or enforcing any order that it is successful in obtaining;

(f) whether the conduct in question can be adequately addressed by the use of other regulatory powers;

(g) whether there is information to suggest that the Person is or has been, involved in money laundering, terrorist financing or other form of financial crime or criminal conduct; and

(h) whether the DFSA has a reasonable chance of success in the relevant proceedings.

5-13 THE COMPULSORY WINDING UP OF A REGULATED ENTITY

5-13-1 The DFSA may apply to the Court for the winding up of a company which is or has been an Authorised Firm, an Authorised Market Institution or operating in breach of the Financial Services prohibition where it considers it is just and equitable and in the interests of the DIFC[48].

5-13-2 In deciding whether such an application is just and equitable and in the interests of the DIFC, the DFSA will consider all relevant circumstances, including but not limited to, the following matters:

(a) the need to protect the company's Clients, particularly in cases where an Authorised Firm holds or controls Client Assets,

(b) whether the company has operated in accordance with the laws of the DIFC;

(c) where the company has contravened the Law or Rules, the nature, seriousness and impact of the contravention and whether the contravention is on-going;

[48] Article 93 of the Regulatory Law

(d) where the company has contravened the Law or Rules, whether any alleged contravention affects, or has the potential to affect , the DFSA objectives;

(e) where the company has contravened the Law or Rules, whether there are any other steps a Person could take or other orders a Court could make to remedy any contravention;

(f) whether the needs of those operating in the DIFC and the interests of the DIFC are best served by the company ceasing to operate;

(g) in the case of an Authorised Firm, where the DFSA considers that its Licence should be withdrawn or where it has been withdrawn, the extent to which there is other business that the firm carries on without authorisation;

(h) whether there is information to suggest that the company is or has been involved in money laundering, terrorist financing or other form of financial crime or other criminal conduct;

(i) where there is a significant cross border or international element to the business being carried on by the company, the impact on the business in other jurisdictions and whether another law enforcement agency or Financial Services Regulator can adequately address the matter and, if so, that body's attitude to the matter;

(j) the extent to which the company has cooperated, and is likely to continue to co-operate, with the DFSA; and

(k) the nature of the involvement of the officers of a company in the foregoing and whether this suggests a systemic failure within the company.

5-14 MARKETS LAW - ORDERS IN THE INTERESTS OF THE DIFC

5-14-1 Article 68 of the Markets Law 2012 provides that the Court or FMT, on application by the DFSA, may make one of a range of orders in relation to a Person, irrespective of whether a contravention has occurred, if it is in the interests of the DIFC for such an order to be made.

5-14-2 The DFSA may seek orders from the Court or FMT, including, but not limited to:

(a) an order that trading in any Investments cease permanently or for such period as is specified in the order;

(b) an order that a disclosure be made to the market;

(c) an order that a person is prohibited from making offers of Securities in or from the DIFC; or

(d) an order that a person is prohibited from being involved in Reporting Entities, Listed Funds or Securities within the DIFC.

5-14-3 Before the DFSA can make an application for an order (whether interim, ex parte or final), the DFSA must be satisfied that such an order would be in the interests of the DIFC and will take into account all relevant circumstances, including, but not limited to, the following:

(a) the nature and extent of the conduct or any other matters in question;

(b) the effect of the conduct or any other matters on the market and the DFSA's objectives;

(c) whether the market is currently informed of all material information;

(d) what steps the relevant Person has taken in respect of the conduct or any other matters being considered;

(e) whether any other form of relief is available to the DFSA or appropriate in the circumstances;

(f) whether the relevant conduct or any other matters could have a significant impact on the integrity of the DIFC market or the confidence in that market; and

(g) the effect of the conduct or any other matters on the interests of participants in the DIFC.

5-15 INTERVENTION POWER

5-15-1 Article 95 empowers the DFSA to intervene as a party in any proceeding in the Court where it considers such intervention appropriate to meet the objectives of the DFSA. Where the DFSA so intervenes it shall be subject to any other law, and have all the rights, duties and liabilities of such a party.

5-15-2 This provision does not affect the ability of the DFSA to seek leave to appear in proceedings, as amicus curiae (i.e. someone not a party to a case, who volunteers to offer information to assist a court in deciding a matter before it), to make submissions on an issue of significance to the DIFC or to place material before the Court that may otherwise not be available.

5-15-3 The DFSA will generally only exercise this right of intervention where it forms the view that it will not be able to meet its objectives by simply appearing as amicus curiae and that to fully serve the interests of the DIFC, it is necessary to join the proceeding as a party and stay involved in the matter throughout.

5-16 PENALTY GUIDANCE

5-16-1 This section sets out the DFSA's policy for the determination of a financial penalty ("penalty"). Such a penalty may be an administrative fine or the submission of a proposed penalty to the FMT (or other competent tribunal or Court).

5-16-2 The DFSA may also refer to this section when determining an appropriate penalty in settlement agreements, including an Enforceable Undertaking.

5-16-3 When determining a penalty the DFSA will consider all relevant facts and circumstances including, but not limited to, the following:

(a) the DFSA's objectives;

(b) the deterrent effect of the penalty on:

  (i) Persons that have committed the contraventions; and

  (ii) other Persons that have committed similar contraventions;

(c) the nature, seriousness and impact of the contravention the subject of the penalty including, but not limited to, consideration of the following factors:

  (i) the duration and frequency of the contravention;

  (ii) whether the contravention revealed serious or systemic weakness in the Person's management, systems and controls relating to all or part of the Person's business;

  (iii) in market misconduct cases, the DFSA should consider whether the contravention had an adverse effect on markets and, if it did, how serious that effect was and may consider the risk to the reputation of the DIFC markets;

  (iv) the loss or risk of loss caused to consumers, investors or other market users; and

  (v) the nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention.

(d) the extent to which the contravention was committed deliberately or recklessly including, but not limited to, consideration of the following factors:

  (i) in relation to an individual:

    (A) whether the contravention was intentional (in that the individual intended or foresaw the potential or actual consequences of his actions);

(B) whether the individual has given no consideration to the consequences of the behaviour that constitutes the contravention.

(C) where the individual has not followed a firm's internal procedures and/or the relevant DFSA Laws and Rules, the reasons for not doing so; and

(D) where the individual has taken decisions beyond his field of skill, competence and experience, the reasons for the decisions and for their being taken by that individual;

(ii) in relation to a firm:

(A) whether the contravention was intentional or reckless; for example, where a firm deliberately takes a course of action when it knew the actual or potential consequences of its actions;

(B) where the firm's internal procedures were intentionally designed to produce the contravention or were drafted in such a way that the contravention was probable; and

(C) where the firm has acted beyond its field of competence; for example, by entering into a business line with which it has no previous experience;

(e) if the contravention involved a number of Persons, the degree of involvement and specific role of each Person;

(f) the benefit gained (whether direct or indirect, pecuniary or non-pecuniary) or loss avoided as a result of the contravention which is the subject of the penalty;

(g) the conduct of the Person on whom the penalty is imposed following the contravention including, but not limited to, consideration of the following factors:

(i) whether or not the Person brought the contravention to the DFSA's attention (or to the attention of other regulatory authorities, where relevant);

(ii) the degree of cooperation the Person showed during the DFSA's enquiries and investigation of the contravention; and

(iii) any remedial steps taken by the Person since the contravention was identified (and whether those steps were taken at the Person's own initiative or that of the DFSA);

(h) the difficulty in detecting and investigating the contravention the subject of the penalty;

