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 or Markets Law 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, 2 3 and 14 inclusive and sections 6.9, 6.10, 11.2, 11.3, 11.12 and 11.13 of GEN apply to a Representative Office.

Overview of the module

Guidance

1. Chapter 2 prescribes, pursuant to Article 41(2) of the Regulatory Law, the activities which constitute a Financial Service and, pursuant to Article 42(1) of the Regulatory Law, 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.

1A. Chapter 2A defines a Financial Product for the purposes of the general prohibition against misconduct in Article 41B of the Regulatory Law.

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

2A. Chapter 3A specifies requirements that apply to Financial Services and other activities relating to Crypto Tokens.

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 the 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 three sets of transitional rules.

   a. Section 10.1 contains transitional rules relating to endorsements to hold Client Assets and Insurance Monies.

   b. Section 10.2 contains transitional rules relating to a Safe Custody Auditor's Report.

   c. Section 10.3 contains transitional rules relating to the reclassification of the Financial Services of 'Arranging Credit or Deals in Investments' and 'Advising on Financial Products or Credit'.

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

11. Chapter 12 sets out Rules relating to business transfer schemes under Part 9 of the Regulatory Law.

12. Chapter 13 contains guidance on the DFSA's approach to facilitating the testing and development of innovative financial technology in the DIFC.

13. Chapter 14 prescribes, under Article 91(8) of the Regulatory Law, the provisions that are subject to a Fixed Penalty Notice, the amount of the penalty payable under a notice and the payment period for the penalty.

2 FINANCIAL SERVICES

2.1 Application

2.1.1 This chapter applies to every Person to whom the Regulatory Law 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 and these Rules where:

(a) it is an activity specified in Rule 2.2.2; and

(b) such activity is carried on by way of business in the manner described in section 2.3.

2.2.2 The following activities are specified for the purposes of Rule 2.2.1:

(a) Accepting Deposits;

(b) Providing Credit;

(c) Providing Money Services;

(d) Dealing in Investments as Principal;

(e) Dealing in Investments as Agent;

(f) Arranging Deals in Investments;

(g) Managing Assets;

(h) Advising on Financial Products;

(i) Managing a Collective Investment Fund;

(j) Providing Custody;

(k) Arranging Custody;

(l) Effecting Contracts of Insurance;

(m) Carrying Out Contracts of Insurance;

(n) Operating an Exchange;

(o) Operating a Clearing House;

(p) Insurance Intermediation;

(q) Insurance Management;

(r) Managing a Profit Sharing Investment Account;

(s) Operating an Alternative Trading System;

(t) Providing Trust Services;

(u) Providing Fund Administration;

(v) Acting as the Trustee of a Fund;

(w) Operating a Representative Office;

(x) Operating a Credit Rating Agency;

(y) Arranging Credit and Advising on Credit;

(z) Operating a Crowdfunding Platform;

(aa) Operating an Employee Money Purchase Scheme;

(bb) Acting as the Administrator of an Employee Money Purchase Scheme; and

(cc) Arranging or Advising on Money Services.

Guidance

Note that the ambit of these activities in Rule 2.2.2 may be restricted under COB, AMI or REP and may be fettered by the continuing operation of the Federal Law.

2.2.3 Each activity specified in Rule 2.2.2:

(a) is to be construed in the manner provided under these Rules; and

(b) is subject to exclusions under these Rules which may apply to such an activity.

Permitted Financial Services for Authorised Firms

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

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.

2.2.7A (1) An Authorised Firm may use a Fund Platform only if it:

(a) is a Fund Manager; and

(b) has an endorsement on its Licence permitting it to use the Fund Platform.

(2) In (1), an Authorised Firm uses a Fund Platform if it uses an Incorporated Cell Company (ICC) to provide infrastructure that facilitates the establishment, management, operation or winding up of a Fund that is an Incorporated Cell of the ICC.

Guidance

1. A Fund Platform is an Incorporated Cell Company (ICC) that provides infrastructure to one or more Funds that are Incorporated Cells of the ICC.

2. Infrastructure that facilitates a Fund Manager to manage Funds may include common rules and procedures, technical facilities, human resources, risk management tools and procedures, compliance and oversight facilities and other infrastructure relating to fund administration and asset management activities.

3. Both CIR and the ICC Regulations contain additional requirements that apply to a Fund Manager using a Fund Platform.

2.2.8 (1) An Authorised Firm may carry on a Financial Service with or for a Retail Client only if it is permitted to do so by an endorsement on its Licence.

(2) An endorsement under (1) is not required by an Authorised Firm when:

(a) Operating an Employee Money Purchase Scheme; or

(b) Acting as the Administrator of an Employee Money Purchase Scheme.

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.

2.2.10A (1) An Authorised Firm may hold or control Client Assets only if it is permitted to do so by an endorsement on its Licence.

(2) In (1), the expression "hold or control Client Assets" has the meaning given in COB Rule 6.11.4.

(3) An endorsement under (1) is not required by an Authorised Firm that has an authorisation for Providing Custody.

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

2.2.10C An Insurance Intermediary may conduct Insurance Intermediation activities in respect of a contract of Long-Term Insurance, that is not a contract of reinsurance, only if it is permitted to do so by an endorsement on its Licence.

2.2.10D The Financial Service of Operating a Crowdfunding Platform may be carried on only by a Body Corporate incorporated under the DIFC Companies Law.

2.2.10E A Crowdfunding Operator must not carry on the following activities:

(a) Managing Assets;

(b) Advising on Financial Products;

(c) Managing a Collective Investment Fund; or

(d) Advising on Credit.

2.2.10F A Crowdfunding Operator must not Operate a Crowdfunding Platform that facilitates a Person investing in the following kinds of Investments or Tokens through the platform:

(a) Warrants, Units or Structured Products;

(b) Derivatives; or

(c) Crypto Tokens.

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

Guidance

1. Providing currency exchange or issuing Payment Instruments, although a specified Money Service under Rule 2.6.1(1)(a) and (e), cannot be provided as a stand-alone financial service in or from the DIFC. An Authorised Firm may, however, provide currency exchange or issue Payment Instruments where it is in connection with, and a necessary part of, providing another Money Service or another Financial Service (see Rule 2.2.10G). An Authorised Firm may also arrange for another person outside the DIFC to provide a currency exchange service or to issue Payment Instruments if the Authorised Firm is authorised to Arrange or Advise on Money Services (see Rule 2.32.1).
2. An Authorised Firm that Provides Money Services is also subject to further restrictions relating to not using physical cash and the settlement of Dirham transactions (see COB section 13.2).

2.2.10H (1) An Authorised Firm must not Operate or Act as the Administrator of an Employee Money Purchase Scheme to which this Rule applies, unless the Scheme is established in the DIFC.

(2) This Rule applies to an Employee Money Purchase Scheme if the Scheme receives contributions that are required to be made by an employer under:

(a) the Employment Law; or

(b) another Dubai law.

Guidance

An Authorised Firm can act as the Operator or Administrator of two types of Employee Money Purchase Schemes: a scheme established in the DIFC (a "DIFC Scheme") or a scheme established outside the DIFC (a "Non-DIFC Scheme"). However, under Rule 2.2.10H, an Authorised Firm is prohibited from Operating or Acting as the Administrator of a Non-DIFC Scheme where that Scheme receives employer contributions required to be made under the Employment Law or another Dubai law. The prohibition does not apply to the operation or administration of Non-DIFC Schemes that fall within the exclusion in Rule 2.3.7.

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, 2.3.3, 2.3.4, 2.3.5, 2.3.6 and 2.3.7, 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) (r) and (y) 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 Corporate:

(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;

provided:

(iii) 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); and

(iv) for the purposes of the activities specified in paragraphs (f), (h), (p), (q) and (y) of Rule 2.2.2, the activity does not involve an insurance Policyholder who is not a Group member; 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 that Person or a customer of 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), (h), or (y) 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 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), (v) and (y) of Rule 2.2.2 by way of business if:

(a) that Person holds a licence to operate a Family Office issued by the DIFC Registrar of Companies under the Family Arrangement Regulations; 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 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 one 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 Family referred to in (a).

2.3.6 (1) This Rule applies if the DIFC is the Host Jurisdiction of a Passported Fund.

(2) A Fund Manager of the Passported Fund does not carry on an activity specified under paragraphs (d), (e), (f), (h) or (i) of Rule 2.2.2 by way of business to the extent that it Promotes the Passported Fund in the DIFC.

(3) An Agent of the Fund Manager or another Licensed Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business to the extent that it Promotes the Passported Fund in the DIFC.

(4) The exclusions in (2) and (3) do not apply if the relevant Fund Manager, Agent or Licensed Person is an Authorised Person.

Guidance

The terms "Host Jurisdiction", "Passported Fund", "Fund Manager", "Promote", "Agent" and "Licensed Person" are defined in the Fund Protocol Rules (and in GLO). The exclusion in Rule 2.3.6 does not apply if the Person is already an Authorised Person in the DIFC; it applies to a Fund Manager or its Agent or a Licensed Person that is authorised by another Authority.

2.3.7 (1) A Person does not carry on an activity specified in paragraphs (aa) or (bb) of Rule 2.2.2 by way of business to the extent that the Person operates or acts as the administrator of a Non-DIFC Scheme to which (2) or (3) applies.

(2) This sub-rule applies to a Non-DIFC Scheme if:

(a) a DIFC employer is participating in the Scheme as a result of a statutory duty in another country to provide an end-of-service benefit in respect of an employee; and

(b) an Exemption Certificate is in force in respect of the Scheme under the Employment Regulations.

(3) This sub-rule applies to a Non-DIFC Scheme if:

(a) it is available exclusively to some or all of the employees of a Group to which a DIFC employer belongs;

(b) it is available to employees of the Group in at least one other country (in addition to the UAE);

(c) it requires contributions for employees that exceed the Core Benefits required to be paid by the DIFC Employer under the Employment Law; and

(d) an Exemption Certificate is in force in respect of the Scheme under the Employment Regulations.

(4) In this Rule, "Exemption Certificate" has the meaning given in the Employment Regulations.

Guidance

1. The exclusions under Rule 2.3.7 apply in respect of certain types of Non-DIFC Schemes that are the subject of exemptions issued by the DIFCA Board under the Employment Regulations.

2. A Non-DIFC Scheme is defined in GLO as an Employee Money Purchase Scheme or any similar scheme or arrangement that is established outside the DIFC.

3. The effect of the above exclusions is that foreign fiduciary service providers, insurers and superannuation scheme operators, who are supervised and regulated in their home jurisdictions for their activities, can be enabled to accept contributions from DIFC employers in respect of their employees under the DIFC Employment Law.

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 (1) In Rule 2.2.2, Providing Credit means providing a Credit Facility:

(a) to a Person in his capacity as a borrower or potential borrower; or

(b) to finance the acquisition of goods or services by a Person.

(2) For the purposes of (1) it is immaterial that no, or reduced, interest or charges are payable by a Person referred to in (1)(a) or (b) if the Person repays all or a specified part of the credit on or before a certain date.

(3) It is immaterial for the purposes of (1)(b) whether the Person is acquiring the goods or services from the Credit Provider, a supplier with whom the Credit Provider has a commercial agreement, or another person.

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.

2.5.3 A Crowdfunding Operator does not Provide Credit to the extent that it Operates a Loan Crowdfunding Platform.

2.5.4 A Person does not Provide Credit to the extent that the Person operates a loyalty or rewards programme where a participant earns points or other monetary value from acquiring goods or services, which the participant can use to receive a discount on, or purchase, further goods or services.

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.

3. The provision of a Credit Facility to finance the acquisition of goods or services will include the provision of 'Buy Now Pay Later' (BNPL) services. This includes, for example, arrangements where, when a consumer purchases goods or services from a merchant, the consumer becomes liable to make instalment payments to a third party (the BNPL provider) instead of paying the purchase price directly to the merchant. Under such arrangements the BNPL provider will typically make an upfront payment to the merchant of an amount equal to the purchase price less a discount.

2.6 Providing money services

2.6.1 (1) In Rule 2.2.2, Providing Money Services means:

(a) providing currency exchange;

(b) providing Money Transmission;

(c) providing or operating a Payment Account;

(d) executing Payment Transactions on a Payment Account provided or operated by another Person;

(e) issuing Payment Instruments; or

(f) issuing Stored Value.

(2) In this Rule:

(a) "Money Transmission" means the transmission of money or monetary value, without a Payment Account being created in the name of the payer or the payee, where funds are:

(i) received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another Payment Service Provider acting on behalf of the payee; or

(ii) received on behalf of, and made available to, the payee.

(b) "Payment Account" means an account held in the name of one or more Users which is used to execute Payment Transactions;

(c) "Payment Instrument" means a:

(i) personalised device; or

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

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

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

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

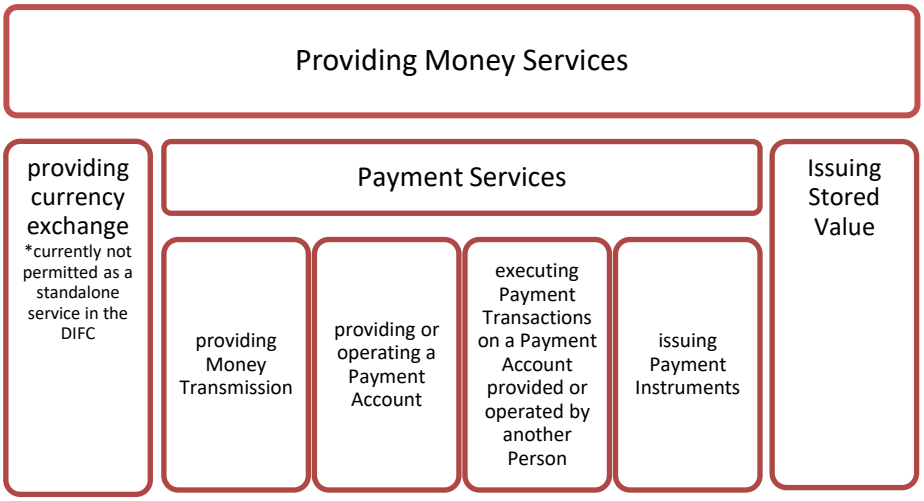
(f) "Payment Service Provider" means a Person providing a Payment Service;

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

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

Guidance

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



2. A particular service provided by an Authorised Firm may involve only one of the above activities e.g. Money Transmission, or a combination of activities e.g. issuing Stored Value, issuing Payment Instruments and operating a Payment Account.
3. The DFSA does not consider that a Person issuing Stored Value would be providing Money Transmission, merely because Stored Value is used to transfer or withdraw funds. However, an issuer may be involved in other Money Services such as providing or operating a Payment Account by creating, for example, Payment Accounts in the name of one or more of its Users to execute Payment Transactions.
4. The term "Payment Service" is used to describe all or any of the activities in Rule 2.6.1(1) other than providing currency exchange or issuing Stored Value.
5. A Payment Account is an account that is used to execute Payment Transactions. Funds are usually expected to remain in a Payment Account only for a short period. A provider of such an account is prohibited from paying any interest or other return on funds in the account (COB Rule A7.2.16). This is because paying interest or any other return on the account is likely to result in the account being a Deposit or a Profit Sharing Investment Account (PSIA).
6. A "User" means a user of a Money Service and, in relation to a Payment Service, includes a person acting in the capacity of payer, payee or both (see the definition in GLO).
7. The reference in the "Stored Value" definition in Rule 2.6.1(2)(h) to receipt of "other assets" includes, for example, the receipt of digital currencies or any other form of assets that may be accepted by an issuer of stored value. Stored Value does not, however, include a loyalty programme where a person earns points that can be redeemed directly for goods or services of the loyalty programme provider.
8. COB Rule A7.3.3 limits the total amount of Stored Value that may be issued to an individual User at any point in time to $5,000 and the total value of a single Payment Transaction to $1,000.
9. Rule 3A.2.5 prohibits a Money Services Provider from using Crypto Tokens in connection with its Money Services business, except in limited circumstances specified in that Rule, and from carrying on other Financial Services relating to Crypto Tokens.
10. The activity of executing Payment Transactions on a Payment Account provided or operated by another Person refers to Payment Transactions that are originated by the payee, such as direct debits or some standing orders.

11. The reference in the definition of "Payment Instrument" to "personalised device" includes physical instruments such as credit and debit cards. The reference to a "set of procedures agreed between the User and the provider" means an arrangement by which a Payment Order can be initiated, such as telephone banking or mobile telephone applications.

Exclusions

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

Guidance

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

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

2.6.4 (1) A Person does not Provide Money Services where the Person issues electronically stored monetary value that can be used only to pay for goods or services, other than Money Services, provided by that Person or another entity in the Person's Group.

(2) Where a portion of electronically stored monetary value issued by a Person can be used only to pay for goods or services referred to in (1), then the Person does not Provide Money Services in respect of that relevant portion if the conditions in (3) are met.

(3) The conditions in (2) are that the relevant portion:

(a) is discrete and clearly identifiable; and

(b) can be used only to pay for goods and services referred to in (1) and cannot be used for any other purpose.

Guidance

1. Rule 2.6.4 is intended to exclude monetary value issued by a merchant that is accepted only by the merchant itself (i.e. a 'closed loop' system). Examples of services that will be excluded under this Rule include cards that can be used only to pay for goods purchased from a specific store or chain of stores or that can be used only to pay for a particular service (such as a taxi or other transport service) or to pay for goods or services offered by a specific club or organisation. However, if a card is more generally accepted, and can be used with other third parties, it will not fall within the exclusion.
2. Where monetary value on a card or wallet can be used for a combination of purposes, all of that monetary value is likely to constitute Stored Value unless the issuer can demonstrate that there is a clear separation between amounts that can be used only for the issuer's goods and services and amounts that can be used for mixed purposes.

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 or Crypto Token, 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 or Crypto Tokens issued by that person.

2.7.4 (1) 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 or Crypto Token by entering into a transaction with or through an Authorised Firm or a Regulated Financial Institution.

(2) The exclusion in (1) does not apply if the Person holds itself out as:

(a) willing to enter into transactions in Investments or Crypto Tokens of the kind to which the transaction relates; or

(b) engaging in the business of buying, selling, subscribing for or underwriting Investments or Crypto Tokens.

Guidance

1. The exclusion in Rule 2.7.4 is intended to apply, for example, to a Person who executes proprietary trades through a duly authorised broker, or to a Person who is carrying on a commercial business and enters into a transaction with a firm for a purpose related to that business, such as to hedge a risk. It does not apply to a Person that holds itself out as willing to enter into transactions relating to Investments or Crypto Tokens of that kind or as engaging in the business of dealing in Investments or Crypto Tokens, such as a market maker or an online trading platform operator (even if it enters into transactions only with Authorised Firms or Regulated Financial Institutions).

2. A Person may hold itself out as carrying on an activity by various means including, for example, on its webpage, in an advertisement or through representations made by its staff. However, merely placing orders with a broker or on a market will not amount to holding out.

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 or Crypto Token as agent.

Exclusions

2.8.2 A Person does not Deal in Investments as Agent if the activity:

(a) is carried on in the course of providing legal or accountancy services which do not otherwise consist of the carrying on of Financial Services;

(b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services; 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 or Crypto Token; 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 or Crypto Token.

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

2.9 Arranging deals in investments

2.9.1 (1) In Rule 2.2.2, Arranging Deals in Investments means making arrangements with a view to another Person buying, selling, subscribing for or underwriting an Investment or Crypto Token (whether that other Person is acting as principal or agent).

(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 or Crypto Tokens.

(3) The arrangements in (1) do not include arrangements which amount to Operating an Alternative Trading System.

(4) In this Rule and in Rules 2.9.2 to 2.9.7, an "Investment" includes rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

Guidance

What constitutes 'Arranging deals in Investments'?

1. The activities which constitute making arrangements with a view to another Person buying, selling, underwriting or subscribing for an Investment or Crypto Token (whether that other Person is acting as principal or agent) generally involve the following elements:

   a. the purpose of such an arrangement is to 'facilitate' or 'bring about' transactions between other parties such as:

      i. buyers and sellers of Investments or Crypto Tokens;

      ii. issuers of and subscribers for Securities (note – subscription is generally an activity associated with an initial offer of Securities);

      iii. issuers of and buyers of Crypto Tokens

      iv. issuers and underwriters of Securities or Crypto Tokens (note – underwriting here is an activity associated with an initial offer of Securities or Crypto Tokens, as opposed to underwriting of risks, which is an activity of an insurer); and

      v. insurers writing Long-Term Insurance and policyholders who wish to obtain such insurance.

   b. such arrangements can be either of an on-going nature, for example, an arrangement which is available to potential buyers or sellers of Investments or Crypto Tokens, or an arrangement which is bespoke (i.e. available on a one-off basis for a particular client, such as an underwriter of Securities or Crypto Tokens).

2. The activities referred to in Guidance item 1 can include one or more of the following:

   a. the introduction of:

      i. potential buyers of Investments or Crypto Tokens to issuers or sellers of Investments or Crypto Tokens, or vice versa;

      ii. potential subscribers for Securities to issuers;

      iii. potential underwriters to issuers of Securities or Crypto Tokens, or vice–versa;

      iv. potential parties to a derivatives transaction; and

      v. policyholders or cedants to insurers or reinsurers underwriting Long-Term Insurance;

   b. assisting any of the parties referred to in a. through activities, such as, completing the applications or other processes relevant to the transaction;

   c. negotiating and settling terms of the contracts between the parties referred to in a.;

   d. collecting and processing fees, commissions or other payments (such as premiums in the case of Long-Term Insurance); and

   e. transmitting instructions or confirmations relating to transactions.

Do arrangements which form part of another facility constitute arranging?

3. An arrangement which is part of a wider arrangement for the purpose of bringing about transactions in Investments or Crypto Tokens still falls within the scope of the Financial Service of arranging. For example, an arranger may arrange (i.e. allow access) for potential investors to access a facility set up by an offeror of Securities. The arrangement to allow access constitutes arranging, although, for a transaction to be concluded, the investor will also need to use the offeror's facility.

How does 'arranging deals' differ from 'dealing as agent'?

4. 'Arranging Deals in Investments' differs from the Financial Service of 'Dealing in Investments as Agent' in Rule 2.8.1 because:

   a. a Person 'arranging deals' (i.e. the 'arranger') does not have the authority to bind the parties to an Investment or Crypto Token transaction resulting from its 'arranging' activities; and

   b. a Person 'dealing as agent' acts as the agent of a party to the Investment or Crypto Token transaction and has the authority to bind its principal.

5. For example, a Person acting as an agent either:

   a. executes the transaction for its principal (the Client); or

   b. if using another broker to execute the client order, commits the Client to the transaction by giving a binding order to the broker.

6. In contrast, a Person acting as an arranger may, for example, receive and transmit client orders to a broker, but does not have the power to execute or enter into the transaction for the client, or commit the client to a transaction. See the exclusion in GEN Rule 2.8.3 from 'Dealing in Investments as Agent', and GEN Rule 2.9.1(2)(b), both of which reflect the above position.

Do arrangements that do not bring about transactions constitute arranging?

7. An activity falls within the scope of the Financial Service of 'arranging' even if it does not necessarily lead to a completed transaction. For example, a prospective buyer or seller of Securities may change his mind and not sign a contract for the sale or purchase of Securities. Similarly, a potential buyer of Long-Term Insurance, after having completed an application form for Long-Term Insurance with the assistance of an arranger, may not go ahead with the purchase of the policy. In both examples, just because the transaction has not been concluded, the arranger's activities do not cease to be 'arranging' under Rule 2.9.1.

Which activities do not constitute 'arranging'?

8. A Person who performs for a financial service provider (in or outside the DIFC) delegated or outsourced functions, such as back office administration services, does not carry on 'arranging' activities under Rule 2.9.1. For example, a Person undertaking administrative tasks (such as processing applications, transmitting orders, or issuing confirmations of transactions for a brokerage firm or an insurer) is not arranging transactions.

9. A passive display of literature which advertises Investments or Crypto Tokens does not amount to arranging, unless something more is done to help potential investors or policyholders to buy such Investments, Crypto Tokens or policies. For example, a passive display of leaflets advertising Investments in property funds at the reception of an office, such as an accountant's office, or a display of leaflets advertising permanent health policies of an Long-Term Insurance insurer at a doctor's or dentist's waiting rooms, would not constitute arranging, provided the relevant service providers or employees in their offices do not assist or facilitate transactions by potential investors/policyholders.

Arranging Long-Term Insurance

10. An 'Investment' is defined in Rule 2.9.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance). As a result, arranging activities relating to contracts of Long-Term Insurance fall within Arranging Deals in Investments. 'Long-Term Insurance' is defined in GLO, in summary, as a contract of the type described in Rule A4.1.2 (certain types of life insurance) that is expressed to be in force for more than one year and meets specified conditions.

Exclusions

2.9.2 A Person does not carry on the activity of Arranging Deals in Investments under Rule 2.9.1(1) in relation to a transaction if the Person becomes, or proposes to become, a party to the transaction (regardless of whether the transaction is effected). This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.9.1(1).

2.9.3 A Person does not Arrange 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 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 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 or Crypto Tokens.

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

2.9.7 A Person does not Arrange Deals in Investments if the activity:

(a) is carried on in the course of providing legal or accountancy services, which do not otherwise consist of the carrying on of Financial Services;

(b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services;

(c) is not remunerated separately from the other services; and

(d) in the case of a contract of Long-Term Insurance, does not assist in the conclusion or performance of the contract.

2.9.8 An Exchange does not make arrangements referred to in Rule 2.9.1(1), merely by making arrangements for, or taking steps that facilitate, another Person to act as Central Counterparty to transactions entered into on a facility operated by the Exchange.

2.9.9 A Crowdfunding Operator does not Arrange Deals in Investments to the extent that it Operates an Investment Crowdfunding Platform.

Guidance

1. Rule 2.9.2 excludes the activities of a party to a transaction from being 'arranging'. This is because a person cannot be both a party to a transaction, and its arranger.

2. Where a Person (an arranger) makes arrangements in the DIFC for another Person to obtain dealing services (e.g. broking services) from its head office, the arranger is not regarded as 'Dealing in Investments as Agent' in the DIFC merely because it is the same legal entity as its head office. However, to be able to do so without breaching the Financial Services Prohibition, the arranger would need to have an Authorisation for 'Arranging Deals in Investments'. It would also need to take care not to conduct activities that go beyond 'arranging' (see Guidance under Rule 2.9.1 for activities which constitute arranging).

