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**Abu Dhabi Global Market Rulebook**  
**Conduct of Business Rulebook**  
**(COBS)**

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**Contents**

1.	Introduction.....	1
2.	Client Classification.....	1
3.	Core Rules – Investment Business, Accepting Deposits, Providing Credit and Providing Trust Services.....	12
4.	Additional Rules – Accepting Deposits and Providing Credit .....	20
5.	Additional Rules — Providing Trust Services.....	21
6.	Additional Rules – Investment Business .....	25
7.	Core Rules – Insurance .....	36
8.	Additional Rules: Operating an MTF or OTF .....	45
9.	Core Rules – Operating A Credit Rating Agency.....	49
10.	Core Rules – Operating a Central Securities Depository.....	60
11.	Records of Orders and Transactions .....	62
12.	Key Information and Client Agreement .....	64
13.	Periodic Statements.....	66
14.	Client Money Provisions.....	67
15.	Safe Custody Provisions .....	90
16.	Recovery and Resolution Planning for Client Money and Safe Custody Assets ..	95

**1. INTRODUCTION**

**1.1 Application**

This Rulebook applies to every Authorised Person with respect to the carrying on, in or from the Abu Dhabi Global Market, of any:

- (a) Regulated Activity where this involves provision of a service to a Client; or
- (b) activity which is carried on, or held out as being carried on, in connection with or for the purposes of such a Regulated Activity;

except to the extent that a provision provides for a narrower application.

**2. CLIENT CLASSIFICATION**

**2.1 Application**

2.1.1 This chapter applies to an Authorised Person carrying on or intending to carry on any Regulated Activity with or for a Person.

2.1.2 For the purposes of this chapter, a Person includes any organisation (including outside of the Abu Dhabi Global Market) whether or not it has a separate legal personality.

2.1.3 This chapter does not apply to a Credit Rating Agency in so far as it carries on, or intends to carry on, the Regulated Activity of Operating a Credit Rating Agency.

2.1.4 This chapter does not apply to an Authorised ISPV.

**Guidance**

2.1.5 The activity described in section 67 of Chapter 14 of Schedule 1 of FSMR refers to the marketing of Regulated Activities and Specified Investments which are offered in a jurisdiction outside the Abu Dhabi Global Market. Such marketing activities can be conducted by an Authorised Person that holds a Representative Office Licence, provided the Regulated Activities or Specified Investments marketed by it are those offered by its head office, or a member of its Group.

2.1.6 As a Representative Office conducting marketing activities of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR does not have a client relationship with a Person to whom it markets a Specified Investment or engages with in relation to carrying on a Regulated Activity, the client classification requirements in this chapter do not apply to the Authorised Person with regard to its engagement with that Person.

2.1.7 Other Authorised Persons can also conduct marketing activities of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR under the exclusion in section 67(5) of Chapter 14 of Schedule 1 of FSMR.

**2.2 Client Categorisation**

2.2.1 An Authorised Person must categorise each of its clients into an appropriate Client category. There are three Client categories:

- (a) Retail Client;

- (b) Professional Client; and
- (c) Market Counterparty.

- 2.2.2 A Person may be classified into one category of Client in relation to the carrying on of a Regulated Activity where this involves provision of a service to a Client, product or Transaction, but another category of Client in relation to another such Regulated Activity and corresponding service, product or Transaction. An Authorised Person must ensure that a client is appropriately and correctly classified with respect to each Regulated Activity, service, product or Transaction.
- 2.2.3 If an Authorised Person is aware that a Client, with or for whom it is intending to carry on a Regulated Activity where this involves provision of a service to a Client, is acting as an agent for another Person (the "second person") in relation to a particular Transaction, then unless the Client is another Authorised Person or a Recognised Body, the Authorised Person must also treat that second person as its Client in relation to that Transaction.
- 2.2.4 If an Authorised Person intends to carry on any Regulated Activity where this involves provision of a service to a client which is a trust, it must unless otherwise provided in the Rules, treat the trustee of the trust, and not the beneficiaries of the trust, as its Client.

#### **Guidance**

- 2.2.5 The point at which a Person becomes a Client of an Authorised Person is a question of fact that needs to be addressed by the Authorised Person in light of the nature of the relevant Regulated Activity (or Specified Investment) involved, and the relations and interactions which the Authorised Person has with that Person. For instance, in certain types of Regulated Activities (such as corporate advisory services), a number of conversations (such as marketing and promotional activities) may occur between an Authorised Person and a potential client before it may appear to the Authorised Person on a reasonable basis that the Authorised Person is likely to be carrying on a Regulated Activity where this involves provision of a service to a Client, at which point a client classification is required.
- 2.2.6 The client classification must take place before an Authorised Person carries on a Regulated Activity where this involves provision of a service to a Client. However, this does not preclude marketing prior to such classification being documented and notified.
- 2.2.7 The Regulator expects Authorised Persons to adopt practices which are consistent with the underlying intent of the client classification provisions, which is to provide Clients with an appropriate level of regulatory protection in light of the resources and expertise available to such Clients. Therefore, as soon as it is reasonably apparent that an Authorised Person is likely to carry on a Regulated Activity where this involves provision of a service to a potential customer, it should undertake the client classification process relating to that customer.
- 2.2.8 For example, an Authorised Person is not expected to undertake advising or arranging activities relating to a Regulated Activity or Specified Investment which is suited to Professional Clients (e.g. complex derivatives) with a potential customer without having a reasonable basis to consider that such a customer has sufficient knowledge and experience relating to the relevant activity or product. Whilst a formal client classification may not be needed at the early stages of interaction, an Authorised Person is expected to form a reasonable view about the professional status of a potential Client when exposing such a customer to Regulated Activities or Specified Investment (such as investments in a Qualified Investor Fund) which are intended for Professional Clients.

### 2.3 **Retail Clients**

A Person who cannot be classified as a Professional Client or Market Counterparty in accordance with these Rules is a Retail Client. If an Authorised Person chooses to provide Regulated Activities to a Person as a Retail Client, it may do so by simply classifying that Person as a Retail Client without having to follow any further procedures as compared to those required for classifying Persons as Professional Clients or Market Counterparties.

### 2.4 **Professional Clients**

2.4.1 There are three routes through which a Person may be classified as a Professional Client:

- (a) "deemed" Professional Clients;
- (b) "Service-based" Professional Clients; and
- (c) "assessed" Professional Clients.

#### 2.4.2 **"Deemed" Professional Clients**

- (a) A Person is a "deemed" Professional Client if that Person is:
  - (i) a supranational organisation whose members are either countries, central banks or national monetary authorities;
  - (ii) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;
  - (iii) a public authority or state investment body;
  - (iv) a Recognised Body;
  - (v) an Authorised Person;
  - (vi) the management company of a regulated pension fund;
  - (vii) a Collective Investment Fund or a regulated pension fund;
  - (viii) a Person which, as at the date of its most recent financial statements, met at least two of the following requirements:
    - (A) a balance sheet total of US\$20 million;
    - (B) a net annual turnover of US\$40 million; or
    - (C) own funds or called up capital of at least US\$2 million(a "Large Undertaking");
  - (ix) a Body Corporate whose shares are listed or admitted to trading on any exchange of an IOSCO member country;
  - (x) any other institutional investor whose main activity is to invest in Financial Instruments, including an entity dedicated to the securitisation of assets or other financial transactions;

- (xi) a trustee of a trust which has, or had during the previous 12 months, assets of at least US\$10,000,000. An individual trustee on the board of such a trust is only a "deemed" Professional Client in relation to that particular trust;
  - (xii) a holder of a licence under the Single Family Office Regulations with respect to its activities carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a Single Family Office; or
  - (xiii) a Subsidiary or a Parent of any of the Persons described in Rules 2.4.2(a)(i)-(xii).
- (b) A "deemed" Professional Client cannot opt to be treated as a Retail Client.
- (c) An Authorised Person must have a reasonable basis for classifying a Person as falling within the list of "deemed" Professional Clients above, including by inspecting copies of any necessary supporting documentation and keeping records of the same.

#### 2.4.3 "Service-based" Professional Clients

- (a) A Person is a "Service-based" Professional Client if:
- (i) the Regulated Activity carried on, where this involves provision of a service to a Client, is Providing Credit;
  - (ii) the Person is an Undertaking;
  - (iii) the Credit Facility in question is provided for use in the business activities of:
    - (A) the Person;
    - (B) a Controller of the Person;
    - (C) any member of the Group to which the Person belongs; or
    - (D) a joint venture of a Person referred to in Rules 2.4.3(a)(iii)(A) – (C);
  - (iv) the Regulated Activity carried on, where this involves provision of a service to a Client, is "Advising on Investments", "Advising on Credit", "Arranging Credit" or "Arranging Deals in Investments" and the service is provided for the purposes of Corporate Structuring and Financing; and
  - (v) the Person has not opted-in to be classified as a Retail Client.
- (b) A "Service-based" Professional Client may elect to be treated as a Retail Client in accordance with Rule 2.6.1.
- (c) An Authorised Person must have a reasonable basis for classifying a Person as falling within the list of "Service-based" Professional Clients above such as inspecting copies of any necessary supporting documentation and keeping records of the same.

#### Guidance

- (d) An Authorised Person may classify an Undertaking as a Professional Client for the purposes of Providing Credit for business purposes, not only for the Undertaking itself,

but also for its related entities (such as a Controller or member of its Group), provided that the Undertaking has not opted-in to be classified as a Retail Client.

- (e) An Authorised Person must decide whether to classify an Undertaking, that is a "deemed" Professional Client but would also qualify as a "Service-based" Professional Client, as a "deemed" Professional Client or as a "Service-based" Professional Client. "Deemed" Professional Clients are not able to opt to be classified as a Retail Client, but "Service-based" Professional Clients are. Generally, it would be more appropriate to classify such a Person as a "deemed" Professional Client rather than a "Service-based" Professional Client.
- (f) Joint ventures may be in the form of contractual arrangements under which parties contribute their assets and expertise to develop or to undertake specified business activities. Where an Undertaking is set up by participants in such a joint venture for the purposes of their joint venture, the Undertaking itself can be treated as a Professional Client provided a joint venture partner meets the Professional Client criteria. To be able to rely on a joint venture partner's Professional Client status, such a partner should generally be a key decision maker with respect to the business activities of the joint venture, and not just a silent partner.
- (g) Advisory and arranging services given to an individual who is a wealth management client for the purposes of their investment activities or portfolio management are excluded because such clients are not necessarily Professional Clients. Therefore, for such a client to qualify as a Professional Client, he would need to be an "assessed" Professional Client.

#### 2.4.4 "Assessed" Professional Clients

##### *Individuals*

- (a) An individual may be treated as an "assessed" Professional Client (instead of a Retail Client) if:
  - (i) the individual has net assets of at least US\$500,000 (including any assets held directly or indirectly by that person), the calculation of which must exclude:
    - (A) property which is that person's primary residence or any loan secured on that residence;
    - (B) any rights of that person under a qualifying Contract of Insurance within the meaning of FSMR; or
    - (C) any benefits (in the form of pensions or otherwise) which are payable on the termination of that person's service or on my death or retirement and to which that person or that person's dependents are, or may be, entitled;
  - (ii) either:
    - (A) the individual is, or has been, in the previous 12 months, an Employee in a professional position of an Authorised Person or a Recognised Body; or
    - (B) the individual appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products

or transactions and any associated risks, following the analysis set out in Rule 2.6.2; and

- (iii) the individual has not opt to be classified as a Retail Client.
- (b) An Authorised Person may classify any legal structure or vehicle, such as an Undertaking, trust or foundation, which is set up solely for the purpose of facilitating the management of an investment portfolio of an individual assessed as meeting the requirements in Rule 2.4.4(a) as a Professional Client.
- (c) An Authorised Person may classify as a Professional Client an individual (a "joint account holder") who has a joint account with an individual assessed as meeting the requirements in Rule 2.4.4(a) (the "primary account holder") if:
  - (i) the joint account holder is a Family Member of the primary account holder;
  - (ii) the account is used for the purposes of managing investments for the primary account holder and the joint account holder; and
  - (iii) the joint account holder has confirmed in writing (or, in the case of a joint account operated by a primary account holder who is a parent or legal guardian of a minor, that parent or guardian exercises its authority to act for the minor in accordance with any necessary formalities) that investment decisions relating to the joint account are generally made for, or on behalf of, him by the primary account holder.
- (d) An individual classified as a Professional Client may operate a joint account with more than one Family Member. Provided that each such Family Member meets the requirements set out in Rule 2.4.4(c), they may all be classified as Professional Clients.
- (e) A legal structure or vehicle of a Professional Client which is itself classified as a Professional Client may not opt to be treated as a Retail Client, as that right belongs to the Professional Client for whose purposes the vehicle is set up.
- (f) A Family Member of a Professional Client classified as a Professional Client under Rule 2.4.4(c) does not *per se* have a right to opt to be classified as a Retail Client with regard to the operation of the joint account.
- (g) A Family Member of a Professional Client classified as a Professional Client under Rule 2.4.4(c) may withdraw his confirmation given to have decisions on behalf of him made by the Professional Client who is the primary account holder of the joint account. An Authorised Person must ensure that once such a withdrawal is made, the withdrawing individual is no longer classified as a Professional Client.

#### *Undertakings*

- (h) An Authorised Person may classify an Undertaking as an "assessed" Professional Client if the Undertaking, or (as assessed by the Authorised Person) its Controller (provided that if such controller is a natural person, it meets the Professional Client criteria in Rule 2.4.4(a)), Holding Company, Subsidiary or joint venture partner:
  - (i) either:
    - (A) has own funds or called up capital of at least US\$500,000;



- (B) appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks, following the analysis set out in Rule 2.6.2; and
  - (C) has not opted to be classified as a Retail Client; or
- (ii) meets any of the criteria in Rule 2.4.2 for a "deemed" Professional Client.