(i) whether the Person committed the contravention the subject of the penalty in such a way as to avoid or reduce the risk that the contravention would be discovered. A Person's incentive to commit a contravention may be greater where the contravention

which is, by its nature, harder to detect. The DFSA may therefore impose a more significant penalty where it considers that a Person committed a contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;

(j) the disciplinary record and compliance history of the Person on whom the penalty is imposed including, but not limited to, consideration of the following factors:

(i) whether the DFSA or any other law enforcement agency or Financial Services Regulator has taken any previous enforcement action against the Person;

(ii) whether the Person has previously undertaken not to do a particular act or engage in particular behaviour (for example in an Enforceable Undertaking to the DFSA); and

(iii) whether the DFSA or any other law enforcement agency or Financial Services Regulator has previously taken supervisory action against the Person (for example by restricting the business of the Person) or has previously requested the Person to take remedial action and the extent to which that action has been taken; and

(k) the financial circumstances of the Person, particularly in the case where the DFSA is considering an administrative fine, including, but not limited to a consideration of whether there is verifiable evidence of serious financial hardship or financial difficulties if the Person were to pay the level of a financial penalty appropriate for the particular contravention.

5-16-4 The DFSA may take into account that natural persons may not always have the financial resources of a body corporate and that enforcement action may have a greater impact on a natural person than a body corporate.

5-16-5 The DFSA may consider the potential impact on a firm's financial position which may result from a proposed penalty, particularly in relation to the implications for a firm's clients and, where relevant, the firm's ability to pay restitution.

5-17 SETTLEMENT GUIDANCE

5-17-1 A settlement is a resolution, between the DFSA and a third party, to agree an outcome resulting from an investigation. A Person who is or may be the subject of any form of enforcement action arising out of or during the course of an investigation may enter into settlement discussions with the DFSA.

5-17-2 Settlement discussions are possible at any stage of the enforcement processes, either before or after enforcement action has commenced. When considering whether or not to enter into negotiations for settlement, or a settlement agreement, the DFSA will consider its objectives.

5-17-3 The DFSA generally considers that the early settlement of an investigation advances its objectives in that it may result in, for example, consumers obtaining compensation sooner, the saving of DFSA and industry resources, and the promotion of good business and regulatory practices.

5-17-4 The DFSA's general view is that settlement discussions should take place as early as possible. However, the DFSA will only be able to settle when it is confident it has sufficient understanding of the nature and gravity of the suspected misconduct to make a reasonable assessment of the appropriate outcome.

5-17-5 The DFSA expects settlement discussions to take place on a "without prejudice" basis; namely, that no party to the discussions may subsequently rely upon any admissions or statements made during the course of the settlement discussion or on any document created recording those discussions.

5-17-6 The DFSA will only settle when the agreed terms result in what the DFSA considers to be an effective regulatory outcome.

5-17-7 The DFSA will set clear and reasonable timetables for settlement discussions to ensure they do not unreasonably delay settlement or a regulatory or enforcement outcome.

5-17-8 Settlement in particular circumstances should not be regarded as binding precedent for future settlement discussions.

Factors the DFSA Will Consider When Contemplating Settlement

5-17-9 In deciding whether a proposed settlement is acceptable and in accordance with meeting its objectives, the DFSA will consider a number of factors, including but not limited to:

(a) the nature, seriousness and impact of the conduct or suspected contravention the subject of the proposed settlement, and whether the suspected contravention is continuing;

(b) whether the Person is prepared to acknowledge publicly the DFSA's concerns about the conduct or suspected contravention which is the subject of the proposed settlement, and the necessity for protective or corrective action;

(c) whether the conduct or suspected contravention which is the subject of the proposed settlement was inadvertent;

(d) whether the suspected contravention which is the subject of the proposed settlement was the result of the conduct of one or more individual officers or employees of the Person;

(e) the seniority and level of experience of the individuals involved in the conduct and/or suspected contravention which is the subject of the proposed settlement;

(f) whether the Person co-operated with the DFSA, including providing complete information about the conduct or suspected contravention which is the subject of the proposed settlement, and any remedial action taken by the Person;

(g) whether the settlement will achieve an effective outcome for those (such as consumers or investors) who have been adversely affected by the conduct and/or suspected contravention which is the subject of the proposed settlement;

(h) whether the Person is likely to comply with the terms of the settlement;

(i) whether the Person's compliance with the Law and Rules generally will be improved;

(j) the disciplinary record and compliance history of the Person;

(k) the prospects for a swift resolution of the matter; and

(l) whether the settlement promotes general deterrence in making regulated entities in the DIFC aware of the conduct or suspected contravention which is the subject of the proposed settlement, and the consequences arising from engaging in similar conduct or contraventions.

Form of Settlement

5-17-10 Any settlement entered into by the DFSA will be documented in the form of a legally enforceable agreement executed by all parties. Generally, a settlement accepted by the DFSA will be in the form of an Enforceable Undertaking.

Enforceable Undertakings

5-17-11 An Enforceable Undertaking (EU) is a written promise, made under Article 89, to do or refrain from doing a specified act or acts. It is an alternative mechanism for regulating contraventions of the Law or Rules.

Acceptance of an Enforceable Undertaking

5-17-12 An EU may be given by a Person at any time, either before, during or after an investigation or before the commencement of litigation or proceedings in the Court or FMT and accepted by the DFSA. The DFSA does not have the power to require a Person to enter into an EU, nor can a Person compel the DFSA to accept an EU. This does not mean, however, that the DFSA cannot propose an EU to a Person, during the course of settlement negotiations, or provide a Person with a draft EU to provide guidance as to the terms of an EU that the DFSA would be willing to accept in the circumstances of the matter.

5-17-13 The DFSA may accept an EU that it considers necessary or desirable in pursuit of its objectives. Article 89 does not prescribe a particular structure or format to an EU. However, in the context of an enforcement matter, the DFSA will generally only accept an EU that:

(a) contains an admission or acknowledgement of any contraventions of the Law or Rules or the DFSA concerns;

(b) contains undertakings that address the DFSA's concerns; and

(c) contains an agreement to make the EU public, and an agreement not to make public statements that conflict with the spirit of the EU.

5-17-14 A Person offering an EU to the DFSA may also undertake in the EU to pay the DFSA's costs, including any costs associated with compliance with the EU.

5-17-15 An EU will not take effect until it is formally accepted by the Chief Executive of the DFSA or his delegate.

Variation or Withdrawal

5-17-16 Once accepted by the DFSA, an EU can only be withdrawn or varied with the consent of the DFSA in writing. The DFSA will only consider a request to vary an undertaking if:

(a) the variation will not alter the spirit of the original undertaking;

(b) compliance with any one or more terms of the undertaking is subsequently found to be impractical or impossible; or

(c) there has been a material change in the circumstances which led to the undertaking being given.

Compliance with an EU

5-17-17 If the DFSA considers that a Person has not complied with a term of the EU, the DFSA may apply to the Court for appropriate orders. The DFSA may publicise the fact of the application to the Court and any subsequent orders of the Court. The DFSA will also seek the costs of the application.

5-18 COSTS

5-18-1 The DFSA will generally seek litigation costs orders from the Court and the FMT where it has commenced a proceeding and been successful in achieving the outcome sought.

5-18-2 The DFSA may also make an application claiming the costs of an investigation where the FMT or any court of law, as a result of that investigation, has found a contravention of the Law or Rules[49]. Such applications are described in section 5-10 of this chapter.