3. Rule 2.9.3 excludes providers of means by which one party to a transaction (or potential transaction) communicates with the other contracting parties, from being arrangers. Communication channel providers, such as internet or telecommunication network providers, are excluded from being arrangers under this exclusion. However, if such a provider goes beyond being a 'mere' communication channel provider, for example, by adding value to the service provided to those communicating with each other, with a view to facilitating a contract being concluded, this exclusion will not apply to them.

4. Rule 2.9.4 excludes from being arranging the activity of making arrangements for a lender (such as a bank) to accept an instrument acknowledging debt by a person who has obtained credit, a loan, a guarantee or any other form of financial facility. This mirrors the similar carve-out from regulation available to banks and other lenders where they are not considered to be 'dealing as principal' in Investments merely because they accept instruments acknowledging debt from those obtaining credit, loans, guarantees or any other form of financial facility from them.

5. Rule 2.9.6 excludes issuers of Securities or Crypto Tokens from being regarded as arrangers. For example, if an issuer of Securities or Crypto Tokens sets up a website which enables prospective buyers of Securities to read the offer document or prospective buyers of Crypto Tokens to read the white paper and apply for the relevant Securities or Crypto Tokens, the issuer is not required to have a Licence as an arranger due to this exclusion (but may have to comply with the disclosure requirements in MKT relating to the offer).

6. Rule 2.9.7 excludes from being 'arrangers' lawyers and accountants, who, in the course of conducting their legal and accounting business, arrange for their clients to buy or sell Securities. To have the benefit of this exclusion, certain conditions have to be met (such as the activity being reasonably regarded as a necessary part of services provided by legal and accounting practitioners and not being separately remunerated). For example, if a lawyer arranges as part of estate planning services for a portfolio of investments to be sold by a brokerage firm, this exclusion can be applied, provided the lawyer's fees do not include a separate charge for arranging the liquidation of the portfolio, and the lawyer does not assist or participate in the conclusion of the contracts.

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, Crypto Token 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 or Crypto Tokens which are included in those assets are taken by an Authorised Firm or a Regulated Financial Institution.

Guidance

1. 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. If an Authorised Firm has a discretionary portfolio mandate from a Client to manage assets on behalf of the Client, the firm controls those Client Assets as it can execute transactions relating to those assets, within the parameters set in the mandate (see also COB Rule 6.11.4(d)).

2.11 Advising on financial products

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

(2) Advice in (1) 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

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

(3) Giving advice to a Person under (1) includes operating an Insurance Aggregation Site relating to contracts of Long-Term Insurance, other than contracts of reinsurance.

(4) For the purposes of this Rule and Rule 2.11.2, a "financial product" is:

(a) an Investment;

(b) a Deposit;

(c) a Profit Sharing Investment Account;

(d) a right under a contract of Long-Term Insurance, that is not a contract of reinsurance;

(e) a right under an Employee Money Purchase Scheme;

(f) a right or interest in a pension, superannuation, retirement or gratuity scheme or arrangement, or a broadly similar scheme or arrangement; or

(g) a Crypto Token.

Guidance

1. As a 'financial product' is defined in Rule 2.11.1(4) to include rights under a contract of Long-Term Insurance (other than a contract of reinsurance), advice on contracts of Long-Term Insurance will fall within Advising on Financial Products.

2. An 'Insurance Aggregation Site' is defined in GLO. In summary, it is a website or other form of electronic media that provides a facility for a user to search for, and then to conclude, directly or indirectly, a Contract of Insurance. The site may, for example, enable the user to conclude a Contract of Insurance:

   a. directly, if the user can enter into the Contract of Insurance by clicking a button on the website itself; or

   b. indirectly, if it provides a link to the insurer, transmits the details of one party to the other party or otherwise facilitates contact between the parties.

3. Operating an Insurance Aggregation Site will fall under Advising on Financial Products to the extent that it relates to contracts of Long-Term Insurance, and under Insurance Intermediation to the extent that it relates to other types of Contracts of Insurance.

4. An operator of an Insurance Aggregation Site that can be used by Retail Clients will need an endorsement on its Licence to deal with Retail Clients (see Rule 2.2.8).

5. As a 'financial product' is defined in Rule 2.11.1(4) to include rights under an Employee Money Purchase Scheme, advice on rights under an Employee Money Purchase Scheme will fall within Advising on Financial Products. It should be noted that an Operator of an Employee Money Purchase Scheme or an Administrator of an Employee Money Purchase Scheme are not licensed to provide such advice to Members of the Scheme.

Exclusions

2.11.2 A Person does not Advise on Financial Products 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 to buy, sell, subscribe for or underwrite a particular financial product of the kind in Rule 2.11.1(4).

2.11.3 A Person does not Advise on Financial Products if the activity:

(a) is carried on in the course of providing legal or accountancy services, which do not otherwise consist of the carrying on of Financial Services;

(b) may reasonably be regarded as a necessary part of any other services provided in the course of providing legal or accountancy services; 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 Fund; and

(2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Deals in Investments, Providing Custody, or, in relation to a Credit Fund, Providing Credit, Arranging Credit or Advising on Credit, 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.

Guidance

A Fund Manager can Provide Custody under Rule 2.12.1(2) only to the extent that a Fund Manager is expressly permitted under the Collective Investment Law 2010 or CIR to hold Fund Property without having to appoint an Eligible Custodian to do so. See CIR 8.2.2(3) for an example of the circumstances in which an Eligible Custodian is not required. Similarly, where a Fund Manager uses the Fund Platform structure, the Fund Platform can carry out the custody function in relation to Fund Property of the Funds established on the Fund Platform only to the extent that the Fund Manager is permitted to do so.

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.

2.12.3 An Incorporated Cell Company does not Manage a Collective Investment Fund under Rule 2.12.1(1), or carry on a Financial Service referred to in Rule 2.12.1(2), if:

(a) the user of the ICC is a Fund Manager that has an endorsement permitting it to use the Fund Platform; and

(b) the ICC merely provides infrastructure in relation to a Fund that is an Incorporated Cell of the ICC.

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 and administering Investments belonging to another Person;

(aa) safeguarding and administering Crypto Tokens belonging to another Person;

(b) in the case of a Fund, safeguarding and administering Fund Property; or

(c) acting as a Central Securities Depository.

(2) In (1)(a) and (b), the following activities do not constitute administering Investments or Fund Property:

(a) providing information as to the number and value of any Investments, Crypto Tokens or Fund Property safeguarded;

(b) converting currency; or

(c) receiving documents relating to an Investment, Crypto Tokens or Fund Property for the purpose of onward transmission to, from or at the direction of the Person to whom the Investment, Crypto Tokens 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

1. 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.

How does Providing Custody differ from Arranging Custody?

2. The Financial Service of Providing Custody differs from that of Arranging Custody because:

   a. a Person Providing Custody is legally accountable to Clients for safeguarding and administering Client Investments or Crypto Tokens (which are defined as Client Assets – see the GLO definition), even if it appoints a Third Party Agent (see GLO) to hold Client Investments or Crypto Tokens; and

   b. a Person arranging Custody does not become a party to the arrangement to Provide Custody and hence does not assume any duties or responsibilities to the Client for the safe custody of the Client's Investments or Crypto Tokens – instead, such a Person merely facilitates a custodian to provide its services to a potential user of its services.

What is 'Safeguarding' and 'Administering' Investments?

3. As set out in Rule 2.13.1, both the elements (i.e. the activities) of safeguarding and administering, must be present before a Person is said to carry on the Financial Service of Providing Custody.

4. A Person:

   a. 'safeguards' a Client's Investments if that Person is the holder of the legal title to the Client's Investments (whether in certificated or uncertificated form); and

   b. 'administers' a Client's Investments if that Person carries out activities as the holder of legal title to the Investments, such as effecting transactions, reinvesting dividends or other income arising from the Investments, and carrying out corporate actions relating to the exercise of rights attaching to the Investments (e.g. voting or appointing proxies to vote and accepting a rights offer/issue of Investments).

What is 'Safeguarding' and 'Administering' Crypto Tokens?

5. A Person 'safeguards' a Client's Crypto Token if that Person is the holder of the legal title to the Crypto Token or of the means of access to that Token. For example, this may occur if the Person's name is registered on the blockchain as the holder of the relevant Token, cryptographic key or Digital Wallet or if the Person, through other means, holds legal title or any beneficial interest in the Crypto Token or controls the cryptographic keys or other instruments that provide access to the Client's Digital Wallet.

6. A Person 'administers' a Crypto Token if that Person carries out activities as the holder of the legal title to the Crypto Token or as the holder of the means of access to that Crypto Token. For example, administering can be done by effecting transactions such as exchanging or transferring the Token, participating in the consensus mechanism where applicable, reinvesting rewards or other income arising from the Token, or exercising other rights, including rights of early access or discounts to products and services offered on the native blockchain of the Token.

Who is a Third Party Agent?

7. A Third Party Agent is simply an agent of the firm which Provides Custody. A Person is regarded as Providing Custody even if it appoints a Third Party Agent (see GLO) to carry out either or both of the activities of safeguarding and administering its

Clients' Investments or Crypto Tokens. The Person Providing Custody (and not the Third Party Agent) remains accountable to the Client for the safe custody of the Investments or Crypto Tokens of the Client.

8. The DFSA requires a firm which Provides Custody, if it is outsourcing or delegating the safeguarding or administering of Client Investments or Crypto Tokens to a Third Party Agent, to undertake due diligence relating to the Third Party Agent (see COB Rule A6.5.1).

What is the relationship between 'Providing Custody' and 'holding or controlling' Client Assets for Investments?

9. A firm Providing Custody, in order to safeguard and administer Client Investments, must hold and control those Investments. Therefore, a firm Providing Custody is subject to the Client Investments provisions in COB section 6.13 and the Safe Custody Provisions in COB App6. The firm may hold and control Client Investments directly (i.e. itself) or indirectly (i.e. through a Third Party Agent).

10. Activities that constitute 'holding or controlling' Client Investments and 'safeguarding and administering' Client Investments can overlap. Guidance items 9 to 11 set out some examples to illustrate the interconnectivity and overlap of such activities.

11. In the case of Investments the title to which is evidenced by a physical instrument (e.g. a share or debenture certificate), a Person who has physical possession of the certificate 'holds' it. It is possible that the Person who has physical possession is also the legal owner (i.e. the Person in whose name the title to the certificate is registered). If this is not the case, the Person who 'holds' the certificate is generally regarded as an agent of the legal owner whose name appears on the share or debenture certificate. An example would be a firm Providing Custody in whose name the certificates are registered, but the actual possession of the certificates is with a Third Party Agent (custodian) appointed by the firm. In this example, the firm Providing Custody continues to be subject to the Client Investments provisions in COB 6.13 and the Safe Custody Provisions in COB App6.

12. In the case of Investments which are held in uncertificated or dematerialised form, the Person in whose name the rights to the relevant Investments are registered (by the central securities depository) is the holder and controller of the relevant Investments. Generally, the 'PIN' or other unique identifier of the owner of the Investments will be issued to the Person in whose name the dematerialised Investments are registered. Again, a firm that Provides Custody may appoint a Third Party Agent to hold and have access to them, in which case, the firm Providing Custody indirectly holds and controls those Investments, and remains accountable to the Client for the safe custody of those Investments. The firm must also comply with the Client Investments provisions in COB 6.13 and the Safe Custody Provisions in COB App6.

13. A Person, who has the power and authority to give directions in relation to Investments, controls the relevant Investments. Generally, the Person who is the legal owner would have the power to give such directions. Examples are directions to effect transactions, to reinvest dividends or other income arising from the Investments, and to carry out corporate actions relating to the exercise of rights attaching to the Investments (e.g. to vote or appoint proxies to vote and to accept or renounce a rights offer/issue of Investments). A firm Providing Custody would carry out such tasks for the purposes of administering Client Investments, either directly (i.e. itself) or indirectly (i.e. through a Third Party Agent appointed by it).

What is the relationship between 'Providing Custody' and 'holding or controlling' Client Assets for Crypto Tokens?

14. Much of the above Guidance relating to Investments is equally applicable to Crypto Tokens. For example, a firm Providing Custody of Crypto Tokens, in safeguarding and administering those Tokens, must hold and control the Crypto Tokens. Therefore,

the firm is subject to the Client Crypto Token provisions in COB section 6.13 and the Safe Custody Provisions in COB App6. The firm may hold and control Client Crypto Tokens directly (i.e. itself) or indirectly (i.e. through a Third Party Agent).

15. In the case of Crypto Tokens, the Person in whose name the Token, cryptographic key or the Digital Wallet is registered on the blockchain is the holder and controller of that Token. For example, a private key or another unique identifier, expressed in the form of a string of numbers or QR code, will be issued to the Person in whose name the Tokens are registered. A firm that Provides Custody may appoint a Third Party Agent to hold and have access to them, in which case, the firm Providing Custody indirectly holds and controls those Tokens and remains accountable to the Client for the safe custody of the Tokens. The firm must also comply with the Client Asset provisions in COB 6.13 and the Safe Custody provisions in COB App6.

16. A Person, who has the power and authority to give directions in relation to Crypto Tokens, controls that Token. Generally, the Person who is the legal owner would have the power to give such directions. For example, directions to effect transactions in the form of exchanging or transferring the Token, participating in the consensus mechanism where applicable, reinvesting rewards or other income arising from the token, or exercising other rights, including rights of early access or discounts to products and services offered on the native blockchain of the Token. A firm Providing Custody would carry out such tasks for the purposes of administering the Client's Crypto Tokens, either directly itself or indirectly through a Third Party Agent.

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 (Providing Custody).

Exclusions

2.14.2 A Person (an 'introducer') does not carry on the activity of Arranging Custody specified in Rule 2.14.1 merely by introducing another Person to a custodian who is an Authorised Firm or a Regulated Financial Institution authorised to provide custody. This exclusion does not apply if:

(a) the custodian is a member of the same Group as the introducer;

(b) the custodian is a part of the same legal entity as the introducer and, conducts custody services outside the DIFC; or

(c) the introducer is remunerated for making the introduction by any Person, including by an entity referred to in (a) or (b).

2.14.3 An Exchange does not Arrange Custody merely by making arrangements for, or taking steps that facilitate:

(a) the safeguarding and administration of assets belonging to Members or other participants for the purposes of AMI section 5.10; or

(b) the settlement by another Person of transactions entered into on a facility operated by the Exchange.

Guidance

How does Providing Custody differ from Arranging Custody?

1. Refer to Guidance item 2 under Providing Custody in section 2.13.

Activities which constitute arranging

2. The type of activities that constitute Arranging Custody include:

    a. negotiating and settling terms of the contract between the custody provider and the Person who is obtaining that service (the Client);

    b. assisting the Client to complete application forms and other processes;

    c. collecting and processing the Client's payments; and

    d. transmitting information (including instructions from the Client and confirmations by the custody provider) between the Customer and the custody provider.

Non-application of the Client Asset provisions

3. The Client Asset provisions only apply to firms holding or controlling Client Assets and to firms Providing Custody. As a firm Arranging Custody does not 'safeguard and administer Investments' (see Guidance items 3 and 4 under Providing Custody in section 2.13), the Client Asset provisions in COB section 6.11 have only limited application to such a firm (see COB Rule 6.11.2(3)). The requirement for a Safe Custody Auditor's Report under Rule 8.6.1(e) also does not apply to a firm Arranging Custody.

4. A firm 'Arranging Custody', although not subject to substantive Client Asset provisions (because it does not hold or control Client Assets), is still required to undertake due diligence on a non-DIFC custodian with whom it arranges for its Client to obtain custody services – see COB Rule A6.5.1A.

Who can rely on the exclusion in Rule 2.14.2?

5. The exclusion in Rule 2.14.2 is available to an introducer who introduces a potential customer to a regulated firm. However, this exclusion does not apply if the introducer:

    a. is a member of the same Group as the custodian;

    b. is part of the same legal entity as the custodian (i.e. the custodian is the introducer's head office or another branch of the same legal entity as the introducer); or

    c. receives remuneration for making the introduction from any Person – which can be a related party referred to in a. or b. above or any unrelated party.

2.15 Effecting contracts of insurance

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

(2) An Insurer authorised to Effect Contracts of Insurance is taken under that authorisation to be authorised also to carry on an activity that:

(a) is referred to in Rule 2.9.1(1), 2.11.1(1) or 2.19(1)(a) or (c); and

(b) relates to a Contract of Insurance entered into, or to be entered into, as principal by the Insurer.

Guidance

A Contract of Insurance is defined in App 4 to include a contract of reinsurance.

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.

Guidance

A Contract of Insurance is defined in GEN App 4 to include a contract of reinsurance.

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.

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

3. The Financial Service of Operating an Exchange only applies in relation to Investments. Therefore, an Authorised Market Institution wishing to operate a facility for the trading of Crypto Tokens will need to use a Multilateral Trading Facility and obtain an endorsement on its Licence that permits it to operate a Multilateral Trading Facility.

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 or Crypto Tokens 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 or Crypto Tokens (the transactions);

(b) checking that Investments, Crypto Tokens, cash or any combination of those assets, 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 or Crypto Tokens made on a facility for trading Investments or Crypto Tokens; 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 Deals in Investments, Managing Assets, Arranging Custody or Arranging Credit, 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 Providing Custody may also operate a CSD under its licence (see 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 2.2.13). Acting as a Trade Repository does not constitute a Financial Service but is subject to the additional conducts requirements in App 5.

3. In the case of Crypto Tokens, acting as a Central Counterparty is the only Clearing House activity relevant to Crypto Tokens, as providing a Securities Settlement System or acting as a Central Securities Depository are relevant only to Investments and Securities. For Crypto Tokens, transfers of the Crypto Tokens take place by means of Distributed Ledger Technology or other similar technology.

2.19 Insurance intermediation

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

(a) advising on a Contract of Insurance;

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

(c) making arrangements with a view to another Person, whether as principal or agent, buying a Contract of Insurance; or

(d) operating an Insurance Aggregation Site.

(2) In (1)(a), 'advising' means giving advice to a Person in his capacity as a Policyholder, or in his capacity as agent for a 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 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 the mere provision of information about:

(a) a Contract of Insurance, insurer, insurance intermediary or insurance manager to a Policyholder; or

(b) a Policyholder to an insurer, insurance intermediary or insurance manager,

if the Person providing that information does not take any further steps to assist in concluding the Contract of Insurance.

Guidance

1. Insurance Intermediation activities may be carried on by an Insurance Agent (i.e. a Person who acts as an agent of one or more insurers) or an Insurance Broker (i.e. a Person who acts as an agent of a policyholder), or by an Insurer itself, in relation to its own Contracts of Insurance. Generally, most activities of an Insurance Agent can be carried on by an Insurance Manager that has the authority to underwrite Contracts of Insurance in the DIFC.

2. For more information about Insurance Aggregation Sites, see Guidance items 2 to 4 under Rule 2.11.1.

3. See the Guidance under Arranging Deals in Investments in section 2.9 for the distinction between the activities of 'acting as agent' and 'arranging'.

4. A Person 'acting as agent' as set out in Rule 2.19.1(1)(b) for an Insurer effecting or carrying out contracts of Long-Term Insurance will need to hold an Insurance Intermediation or Insurance Management Licence.

5. If an Insurance Intermediary wishes to carry on Insurance Intermediation activities in respect of a contract of Long-Term Insurance, that is not a contract of reinsurance, it must obtain an endorsement on its Licence (see Rule 2.2.10C).

6. See also Guidance item 2 under Rule 2.9.1 for examples of activities that constitute arranging.

Exclusions

2.19.2 A Person (an 'arranger'), does not carry on the activity of Insurance Intermediation specified in Rule 2.19.1(1) if that Person enters, or is to enter, into a transaction in respect of a Contract of Insurance as principal. This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.19.1(1).

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;

(c) is not remunerated separately from the other services; and

(d) does not assist in the conclusion or performance of a Contract of Insurance.

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

(a) the activity is carried on in the course of a business of providing goods or services (other than Financial Services);

(b) providing goods or services referred to in (a) is the principal business of that Person; and

(c) the activity:

(i) can reasonably be regarded as being ancillary and complementary to the principal business of that Person; and

(ii) does not relate to a contract of Long-Term Insurance.

Guidance

1. The exclusions in Rules 2.19.3 and 2.19.3A apply to certain Insurance Intermediation activities which occur in the course of carrying on other businesses.

2. Rule 2.19.3 applies to activities carried on as a necessary part of a professional service, such as insurance advice provided by an accountant or solicitor as part of estate planning or tax advice.

3. Rule 2.19.3A applies to activities that are ancillary and complementary to a business of providing goods or services. This might include, for example, a travel agent arranging travel insurance or a supplier of electrical goods arranging insurance of those goods. It does not apply if the main service or good is not provided to the customer, for example, if a travel agent does not provide the main travel service to the customer.

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 a Contract of Insurance if it is authorised under its Licence to carry on the Financial Service of Advising on Financial Products, to the extent the advice relates to a contract of Long-Term Insurance, that is not 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 Deals in Investments, to the extent that the arranging relates to rights under a contract of Long-Term Insurance, that is not a contract of reinsurance.

2.19.8 An Insurance Manager does not carry on Insurance Intermediation to the extent that it carries on an activity that constitutes Insurance Management.

2.19.9 A Person does not carry on Insurance Intermediation by reason only of providing either or both of the following services:

(a) an insurance loss adjustment service; or

(b) the expert appraisal of insurance claims.

2.20 Insurance management

2.20.1 (1) In Rule 2.2.2, Insurance Management means:

(a) performing underwriting or administration functions for or on behalf of an insurer, for the purposes of that insurer effecting or carrying out a Contract of Insurance as principal;

(b) advising on a Contract of Insurance for which the Person performs, or is proposing to perform, underwriting functions referred to in (a); or

(c) arranging reinsurance for and on behalf of an insurer for whom it is underwriting.

(2) In (1):

(a) "administration" includes, without limitation, one or more of the following activities:

(i) processing applications for, and endorsements on, Contracts of Insurance;

(ii) collecting and processing premiums;

(iii) negotiating terms of settlement of claims; or

(iv) settling claims;

(b) "advising" has the same meaning as in Rule 2.19.1(2) and (3); and

(c) "underwriting" includes, without limitation, one or more of the following activities:

(i) assessing underwriting risks;

(ii) negotiating and settling terms of Contracts of Insurance including exclusions;

(iii) negotiating and settling premiums;

(iv) negotiating commissions; or

(v) countersigning, stamping and issuing Contracts of Insurance.

(3) In this Rule, a reference to an "insurer" is a reference to:

(a) an Insurer; or

(b) a Non-DIFC insurer.

Guidance

1. As a Contract of Insurance is defined in GEN App4 to include a contract of reinsurance, Insurance Management includes functions performed for or on behalf of a reinsurer. A Person may carry on Insurance Management for or on behalf of a domestic (i.e. DIFC) Insurer or a Non-DIFC insurer (i.e. an insurer located and regulated outside the DIFC). A Person may also do so for a single insurer or a number of insurers.

2. An Insurance Manager can under Rule 2.20.1(1)(b) advise on Contracts of Insurance for which it performs, or proposes to perform, underwriting functions. This includes advising sponsors and members of captive cells it manages or proposes to manage.

3. An Insurance Manager advising on contracts of insurance which it underwrites or proposes to underwrite is not generally expected to act also as an Insurance Broker, i.e. as agent of a Policyholder, because this would cause conflicts of interest that are difficult to manage. See the Guidance under COB Rule 7.9.1.

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 carry on Insurance Management if it is an Insurer.

2.20.4 A Person does not carry on Insurance Management by reason only of providing to an insurer any one or more of the following services:

(a) an actuarial service;

(b) an insurance loss adjustment service; or

(c) advice relating to insurance risks.

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 or Crypto Tokens, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such Investments or Crypto Tokens.

(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.

(4) A Person must not operate a system relating to Crypto Tokens that would be an OTF if the definition in (3) applied to Crypto Tokens.

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. Under the above Rule, an OTF cannot be operated for Crypto Tokens. Therefore, an ATS relating to Crypto Tokens may only be a MTF.

Exclusions

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 or Crypto Tokens are merely transmitted but do not interact.

2.22.3 A Crowdfunding Operator does not Operate an Alternative Trading System to the extent that it Operates a Crowdfunding Platform.

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, provided such services or products are those offered:

(a) in a jurisdiction other than the DIFC; and

(b) by a related party of the Representative Office.

(2) For the purposes of (1) and (4) 'marketing' means:

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

(b) engaging in Financial 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;

(e) Advising on Credit; or

(f) 'arranging' under Rules 2.9.1, 2.14.1, 2.19.1(1)(c) and 2.28.1(1)(a), including receiving and transmitting orders in relation to a financial product.

(3) For the purposes of this Rule:

(a) a 'financial product' means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, a Contract of

Insurance or, for the purposes of the prohibition in (4), a Crypto Token; and

(b) a 'related party' of a Representative Office means:

(i) the same Body Corporate as the Representative Office, including its head office or any other branch; and

(ii) a member of the same Group as the Body Corporate referred to in (i).

(4) A Person must not Operate a Representative Office that markets:

(a) a Crypto Token;

(b) an Investment relating to a Crypto Token; or

(c) a Financial Service relating to:

(i) a Crypto Token; or

(ii) an Investment relating to a Crypto Token.

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.

Guidance

1. Refer to Guidance under REP section 1.3 for the scope of the activities which a Representative Office can conduct under its Licence.

2. Rule 2.26.1(4) prohibits the use of a Representative Office to market:

a. a Crypto Token or an Investment relating to a Crypto Token (such as a Derivative relating to a Crypto Token or a Unit of a Fund that invests in Crypto Tokens); or

b. a Financial Service relating to a Crypto Token or such an Investment.

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.