### **Guidance**

- (i) In the calculation of net assets in Rule 2.4.4(a)(i), the reference to "assets held directly or indirectly" is designed to include assets held by direct legal ownership, by beneficial ownership (e.g. as a beneficiary in a trust), or by both legal and beneficial ownership. Such assets may be held, for instance, through a special purpose or personal investment vehicle, a foundation, or similar. Similarly, any real property held subject to an Islamic mortgage, where the lender has the legal title to the property, may be counted as indirectly held property of a Client, less the amount owing on the mortgage, where it is not a primary residence. As the test is to determine the net assets (not gross assets) of an individual, any mortgages or other charges held over the property to secure any indebtedness of the individual should be deducted from the value of the assets. An individual's primary residence is excluded from the calculation of their net assets. If an individual who is an expatriate has a primary residence in his home country, such a residence should not generally be counted for the purposes of meeting the net asset test. However, if the current residence in the host country is owned by the individual, then that may be treated as their primary residence and the value of the residence in the home country of the individual may be counted for the purposes of meeting the net asset test, provided there is sufficient evidence of ownership and an objective valuation of the relevant premises. An Authorised Person should be able to demonstrate that it has objective evidence of the ownership and valuation of any assets taken into account for the purposes of meeting the net asset test.
- (j) Joint ventures may be in the form of contractual arrangements under which parties contribute their assets and expertise to develop or to undertake specified business activities. Where an Undertaking is set up by participants in such a joint venture for the purposes of their joint venture, the Undertaking itself can be treated as a Professional Client provided a joint venture partner meets the Professional Client criteria. To be able to rely on a joint venture partner's Professional Client status, such a partner should generally be a key decision maker with respect to the business activities of the joint venture, and not just a silent partner.

### **2.5 Market Counterparties**

- (a) An Authorised Person may classify a Person as a Market Counterparty if:
  - (i) that Person is a "deemed" Professional Client; and
  - (ii) the requirements in Rule 2.5(b) have been met.
- (b) An Authorised Person must, before classifying a Person as a Market Counterparty, ensure that such a Person has:
  - (i) been given a prior written notification of the classification as a Market Counterparty in relation to a particular Regulated Activity or Transaction, or in respect of all Regulated Activities and Transactions; and

- (ii) not requested to be classified otherwise within the period specified in the notice.
- (c) The notification in Rule 2.5(b)(i) need only be given to:
  - (i) in the case of a Fund, either to the Fund or its Fund Manager; and
  - (ii) in the case of a pension fund, either to such fund or its management company.

## 2.6 **Client Classification Procedures**

### 2.6.1 **Option for a Professional Client to be classified as a Retail Client**

- (a) A Professional Client other than a "deemed" Professional Client has the right to elect to be classified as a Retail Client. An Authorised Person must, when first establishing a relationship with such a Person as a Professional Client, inform that Person of:
  - (i) that Person's right to be classified as a Retail Client;
  - (ii) the higher level of protection available to Retail Clients; and
  - (iii) the time within which the Person may elect to be classified as a Retail Client.
- (b) If the Person does not expressly elect to be classified as a Retail Client within the time specified by the Authorised Person, the Authorised Person may classify that Person as a Professional Client.
- (c) If such a Person already classified as a Professional Client by an Authorised Person expressly requests the Authorised Person to be re-classified as a Retail Client, the Authorised Person must re-classify such a Person as a Retail Client.
- (d) If an Authorised Person does not provide Regulated Activities to Retail Clients, it must inform the Person of this fact and any relevant consequences.

#### **Guidance**

- (e) The obligation in Rule 2.6.1(a) applies to an Authorised Person when it first carries on or intends to carry on a Regulated Activity where this involves provision of a service to a Professional Client.
- (f) Once an Authorised Person has first classified a Person as a Professional Client, that Professional Client has a right at any time thereafter to ask to be re-classified as a Retail Client to obtain a higher level of protection. Although the right to ask the Authorised Person to be re-classified as a Retail Client is available to the Professional Client, as a matter of good practice:
  - (i) the Authorised Person should also periodically review whether the circumstances relating to the particular Client remain the same; and
  - (ii) if the Authorised Person becomes aware of any circumstances which would warrant a re-classification of the Client, initiate the process with the Client to give that Client a more appropriate classification.
- (g) An Authorised Person cannot provide Regulated Activities to a Retail Client unless it has a Retail authorisation on its Financial Services Permission. However, such an

Authorised Person may refer any Person who opts to be treated as a Retail Client to another Authorised Person with the appropriate Financial Services Permission.

#### 2.6.2 **Assessment of knowledge and experience**

- (a) For the purpose of the analysis required to classify a Person as an "assessed" Professional Client, an Authorised Person must include, where applicable, consideration of the following matters:
  - (i) the Person's knowledge and understanding of the relevant financial markets, types of financial products or arrangements and the risks involved either generally or in relation to a proposed Transaction;
  - (ii) the length of time the Person has participated in relevant financial markets, the frequency of dealings and the extent to which the Person has relied on professional financial advice;
  - (iii) the size and nature of transactions that have been undertaken by, or on behalf of, the Person in relevant financial markets;
  - (iv) the Person's relevant qualifications relating to financial markets;
  - (v) the composition and size of the Person's existing financial investment portfolio;
  - (vi) in the case of credit or insurance transactions, relevant experience in relation to similar transactions to be able to understand the risks associated with such transactions; and
  - (vii) any other matters which the Authorised Person considers relevant.
- (b) Where the analysis is being carried out in respect of an Undertaking, the analysis must be applied to those individuals who are authorised to undertake transactions on behalf of the Undertaking.

#### 2.6.3 **Reliance on a classification made elsewhere**

- (a) An Authorised Person may rely on a client classification made, if it is a Branch, by its head office or any other branch of the same legal entity, or if it is a member of a Group, by any other member of its Group, if it has reasonable grounds to believe that such a client classification is substantially similar to the client classification required under these Rules.
- (b) If any gaps are identified between the requirements applicable to the Authorised Person under these Rules and the requirements under which the client classification is carried out by such other entity, the Authorised Person may rely on such a client classification only if it has effectively addressed the identified gaps.

#### **Guidance**

- (c) Generally, an Authorised Person relying on this Rule should be able to demonstrate to the Regulator the due diligence process that it had undertaken to assess whether the client classification made by its head office or other branch of the same legal entity or a member of its Group substantially meets the client classification requirements in these Rules (e.g. documents verified and available) and, if any gaps are identified, how those gaps are effectively addressed.

- (d) If an Authorised Person wishes to use any client classification undertaken by any third party other than its head office or another branch of the same legal entity, or a member of its Group, such an arrangement is generally treated as an outsourcing arrangement. In such case, the Authorised Person would need to meet the requirements in GEN 3.3.32 relating to outsourcing.

#### 2.6.4 **Group clients**

- (a) An Authorised Person that is a member of a Group and carries out one or more Regulated Activities where the Regulated Activities carried out by the Authorised Person form part of a bundle of Regulated Activities carried out for the benefit of that Client and its Group members must ensure that:
  - (i) the client classification it adopts for any Regulated Activity carried on which involves the provision of a service to a Client is both consistent with the requirements in these Rules and appropriate for the overall bundle of Regulated Activities which involve the provision of services to a Client;
  - (ii) the Client has a clear understanding of the arrangement under which Regulated Activities are carried out for the Client's benefit by the Authorised Person in conjunction with the other members of the Group; and
  - (iii) any risks arising from such arrangements are identified and appropriately and effectively addressed.

#### **Guidance**

- (b) Different entities in a Group may have different arrangements under which they provide to their Clients one or more Regulated Activities. Such arrangements may involve, instead of each member within a Group carrying on a discrete stand-alone Regulated Activity, different members of the Group carrying on different aspects of the bundle of Regulated Activities carried on for the Client's benefit. An example is where a number of members within a Group provide discrete aspects of expertise that facilitate merger and acquisition activity of a Client. In such a situation, different members of the Group could prepare and provide:
  - (i) Advice relating to a proposed restructure;
  - (ii) Advice relating to financing of the restructure; and
  - (iii) Arranging Credit for financing the restructure.
- (c) In order to provide flexibility for Authorised Persons which are members of a Group to provide such services to their Clients in a manner that suits the Client's needs and the nature of the service, this Rule 2.6.4 sets out the overarching objectives that must be achieved, rather than any detailed requirements.
- (d) Depending on the nature of the arrangement under which Group members choose to carry on Regulated Activities for the benefit of the same Client, and the nature of the Regulated Activities involved, the risks associated with such arrangements may vary.

Some of the common risks that could arise, and therefore would need to be addressed, include:

- (i) conflicting legal requirements applicable to the carrying on of the Regulated Activities, particularly if the members of the Group are located in different jurisdictions; and
  - (ii) a Client not being able to clearly identify the actual service provider or providers and resulting exposure to legal accountability to the Client that may arise for all members of the Group.
- (e) An Authorised Person must comply with, and must be able to demonstrate compliance with, the systems and controls requirements set out in GEN when relying on this Rule 2.6.4.
- (f) This Rule 2.6.4 does not extend to a Branch as it is not a separate legal entity, and hence would generally have greater flexibility than Group members providing a bundle of services when carrying out Regulated Activities for a Client's benefit in conjunction with its head office or any other branch of the same legal entity. However, to the extent that a Branch operates as a stand-alone entity, it may use the same outcome-based approach reflected in this Rule 2.6.4 where it carries out Regulated Activities for the benefit of a Client in conjunction with its head office or other branches of the same legal entity.

## **2.7 Record Keeping**

2.7.1 In addition to any applicable rules under GEN relating to record keeping, and the remainder of these Rules, an Authorised Person must keep records of:

- (a) the procedures which it has followed under these Rules, including any documents which evidence the Client's classification; and
- (b) any notice sent to the Client pursuant to these Rules and evidence of despatch.

2.7.2 The records must be kept by an Authorised Person for at least six years from the date on which the business relationship with a Client has ended.

2.7.3 An Authorised Person may, if the date on which the business relationship with the Client ended is unclear, treat the date of the completion of the last Transaction with the Client as the date on which the business relationship ended.

2.7.4 An Authorised Person must ensure that in relation to reliance on a classification made elsewhere (Rule 2.6.3) and in relation to Group Clients (Rule 2.6.4), the Regulator has unrestricted access to all the records required for the Authorised Person to be able to demonstrate to the Regulator its compliance with the applicable requirements, including any records maintained by or at its head office or any other branch of the same legal entity, or a member of its Group.

2.7.5 An Authorised Person must notify the Regulator immediately if, for any reason, it is no longer able to provide unrestricted access to records.

3. **CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT AND PROVIDING TRUST SERVICES**

3.1 **Application**

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

- (a) Investment Business;
- (b) Accepting Deposits;
- (c) Providing Credit; or
- (d) Providing Trust Services

except where it is expressly provided otherwise.

3.2 **Communication of Information and Marketing Material**

**General**

3.2.1 (a) When communicating information to a Person in relation to a Specified Investment or Regulated Activity, an Authorised Person must take reasonable steps to ensure that the communication is clear, fair and not misleading.

**Guidance**

(b) A communication addressed to a Professional Client may not need to include the same information, or be presented in the same way, as a communication addressed to a Retail Client.

3.2.2 An Authorised Person must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under the ADGM Founding Law or FSMR.

3.2.3 Where a Rule requires information to be sent to a Client, the Authorised Person must provide that information directly to the Client and not to another Person, unless it is on the written instructions of the Client.

**Marketing Material**

3.2.4 (a) An Authorised Person must ensure that any Marketing Material communicated to a Person contains the following information:

- (i) the name of the Authorised Person communicating the Marketing Material or, on whose behalf the Marketing Material is being communicated;
- (ii) the Authorised Person's regulatory status; and
- (iii) if the Marketing Material is intended only for Professional Clients or Market Counterparties, a clear statement to that effect and that no other Person should act upon it.

- (b) Marketing Material includes any invitation or inducement to Engage in Investment Activity.
- (c) An Authorised Person which communicates Marketing Material must:
  - (i) ensure that the Marketing Material complies with the applicable Rules and any legislation administered by the Regulator; and
  - (ii) not distribute such Marketing Material if it becomes aware that the Person offering to carry on the Regulated Activity or offering the Specified Investment to which the Material relates is in breach of the regulatory requirements that apply to that Person in relation to that Specified Investment or Regulated Activity.

3.2.5 An Authorised Person must take reasonable steps to ensure that:

- (a) any Marketing Material intended for Professional Clients or Market Counterparties is not sent or directed to any Persons who are not Professional Clients or Market Counterparties; and
- (b) no Person communicates or otherwise uses the Marketing Material on behalf of the Authorised Person in a manner that amounts to a breach of the requirements in this section.

#### **Past Performance and Forecasts**

3.2.6 An Authorised Person must ensure that any information or representation relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to or targeted at Retail Clients:

- (a) presents a fair, balanced and up-to-date view of the Specified Investments or Regulated Activities to which the information or representation relates;
- (b) identifies, in an easy to understand manner, the source of information from which the past performance is derived and any key facts and assumptions used in that context are drawn;
- (c) contains comparable data for each year and at least 5 years' data where available; and
- (d) contains a prominent warning that past performance is not necessarily a reliable indicator of future results.

### **3.3 Key Information and Client Agreement**

#### **3.3.1 Application**

The Rules in this section do not apply to an Authorised Person when it is:

- (a) carrying on a Regulated Activity carried where this involves provision of a service to a Client with, or for a Market Counterparty;
- (b) Accepting Deposits;
- (c) Providing Credit;

- (d) carrying on an activity of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR that constitutes marketing; or
- (e) a Fund Manager of a Fund Offering the Units of a Fund it manages.