[49] Article 79(2) of the Regulatory Law

Undertakings as to Damages

5-18-3 Pursuant to Article 47(1) of the Court Law, the Court shall not require the DFSA to give an undertaking as to damages as a condition for granting an injunction or any order made under DIFC Law. In making any order the Court shall not take into account in determining the merits of an application for the injunction that the DFSA has not given an undertaking as to damages.

Enforcement of orders

5-18-4 The DFSA will do all things necessary and where appropriate, commence relevant actions to ensure full compliance with any orders of the FMT or of the Court which arise out of an investigation.

5-18-5 In particular, Article 87(5) provides that the DFSA may apply to the Court for recovery, as a debt due, of so much of a fine as is not paid by a party together with costs. Further, in appropriate circumstances, the DFSA may apply to the Court for the winding up of a body corporate.

5-19 Publicity

5-19-1 This Policy Statement describes how the DFSA Executive may comment publicly on investigations, enforcement actions and other formal regulatory decisions[50], subject to any independent determinations by the Regulatory Appeals Committee (RAC), Financial Markets Tribunal (FMT) and courts, unless otherwise ordered by any of these bodies, including:

(a) General policy on publicity of enforcement actions;

(b) Commencement and conclusion of investigations;

(c) Commencement of proceedings;

(d) Disclosure of Decisions;

(e) Disclosure of Settlement Agreements and Enforceable Undertakings;

(f) Content of Publication; and

(g) Mode of Publication.

General policy on publicity of enforcement actions

5-19-2 The DFSA expects to publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions, including censures and any

[50] In the remainder of the section we refer to 'enforcement actions', for brevity. Formal regulatory decisions are those that are made by a Decision Maker and are reviewable by the RAC.

other matters which the DFSA considers relevant to the conduct of affairs in the DIFC. The publication of enforcement outcomes is consistent with the DFSA's commitment to open and transparent processes and with the pursuit of its objectives.

5-19-3 In all cases the DFSA retains the discretion to take a different course of action, where it furthers the DFSA's achievement of its objectives or is otherwise in the public interest to do so. For example, the DFSA may decide to publish at an earlier stage than suggested by the general policy, where circumstances justify this.

Commencement and conclusion of investigations

5-19-4 The DFSA expects not to publicise the commencement, conduct or conclusion of investigations.

5-19-5 Where the DFSA has publicised that it is conducting an investigation and no enforcement action results, the DFSA would issue a press release confirming the conclusion of the investigation and that no action is to be taken.

5-19-6 The DFSA expects not to publicise information about referrals to a Decision Maker.

Commencement of proceedings

Decision Maker

5-19-7 Reasons for this information not normally being published include:

(a) oral and written submissions in regard to a matter before a Decision Maker are confidential and made in private;

(b) hearings are held in private; and

(c) the release of information by the Decision Maker prior to a full and complete consideration of all submissions and facts may be contrary to the DFSA's objectives or not in the public interest.

RAC, FMT or a court

5-19-8 The DFSA expects to publicise information about the commencement and the hearing of proceedings before the RAC, FMT or courts, unless otherwise ordered by any of the bodies the proceedings are heard by.

Disclosure of Decisions

Decision Maker Decisions

5-19-9 The DFSA expects to make public any decision made by a Decision Maker, and to do so in a timely manner after any relevant appeal period has expired or appeal process has come to an end.

5-19-10 In circumstances where the DFSA considers it necessary to publish at an earlier stage, the publication will refer to the right of appeal which the affected party has and the time limit for that appeal. The DFSA would consider it necessary to publish at this early stage, where to do so enables it to achieve its objectives or it is in the public interest to do so. Before making a decision public the DFSA will endeavour to give affected parties notice of its intent to publish within an appropriate timescale.

5-19-11 If the affected party exercises its right of appeal, then the DFSA will publicise that fact unless otherwise ordered. When the appeal has been heard and determined, the DFSA expects to publicise the result of the appeal (subject only to the RAC or FMT – see 5-19-12).

RAC, FMT or a court decision

5-19-12 The Regulatory Law 2004 requires all RAC and FMT hearings to be heard in public unless otherwise ordered by the RAC or FMT. The RAC and FMT may exercise their discretion not to make public any decisions they may make. Where they do determine to publish their decisions including interim decisions the RAC and FMT will publish these on their respective websites which are maintained on the DFSA website. Following hearings and decisions by these bodies, the DFSA expects to make timely public disclosure of their decisions, including any interim decisions, unless otherwise ordered.

5-19-13 Decisions made by the courts will be publicised by the DFSA in a timely manner, unless ordered otherwise.

5-19-14 This approach is adopted on the basis that any delay in disclosure may hinder and unfairly prejudice the DFSA in achieving some of its primary objectives, namely transparency, fairness, financial stability, fostering confidence, and consumer protection. For example, non-disclosure may potentially prejudice users and prospective users of financial services in the DIFC if they are acting unaware of facts known in the enforcement action.

Disclosure of Enforceable Undertakings or other settlements

5-19-15 The DFSA expects to publicly disclose all settlements of enforcement matters, including Enforceable Undertakings, to ensure all market participants are clearly informed. This will also be part of the negotiations that lead to the agreement.

5-19-16 The DFSA may be otherwise ordered or required by law not to publish. For example, disclosure may not occur if a third party has commenced proceedings in the courts in respect of the same conduct and the publication of the undertaking or settlement may prejudice that party's case in the court. However, simply because a third party has commenced proceedings does not preclude the DFSA from publishing its settlements, including Enforceable Undertakings.

Content of Publication

5-19-17 The DFSA expects to make appropriate disclosures when publishing Enforceable Undertakings, settlement agreements, proceedings before, and decisions of, RAC, FMT or a

court. Appropriate disclosures should provide sufficient meaningful information to achieve the regulatory objectives of the DFSA.

5-19-18 The DFSA expects to take into consideration any privileged or sensitive information when considering the content of its publications. In doing so, it will also consider the possibility that any publication may also potentially affect the rights of a third party and, if so, will endeavour to give that third party an opportunity to make representations on the publication.

Mode of Publication

5-19-19 Publication may take any one or more forms including, for example, a media release, the DFSA website, and any other suitable forums as determined by the DFSA.

5-20 MAINTENANCE OF REGISTERS

5-20-1 The DFSA is also required to publish and maintain a register[51] in respect of:

(a) withdrawals and suspensions of Licences and authorisations of Authorised Firms, Authorised Market Institutions and Authorised Individuals;

(a) withdrawals of registration of DNFBPs; and

(b) withdrawals and suspensions of Auditors.

[51] Article 62 of the Regulatory Law 2004

5-21 CONCLUSION OF AN INVESTIGATION

5-21-1 The DFSA will conclude an investigation when:

(a) it determines to take no further action in response to the suspected contraventions of the Law and Rules subject of the investigation; and

(b) all remedies and obligations resulting from an investigation are concluded and fulfilled.

5-21-2 The DFSA may determine to take no further action in respect of the suspected contraventions that are the subject of an investigation due to insufficiency of evidence or in circumstances where pursuing an enforcement action in respect of the suspected contraventions would not accord with the DFSA's objectives.

Costs of investigation

5-21-3 Where a Person is found by the FMT or Court to have contravened a provision of the Law or Rules, the FMT or Court may order[52] that Person to reimburse the DFSA in respect of the whole or a specified part of the costs and expenses of the investigation, including the remuneration of an officer involved in the investigation.