2.28 Arranging Credit and Advising on Credit

2.28.1 (1) In Rule 2.2.2, Arranging Credit and Advising on Credit means:

(a) making arrangements for another Person, whether as principal or agent, to borrow money by way of a Credit Facility; or

(b) giving advice to a Person 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)(b) includes a statement, opinion or report:

(a) where the intention is to influence a Person, in making a decision, to enter into a particular Credit Facility; or

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

Guidance

Activities that constitute 'Arranging Credit'

1. Generally, the following activities constitute Arranging Credit:

   a. Introducing potential borrowers to a credit provider (who can be in the DIFC or outside the DIFC);

   b. Assisting a potential borrower to obtain credit, such as completing application forms and other processes relevant to the transaction;

   c. Negotiating terms of credit, including any fees payable to the arranger; and

   d. Arranging collateral or other assurances needed by the potential borrower to obtain credit.

2. The Guidance under 'Arranging Deals in Investments' is generally relevant for 'Arranging Credit', although the activities relate to 'credit' in this context, instead of 'Investments'. Therefore, a reference to Investment in that Guidance should be read as 'credit' for the purposes of 'Arranging Credit'.

Exclusions

2.28.2 A Person does not carry on the activity of Arranging Credit under Rule 2.28.1(1)(a) if that Person enters, or is to enter, into the transaction to Provide Credit. This exclusion does not apply in the case of a branch which makes arrangements for its head office, or any other branch of the same legal entity as itself, to enter into a transaction as provided under Rule 2.28.1(1)(a).

2.28.3 A Person does not make arrangements referred to in Rule 2.28.1(1)(a) merely by providing means by which one party to a transaction is able to communicate with other such parties.

2.28.4 A Person does not carry on the activity referred to in Rule 2.28.1(1)(a) 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.

2.28.5 A Person does not Arrange Credit 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.

2.28.6 A Person does not carry on the activities in Rule 2.28.1(1)(a) or (b) 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.

2.28.7 A Person does not carry on the activity in Rule 2.28.1(1)(b) 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 2.28.1(1)(b); nor

(b) that of leading or enabling Persons to enter into a particular Credit Facility.

2.28.8 A Crowdfunding Operator does not Arrange Credit to the extent that it Operates a Loan Crowdfunding Platform.

Guidance

The Guidance relating to the exclusions from the activity of 'Arranging Deals in Investments' is generally relevant for the exclusions from 'Arranging Credit', although the activities relate to 'credit' in this context, instead of 'Investments'. To the extent relevant, a reference to an Investment in that Guidance should be read as 'credit' for the purposes of Guidance on exclusions from 'Arranging Credit'.

2.29 Operating a Crowdfunding Platform

2.29.1 (1) In Rule 2.2.2, a Person carries on the activity of Operating a Crowdfunding Platform if the Person operates:

(a) a Loan Crowdfunding Platform;

(b) an Investment Crowdfunding Platform; or

(c) a Property Investment Crowdfunding Platform.

(2) A Person operates a Loan Crowdfunding Platform under (1)(a) if it does both of the following:

(a) operates an electronic platform that facilitates the bringing together of potential lenders and borrowers who wish to obtain funding for a business or project; and

(b) administers a loan agreement that results from operating the electronic platform.

(3) If the Person referred to in (2) also provides a facility that assists a lender to transfer his rights and obligations under a loan agreement referred to in that paragraph, that activity is also included within operating a Loan Crowdfunding Platform.

(4) A Person operates an Investment Crowdfunding Platform under (1)(b) if it does both of the following:

(a) operates an electronic platform that facilitates the bringing together of potential investors and Persons who wish to obtain funding for a business or project (other than the sale of a property), resulting in an investor making an Investment with the Person seeking funding; and

(b) administers an Investment that results from operating the electronic platform.

(5) A Person operates a Property Investment Crowdfunding Platform under (1)(c) if it does both of the following:

(a) operates an electronic platform that facilitates the bringing together of potential investors and Persons who wish to sell a property, resulting in an investor making an investment in an individual property; and

(b) administers an Investment or a beneficial interest in a trust that results from operating the electronic platform.

(6) If the Person referred to in (4) or (5) also provides a facility that assists an investor to sell an investment referred to in those paragraphs, that activity is also included within operating a Crowdfunding Platform under the relevant paragraph.

(7) In this Rule:

(a) "administer a loan agreement" in (2) means:

(i) provide information or perform other duties under the loan agreement on behalf of the borrower or lender;

(ii) take steps to obtain the repayment of the loan; or

(iii) exercise rights or perform obligations under the loan agreement on behalf of the borrower or lender;

(b) "administer an Investment" in (4) means:

(i) provide information or perform other duties relating to the Investment on behalf of the Issuer or investor;

(ii) take steps to obtain the payment of any amount payable by the Issuer to an investor; or

(iii) exercise rights or perform obligations relating to the Investment on behalf of the Issuer or investor;

(c) "administer an Investment or a beneficial interest in a trust" in (5) means:

(i) provide information or perform other duties relating to the Investment or trust on behalf of the investor;

(ii) take steps to obtain the payment of any amount payable to an investor;

(iii) exercise rights or perform obligations relating to the Investment or trust on behalf of an investor;

(iv) arrange for any service to be provided relating to the property;

(v) provide any service related to a Special Purpose Vehicle that holds title to the property; or

(vi) arrange for the sale of the property at the end of the investment period;

(d) "electronic platform" means a website or other form of electronic media;

(e) "property" means land or buildings and includes a part of a building, such as an apartment.

(8) A Person (A) administers a loan agreement or an Investment or a beneficial interest in a trust for the purposes of this Rule if A performs a function itself or through another Person who has been appointed by A, acts under an arrangement with A or acts at A's direction.

(9) A Person invests in a property for the purposes of this Rule if the Person has an interest in the property whether legal or beneficial, direct or indirect, including if the Person has an Investment issued by a Special Purpose Vehicle that has an interest in the property.

Guidance

1. Operating a Crowdfunding Platform under Rule 2.29.1 requires a Person not only to operate an electronic platform that brings together lenders and borrowers, investors and issuers or investors and sellers (collectively referred to as 'users'), but also to administer a resulting loan agreement or Investment. The administration may be carried out by the platform operator itself or by another person acting under an arrangement with, or at the direction of, the platform operator.

2. The activity in Rule 2.29.1(2)(a), (4)(a), and (5)(a) only covers electronic systems such as online portals and does not include, for example, meetings to facilitate a loan.

3. A Crowdfunding Operator may in some cases also provide a facility that assists lenders or investors using the platform to transfer their rights and obligations under a

loan agreement to another lender or to sell their Investment to another investor. If a Crowdfunding Operator provides such a facility, that activity will also fall within the definition of Operating a Crowdfunding Platform (see Rule 2.29.1(3) and (6)).

4. Operating a Loan Crowdfunding Platform will apply to a number of types of crowdfunding services such as 'peer to peer' lending, 'peer to business' lending and 'business to business' lending. However, it should be noted that COB Rule 11.3.5 requires a borrower to be a Body Corporate.

5. Investment Crowdfunding differs from Loan Crowdfunding in that, instead of the platform facilitating a loan, it facilitates the issue of an investment to an investor. Under Rule 2.2.10F, the type of Investment that can be facilitated is restricted to Investments such as Shares, Certificates, Debentures or Sukuk; facilitating other more complex Investments such as Derivatives or Structured Products is not permitted.

6. Property Investment Crowdfunding involves multiple investors investing in an individual apartment, house or building that has a single title, using a Crowdfunding Platform. Typically, a Special Purpose Vehicle (SPV) will hold title to the property and the investors will have an interest in that SPV, for example, a Share or Certificate issued by the SPV.

7. Other types of crowdfunding such as 'reward crowdfunding' (i.e. where a financial contribution is made in anticipation of a benefit in existing or future goods or services) and 'donation crowdfunding' (i.e. where contributions are made in support of a social cause) will not usually constitute an activity referred to in Rule 2.29.1 unless a loan or Investment is involved.

8. A Crowdfunding Operator will need an endorsement on its Licence to deal with Retail Clients if it carries on its activities with a user that is a Retail Client (see Rule 2.2.8). It will also need an endorsement on its Licence if it holds or controls Client Assets (see Rule 2.2.10A).

9. A Crowdfunding Operator must be a Body Corporate incorporated under the DIFC Companies Law (see Rule 2.2.10D).

Exclusions

2.29.2 A Person does not carry on the activity referred to in Rule 2.29.1 if the Person who carries on those activities is itself the sole lender or the sole investor on the electronic platform.

Guidance

The activity in Rule 2.29.1 does not cover an electronic platform where the operator itself is the sole lender providing the loans e.g. if it is a credit provider and provides an electronic facility for use by its clients. Similarly, it does not apply to a platform where the operator is the sole investor. However, if the operator itself lends or invests, it is likely to be carrying on the Financial Service of Providing Credit or Dealing in Investments as Principal, and will require a separate authorisation for that activity.

2.30 Operating an Employee Money Purchase Scheme

Interpretation

2.30.1 In this section and in section 2.31:

(a) "Member" means an employee on whose behalf a Participating Employer is required to make or has made contributions into a Scheme;

(b) "Participating Employer" means an employer who is a contributor, in respect of its employees, to a Scheme; and

(c) "Scheme" means an Employee Money Purchase Scheme.

Guidance

An Employee Money Purchase Scheme is defined in Schedule 1 to the Regulatory Law as an arrangement where:

(a) the main purpose of the arrangement is to provide benefits to members in respect of their employment;

(b) benefits are payable on termination of employment or on the occurrence of another specified event; and

(c) the amount of the benefit is calculated by reference to:

(i) the contributions made by an employer in respect of the member, whether or not the member may make additional contributions; and

(ii) the investment performance of the scheme assets.

2.30.2 (1) In Rule 2.2.2, Operating an Employee Money Purchase Scheme means:

(a) in relation to a Scheme established in the DIFC under a trust, acting as the trustee of the trust; or

(b) in relation to any other type of Scheme, acting as the manager of the Scheme.

(2) If a Scheme is established under a master trust, the master trustee and each sub-trustee are taken to be Operating that Scheme.

(3) To the extent that any activity under (1) constitutes:

(a) Dealing as Principal;

(b) Dealing as Agent;

(c) Providing Trust Services; or

(d) Managing Assets,

such a Financial Service is taken to be incorporated within Operating an Employee Money Purchase Scheme.

Exclusions

2.30.3 A Scheme that is a Body Corporate does not carry on a Financial Service referred to in Rule 2.30.2(1) or (3) if:

(a) it is operated by a Person who is authorised under a Licence to Operate a Scheme; and

(b) the DFSA has approved the Scheme under COB Rule 12.2.2.

2.31 Acting as the Administrator of an Employee Money Purchase Scheme

2.31.1 (1) In Rule 2.2.2, Acting as the Administrator of an Employee Money Purchase Scheme means performing one or more of the following functions for or on behalf of the Operator of the Scheme:

(a) technical operational functions relating to the Scheme;

(b) communicating with Members or providing support services to Members;

(c) operating an Investment Platform; or

(d) reporting functions relating to the Scheme.

(2) To the extent that any activity under (1) constitutes:

(a) Dealing as Agent;

(b) Providing Trust Services;

(c) Managing Assets;

(d) Arranging Deals in Investment; and

(e) Arranging custody,

such a Financial Service is taken to be incorporated within Acting as the Administrator of an Employee Money Purchase Scheme.

(3) In (1), "Investment Platform" means a facility on which investment options available to Members are offered to, or accessible by, Members.

Guidance

1. In (1)(a), technical operational functions include:

a. identifying and verifying employers participating in the Scheme;

b. on-boarding Members of the Scheme including performing AML customer due diligence;

c. collecting and processing contributions and monitoring payments by Participating Employers;

d. issuing notices to a Member if a contribution in respect of that Member has not been made;

e. processing and making payment of benefits to Members or their Beneficiaries;

f. undertaking transaction monitoring and reconciliation functions relating to Member accounts;

g. arranging for Scheme assets to be held by an Eligible Custodian;

h. maintaining bank accounts and carrying out other cash related functions;

i. arranging the appointment of Third Party Service Providers and monitoring their performance;

j. maintaining registers of Participating Employers and the Members relevant to each Participating Employer; and

k. keeping records in relation to the Scheme.

2. In (1)(b), communicating with Members and providing support services includes:

a. providing information to Members and prospective members relating to:

i. investment options (e.g. underlying funds) available to Members using the Investment Platform;

ii. the manner and the frequency of selecting investment options; and

iii. the manner and frequency of Member account reporting;

b. providing reports to Members relating to their accounts; and

c. handling inquiries and complaints by Members and Beneficiaries.

3. In (1)(c), providing an Investment Platform includes:

a. adding and removing investment options offered on the Investment Platform;

b. monitoring the performance of the investment options on the Investment Platform;

c. allocation of a Member's contributions and earnings to appropriate investment options selected by the Members; and

d. carrying out record keeping and reconciliation functions relating to investments in the Member's account in accordance with a Member's choice.

4. In (1)(d), performing reporting functions relating to a Scheme includes:

a. producing financial statements relating to the Scheme, other than as the Scheme's registered auditor, to enable the Operator to fulfil its regulatory obligations; and

b. giving to the Operator any other information or operational statistics as may be required from time to time.

Exclusions

2.31.2 A Scheme that is a Body Corporate does not carry on a Financial Service referred to in Rule 2.31.1(1) or (2) if:

(a) the functions referred to in Rule 2.31.1(1) are performed in relation to the Scheme by a Person that is authorised under a Licence to Act as the Administrator of a Scheme; and

(b) the DFSA has approved the Scheme under COB Rule 12.2.2.

2.32 Arranging or Advising on Money Services

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

(a) making arrangements for another Person to receive Money Services;

(b) giving advice to another Person on the merits of using a particular Money Services Provider;

(c) providing an Account Information Service; or

(d) providing a Payment Initiation Service.

(2) Advice in (1)(b) includes a statement, opinion or report:

(a) intended to influence a Person, in making a decision, to use or select a particular Money Services Provider; or

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

(3) In 1(c), "Account Information Service" means an online service that provides consolidated information on one or more accounts held by the User with one or more account providers, and includes such a service whether information is provided:

(a) in its original form or after processing; and

(b) to the User or to another person in accordance with the User's instructions.

(4) In 1(d), "Payment Initiation Service" means an online service that initiates a Payment Order at the request of the User with respect to a Payment Account held at another Payment Service Provider, but does not include:

(a) a service that involves contact with any funds at any stage of the Payment Transaction; or

(b) the issue of a Payment Instrument.

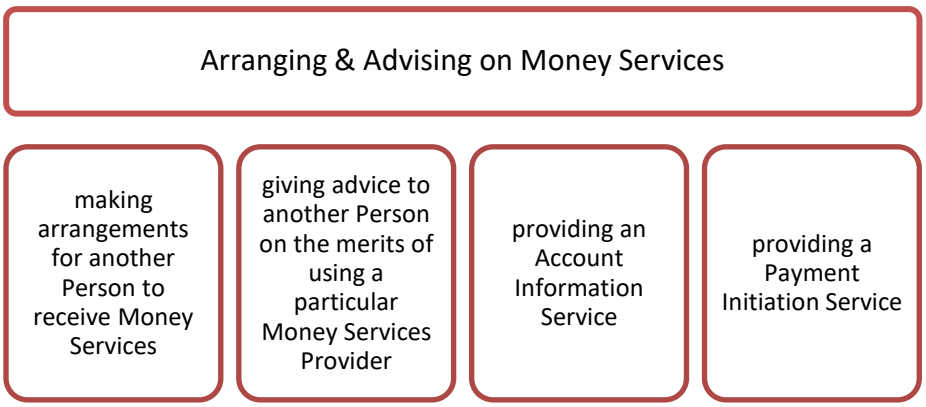
Exclusion

2.32.2 An Authorised Firm does not Arrange or Advise on Money Services under Rule 2.32.1(a) or (b) if it is the relevant Money Services Provider. This exclusion does not apply in the case of a branch which makes arrangements for another Person to receive Money Services from, or provides advice to another Person about the merits of using Money Services provided by, its head office, or any other branch of the same legal entity as itself.

Guidance

Activities that constitute 'Arranging or Advising on Money Services'

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



2. Making arrangements for another Person to receive Money Services under Rule 2.32.1(1)(a) includes the following activities:

   (a) introducing a potential user to a Money Services Provider (whether the provider is in the DIFC or outside the DIFC);

   (b) arranging currency exchange, including spot and forward contracts;

   (c) assisting a potential user to use Money Services, for example by completing application forms and other processes relevant to the transaction;

   (d) negotiating terms related to Money Services, including any fees payable to the arranger; and

   (e) arranging assurances, incidentals or other arrangements required from a potential user to use Money Services.

3. A Person Arranging or Advising on Money Services should not be 'holding or controlling' any Client Money (as defined in COB Rule 6.11.4), including any Stored Value or other funds.

4. An Account Information Service enables users to have access to a single source of aggregated information so they can view information from various accounts in a single place. Users may also expressly consent to that information being shared with another person such as their financial adviser or a credit reference agency.

5. A Payment Initiation Service is a service that establishes a software 'bridge' between the website of the merchant and the online banking platform of a payer's Payment Account, which allows the user to initiate the payment. This type of service would typically be made available as a payment option on a merchant's website.

6. A provider of Payment Initiation Services should not receive funds at any stage of the Payment Transaction or issue Payment Instruments. The provider of a Payment Initiation Service provides independent verification to the relevant merchant that the user has sufficient funds in his Payment Account and has made a payment by selecting that account to make a payment to the merchant.

2A. DEFINITION OF FINANCIAL PRODUCT IN THE GENERAL PROHIBITION AGAINST MISCONDUCT

Definition of Financial Product in the general prohibition against misconduct.

2A.1.1 For the purposes of Article 41B of the Regulatory Law, a "Financial Product" means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, a Contract of Insurance, a Crowdfunding Loan Agreement, Crypto Token or rights under an Employee Money Purchase Scheme.

3. FINANCIAL PROMOTIONS

3.1 Application

3.1.1 This chapter applies to any Person who approves, makes or intends to make a Financial Promotion in or from the DIFC.

3.1.2 Rules 3.4.1 to 3.6.3 do not apply to a Person who makes an Offer which is in accordance with the requirements relating to:

(a) an Offer of Securities under the Markets Law and the MKT Rules; or

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

Guidance

The purpose of the exclusion in Rule 3.1.2 is to ensure that a Person who makes an Offer referred to in that Rule is not subject to duplicative requirements under this chapter. The exclusion applies only to a communication by a Person making an Offer and if that communication is subject to requirements specified in the relevant laws or Rules.

3.2 Overview

3.2.1 The Rules in this chapter are made for the purposes of the Financial Promotions Prohibition in Article 41A of the Regulatory Law.

Guidance

1. Article 41A(3) of the Regulatory Law defines a Financial Promotion as:

> *"Any communication, however made, which invites or induces a Person to:*
>
> *(a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or*
>
> *(b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product."*

2. The Guidance in this chapter is designed to help explain the scope of the Financial Promotions Prohibition.

3. The definition of a Financial Promotion is very broad and encompasses the definitions of a "financial promotion" in Article 19(3) of the Collective Investment Law 2010. A Financial Promotion also includes "marketing material" as defined elsewhere in the Rulebook.

4. The DFSA considers that a Financial Promotion may be made in any manner and by any form including, but not limited to, an oral, electronic or written communication and includes an advertisement, or any form of promotion or marketing. A disclaimer stating that a communication is not a Financial Promotion would not, on its own, prevent a communication from being a Financial Promotion.

5. A Person who is permitted to make a Financial Promotion in the DIFC pursuant to these Rules should ensure that in making such a Financial Promotion he does not breach the Financial Services Prohibition in Article 41 of the Regulatory Law.

6. Depending on the nature and scale of the activities, if a Person makes Financial Promotions on a regular basis or for a prolonged period while physically located in the DIFC, for example by way of a booth, meetings or conferences, the DFSA may consider such activities as constituting the carrying on of a Financial Service, such as Operating a Representative Office. The DFSA considers that in the context of Financial Promotions, "a regular basis" would be anything more than occasional and "a prolonged period" would usually be anything more than five consecutive days.

7. GEN Chapter 3A (Crypto Token requirements) contains several prohibitions that apply to making or approving Financial Promotions relating to particular Crypto Tokens. This includes Financial Promotions relating to Crypto Tokens that are not Recognised Crypto Tokens, Algorithmic Tokens and Privacy Tokens and Devices.

3.3 Definition of a Financial Product

3.3.1 Pursuant to Article 41A(4) of the Regulatory Law, "financial product" in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean:

(a) an Investment;

(b) a Credit Facility;

(c) a Deposit;

(d) a Profit Sharing Investment Account;

(e) a Contract of Insurance;

(f) a Crowdfunding Loan Agreement;

(g) a right under an Employee Money Purchase Scheme;

(h) a right or interest in a pension, superannuation, retirement or gratuity scheme or arrangement, or a broadly similar scheme or arrangement;

(i) a Token, whether or not it is an Investment, which is held out or referred to in a relevant communication as an 'investment token', 'security token', 'derivative token' or using any other name that suggests or implies that it is an Investment or a particular type of Investment; or

(j) a Crypto Token.

Guidance

Examples of other names that, when used in any marketing material or other Financial Promotion, might suggest or imply that a Token is an Investment under Rule 3.3.1(h), include terms such as 'share token', 'bond token', 'futures token' or 'option token'.

3.4 Scope of the Financial Promotions Prohibition

3.4.1 (1) A Person shall not, subject to (2) and (3), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.

(2) A Representative Office may make a Financial Promotion in or from the DIFC only in relation to a financial service or financial product offered:

(a) in a jurisdiction other than the DIFC; and

(b) by a related party (as defined in Rule 2.26.1(3)) of the Representative Office.

(3) 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 (4).

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

(a) approved by an Authorised Firm other than a Representative Office;

(b) approved by a Representative Office and it is a communication relating to a financial service or financial product offered by a related party (as defined in Rule 2.26.1(3)) of the Representative Office;

(c) 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 2.3.4;

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

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

(f) made in the DIFC by a Person in the course of providing legal or accountancy services and may reasonably be regarded as incidental to and a necessary part of the provision of such services.

Guidance

If a Person proposes to conduct Financial Promotions in or from the DIFC other than as permitted under (3) and (4), that Person should consider obtaining an appropriate Licence.

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;

(c) the Person makes a Financial Promotion relating to an Employee Share Scheme and that Person or another entity in its Group is the employer to whom the scheme relates; or

(d) 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(d) 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(3) (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(3)(a) who makes a Financial Promotion:

(a) to an existing client in the DIFC; or

(b) to a prospective client in the DIFC relating to the Passported Fund for which the DIFC is the Host Jurisdiction,

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 or with a prospective client in relation to a Passported Fund where the DIFC is a Host Jurisdiction. However, when making any other 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. The exclusion in Rule 3.5.1(2) applies only if the Person is complying with the financial promotion requirements of its Financial Services Regulator in the UAE.

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.

3.5.3 A Person must not make a Financial Promotion, in or from the DIFC, in relation to a Restricted Speculative Investment offered by a Person outside the DIFC unless the Person making the Financial Promotion is reasonably satisfied that the issuer or provider of the Restricted Speculative Investment is:

(a) a Regulated Financial Institution; and

(b) subject to substantially similar requirements to the requirements applicable to an Authorised Firm under COB section 6.16.

Guidance

1. A communication that is an 'exempt financial promotion" under Rule 3.4.1(4) is still permitted.

2. A Person making a Financial Promotion relating to a Restricted Speculative Investment should be able to demonstrate to the DFSA the basis upon which it was reasonably satisfied that the issuer or provider of the Restricted Speculative Investment was subject to substantially similar requirements to those applicable under COB section 6.16.

3.5.4 A Person must not make or approve a Financial Promotion that refers to a Token as an 'investment token', 'security token', 'derivative token' or uses any other name that suggests or implies it is an Investment or a particular type of Investment, unless the Person reasonably believes that it is such an Investment, or the particular type of Investment, as defined in App 2.

Guidance

A Person making or approving a Financial Promotion relating to a Token referred to in Rule 3.5.4 will also need to ensure that other aspects of the Financial Promotion are clear, fair and not misleading.

3.6 Approval of Financial Promotions by an Authorised Firm

3.6.1 For the purposes of GEN Rule 3.4.1(4)(a) and (b), 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.

3A. CRYPTO TOKEN REQUIREMENTS

Guidance

1. A Crypto Token is defined in section A2.5 of Appendix 2 of these Rules.

2. Under chapter 2, only certain Financial Services directly apply to Crypto Tokens: Dealing in Investments as Principal; Dealing in Investments as Agent; Arranging Deals in Investments; Managing Assets; Advising on Financial Products; Providing Custody; Arranging Custody; Operating a Clearing House and Operating a Multilateral Trading Facility. However, other Financial Services may indirectly relate to a Crypto Token. For example, a Fund Manager may manage a Collective Investment Fund that invests in a Crypto Token, an Authorised Firm may (subject to the express restrictions in COB 15.6) Provide Credit to, or Arrange Credit for, a non-retail Crypto Token investor or a Money Services Provider may use a Crypto Token in limited circumstances (see Rule 3A.2.5).

3. Under chapter 2A, a Crypto Token is a Financial Product to which the general prohibitions against misconduct in Article 41B of the Regulatory Law apply.

4. Chapter 3 relating to Financial Promotions applies to Crypto Tokens.

5. Other parts of GEN will also apply to Financial Services related to Crypto Tokens.

6. This chapter sets out several requirements relating to Crypto Tokens that apply across different Financial Services and activities (e.g. Financial Promotions and Offers to the Public).

3A.1 Definitions

3A.1.1 In this chapter:

(a) "Algorithmic Token" means a Crypto Token which uses, or purports to use, an algorithm to increase or decrease the supply of Crypto Tokens in order to stabilise its price or reduce volatility in its price;

(b) "application" means an application to the DFSA for recognition of a Crypto Token;

(c) "Privacy Device" means any technology, Digital Wallet or other mechanism or device (excluding a VPN), which has any feature or features used, or intended to be used, to hide, anonymise, obscure or prevent the tracing of any of the following information:

(i) a Crypto Token transaction;

(ii) the identity of the holder of a Crypto Token;

(iii) the cryptographic key associated with a person;

(iv) the identity of parties to a Crypto Token transaction;

(v) the value of a Crypto Token transaction; or

(vi) the beneficial owner of a Crypto Token;

(d) "Privacy Token" means a Crypto Token where the Crypto Token or the DLT or other similar technology used for the Crypto Token, has any

feature or features that are used, or intended to be used, to hide, anonymise, obscure or prevent the tracing of any of the information referred to in (c)(i) to (vi);

(e) "Recognised Crypto Token" means a Crypto Token which:

(i) is included on the Initial List published by the DFSA under section 3A.4; or

(ii) the DFSA has recognised under Rule 3A.3.4;

(f) "recognition" means recognition of a Crypto Token by the DFSA under section 3A.3; and

(g) "VPN" means a virtual private network that creates a safe, encrypted online connection for internet users.