### 3.3.2 Requirements

- (a) Subject to Rule 3.3.2(b), an Authorised Person must not carry on a Regulated Activity where this involves provision of a service to a Client unless:
  - (i) there is a Client Agreement entered into between the Authorised Person and that Person containing the key information specified in Rule 12 which is entered into either between the Authorised Person and that Person or in accordance with the requirements in Rule 3.3.2(c); and
  - (ii) before entering into the Client Agreement with the Person, the Authorised Person has provided to that Person the key information referred to in Rule 12 in good time to enable him to make an informed decision relating to the relevant Regulated Activity.
- (b) An Authorised Person may carry on a Regulated Activity where this involves provision of a service to a Client without having to comply with the requirement in Rule 3.3.2(a);
  - (i) where it is, on reasonable grounds, impracticable to comply, in which case an Authorised Person carrying on the Regulated Activity must:
    - (A) first explain to the Person why it is impracticable to comply; and
    - (B) enter into a Client Agreement as soon as practicable thereafter.
  - (ii) where the Client has expressly agreed to dispense with the requirement in regard to a personal investment vehicle.
- (c) An Authorised Person may rely on a Client Agreement executed other than by the Authorised Person in the following circumstances:
  - (i) An Authorised Person which is a Branch may rely on a Client Agreement executed by its head office or any other branch of the same legal entity if:
    - (A) the Client Agreement adequately and clearly applies to the Regulated Activities carried out the Branch; and
    - (B) the Authorised Person ensures that the Client Agreement is available to the Regulator on request.
  - (ii) an Authorised Person may rely on a Client Agreement executed by a member of its Group if:
    - (A) it is carrying on a Regulated Activity where this involves provision of a service to a Client pursuant to Rule 2.6.4;
    - (B) the Client Agreement clearly sets out the Regulated Activity carried on where this involves provision of a service to a Client by the Authorised Person and that the Client's rights in respect of the carrying



on of the Regulated Activity are enforceable against the Authorised Person; and

- (C) the Authorised Person ensures that the Client Agreement is available to the Regulator on request.

### 3.3.3 **Information**

- (a) Rule 12 sets out the core information that must be included in every Client Agreement and additional disclosure for certain types of activities to which this chapter applies.
- (b) An Authorised Person may either provide a Person with a copy of the proposed Client Agreement, or give that information in a separate form. If there are any changes to the terms and conditions of the proposed agreement, the Authorised Person must ensure that the Client Agreement to be signed with the Person accurately incorporates those changes.
- (c) An Authorised Person may consider it is reasonably impracticable to provide the key information to a Person if that Person requests the Authorised Person to execute a Transaction on a time critical basis. Where an Authorised Person has explained why it is impracticable to comply with the requirement to enter into a Client Agreement orally, it must maintain records to demonstrate to the Regulator that it has provided that information to the Client.

### 3.3.4 **Changes to the Client Agreement**

If the Client Agreement provided to a Retail Client allows an Authorised Person to amend the Client Agreement without the Client's prior written consent, the Authorised Person must give at least 14 days' notice to the Client before carrying on a Regulated Activity where this involves provision of a service to a Client on any amended terms, unless it is impracticable to do so.

## 3.4 **Suitability**

### 3.4.1 **Application**

The Rules in this section do not apply where the Authorised Person:

- (a) undertakes a Transaction with a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits or Providing Credit; or
- (d) carries on an activity of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR that constitutes marketing.

### 3.4.2 **Suitability Assessment**

- (a) Subject to Rule 3.4.2(b), an Authorised Person must not recommend to a Client a Specified Investment or the carrying on of a Regulated Activity where this involves provision of a service to a Client, or execute a Transaction on a discretionary basis for a Client, unless the Authorised Person has a reasonable basis for considering the recommendation or Transaction to be suitable for that particular Client. For this purpose, the Authorised Person must:

- (i) undertake an appropriate assessment of the particular Client's needs and objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and
  - (ii) take into account any other relevant requirements and circumstances of the Client of which the Authorised Person is, or ought reasonably to be aware.
- (b) An Authorised Person may, subject to Rule 3.4.2(c), limit the extent to which it will consider suitability when making a recommendation to, or undertaking a Transaction on a discretionary basis for or on behalf of, a Professional Client or Market Counterparty if, prior to carrying on that activity, the Authorised Person:
- (i) has given a written warning to the Professional Client or Market Counterparty in the form of a notice clearly stating either that the Authorised Person will not consider suitability, or will consider suitability only to the extent specified in the notice; and
  - (ii) the Professional Client or Market Counterparty has given his express consent, after a proper opportunity to consider the warning, by signing that notice.
- (c) Where an Authorised Person manages a Discretionary Portfolio Management Account for a Professional Client or Market Counterparty, it must ensure that the account remains suitable for the Professional Client or Market Counterparty, having regard to the matters specified in Rule 3.4.2(a)(i) and 3.4.2(a)(ii).
- (d) An Authorised Person Providing Trust Services does not have to undertake an assessment of the factors such as risk tolerance, knowledge and experience of a Client when assessing the suitability of the service to a particular Client.
- (e) The extent to which an Authorised Person needs to carry out a suitability assessment for a Professional Client or Market Counterparty depends on its agreement with such a Client. The agreement may limit the suitability assessment to a specified extent, or may dispense with the suitability assessment completely. To the extent a limited suitability assessment is agreed upon, the Authorised Person must carry out the suitability assessment as agreed. Limitations may, for example, relate to the objectives of the Client or the product range in respect of which the recommendations are to be made.
- 3.4.3 An Authorised Person must take reasonable steps to ensure the information it holds about a Client is accurate, complete and up to date.

### 3.5 **Conflicts of Interest**

#### 3.5.1 **Fair Treatment**

An Authorised Person must take reasonable steps to ensure that conflicts of interest and potential conflicts of interest between itself and its Clients and between one Client and another Client are identified and then prevented or managed in accordance with this Rule 3.5.

#### 3.5.2 **Record of Conflicts**

An Authorised Person must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that Authorised Person in which a conflict of interest entailing a material risk of damage to the interests of one or more Clients has arisen or, in the case of an ongoing service or activity, may arise.

### 3.5.3 **Managing Conflicts**

An Authorised Person must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its Clients, including establishing and maintaining effective Information Barriers to restrict the communication of relevant information.

### 3.5.4 **Disclosure of Conflicts**

- (a) If arrangements made by an Authorised Person under Rule 3.5.3 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a Client will be prevented, the Authorised Person must clearly disclose the general nature and/or sources of conflicts of interest to the Client before undertaking business for the Client.
- (b) The disclosure must:
  - (i) be made in a durable medium; and
  - (ii) include sufficient detail, taking into account the nature of the Client, to enable that Client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

### 3.5.5 **Conflicts Policy**

- (a) An Authorised Person must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the Authorised Person and the nature, scale and complexity of its business.
- (b) Where the Authorised Person is a member of a Group, the policy must also take into account any circumstances of which the Authorised Person is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the Group.

3.5.6 If an Authorised Person is unable to prevent or manage a conflict or potential conflict of interest, it must decline to act for that Client.

### 3.5.7 **Attribution of Knowledge**

When a Rule applies to an Authorised Person that acts with knowledge, the Authorised Person will not be taken to act with knowledge for the purposes of that Rule as long as none of the relevant individuals involved for on behalf of the Authorised Person acts with that knowledge as a result of an Information Barrier arrangement.

### 3.5.8 **Inducements**

- (a) An Authorised Person must have systems and controls including policies and procedures to ensure that neither it, nor an Employee or Associate of it, offers, gives, solicits or accepts inducements such as commissions or other direct or indirect benefits where such inducements are reasonably likely to conflict with any duty that it owes to its Clients. In circumstances where an Authorised Person believes on reasonable grounds that the Client's interests are better served by a Person to whom the referral is to be made, any commission or other benefit which the Authorised Person or any of its

Employees or Associates receives in respect of such a referral would not be a prohibited inducement under that Rule.

- (b) Subject to Rule 3.5.8(c), an Authorised Person must, before recommending a Specified Investment to, or Executing a Transaction for, a Retail Client, disclose to that Client any commission or other direct or indirect benefit which it, or any Associate or Employee of it, has received or may or will receive, in connection with or as a result of the Authorised Person making the recommendation or executing the Transaction.
- (c) An Authorised Person may provide the information required under Rule 3.5.8(b) in summary form, provided it informs the Client that more detailed information will be provided to the Client upon request and complies with such a request.

### **3.6 Soft Dollar Agreements**

3.6.1 An Authorised Person may accept goods and services under a Soft Dollar Agreement only if the goods and services are reasonably expected to:

- (a) assist in the provision of Investment Business services to the Authorised Person's Clients by means of:
  - (i) specific advice on dealing in, or on the value of, any Investment;
  - (ii) research or analysis about Investments generally; or
  - (iii) use of computer or other information facilities to the extent that they are associated with specialist computer software or research services, or dedicated telephone lines;
- (b) provide custody services relating to Investments belonging to, or managed for, Clients;
- (c) provide services relating to portfolio valuation or performance measurement services; or
- (d) provide market price services.

3.6.2 An Authorised Person must undertake a thorough assessment of the nature of the goods and services and the terms upon which they are to be provided under a Soft Dollar Agreement to ensure that the receipt of such goods and services provide commensurate value notifying in particular if any costs of such goods and services are to be passed through to Clients. Where the Client bears the cost of the goods and services, the disclosure obligation relating to costs and charges under will apply to such costs.

3.6.3 An Authorised Person must not Deal in Investments as agent for a Client, either directly or indirectly, through any broker under a Soft Dollar Agreement, unless:

- (a) the agreement is a written agreement for the supply of goods or services described in Rule 3.6.1, which do not take the form of, or include, cash or any other direct financial benefit;
- (b) Transaction execution by the broker is consistent with any best execution obligations owed to the Client;

- (c) the Authorised Person has taken reasonable steps to ensure that the services provided by the broker are competitive, with no comparative price disadvantage, and take into account the interests of the Client;
- (d) for Transactions in which the broker acts as principal, the Authorised Person has taken reasonable steps to ensure that Commission paid under the agreement will be sufficient to cover the value of the goods or services to be received and the costs of execution; and
- (e) the Authorised Person makes adequate disclosure in accordance with Rules 3.6.4 and 3.6.5.

3.6.4 Before an Authorised Person enters into a Transaction for or on behalf of a Retail Client, Professional Client or Market Counterparty, either directly or indirectly, with or through the agency of another Person, in relation to which there is a Soft Dollar Agreement which the Authorised Person has, or knows that another member of its Group has, with that other Person, it must disclose to its Client:

- (a) the existence of a Soft Dollar Agreement; and
- (b) the Authorised Person's or its Group's policy relating to Soft Dollar Agreements.

3.6.5 If an Authorised Person or member of its Group has a Soft Dollar Agreement under which either the Authorised Person or member of its Group deals for a Client, the Authorised Person must provide that Client with the following information:

- (a) the percentage paid under Soft Dollar Agreements of the total Commission paid by or at the direction of:
  - (i) the Authorised Person; and
  - (ii) any other member of the Authorised Person's Group which is a party to those agreements;
- (b) the value, on a cost price basis, of the goods and services received by the Authorised Person under Soft Dollar Agreements, expressed as a percentage of the total Commission paid by or at the direction of:
  - (i) the Authorised Person; or
  - (ii) other members of the Authorised Person's Group;
- (c) a summary of the nature of the goods and services received by the Authorised Person under the Soft Dollar Agreements; and
- (d) the total Commission paid from the portfolio of that Client.

3.6.6 The information in Rule 3.6.5 must be provided to that Client at least once a year, covering the period since the Authorised Person last reported to that Client.

### 3.7 **Record Keeping**

3.7.1 An Authorised Person must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Authorised Person. These must include, where applicable, the following:

- (a) any Marketing Material issued by, or on behalf of, the Authorised Person;
- (b) any Financial Instruments provided to or Regulated Activities carried out for the benefit of a Client and each advice or recommendation made to a Client;
- (c) documents regarding Client classification under Rule 2;
- (d) a record of each Client Agreement including any subsequent amendments to it as agreed with the Client;
- (e) records relating to the suitability assessment undertaken by the Authorised Person to demonstrate compliance with these Rules;
- (f) records to demonstrate compliance with the requirements relating to inducements, including any disclosure made to Clients under that rule and if any goods and services are received by the Authorised Person under a Soft Dollar Agreement, the details relating to those agreements;
- (g) financial promotions under Schedule 2 of FSMR; and
- (h) any other disclosures made to Clients.

3.7.2 For the purposes of Rule 3.7.1, the six year period commences:

- (a) in the case of the requirement in Rule 3.7.1(a), from the date on which the Marketing Material was last provided to a Person;
- (b) in the case of the requirement in Rule 3.7.1(b) to Rule 3.7.1(d), from the date the Client ceases to be a Client of the Authorised Person;
- (c) in the case of the requirement in Rule 3.7.1(e), from the date on which the relevant inducements were last received; and
- (d) in the case of the requirement in Rule 3.7.1(g), from the date on which the relevant financial promotion was made.

#### **4. ADDITIONAL RULES – ACCEPTING DEPOSITS AND PROVIDING CREDIT**

##### **4.1 Application**

4.1.1 The Rules in this chapter apply to an Authorised Person with respect to Accepting Deposits or Providing Credit through an establishment maintained by it in the Abu Dhabi Global Market.

##### **4.2 Accepting Deposits**

4.2.1 A Bank, in the course of Accepting Deposits, must not:

- (a) Accept Deposits from the U.A.E markets;
- (b) Accept Deposits in U.A.E. Dirham; or
- (c) Undertake foreign exchange transactions involving U.A.E. Dirhams.

#### 4.3 **Providing Credit**

4.3.1 An Authorised Person may, subject to Rule 4.3.3, Provide Credit to a Professional Client or Market Counterparty.

4.3.2 An Authorised Person may, subject to Rule 4.3.3, Provide Credit to a Retail Client only where:

- (a) the Retail Client is an Undertaking; and
- (b) the Credit Facility is provided to the Retail Client for a business purpose.

4.3.3 An Authorised Person, in the course of Providing Credit, must not:

- (a) Provide Credit in U.A.E. Dirhams; or
- (b) Undertake currency or foreign exchange transactions involving U.A.E. Dirhams.

#### 4.4 **Depositor Protection**

4.4.1 (a) In the event of:

- (i) the appointment of a provisional liquidator, liquidator, receiver or administrator, or trustee in bankruptcy over a Bank which is an Abu Dhabi Global Market Firm; or
- (ii) a direction by the Regulator to a Bank which is an Abu Dhabi Global Market Firm to deal with all or substantially all its Deposits in a specified manner,

eligible depositors of the Bank have priority over, and shall be paid in priority to, all other unsecured creditors of the Bank.