[52] Article 79 (2) of the Regulatory Law 2004

6 DECISION MAKING

6-1 INTRODUCTION

6-1-1 This chapter sets out the DFSA's general approach to making decisions in the exercise of its discretionary powers, including those set out in chapters 4 and 5 of this Sourcebook.

6-1-2 A reference to:

(a) an Article in this chapter is a reference to an Article in the Regulatory Law 2004, unless otherwise stated; and

(b) the Law in this chapter is a reference to any legislation administered by the DFSA.

6-1-3 The DFSA is aware that when it makes a decision to take certain action or pursue a remedy, such decisions are likely to affect the rights, interests and legitimate expectations of Persons. Therefore, the DFSA has put in place a fair and transparent decision making process.

6-2 WHO CAN EXERCISE A DFSA POWER?

6-2-1 The DFSA's powers can be exercised by the Chief Executive and any DFSA officer with an appropriate delegation.

6-2-2 Some DFSA powers can be exercised only by the Chief Executive, or an individual acting in the capacity of the Chief Executive. An example of such a decision is the power to commence an investigation under Article 78 of the Regulatory Law 2004.

6-2-3 The decisions which are made by the DFSA generally fall into two main categories:

(a) the first category is those decisions made by the DFSA in response to an application or notification made by a Person to the DFSA to obtain a right, status or other privilege which the Person would not have, unless the DFSA grants such a right, status or other privilege. These decisions mainly involve "entry control" or "gate-keeper" type decisions. An example of such a decision is when the DFSA considers an application for a Licence or extension to an existing Licence. Such decisions are referred to as **"Executive Decisions"** in this chapter; and

(b) the second category is those decisions which result from action initiated by the DFSA and which can have a significant adverse impact on the existing rights, interests and legitimate expectations of Persons. An example of such a decision is when the DFSA seeks to withdraw an Authorised Person's Licence. Such decisions are referred to as "**Decision Maker Decisions**" in this chapter.

6-3 WHAT ARE THE DFSA'S DECISION MAKING PROCEDURES?

6-3-1 Subject to the considerations of procedural fairness, the decision making procedures of the DFSA will generally take into account matters including:

(a) the requirements set out in the relevant Law and Rules;

(b) the nature of the decision, including its complexity, importance and urgency; and

(c) the extent and manner in which the rights, interests and legitimate expectations of Persons may be affected by the decision.

6-3-2 In regard to 6.3.1(b), the DFSA has appropriate procedures for making Executive Decisions (see section 6-4) and Decision Maker Decisions (see section 6-5).

6-3-3 Generally, decisions of the DFSA which affect the rights of a Person are appealable to the DFSA's Regulatory Appeals Committee. The Regulatory Appeals Committee is a committee of the DFSA Board which will conduct a full merits review of certain decisions made by the DFSA. In doing so, it looks at the facts afresh, and can make a new decision ensuring procedural fairness, objectivity and transparency in arriving at its decision. A decision of the Regulatory Appeals Committee may be reviewed by the DIFC Court by way of judicial review on a point of law. For more information on the Regulatory Appeals Committee, including its rules and procedures, please see the DFSA's website (www.dfsa.ae).

6-3-4 Based on the above considerations, the DFSA has prepared a list containing the most common types of decisions it may take and the types of procedures followed in making such decisions (see Appendix 1 to this chapter). This list also sets out whether a Person has a right of appeal to the Regulatory Appeals Committee in respect of a particular decision. However, it is not an exhaustive list.

6-4 EXECUTIVE DECISION PROCEDURES

6-4-1 The Executive Decisions of the DFSA are generally operational decisions which involve the DFSA being called upon to make a decision in response to an application or notification made by a Person. Some examples of these decisions include where the DFSA proposes to:

(a) grant an application for a Licence or an extension to such a Licence of an Authorised Person;

(b) grant an application for an Authorised Individual's status;

(c) register an Ancillary Service Provider or Auditor;

(d) register a Public Fund;

(e) approve an application for a change in control by an Authorised Person; or

(f) approve a Prospectus filed with the DFSA.

6-4-2 The decisions of the kind referred to above are generally decisions which would confer on a Person a right or authority to undertake specified activities or enjoy a particular privilege or status only if the DFSA decides to grant the relevant licence, registration, approval, or privilege sought. Although a Person does not have any vested rights relating to the subject matter of the application or notification, that Person has:

(a) a right to be treated fairly and properly by the DFSA when considering the relevant application or notification; and

(b) a right to have the DFSA's decision reviewed by the Regulatory Appeals Committee.

Procedural fairness principles

6-4-3 Because a Person has a right to be treated fairly and properly during the course of processing the application or notification made by that Person, a DFSA officer making an Executive Decision is expected to:

(a) act without bias or conflict of interest;

(b) give the Person a fair right to present his case; and

(c) take into account only those considerations which are relevant to the matter to be decided upon.

Acting without bias or conflict of interest

6-4-4 A DFSA officer is expected to act impartially. If an officer has a vested financial or personal interest in the subject matter of the decision, a conflict of interest may arise that prevents a decision being made by that officer.

6-4-5 A DFSA officer who has a financial or other personal interest in the subject matter of the decision, is required to disclose the fact to the DFSA, and where such interest is material, not act in relation to such decision.

Right to present his case

6-4-6 A Person who will be affected by a decision of the DFSA has the right to present his case. This right arises at the point of submission of an application or notification, and continues during the process until a decision is made. Generally, the application or notification form which is required to be submitted by the Person who is asking for such a decision to be made will contain all the information relevant to the DFSA decision sought. The DFSA officer may require further information if the information provided is not complete.

6-4-7 In some cases, the DFSA officer will obtain information relevant to the matter in relation to which the decision is to be made from sources other than the Person

making the application or notification (external sources) in response to which the decision has to be made. As a matter of fair procedure, where information is obtained from an external source, particularly if that information has an adverse bearing (for example, information that does not support the grant of a Licence, authorisation or approval sought from the DFSA), the DFSA officer should, before acting on such information (subject to any confidentiality obligations), give to the Person making the application or notification a right to comment upon the adverse information before making his decision.

Relevant considerations

6-4-8 The DFSA officer is expected to take into account only those considerations which are relevant to the matter to be decided upon. Taking into account only those considerations which are relevant to the matter to be decided upon necessarily requires disregarding any irrelevant information. This also requires the DFSA officer to ensure that he has all the material information that is necessary to be able to make the relevant decision. For this purpose, the DFSA officer may ask for further information.

Right of review

6-4-9 Generally, a Person affected by an Executive Decision has a right of review of that decision (see paragraph 6-3-3 above). To enable the Person affected by the DFSA decision to exercise that right effectively, the DFSA Officer will inform the relevant Person without undue delay of:

(a) the decision and the reasons for making that decision;

(b) any information required to be provided by the relevant Law or Rule empowering the action; and

(c) if applicable, the fact that the Person has the right to appeal the decision to the Regulatory Appeals Committee, the process for making the appeal and the period within which the appeal can be lodged.

6-5 DECISION MAKER PROCEDURES

6-5-1 Decision Maker Decisions result from action initiated by the DFSA which can have a significant adverse impact on the existing rights, interests or legitimate expectations of a Person.

6-5-2 The procedures that must be followed when making such decisions are often prescribed in the Laws and Rules administered by the DFSA. These decisions attract prescribed procedures because they can have a significant adverse impact on the existing rights, interests or legitimate expectations of Persons. Therefore, a Decision Maker is bound by procedural fairness principles such as those set out in paragraphs 6-4-3 to 6-4-8, in addition to the considerations noted below.