3A.1.2 (1) For the purposes of this chapter, a Fund invests in a Crypto Token if:

(a) any of its property includes the Crypto Token;

(b) it has a derivative exposure to the Crypto Token;

(c) it tracks an index that includes the Crypto Token; or

(d) it invests in another Fund or entity which:

(i) has property that includes the Crypto Token;

(ii) has a derivative exposure to the Crypto Token; or

(iii) tracks an index that includes the Crypto Token,

(2) An investment in another Fund or entity referred to in (1)(d) is to be disregarded under that paragraph if the total aggregate exposure of that other Fund or entity under (d)(i), (ii) and (iii) to all Crypto Tokens does not exceed 5% of the gross value of the Fund or entity.

3A.1.3 For the purposes of this chapter, a Derivative or instrument relates to a Crypto Token if the value of the Derivative or instrument is determined by reference to:

(a) the Crypto Token; or

(b) an index that includes the Crypto Token.

3A.2 Prohibitions relating to Crypto Tokens

Only Recognised Crypto Tokens to be used in the DIFC

3A.2.1 (1) A Person must not engage in any of the following activities in or from the DIFC in relation to a Crypto Token unless it is a Recognised Crypto Token:

(a) carry on a Financial Service relating to the Crypto Token;

(b) make or approve a Financial Promotion relating to the Crypto Token;

(c) Offer to the Public the Crypto Token;

(d) carry on an activity referred to in (a), (b) or (c) in relation to a Fund that invests in the Crypto Token; or

(e) carry on an activity referred to in (a), (b) or (c) in respect of a Derivative or instrument relating to the Crypto Token.

(2) The prohibition in (1)(a) does not apply to an Authorised Person to the extent that it Provides Custody of a Crypto Token.

(3) The prohibition in (1)(d) does not apply in relation to a Fund if:

(a) it is established or domiciled in the DIFC and is a Qualified Investor Fund;

(b) it invests not more than 30% of the gross asset value of the Fund in Crypto Tokens that are not Recognised Crypto Tokens; and

(c) its Fund Manager:

(i) provides Unitholders, upon request, with relevant information about the main characteristics of and risks associated with the investment in Crypto Tokens that are not Recognised Crypto Tokens; and

(ii) conducts daily valuations of the Fund's investments in Crypto Tokens that are not Recognised Crypto Tokens and keeps a record of those valuations.

Guidance

1. Rule 3A.2.1 prohibits activities from being carried on in relation to a Crypto Token unless the Crypto Token is a Recognised Crypto Token i.e. a Crypto Token the DFSA has recognised under section 3A.3 or 3A.4. Section 3A.3 sets out the procedures for applying for a Crypto Token to be a Recognised Crypto Token and the criteria that must be met for the DFSA to recognise a Crypto Token.

2. The prohibition against carrying on a Financial Service relating to an unrecognised Crypto Token does not apply to an Authorised Person that Provides Custody of a Crypto Token. For example, a Custodian may receive an 'airdrop' of Crypto Tokens for promotional purposes when the Crypto Tokens have not been recognised. Similarly, due to a fork which results in the splitting of blockchains a Custodian may find that it is holding Crypto Tokens that have not been recognised. The Custodian may therefore hold unrecognised Crypto Tokens without contravening the Rule.

3. Whether a Crypto Token remains recognised after a fork in the blockchain will depend on the effect of the fork on the existing Crypto Token. If new Crypto Tokens are created they may no longer be covered by an existing recognition. For that reason, an applicant should identify any proposed fork and its effect, so that recognition can cover this contingency.

4. The recognition of a Crypto Token by the DFSA does not cover any representation of the Crypto Token in the form of another Crypto Token, such as a wrapped token.

Therefore, if a Person would like the representation of the Crypto Token also to be recognised in the DIFC, it should apply under Rule 3A.3.1.

5. The prohibition also applies in relation to Funds that invest in Crypto Tokens. An Authorised Firm is prohibited from managing, offering or promoting a Fund that invests in unrecognised Crypto Tokens except as specified in Rule 3A.2.1(3). This prohibition covers not only Funds that invest directly in unrecognised Crypto Tokens, but also those that have an exposure using derivatives or that track an index that includes unrecognized Crypto Tokens. It also applies to indirect investment in unrecognised Crypto Tokens such as by the use of Feeder Funds or Exchange Traded Funds (see Rule 3A.1.2). Similarly, an Authorised Firm that is Managing Assets may only provide discretionary management of a Crypto Token that is recognised.

6. The gross asset value of a Fund under Rule 3A.2.1(3)(b) should be calculated as the total value of the Fund Property, based on the most recent valuation under CIR Rule 8.4.1(1).

7. Crypto Tokens that are prohibited from being used in the DIFC, such as Privacy Tokens and Algorithmic Tokens, cannot be recognized by the DFSA (see Rule 3A.3.4(1)).

8. The Recognition of a Crypto Token under this chapter does not relieve an Authorised Person or any other Person from their responsibility to carry out proper due diligence on a Crypto Token before providing a Financial Service or carrying on any other activity relating to the Crypto Token.

9. The DFSA expects that the information about the main characteristics and risks referred to in Rule 3A.2.1(3)(c)(i) include information about:

   a. the rights and obligations conferred by the Crypto Token;

   b. trading history of the Crypto Token, including volumes and prices;

   c. details of the Distributed Ledger Technology or other similar technology used; and

   d. cybersecurity risks associated with the Crypto Token or its underlying technology.

Use of Privacy Tokens and Devices prohibited

3A.2.2 A Person must not in or from the DIFC:

(a) carry on a Financial Service relating to a Privacy Token or that involves the use of a Privacy Device;

(b) make or approve a Financial Promotion relating to a Privacy Token or Privacy Device;

(c) Offer to the Public a Privacy Token;

(d) carry on an activity referred to in (a), (b) or (c) in relation to a Fund that invests in a Privacy Token; or

(e) carry on an activity referred to in (a), (b) or (c) in respect of a Derivative or Instrument relating to a Privacy Token.

Guidance

1. Privacy Tokens and Privacy Devices are typically used for two main purposes: to facilitate anonymity and to prevent the tracing of transactions. Anonymity hides the identity of a holder of a Crypto Token or the identity of two parties to a transaction on the blockchain, while non-traceability makes it difficult or impossible for third parties to follow the trail of a series of transactions. The use of Privacy Tokens or Privacy Devices is prohibited as they can facilitate money laundering, market abuse, fraud or other financial crime.

2. The definitions of Privacy Token and Privacy Device will apply to Crypto Tokens and devices that have features that are used or intended to be used for hiding, anonymising, obscuring or preventing the tracing of information, whether or not they are in fact used for that purpose. For example, some Crypto Tokens have features that can be turned on at the option of the user to hide or prevent the tracing of information. A Crypto Token that has such optional features, will be a Privacy Coin as defined and is prohibited from being used in the DIFC.

Use of Algorithmic Tokens prohibited

3A.2.3 A Person must not in or from the DIFC:

(a) carry on a Financial Service relating to an Algorithmic Token;

(b) make or approve a Financial Promotion relating to an Algorithmic Token;

(c) Offer to the Public an Algorithmic Token;

(d) carry on an activity referred to in (a), (b) or (c) in relation to a Fund that invests in an Algorithmic Token; or

(e) carry on an activity referred to in (a), (b) or (c) in respect of a Derivative or Instrument relating to a Algorithmic Token.

Guidance

Rule 3A.2.3 prohibits certain activities in the DIFC relating to Algorithmic Tokens i.e. Crypto Tokens that use an algorithm to increase or decrease the supply of the Crypto Token to stabilise their price or reduce volatility. This is because the functioning of these algorithms is often not transparent to users, markets or regulators and due to concerns about whether such algorithms function effectively. These factors make it difficult for investors to make informed decisions about the Crypto Token. In addition, attempts to stabilise the price of a Crypto Token (or any other Investment) by such means may be contrary to the market manipulation provisions in the Markets Law.

Regulated and unregulated business not to be carried on together

3A.2.4 (1) An Authorised Person must not provide any service or carry on any activity related to a Utility Token or a Non-Fungible Token.

(2) The prohibition in (1) does not apply to an Authorised Person:

(a) that is permitted under its Licence to Provide Custody; and

(b) to the extent that it carries on an activity described in Rule 2.13.1 in relation to a Utility Token or a Non-Fungible Token.

Guidance

1. Rule 3A.2.4 prohibits Authorised Persons (i.e. Persons that are authorised under a Licence to provide Financial Services) from also carrying on unregulated business relating to certain Excluded Tokens i.e. Utility Tokens and NFTs. The only exception is that an Authorised Person that is permitted to Provide Custody may also carry on that activity in relation to Utility Tokens and NFTs.

2. The prohibition is intended to avoid any misconception by users of a service that regulatory requirements for Financial Services apply to the unregulated part of the business. The prohibition does not extend to the use of digital currencies issued by governments, government agencies, central banks or other monetary authorities. Therefore, an Authorised Person may provide a service or carry on an activity involving such a digital currency.

Money Services Providers restricted from carrying on crypto activities

3A.2.5 (1) A Money Services Provider must not:

(a) use a Crypto Token in connection with providing Money Services, except as provided in (2); or

(b) carry on any other Financial Service relating to a Crypto Token.

(2) A Money Services Provider may use a Fiat Crypto Token in connection with providing Money Services if the Fiat Crypto Token is:

(a) a Recognised Crypto Token;

(b) used only for the purposes of Money Transmission or executing a Payment Transaction; and

(c) sent, held or received in the name of the Money Services Provider and not in the Client's name.

Guidance

1. Under Rule 3A.2.5, a Money Services Provider is generally prohibited from using Crypto Tokens in connection with its Money Services business. The only exception is that a Money Services Provider may use a Fiat Crypto Token (i.e. a fiat stablecoin) for specified purposes. A Money Services provider is also prohibited from carrying on other Financial Services relating to Crypto Tokens, for example, it cannot deal as principal or agent or arrange transactions relating to Crypto Tokens.

2. A Money Services Provider is not however prohibited from using Distributed Ledger Technology or other similar technology as the technological platform for its Money Service operations. For example, an Authorised Firm may use a private blockchain offered by a reputable technology provider to facilitate payment transactions and money transmission initiated by their Clients. In that case, the use of blockchain and any tokens, where applicable, must serve the sole purpose of facilitating the technology side of the business and supporting the back-office operations.

3. Firms should take due care that their Clients are not exposed to the risks arising from the use of blockchain. For example, that Clients are not sending, holding, or receiving any Tokens under their name, and that the Client agreement is limited to using fiat currency. Depending on the arrangement, the use of blockchain may be an outsourcing of technology to a third-party service provider. The Authorised Firm will then be required to inform the DFSA of the material outsourcing arrangement and comply with the relevant provisions in GEN 5.3.21 and 5.3.22.

Making referrals relating to Crypto Tokens

3A.2.6 An Authorised Firm must not refer a client to a person providing any service related to a Crypto Token, unless it is reasonably satisfied that the person is either:

(a) an Authorised Firm; or

(b) a Regulated Financial Institution outside the DIFC that is subject to substantially similar requirements to those that apply to an Authorised Firm carrying on Crypto Business in or from the DIFC.

Guidance

An Authorised Firm needs to carry out proper due diligence to satisfy itself, on reasonable grounds, that the person to which it intends to refer its client is subject to substantially similar requirements to those that apply to an Authorised Firm carrying on Crypto Business in or from the DIFC. This due diligence needs to be undertaken before making the referral. The Authorised Firm should be able to demonstrate to the DFSA the basis upon which it has reasonably concluded that the requirements are substantially the same.

3A.3 Recognition of a Crypto Token

3A.3.1 Any of the following Persons may apply to the DFSA for a Crypto Token to be recognised in the DIFC:

(a) an Authorised Person;

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

(c) an issuer or developer of the Crypto Token.

3A.3.2 An applicant must apply using the appropriate form specified by the DFSA.

3A.3.3 In assessing an application, 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 any criteria;

(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 in making a suitability assessment.

3A.3.4 (1) The DFSA may recognise a Crypto Token if it is satisfied that:

(a) having regard to the matters in (2), the Crypto Token is suitable for use in the DIFC;

(b) it is not a Privacy Token or an Algorithmic Token; and

(c) for a Fiat Crypto Token, all of the requirements in (4) are met in respect of that Fiat Crypto Token (in addition to the criteria in (a) and (b) above).

(2) The matters referred to in (1)(a) are:

(a) the regulatory status of the Crypto Token in other jurisdictions, including whether it has been assessed or approved for use by a Regulator in another Recognised Jurisdiction;

(b) whether there is adequate transparency relating to the Crypto Token, including sufficient detail about its purpose, protocols, consensus mechanism, governance arrangements, founders, key persons, miners and significant holders;

(c) the size, liquidity and volatility of the market for the Crypto Token globally;

(d) the adequacy and suitability of the technology used in connection with the Crypto Token; and

(e) whether risks associated with the Crypto Token are adequately mitigated, including risks relating to governance, legal and regulatory issues, cybersecurity, money laundering, market abuse and other financial crime.

(3) The DFSA may, in assessing the matters in (2), consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt that the criteria in (1)(a) is satisfied.

(4) In the case of a Fiat Crypto Token, the additional criteria referred to in (1)(c) are that:

(a) the Crypto Token is able to maintain a stable price relative to the fiat currency it references;

(b) the reserves:

(i) are at least equal in value to the notional value of outstanding Crypto Tokens in circulation (that value being calculated by multiplying the number of Crypto Tokens in circulation by the purported pegged fiat currency value);

(ii) are denominated in the reference currency;

(iii) are held in assets that are likely to maintain their value, including during periods of stress, are highly liquid, are appropriately diversified and carry minimal credit risk;

(iv) are valued daily; and

(v) are held in segregated accounts with properly regulated banks or custodians in jurisdictions with regulation that

is equivalent to the DFSA's regime and AML regulation that is equivalent to the standards set out in the FATF Recommendations;

(c) a person is clearly responsible and liable to investors for the Crypto Token.

(d) information demonstrating that the reserves meet the criteria in (b) is published at least monthly; and

(e) the published information referred to in (d) is verified by a suitably qualified third-party professional who is independent of the issuer of the Crypto Token and any persons responsible for the Crypto Token.

(5) In assessing the equivalence of AML regulation under (4)(b)(v), the DFSA may consider, among other things, whether on the basis of reports by credible sources (as defined in AML Rule 6.1.3(2)), such as mutual evaluations, detailed assessment reports or follow-up reports, a jurisdiction:

(a) has AML requirements that are consistent with the FATF Recommendations; and

(b) effectively implements those Recommendations.

Guidance

1. Matters the DFSA may consider under Rule 3A.3.4(2)(a) include:

a. the jurisdiction(s) where the Crypto Token was established and where its issuers, founders, developers and other key persons and technology are located;

b. its regulatory status of being green-listed or otherwise approved as suitable for use in other Recognised Jurisdictions;

c. any history of regulatory examination of the Crypto Token in other jurisdictions and whether any regulatory issues have arisen.

2. Matters the DFSA may consider under Rule 3A.3.4(2)(b) include:

a. the adequacy of public information about the issuer, founders, developers, miners, significant holders and other key persons behind the Crypto Token;

b. whether white papers set out clearly the purpose, use case and development path for the Crypto Token and how funds raised by offerings have been or will be used;

c. whether there is public access to the blockchain protocol and the consensus mechanism, publication of smart contract or technology audit reports and records of live updates to the blockchain; and

d. whether persons associated with private and public keys can be identified, Crypto Token balances and transactions can be traced and devices to create anonymity are not used.

3. Matters the DFSA may consider under Rule 3A.3.4(2)(c) include:

a. the maturity of the market for the Crypto Token, the number of years it has been traded and its trading history across different service providers, markets and jurisdictions;

b. the total supply of the Crypto Tokens issued, the market capitalisation of the Crypto Tokens, pre-determined schedules for issuing or burning Crypto Tokens and any inflationary or deflationary mechanisms used; and

c. factors affecting supply and demand for the Crypto Token and transparency about significant events affecting price, volatility levels and returns; and

d. the market liquidity of the Crypto Token, daily and weekly trading volumes and changes in the liquidity profile in response to market stress.

4. Matters the DFSA may consider under Rule 3A.3.4(2)(d) include:

a. the type of blockchain, access permissions and rights to amend the protocol and consensus mechanisms used and the associated environmental costs;

b. smart contract availability, endogenous computational capacity, native token features and the ability to host piggyback tokens on the blockchain;

c. interoperability of the Crypto Token across various blockchains, limitations of transaction validation times and costs on the native blockchain; and

d. technological solutions to collect user information and monitor and maintain records of transactions and to protect privacy of user information.

5. Matters the DFSA may consider under Rule 3A.3.4(2)(e) include:

a. cybersecurity risks and mitigation controls, any history of hacks and thefts involving the token, near miss events and losses from cyber security failures;

b. custody risks, systems and controls relating to wallet management and the track record of users being compensated for any operational failures in custody management;

c. adequacy of measures to ensure compliance with anti-money laundering, counter-terrorist finance and sanctions requirements;

d. settlement risk and mitigation measures; and

e. operational risk and defence mechanisms, systems and controls to prevent detect and address faulty codes, quality assurance processes and risk reaction systems.

6. Matters the DFSA will consider under Rule 3A.3.4(4) include whether:

a. price volatility is generally maintained within one percent from the peg and there is minimal market risk associated with the Crypto Token;

b. information published about the reserves provides sufficient clarity about the quality of the assets and how they are held and segregated;

c. reserve assets:

i. show historical evidence of relative price stability;

ii. can be converted easily and immediately into cash at little or no loss of value, taking into account relevant factors such as, degree of subordination, duration and market size;

iii. are appropriately diversified in such a way as to avoid undue reliance on any particular asset, issuer or risk factor; and

iv. are issued by a person with a a high credit standing.

3A.3.5 (1) The DFSA may refuse an application to recognise a Crypto Token if it is not satisfied of the matters set out in Rule 3A.3.4.

(2) The procedures in Schedule 3 apply to a decision of the DFSA under (1) and the DFSA must give the applicant an opportunity to make representations under those procedures.

Guidance

The procedures in Schedule 3 of the Regulatory Law (providing for an affected person to be given an opportunity to make representations) apply to a DFSA decision to refuse an application for a Crypto Token to be a Recognised Crypto Token. However, no right is given under the Rules for an applicant to refer the final decision to the Financial Markets Tribunal.

3A.3.6 (1) The DFSA may revoke the Recognised Crypto Token status of a Crypto Token if it is no longer satisfied of the matters set out in Rule 3A.3.4 in respect of the Crypto Token.

(2) The DFSA may specify that the revocation is to take effect immediately or on a specified future date.

(3) The procedures in Schedule 3 apply to a decision of the DFSA under (1) and in such a case the DFSA must give the following Persons an opportunity to make representations under those procedures:

(a) the Person who applied for the Crypto Token to be a Recognised Crypto Token; and

(b) each Authorised Person that Operates a MTF or Clearing House relating to the Crypto Token.

Guidance

1. The DFSA may decide to revoke the recognition of a Crypto Token in a variety of circumstances where it is no longer satisfied that the Crypto Token meets the criteria for recognition. Without limiting those circumstances, this might include for example a major hacking event, technology failure, fraud, a serious money laundering issue, a lack of verified information about the adequacy of reserves backing a Fiat Crypto Token or the failure of a Fiat Crypto Token to maintain its peg.

2. The procedures in Schedule 3 of the Regulatory Law apply to a DFSA decision to revoke the Recognised Crypto Token status of a Crypto Token. Rule 3A.3.6 specifies the Persons to whom an opportunity to make representations is to be given in such a case. However, there is no right under the Rules for the Person to refer the decision to the Financial Markets Tribunal for review.

3. As the effect of revoking recognition of a Crypto Token is that various activities will not be permitted in the DIFC in relation to the Crypto Token, the DFSA may in appropriate cases allow a period for the orderly winding down of activities and services in the DIFC. This could be for example by specifying that the revocation takes effect on a specified date in the future. This will however depend on the circumstances leading to the revocation.

Publication of information

3A.3.7 (1) The DFSA will publish a notice when it recognises a Crypto Token and if it decides to revoke recognition of a Crypto Token.

(2) The DFSA may publish notice of the fact that an application for recognition of a Crypto Token has been received or that an application has been refused.

(3) A notice under this Rule may contain such information as the DFSA considers appropriate.

3A.4 Initial list of Recognised Crypto Tokens

DFSA may publish a list

3A.4.1 (1) The DFSA may, without the need for an application, publish a list (an Initial List) of Crypto Tokens that are taken to be Recognised by the DFSA.

(2) The DFSA must publish any Initial List within 30 days of the commencement date (as defined in Rule 10.5.1(1)).

(3) The DFSA may include a Crypto Token on the Initial List if it is satisfied that the Crypto Token would meet the criteria in Rule 3A.3.4 if an application was made for its recognition.

(4) The DFSA may amend the Initial List if it is necessary due to a change in the name of a Crypto Token on the list or if there is a fork affecting a Crypto Token on the list and the DFSA is satisfied that one or more Crypto Tokens resulting from the fork should be included on the list.

(5) The DFSA is not to add a Crypto Token to the Initial List, except as provided in (4) if there is a fork.

(6) The DFSA may remove a Crypto Token from the Initial List if it is no longer satisfied that it meets the criteria in Rule 3A.3.4.

(7) The DFSA may remove a Crypto Token under (6) immediately or on a specified future date.

(8) The procedures in Schedule 3 apply to a decision of the DFSA under (6) and for the purposes of applying those procedures the DFSA must give an opportunity to make representations to each Authorised Person (if any) that Operates a MTF or Clearing House relating to the Crypto Token.

Guidance

1. Rule 3A.4.1 confers on the DFSA a one-off power to issue a list of Recognised Crypto Tokens on the commencement of the regime for the regulation of Crypto Tokens. The list cannot be added to after it is published, and any further Crypto Tokens will be recognised only if an application is made to the DFSA for recognition under section 3A (and the DFSA is satisfied under that section that the criteria for recognition are met). For the purposes of the prohibition in section 3A, a Crypto Token will therefore be a Recognised Crypto Token if it is included on the Initial List

published under Rule 3A.4.1 (and has not been removed from that list) or if it has been recognised by the DFSA after an application under section 3A.3.

2. The DFSA may remove a Recognised Crypto Token from the Initial List under Rule 3A.4.1(6). The procedures in Schedule 3 of the Regulatory Law apply to such a decision, however, the opportunity to make representations under that Schedule are required to be provided only to an Authorised Person (if any) that operates a MTF or Clearing House for the Crypto Token being removed. No right is provided under the Rules for a Person to refer the decision to the Financial Markets Tribunal for review.

3A.5 Recognised Jurisdictions

DFSA may recognise jurisdictions

3A.5.1 (1) The DFSA may recognise a jurisdiction as having a regulatory regime for Crypto Tokens that is equivalent to the DFSA's regime if it is satisfied that:

(a) the legislation in that jurisdiction for regulating Crypto Tokens, and Persons conducting activities or services relating to Crypto Tokens, includes requirements and protections that are at least equivalent to the requirements and protection under the DFSA's regulatory regime for Crypto Tokens and Crypto Business;

(b) adequate arrangements are in place in that jurisdiction for the licensing by the Regulator of Persons conducting activities or providing services relating to Crypto Tokens and for the assessment and approval by the Regulator of individual Crypto Tokens;

(c) adequate arrangements are in place in that jurisdiction to ensure that the requirements in (a) are properly supervised and enforced; and

(d) adequate arrangements exist for co-operation between the Regulator in that jurisdiction and the DFSA.

(2) The DFSA may specify that the recognition of a jurisdiction is limited to specific activities or services or specific types of Crypto Tokens.

(3) The DFSA may:

(a) amend the recognition of a jurisdiction; or

(b) revoke recognition of a jurisdiction if it is no longer satisfied of the matters set out in (1).

(4) The DFSA will publish a list of jurisdictions that it has recognised under this Rule.

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) Sections 5.3 and 5.5 also apply 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, 5.3.31 and section 5.5 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 Person 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.

(3) An Authorised Firm is not required to have an internal audit function if the only Financial Service it carries on is Managing a Venture Capital Fund.

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.

Continuing Professional Development

5.3.19A (1) An Authorised Firm must ensure that an Employee who falls within a category specified in (2) remains competent by completing a minimum of 15 hours of continuing professional development (CPD) in each calendar year.

(2) The categories of Employees specified for the purposes of (1) are:

(a) the Senior Executive Officer;

(b) the Compliance Officer; and

(c) the Money Laundering Reporting Officer.

(3) An Authorised Firm must ensure that:

(a) the CPD in (1) is relevant to the Employee's:

(i) current role and any anticipated change in that role; and

(ii) professional skill and knowledge;

(b) the CPD consists of structured activities; and

(c) the Employee keeps adequate records of CPD activities to be able to demonstrate that the requirements in this Rule have been met.

(4) In (3), "structured activities" means courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning which require a commitment of thirty minutes or more.

Guidance

1. The requirement in Rule 5.3.19A does not derogate from the requirement in Rule 5.3.19 for an Authorised Firm to ensure that Employees generally are competent and capable of performing their functions. This requires the Authorised Firm to consider what training is undertaken or required for all Employees, including Employees not covered by this Rule.

2. The structured activities that are completed as CPD may consist of activities conducted internally or externally, and may include activities conducted by a professional body.

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 abuse, whether in the DIFC or elsewhere; 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.

3. GEN Section 5.5 contains additional requirements that apply to an Authorised Person that receives services directly from a third party or a subcontractor of the third party which involve accessing the Authorised Person's IT systems or networks or accessing or processing its data.

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.