- (b) In Rule 4.4.1(a), an "eligible depositor" means a Person (other than a Market Counterparty or a Bank) who, at the relevant time, is a creditor of a Bank referred to in Rule 4.4.1(a) by virtue of being owed an amount of Money held by the Bank as a Deposit.

### 5. **ADDITIONAL RULES — PROVIDING TRUST SERVICES**

#### 5.1 **Application**

5.1.1 This chapter applies to a Trust Service Provider with respect to the conduct of Providing Trust Services.

#### 5.2 **General**

5.2.1 For the purposes of this chapter, a settlor, a trustee or a named beneficiary of a trust in respect of which the Trust Service Provider is engaged in Providing Trust Services may be treated as a Client of the Authorised Person.

5.2.2 A Trust Service Provider must maintain adequate knowledge of, and comply with, all applicable Abu Dhabi Global Market laws, Rules and Regulations relevant to Providing Trust Services.

5.2.3 A Trust Service Provider must be able to demonstrate that it is in compliance with appropriate standards of corporate governance.

5.2.4 A Trust Service Provider must transact its business (including the establishing, transferring or closing of business relationships with its Clients) in an expeditious manner where appropriate unless there are reasonable grounds to do otherwise.

**5.3 Exercise of Discretion**

5.3.1 Where a Trust Service Provider is responsible for exercising discretion for, or in relation to, its Clients, it must take all reasonable steps to obtain sufficient information in order to exercise its discretion or other powers in a proper manner and for a proper purpose.

5.3.2 The Trust Service Provider must ensure that its understanding of a Client's business is refreshed by means of regular reviews.

5.3.3 The Trust Service Provider must ensure that any trustee exercises his discretion in accordance with his fiduciary and other duties under the laws governing the trust of which he is a trustee.

**5.4 Delegation of Duties or Powers**

5.4.1 Any delegation of duties or powers by a Trust Service Provider, whether by Power of Attorney or otherwise, must only be entered into for a proper purpose, permissible by law and limited and monitored as appropriate.

**5.5 Reviews**

5.5.1 A Trust Service Provider must ensure that adequate procedures are implemented to ensure that regular reviews at appropriate intervals are conducted in respect of Providing Trust Services to its Clients.

**5.6 Professional Indemnity Insurance Cover**

5.6.1 A Trust Service Provider must maintain professional indemnity insurance cover appropriate to the nature and size of the Trust Service Provider's business.

5.6.2 A Trust Service Provider must:

- (a) provide the Regulator with a copy of its professional indemnity insurance cover; and
- (b) notify the Regulator of any changes to the cover including termination and renewal.

5.6.3 A Trust Service Provider must provide the Regulator on a yearly basis, with the details of the arrangements in force together with evidence of the cover. Any claims in excess of US\$10,000 or changes to the arrangements previously notified to the Regulator under this Rule must be notified to the Regulator as they arise.

**5.7 Dual Control**

5.7.1 The Trust Service Provider must have adequate internal controls, including having two Persons with appropriate skills and experience managing the business.

5.7.2 While a Trust Service Provider may have a single Person with overall responsibility, at least another Person must have the skills and experience to be able to run the business of the Trust Service Provider in the absence of the senior Person and must be in a position to challenge the actions of the senior Person where they consider that those actions may be contrary to the provisions of Abu Dhabi Global Market Laws, Rules or Regulations or any other applicable



legislation, may not be in the interests of the Client, or may be contrary to sound business principles.

#### **5.8 Internal Reporting**

A Trust Service Provider must have arrangements for internal reporting to ensure that the directors or the partners can satisfy themselves that:

- (a) the requirements of the relevant legislation are being met on an on-going basis;
- (b) the Trust Service Provider's business is being managed according to sound business principles and, in particular, that it can meet its financial commitments as they fall due;
- (c) the affairs of its Clients are being managed in accordance with the service agreements;
- (d) the trustees are acting in accordance with their fiduciary and other duties;
- (e) the affairs of its Clients are being properly monitored and in particular that the Client is not using the trust structure to hide assets from legitimate enquiry, to avoid proper obligations in other jurisdictions or to engage in illegal activities in other jurisdictions;
- (f) the assets of its Clients are properly managed and safeguarded; and
- (g) the recruitment, training and motivation of staff is sufficient to meet the obligations of the business.

#### **5.9 Recording of Selection Criteria**

5.9.1 Where the Trust Service Provider seeks the advice of a third party in connection with a Client's affairs, for example to advise on or manage investments, the Trust Service Provider must record the criteria for selection of the adviser and the reasons for the selection made.

5.9.2 The Trust Service Provider must monitor the performance of the adviser and ensure that it is in a position to change advisers if it is in the interests of the Client.

#### **5.10 Qualification and Experience of Trust Service Provider Staff**

5.10.1 Staff employed or Persons recommended by the Trust Service Provider must have appropriate qualifications and experience.

5.10.2 A Trust Service Provider must ensure that all transactions or decisions entered into, taken by or on behalf of Clients are properly authorised and handled by Persons with an appropriate level of knowledge, experience, qualifications and status according to the nature and status of the transactions or decisions involved (this applies also to decisions taken by trustees who are recommended by, but not employed by, a Trust Service Provider).

5.10.3 A Trust Service Provider must ensure that, each of its officers and employees, agents, Persons acting with its instructions and Persons it recommends to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.

5.10.4 A Trust Service Provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.

**5.11 Books and Records**

- 5.11.1 The books and records of a Trust Service Provider must be sufficient to demonstrate adequate and orderly management of Clients' affairs.
- 5.11.2 A Trust Service Provider must prepare proper accounts, at appropriately regular intervals on the trusts and underlying companies administered for its Clients.
- 5.11.3 Where trusts and underlying companies are governed by the laws of a jurisdiction that require accounts to be kept in a particular form, the Trust Service Provider must meet those requirements.
- 5.11.4 The Trust Service Provider's books and records must be sufficient to allow the recreation of the transactions of the business and its Clients and to demonstrate what assets are due to each Client and what liabilities are attributable to each Client.

**5.12 Due Diligence**

- 5.12.1 A Trust Service Provider must, at all times, have verified documentary evidence of the settlors, trustees (in addition to the Trust Service Provider itself) and principal named beneficiaries of trusts for which it Provides Trust Services. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, a Trust Service Provider must also have verified, where reasonably possible, documentary evidence of any Person who receives a distribution from the trust and any other Person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust.
- 5.12.2 A Trust Service Provider must demonstrate that it has knowledge of the source of funds that have been settled into trusts or have been used to provide capital to companies, or have been used in transactions with which the Trust Service Provider has an involvement.

**5.13 Fitness and Propriety of Persons Acting as Trustees**

- 5.13.1 Where a Trust Service Provider arranges for a Person who is not an employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.
- 5.13.2 A Trust Service Provider must notify the Regulator of the appointment of a Person under Rule 5.13.1, including the name and business address if applicable and the date of commencement of the appointment.
- 5.13.3 Prior to the appointment of such a Person to act as a trustee, the Trust Service Provider must take reasonable steps to ensure that the Person has the required skills, experience and resources to act as a trustee for a Client of the Trust Service Provider.
- 5.13.4 A Trust Service Provider must notify the Regulator immediately if the appointment of such a Person is or is about to be terminated, or on the resignation of such Person, giving the reasons for the resignation and the measures which have been taken to ensure that a new trustee has been appointed.
- 5.13.5 A Person appointed to act as trustee for a Client of a Trust Service Provider who is not an Employee of the Trust Service Provider, must agree in writing to be bound by and comply with the same legal and regulatory requirements as if he were an Employee of the Trust Service Provider.

**6. ADDITIONAL RULES – INVESTMENT BUSINESS**

**6.1 Application**

The Rules in this chapter apply to an Authorised Person when conducting Investment Business. The requirements in this chapter apply to an Authorised Person regardless of the classification of the Client, unless expressly provided otherwise.

**6.2 Personal Account Transactions**

6.2.1 An Authorised Person must establish and maintain adequate policies and procedures so as to ensure that:

- (a) an Employee does not undertake a Personal Account Transaction unless:
  - (i) the Authorised Person has, in a written notice, drawn to the attention of the Employee the conditions upon which the Employee may undertake Personal Account Transactions and that the contents of such a notice are made a term of his contract of employment or services;
  - (ii) the Authorised Person has given its written permission to that Employee for that transaction or to transactions generally in Investments of that kind; and
  - (iii) the transaction will not conflict with the Authorised Person's duties to its Clients;
- (b) it receives prompt notification or is otherwise aware of each Employee's Personal Account Transactions; and
- (c) if an Employee's Personal Account Transactions are conducted with the Authorised Person, each Employee's account must be clearly identified and distinguishable from other Clients' accounts.

6.2.2 The written notice in Rule 6.2.1(a)(i) must make it explicit that, if an Employee is prohibited from undertaking a Personal Account Transaction, he must not, except in the proper course of his employment:

- (a) procure another Person to enter into such a Transaction; or
- (b) communicate any information or opinion to another Person if he knows, or ought to know, that the Person will as a result, enter into such a Transaction or procure some other Person to do so.

6.2.3 Where an Authorised Person has taken reasonable steps to ensure that an Employee will not be involved to any material extent in, or have access to information about, the Authorised Person's Investment Business, then the Authorised Person need not comply with the requirements in Rule 6.2.1 in respect of that Employee.

6.2.4 An Authorised Person must establish and maintain procedures and controls so as to ensure that an Investment Analyst does not undertake a Personal Account Transaction in an Investment if the Investment Analyst is preparing Investment Research:

- (a) on that Investment or its Issuer; or
- (b) on a related investment, or its Issuer,

until the Investment Research is published or made available to the Authorised Person's Clients.

### 6.3 **Record Keeping**

- 6.3.1 (a) An Authorised Person must maintain and keep a record of:
- (i) the written notice setting out the conditions for Personal Account Transactions under Rule 6.2.1(a)(i);
  - (ii) each permission given or denied by the Authorised Person under Rule 6.2.1(a)(ii);
  - (iii) each notification made to it under Rule 6.2.1(b); and
  - (iv) the basis upon which the Authorised Person has ascertained that an Employee will not be involved in to any material extent, or have access to information about, the Authorised Person's Investment Business for the purposes of Rule 6.2.3.
- (b) The records in Rule 6.3.1(a) must be retained for a minimum of six years from the date of:
- (i) in Rule 6.3.1(a)(i) and Rule 6.3.1(a)(iv), termination of the employment contract of each Employee;
  - (ii) in Rule 6.3.1(a)(ii), each permission given or denied by the Authorised Person; and
  - (iii) in Rule 6.3.1(a)(iii), each notification made to the Authorised Person.

### 6.4 **Investment Research and Offers of Securities**

#### 6.4.1 **Application**

- (a) This section applies to an Authorised Person preparing or publishing Investment Research.

#### **Guidance**

- (b) Investment Research is seen as a significant potential source of conflicts of interest within an Authorised Person and therefore an Authorised Person preparing or publishing investment research is expected to have adequate procedures, systems and controls to manage effectively any conflicts that arise.
- (c) An Authorised Person that prepares and publishes Investment Research must have adequate procedures and controls to ensure:
- (i) the effective supervision and management of Investment Analysts;
  - (ii) that the actual or potential conflicts of interest are proactively managed in accordance with Rule 3.5;
  - (iii) that the Investment Research issued to Clients is impartial; and

- (iv) that the Investment Research contains the disclosures described under Rules 6.4.2 and 6.4.4.
- (d) An Authorised Person's procedures, controls and internal arrangements, which may include Information Barriers, should limit the extent of Investment Analysts' participation in Corporate Finance Business and sales and trading activities, and ensure remuneration structures do not affect their independence.

#### **6.4.2 Disclosures in Investment Research**

- (a) When an Authorised Person publishes Investment Research, it must take reasonable steps to ensure that the Investment Research:
  - (i) clearly identifies the types of Clients for whom it is principally intended;
  - (ii) distinguishes fact from opinion or estimates, and includes references to sources of data and any assumptions used;
  - (iii) specifies the date when it was first published;
  - (iv) specifies the period the ratings or recommendations are intended to cover;
  - (v) contains a clear and unambiguous explanation of the rating or recommendation system used;
  - (vi) includes a distribution of the different ratings or recommendations, in percentage terms:
    - (A) for all Investments;
    - (B) for Investments in each sector covered; and
    - (C) for Investments, if any, where the Authorised Person has undertaken Corporate Finance Business with or for the Issuer over the past 12 months; and
  - (vii) if intended for use only by a Professional Client or Market Counterparty, contains a clear warning that it should not be relied upon by or distributed to Retail Clients.
- (b) An Authorised Person must consider whether it would be appropriate to include a price chart or line graph depicting the performance of the Investment for the period that the Authorised Person has assigned a rating or recommendation for that investment, including any dates on which the ratings were revised.
- (c) For the purposes of this section, an Authorised Person must take reasonable steps to ensure that when it publishes Investment Research, and in the case where a representative of the Authorised Person makes a public appearance, disclosure is made of the following matters:
  - (i) any financial interest or material interest that the Investment Analyst or a Close Relative of the analyst has, which relates to the Investment;

- (ii) the reporting lines for Investment Analysts and their remuneration arrangements where such matters give rise to any conflicts of interest which may reasonably be likely to impair the impartiality of the Investment Research;
- (iii) any shareholding by the Authorised Person or its Associate of 1% or more of the total issued share capital of the Issuer;
- (iv) if the Authorised Person or its Associate acts as corporate broker for the Issuer;
- (v) any material shareholding by the Issuer in the Authorised Person;
- (vi) any Corporate Finance Business undertaken by the Authorised Person with or for the Issuer over the past 12 months, and any future relevant Corporate Finance Business initiatives; and
- (vii) that the Authorised Person is a Market Maker in the Investment, if that is the case.

### **Guidance**

- (d) The requirements in this Rule 6.4.2 apply to an Authorised Person in addition to other requirements under FSMR and any rules made thereunder. For example, an Authorised Person is required to take reasonable steps to identify actual or potential conflicts of interest and then prevent or manage them under GEN 3.3.21-3.3.24. An Authorised Person must also have adequate procedures and controls when it prepares or publishes Investment Research.