6-5-3 Decision Maker Decisions are made by a DFSA officer known as a Decision Maker. The Decision Maker will be a person with no previous direct involvement in

the matter to which the decision relates. Examples of these decisions include where the DFSA, on its own initiative, proposes to:

(a) impose an administrative fine or censure,

(b) withdraw a Licence of an Authorised Person;

(c) withdraw the status of an Authorised Individual;

(d) withdraw the registration of an Auditor; or

(e) withdraw the registration of a Public Fund.

6-5-4 Decision Maker Decisions are often, but not always, made by the DFSA at the conclusion of an investigation.

Prior Representation Procedures

6-5-5 Decision Maker Decisions generally involve prescribed procedures, which require the Decision Maker to give to the Person who will be affected by his decision ("the Affected Person") a right of representation prior to making his decision. Prior representation procedures involve the Decision Maker giving to the Affected Person:

(a) a written notice setting out the basis on which he proposes to exercise the relevant DFSA power; and

(b) a suitable opportunity to make representations prior to the Decision Maker's exercising the relevant DFSA power, unless the Law or Rules provide for making a decision without giving a prior right of representation. In the latter case, generally, a right of representation is given immediately after the decision is made (see paragraphs 6-5-12 to 6-5-16).

6-5-6 If the Decision Maker receives no response or representations from the Affected Person within the period specified in the notice, the Decision Maker may regard the allegations or matters in the notice as undisputed and proceed to make his decision.

6-5-7 If, however, the Affected Person makes representations, then the Decision Maker will take into account those representations in making his decision on the basis of the material then available, subject to seeking further clarification of any issues that might arise from such representations.

6-5-8 Should the Affected Person wish to make oral representations in addition to, or in lieu of, written submissions, he should notify the Decision Maker as soon as practicable and within the timeframe provided for making representations. The notification should specify the matters on which the Person wishes to make oral representations, how long the Person expects the representations will take and the names of any representatives appointed to attend the hearing at which the representations will be made.

6-5-9 The Affected Person may appoint one or more representatives of that Person's choice (who may be legally qualified) to attend the meeting at which representations will be made. Such representatives may make, or assist in making, the representations.

6-5-10 As soon as is reasonably practicable after receiving the notification for the meeting to take place, the Decision Maker will specify the time and place at which the meeting will take place. Before making his decision, the Decision Maker may also seek further comments or clarification from DFSA officers on matters that were represented to him by the Affected Person.

6-5-11 Upon making the relevant decision, a written notice setting out the DFSA decision, the reasons for making such decision and any right of appeal to the Regulatory Appeals Committee must be given to the Affected Person.

Post Representations Procedures

6-5-12 In certain circumstances a Decision Maker is not required to follow the procedures relating to prior representations when exercising specific DFSA powers. These circumstances are set out in the relevant Law and Rules. For example, the DFSA is not obliged to provide an Affected Person with a prior opportunity to make representations where any delay likely to arise from giving such a right is prejudicial to the interests of the DIFC. These circumstances can sometimes apply in the decision to:

(a) withdraw an authorisation in relation to one or more Financial Services for which an Authorised Person is authorised under a Licence (see Article 50);

(b) withdraw a Licence of an Authorised Person (see Article 51);

(c) impose conditions and restrictions, impose additional conditions and restrictions, or vary or withdraw existing conditions and restrictions on a Licence of an Authorised Person (see Article 49);

(d) restrict a Person from performing one or more Licensed Functions or suspend or withdraw Authorised Individual status from such a Person (see Article 58(2));

(e) impose conditions and restrictions, impose additional conditions and restrictions, or vary or withdraw existing conditions and restrictions on Authorised Individual status (see Article 57);

(f) restrict Persons from performing functions (see Article 58(1)); and

(g) remove a Recognised Person from the list of Recognised Persons (see Article 37(7) of the Markets Law and REC Rule 4.4.4).

6-5-13 In deciding whether any delay is prejudicial to the interests of the DIFC, the Decision Maker will take into account factors including, but not limited to:

(a) the extent of any loss, or risk of loss, or other adverse effect on DIFC regulated entities or customers;

(b) the extent to which assets appear to be at risk;

(c) the nature and extent of any false or inaccurate information provided by the Person to the DFSA;

(d) the seriousness of any suspected breach of the requirements of the Law or Rules and the steps that need to be taken to correct that breach;

(e) the risk that the Person or the Person's business may be used or has been used to facilitate money laundering or other financial crime;

(f) the Person's conduct in identifying the conduct and taking action in respect thereto; and

(g) the impact that use of the DFSA's powers will have on the Person's business or on its customers.

6-5-14 In some cases, the relevant provisions expressly require Affected Persons to be given a right of representation following the making of a decision without being given prior representation rights. The right arises when the decision involves:

(a) imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions imposed on a Licence of an Authorised Person (see Article 49); or

(b) imposing conditions and restrictions or additional conditions and restrictions, or varying or withdrawing conditions and restrictions on Authorised Individual status (see Article 57),

and the DFSA concluded that any delay would be prejudicial to the interests of the DIFC. The Decision Maker will allow the Person the opportunity to make representations within fourteen days (or such longer period as may be agreed) from the date of the decision.[53]

6-5-15 Where the relevant Law or Rules do not expressly confer on an Affected Person a right to make representation, where the DFSA makes a decision without giving a prior right of representation due to any delay being prejudicial to the interests of the DIFC, the DFSA will generally provide such a person a post decision right of representation.

6-5-16 Where a post decision representation right is given, the Decision Maker will confirm, withdraw or vary his decision taking into account the representations made. The procedures for considering representations are the same as noted in paragraphs 6-5-5 to 6-5-11 for prior representations.

[53] Articles 49(5) and 57(5) of the Regulatory Law 2004.

Article 75, 75A and 76 powers

6-5-17 Pursuant to Articles 75, 75A and 76 of the Regulatory Law 2004, the DFSA has the power by which:

(a) prohibitions or requirements can be imposed on an Authorised Person's business such as those relating to certain specified business transactions, soliciting business from specified persons or carrying on business in a specified manner (see Article 75);

(b) for prudential purposes, directions can be imposed on an Authorised Firm or Authorised Firms within a specified class (see Article 75A); and

(c) prohibitions or requirements can be imposed on an Authorised Person's dealings in property such as prohibitions against dealing in property other than in a specified manner (see Article 76).

6-5-18 The Article 75 and 76 powers do not require the DFSA to give an Affected Person the opportunity to make representations, prior to the DFSA exercising such powers. This is because such powers are designed to enable the DFSA to act swiftly in the circumstances set out in GEN Rule 11.13.1. These circumstances include where the DFSA considers that any prohibition or requirement is necessary to ensure that customers, Authorised Persons or the financial system are not adversely affected by the activities of the Affected Person.

6-5-19 Before issuing a direction under Article 75A, the DFSA will provide an Affected Person with an opportunity to make written and oral representations. Where the DFSA needs to exercise its powers swiftly under Article 75A, it will not be possible to provide an Affected Person with an opportunity to make representations to the DFSA prior to the issue of the relevant direction. However, an opportunity to make representations immediately after the issue of such direction will be afforded to the Affected Person.

6-5-20 Given that the DFSA may be required to act swiftly when it exercises its Article 75, 75A and 76 powers, the Decision Maker may be a DFSA officer who might have had supervisory or other regulatory responsibilities, including enforcement responsibilities, in relation to the Affected Person.

APPENDIX 1 DFSA'S REGULATORY POWERS

A reference to executive* refers to the Chief Executive or a DFSA Officer that has been delegated the authority to act as Chief Executive.