5.4 Whistleblowing

5.4.1 In this section:

(a) "money laundering" has the meaning given in Article 70(2)(b) of the Regulatory Law;

(b) "regulatory concern", in relation to an Authorised Person, means a concern held by any person that the Authorised Person, an officer or employee of the Authorised Person, an Affiliate of the Authorised Person or an officer or employee of an Affiliate of the Authorised Person has or may have:

(i) contravened a provision of legislation administered by the DFSA; or

(ii) engaged in money laundering, fraud or any other financial crime;

(c) "whistleblower" means a person who reports a regulatory concern to a person specified in Article 68A(3) of the Regulatory Law.

Policies and procedures

5.4.2 (1) An Authorised Person must have appropriate and effective policies and procedures in place:

(a) to facilitate the reporting of regulatory concerns by whistleblowers; and

(b) to assess and, where appropriate, escalate regulatory concerns reported to it.

(2) The policies and procedures required under (1) must be in writing.

(3) An Authorised Person must periodically review the policies and procedures to ensure they are appropriate, effective and up to date.

Record of whistleblowing reports

5.4.3 An Authorised Person must maintain a written record of each regulatory concern reported to it by a whistleblower, including appropriate details of the regulatory concern and the outcome of its assessment of the reported concern.

Guidance

1. The DFSA expects an Authorised Person to implement policies and procedures under Rule 5.4.2 that are appropriate based on the nature, scale and complexity of the Authorised Person's business. For example, a larger or more complex firm is expected to have more detailed and comprehensive policies and procedures in place.

2. The policies and procedures should:

   a. include internal arrangements to allow for reports to be made by whistleblowers;

   b. include adequate procedures to deal with, assess and, where appropriate, escalate reports to the senior management of the Authorised Person or, if necessary, to the DFSA or to any other relevant authority;

   c. include reasonable measures to protect the identity and confidentiality of whistleblowers;

   d. include reasonable measures to protect the whistleblower from suffering any detriment, as a result of the report;

   e. ensure that, where appropriate and feasible, feedback is provided to the whistleblower; and

   f. include reasonable measures to manage any conflicts of interest and ensure the fair treatment of any person who is the subject of an allegation in a report.

3. An Authorised Person's whistleblowing policies and procedures should generally encourage reporting of concerns first to the Authorised Person itself. However, the policies and procedures should also take into account that there may be circumstances where it is appropriate, or a whistleblower may prefer, to report the concerns directly to the DFSA or to another relevant authority.

4. The records under Rule 5.4.3 should include:

   a. the date the report was received;

   b. a summary of the concerns raised;

   c. steps taken by the Authorised Person in relation to the report until the matter is resolved;

   d. any steps taken to maintain the confidentiality of the whistleblower and to ensure fair treatment of the whistleblower;

   e. the list of persons who have knowledge of the report;

f. the outcome of the assessment of the report including the rationale for the outcome and any decision on whether or not to disclose the report to the DFSA or any other relevant authority; and

g. references or links to all documentation and review papers in relation to the report.

5. An Authorised Person may be required to make its records of whistleblowing reports available to the DFSA for inspection.

6. In addition to the requirements in these Rules, Article 68A of the Regulatory Law provides legal protection to a whistleblower who discloses information about suspected misconduct in good faith to a specified person, such as the relevant Authorised Person, the auditor of the Authorised Person, the DFSA or other relevant authorities.

7. The protection under the Regulatory Law applies to any person who makes such a disclosure. For example, the disclosure may be made by a person who is or has been an officer, employee or agent of the Authorised Person, a Person who provides services or products to the Authorised Person or a person who has no formal connection with the Authorised Person.

8. The protection under the Regulatory Law is from liability, dismissal or detriment for making that disclosure. However, it does not, for example, prevent an Authorised Person from taking action against an employee for other legitimate reasons, such as if the employee has engaged in misconduct.

9. An Authorised Person should, as part of its whistleblowing policies and procedures, inform its officers and employees of the protection under Article 68A of the Regulatory Law.

5.5 Cyber risk management

Introduction

Guidance

1. This section deals with the management of Cyber Risk by an Authorised Person. It aims to ensure that an Authorised Person takes measures that are appropriate to the nature, scale and complexity of its activities to protect against potential loss or harm stemming from a malicious attack on its information or communication systems.

2. This section is structured as follows:

a. Rule 5.5.1 sets out the key definitions used in this section;

b. Rules 5.5.2 to 5.5.4 contain the obligations of an Authorised Person to establish and maintain a Cyber Risk Management Framework and to have adequate governance arrangements in place;

c. Rule 5.5.5 requires an Authorised Person to identify and assess Cyber Risk;

d. Rules 5.5.6 to 5.5.15 set out measures an Authorised Person must take to protect its ICT Assets from Cyber Incidents;

e. Rules 5.5.16 to 5.5.18 contain the obligations of an Authorised Persons to monitor its IT Systems and Networks and respond to actual or potential Cyber Incidents, and, if applicable, resume its operations responsibly; and

f. Rule 5.5.19 requires an Authorised Person to report material Cyber Incidents to the DFSA.

5.5.1 In this section:

(a) "Cyber Incident" means an incident arising from the malicious use of information or communication technology that adversely affects an Authorised Person's ICT Assets;

(b) "Cyber Risk" means the risk of:

(i) financial loss, operational disruption or damage; or

(ii) loss of confidentiality, integrity or availability of ICT Assets,

resulting from a Cyber Incident;

(c) "Cyber Risk Management Framework" means the framework to identify, assess and manage Cyber Risk required by Rule 5.5.2;

(d) "Cyber Incident Response Plan" means the plan for dealing with Cyber Incidents required by Rule 5.5.17;

(e) "ICT Asset" or "Information and Communication Technology Asset" means any data, any device or any other component of the information technology infrastructure, such as application software, firmware, databases, hardware, or end-user computing tools;

(f) "ICT Service" or "Information and Communication Technology Service" means an information and communication technology related service, such as hosting, maintenance or repair services of ICT Assets or any other service that involves accessing an Authorised Person's IT Systems or Networks or accessing or processing an Authorised Person's data;

(g) "IT System" means an assembly of ICT Assets and related methods and procedures, organised to provide information processing functions;

(h) "Network" means a group of ICT Assets that are interconnected to exchange data, together with the communication channels between those ICT Assets; and

(i) "Third-Party Cyber Risk" means Cyber Risk that may arise from the use of ICT Services provided by a third party or a subcontractor of that third party.

Cyber Risk Management Framework

5.5.2 (1) An Authorised Person must establish and maintain a Cyber Risk Management Framework to identify, assess and manage Cyber Risk effectively in an integrated and comprehensive manner.

(2) An Authorised Person must ensure the Cyber Risk Management Framework is in writing and is approved by its Governing Body.

(3) The Cyber Risk Management Framework must:

(a) include systems and controls which are appropriate to the

nature, scale and complexity of the activities conducted by the Authorised Person; and

(b) have clearly defined roles and responsibilities, including accountability for decision making during business-as-usual operations as well as in stressed situations.

(4) The systems and controls in (3)(a) must include:

(a) a system for identifying and assessing Cyber Risk which enables the Authorised Person to implement the requirements in Rule 5.5.5;

(b) a system for protecting ICT Assets in accordance with Rules 5.5.6 to 5.5.15; and

(c) a system for managing and controlling Cyber Incidents which enables the Authorised Person to comply with the requirements in Rules 5.5.16 to 5.5.18.

(5) An Authorised Person must review periodically, and at least annually, its Cyber Risk Management Framework to ensure that it remains appropriate, effective and up-to-date.

(6) An Authorised Person must integrate its Cyber Risk Management Framework within its overall risk management framework established under GEN Rules 5.3.4 to 5.3.6.

Guidance

1. An Authorised Person's Cyber Risk Management Framework can be based on, or informed by, standards prepared by international organisations or recognised professional institutions, including the following standards:

   a. International Organisation for Standardisation: Information technology – Security techniques – Information security management systems – Overview and vocabulary (ISO standard no. 27000:2018);

   b. US National Institute of Standards and Technology: Framework for Improving Critical Infrastructure Cybersecurity (2018);

   c. Center for Internet Security: Critical Security Controls (2018);

   d. Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions: Guidance on cyber resilience for financial market infrastructures (2016); and

   e. Cloud Security Alliance: Cloud Controls Matrix and CAIQ (2016).

2. An Authorised Person may also rely on Group-wide policies on Cyber Risk when developing their policies, procedures or controls.

3. An Authorised Person should tailor any standards or policies it chooses to adopt to its needs. Not all elements of the standards or policies may be applicable. Further, additional policies, procedures and controls may be required to address idiosyncratic risks.

5.5.3 (1) An Authorised Person must manage Third-Party Cyber Risk as an integral part of its Cyber Risk Management Framework established under Rule 5.5.2, including by:

(a) undertaking due diligence to ensure that it chooses suitable third party providers of ICT Services that comply with appropriate cyber security standards;

(b) ensuring that the terms of the contractual arrangements with a third party provider of ICT Services require the third party to:

(i) comply with the Authorised Person's cyber security requirements;

(ii) notify the Authorised Person about any Cyber Incident that may affect the Authorised Person;

(iii) collaborate with the Authorised Person in remediating the impact of a Cyber Incident on the Authorised Person;

(iv) allow the Authorised Person to verify that the third party continues to meet the Authorised Person's cyber security requirements; and

(c) supervising effectively the provision of ICT Services by third parties.

(2) An Authorised Person that relies on the provision of ICT Services by a third party remains fully responsible for compliance with, and the discharge of, all obligations under this section.

Guidance

1. This Rule supplements the overarching requirements that govern outsourcing of functions and activities under Rules 5.3.21 and 5.3.22 by an Authorised Person. The scope of this Rule is wider than the scope of those outsourcing requirements as it applies to the provision of all ICT Services that may impact the provision of Financial Services by an Authorised Person, such as a contract for the maintenance of an Authorised Person's servers.

2. The supervision of a third party's provision of ICT Services under Rule 5.5.3(1)(c) should include regular verification that the third party complies with the Authorised Person's security requirements. Verification can be achieved, for example, through a review of the third party's control environment or using independent audit reports. Self-verification by the third party would not meet the requirement of effective supervision. The frequency and scope of the reviews should be determined based on the criticality of systems and the sensitivity of information.

3. The DFSA expects an Authorised Person to apply adequate controls on the use of subcontractors by a third party. An Authorised Person should be aware of the scope of services that are carried out by subcontractors and what actions were undertaken to mitigate Cyber Risk by both, the third party and any of its subcontractors.

Governance

5.5.4 (1) An Authorised Person must ensure that its Governing Body and senior management are ultimately responsible for ensuring that its Cyber

Risk Management Framework is followed and that Cyber Risk is managed effectively.

(2) Without limiting the operation of (1), the responsibilities of an Authorised Person's Governing Body and senior management in respect of Cyber Risk include:

(a) ensuring that Cyber Risk is adequately identified, assessed and managed in accordance with the Authorised Person's Cyber Risk Management Framework;

(b) establishing and maintaining a senior management structure for the management of Cyber Risk and for ensuring compliance with the Authorised Person's Cyber Risk Management Framework;

(c) defining the Authorised Person's Cyber Risk tolerance, which must be in line with its business objectives, strategy and overall risk tolerance; and

(d) ensuring that relevant personnel have the necessary experience to manage Cyber Risk.

Guidance

1. The DFSA expects the Governing Body of an Authorised Person to demonstrate a thorough understanding of Cyber Risk to which it is or might be exposed. For that purpose, the Governing Body should be regularly updated on current global cyber trends and be included in cybersecurity training, cyber awareness campaigns and similar activities conducted by the Authorised Person.

2. Management information on Cyber Risk and mitigation measures should be presented to the Governing Body in a way that can be easily understood and analysed. It should include information on current and emerging Cyber Risks and the efficiency of existing mitigation measures. For example, the DFSA expects the Governing Body to be informed where a key performance indicator signals that a Cyber Risk control may be underperforming or failing, leading to the Cyber Risk exposure approaching the Authorised Person's risk tolerance.

Identification and assessment of Cyber Risk

5.5.5 (1) An Authorised Person must identify and maintain a current inventory of its ICT Assets and classify them in terms of their confidentiality and how critical they are to the support of its business functions and processes.

(2) An Authorised Person must regularly carry out an assessment of Cyber Risk associated with the assets identified in (1).

(3) When carrying out the assessment in (2) the Authorised Person must:

(a) identify threats from Cyber Incidents;

(b) evaluate the Cyber Risk resulting from those threats and the effectiveness of relevant controls to arrive at the residual Cyber Risk; and

(c) analyse and quantify the potential impact and consequences of the residual Cyber Risk on its overall business and operations.

Guidance

1. The purpose of this Rule is to ensure that an Authorised Person understands which of its critical operations and supporting information should, in order of priority, be protected against Cyber Incidents.

2. An Authorised Person's assessment of the Cyber Risk should be accurate, up-to-date and reviewed on a regular basis.

3. The DFSA expects the assessment to include:

   a. an assessment of the interconnections and dependencies between the Authorised Person's ICT Assets and its business functions and processes;

   b. consideration of the results of the Authorised Person's most recent risk self-assessment, where applicable, and testing of its business continuity arrangements under GEN Rule 5.3.23; and

   c. consideration of Cyber Risk that third parties pose to the Authorised Person.

4. The DFSA expects an Authorised Person to have well defined processes and clearly assigned responsibilities for maintaining the inventory of its ICT Assets and the assessment of Cyber Risk.

Protection of ICT Assets against Cyber Incidents

Guidance

1. The systems and controls referred to in Rule 5.5.2(4)(b) should enable an Authorised Person to protect its ICT Assets in accordance with the requirements in Rules 5.5.6 to 5.5.15 in a way that minimises the likelihood and impact of a successful Cyber Incident on its ICT Assets identified under Rule 5.5.5(1). They should be commensurate with the outcome of the assessment under Rule 5.5.5(2) and the Authorised Person's Cyber Risk tolerance determined under Rule 5.5.4(2)(c).

2. An Authorised Person may need to apply additional controls, depending on its nature, scale or complexity.

5.5.6 An Authorised Person must use and maintain up-to-date anti-malware software and must ensure that regular updates are applied to its anti-malware definition files.

Guidance

The DFSA expects an Authorised Person to use anti-malware software to conduct regular automatic scanning of its ICT Assets, in particular servers and workstations, and to scan any files received over networks (including email attachments and files downloaded from websites) and files kept on storage media before use. The anti-malware software should be used to detect and block malware, potentially malicious links in emails and malicious websites.

5.5.7 (1) An Authorised Person must implement network security controls, including appropriate network architectures, protocols and network security devices, to protect the perimeters of its Networks.

(2) An Authorised Person must implement network security monitoring procedures to facilitate prompt detection of unauthorised or malicious activities.

Guidance

An Authorised Person should consider installing security devices at critical junctures in its Networks (e.g., firewalls, web application firewalls, intrusion detection and prevention systems, virtual private network gateways) to protect the perimeters of its Networks. The rules and configurations of the network security devices should be backed up and reviewed regularly to ensure they remain appropriate and relevant.

5.5.8 (1) An Authorised Person must ensure that access rights and permissions to its IT Systems and Networks are properly managed.

(2) For the purpose of (1), the Authorised Person must:

(a) establish a user access management process for the approval of a user's request for access or permission that ensures that:

(i) the user is only granted the minimum access or permissions needed to perform that user's tasks or functions ('least privilege principle'); and

(ii) the user's access and permissions are immediately revoked if the conditions for granting approval are no longer met;

(b) perform regular reviews of users' access rights and permissions to verify that they remain appropriate.

Guidance

1. The least privilege principle is a recognised information security concept that provides that only the minimum access necessary to perform an operation or task should be granted and that the access should be granted only for the minimum amount of time necessary. Its purpose is to reduce risk by limiting the number of individuals with access rights or privileges. In line with this principle, the DFSA expects an Authorised Person to base access rights and privileges, including access rights and privileges of employees, customers or third party service providers, on a user's requirements and responsibilities and to revoke those rights and privileges as soon as they are no longer required, in particular, upon termination of employment, customer relationship or service contract, or change in an user's requirements or tasks.

2. Privileged access rights or permissions (i.e. rights and permissions to perform security related functions that ordinary users are not authorised to perform, including rights and permissions to administrator accounts) should be limited to the extent possible and assigned to user credentials different from those used for regular business activities. Regular business activities should not be performed using privileged user credentials.

3. The process of performing regular reviews of access and permissions should facilitate the identification of dormant and redundant accounts as well as the detection of unauthorised access rights or permissions.

5.5.9 An Authorised Person must ensure that access to its IT Systems and Networks is properly secured, including by implementing:

(a) strong password authentication requirements;

(b) multi-factor authentication (MFA) or equivalent protection to its IT Systems and Networks that can be accessed from the internet;

(c) MFA or equivalent protection for privileged access rights or permissions; and

(d) encryption techniques to secure communication between a user and the Authorised Person's IT Systems and Networks.

Guidance

1. The DFSA expects that an Authorised Person's strong password controls require, at the minimum, a change of password upon initial logon, minimum password length and history requirements, password complexity, maximum validity periods as well as lockout thresholds after a number of unsuccessful logon attempts.

2. For mobile devices, access controls and encryption techniques should address threats raised by their use outside the Authorised Person's premises.

5.5.10 (1) An Authorised Person must have a comprehensive change management process that considers Cyber Risk before and during a change to its IT Systems and Networks and any new Cyber Risk created after the change.

(2) The process in (1) must include systems and controls that ensure changes to its IT System and Networks are:

(a) adequately tested;

(b) approved before their implementation; and

(c) implemented quickly if needed to resolve major Cyber Incidents or security vulnerabilities.

Guidance

1. The purpose of the change management process is to ensure that changes and patches to production systems and hardware devices are adequately assessed, tested, approved and implemented.

2. The DFSA expects an Authorised Person to establish a separate physical or logical environment for the development, testing and production of systems or patches. Moreover, the DFSA expects an Authorised Person to ensure a clear segregation of tasks so that no single individual develops, tests or implements any change.

3. The DFSA recognises that, while any emergency change should be implemented in a controlled manner, the process requires swift actions and decisions. Therefore, some aspects of an Authorised Person's change management process, such as change documentation or testing, can be completed after a change has been implemented, on an exceptional basis.

5.5.11 (1) An Authorised Person must establish a process for the management of software updates that addresses security vulnerabilities in any of the Authorised Person's ICT Assets.

(2) The process in (1) must ensure that:

(a) software updates are identified and classified by how critical they are to mitigate Cyber Risk;

(b) software updates are applied in a timely manner; and

(c) the implementation of critical software updates is prioritised.

(3) An Authorised Person must implement software updates in accordance with the process required under Rule 5.5.10.

5.5.12 (1) An Authorised Person must implement appropriate encryption techniques to protect the confidentiality and integrity of information.

(2) The encryption techniques implemented must be commensurate to the sensitivity of that information.

Guidance

1. The DFSA expects encryption techniques to be used to protect the confidentiality and integrity of sensitive information. In particular, encryption techniques should be used where such information is stored on workstation memory drives, external drives such as USB pen drives, external hard discs, mobile phones, tablets and similar electronic equipment used to store or process critical and sensitive information.

2. Appropriate measures should also be taken when exchanging sensitive information. These encryption measures could include sending information through encrypted channels or encrypting the information using strong encryption with an adequate key length.

5.5.13 (1) An Authorised Person must limit physical access to its data centres and server rooms, if any, to individuals who have a legitimate business need.

(2) For the purposes of (1), the Authorised Person must establish a process for:

(a) the approval of an individual's request for physical access; and

(b) the immediate revocation of such access if the conditions for granting approval are no longer met.

(3) An Authorised Person must implement appropriate security measures to prevent unauthorised physical access to its data centres and server rooms.

Guidance

1. The DFSA expects that where physical access is granted to individuals who are not members of an Authorised Person's staff they are accompanied at all times while performing their tasks.

2. The DFSA expects that an Authorised Person monitors and records activities that take place inside its data centres and server rooms.

5.5.14 (1) An Authorised Person must establish and maintain a comprehensive cybersecurity training programme and adequate awareness arrangements.

(2) The programme and arrangements in (1) must ensure that all relevant Employees:

(a) receive training, at least annually, on the Authorised Person's cybersecurity policies and standards;

(b) develop and maintain appropriate awareness of, and competencies for, detecting and reporting Cyber Incidents; and

(c) understand their individual responsibilities.

Guidance

1. An Authorised Person should regularly review and, where necessary, update its training programme to ensure that it remains current and relevant. The review should take into consideration the evolving nature of technology as well as emerging Cyber Risks.

2. A relevant Employee would include any member of staff with access to an Authorised Person's IT Systems or Networks or any other Employee who might otherwise be exposed to, or targeted by, a Cyber Incident.

3. New Employees should receive training within a reasonable period of joining the Authorised Person.

4. The DFSA expects Employees with privileged access rights to receive targeted security training that reflects their rights and responsibilities.

5.5.15 An Authorised Person must ensure that:

(a) it has in place a comprehensive programme to test the resilience of its IT Systems and Networks and its processes and controls implemented to comply with Rules 5.5.6 to 5.5.14;

(b) testing under the programme is carried out regularly, and in the case of internet facing systems, at least annually; and

(c) it has in place a process to prioritise and remedy adverse testing outcomes.

Guidance

1. An Authorised Person should use a range of methods to test its IT Systems and Networks and processes and controls, including:

   a. vulnerability assessments;

   b. scenario-based testing;

   c. penetration tests; and

   d. red team exercises,

   depending on the outcome of the Authorised Person's cyber risk assessment under Rule 5.5.5(2).

2. The frequency with which an Authorised Person should carry out testing will depend on the nature, scale and complexity of its business. For some Authorised Persons it may be adequate to test annually but for others it may be necessary to carry out tests more frequently. The DFSA expects additional tests to be carried out whenever systems are updated or new systems are implemented, including when systems are changed to address any vulnerabilities that have been identified during testing.

Detection, response and recovery

5.5.16 (1) An Authorised Person must continuously monitor its IT Systems and Networks with a view to detecting:

(a) Cyber Incidents; and

(b) the occurrence of anomalies and events indicating a potential Cyber Incident.

(2) An Authorised Person must have a process for escalating actual or potential Cyber Incidents.

Guidance

1. An Authorised Person's ability to detect an actual or potential Cyber Incident is essential for strong cyber resilience. Early detection provides an Authorised Person with useful lead time to take appropriate measures.

2. As part of its monitoring, the DFSA expects an Authorised Person to regularly review system logs, warnings, errors and security events to identify suspicious activities and system errors indicating a potential Cyber Incident.

3. The process for escalating actual or potential Cyber Incidents should define a point of contact for reporting incidents. All Employees should be made aware of their responsibility to report actual or potential Cyber Incidents as quickly as possible.

5.5.17 (1) An Authorised Person must draw up and maintain a robust Cyber Incident Response Plan providing for measures to be taken by the Authorised Person to respond to and limit consequences of a Cyber Incident.

(2) The Cyber Incident Response Plan must include appropriate conditions and procedures to ensure the timely implementation of response and recovery actions, including the actions required by Rule 5.5.18.

(3) The conditions and procedures in (2) must be regularly tested to ensure their effectiveness.

(4) An Authorised Person must ensure the Cyber Incident Response Plan is in writing and is reviewed at least annually and following the occurrence of a major Cyber Incident to ensure that it remains appropriate, effective and up-to-date.

Guidance

1. GEN Rule 5.3.23 provides overarching requirements for an Authorised Person's business continuity arrangements. The DFSA expects the Cyber Incident Response Plan to be integrated into the Authorised Person's overall crisis management and disaster recovery plans, where applicable.

2. The DFSA expects an Authorised Person's Cyber Incident Response Plan to include a plan for communication with internal and external stakeholders using pre-approved communication templates relating to identified scenarios that can easily be adjusted, if necessary, and promptly released if there is a Cyber Incident. The communication plans may be developed to address a range of possible scenarios taking into consideration experience from previous incidents.

3. An Authorised Person's test of its conditions and procedures under Rule 5.5.17(3) may be conducted in a variety of ways (for example table-top exercise or

simulations) and the appropriate scope of testing should be determined each time a test is planned. While an Authorised Person may decide to test only selected procedures at one time, it should ensure that all aspects of the Cyber Incident Response Plan are tested regularly. Testing requirements should be specified in the Cyber Incident Response Plan.

4. The regular review required by Rule 5.5.17(4) should take into account current cyber threat intelligence as well as lessons learned from previous events and be adjusted to account for new processes and services. Where the review is triggered by a major Cyber Incident (see Guidance item 1 under Rule 5.5.19), the DFSA expects an Authorised Person to assess whether established procedures were followed and whether actions taken were effective. It should also identify key lessons learnt with a view to improving future Cyber Incident response and recovery processes.

5.5.18 (1) If a potential or actual Cyber Incident is detected, an Authorised Person must carry out an investigation to determine its nature and extent.

(2) While the investigation in (1) is ongoing, the Authorised Person must, where applicable, take immediate action to contain the situation to prevent further damage and commence recovery processes based on its Cyber Incident Response Plan.

(3) An Authorised Person must take reasonable care to resume its operations responsibly, including by taking the following steps, where applicable:

(a) eliminating remaining harmful effects of the Cyber Incident;

(b) restoring affected elements of its IT Systems and Networks;

(c) recovering corrupted data;

(d) identifying and mitigating all vulnerabilities that were exploited by the Cyber Incident;

(e) remediating vulnerabilities to prevent similar Cyber Incidents in the future; and

(f) communicating appropriately internally and externally.

Notification

5.5.19 An Authorised Person must notify the DFSA as soon as reasonably practicable, and in any event no later than 72 hours, after it becomes aware, or has information which reasonably suggests, that a material Cyber Incident has occurred, using the appropriate form available on the DFSA electronic portal.

Guidance

1. In determining whether a Cyber Incident is material, an Authorised Person should take into account the extent to which the Cyber Incident:

a. affects customer information or poses a risk to Client Assets;

b. results in leakage or corruption of sensitive or confidential information;

c. disrupts critical business functions or information systems;

d. leads to material financial loss to the Authorised Person; or

e. affects external stakeholders.

2. The DFSA expects an Authorised Person to consider the need to report Cyber Incidents to other authorities, such as law enforcement agencies or the DIFC Data Protection Commissioner.