### **6.4.3 Restrictions on Publication**

- (a) If an Authorised Person acts as a manager or co-manager of an initial public offering or a secondary offering, it must take reasonable steps to ensure that:
  - (i) it does not publish Investment Research relating to the Investment during a Quiet Period; and
  - (ii) an Investment Analyst from the Authorised Person does not make a public appearance relating to that Investment during a Quiet Period.
- (b) The same conflicts of interest mentioned in this section do not arise if an Investment Analyst prepares Investment Research solely for an Authorised Person's own use and not for publication. For example, if the research material is prepared solely for the purposes of the Authorised Person's proprietary trading then the use of this information would fall outside the restrictions placed on publications.

### **6.4.4 Restriction on Own Account Transactions**

- (a) An Authorised Person or its Associate must not knowingly execute an Own Account Transaction in an Investment or related Investments, which is the subject of Investment Research, prepared either by the Authorised Person or its Associate, until the Clients for whom the Investment Research was principally intended have had a reasonable opportunity to act upon it.

- (b) The restriction in Rule 6.4.4(a) does not apply if:
  - (i) the Authorised Person or its Associate is a Market Maker in the relevant Investment;
  - (ii) the Authorised Person or its Associate undertakes an Execution-Only Transaction for a Client; or
  - (iii) it is not expected to materially affect the price of the Investment.

**Guidance**

- (c) The exceptions in Rule 6.4.4(b) allow an Authorised Person to continue to provide key services to the market and to its Clients even if the Authorised Person would be considered to have knowledge of the timing and content of the Investment Research which is intended for publication to Clients, for example when it is impractical for an Authorised Person to put in place an Information Barrier because the Authorised Person has few Employees or cannot otherwise separate its functions.

**6.4.5 Offers of Securities**

When an Authorised Person carries out a mandate to manage an Offer of Securities, it must implement adequate internal arrangements, in accordance with Rule 3.5, to manage any conflicts of interest that may arise as a result of the Authorised Person's duty to two distinct sets of Clients namely the corporate finance Client and the investment Client.

**6.4.6 Disclosure**

- (a) When an Authorised Person accepts a mandate to manage an Offer, it must take reasonable steps to disclose to its corporate finance Client:
  - (i) the process the Authorised Person proposes to adopt in order to determine what recommendations it will make about allocations for the Offer;
  - (ii) details of how the target investor group, to whom it is planned to Offer the Securities, will be identified;
  - (iii) the process through which recommendations are prepared and by whom; and
  - (iv) (if relevant) that it may recommend placing Securities with a Client of the Authorised Person for whom the Authorised Person provides other services, with the Authorised Person's own proprietary book, or with an Associate, and that this represents a potential conflict of interest.

**Guidance**

- (b) It is the Regulator's expectation that an Authorised Person's procedures to identify and manage conflicts of interest should extend to the allocation process for an offering of Securities.

## 6.5 **Best Execution**

### 6.5.1 **Application**

- (a) The Rules in this section do not apply to an Authorised Person with respect to any Transaction which:
  - (i) it undertakes with a Market Counterparty;
  - (ii) it carries out for the purposes of managing a Fund of which it is the Fund Manager; or
  - (iii) is an Execution-Only Transaction.
- (b) Where an Authorised Person undertakes an Execution-Only Transaction with or for a Client, the Authorised Person is not relieved from providing best execution in respect of any aspect of that Transaction which lies outside the Client's specific instructions.

### 6.5.2 **Providing Best Execution**

- (a) When an Authorised Person agrees, or decides in the exercise of its discretion, to Execute any Transaction with or for a Client in an Investment, it must provide best execution.
- (b) An Authorised Person provides best execution if it takes reasonable care to determine the best execution available for that Investment under the prevailing market conditions and deals at a price and other conditions which are no less advantageous to that Client.

### 6.5.3 **Requirements**

In determining whether an Authorised Person has taken reasonable care to provide the best overall price for a Client in accordance with Rule 6.5.2 the Regulator will have regard to whether an Authorised Person has:

- (a) discounted any fees and charges previously disclosed to the Client;
- (b) not taken a Mark-up or Mark-down from the price at which it Executed the Transaction, unless this is disclosed to the Client; and
- (c) had regard to price competition or the availability of a range of price sources for the execution of its Clients' Transactions. In the case where the Authorised Person has access to prices of different Recognised Investment Exchanges or MTFs or OTFs or its own available proprietary prices, it must Execute the Transaction at the best overall price available having considered other relevant factors.

6.5.4 If another Person is responsible for the execution of a Transaction, an Authorised Person may rely on that Person to provide best execution where that Person has undertaken to provide best execution in accordance with this section.

6.5.5 When determining best execution, an Authorised Person must consider the direct costs and indirect costs and the relevant order type and size, clearing and settlement arrangements and costs, margin costs, third-party fees and timing of a Client's order and its settlement that could affect decisions on when, where and how to trade.



## 6.6 Non-market Price Transactions

### 6.6.1 General Prohibition

Except in relation to:

- (a) a non-market price Transaction subject to the Rules of a Recognised Investment Exchange; or
- (b) Fund Investment Managers pursuing a strategy that involves the buying, selling or holding of securities that are not publicly listed or traded or readily saleable,

an Authorised Person must not enter into a non-market price Transaction in any capacity, with or for a Client, unless it has taken reasonable steps to ensure that the Transaction is not being entered into by the Client for an improper purpose.

### 6.6.2 Definition

- (a) A non-market price Transaction is a Transaction where the dealing rate or price paid by the Authorised Person or its Client differs from the prevailing market rate or price (after taking into account all costs) to a material extent or the Authorised Person or its Client gives materially more or less in value than it receives in return.
- (b) Authorised Persons must undertake transactions at the prevailing market price. Failure to do this may result in an Authorised Person participating, whether deliberately or unknowingly, in the concealment of a profit or loss, or in the perpetration of a fraud.

## 6.7 Aggregation and Allocation

### 6.7.1 Application

The Rules in this section do not apply to an Authorised Person with respect to any Transaction which:

- (a) it undertakes with a Market Counterparty; or
- (b) it carries out for the purposes of managing a Fund of which it is the Fund Manager.

### 6.7.2 Aggregation of Orders

An Authorised Person may aggregate an order for a Client with an order for other Clients or with an order for its own account only where:

- (a) it is unlikely that the aggregation will operate to the disadvantage of any of the Clients whose Transactions have been aggregated;
- (b) the Authorised Person has disclosed in writing to the Client that his order may be aggregated and that the effect of the aggregation may operate on some occasions to his disadvantage;
- (c) the Authorised Person has made a record of the intended basis of allocation and the identity of each Client before the order is effected; and

- (d) the Authorised Person has in place written standards and policies on aggregation and allocation which are consistently applied and must include the policy that will be adopted when only part of the aggregated order has been filled.

### 6.7.3 Allocation of Investments

Where an Authorised Person has aggregated a Client order with an order for other Clients or with an order for its own account, and part or all of the aggregated order has been filled, it must:

- (a) promptly allocate the Investments concerned;
- (b) allocate the Investments in accordance with the stated intention;
- (c) ensure the allocation is done fairly and uniformly by not giving undue preference to itself or to any of those for whom it dealt; and
- (d) make and maintain a record of:
  - (i) the date and time of the allocation;
  - (ii) the relevant Investments;
  - (iii) the identify of each Client concerned; and
  - (iv) the amount allocated to each Client and to the Authorised Person recorded against the intended allocation as required in Rule 6.7.3(b).

## 6.8 Record Keeping

### 6.8.1 Record Keeping – Voice and Electronic Communications

- (a) Subject to Rule 5.8.1(b), an Authorised Person must take reasonable steps to ensure that it makes and retains recordings of voice and electronic communications that are:
  - (i) with a Client or with another Person in relation to a Transaction, including communications relating to the receipt, execution, arrangement of execution of Client orders and passing of related instructions; and
  - (ii) made with, sent from or received on equipment either provided by the Authorised Person to an employee or contractor or use of which by an employee or contractor has been sanctioned or permitted by the Authorised Person.
- (b) The obligation in Rule 6.8.1(a) does not apply to the following:
  - (i) Corporate Finance Business;
  - (ii) corporate treasury functions;
  - (iii) communications between Fund Managers, or between Fund Managers and Eligible Custodians of the same Fund (when acting in that capacity); and
  - (iv) voice and electronic communications which are not intended to lead to the conclusion of a specific Transaction and are general conversations or communications about market conditions.

- (c) To comply with Rule 5.8.1(a), an Authorised Person must:
  - (i) be able to demonstrate prompt accessibility of all records.
  - (ii) maintain records in comprehensible form or must be capable of being promptly so reproduced.
  - (iii) make and implement appropriate procedures to prevent unauthorised alteration of its records.
  - (iv) retain all records of voice or electronic communication for a minimum of two years.
- (d) The effect of this Rule 6.8.1 is that an Authorised Person may conduct business over a mobile phone or other handheld electronic communication device but only if the Authorised Person is able to record such communications. Further, mere transmission of instructions by front office personnel to back office personnel within an Authorised Person would not ordinarily be subject to this Rule.

#### **Guidance**

- (e) The effect of Rule 5.8.1(b)(iv) is to exclude from Rule 5.8.1(a) conversations or communications made by Investment Analysts, retail financial advisers, and persons carrying on back office functions.

#### **6.8.2 Records of Orders and Transactions**

- (a) When an Authorised Person receives a Client order or in the exercise of its discretion decides upon a Transaction, it must promptly make a record of the information set out in Rule 11.1.1.
- (b) When an Authorised Person Executes a Transaction, it must promptly make a record of the information set out in Rule 11.1.2.
- (c) When an Authorised Person passes a Client order to another Person for Execution, it must promptly make a record of the information set out in Rule 11.1.3.
- (d) An Authorised Person must retain the records required in Rules 6.8.2 for six years from the date on which the order is allocated.

#### **6.9 Other Dealing Rules**

##### **6.9.1 Application**

Rule 6.9 does not apply to an Authorised Person with respect to any Transaction which it:

- (a) undertakes with a Market Counterparty; or
- (b) carries out for the purposes of managing a Fund of which it is the Fund Manager.

##### **6.9.2 Churning**

- (a) An Authorised Person must not Execute a Transaction for a Client in its discretion or advise any Client to transact with a frequency or in amounts to the extent that those

Transactions have no commercial purpose other than to obtain a benefit from transaction volumes.

- (b) The onus will be on the Authorised Person to ensure that such Transactions were fair and reasonable at the time they were entered into.

### 6.9.3 **Timely Execution**

- (a) Once an Authorised Person has agreed or decided to enter into a Transaction for a Client, it must do so as soon as reasonably practical.
- (b) An Authorised Person may postpone the execution of a Transaction if it has taken reasonable steps to ensure that it is in the best interests of the Client.

### 6.9.4 **Fairly and in Due Turn**

An Authorised Person must deal with Own Account Transactions and Client Transactions fairly and in due turn.

### 6.9.5 **Averaging of Prices**

- (a) An Authorised Person may execute a series of Transactions on behalf of a Client within the same trading day or within such other period as may be agreed in writing by the Client, to achieve one investment decision or objective, or to meet Transactions which it has aggregated.
- (b) If the Authorised Person does so, it may determine a uniform price for the Transactions executed during the period, calculated as the weighted average of the various prices of the Transactions in the series.

### 6.9.6 **Timely Allocation**

- (a) An Authorised Person must ensure that a Transaction it Executes is promptly allocated.
- (b) The allocation must be:
  - (i) to the account of the Client on whose instructions the Transaction was executed;
  - (ii) in respect of a discretionary Transaction, to the account of the Client or Clients with or for whom the Authorised Person has made and recorded, prior to the Transaction, a decision in principle to execute that Transaction; or
  - (iii) in all other cases, to the account of the Authorised Person.

### 6.9.7 **Direct Electronic Access**

Where an Authorised Person provides a Client (including a Market Counterparty) with direct electronic access to a Recognised Body or MTF, the Authorised Person must:

- (a) establish and maintain policies, procedures, systems and controls to limit or prevent a Client from placing an order that would result in the Authorised Person exceeding its existing position limits or credit limits; and

- (b) ensure that such policies, procedures, systems and controls remain appropriate and effective on an on-going basis.

6.9.8 An Authorised Person must undertake on-going monitoring of its systems and controls to ensure that they are operating effectively and as intended and remain appropriate.

#### 6.10 **Confirmation Notes**

##### 6.10.1 **Application**

The Rules in this section do not apply to an Authorised Person with respect to any Transaction which it:

- (a) undertakes with a Market Counterparty; or
- (b) carries out for the purposes of managing a Fund of which it is the Fund Manager.

##### 6.10.2 **Sending Confirmation Notes**

- (a) When an Authorised Person Executes a Transaction in an Investment for a Client or with a counterparty, it must ensure a confirmation note is sent to the Client or counterparty as soon as possible and in any case no later than two business days following the date of Execution of the Transaction.
- (b) Where an Authorised Person has executed a Transaction or series of Transactions in accordance with Rule 6.9.5, the Authorised Person must send a confirmation note relating to those Transactions as soon as possible, but no later than two business days following the last Transaction.
- (c) The confirmation note must include the details of the Transaction in accordance with Rule 13.1.

##### 6.10.3 **Record Keeping**

An Authorised Person must retain a copy of each confirmation note sent to a Client or counterparty and retain it for a minimum of six years from the date of despatch.

#### 6.11 **Periodic Statements**

##### 6.11.1 **Application**

The Rules in this section do not apply to an Authorised Person with respect to any Transaction which it:

- (a) undertakes with a Market Counterparty; or
- (b) carries out for the purposes of managing a Collective Investment Fund of which it is the Fund Manager; or
- (c) carries out for, or on behalf of, a Client under a Discretionary Portfolio Management Agreement.

##### 6.11.2 **Investment Management and Contingent Liability Investments**

- (a) When an Authorised Person:

- (i) acts as an Investment Manager for a Client; or
- (ii) operates a Client's account containing uncovered open positions in a Contingent Liability Investment;

it must promptly and at suitable intervals in accordance with Rule 6.11.2(b) provide the Client with a written statement ("a periodic statement") containing the matters referred to in Rule 13.1.