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 33	when the DFSA is proposing to commence proceedings before the Financial Markets Tribunal	executive*	No
Article 46	when the DFSA is proposing to require an applicant to provide additional information reasonably required to decide an application for a Licence	executive	No
Article 47	when the DFSA is proposing to refuse to grant an application for a Licence, or, an extension to a Licence	executive	Yes
Article 48	when the DFSA is proposing to grant an application for a Licence, or, an extension to a Licence, with or without conditions and restrictions	executive	No
Article 49(1)	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions on a Licence, or, vary or withdraw conditions and restrictions on such Licence	executive	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 49(1)	when the DFSA, on its own initiative, is proposing to impose conditions and restrictions or additional conditions and restrictions on a Licence, or, vary or withdraw conditions and restrictions on such Licence	decision maker	Yes
Article 50(1)	when the DFSA, at the request of an Authorised Person, is proposing to withdraw an authorisation in relation to one or more Financial Services under a Licence	executive	Yes
Article 50(1)	when the DFSA, on its own initiative, is proposing to withdraw an authorisation in relation to one or more Financial Services under a Licence	decision maker	Yes
Article 51	when the DFSA, at the request of an Authorised Person, is proposing to withdraw a Licence	executive	Yes
Article 51	when the DFSA, on its own initiative, is proposing to withdraw a Licence	decision maker	Yes
Article 54	when the DFSA is proposing to require an applicant to provide additional information reasonably required to decide an application for an Authorised Individual status	executive	No
Article 55	when the DFSA is proposing to refuse to grant an application for an Authorised Individual status, or, an extension to such status	executive	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 56	when the DFSA is proposing to grant an application for an Authorised Individual status, or, an extension to such status, with or without conditions and restrictions	executive	No
Article 57	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions on the grant of an Authorised Individual's status, or, vary or withdraw conditions and restrictions on such status	executive	Yes
Article 57	when the DFSA, is proposing on its own initiative, to impose conditions and restrictions or additional conditions and restrictions on the grant of an Authorised Individual's status, or, vary or withdraw conditions and restrictions to such status	decision maker	Yes
Article 58(1)	when the DFSA, on its own initiative, is proposing to restrict an individual from performing one on more functions in connection with the provision of Financial Services or Ancillary Services	decision maker	Yes
Article 58(2)	when the DFSA, at the request of a relevant person or Authorised Person, is proposing to either restrict, suspend or withdraw the status of an Authorised Individual	executive	Yes
Article 58(2)	when the DFSA, on its own initiative, is proposing to either restrict, suspend or withdraw the status of an Authorised Individual	decision maker	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 60(3)	when the DFSA is proposing to grant an application for registration as an Ancillary Service Provider	executive	No
Article 60(3)	when the DFSA is proposing to refuse to grant an application for registration as an Ancillary Service Provider	executive	Yes
Article 73	when the DFSA is proposing to either obtain information or documents, or to enter the premises of any Authorised Firm, Authorised Market Institution, DNFBP or Fund for the purpose of inspecting and copying information within the premises	executive	No
Article 74	when the DFSA is proposing to require an Authorised Firm or Authorised Market Institution to provide a report on any matter or information about which the DFSA could have or has required under Article 73	executive	Yes
Article 75	when the DFSA is proposing to impose a prohibition or requirement on the business of an Authorised Firm, Authorised Market Institution, Fund Manager or Fund	decision maker	Yes
Article 75A	when the DFSA for prudential purposes is proposing to require an Authorised Firm or Authorised Firms within a specified class to comply with a direction	decision maker	Yes
Article 76	when the DFSA is proposing to impose on an Authorised Firm or Authorised Market Institution a prohibition, from or requirement to dealing with relevant property	decision maker	Yes

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 77(2)	when the DFSA is proposing to substitute or vary a prohibition or requirement made under Articles 75 and 76	decision maker	No
Article 77(2)	when the DFSA is proposing to withdraw a prohibition or requirement made under Article 75 and 76	decision maker	No
Article 78	when the DFSA is proposing to conduct an investigation under Chapter 2 of Part 5	executive*	No
Article 79(2)	when the DFSA is proposing to apply to the Court to recover part or all of the costs of an investigation	executive	No
Article 80	when the DFSA is proposing to exercise powers of compulsion to obtain information, documents and testimony from any person that may be relevant to an investigation	executive	No
Article 84	when the DFSA is proposing to apply to the Court for an injunction or warrant to search premises in order to enforce compliance with a requirement made pursuant to the exercise of any power under Articles 73, 74 or 80	executive	No
Article 87(5)	when the DFSA is proposing to apply to the Court to recover outstanding fines	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 88(1)	when the DFSA is proposing to require an Authorised Firm or Authorised Market Institution to appoint one or more individuals to act as managers of the business of such person	decision maker	Yes
Articles 89(1) & (2)	when the DFSA is proposing to accept a written enforceable undertaking given by a person, or, withdraw or vary such undertaking	executive	No
Article 89 (3)	when the DFSA is proposing to apply to the Court to enforce compliance with a written enforceable undertaking accepted by the DFSA under Articles 89 (1) and (2)	executive	No
Article 90	when the DFSA is proposing to issue an administrative fine	decision maker	Yes
Article 91	when the DFSA is proposing to issue an administrative censure	decision maker	Yes
Article 92 (2)	when the DFSA is proposing to apply to the Court for an injunction or other judicial relief, where a person has engaged, is engaging or is proposing to engage in conduct which contravenes a relevant requirement under Article 92(1)	executive	No
Article 92 (3)	when the DFSA is proposing to apply to the Court, where the DFSA is conducting, or has conducted, an investigation or has instituted civil or regulatory proceedings, for orders under Articles 92(3) (c) (d) (e) (f) (g) (h) or (i)	executive	No

Regulatory Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Article 93	when the DFSA is proposing to apply to the Court to wind up an Authorised Firm, Authorised Market Institution, or, to wind up a company that is in breach of the Financial Services Prohibition	executive	No
Article 94(2)	when the DFSA is proposing to apply to the Court for an order for damages, compensation, or recovery of property or any other order the Court sees fit, where there has been a breach of a requirement as described in Article 94(1)	executive	No
Article 95	when the DFSA is proposing to apply to the Court to intervene in any Court proceedings where the DFSA considers it necessary to meet its objectives	executive	No
Article 98(1)	when the DFSA is proposing to grant an application for the registration of an Auditor	executive	No
Article 98(1)	when the DFSA is proposing to refuse an application for the registration of an Auditor	executive	Yes
Article 99(7)	when the DFSA is proposing to order the remove of an Auditor	executive	No
Article 111	when the DFSA is proposing to nominate or approve a person to make a scheme report relating to a sanctioned transfer scheme under Article 108	executive	No

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 7.3.1(1)	when the DFSA is proposing to grant an application for an endorsement on a Licence permitting an Authorised Firm to conduct business with Retail Clients	executive	No
Rule 7.3.1(2)	when the DFSA is proposing to refuse to grant an endorsement on a Licence permitting an Authorised Firm to conduct business with Retail Clients, or, vary such endorsement	executive	Yes
Rule 8.4.6	when the DFSA is proposing to direct an Authorised Person to appoint an auditor, where an auditor has not been appointed by such Authorised Person	executive	No
Rule 8.4.7	when the DFSA is proposing to direct an auditor to remove itself as auditor of an Authorised Person, where the DFSA is of the opinion that the existing auditor is unsuitable	decision maker	Yes
Rules 8.12 and 8.13	when the DFSA, on its own initiative, is proposing under Article 98(3) of the Regulatory Law to withdraw the registration of an Auditor	decision maker	Yes
Section 8.14	when the DFSA, on its own initiative, is proposing under Article 105 of the Regulatory Law to suspend the registration of an Auditor	decision maker	Yes
Rule 11.8.5(2)	when the DFSA is proposing under Article 64(2) of the Regulatory Law to approve an application for a change in control without conditions in relation to a Domestic Firm	executive	No