6 GENERAL PROVISIONS

6.1 Application

6.1.1 (1) Sections 6.1, 6.2, 6.3, 6.9 and 6.10 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) Only sections 6.9 and 6.10 of this chapter 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 Saturday or Sunday or an official State holiday in the DIFC, the obligation takes effect 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, for example, 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. Similarly, in AML Rule 3.2.1 and in FPR section 1.3 there are a number of specific definitions. 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 6.10.

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 is a Body Corporate incorporated in the DIFC, its head office and registered office must be in the DIFC.

(2) Where an Authorised Person is a partnership established under the Limited Partnership Law 2004 or the General Partnership Law 2006, its head office and registered office must be in the DIFC.

(3) Where an Authorised Person operates in the DIFC through a Branch:

(a) it must have a place of business in the DIFC that is the principal place where it carries on the activities for which it is authorised by the DFSA; and

(b) that place of business must be its address in the DIFC to which communications and notices may be addressed.

(4) An applicant for authorisation to carry on one or more Financial Services must satisfy the DFSA that it will meet the requirements in this Rule when the authorisation is granted.

(5) In this Rule:

(a) "head office" means the principal place where an Authorised Person carries on:

(i) the day-to-day management and control of its business, wherever that business may be conducted; and

(ii) the activities for which it is authorised by the DFSA; and

(b) "registered office" has the meaning given in the Companies Law, Limited Partnership Law 2004 or General Partnership Law 2006, as applicable.

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. An Authorised Firm, Authorised Market Institution or an applicant for authorisation 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.

3. The DFSA expects all Authorised Persons to have a physical presence, including Employees, in the DIFC. The DFSA does not permit 'brass plate' operations i.e. offices with the name of the entity but with no staff or where no meaningful activity takes place.

4. The Companies Law, Limited Partnership Law and General Partnership Law of the DIFC also require entities to which they apply, to have a registered office in the DIFC, and to carry on their principal business activity in the DIFC.

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 6.10.

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.

6.10 Provision of information to the DFSA

Guidance

1. This section sets out how certain information must be provided to the DFSA. It applies to information in an AFN form and in any other application, notification, report or return that must be provided to the DFSA under a Rule. It does not apply to PIB or PIN returns, which are subject to a special system: the DFSA Electronic Prudential Reporting System (EPRS).

2. The DFSA has enabled certain information to be submitted online using the electronic system on its website. If information can be submitted online, that online electronic system is to be used – see Rule 6.10.2. In other cases, information must be provided to the DFSA in accordance with Rule 6.10.3.

6.10.1 (1) This section applies to a Person providing information to the DFSA in:

(a) an AFN form; or

(b) any other application, notification, report or return required to be provided or submitted to the DFSA under a Rule.

(2) This section does not apply to an Authorised Person providing a return under PIB or PIN.

(3) In this section, a reference to information that can be submitted online is a reference to information that can be submitted to the DFSA online using the appropriate electronic system on the DFSA website.

Method of providing information

6.10.2 If information can be submitted online, a Person must submit the information to the DFSA using the online system.

6.10.3 If information cannot be submitted online then, unless a Rule states otherwise, a Person must ensure that information it provides to the DFSA:

(a) is provided to the DFSA in writing;

(b) sets out the Person's full name and, if applicable, its authorisation or registration number;

(c) is addressed to the attention of:

(i) the Markets Department if the information is being provided under AMI, REC, MKT, PRS or TKO; or

(ii) the Supervision Department in any other case; and

(d) is delivered to the DFSA:

(i) by post to the current address of the DFSA;

(ii) by hand to the current address of the DFSA; or

(iii) by electronic mail to an address provided by the DFSA.

Evidence that information was provided

6.10.4 A Person who provides information to the DFSA must retain sufficient evidence to be able to demonstrate to the DFSA, upon request, that the information was submitted or delivered.

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), (4), (5), (6), (7) and (8) 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) Deleted.

(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.

(5) If the application is for the Financial Service of Operating or Acting as the Administrator of an Employee Money Purchase Scheme, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.

(6) If the application is for Managing a Venture Capital Fund, the applicant must be a Body Corporate incorporated under the DIFC Companies Law.

(7) If the application is in respect of a Financial Service relating to a Crypto Token, the applicant must be a Body Corporate incorporated under the DIFC Companies Law, unless (8) applies.

(8) An applicant in respect of a Financial Service relating to a Crypto Token may be a Body Corporate incorporated outside the DIFC only if:

(a) it was an Authorised Firm before the commencement date (as defined in Rule 10.5.1(1));

(b) the Financial Service is not:

(i) Operating an Alternative Trading System;

(ii) Operating a Clearing House;

(iii) Providing Custody; or

(iv) Dealing as Principal where the applicant is to act as a Market Maker;

(c) its head office is licensed to carry on the relevant Financial Service, and supervised, by a Regulator in a Recognised Jurisdiction;

(d) its head office has arrangements in place to hold adequate regulatory capital against Crypto Tokens held on the balance sheet of the branch;

(e) its head office has cyber security insurance that covers potential losses by the branch; and

(f) where it will Advise on Crypto Tokens, its head office has appropriate professional indemnity insurance that covers advising by the branch.

Guidance

1. 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.

2. A Body Corporate incorporated under the DIFC Companies Law can be a Private Company or a Public Company.

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:

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

(g) require the applicant to provide additional information;

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

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

(j) 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 Applications for endorsements

Carrying on service with or for a Retail Client

7.3.1 The following requirements must be met by an Authorised Firm for the grant of an endorsement to carry on a Financial Service with or for a Retail Client:

(a) the applicant must have adequate systems and controls for carrying on Financial Services with or for a Retail Client;

(b) the applicant must have adequate systems and controls (including policies and procedures) to ensure compliance with the requirements in COB relevant to Retail Clients;

(c) the applicant must have adequate systems and controls to ensure that its Employees remain competent and capable to perform the functions which are assigned to them, in particular, functions that involve dealing with Retail Clients; and

(d) the applicant must have adequate Complaint handling policies and procedures.

Guidance

Where an Authorised Firm applies for an endorsement to carry on a Financial Service with or for a Retail Client that involves dealing in a Restricted Speculative Investment, the DFSA would expect it to be able to demonstrate that:

(a) either another Group member, or its head office if it is a Branch, is authorised and supervised by a Financial Services Regulator and has at least five years of relevant experience in dealing in Restricted Speculative Investments with Retail Clients; and

(b) a sufficient number of the compliance staff, and client-facing staff involved in dealing in Restricted Speculative Investments, have at least three years of relevant experience.

Acting as a Trade Repository

7.3.2 The requirements in App 5 must be met by an Authorised Firm for the grant of an endorsement to act as a Trade Repository.

Endorsement to hold Client Assets or Insurance Monies

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

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

Endorsement relating to Long-Term Insurance

7.3.5 An Insurance Intermediary applying for an endorsement to conduct activities relating to contracts of Long-Term Insurance must satisfy the DFSA that it has adequate skills and knowledge relating to underlying investments of Long-Term Insurance.

Endorsement to use a Fund Platform

7.3.6 A Person applying for an endorsement to use a Fund Platform must:

(a) be authorised to Manage a Collective Investment Fund; and

(b) satisfy the DFSA that the Incorporated Cell Company that is to be the Fund Platform:

(i) has adequate systems and controls to establish, manage, operate or wind up the type or specialist classes of Funds proposed to be established as Incorporated Cells of that Incorporated Cell Company; and

(ii) can carry out those activities in accordance with the requirements under the Collective Investment Law 2010 and CIR that apply to the relevant type or specialist classes of Funds referred to in (i).

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) A Licensed Function shall not include a function performed by a registered insolvency practitioner (subject to the restrictions defined within Article 123 of the Insolvency Law 2019) if the practitioner is:

(a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article 7 of the Insolvency Law 2019;

(b) appointed as a receiver or administrative receiver within the meaning of Article 42 of the Insolvency Law 2019;

(c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article 61 of the Insolvency Law 2019;

(d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article 68 of the Insolvency Law 2019; or

(e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article 90 and 59 of the Insolvency Law 2019.

(3) A Licensed Function shall not include a function performed by an individual appointed to act as:

(a) manager of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under Article 77A of the Regulatory Law; or

(b) Temporary Administrator of an Authorised Firm under Article 84Q of the Regulatory Law.

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 requirements relating to financial resources in PIN, PIB or other Rules.

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 the Authorised Firm's compliance with Rules and applicable legislation relating 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 other 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.

3. Rule 7.5.1A specifies when different Licensed Functions may be performed by one individual in an Authorised Firm, including restrictions on combining certain Licensed Functions.

7.5 Mandatory appointments, combining roles and other requirements

7.5.1 (1) An Authorised Firm must, subject to (2) and (3), 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.

(3) An Authorised Firm need not make the appointment referred to in (1)(b) if the only Financial Service it carries on is Managing a Venture Capital Fund.

7.5.1A (1) An Authorised Firm may, subject to (2), permit an individual to perform more than one Licensed Function for the Authorised Firm only if it is reasonably satisfied that:

(a) having regard to the nature, scale and complexity of the Authorised Firm's business and the individual's proposed duties, the different Licensed Functions can be performed effectively by one person;

(b) the individual is fit and proper to perform each Licensed Function; and

(c) there are no conflicts of interest or that actual or potential conflicts of interest are appropriately managed.

(2) An Authorised Firm must not permit an individual to perform a Licensed Function specified in the left-hand column of the Table below with another Licensed Function specified in the top row of the Table where a cross appears in the relevant intersecting column and row.

Table

	D/P	SM	SEO	FO	CO	MLRO
Director/Partner (D/P)		×	✓	✓	✓	✓
Senior Manager (SM)	×		✓	✓	✓	✓
Senior Executive Officer (SEO)	✓	✓		×	×	×
Finance Officer (FO)	✓	✓	×		×	×
Compliance Officer (CO)	✓	✓	×	×		✓
Money Laundering Reporting Officer (MLRO)	✓	✓	×	×	✓	

✓	may be combined if the conditions in Rule 7.5.1A(1) are met
×	cannot be combined

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 7.5.1A;

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, as contemplated in Rule 7.4.10.

2. An Authorised Firm will need to satisfy itself of the matters set out in Rule 7.5.1A(1) before it permits an individual to perform combined roles for the firm. That is, 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. The DFSA may refuse an application for Authorised Individual status for an individual intending to perform combined roles if it is not satisfied that all of these conditions is met.

3. 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.

4. 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.

5. The DFSA may, using its discretion to grant waivers or modifications, permit greater flexibility in combining Licensed Function roles where an Authorised Firm is winding down its business.

7.5.2 The Authorised Individuals referred to in Rule 7.5.1(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 (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 Licensed Partners 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 This chapter applies to every Authorised Person other than a Representative Office.

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

Guidance

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

8.2 Financial statements and financial reporting standards

8.2.1 An Authorised Person must prepare financial statements for each financial year of the Authorised Person.

Guidance

1. Chapter 4 of the Islamic Finance Rules (IFR) sets out specific disclosures an Authorised Person must include in its financial statements when carrying on Islamic Financial Business.

2. The financial statements prepared by an Authorised Person which is a Branch may be the financial statements prepared for the Authorised Person's head office.

8.2.2 (1) An Authorised Person must, except as provided under (2) and Rule 8.2.3, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS).

(2) If an Authorised Person is a Branch and the financial statements have been prepared for its head office, those financial statements may be prepared and maintained in accordance with the recognised financial reporting standards in the jurisdiction where the head office is located.

8.2.3 (1) An Authorised Firm specified in (2) may prepare and maintain its financial statements in accordance with IFRS for Small and Medium-Sized Entities (SMEs) where that standard applies to it.

(2) Authorised Firms specified for the purposes of (1) are:

(a) an Authorised Firm in Category 3B, Category 3C or Category 4, which does not hold or control Client Assets or Insurance Monies; and

(b) an Authorised Firm in Category 4 which is not authorised under its Licence to carry on the Financial Service of Operating an Alternative Trading System.

(3) The DFSA may by written notice direct that a particular Authorised Firm or a specified class of Authorised Firm specified in (2) must prepare and maintain financial statements in accordance with IFRS rather than IFRS for Small and Medium Sized Entities.

(4) The DFSA may by written notice vary or revoke a direction under (3).

(5) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA to give a direction under (3) to a particular Authorised Firm.

(6) If the DFSA decides to give a direction under (3) to a particular Authorised Firm, the Authorised Firm may refer the matter to the FMT for review.

8.2.4 An Authorised Person must:

(a) if it is a Body Corporate, have its financial statements approved by the Directors and signed on their behalf by at least one of the Directors; or

(b) if it is a Partnership, have its financial statements approved by the Partners and signed on their behalf by at least one of the Partners.

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 financial statements 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 six 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.

Financial years

8.3.5 (1) The first financial year of an Authorised Firm which is a Domestic Firm starts on the day on which it is incorporated and lasts for such period not exceeding 18 months as may be determined by its Directors or Partners.

(2) An Authorised Firm which is a Domestic Firm must as soon as practicable after it has made a determination under (1) notify the DFSA of the end date determined for its first financial year.

(3) The second and any subsequent financial year of an Authorised Firm which is a Domestic Firm shall, except as provided in Rule 8.3.6, start at the end of the previous financial year and shall last for 12 months or such other period which is within 7 days either shorter or longer than 12 months as may be determined by its Directors or Partners.

8.3.6 (1) An Authorised Firm which is a Domestic Firm may only change its financial year end from a period provided for under Rule 8.3.5(3) with the DFSA's prior consent.

(2) The application for consent must be in writing and include the 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.

8.3.7 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 by completing and submitting the appropriate form in AFN;

(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, is registered with the DFSA as a Registered Auditor.

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, by completing and submitting the appropriate form in AFN.

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 Auditor and 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 Auditor or 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. An Authorised Person should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Auditor or any of the relevant Employees of the Auditor that may affect the judgement of the Auditor when conducting an audit of the Authorised Person or complying with all its legal obligations, including the Regulatory Law, AUD, AML and other relevant modules of the DFSA Rulebook.

2. An Authorised Person should consider rotating the appointed relevant staff of the Auditor on a regular basis to ensure that the relevant staff of the Auditor remain independent.

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.

8.5 Co-operation with Auditors

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

(a) provide any information to its Auditor that its Auditor reasonably requires, or is entitled to receive as Auditor;

(b) give the Auditor right of access at all reasonable times to relevant records and information within its possession;

(c) allow the Auditor to make copies of any records or information referred to in (b);

(d) do not interfere with the Auditor's ability to discharge its duties;

(e) report to the Auditor any matter which may significantly affect the financial position of the Authorised Person; and

(f) provide such other assistance as the Auditor may reasonably request it to provide.

8.6 Audit reports

8.6.1 An Authorised Person must, in writing, require its Auditor to:

(a) conduct an audit of and produce a Financial Statement Auditor's Report on the Authorised Person's financial statements in accordance with:

(i) the International Standards on Auditing; or

(ii) if the Authorised Firm is a Branch and the financial statements have been prepared for its head office, the recognised audit standards in the jurisdiction where the head office is located;

(b) produce a Regulatory Returns Auditor's Report in accordance with the Rules in AUD App1 as relevant;

(c) produce, if the Authorised Firm is permitted to control or hold Client Money, a Client Money Auditor's Report in accordance with the Rules in AUD App2;

(d) produce, if the Authorised Firm is permitted to control or hold Insurance Monies, an Insurance Monies Auditor's Report in accordance with the Rules in AUD App3;

(e) produce, if the Authorised Firm is permitted to hold or control Client Investments or Provide Custody in or from the DIFC, a Safe Custody Auditor's Report in respect of such business as applicable, in accordance with the Rules in AUD App4; and

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

Guidance

For the purposes of Rule 8.6.1(a) the financial statements of an Authorised Person which is a Branch may be the financial statements prepared for the Authorised Person's head office.

8.6.2 An Authorised Person must submit any reports produced by its Auditor that are required by this chapter to the DFSA:

(a) within four months of the Authorised Person's financial year end; or

(b) if the report is on financial statements prepared for the head office of a Branch as referred to in Rule 8.6.1(a)(ii), within 14 days of the report being required to be submitted by the head office to its Financial Services Regulator,

whichever is later.

8.6.3 (1) An Authorised Person must, subject to (2), upon request by any Person, provide a copy of its most recent audited financial statements, together with the Financial Statement Auditor's Report to the Person. 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.

(2) The requirement in (1) does not apply to an Authorised Firm which:

(a) is in Category 3B, Category 3C or Category 4; and

(b) does not hold or control Client Assets or Insurance Monies.

Guidance

An Authorised Person should be aware that there may be other legislation applicable to it that may require the Authorised Person to provide access to all or part of its financial statements.

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;

(b) Section 9.3 applies to an Authorised Firm carrying on a Financial Service with or for a Professional Client.; and

(c) Section 9.4 sets out additional requirements that apply to an Authorised Firm carrying on the Financial Service of Providing Money Services or Arranging or Advising on Money Services.

9.2 Complaints handling procedures for Retail Clients

Written Complaints handling procedures

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

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

Guidance

1. In establishing adequate Complaints handling policies and procedures, an Authorised Firm should have regard to:

   a. the nature, scale and complexity of its business; and

   b. its size and organisational structure.

2. In handling Complaints, an Authorised Firm should consider its obligations under the Data Protection Law 2007.

3. An Authorised Firm should consider its obligations under GEN Rule 5.3.19 and accompanying guidance.

4. The DFSA considers 60 days from the receipt of a Complaint to be an appropriate period in which an Authorised Firm should be able to resolve most Complaints. However, Complaints related to the Provision of Money Services or Arranging or Advising on Money Services should generally be resolved within 15 business days – see Rule 9.4.3.

5. In accordance with COB Rule 2.1.2(5), a Member, Beneficiary or Participating Employer of an Employee Money Purchase Scheme is treated as a Retail Client of

an Operator or Administrator of the Scheme. Therefore, the complaints handling procedures in this chapter relating to Retail Clients will apply to those persons.

9.2.3 On receipt of a Complaint, an Authorised Firm must:

(a) acknowledge the Complaint promptly in writing;

(b) provide the complainant with:

(i) the contact details of any individual responsible for handling the Complaint;

(ii) key particulars of the Authorised Firm's Complaints handling procedures; and

(iii) a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11; and

(c) consider the subject matter of the Complaint.

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

Guidance

1. The DFSA considers 7 days to be an adequate period in which an Authorised Firm should be able to acknowledge most Complaints.

2. The DFSA expects an update to be provided to the complainant in circumstances where the resolution of the Complaint is taking longer than 30 days.

Resolution of Complaints

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

(a) advise the complainant in writing of the resolution of the Complaint;

(b) provide the complainant with clear terms of redress, if applicable; and

(c) comply with the terms of redress if accepted by the complainant.

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

Guidance

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

Employees handling Complaints

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.

9.4 Additional requirements for complaints related to Money Services

9.4.1 This section applies to a complaint made by a Client against an Authorised Firm relating to the Financial Service of:

(a) Providing Money Services; or

(b) Arranging or Advising on Money Services.

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

Complaints to be resolved within 15 business days

9.4.3 (1) An Authorised Firm must, except as provided in (2), advise the complainant in writing of the resolution of the Complaint and, if applicable, provide the complainant with clear terms of redress no later than 15 business days after the day on which it received the Complaint.

(2) If the Authorised Firm cannot comply with (1) for reasons beyond its control, it must send a holding reply, clearly indicating the reasons for the delay and specifying the deadline by which the complainant will receive a full reply.

(3) When the Authorised Firm advises the complainant of the outcome of a Complaint, it must inform the Client in writing:

(a) that the Client may refer the matter to the independent complaints handling service referred to in Rule 9.4.4 if the Client is not satisfied with the outcome;

(b) details of the independent complaints handling scheme and how the Client may access the service; and

(c) that the firm will pay the costs of the application fee to the scheme in the circumstances specified in Rule 9.4.4 (c).

Independent complaints handling service

9.4.4 An Authorised Firm must:

(a) ensure that Clients have access to an independent complaints handling service that can determine Complaints where a Client is not satisfied with the outcome of the firm's resolution of a Complaint;

(b) ensure that the service referred to in (a) is easily accessible to its Clients; and

(c) bear the cost of any application fee payable for the use of the service referred to in (a), unless the Complaint is found to be unsuccessful, in which case the firm may recover the cost of that fee from the Client.

Guidance

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

10 TRANSITIONAL RULES

10.1 Endorsements to hold client assets and insurance monies

Interpretation

10.1.1 In this section:

"commencement date" means the day on which Rule-Making Instrument No 166 of 2016 comes into force;

"endorsement" means an endorsement under:

(a) Rule 2.2.10A permitting an Authorised Firm to hold or control Client Assets; or

(b) Rule 2.2.10B permitting an Authorised Firm to hold Insurance Monies;

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

Endorsement not required during transitional period

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

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

10.1.3 (1) This Rule applies to an Authorised Firm that has, in the 12 months before the commencement date, submitted to the DFSA under Rule8.6.2:

(a) an Auditor's Report referred to in Rule 8.6.1(c) (a Client Money Auditor's Report); or

(b) an Auditor's Report referred to in Rule 8.6.1(e) (a Safe Custody Auditor's Report).

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

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

(b) has submitted to the DFSA an Auditor's Report referred to in (1) in the 12 months before the commencement date; and

(c) has in place adequate systems and controls to meet the applicable requirements in COB sections 6.11 to 6.14.

(3) The DFSA may require the notification in (2) to be in such form and verified in such manner as it thinks fit.

(4) If an Authorised Firm provides a duly completed notification to the DFSA in accordance with (2) and (3) within the transitional period:

(a) the DFSA must grant it an endorsement to hold or control Client Assets; and

(b) it is not required to apply for an endorsement under Rule 7.3.3 or pay the fee prescribed in FER 2.2.6 for such an application.

Grant of endorsement for Firms that already hold Insurance Monies

10.1.4 (1) This Rule applies to an Authorised Firm that has, in the 12 months before the commencement date, submitted to the DFSA under Rule 8.6.2 an Auditor's Report referred to in Rule 8.6.1(d) (an Insurance Monies Auditor's Report).

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

(a) wishes to obtain an endorsement to hold Insurance Monies;

(b) has submitted to the DFSA an Auditor's Report referred to in (1) in the 12 months before the commencement date; and

(c) has in place adequate systems and controls to meet the applicable requirements in COB section 7.12.

(3) The DFSA may require the notification in (2) to be in such form and verified in such manner as it thinks fit.

(4) If an Authorised Firm provides a duly completed notification to the DFSA in accordance with (2) and (3) within the transitional period:

(a) the DFSA must grant it an endorsement to hold Insurance Monies; and

(b) it is not required to apply for an endorsement under Rule 7.3.4 or pay the fee prescribed in FER 2.2.6 for such an application.

DFSA's powers not affected

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

10.2 Safe Custody Auditor's Report

Report not required for firms arranging custody

10.2.1 An Authorised Firm which has an authorisation for Arranging Custody is not required, in relation to carrying on that Financial Service, to submit a Safe Custody Auditor's Report under Rule 8.6.1(e) in respect of its financial years ending in 2016 or 2017, or any part of those financial years.

10.3 Re-classification of certain Financial Services

Interpretation

10.3.1 In this section:

"authorisation" means authorisation to carry on a Financial Service under a Licence;

"commencement date" means the day on which Rule-Making Instrument No 184 of 2016 comes into force; and

"re-classification" means the re-classification of a Financial Service under Rules 10.3.2 to 10.3.7.

Arranging Credit or Deals in Investments

10.3.2 An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Arranging Credit or Deals in Investments' in respect of both credit and Investments is, on the commencement date, taken to have the following authorisations:

(a) 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Arranging Credit; and

(b) 'Arranging Deals in Investments', but only with respect to the Investments specified on its Licence immediately before the commencement date.

10.3.3 An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Arranging Credit or Deals in Investments' only in respect of credit (and not Investments) is, on the commencement date, taken to have an authorisation for 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Arranging Credit.

10.3.4 An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Arranging Credit or Deals in Investments' in respect of Investments (and not credit), is, on the commencement date, taken to have an authorisation for 'Arranging Deals in Investments', but only with respect to the Investments specified on its Licence immediately before the commencement date.

Advising on Financial Products or Credit

10.3.5 An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Advising on Financial Products or Credit' in respect of Financial Products and credit is, on the commencement date, taken to have the following authorisations:

(a) 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Advising on Credit; and

(b) 'Advising on Financial Products', but only with respect to Financial Products specified on its Licence immediately before the commencement date.

10.3.6 An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Advising on Financial Products or Credit' only in respect of credit (and not Financial Products) is, on the commencement date, taken to have an authorisation for 'Arranging Credit and Advising on Credit' so far as that authorisation relates to Advising on Credit.

10.3.7 An Authorised Firm which, immediately before the commencement date, had an authorisation for 'Advising on Financial Products or Credit' only in respect of Financial Products (and not credit) is, on the commencement date, taken to have an authorisation for 'Advising on Financial Products', but only with respect to the Financial Products specified on its Licence immediately before the commencement date.

Public Register to be updated

10.3.8 The DFSA will amend the Public Register as soon as practicable after the commencement date to reflect the re-classifications under this section.

Certain things not affected

10.3.9 For the avoidance of doubt, re-classification under this section does not affect:

(a) any condition or restriction imposed on a Licence before the commencement date;

(b) the DFSA's ability to impose any condition or restriction on a Licence, or to withdraw or suspend an authorisation, after the commencement date;

(c) the classification of a Client, any Client Agreement entered into with a Client, or any procedure adopted or action taken by an Authorised Firm before the commencement date, in respect of a Financial Service provided to a Client; or

(d) any other right, remedy, privilege, obligation or liability arising in relation to the conduct of a Financial Service by an Authorised Firm before the commencement date.

Disclosure not required for Long-Term Insurance

10.3.10 An Authorised Firm is not required to comply with COB Rule 6.15.1 (relating to disclosure of certain information) in respect of any advice on Long-Term Insurance it provided, or any Long-Term Insurance it arranged, before the commencement date.