- (b) For the purposes of Rule 6.11.2, a "suitable interval" is:
  - (i) six-monthly;
  - (ii) monthly, if the Client's portfolio includes an uncovered open position in Contingent Liability Investments; or
  - (iii) at any alternative interval that a Client has on his own initiative agreed with the Authorised Person but in any case at least annually.

### 6.11.3 Record Keeping

An Authorised Person must make a copy of any periodic statement provided to a Client and retain it for a minimum of six years from the date on which it was provided.

## 7. CORE RULES – INSURANCE

### 7.1 Application

The Rules in this chapter:

- (a) apply to an Authorised Person with respect to the conduct in or from the Abu Dhabi Global Market of Insurance Business, Insurance Intermediation or Insurance Management to the extent specified in any Rule; and
- (b) do not apply to an Insurer that is an Authorised ISPV with the exception of Rule 7.2.

### 7.2 Insurance Business and Intermediation Restrictions

7.2.1 An Authorised Person may conduct Insurance Business or Insurance Intermediation with or for a Client only to the extent specified in this section.

7.2.2 An Authorised Person must ensure that it does not:

- (a) if it is an Insurer, Effect a Contract of Insurance or carry out a Contract of Insurance through an establishment maintained by it in the Abu Dhabi Global Market; or
- (b) if it is an Insurance Intermediary, act in relation to a Contract of Insurance;

where the contract is in relation to a risk situated within the U.A.E., unless the risk is situated in the Abu Dhabi Global Market, or the contract is one of re-insurance.

7.2.3 The classes of Contracts of Insurance are set out in Chapter 1 of Part 4 of Schedule 1 of FSMR.

- 7.2.4 An Insurer must ensure that it does not carry on, through an establishment maintained by it in the Abu Dhabi Global Market, both Long-Term Insurance Business and General Insurance Business unless the General Insurance Business is restricted to Class 1 or Class 2 or both.
- 7.2.5 An Insurer which is a Protected Cell Company must ensure that all Insurance Business is attributable to a particular Cell of that Insurer.
- 7.2.6 An Insurer must not carry on any activity other than Insurance Business unless it is an activity in direct connection with or for the purposes of such business. For the purposes of this Rule, Managing Assets is not an activity in connection with or for the purposes of Insurance Business.
- 7.2.7 The Regulator may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.

### **Guidance**

- 7.2.8 The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:
- (a) investing, reinvesting or trading, as investor or *rabb ul maal* and for the Insurer's own account, that of its Subsidiary, its Holding Company or any Subsidiary of its Holding Company but not any other party, in Securities, loans, investment accounts, Units or Shares in Collective Investment Funds, certificates of Mudaraba, certificates of Musharaka or other forms of Investments that are intended to earn profit or return for the investor;
  - (b) rendering other services related to Insurance Business operations including, but not limited to, actuarial, risk assessment, loss prevention, safety engineering, data processing, accounting, claims handling, loss assessment, appraisal and collection services;
  - (c) acting as agent for another insurer in respect of Contracts of Insurance in which both Insurers participate; and
  - (d) establishing Subsidiaries or Associates engaged or organised to engage exclusively in one or more of the businesses specified above.

## **7.3 Communication of Information and Marketing Material**

### **7.3.1 General Obligation**

- (a) When communicating any information in relation to Insurance Business, Insurance Intermediation or Insurance Management to a Person, an Authorised Person must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- (b) An Insurer, Insurance Intermediary or Insurance Manager must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under FSMR.
- (c) An Insurer or Insurance Intermediary must, when providing or directing Marketing Material to a Retail Client, comply with the requirements in Rule 3.2, if the Marketing Material relates to a Direct Long-Term Insurance Contract.

### **Guidance**

- (d) A communication addressed to a Professional Client may not need to include the same information, or be presented in the same way as, a communication addressed to a Retail Client.

#### **7.4 Client's Duty of Disclosure**

7.4.1 An Insurer or Insurance Intermediary must explain to a Client:

- (a) the Client's duty to disclose all circumstances material to the insurance both before the insurance commences and during the continuance of the policy; and
- (b) the consequence of any failure by the Client to make such disclosures.

7.4.2 An Insurance Intermediary must explain to a Client that all answers or statements given on a proposal form, claim form or any other relevant document are the Client's own responsibility and that the Client is responsible for checking the accuracy of such information.

7.4.3 If an Insurance Intermediary believes that any disclosure of material facts by a Client is not true, fair or complete, it must request the Client to make the necessary true, fair or complete disclosure, and if this is not forthcoming must consider declining to continue acting on that Client's behalf.

#### **7.5 Authorised Person's Duty of Disclosure**

7.5.1 An Insurer or Insurance Intermediary must disclose to a Client:

- (a) the name and address of the insurer or insurers effecting the Contract of Insurance;
- (b) its own name and address where different; and
- (c) contact details of the Person to whom a claim is to be notified.

7.5.2 The disclosures in Rule 7.5.1 must be made before effecting or placing the Contract of Insurance, or as soon as reasonably practicable thereafter.

7.5.3 An Insurance Intermediary must, before providing any Insurance Intermediation service to a Person as a Retail Client, disclose whether any advice or information is or will:

- (a) be provided on the basis of a fair analysis of the market;
- (b) not be provided on the basis of a fair analysis of the market because of any contractual agreement it has with any particular insurer or insurers to deal with only their products; or
- (c) even if there are no contractual agreements of the type referred to in Rule 7.5.3(b), not be provided on the basis of a fair analysis of the market.

7.5.4 If Rule 7.5.3(b) or 7.5.3(c) applies, the Insurance Intermediary must, if requested by the Retail Client, provide to that Client a list of insurers with whom it deals or may deal in relation to the relevant Contracts of Insurance.

7.5.5 An Insurance Intermediary must, before providing any Insurance Intermediation service to a Client, disclose to that Client whether it acts on behalf of an insurer or any other Person or acts independently on behalf of Clients.



7.5.6 An Insurance Intermediary must not represent itself as providing advice or information on the basis of a fair analysis of the market unless it has considered a sufficiently broad range of Contracts of Insurance and based its decision on an adequate analysis of those contracts.

**7.6 Disclosure of Costs and Remuneration**

7.6.1 An Insurer, Insurance Intermediary or Insurance Manager must provide details of the costs of each Contract of Insurance or Insurance Intermediation service or Insurance Management service offered to a Client. The disclosure required by this Rule must include any premiums, fees, charges or taxes payable by the Client, whether or not these are payable to the Authorised Person. The disclosure must be made in terms readily understandable by the Client, taking into account the knowledge held by that Client in relation to the type of insurance in question.

7.6.2 An Insurer or Insurance Intermediary must, where any premium is payable through a Credit Facility made available to a Retail Client, disclose any interest, profit rate or charges payable by the Client for using that facility.

7.6.3 An Insurer, Insurance Intermediary or Insurance Manager must ensure that it does not impose any new costs, fees or charges without first disclosing the amount and the purpose of those charges to the Client.

7.6.4 An Insurer, Insurance Intermediary or Insurance Manager must, on the request of any Client, disclose to that Client all commissions and other economic benefits accruing to the Authorised Person or any member of the same Group from:

- (a) any Insurance Intermediation business;
- (b) any Insurance Management business; or
- (c) any other business connected to or related to the provision of such business;

transacted by the Authorised Person on behalf of that Client.

7.6.5 The requirement to disclose the information under Rule 7.6.4 does not apply where an Insurance Intermediary acts solely on behalf of a single insurer, and this fact has been disclosed to the Client.

**7.7 Information about the Proposed Insurance**

7.7.1 An Insurer or Insurance Intermediary must provide adequate information in a comprehensive and timely manner to enable a Client to make an informed decision about the Contract of Insurance that is being proposed.

7.7.2 Without limiting the generality of the disclosure obligation under Rules 7.5 and 7.6, an Insurer or Insurance Intermediary must, for the purpose of complying with the obligation under that section:

- (a) provide to a Client information about the key features of any insurance proposed including the essential cover and benefits, any significant or unusual restrictions, exclusions, conditions or obligations, and the applicable period of cover; and
- (b) explain, except where the insurance cover is sourced from a single insurer, the differences in and the relative costs of similar types of insurance as proposed.

7.7.3 When deciding to what extent it is appropriate to explain the terms and conditions of a particular insurance the Insurer or Insurance Intermediary must take into consideration the knowledge held by the Client in relation to the type of insurance in question.

**7.7.4 Specific Disclosure for Long-Term Insurance**

Where an Insurer or an Insurance Intermediary proposes Direct Long-Term Insurance to a Retail Client, the disclosure for the purposes of this section must include:

- (a) the method of calculation of any bonuses;
- (b) an indication of surrender values and paid-up values, and the extent to which any such values are guaranteed;
- (c) for unit-linked insurance contracts, definition of the units to which they are linked, and a description of the underlying assets;
- (d) the basis of any projections included in the information; and
- (e) any facts that are material to the decision to invest, including risks associated with the investment and factors that may adversely affect the performance of the Investments.

**7.8 Suitability**

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

7.8.2 (a) The Insurer or Insurance Intermediary must obtain from a Retail Client such information as is necessary to identify the Client's circumstances and objectives, and consider whether the terms of the particular contract of General Insurance meet the requirements identified.

(b) An Insurer and an Insurance Intermediary may recommend to a Client a contract of General Insurance that does not meet all the Client's requirements only if it clearly explains to the Client, at the point of making the recommendation, that the contract does not fully meet the Client's requirements and the differences in the insurance recommended and the Client instructs the Insurer or Insurance Intermediary to proceed in writing under Rule 7.8.4.

7.8.3 When deciding what level of explanation is appropriate for a Client to whom a contract of insurance that does not fully meet that Client's requirements is required, the Insurer or Insurance Intermediary must take into consideration the knowledge held by the Client in relation to the type of insurance in question.

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

**7.9 Placement of Insurance**

**7.9.1 Instructions**

An Insurance Intermediary must not place a Contract of Insurance with or on behalf of an insurer unless it has satisfied itself on reasonable grounds that the insurer may lawfully effect that Contract under the laws of the jurisdictions in which the insurer and the risk are located.

**7.9.2 Quotations**

When giving a quotation, an Insurance Intermediary must take due care to ensure the accuracy of the quotation and its ability to obtain the insurance at the quoted terms.

**7.9.3 Confirmation of Cover**

- (a) An Insurer, in Effecting Contracts of Insurance, must promptly document the principal economic and coverage terms and conditions agreed upon under any Contract of Insurance and finalise such contract in a timely manner.
- (b) An Insurer or Insurance Intermediary must, as soon as reasonably practicable, provide a Client with written confirmation and details of the insurance which it has effected for the Client or has obtained on behalf of the Client, including any changes to an existing Contract of Insurance.
- (c) An Insurer or Insurance Intermediary must, as soon reasonably practicable, provide the Client with the full policy documentation where this was not included with the confirmation of cover.

**7.10 Providing an Ongoing Service**

**7.10.1 Amendments to and Renewal of Insurance**

- (a) An Insurer or Insurance Intermediary must deal promptly with a Client's request for an amendment to the insurance cover and provide the Client with full details of any premium or charges to be paid or returned.
- (b) An Insurer or Insurance Intermediary must provide a Client with written confirmation when the amendment is made and remit any return premium or charges due to the Client without delay.

7.10.2 An Insurer or Insurance Intermediary must give adequate advance notification to a Client of the renewal or expiration date of an existing insurance policy so as to allow the Client sufficient time to consider whether continuing cover is required.

7.10.3 On expiry or cancellation of the insurance, at the request of the Client, an Insurer or Insurance Intermediary must promptly make available all documentation and information to which the Client is entitled.

## **Claims**

7.10.4 Where an Insurance Intermediary handles insurance claims it must:

- (a) on request, give the Client reasonable guidance, inform the Client of applicable procedures and provide the Client with the relevant forms in pursuing a claim under the relevant policy;
- (b) handle claims fairly and promptly and keep the Client informed of progress;
- (c) inform the Client in writing, with an explanation, if it is unable to deal with any part of a claim; and
- (d) forward settlement of any claim, as soon as reasonably practicable, once it has been agreed.

7.10.5 An Insurer must:

- (a) handle claims fairly and promptly;
- (b) keep the Client informed of the progress of the claim;
- (c) not reject a claim unreasonably;
- (d) if only part of a claim is accepted:
  - (i) provide a clear statement about the part of the claim that is accepted; and
  - (ii) give clear reasons for rejecting that part of the claim that has not been accepted; and
- (e) settle the claim promptly.

7.11 **Insurance Monies**

7.11.1 **Application**

This section applies to an Insurance Intermediary and an Insurance Manager, in respect of activities carried on in or from the Abu Dhabi Global Market.

7.11.2 **General**

- (a) Insurance Monies are any monies arising from Insurance Intermediation or the Insurance Management business which are any of the following:
  - (i) premiums, additional premiums and return premiums of all kinds;
  - (ii) claims and other payments due under Contracts of Insurance;
  - (iii) refunds and salvages;
  - (iv) fees, charges, taxes and similar fiscal levies relating to Contracts of Insurance payable to a Person other than the Insurance Intermediary or Insurance Manager;

- (v) discounts, commissions and brokerage payable to a Person other than the Insurance Intermediary or Insurance Manager; or
  - (vi) monies received from or on behalf of a Client of an Insurance Manager, in relation to his Insurance Management business.
- (b) Monies are not Insurance Monies where there is a written agreement in place between the Insurance Intermediary or Insurance Manager and the insurer to whom the relevant monies are to be paid (or from whom they have been received) under which the insurer agrees that:
- (i) the Insurance Intermediary or Insurance Manager, as the case may be, holds as agent for the insurer all monies received by it in connection with Contracts of Insurance effected or to be effected by the insurer;
  - (ii) insurance cover is maintained for the Client once the monies are received by the Insurance Intermediary or the Insurance Manager, as the case may be; and
  - (iii) the insurer's obligation to make a payment to the Client is not discharged until actual receipt of the relevant monies by the Client.

7.11.3 In this section, a Client of an Insurance Manager means:

- (a) any insurer for which the Insurance Manager provides Insurance Management;
- (b) any shareholder of an insurer mentioned in Rule 7.11.3(a); or
- (c) any Person on whose behalf the Insurance Manager undertakes to establish that Person as an insurer.