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 11.8.5(2)	when the DFSA is proposing under Article 64(2) of the Regulatory Law to approve an application for a change in control with conditions, or, object to an application for a change in control, in relation to a Domestic Firm	decision maker	Yes
Rule 11.8.13(1)	when the DFSA is proposing under Article 64(3) and (4) of the Regulatory Law to object to a Person as a Controller.	decision maker	Yes
Rule 11.9.4(a)	when the DFSA is proposing to grant an application for the creation of a new Cell by an Insurer that is a Protected Cell Company	executive	No
Rule 11.9.4(b)	when the DFSA is proposing to impose conditions and restrictions in relation to granting an application for the creation of a new Cell by an Insurer that is a Protected Cell Company	executive	Yes
Rule 11.9.4 (c)	when the DFSA is proposing to refuse to approve the application for the creation of a new Cell by an Insurer that is a Protected Cell Company	executive	Yes
Rule 11.10.5	when the DFSA is proposing to object to the establishment of a branch by a Domestic Firm	executive	Yes
Rule 11.10.9	when the DFSA is proposing to object to a proposed Major Acquisition by an Authorised Firm or impose conditions in relation to any proposed Major Acquisition by a Domestic Firm	executive	Yes

General (GEN) Module

GEN Module	Description	Type of Decision	Right of appeal to RAC
Rule 11.10.10(1)(b)	when the DFSA is proposing to object to a proposed Major Acquisition by an Authorised Firm or impose conditions in relation to any proposed Major Acquisition by a An Authorised Firm which is not a Domestic Firm	executive	Yes
Rule 11.10.11(2)	when the DFSA is proposing to withdraw its no objection position, or, modify or vary any condition or any remedial action	executive	Yes

Anti-Money Laundering (AML) Module

ASP Module	Description	Type of Decision	Right of appeal to RAC
Rule 15.2.3(a)	when the DFSA, at the request of an DNFBP, cancels its registration	executive	No
Rule 15.2.3 (b) to (e)	when the DFSA is proposing to cancel the registration of a DNFBP	decision maker	Yes

Collective Investments Law 2010

Article	Description	Type of Decision	Right of appeal to RAC
Article 25(2)	when the DFSA is proposing to apply to the Court to make an application to remove a Fund Manager	executive	No
Articles 28 and 31	when the DFSA is proposing to register a Domestic Fund which is a Public Fund	executive	No
Article 29	when the DFSA is proposing to request the Fund Manager or Trustee to provide additional information in relation to an application for registration of a Public Fund	executive	No
Article 30	when the DFSA is proposing to reject an application for registration of a Public Fund	executive	Yes
Article 32(1)	when the DFSA, at the request of a Fund Manager or Trustee, is proposing to withdraw the registration of a Public Fund	executive	Yes
Article 32(1)	when the DFSA, on its own initiative, is proposing to withdraw the registration of a Public Fund	decision maker	Yes
Articles 35(6) and 36(1)	when the DFSA is proposing to refuse to grant approval of a proposed alteration of a Domestic Fund's Constitution or Prospectus, or, replacement of the Fund Manager, Trustee, member of the Governing Body or the auditor of a Fund as described in Article 35(1)	executive	Yes

Collective Investments Law 2010

Article	Description	Type of Decision	Right of appeal to RAC
Article 39(4)	when the DFSA is proposing to object to a particular oversight arrangement for a Public Fund	executive	Yes
Article 43(8)	when the DFSA is proposing to apply to the Court for the removal of an Auditor of a Domestic Fund	executive	No
Article 69	when the DFSA is proposing to issue a stop order directing that no Offers, issues, redemptions, sales or transfers of the Units of the Fund be made for an appropriate period	executive	Yes

Islamic Financial Business Law 2004

Article	Description	Type of Decision	Right of appeal to RAC
Articles 11(2) and 12(1)	when the DFSA is proposing to grant an application for an endorsement on a Licence permitting an Authorised Person to conduct Islamic Financial Business, or to vary such an endorsement	executive	No
Article 11(5)	when the DFSA is proposing to refuse an application for an endorsement on a Licence permitting an Authorised Person to conduct Islamic Financial Business, or a variation to an endorsement	executive	Yes

Collective Investments Law 2010

Article	Description	Type of Decision	Right of appeal to RAC
Article 12(2)	when the DFSA, at the request of an Authorised Person, is proposing to impose conditions and restrictions or additional conditions and restrictions in relation to an endorsement on a Licence, or, vary or withdraw conditions and restrictions to such endorsement	executive	Yes
Article 12(2)	when the DFSA, on its own initiative, is proposing to impose conditions and restrictions or additional conditions and restrictions in relation to an endorsement on a Licence, or, vary or withdraw conditions and restrictions to such endorsement	decision maker	Yes

Investment Trust Law 2006

Article	Description	Type of Decision	Right of appeal to RAC
Article 26(5)	when the DFSA is proposing to apply to the Court for an order for the removal of the Trustee and any other appropriate orders	executive	No

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 25	when the DFSA is proposing to issue a stop order directing that no Offers, issue, sale or transfer of a Security to be made for an appropriate period	executive	Yes
Article 26(1) and (2)	when the DFSA is proposing to direct an Authorised Market Institution to do, or, not to do specific things	executive	Yes
Article 29(3)	when the DFSA is proposing to transfer an Official List of Securities for an Authorised Market Institution	executive	No
Article 30(2)	when the DFSA is proposing to grant an application for an endorsement on a Licence of an Authorised Market Institution to maintain an Official List of Securities	executive	No
Article 30(2)	when the DFSA is proposing to refuse to grant an application for an endorsement on a Licence of an Authorised Market Intuition to maintain an Official List of Securities	executive	Yes
Article 31	when the DFSA, at the request of an Authorised Market Institution, is proposing by written notice to suspend or withdraw the endorsement on the Licence of an Authorised Market Institution to maintain an Official List of Securities	executive	No
Article 31	when the DFSA, on its own initiative, is proposing by written notice to suspend or withdraw an endorsement on the Licence of an Authorised Market Institution to maintain an Official List of Securities	decision maker	Yes

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 32(2)	when the DFSA is proposing to direct an Authorised Market Institution to make or amend its listing rules	executive	No
Article 33(1)	when the DFSA is proposing to grant admission of Securities to an Official List of Securities maintained by it	executive	No
Article 34(1)	when the DFSA is proposing to object to the admission of Securities, or impose conditions or restrictions to the admission of Securities to an Official List of Securities maintained by an Authorised Market Institution, or, vary or withdraw such conditions and restrictions	executive	Yes
Article 34(2)	when the DFSA is proposing to refuse an application for the admission of Securities, or, impose conditions or restrictions to the admission of Securities to an Official List of Securities maintained by the DFSA, or, vary or withdraw such conditions and restrictions	executive	Yes
Article 35(1)	when the DFSA is proposing to suspend or delist Securities from its Official List of Securities with immediate effect, or, from such date and time as may be specified	executive	Yes
Article 35(2)	when the DFSA is proposing to direct an Authorised Market Institution to suspend or delist Securities from an Official List of Securities with immediate effect, or, from such date and time as may be specified	executive	Yes
Article 37(5)	when the DFSA is proposing to admit a person to its list of Recognised Persons	executive	No