10.4 Transitional Rules relating to Employee Money Purchase Schemes

10.4.1 (1) In this Rule:

(a) "Certificate of Compliance" means a certificate of compliance issued in relation to a Scheme by the DIFCA Board under the Employment Regulations;

(b) "commencement date" means the day on which Rule-making instrument No 301 of 2021 comes into force;

(c) "transitional period" means the period starting on the commencement date and ending six months after that date.

(2) An Authorised Firm which, immediately before the commencement date was Operating or Acting as the Administrator of a Non-DIFC Scheme that had obtained a Certificate of Compliance, is not required to comply with Rule 2.2.10H in relation to the Scheme until the Certificate of Compliance has expired or been revoked by the DIFCA Board.

(3) A Person is not required to comply with Rule 7.2.2(5) (as amended by Rule-making Instrument No 301 of 2021) before the end of the transitional period.

10.5 Transitional Rules relating to Crypto Tokens

10.5.1 (1) In this Rule:

(a) "commencement date" means the day on which Rule-making instrument No. 328 of 2022 comes into force;

(b) "relevant activity or service", in relation to a Crypto Token, means an activity or service relating to a Crypto Token that on or after the commencement date requires DFSA authorisation as a Financial Service;

(c) "transitional period" means the period starting on the commencement date and ending six months after that date.

(2) This Rule applies to a Person who immediately before the commencement date:

(a) was an Authorised Person; and

(b) carried on a relevant activity or service relating to a Crypto Token.

(3) The Authorised Person, may until the end of the transitional period, continue to carry on the relevant activity or service referred to in (2) without:

(a) obtaining an authorisation from the DFSA for carrying on the relevant Financial Service relating to Crypto Tokens; and

(b) subject to (4), complying with the amendments to Rules that come into force as a result of Rule-making instrument No. 328 of 2022.

(4) The Authorised Person must, during the transitional period, comply with the following requirements relating to the relevant activity or service it carries on:

(a) Article 41B of the Regulatory Law:

(b) Chapter 2 of Part 4 of the Regulatory Law;

(c) Part 6 of the Markets Law;

(d) Rule 3A.2.2 of GEN;

(e) chapter 3 of GEN;

(f) section 4.2 of GEN;

(g) the AML Module.

(5) The DFSA may require:

(a) an Authorised Person to provide confirmation that it was carrying on a relevant activity or service before the commencement of the transitional period; and

(b) the confirmation referred to in (a) to be in such form and verified in such manner as it thinks fit.

Guidance

1. Section 10.5 allows some Authorised Persons to continue to carry on certain activities or services relating to Crypto Tokens for a transitional six-month period after the commencement date without being required to obtain the necessary amendment to its authorisation or to comply with various detailed requirements relating to Crypto Tokens.

2. However, the transitional relief only applies to persons who immediately before the commencement date were authorised by the DFSA and were in fact already carrying on the activities or services relating to Crypto Tokens. That is, it does not apply to persons who were not authorised or not carrying on the activities or services before that date. The DFSA may require confirmation from an Authorised Person that it was in fact carrying on the activities or services before the commencement date.

3. The transitional relief does not relieve the Authorised Person from complying with certain key obligations during the transitional period in respect of the activities or services it carries on under the transitional arrangements. For example, the Authorised Person must comply with the Principles for Authorised Firms, Financial

Promotion requirements, Market Abuse provisions, provisions prohibiting misconduct (e.g. misleading, deceptive, fraudulent or dishonest conduct) and the prohibition relating to the use of Privacy Tokens. Further, the Authorised Person must comply with all anti-money laundering requirements which apply not only under the DFSA's AML Rules but also under Federal Legislation.

4. An Authorised Firm that can use the transitional arrangements will need to obtain the necessary authorisations relating to the Crypto Tokens by the end of the transitional period. If it does not do so, it will need to cease carrying on the relevant activities or services after the transitional period.

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 to the DFSA using the appropriate form in AFN.

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 other than a Representative Office 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), 56(3), 58(2) and 58(3).

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 a reference to the FMT relating to the relevant condition or restriction may commence under Article 29.

Guidance

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 26 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.

(5) An Authorised Firm must take reasonable steps to ensure that, after any period of temporary cover permitted under this Rule, an individual who is an Authorised Individual is appointed to perform the relevant function.

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.

(3) If the DFSA decides to exercise its power under this Rule not to approve a Person as a Controller or to impose conditions on an approval, the Person may refer the matter to the FMT for review.

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).

(7) If the DFSA decides to exercise its power under this Rule to object to a Person as a Controller, to impose conditions on an approval or to require a Person to dispose of their holdings, the Person may refer the matter to the FMT for review.

Guidance

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.

11.9 Deleted

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 object to the establishment by a Domestic Firm of a branch office elsewhere in the world.

(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.

(3) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under (1).

(4) If the DFSA decides to exercise its power under (1), the Domestic Firm may refer the matter to the FMT for review.

11.10.6 Deleted

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 in respect of 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 Rules 1.3.3 to 1.3.5) or Category 4 (as defined in PIB Rule 1.3.6).

(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 1.3.7); 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

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 (1) The procedures in Schedule 3 to the Regulatory Law apply to a decision of the DFSA under Rules 11.10.9, 11.10.10 and 11.10.11 to object to an acquisition or to impose or vary conditions.

(2) If the DFSA decides to exercise its power under Rule 11.10.9, 11.10.10 or 11.10.11 to object to an acquisition or to impose or vary conditions, the Authorised Firm may refer the matter to the FMT for review.

Suspected Market Abuse

11.10.12A (1) An Authorised Firm must notify the DFSA immediately if it:

(a) receives an order from a Client, or arranges or executes a transaction with or for a Client; and

(b) has reasonable grounds to suspect that the order or transaction may constitute Market Abuse.

(2) The notification under (1) must specify:

(a) sufficient details of the order or transaction; and

(b) the reasons for the Authorised Firm suspecting that the order or transaction may constitute Market Abuse.

(3) An Authorised Firm must not inform the Client, or any other Person involved in the order or transaction, of a notification under this Rule.

Guidance

1. Under Rule 5.3.20, an Authorised Firm must establish and maintain systems and controls that ensure that it and its employees do not engage in market abuse or facilitate others to engage in market abuse, whether in the DIFC or elsewhere. Rule 11.10.12A requires the firm to notify the DFSA if it reasonably suspects that a client's order or transaction may constitute Market Abuse under Part 6 of the Markets Law.

2. In some cases, a suspicion of Market Abuse may arise when an order is received. In other cases, it may not be apparent until a transaction is executed or when viewed in the context of later information, behaviour or transactions. When a firm submits a notification, it should be able to explain to the DFSA its reasons for suspecting that the order or transaction may constitute Market Abuse.

3. The details of the order or transaction provided with the notification should include the date and time of the order or transaction, the relevant Investment, the client and other parties involved, the nature of the order (e.g. limit order or market order), the nature of the transaction (e.g. on-exchange or OTC) and if the client was acting on its own account or for a third party.

4. If a firm reasonably suspects that a client's order or transaction may constitute market abuse under the laws in another jurisdiction, it will also need to consider if it needs to notify the regulator in that other jurisdiction (under any corresponding obligation to notify).

5. If an Authorised Firm becomes aware that the firm itself, or an employee of the firm, (rather than a client) has engaged in conduct that may constitute market abuse in the DIFC or elsewhere, it has a separate obligation to notify the DFSA under Article 67 of the Regulatory Law and Rule 11.10.7.

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 or an Incorporated Cell Company, an Insurer must advise the DFSA immediately if it becomes aware of any actual or prospective significant change in the type or scale of the business conducted through a Cell, or in the ownership of the Cell shares of the Protected Cell Company or of an Incorporated Cell of the ICC.

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.

Significant events affecting Crypto Tokens

11.10.21 (1) This Rule applies to an Authorised Person that carries on a Financial Service relating to a Crypto Token.

(2) The Authorised Person must notify the DFSA immediately if it becomes aware of any significant event or development that reasonably suggests that the Crypto Token no longer meets the criteria referred to in Rule 3A.3.4 for it to be a Recognised Crypto Token.

(3) A notification is not required under (2) if the Authorised Person reasonably believes that the information is already generally available to the public.

Guidance

1. The DFSA would not normally expect an Authorised Person to carry out daily monitoring of whether a Crypto Token continues to meet the eligibility criteria for recognition. Rather, if the Authorised Person becomes aware of a significant event or development during the normal course of its business, it should inform the DFSA. There may, however, be certain services where an Authorised Person may be either required or more likely to be aware of developments relating to a Crypto Token. For example, this might occur where an Authorised Firm operates a MTF that trades the Crypto Token, acts as a Market Maker for the Crypto Token or is involved in the development, offer or marketing of the Crypto Token. In such situations the DFSA would expect the Authorised Person to have greater knowledge and awareness of developments relating to the Crypto Token and therefore to be more likely to report adverse events or developments.

2. As set out in the Guidance under Rule 3A.2.1, the DFSA's recognition of a Crypto Token does not relieve an Authorised Person of its obligation to conduct adequate due diligence on the Crypto Token both before and when carrying on an activity or service relating to the Crypto Token.

11.12 Requirement to provide a report

11.12.1 This section applies to every Authorised Person.

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;

(m) the DFSA considers there are reasonable grounds to require the suspension or removal from trading of an Investment or Crypto Token traded on any facility operated by the Authorised Person; or

(n) the DFSA considers that this prohibition or requirement is necessary to ensure customers, Authorised Persons or the financial system are not adversely affected.

12 BUSINESS TRANSFER SCHEMES

Guidance

1. Part 9 of the Regulatory Law ("Part 9") sets out provisions relating to financial services business transfer schemes ("transfer schemes"). Article 106 provides that no transfer scheme is to have effect unless a Court order has been made in relation to the scheme. Article 108 provides that the Court may make an order sanctioning a transfer scheme.

2. The DFSA may under Article 113 of the Regulatory Law make Rules providing for provisions of Part 9 to have effect in specified cases with modifications. This chapter sets out such Rules.

3. The intended effect of the Rules in this chapter when read with Part 9 is that:

   (a) a Banking transfer scheme and an Insurance transfer scheme (as defined in this chapter) must continue to comply with all relevant requirements in Part 9 and such a scheme does not take effect unless a Court order has been made in relation to it under Article 108; and

   (b) a transfer scheme, other than a scheme referred to in (a) or a scheme relating to a Domestic Fund, is not required to be sanctioned by a Court order under Article 108 if certain conditions set out in Rule 12.1.4 are met.

4. The Rules in this chapter do not prevent an Authorised Firm or transferee applying for a Court order sanctioning a transfer scheme under Part 9 if they consider it appropriate to do so, for example, if the scheme is complex, is likely to be contentious or if additional legal certainty is sought.

12.1 Modifications applying to transfer schemes

12.1.1 The Rules in this chapter are prescribed under Article 113 of the Regulatory Law and Part 9 of that Law is to be read as if it was modified, in relation to the cases set out in Rule 12.1.4, as specified in this chapter.

12.1.2 In this chapter:

(a) "Banking transfer scheme" means a transfer scheme where the whole or part of the business to be transferred relates to the Authorised Firm's business of Accepting Deposits;

(b) "Court order" means a Court order under Article 108 of the Law;

(c) "Fund transfer scheme" means a transfer scheme relating to the Fund Property of a Domestic Fund or of a sub-fund of an Umbrella Fund that is a Domestic Fund;

(d) "Insurance transfer scheme" means a transfer scheme where the whole or part of the business to be transferred relates to the Authorised Firm's Insurance Business;

(e) "the Law" means the Regulatory Law; and

(f) "transfer scheme" has the meaning given in Article 106 of the Law.

12.1.3 The Rules in this chapter do not modify the provisions of Part 9 of the Law so far as they apply to any of the following:

(a) a Banking transfer scheme;

(b) an Insurance transfer scheme; or

(c) a Fund transfer scheme.

12.1.4 A transfer scheme, other than a scheme referred to in Rule 12.1.3, is not required to be sanctioned by a Court order to be effective if:

(a) all of the Clients of the Authorised Firm who will be affected by the transfer scheme have consented to it;

(b) the transfer scheme is expressly permitted under agreements between the Authorised Firm or transferee and the Clients of the Authorised Firm who will be affected by the scheme and any procedures in the agreements for giving effect to the scheme have been complied with; or

(c) the DFSA has consented in writing to the transfer scheme under Rule 12.1.5.

12.1.5 (1) An Authorised Firm or transferee may apply in writing to the DFSA seeking its consent to a transfer scheme.

(2) The DFSA may consent in writing to the transfer scheme if it is reasonably satisfied that:

(a) the scheme is not a transfer scheme referred to in Rule 12.1.3;

(b) it is more appropriate and proportionate, and in the overall interests of Clients affected by the scheme, for the Authorised Firm or transferee to seek the DFSA's consent rather than applying to the Court for an order sanctioning the scheme;

(c) the Authorised Firm or transferee has taken all reasonable steps to pursue other options for giving effect to the scheme;

(d) the scheme is not likely to result in any material prejudice to the interests of Clients of the Authorised Firm; and

(e) implementation of the scheme will not result in the Authorised Firm or transferee contravening any applicable law or Rule.

(3) The procedures in Schedule 3 to the Law apply to a decision of the DFSA under (2) to refuse to give its consent to a transfer scheme.

(4) If the DFSA decides to refuse to give its consent under this Rule, the Authorised Firm may refer the matter to the FMT for review.

Guidance

1. The DFSA expects to receive applications seeking its consent to a transfer scheme only in limited circumstances, and if the scheme is not complex or contentious. If a scheme is likely to be contentious or complex, then it is more appropriate for an application to be made to the Court.

2. The DFSA will not give its consent unless the applicant can demonstrate that it has taken all reasonable steps to pursue other options for implementing the scheme, such as seeking the consent of affected Clients or using existing agreements with Clients.

3. The DFSA also will not give its consent in cases such as where:

   (a) the transfer scheme is likely to materially prejudice the interests of Clients;

   (b) due to the complexity of the transfer scheme it is unclear what the precise impact of the scheme will be on Clients or whether it will be legally effective; or

   (c) implementation of the transfer scheme will result in the Authorised Firm or transferee breaching a requirement in a law or Rule, for example, if the transferee does not have the necessary authorisation to conduct that business or if the transfer will result in the Authorised Firm or transferee breaching a prudential requirement.

4. The type of case where the DFSA anticipates giving its consent to a transfer scheme is where the scheme is relatively simple and the applicant has taken all reasonable steps to pursue other options but has been unable to complete the necessary processes because, for example, a small number of Clients do not respond.

13. FACILITATING INNOVATION

Guidance

Introduction

1. This chapter sets out the DFSA's approach to dealing with businesses that wish to test innovative financial technology in or from the DIFC. In particular, it sets out how the DFSA will consider using its powers to waive or modify Rules for such businesses.

2. In this way the DFSA may create a simplified regulatory framework tailored to the specific business proposal. This will allow the business to test innovative uses of technology, potentially resulting in new financial products or services without having to comply with Rules that may be inappropriate or disproportionate given the innovative nature of the business and that it is only at a testing stage.

3. The DFSA would however expect a business, once it is fully operational, to be able to comply with all relevant Rules applicable to the type of activities it carries on.

Businesses that can use this approach

4. To be considered for this approach, a business should, before submitting a Licence application, demonstrate to the satisfaction of the DFSA, that:

   (a) there is a genuine need to test technology in a way that involves the carrying on of one or more Financial Services (i.e. it is within the scope of activities that the DFSA regulates);

   (b) testing will involve the use of innovative technology by offering a new type of financial product or service or by applying innovative technology to an existing financial product or service;

   (c) it is ready to start live-testing of its innovative technology with customers or users;

   (d) it understands the applicable requirements in the DIFC and how its use of innovative technology might affect its ability to comply with those requirements; and

   (e) it intends to roll-out its innovative technology on a broader scale in or from the DIFC once it has successfully completed testing.

5. In assessing if a business involves the use of innovative technology, the DFSA will consider, among other things, its value proposition, in particular in the light of:

   (a) the prevalence of the technology within the DIFC, the region and the wider financial services industry; and

   (b) whether the technology addresses a problem or brings potential benefits to consumers or the industry.

6. Where a business does not meet the criteria in paragraph 4, it should apply via the standard application process.

Authorisation

7. If a business involves an activity that is a Financial Service in the DIFC, it will need to obtain a Licence before it can start testing its product or service. An existing Authorised Person that wishes to test such a business should refer to the Guidance in paragraphs 26 to 28. If a business does not involve a Financial Service, a DFSA Licence will not be required to test or carry on the business in the DIFC (although other DIFC approvals may still be needed).

8. An applicant will need to satisfy the requirements in GEN chapter 7 to be authorised. For example, it will need to demonstrate that it is fit and proper and has adequate financial and

non-financial resources. In assessing the application, the DFSA, where appropriate, will take into account the limited nature of the authorisation that is being sought, that the business is only at a testing stage and the simplified regulatory requirements that are, therefore, likely to apply.

9. The DFSA may also consider if it is appropriate to grant relief from certain prudential requirements (i.e. PIB or PIN Rules), conduct rules, or corporate governance arrangements, for example, taking into account that management control of a new innovative technology business usually lies with one or two individuals.

Pre-application stage

10. A business that wishes to apply for a Licence to test its innovative technology should complete a pre-application form.

11. The DFSA will need to be satisfied that:

    (a) the criteria for the use of the approach are met (see paragraph 4); and

    (b) the information provided in the pre-application form is complete and appropriate,

    before the business submits its Licence application

Licence application and Test Plan

12. Following the successful completion of the pre-application stage, a business should submit its application for a Licence.

13. The applicant will need to provide a detailed test plan (a Test Plan) with its Licence application. The Test Plan must clearly describe:

    (a) the business and the proposed innovative product or service;

    (b) the objectives and parameters for the testing of the product or service;

    (c) the timeline and key milestones for testing;

    (d) the number and type of customers that will take part in testing and how they will be sourced;

    (e) the key risks of testing and how they will be mitigated;

    (f) how the business will ensure that customers understand that the product or service is being tested and the resulting risks;

    (g) the safeguards that will be put in place to adequately protect customers in the event of a problem arising from use of the technology or the business failing;

    (h) how communications with customers will be handled before, during and after testing, including how the business will deal with queries, feedback and complaints;

    (i) how the success of the testing will be measured;

    (j) how testing progress will be reported to the DFSA;

    (k) the next steps if the testing is successful; and

    (l) a clear exit plan if the testing is not successful, including how the business will fulfil its obligations to its testing customers.

Non-responsive applications

14. Where, after submitting an application, a business does not:

    (a) intend to proceed with its application; or

    (b) work with the DFSA in a way that allows the DFSA to assess the application, for example, because the application remains incomplete or fails to meet the minimum standards,

    the DFSA expects that business to withdraw its application.

Applying a simplified regulatory framework

15. The DFSA will work with the applicant to understand its business proposal and to establish, on a case-by-case basis, whether any Rules should not apply to that business or apply to it with modifications during the testing phase.

16. While the DFSA will consider giving relief from various parts of the Rulebook, it is not likely to waive or modify certain key requirements, for example, Rules relating to:

    (c) fitness and propriety (see Rule 7.2.5);

    (d) acting with integrity and with due skill, care and diligence (see Rules 4.2.1 and 4.2.2);

    (e) having due regard to customers' interests and communicating information in a way that is fair, clear and not misleading (see Rule 4.2.6);

    (f) being open and co-operative with the DFSA (e.g. Rule 4.2.10 and section 11.1);

    (g) Financial Promotions (see chapter 3); and

    (h) holding and controlling Client Assets (COB sections 6.11 to 6.13).

17. The DFSA will also not waive or modify requirements based on Federal Law requirements, for example, Rules relating to:

    (a) not accepting Deposits from the State's markets or carrying on currency exchange involving the Dirham (see COB Rules 4.2.1 and 4.3.1);

    (b) having an office in the DIFC (see Rule 6.5.1); and

    (c) AML requirements.

Restrictions and conditions

18. If the DFSA grants a Licence to the business, it is likely to impose appropriate restrictions including, for example, restricting:

    (a) the business that may be carried on under the Licence to testing the specific innovative product or service;

    (b) the number and type of customers that may take part in the testing; and

    (c) the period during which it may carry on testing.

19. The DFSA is also likely to impose conditions on the Licence, for example, requiring the business:

    (a) to comply with its Test Plan;

(b) not to change or modify its business model or Test Plan without the DFSA's consent;

(c) to disclose in any communications that it is only authorised by the DFSA to test its product or service for a limited period of time; and

(d) within a reasonable period after the test period ends, either to demonstrate it can comply fully with all regulatory requirements or to cease carrying on its activities.

Completion of testing

20. As the purpose of the DFSA's approach is to allow a business to test and develop its innovative technology, and not to carry on a fully operational business, the DFSA would expect the business to use the simplified regulatory framework only for a limited period. It is, therefore, likely to grant waivers and modifications only for a finite period, normally twelve to twenty-four months. In exceptional cases, it may consider extending that period.

21. When the testing period ends, the business would be expected either:

(a) if the testing is successful, to carry on its business on a broader scale, in which case it will need to demonstrate to the DFSA's satisfaction that it is able to comply fully with relevant legal and regulatory requirements before the DFSA will remove the various restrictions and conditions; or

(b) to cease carrying on activities in the DIFC, in which case it should implement its exit plan and ensure that all obligations to customers are fulfilled.

22. The DFSA will not permit a business that has completed testing to continue to hold a restricted Licence (i.e. that only permits it to carry on testing). At this point the business should either apply to remove the restrictions or to apply to have the Licence withdrawn. Nonetheless, until the application to remove the restrictions has been determined or the Licence has been withdrawn, the business is required to continue to operate under the terms of its restricted Licence.

23. In appropriate cases, if testing is successful, the DFSA may consider granting further waivers or modifications to the business if the innovative nature of its business model, once fully operational, means that certain Rules are either not appropriate or disproportionate.

Withdrawal of Licence

24. Without limiting any other grounds on which it may act, the DFSA may take action to withdraw a restricted Licence at any time if the business:

(a) is no longer fit and proper to hold a Licence;

(b) has breached any restrictions or conditions imposed on the Licence;

(c) has breached the Law or any Rules;

(d) is not carrying on testing under the Licence as set out in its Test Plan; or

(e) has completed its testing but has not promptly taken steps either to apply to remove the restrictions or to withdraw its Licence.

Fees

25. The fees that are payable are set out in FER. The precise fee calculation will depend on the nature of the activities being carried on.

Existing Authorised Persons that wish to test innovative technology

26. If an existing Authorised Person wishes to test innovative technology, it will not need to apply for a Licence. Instead, if it has authorisation for the activity it wishes to carry on, it may carry on the activity. Alternatively, if it does not have the relevant authorisation for the activity, it will need to apply to amend its Licence to obtain that authorisation.

27. If the Authorised Person considers that there are Rules that are not appropriate or are disproportionate to the testing of its technology, it can apply to the DFSA for a waiver or modification of the Rules. Again, if the DFSA grants waivers or modifications, it will do so only for a finite period (the period during which testing is to take place).

28. An Authorised Person that wishes to test an innovative technology should discuss its proposal with the DFSA at an early stage.

Partnerships with existing Authorised Persons

29. In some cases, a Person wishing to test innovative technology may seek to do so in partnership with an Authorised Person. If that is the case, and the activity is to be carried out under the Licence of the Authorised Person, paragraphs 26 to 28 will be relevant. Alternatively, if the business wishes to carry on the business in its own right, it will need to apply for a Licence.

14 FIXED PENALTY NOTICES

14.1.1 The following Rules are subject to a Fixed Penalty Notice:

(a) AMI Rules 8.2.9(1), 9.6.1, 9.6.3 and 9.6.4;

(b) AML Rule 14.5.1;

(c) AUD Rule 4.8.1;

(d) CIR Rules 9.4.2(1), 9.6.2 and 15.1.10(1);

(e) COB Rules 14.5.1(2)(b), 15.4.6(2) and 15.8.1(2)(b);

(f) GEN Rules 8.6.2 and 11.8.12(1);

(g) PIB Rules 2.3.8(1), 2.3.8(2), 10.3.2(3) and 10.4.2(3);

(h) PIN Rules 6.5.1, 6.5.5, 6.5.7, 6.6.2(1), 7.2.3(1), 7.3.5, 8.5.2, 8.5.3 and 9.4.10; and

(i) REC Rule 3.5.1.

14.1.2 The penalty payable under a Fixed Penalty Notice is:

(a) $2,500 for the first contravention;

(b) $7,500 for the second contravention; and

(c) $15,000 for any subsequent contravention,

of any of the Rules specified in Rule 14.1.1 by a Person in any single calendar year.

14.1.3 For the purpose of determining the penalty payable under Rule 14.1.2:

(a) a contravention includes any contravention for which:

(i) a penalty issued under a Fixed Penalty Notice has been paid; or

(ii) a Person has been fined or censured under Article 90(2)(a) or (b) of the Regulatory Law; and

(b) the contraventions referred to in Rule 14.1.2(b) to (c) do not need to relate to a contravention of the same rule.

14.1.4 The prescribed period for payment of a penalty is within 14 days after the day the Fixed Penalty Notice is given to a Person.

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 acting in his professional capacity;

(b) by an accountant 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 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 Intermediation;

(xi) Insurance Management;

(xii) Managing a Profit Sharing Investment Account;

(xiii) Providing Trust Services;

(xiv) Arranging Credit and Advising on Credit; or

(xv) Operating a Crowdfunding Platform,

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 AND CRYPTO TOKENS

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;

(b) the Security or Derivative in the form of a cryptographically secured digital representation of rights and obligations that is issued, transferred and stored using DLT or other similar technology;

(c) a cryptographically secured digital representation of rights and obligations that is issued, transferred and stored using DLT or other similar technology and:

(i) confers rights and obligations that are substantially similar in nature to those conferred by a Security or Derivative; or

(ii) has a substantially similar purpose or effect to a Security or Derivative; and

(d) any instrument declared as a Security or Derivative pursuant to Rule A2.4.1(1).

(3) In these Rules, an Investment Token means an instrument specified in (2)(b) or (c).

(4) 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

1. A Token is defined in GLO as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using DLT or other similar technology.

2. Rules A2.1.1(2)(b) and (c) specify when a Token will be an Investment. A Token that is an Investment may be either a Security or a Derivative and will be treated under the Rules as being the particular type or particular types of Security or Derivative to which it is substantially similar in nature. A Token that is an Investment is defined in these Rules as an Investment Token.