7.11.4 For the purposes of Rule 7.11.3:

- (a) an Insurer includes a Cell of a Protected Cell Company which is an Insurer; and
- (b) a shareholder includes a holder of Cell Shares.

#### 7.11.5 **Pooling Event**

Following a Pooling Event, an Authorised Person must comply with the Rules in Rule 14.4 and all Money will also be subject to such Rules in the same way as Client Money.

#### 7.11.6 **Insurance Money Segregation**

An Insurance Intermediary or Insurance Manager when dealing with Insurance Monies must:

- (a) maintain one or more separate Insurance Bank Accounts with an Eligible Bank in the U.A.E.;
- (b) ensure that each Insurance Bank Account contains in its title the name of the Authorised Person, together with the designation Insurance Bank Account (or IBA);
- (c) prior to operating an Insurance Bank Account, give written notice to, and receive written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the Authorised Person, or to any charge,

encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;

- (d) pay all Insurance Monies directly and without delay into an Insurance Bank Account;
- (e) use an Insurance Bank Account only for the following purposes:
  - (i) the receipt of Insurance Monies;
  - (ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Person with any conditions or requirements prescribed by the Regulator;
  - (iii) the payment to Clients or to insurers of monies due under Insurance Intermediation Business transactions;
  - (iv) the payment of all monies payable by the Authorised Person in respect of the acquisition of or otherwise in connection with Approved Assets;
  - (v) the withdrawal of brokerage, management fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;
  - (vi) the withdrawal of monies paid into the Insurance Bank Account in error; and
  - (vii) the withdrawal of any monies credited to the Insurance Bank Account in excess of those required by any conditions and requirements prescribed by the Regulator;
- (f) ensure that any amount held in the Insurance Bank Account or other Approved Assets, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and
- (g) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.

7.11.7 An Insurance Intermediary or Insurance Manager may not obtain a loan or overdraft for any purpose relating to an Insurance Bank Account unless that advance:

- (a) is on a bank account which is designated as an Insurance Bank Account, and the loan or overdraft is used for payment to Clients or to insurers of monies due under Insurance Intermediation transactions;
- (b) does not give rise to a breach of the requirements of Rule 7.11.6(e); and
- (c) is of a temporary nature and is repaid as soon as reasonably practicable.

7.11.8 An Insurance Intermediary or Insurance Manager must hold Insurance Monies either in an Insurance Bank Account or in Approved Assets.

7.11.9 An Insurance Intermediary must ensure that Approved Assets are:

- (a) registered in the name of the Insurance Intermediary or Insurance Manager and designated "Insurance Bank Account"; or
  - (b) held for the Insurance Bank Account of the Insurance Intermediary or Insurance Manager at the bank at which such Insurance Bank Account is held.
- 7.11.10 An Insurance Intermediary or Insurance Manager must ensure that monies, other than interest, arising from Approved Assets or their realisation, sale or disposal are paid into an Insurance Bank Account.
- 7.11.11 An Insurance Intermediary or Insurance Manager may not hold Insurance Monies in Approved Assets until it has given written notice to and received written notice from the bank referred to in Rule 7.11.9(b) that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against Approved Assets held for the Insurance Intermediary's or Insurance Manager's Insurance Bank Account.
- 7.11.12 An Insurance Intermediary or Insurance Manager may only use Approved Assets as security for a loan or overdraft where that loan or overdraft is for a purpose relating to an Insurance Bank Account as permitted by Rule 7.11.7.
- 7.11.13 Where Insurance Monies are held in Approved Assets whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an Approved Asset and the Insurance Intermediary or Insurance Manager must dispose of the investment or asset as soon as possible and no later than within thirty days of the rating change.
- 7.11.14 An Insurance Intermediary or Insurance Manager may not use derivatives in the management of Insurance Monies except for the prudent management of risks.
- 7.11.15 An Insurance Intermediary who has a credit balance for a Client who cannot be traced must not take credit for such an amount except where:
- (a) he has taken reasonable steps to trace the Client and to inform him that he is entitled to the money;
  - (b) at least six years has passed from the date the credit was initially notified to the Client; and
  - (c) Rule 7.11.6(f) will continue to be satisfied after the withdrawal of such money.
- 7.11.16 An Insurance Intermediary must keep records of all sums withdrawn from the Insurance Bank Account or realised Approved Assets as a result of credit taken under Rule 7.11.15 for at least six years from the date of withdrawal or realisation.
- 8. ADDITIONAL RULES: OPERATING AN MTF OR OTF**
- 8.1 Application and interpretation**
- 8.1.1 This chapter applies to an Authorised Person which Operates a Multilateral Trading Facility ("MTF") or an Organised Trading Facility ("OTF").
- 8.2 Rules Applicable to MTF and OTF Operators – General**
- 8.2.1 In addition to the general requirements applicable to Authorised Persons in COBS, GEN and elsewhere in the Rules, an Authorised Person carrying on the Regulated Activity of Operating an MTF (an "MTF Operator") must comply with the following requirements applicable to a

Recognised Body or Recognised Investment Exchange set out in the MIR rulebook, reading references to Recognised Bodies or Recognised Investment Exchanges in the relevant rules as if they were references to the MTF:

- (a) MIR 2.6 (*Operational systems and controls*);
- (b) MIR 2.7.1 and 2.7.2 (*Transaction recording*);
- (c) MIR 2.8 (*Membership criteria and access*);
- (d) MIR 2.9 (*Financial crime and market abuse*);
- (e) MIR 2.11 (*Rules and consultation*);
- (f) MIR 3.3 (*Fair and orderly trading*);
- (g) MIR 3.7 (*Public disclosure*);
- (h) MIR 3.8 (*Settlement and clearing facilitation services*);
- (i) MIR 3.10 (*Default Rules*).

#### 8.2.2 **Guidance**

In assessing whether an MTF Operator complies with the requirements set out above, the Regulator will take into account the general principle that users of an MTF anticipate less comprehensive regulatory protections.

#### 8.3 **Rules Applicable to MTF and OTF Operators – Transparency**

8.3.1 An MTF Operator or OTF Operator must disclose to its Members and the public as appropriate, on a continuous basis during normal trading, the following information relating to trading of Investments on its MTF or OTF:

- (i) the current bid and offer prices and volume;
  - (ii) the depth of trading interest shown at the prices and volumes advertised through its systems for the Investments; and
  - (iii) any other information relating to Investments which would promote transparency relating to trading.
- (b) The Regulator may waive or modify the disclosure requirement in Rule 8.2.2 in relation to certain transactions where the order size is predetermined, exceeds a pre-set and published threshold level and the details of the exemption are made available to an MTF Operator or OTF Operator's Members and the public.
- (c) In assessing whether an exemption from pre-trade disclosure should be allowed, the Regulator will take into account factors such as:
- (i) the level of order threshold compared with normal market size for the Investment;
  - (ii) the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;



- (iii) whether there is sufficient transparency relating to trades executed without pre-trade disclosure (as a result of orders executed on execution platforms without pre-trade transparency), whether or not they are entered in transparent markets;
  - (iv) whether the MTF Operator or OTF Operator supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and
  - (v) whether there is adequate disclosure of details relating to dark orders available to members and other participants on the Facility to enable them to understand the manner in which their orders will be handled and executed on the Facility.
- (d) When making disclosure, an MTF Operator or OTF Operator must adopt a technical mechanism by which the public can differentiate between transactions that have been transacted in the central order book and transactions that have been reported to the Facility as off-order book transactions. Any transactions that have been cancelled pursuant to its rules must also be identifiable.
- (e) An MTF Operator or OTF Operator must use appropriate mechanisms to enable pre-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An MTF Operator or OTF Operator may charge a reasonable fee for the information which it makes available to the public.
- 8.3.2 MTF Operator or OTF Operator must disclose the price, volume and time of the transactions executed in respect of Investments to the public as close to real-time as is technically possible on reasonable commercial terms and on a non-discretionary basis. An MTF Operator or OTF Operator must use adequate mechanisms to enable post-trade information to be made available to the public in an easy to access and uninterrupted manner at least during business hours. An MTF Operator or OTF Operator may charge a reasonable fee for the information which it makes available to the public.
- 8.4 **Rules Applicable to MTF and OTF Operators and rules on Liquidity providers.**
- 8.4.1 An MTF Operator or OTF Operator must not introduce a liquidity incentive scheme unless
- (a) participation of such a scheme is limited to members or any other Persons where:
    - (i) the MTF Operator or OTF Operator has undertaken due diligence to ensure that the Person is of sufficient good repute and has adequate competencies and organisational arrangements; and
    - (ii) the Person has agreed in writing to comply with the MTF Operator or OTF Operator's operating rules so far as those rules are applicable to that Person's activities; and
  - (b) the MTF Operator or OTF Operator has obtained the prior approval of the Regulator.
- 8.4.2 For the purposes of this section, a "liquidity incentive scheme" means an arrangement designed to provide liquidity to the market in relation to Investments traded on the MTF or OTF.
- 8.4.3 Where an MTF Operator or OTF Operator proposes to introduce or amend a liquidity incentive scheme, it must lodge with the Regulator, at least ten days before the date by which it expects to obtain the Regulator approval, a statement setting out:

- (a) the details of the relevant scheme, including benefits to the MTF or OTF and members arising from that scheme; and
- (b) the date on which the scheme is intended to become operative.

8.4.4 The Regulator must within ten days of receiving the notification referred to in 8.4.3, approve a proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme would be detrimental to the MTF or OTF or to markets in general. Where the Regulator does not approve the proposed liquidity incentive scheme, it must notify the MTF Operator or OTF Operator of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.

8.4.5 An MTF Operator or OTF Operator must sufficiently prior to launch, to enable any interested parties to participate in it, announce the introduction of the liquidity incentive scheme, specify the date on which the scheme becomes operative and the contracts to which it relates.

8.4.6 MTF and OTF Operators must also comply with the requirements set out in MIR 3.4.

## 8.5 **Rules Applicable to MTF Operators**

8.5.1 The following rules shall not apply to MTF Operators in respect of transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF, except that members of or participants in the MTF shall comply with such obligations with respect to their Clients when, acting on behalf of their Clients, they execute their orders through the systems of an MTF as stated in the following provisions:

- (a) Rule 3.4 (*Suitability*);
- (b) Rule 6.5 (*Best Execution*);
- (c) Rule 6.7 (*Aggregation and Allocation*); and
- (d) Rule 12 (*Key Information and Client Agreement*).

8.5.2 MTF Operators may not execute Client orders against proprietary capital, or engage in matched principal trading.

## 8.6 **Rules Applicable to OTF Operators**

8.6.1 An OTF Operator may engage in matched principal trading in bonds, structured finance products, and other derivatives specified by the Regulator only where the Client has consented to the process.

8.6.2 An OTF Operator shall not use matched principal trading to execute Client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the Clearing obligation in accordance with the Regulations.

8.6.3 OTF Operators may engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.

8.6.4 OTF Operators may engage another Authorised Person to carry out market making on that OTF on an independent basis, provided that such other Authorised Person does not have Close Links with the OTF Operator.

- 8.6.5 Execution of orders on an OTF must be carried out on a discretionary basis.
- 8.6.6 An OTF Operator shall exercise discretion only in the following circumstances:
- (a) when deciding to place or retract an order on the OTF they operate; and/or
  - (b) when deciding not to match a specific Client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a Client and with its "best execution" obligations in accordance with these Rules.
- 8.6.7 With a system that crosses Client orders, the OTF Operator may decide if, when and how much of two or more orders it wants to match within the system. With regard to a system that arranges transactions in non-equities, the OTF Operator may facilitate negotiation between Clients so as to bring together two or more potentially compatible trading interests in a transaction.
- 8.6.8 OTF Operators shall, on request, provide the Regulator with a detailed explanation why the system does not correspond to and cannot operate as a Recognised Investment Exchange or MTF, a detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more Client orders will be matched within the OTF. In addition, the OTF Operator shall provide the Regulator with information explaining its use of matched principal trading.
- 8.6.9 OTF Operators must also comply with the requirements relating to financial crime and market abuse, and fair and orderly trading in MIR 2.9 and MIR 3.3 respectively.

## **9. CORE RULES – OPERATING A CREDIT RATING AGENCY**

### **9.1 Application**

9.1.1 This chapter applies to every Person who carries on, or intends to carry on, the Regulated Activity of Operating a Credit Rating Agency in or from the Abu Dhabi Global Market.

9.1.2 For the purposes of this chapter:

- (a) a Regulated Activity of Operating a Credit Rating Agency means undertaking one or more activities that involve data and information analysis relating to a Credit Rating or the evaluation, approval, issue or review of a credit rating;
- (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;
- (c) a Rating Subject means a Person other than a natural person, a credit commitment or a debt or debt-like instrument; and
- (d) where a reference is made to a Rating Subject which is a credit commitment, a debt or a debt-like Investment, that reference is to be read, where the context requires, as a reference to the Person responsible for obtaining the Credit Rating.

9.1.3 This chapter contains the specific conduct requirements that apply to Persons carrying on the Regulated Activity of Operating a Credit Rating Agency.

### **Guidance**

9.1.4 Not all Rating Subjects are bodies corporate. For example, Credit Ratings can be provided in respect of a credit commitment given by a Person, or a debt or debt-like Investment. In such

instances, where a Rule in this chapter requires the Rating Subject to carry out some activity, such a reference is to be read as a reference to the Person who is responsible for obtaining the Credit Rating. Such a Person would generally be the originator, arranger or Sponsor of the relevant financial product which is being rated. The Credit Rating Agency should clearly identify the Person responsible for a Rating Subject before proceeding with its Credit Rating Activities relating to that Rating Subject.

- 9.1.5 However, there is no restriction against more than one Person being identified as Persons responsible for obtaining a Credit Rating relating to a Rating Subject. In such cases, a Credit Rating Agency should clearly identify those Persons as responsible Persons relating to the relevant Rating Subject.

## **9.2 Quality of the rating process**

- 9.2.1 A Credit Rating Agency must adopt, implement and enforce written procedures to ensure that the opinions it disseminates are based on a thorough analysis of all information known to the Credit Rating Agency that is relevant to its analysis according to the Credit Rating Agency's published rating methodology.