Markets Law 2012

Article	Description	Type of Decision	Right of appeal to RAC
Article 37(5)	when the DFSA is proposing not to admit a person to its list of Recognised Persons	executive	Yes
Article 37(7)	when the DFSA is proposing to remove a person from its list of Recognised Persons	executive	Yes
Articles 38(1)(d) & (4)	when the DFSA is proposing to declare a Person to be, or not to be, a Reporting Entity, or impose conditions or restrictions as it considers appropriate in respect of such declaration	executive	Yes
Article 49(1)	when the DFSA is proposing to require a Reporting Entity to appoint a sponsor, compliance adviser or other expert adviser on such terms and conditions as it considers appropriate	executive	Yes
Article 50(1)(a)	when the DFSA is proposing to direct a Reporting Entity to disclose specified information to the market, or, take such other steps as the DFSA considers appropriate	executive	Yes
Article 50(1)(b)	when the DFSA is proposing to impose any additional continuing obligations on a Reporting Entity	executive	Yes

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
Rule 2.6.2(1)	when the DFSA is proposing to approve a Prospectus filed with the DFSA	executive	No
Rule 2.6.2(2)	when the DFSA is proposing not to approve a Prospectus or Supplementary Prospectus filed with the DFSA	executive	Yes
Rule 2.7.1	when the DFSA is proposing to approve an offer document from other jurisdictions	executive	No
Rule 2.13.1	when the DFSA is proposing to require a Prospectus Offer to be underwritten by an underwriter acceptable to the DFSA	executive	No
Rule 2.13.3(1)	when the DFSA is proposing to impose a requirement that monies held by a Person making a Prospectus Offer are held in an escrow account for a specified period and on specified terms	executive	No
Rule 2.13.3(2)	when the DFSA is proposing to require the appointment of a paying agent during the Offer Period	executive	No
Rule 4.2.4(3)	when the DFSA is proposing to specify the period during which disclosure of the information included in a confidential report need not be disclosed to the markets and may extend such period upon application by the Reporting Entity	executive	No

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
Rule 4.5.1(1)	when the DFSA is proposing to issue a notice pursuant to Article 50(1) of the Markets Law to direct a Reporting Entity to disclose specified information to the market and to take any other steps as the DFSA considers appropriate	executive	Yes
Rule 4.7.2	when the DFSA is proposing to approve a Regulatory Announcement Services for the purposes of making the disclosure in Rule 4.7.1(c)	executive	No
Rule 5.2.6	when the DFSA is proposing to direct a Public Listed Company to appoint an auditor, where an auditor has not been appointed by such Public Listed Company	executive	No
Rule 5.2.7	when the DFSA is proposing to direct an auditor to remove itself as auditor of a Public Listed Company, where the DFSA is of the opinion that the existing auditor is unsuitable	decision maker	Yes
Rule 5.2.15	when the DFSA is proposing to impose any terms or conditions on the registration of an Auditor of a Public Listed Company	executive	Yes
Rule 5.2.27	when the DFSA, at the request of an Auditor of a Public Listed Company, is proposing under Article 98(3) of the Regulatory Law to withdraw the registration of such Auditor	executive	Yes
Rule 5.2.27(1) and 5.2.31	when the DFSA, on its own initiative, is proposing under Article 98(3) of the Regulatory Law 2004 to withdraw the registration of an Auditor of a Public Listed	decision maker	Yes

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
	Company		
Rule 5.2.35	when the DFSA, at the request of an Auditor of a Public Listed Company, is proposing under Article 105 of the Regulatory Law 2004 to suspend the registration of such Auditor	executive	Yes
Rule 5.2.35	when the DFSA, on its own initiative, is proposing under Article 105 of the Regulatory Law to suspend the registration of an Auditor of a Public Listed Company	decision maker	Yes
Rule 6.3.2(1)	when the DFSA is proposing to approve a Fund Prospectus	executive	No
Rule 6.3.2(2) and (3)	when the DFSA is proposing not to approve a Fund Prospectus	executive	Yes
Rule 6.5.4(3)	when the DFSA is proposing to specify the period during which disclosure of the information included in a confidential report need not be disclosed to the markets	executive	No
Rule 6.11.1(1)	when the DFSA is proposing to issue a notice pursuant to Article 50(1) of the Markets Law to direct a Reporting Entity of a Listed Fund to disclose specified information to the market or take any other steps as the DFSA considers appropriate	executive	No

Markets Rules (MKT) Module

MKT Module	Description	Type of Decision	Right of appeal to RAC
Rule 7.1.2(1)	when the DFSA is proposing to issue a notice pursuant to Article 49(1) of the Markets Law, requiring a Person who makes or intends to make a Prospectus Offer, to appoint a sponsor and provide third party certification in respect of any specific matters relating to the Prospectus Offer	executive	No
Rule 7.2.2	when the DFSA is proposing pursuant to Article 49(1)of the Markets Law, to require a Reporting Entity to appoint a compliance adviser or replace a compliance advisor already appointed	executive	Yes

Authorised Market Institutions (AMI) Module

AMI Module	Description	Type of Decision	Right of appeal to RAC
Rule 4.3.3	when the DFSA approves or disapproves a proposed material change to existing arrangements of an Authorised Market Institution to meet the Licensing Requirements	executive	Yes
Rules 5.6.6 and 5.6.7	when the DFSA is proposing to dispense with the public consultation for a proposed change to the Business Rules or to approve a proposed amendment to the Business Rules of an Authorised Market Institution	executive	Yes

Authorised Market Institutions (AMI) Module

AMI Module	Description	Type of Decision	Right of appeal to RAC
Rule 6.9.1(4)	when the DFSA is approving a proposed liquidity incentive scheme	executive	Yes
Rule 6.11.2	when the DFSA is proposing to approve proposed Listing Rules or any amendments to such rules of an Authorised Market Institution	executive	No
Rules 8.2.2 and 8.2.4	when the DFSA is proposing to approve a proposed acquisition or increase in level of control with or without conditions or object to an application for a change in control, of an Authorised Market Institution	decision maker	Yes

Recognition (REC) Module

REC Module	Description	Type of Decision	Right of appeal to RAC
Rule 2.3.1	when the DFSA is proposing to refuse to recognise an applicant as a Recognised Person	executive	Yes

Price Stabilisation (PRS) Module

PRS Module	Description	Type of Decision	Right of appeal to RAC
Rule 3.2.3	when the DFSA is proposing to direct an Issuer to replace or appoint a Stablisation Manager, where the DFSA considers a Stablisation Manager appointed by an Issuer is not suitable or where one has not been appointed	executive	No
Rule 4.3.2(e)	when the DFSA is proposing to request a Stablisation Manager within 2 business days following the end of the Stablisation Window to disclose any additional information to the market.	executive	No
Rule 5.2.4(3)	when the DFSA is proposing to permit a Person to inspect the register maintained by a Stabilisation Manager under section 5.2 of PRS	executive	No
Rule 6.2.1(2)	where the DFSA is proposing to give its consent to a Person who conducts Price Stabilisation in the DIFC of dual-listed Eligible Securities	executive	No
Rule 6.2.1(3)	when the DFSA is proposing to attach a condition to the giving of its consent to a decision made under Rule 6.2.1(2)	executive	No