3. An Investment Token that is the same as, or substantially similar in nature, purpose or effect to, a Share, Debenture, Warrant, Certificate, Unit or Structured Product is defined in GLO as a "Security Token". An Investment Token that is the same as, or substantially similar in nature, purpose or effect to, an Option or a Future is defined in GLO as a "Derivative Token".

4. GEN App 6 sets out further Guidance relating to whether a particular Token is an Investment Token.

5. An example of the application of Rule A2.1.1(~~3~~4) 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;

(v) a Crowdfunding Loan Agreement;

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), Crypto Token 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.

4. The reference to "property" in Rule A2.3.1(b) will include a Crypto Token, therefore the definition covers a Future relating to a Crypto Token.

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).

A2.5 Definitions relating to Crypto Tokens

Guidance

1. This section defines when a Token is a "Crypto Token" or an "Excluded Token". A Token is defined in GLO as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically using DLT or other similar technology.

2. In summary, a Token is a Crypto Token if it is used, or intended to be used, as a medium of exchange or for payment or investment purposes (or it confers a right or

interest in such a Token) and it is not an Investment Token or other Investment (see Rule A2.1.1) or an Excluded Token (see the definition in Rule A2.5.2 below).

3. The following diagram illustrates the different classification of Tokens:

Tokens				
Investment Tokens	**Crypto Tokens**			**Excluded Tokens**
	Recognised Tokens	Unrecognised Tokens	Prohibited Tokens:- • Privacy Tokens • Algorithmic Tokens	• Non-Fungible Tokens • Utility Tokens • Digital currencies issued by Governments
Financial Services can be carried on in the DIFC subject to compliance with DFSA regulatory requirements	*Financial Services can be carried on in the DIFC subject to compliance with DFSA regulatory requirements*	*Financial Services cannot be carried on in the DIFC unless and until recognised by the DFSA (unless providing custody)*	*Prohibited from being used in the DIFC*	*Use not regulated in the DIFC except:* - *some issuers or service providers of NFTs and Utility Tokens must be registered as a DNFBP for AML purposes* - *an Authorised Person cannot carry on both Crypto Token Business and business relating to NFTs and Utility Tokens (unless providing custody)*

Crypto Token

A2.5.1 (1) A token is a Crypto Token if it:

(a) is used, or is intended to be used, as a medium of exchange or for payment of investment purposes; or

(b) confers a right or interest in another Token that meets the requirements in (a).

(2) A Token is not a Crypto Token under (1) if it is:

(a) an Excluded Token; or

(b) an Investment Token or any other type of Investment.

Guidance

1. The definition of a Crypto Token refers not only to how a Token is used but also how it is intended to be used. The intended use of a Token will normally be evident from documents such as the white paper or other concept papers for the Token that have been prepared and published by the developers of the Crypto Token.

2. The most common types of a Crypto Token are cryptocurrencies and stablecoins (i.e. Crypto Tokens that aim to maintain a stable price by determining their value by reference to the value of a currency, commodity, gold or other asset.) Cryptocurrencies do not usually provide the holder with a bundle of rights as are commonly attached to Investments. More generally, cryptocurrencies serve as the virtual currency of their native blockchain, where transaction validation takes place through various forms of decentralised consensus mechanisms.

3. It is not uncommon for certain cryptocurrencies to provide the holder with rights of early access or discounts on the native blockchain (for example, where the cryptocurrency is the virtual currency on the native crypto exchange). However, these limited rights do not change the nature of the cryptocurrency as these rights have limited impact on the nature and value of the Token.

4. Stablecoins, as opposed to other cryptocurrencies, aim to maintain a stable price through a direct one-to-one peg against a fiat currency (usually, the US dollar) or by pegging their value to other assets, such as commodities or other cryptocurrencies. Stablecoins usually claim to have a reserve of assets to back their peg. These assets are purchased using the funds provided by purchasers of the stablecoins. Stablecoins are often used to enter and exit blockchain-based trading systems, where the use of fiat currency is limited, as well as to make payments and transfers between users.

5. Derivatives such as futures contracts or options may also be issued relating to cryptocurrencies. Such a futures contract or an option will be a Derivative as defined in GEN Rule A2.1.3 and therefore an Investment under GEN Rule A2.1.1, rather than a Crypto Token as defined in this section. Similarly, if the arrangements relating to a Token constitute a Collective Investment Fund, then the Token will be a Unit and therefore a Security, rather than a Crypto Token.

Excluded Token

A2.5.2 A Token is an excluded Token if it is:

(a) a Non-Fungible Token (NFT);

(b) a Utility Token; or

(c) a digital currency issued by any government, government agency, central bank or other monetary authority.

Non-Fungible Token (NFT)

A2.5.3 A Token is a Non-Fungible Token (NFT) if it:

(a) is unique and not fungible with any other Token;

(b) related to an identified asset; and

(c) is used to prove the ownership or provenance of the asset.

Guidance

1. A Non-Fungible Token (NFT) is a Token that relates to an identified asset such as art, music, a collectable item, intellectual property relating to an object or some other specific asset. To fall within the definition in Rule A2.5.3 the Token must be unique and not fungible with another Token. Therefore, if a particular type of Token is issued to multiple persons or relates to several different assets, it is unlikely to qualify as a NFT under Rule A2.5.3 and therefore will not be an Excluded Token under Rule 2.5.2. If it is not a NFT, as defined, it is likely to fall within the definition of a Crypto Token or may, depending on the arrangements, constitute a Collective Investment Fund (in which case the Token will be a Unit of that Fund).

2. The DFSA will take a substance over form approach in considering whether a Token that calls itself a NFT is in fact a NFT under the above definition. If it is not a NFT, as defined, and is a Crypto Token, a person should not carry out a Financial Service relating to that Token unless they are licensed to do so, and it is a Recognised Crypto Token.

   Example 1

   An individual artist has created a Token that represents a one-of-a-kind piece of art. This Token is to be sold by auction. The owner will then be able to sell the Token to a new owner, should they wish to do so. This Token would be a NFT.

   Example 2

   Company A invests in art using the funds it receives and pools from investors. It then issues Tokens to those investors in proportion to their contributions. The Tokens also entitle the holders to receive a share of the fees generated by art rental, and the profits if the art sells. They have no control over the decisions taken by Company A in respect of the art. These Tokens are likely to constitute Units in a Collective Investment Fund.

   Example 3

   A NFT is created which tracks the price of a certain commodity, precious stone or gold or a security. In this case, it is likely to be an Investment or Investment Token such as a Unit of a Fund or a Derivative.

Utility Token

A2.5.4 A Token is a Utility Token if:

(a) it can be used by the holder only to pay for, received a discount on, or access a product or service (whether current or proposed); and

(b) the product or service referred to in (a) is provided by the issuer of the Token or of another entity in the issuer's Group.

Guidance

A Token will be a Utility Token only if it can be used by the holder to pay for, receive a discount on, or access a product or service (whether current or proposed), and the product or service is provided by the issuer of the Token or of another entity in the issuer's group. However, if at any time during the lifecycle of a Token, it can be used for other purposes, for example, as a medium of exchange or for payment or investment purposes, its hybrid nature is likely to result in it falling outside the scope of the above definition. If this is the case, it is likely to be a Crypto Token, and a person should not carry out a Financial Service relating to that Token unless they are licensed to do so, and it is a Recognised Crypto Token.

Alternatively, if the Token has characteristics substantially similar to an Investment, it may be classified as an Investment Token. For further information about when a Token is an Investment Token, and the applicable requirements, see APP6.

Example 1

Company A issues a Token that grants the holder early access to a range of jewellery to be released by the Company. It does not confer any other rights. This Token would be a Utility Token.

Example 2

Company B operates an online card game. It issues Tokens that allow holders to play card games on its website. It does not confer any other rights. This Token would be a Utility Token.

Example 3

Company C, a car manufacturer, issues a Token that allows holders to test drive one of its new cars for an hour. It does not confer any other rights. The Tokens can be traded by holders, and the traded price may increase or decrease depending on the demand for test driving the cars. This Token would be a Utility Token.

Example 4

Company D issues a Token that it describes in its white paper as a utility token. The Token allows holders to access a product that Company D is developing. It also allows them to share in the profits of Company D in accordance with their holdings once the product is launched. The Token is not traded. This Token is likely to be an Investment Token, as it confers on holders' rights similar to an Investment i.e. a right to share in the profits of the business.

Fiat Crypto Token

A2.5.5 A Crypto Token is a Fiat Crypto Token if, to stabilise its price or reduce volatility in its price, the value of the Crypto Token purports to be determined by reference to a single fiat currency.

Guidance

1. A Fiat Crypto Token (also called a 'Fiat stablecoin') is a Crypto Token the value of which purports to be determined by reference to a fiat currency. Typically, the stablecoin purports to be backed by financial assets. The use of financial assets to back the Crypto Token is intended to stabilise its price or reduce volatility in its price.

2. An alternative mechanism for stabilising the price of a Crypto Token is the use of an algorithm, which increases or decreases the supply of the Crypto Token in response to changes in demand for the Crypto Token. GEN Rule 3A.2.3 prohibits the use of such a Token in the DIFC i.e. a Crypto Token which uses, or purports to use, an algorithm to stabilise its price. This is because of concerns about the lack of transparency relating to the functioning of such algorithms and also concerns about whether they are able to function effectively.

3. In addition to Fiat Crypto Tokens, other stablecoins exist where the value is determined by reference to other assets, such as gold or a commodity, or a basket of currencies. While they do not fall within the definition of a Fiat Crypto Token, they will be a Crypto Token unless they are an Investment, for example, a Derivative or a Unit of a Collective Investment Fund.

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.

APP6 INVESTMENT TOKENS

Guidance

Purpose of this Guidance

1. A Person who carries on certain activities relating to Investment Tokens, in or from the DIFC, will require DFSA approval or authorisation, or will need to comply with applicable requirements in DFSA administered laws or Rules. Those activities may include:
   a. carrying on a Financial Service (as defined in GEN section 2.2.) which relates to an Investment Token (such as operating a facility on which Investment Tokens are traded or cleared, or giving advice on, or arranging deals in such Investment Tokens);
   b. making a Financial Promotion relating to an Investment Token;
   c. making an Offer to the Public of an Investment Token; or
   d. applying for a Security Token to be admitted to the Official List of Securities.

2. A Person proposing to carry out such activities relating to a Token, is responsible for analysing and determining whether a Token is an Investment Token and, if so, which type or types of Investment it constitutes. The Guidance in this Appendix is intended to assist a Person conducting such an analysis by indicating how the DFSA will approach that question.

3. A Person who wishes to obtain an approval or authorisation from the DFSA to conduct activities which relate to Investment Tokens, will need to include in its application sufficient information to demonstrate how those Investment Tokens meet the definition of one or more specific Investments, taking into account the Guidance in this Appendix.

What is a Token?

4. A Token is defined in GLO as a cryptographically secured digital representation of value, rights or obligations, which may be issued, transferred and stored electronically, using DLT or other similar technology.

What is an Investment Token?

5. An Investment Token is a Token which falls within the definition of one or more types of Investment. An Investment is defined in Rule A2.1.1(1) as a Security or a Derivative. Such a Security or Derivative includes a Token which falls within paragraph (b) or (c) of Rule A2.1.1(2).

6. A Token will be an Investment Token under Rule A2.1.1(2)(b) where it falls within the definition of a specific type of Security in Rule A2.2.1, or the definition of a

specific type of Derivative in Rule A2.3.1, or falls within more than one of those definitions.

7. A Token will also be an Investment Token under Rule A2.1.1(2)(c) if it does not fall within the definition of a specific Security or Derivative, but confers rights and obligations that are substantially similar in nature to those conferred by one or more specific Securities or Derivatives, or has a substantially similar purpose or effect to one or more specific Securities or Derivatives.

8. An Investment Token will therefore, depending on the nature of the rights and obligations it confers, fall into one or more existing categories of Security or Derivative. The differentiating feature between a conventional Security or Derivative, on the one hand, and an Investment Token on the other, is that the latter confers rights on holders that are issued, stored and transferred using cryptography and DLT.

9. An Investment Token which confers rights and obligations that are substantially similar in nature to those conferred by one or more Securities, or has a substantially similar purpose or effect to one or more Securities, is defined as a Security Token. An Investment Token which confers rights and obligations that are substantially similar in nature to those conferred by one or more Derivatives, or has a substantially similar purpose or effect to one or more Derivatives, is defined as a Derivative Token.

10. An Investment Token may confer rights and obligations that go beyond those conferred by one specific Security or Derivative and doing so will not prevent it from falling within the definition of an Investment Token, or from falling within the relevant category of Security or Derivative. Where an Investment Token confers rights and obligations that are substantially similar in nature to those conferred by more than one specific Security or Derivative, it may fall within more than one existing category of Security or Derivative (sometimes referred to as hybrid Investment Tokens) and be subject to the requirements under these Rules applicable to each of those categories.

When does a Token confer rights and obligations that are substantially similar in nature to those conferred by a specific Investment?

11. For a Token to confer rights and obligations that are substantially similar in nature to those conferred by a specific Security or Derivative, it should confer rights and obligations that give it most of the main characteristics of the relevant type of Security or Derivative. That is, it is not enough to confer part only of the rights and obligations that are characteristic of the relevant Security or Derivative, or to confer hybrid rights or interests that are not typical of either one type of Security or Derivative or another. As noted in paragraph 10 above, it is possible for an Investment Token to confer additional rights and obligations that go beyond those conferred by one specific Security or Derivative.

12. The DFSA considers that key factors to take into account when determining whether a Token is an Investment Token and, if so, which particular type (or types) of Security or Derivative it constitutes include:

a. in substance, what rights and interests are given to holders of such a Token;

b. who is required to meet the corresponding duties and obligations arising from the rights and interests referred to in (a);

c. how such a Token may reasonably be viewed by investors;

d. how the offer documents or other marketing material describe the Token (although this is not a conclusive indicator); and

e. how such Tokens are generally classified in other jurisdictions.

13. The remainder of the Guidance in this Appendix sets out key examples of Investments that a Token might constitute.

When is an Investment Token a Share?

14. A Share is defined as a 'a share or stock in the share capital of any Body Corporate or unincorporated body but excluding a Unit', in GEN Rule A2.2.1(a). We consider a Token to be a Share if the holder has rights associated with ownership and/or control that are characteristic of a Share, such as:

a. the ability to share in profits, revenue or other benefits generated by the Body Corporate or unincorporated body (legal entity), for example, a right to a declared dividend of the legal entity;

b. a right to participate in the assets of the legal entity in its winding up; and

c. a right of control, such as the right to vote on significant matters relating to the management and operation of the business of the legal entity, to appoint or remove directors or senior managers or determine their remuneration, or to agree to a merger, or reconstruction or arrangement to satisfy creditors of the legal entity.

15. For a Token to be a Share we would generally expect the holder of that Token, as a person having a 'share in the share capital' of the legal entity, to have rights to participate in profits and benefits, assets in a winding up or voting rights, which are proportionate to the value of the share capital, represented by the tokens held or owned by the person. For example, if the legal entity has a share capital of $10 million, divided into Tokens of $100 each, each holder will have *pro rata* rights to distributions and voting rights, based on the number of tokens held.

16. Whether a Token is a Share will also depend on the operation of company and corporate law. It may be that even if a Token is labelled or called a share by the Issuer, as a matter of law this might not be possible or accurate (e.g. if the company law governing the Issuer specifies requirements for a Share that have not been met). This may not, however, prevent the Token from constituting another type of specified Investment nonetheless (such as a Certificate or Unit in a Fund, if, in substance, the rights and obligations conferred by the Token are similar to those conferred by a Certificate or Unit in a Fund).

17. While generally a right to participate in profits, assets or rights of control (voting on significant matters) go hand-in-hand, it is possible for rights to participate in profits and assets, without control, or *vice versa* to be conferred by a Share, and similarly, by an Investment Token that is considered a Share. An Investment Token that is considered a Share will also be a Security Token.

Example 1

18. A Token holder, A, has a right to receive a share of profits or revenue of Company B (a legal entity), to be distributed annually. A can also vote on matters relating to the

governance and business direction of Company B. These rights are proportionate to the share of the capital represented by the Token held by A. A can also transfer the Token to another person, who will have the same rights as A by being the holder of that Token. This is a Security Token that confers rights and obligations that are substantially similar in nature to those conferred by a Share and will be considered to be a Share.

Example 2

19. A holds a Token in Company B which gives A the right to vote on matters relating to the governance and business of Company B, but no right to participate in the profits, or assets in a winding up, of Company B. This is a Security Token that confers rights and obligations substantially similar in nature to those characteristic of a director's Share, and will be considered to be such a Share.

Example 3

20. Company B issues a Token that is described in its white paper as being a Token other than an Investment Token (e.g. a 'pure utility Token'). The Token allows the holder to (i) access a product or service Company B is still developing, and (ii) gives a right to share in the profits of the company, proportionate to the number of Tokens held, once the product is launched. Such a Token confers rights and obligations substantially similar in nature to those conferred by a Share in the capital of Company B and is a Security Token that is considered to be a Share.

When is an Investment Token a Debenture?

21. A Debenture is an instrument creating or acknowledging indebtedness, whether accrued or not, but does not include certain instruments specified in Rule A2.2.1(b) (such as a cheque or a letter of credit).

22. A Token that creates or acknowledges indebtedness by representing money owed to the Token holder, but does not fall within the exclusions mentioned above, is considered a Debenture and constitutes both an Investment Token and a Security Token.

Example 1

23. Company B issues a Token to A, creating or acknowledging that Company B owes money to A (other than to defray any costs of goods or services bought by Company B from A). This instrument confers on A the right to the return of the money owed by Company B, together with any interest (and the corresponding obligation on Company B to pay to A the money owed, together with any interest). This is a Security Token and is considered a Debenture as it confers rights substantially similar in nature to those conferred by a Debenture.

Example 2

24. Company B issues a Token to A, acknowledging that Company B owes money to A. In addition to conferring a right to receive interest payments, the Token gives A the right, following a triggering event at a future point in time, to participate in the profits and assets of Company B, and to exercise control of the company through voting rights. This is a Token that gives A substantially similar rights to those conferred by convertible debt, with corresponding obligations imposed on Company B. This is a Security Token that is considered a Debenture, until such time it is converted to a Share in the capital of Company B, at which point it becomes a Security Token that is considered a Share.

When is an Investment Token a Warrant?

25. A Warrant is an instrument that confers, on the holder, a right to acquire an unissued Share, Debenture or Unit in a Fund.

26. A Token that confers on the holder a right to acquire an unissued Share, Debenture or Unit will be an Investment Token that is considered a Warrant and therefore also a Security Token. This will be the case regardless of whether the unissued Share, Debenture or Warrant to be acquired by exercising those rights is a Security in its conventional form, or is itself a Security Token.

Example

27. Company B issues a Token to investors, which gives the holder a right (but not an obligation) to acquire a new Share or Debenture to be issued by Company B at a future point in time. This confers on the holder a right to have the new Share or Debenture issued, and the obligation on Company B to issue that Share or Warrant, which are substantially similar in nature to those conferred by a Warrant. The Token is therefore a Security Token that is considered a Warrant.

When is an Investment Token a Certificate?

28. A Certificate is an instrument which confers on the holder contractual or property rights over Shares, Debentures, Units or Warrants held by a Person, where the holder of the instrument can effect the transfer those rights without the consent of that Person. For example, the following is a typical example of a Certificate:

    a. B holds Shares, Debentures, Units or Warrants;

    b. B issues an 'instrument' to A, giving A rights in respect of the Shares, Debentures, Units or Warrants held by B (such as dividends or distributions); and

    c. A does not need the consent of B to transfer the instrument, and with it the rights to the Shares, Debentures, Units or Warrants held by B).

Example

29. B issues a Token to A, conferring rights to Shares, Debentures, Units or Warrants held by B. A can sell that Token and so transfer the rights to those Shares, Debentures, Units or Warrants, without needing the consent of B. As the Token confers rights on A and obligations on B that are substantially similar in nature to those conferred by a Certificate, it is an Investment Token that is considered a Certificate and therefore also a Security Token.

When is an Investment Token a Unit in a Fund?

30. A Unit is a unit in or share representing the rights or interests of a Unitholder in a Fund. Under the Collective Investment Law, a Fund is an arrangement, where:

    a. the purpose or effect of the arrangement is to enable the persons taking part in that arrangement ('participants') to receive income or profit arising from the property of the arrangement;

    b. participants do not have the day-to-day control over the management of the property; and

    c. either the property of the arrangement is managed as a whole, or the investors' contributions and the profits or income thereof are pooled, or both.

31. Some arrangements, even though they meet the above criteria, are excluded from the definition of a Fund; see CIR chapter 2.

32. If a Token confers the rights to participate in an arrangement that is a Fund, and the rights conferred by the Token are the same as, or substantially similar in nature to, those conferred by a Unit in a Fund, it is an Investment Token that is a Security Token. Such a Security Token will be considered a Unit. Example

33. An arrangement is in place under which people contribute their money on the invitation of Firm B (the Fund Manager in this example), in exchange for Tokens. These people make their contributions in the expectation that Firm B will pool those contributions to buy fine art, manage a business of hiring the fine art for corporate events to generate income, and also sell some art to make capital gains. The further expectation is that Firm B will distribute such income and capital gains to the contributors, *pro rata* to the amounts they contributed. This arrangement is a Fund. If the Tokens issued by Firm B to participants confer on them the rights to participate as expected in the profits and income of the arrangement, such a Token confers on the participants rights that are substantially similar in nature to a Unit in a Fund and so it is a Security Token that is considered a Unit.

When is an Investment Token a Structured Product?

34. A Structured Product is an instrument comprising rights under a contract where:

    a. the gain or loss of each party to the contract is determined by reference to the fluctuations in the value or price of an underlying factor, (such as gold, an index, an interest or exchange rate, in relation to which there is readily available public information);

    b. the gain or loss of each party is settled by cash or set off between the parties; and

    c. each party is not exposed to any contingent liabilities to the other (i.e. there is no leverage).

35. If the rights and obligations of the parties to a contract that meets the above criteria are conferred by a Token, the Token confers rights and obligations that are substantially similar in nature to a Structured Product, and so the Token is considered an Investment Token that is a Structured Product.

36. Although a Structured Product is similar to a contract for difference, it can be distinguished from a Future due to the absence of leverage on the part of the investor and the availability of readily accessible public information relating to the underlying factor referenced by it. Structured Products are categorised as Securities and can be included in the Official List of Securities. An Investment Token that is a Structured Product is therefore also a Security Token.

Example

37. Firm B enters into a contract with its client, A. The contract provides that A will receive a profit or incur a liability to Firm B, based on whether the underlying price of gold has moved up or down between the opening day, and the closing day, of the contract. The contract does not contain any leverage (for example, where the profit or loss of A would be 50 times the amount of margin A posted with B to open the position). This is a Structured Product. The terms of the contract are embedded in a Token issued by Firm B, and the contract is created when A accepts those terms by accepting ownership of the Token. As the Token confers the rights and obligations of the contract, it confers rights and obligations substantially similar in nature to those conferred by a Structured Product. The Token is therefore a Security Token that is considered a Structured Product.

When is an Investment Token an Option?

38. An Option is an instrument that confers on the holder, upon exercise, a right to:

    a. acquire or dispose of:

        i. a Security (other than a Warrant);

        ii. a contractually based investment (e.g. a Future);

        iii. currency of any country or territory; or

        iv. a commodity of any kind; or

    b. receive a cash settlement determined by reference to the value or price of an index, interest rate, exchange rate or any other rate or variable; or

    c. a right to acquire or dispose of an Option under a) or b).

39. If a person issues a Token that confers on the holder rights that meet the criteria in paragraph 38 a), b) or c) which the holder may, but is not required to exercise, the Token is an Investment Token that is an Option and therefore also a Derivative Token.

Example

40. B owns an issued Share in a company. B issues a Token to A which confers on A the right to buy that Share from B at a set price on a certain date, should A choose to do so. The Token confers rights and obligations that are substantially similar in nature to those conferred by a call Option and is therefore a Derivative Token that is considered to be an Option.

When is an Investment Token a Future?

41. Futures are instruments comprising rights under a contract which meets the criteria in the definition in Rule A2.3.1(b). There are two types of Futures; those covered under Rule A2.3.1(b)(i), referred to in this Guidance as 'commodity Futures', and those covered under Rule A2.3.1(b)(ii), referred to in this Guidance as 'financial Futures'. A financial Future is sometimes referred to as a contract for difference, or CFD.

42. If a Token confers rights and obligations that are substantially similar in nature to those conferred by a contract meeting the definition of a Future, the Token is an Investment Token that is a Future and therefore a Derivative Token.

Example 1

43. This example relates to a commodity Future under Rule A2.3.2(b)(i). Firm B arranges for its client, A to purchase a Token on a regulated exchange. Embedded in that token are the terms of a contract between the holder of that Token and Company C, which A accepts by purchasing the Token. The contract is for Company C to deliver a specified type and quantity of a commodity at a future date and at a specified price to be paid by A. A is entering the contract for investment purposes, as he has no use for the commodity but believes that its value will rise and he will be able to sell the rights under the contract (or settle them with Company C in cash) to make a profit on or before the delivery date. The Token confers rights and obligations substantially similar in nature to a contract falling within the definition of a Future at Rule A2.3.1(b)(ii). Therefore, the Token is a Derivative Token and is considered a Future.

Example 2

44. This example relates to a financial Future or CFD under Rule A2.3.1(b)(ii). Firm B enters into a contract with its client, A. The contract provides that A or B will receive

a profit or incur a loss, based on the difference between the value of the FTSE 100 index on the opening day, and the closing day, of the contract. The contract is leveraged such that the profit or loss of A will be 5 times the amount of margin A posted with B to open the position. Under this contract, A's and B's right to a profit or loss will depend on whether the value of the FTSE 100 index moved up or down from the opening day to the closing day. If the rights conferred under that contract are represented by a Token issued by B, the Token confers rights and obligations substantially similar in nature to a contract falling within the definition of a Future at Rule A2.3.1(b)(ii). Therefore, the Token is a Derivative Token and is considered a Future.