- 9.2.2 A Credit Rating Agency must use rating methodologies that are rigorous, systematic, and, where possible, result in ratings that can be subjected to some form of objective validation based on historical experience.

- 9.2.3 In assessing an issuer's creditworthiness, analysts involved in the preparation or review of any rating action must use methodologies established by the Credit Rating Agency. Analysts must apply a given methodology in a consistent manner, as determined by the Credit Rating Agency.

- 9.2.4 Credit ratings must be assigned by the Credit Rating Agency and not by any individual analyst employed by the Credit Rating Agency; ratings must reflect all information known, and believed to be relevant, to the Credit Rating Agency, consistent with its published methodology; and the Credit Rating Agency must use people who, individually or collectively (particularly where rating committees are used) have appropriate knowledge and experience in developing a rating opinion for the type of credit being applied.

- 9.2.5 A Credit Rating Agency and its analysts must take steps to avoid issuing any credit analyses or reports that contain misrepresentations or are otherwise misleading as to the general creditworthiness of an issuer or obligation.

- 9.2.6 A Credit Rating Agency must ensure that it has and devotes sufficient resources to carry out high-quality credit assessments of all obligations and issuers it rates. When deciding whether to rate or continue rating an obligation or issuer, it must assess whether it is able to devote sufficient personnel with sufficient skill sets to make a proper rating assessment, and whether its personnel likely will have access to sufficient information needed in order to make such an assessment. A Credit Rating Agency must adopt reasonable measures so that the information it uses in assigning a rating is of sufficient quality to support a credible rating. If the rating involves a type of financial product presenting limited historical data (such as an innovative financial vehicle), the Credit Rating Agency must make clear, in a prominent place, the limitations of the rating.

- 9.2.7 A Credit Rating Agency must establish a review function made up of one or more senior managers with appropriate experience to review the feasibility of providing a credit rating for a type of structure that is materially different from the structures the Credit Rating Agency currently rates.

- 9.2.8 A Credit Rating Agency must establish and implement a rigorous and formal review function responsible for periodically reviewing the methodologies and models and significant changes to the methodologies and models it uses. Where feasible and appropriate for the size and scope of its credit rating services, this function must be independent of the business lines that are principally responsible for rating various classes of issuers and obligations.
- 9.2.9 A Credit Rating Agency must assess whether existing methodologies and models for determining credit ratings of structured products are appropriate when the risk characteristics of the assets underlying a structured product change materially. In cases where the complexity or structure of a new type of structured product or the lack of robust data about the assets underlying the structured product raise serious questions as to whether the Credit Rating Agency can determine a credible credit rating for the security, Credit Rating Agency must refrain from issuing a credit rating.
- 9.2.10 A Credit Rating Agency must structure its rating teams to promote continuity and avoid bias in the rating process.

### **9.3 Application to Groups and Branches**

- 9.3.1 Where a Credit Rating Agency is a member of a Group, the Credit Rating Agency may rely on the policies, procedures and controls adopted at the group-wide level. Where this is the case, the Credit Rating Agency must ensure that the group-wide policies, procedures and controls are consistent with the requirements applicable to it and do not constrain its ability to comply with the applicable requirements in the Abu Dhabi Global Market.
- 9.3.2 In the case of Branch operations, the Regulator will grant an authorisation to carry on the Regulated Activity of Operating a Credit Rating Agency only where it is satisfied with the adequacy of the home jurisdiction regulation of the relevant legal entity.

### **9.4 Monitoring and Updating**

- 9.4.1 A Credit Rating Agency must ensure that adequate personnel and financial resources are allocated to monitoring and updating its ratings. Except for ratings that clearly indicate they do not entail ongoing surveillance, once a rating is published the Credit Rating Agency must monitor on an ongoing basis and update the rating by:
- (a) regularly reviewing the issuer's creditworthiness;
  - (b) initiating a review of the status of the rating upon becoming aware of any information that might reasonably be expected to result in a rating action (including termination of a rating), consistent with the applicable rating methodology; and
  - (c) updating on a timely basis the rating, as appropriate, based on the results of such review.

Subsequent monitoring must incorporate all cumulative experience obtained. Changes in ratings criteria and assumptions must be applied where appropriate to both initial ratings and subsequent ratings.

- 9.4.2 If a Credit Rating Agency uses separate analytical teams for determining initial ratings and for subsequent monitoring of structured finance products, each team must have the requisite level of expertise and resources to perform their respective functions in a timely manner.
- 9.4.3 Where a Credit Rating Agency makes its ratings available to the public, the Credit Rating Agency must publicly announce if it discontinues rating an issuer or obligation. Where a Credit

Rating Agency's ratings are provided only to its subscribers, the Credit Rating Agency must announce to its subscribers if it discontinues rating an issuer or obligation. In both cases, continuing publications by the Credit Rating Agency of the discontinued rating must indicate the date the rating was last updated and the fact that the rating is no longer being updated.

**9.5 Integrity of the Rating Process**

- 9.5.1 A Credit Rating Agency and its employees must comply with all applicable laws and regulations governing its activities in each jurisdiction in which it operates.
- 9.5.2 A Credit Rating Agency and its employees must deal fairly and honestly with issuers, investors, other market participants, and the public.
- 9.5.3 A Credit Rating Agency's analysts must be held to high standards of integrity, and a Credit Rating Agency must not employ individuals with demonstrably compromised integrity.
- 9.5.4 A Credit Rating Agency and its employees must not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. This does not preclude a Credit Rating Agency from developing prospective assessments used in structured finance and similar transactions.
- 9.5.5 A Credit Rating Agency must prohibit its analysts from making proposals or recommendations regarding the design of structured finance products that a Credit Rating Agency rates.
- 9.5.6 A Credit Rating Agency must institute policies and procedures that clearly specify a person responsible for a Credit Rating Agency's and its employees' compliance with the provisions of a Credit Rating Agency's code of conduct and with applicable laws and regulations. This person's reporting lines and compensation must be independent of a Credit Rating Agency's rating operations.
- 9.5.7 Upon becoming aware that another employee or entity under common control with the Credit Rating Agency is or has engaged in conduct that is illegal, unethical or contrary to the Credit Rating Agency's code of conduct, a Credit Rating Agency employee must report such information immediately to the individual in charge of compliance or an officer of the Credit Rating Agency, as appropriate, so proper action may be taken.

**Guidance**

- 9.5.8 A Credit Rating Agency's employees are expected to report the activities that a reasonable person would question. Any Credit Rating Agency officer who receives such a report from a Credit Rating Agency employee is obligated to take appropriate action, as determined by applicable laws and regulations and the rules and guidelines set forth by the Credit Rating Agency Credit Rating. Agency management must prohibit retaliation by other Credit Rating Agency staff or by the Credit Rating Agency itself against any employees who, in good faith, make such reports.

**9.6 Credit Rating Agency Independence – General**

- 9.6.1 A Credit Rating Agency must not forbear or refrain from taking a rating action based on the potential effect (economic, political, or otherwise) of the action on the Credit Rating Agency, an issuer, an investor, or other market participant.
- 9.6.2 A Credit Rating Agency and its analysts must use care and professional judgment to maintain both the substance and appearance of independence and objectivity.

- 9.6.3 The determination of a credit rating must be influenced only by factors relevant to the credit assessment.
- 9.6.4 The credit rating a Credit Rating Agency assigns to an issuer or security must not be affected by the existence of or potential for a business relationship between the Credit Rating Agency (or its affiliates) and the issuer (or its affiliates) or any other party, or the non-existence of such a relationship.
- 9.6.5 A Credit Rating Agency must separate, operationally and legally, its credit rating business and Credit Rating Agency analysts from any other businesses of the Credit Rating Agency, including consulting businesses that may present a conflict of interest. A Credit Rating Agency must ensure that ancillary business operations which do not necessarily present conflicts of interest with the Credit Rating Agency's rating business have in place procedures and mechanisms designed to minimize the likelihood that conflicts of interest will arise. A Credit Rating Agency must also define what it considers, and does not consider, to be an ancillary business and why.

**9.7 Credit Rating Agency Independence – Procedures and Policies**

- 9.7.1 A Credit Rating Agency must adopt written internal procedures and mechanisms to (a) identify, and (b) eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the opinions and analyses a Credit Rating Agency makes or the judgment and analyses of the individuals a Credit Rating Agency employs who have an influence on ratings decisions. A Credit Rating Agency's code of conduct must also state that the Credit Rating Agency will disclose such conflict avoidance and management measures.
- 9.7.2 A Credit Rating Agency's disclosures of actual and potential conflicts of interest must be complete, timely, clear, concise, specific and prominent.
- 9.7.3 A Credit Rating Agency must disclose the general nature of its compensation arrangements with rated entities.
- (a) Where a Credit Rating Agency receives from a rated entity compensation unrelated to its ratings service, such as compensation for consulting services, a Credit Rating Agency must disclose the proportion such non-rating fees constitute against the fees the Credit Rating Agency receives from the entity for ratings services.
  - (b) A Credit Rating Agency must disclose if it receives 10% or more of its annual revenue from a single issuer, originator, arranger, client or subscriber (including any affiliates of that issuer, originator, arranger, client or subscriber).
  - (c) Credit Rating Agencies must encourage structured finance issuers and originators of structured finance products to publicly disclose all relevant information regarding these products so that investors and other Credit Rating Agencies can conduct their own analyses independently of the Credit Rating Agency contracted by the issuers and/or originators to provide a rating. A Credit Rating Agency must disclose in its rating announcements whether the issuer of a structured finance product has informed it that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public.
- 9.7.4 A Credit Rating Agency and its employees must not engage in any securities or derivatives trading presenting conflicts of interest with the Credit Rating Agency's rating activities.

- 9.7.5 In instances where rated entities have, or are simultaneously pursuing, oversight functions related to the Credit Rating Agency, the Credit Rating Agency must use different employees to conduct its rating actions than those employees involved in its oversight issues.
- 9.8 **Analyst and Employee Independence**
- 9.8.1 Reporting lines for Credit Rating Agency employees and their compensation arrangements must be structured to eliminate or effectively manage actual and potential conflicts of interest.
- (a) A Credit Rating Agency's code of conduct must state that a Credit Rating Agency analyst will not be compensated or evaluated on the basis of the amount of revenue that the Credit Rating Agency derives from issuers that the analyst rates or with which the analyst regularly interacts.
  - (b) A Credit Rating Agency must conduct formal and periodic reviews of compensation policies and practices for Credit Rating Agency analysts and other employees who participate in or who might otherwise have an effect on the rating process to ensure that these policies and practices do not compromise the objectivity of the Credit Rating Agency's rating process.
- 9.8.2 A Credit Rating Agency must not have employees who are directly involved in the rating process initiate, or participate in, discussions regarding fees or payments with any entity they rate.
- 9.8.3 No Credit Rating Agency employee may participate in or otherwise influence the determination of the Credit Rating Agency's rating of any particular entity or obligation if the employee:
- (a) owns securities or derivatives of the rated entity, other than holdings in diversified collective investment schemes;
  - (b) owns securities or derivatives of any entity related to a rated entity, the ownership of which may cause or may be perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;
  - (c) has had a recent employment or other significant business relationship with the rated entity that may cause or may be perceived as causing a conflict of interest;
  - (d) has an immediate relation (i.e., a spouse, partner, parent, child, or sibling) who currently works for the rated entity; or
  - (e) has, or had, any other relationship with the rated entity or any related entity thereof that may cause or may be perceived as causing a conflict of interest.
- 9.8.4 A Credit Rating Agency's analysts and anyone involved in the rating process (or their spouse, partner or minor children) must not buy or sell or engage in any transaction in any security or derivative based on a security issued, guaranteed, or otherwise supported by any entity within such analyst's area of primary analytical responsibility, other than holdings in diversified collective investment schemes.
- 9.8.5 Credit Rating Agency employees must be prohibited from soliciting money, gifts or favours from anyone with whom the Credit Rating Agency does business and must be prohibited from accepting gifts offered in the form of cash or any gifts exceeding [To be determined].
- 9.8.6 Any Credit Rating Agency analyst who becomes involved in any personal relationship that creates the potential for any real or apparent conflict of interest (including, for example, any



personal relationship with an employee of a rated entity or agent of such entity within his or her area of analytic responsibility), must disclose such relationship to the appropriate manager or officer of the Credit Rating Agency, as determined by the Credit Rating Agency's compliance policies.

- 9.8.7 A Credit Rating Agency must establish policies and procedures for reviewing the past work of analysts that leave the employ of the Credit Rating Agency and join an issuer the Credit Rating Agency analyst has been involved in rating, or a financial firm with which the Credit Rating Agency analyst has had significant dealings as part of his or her duties at the Credit Rating Agency.

## 9.9 **Transparency and Timeliness of Ratings Disclosure**

- 9.9.1 A Credit Rating Agency must distribute in a timely manner its ratings decisions regarding the entities and securities it rates.

- 9.9.2 A Credit Rating Agency must publicly disclose its policies for distributing ratings, reports and updates.

- 9.9.3 A Credit Rating Agency must indicate with each of its ratings when the rating was last updated. Each rating announcement must also indicate the principal methodology or methodology version that was used in determining the rating and where a description of that methodology can be found. Where the rating is based on more than one methodology, or where a review of only the principal methodology might cause investors to overlook other important aspects of the rating, the Credit Rating Agency must explain this fact in the ratings announcement, and indicate where a discussion of how the different methodologies and other important aspects factored into the rating decision.

- 9.9.4 Except for "private ratings" provided only to the issuer, the Credit Rating Agency must disclose to the public, on a non-selective basis and free of charge, any rating regarding publicly issued securities, or public issuers themselves, as well as any subsequent decisions to discontinue such a rating, if the rating action is based in whole or in part on material non-public information.

- 9.9.5 A Credit Rating Agency must publish sufficient information about its procedures, methodologies and assumptions (including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements and a description of the rating committee process, if applicable) so that outside parties can understand how a rating was arrived at by the Credit Rating Agency. This information will include (but not be limited to) the meaning of each rating category and the definition of default or recovery, and the time horizon the Credit Rating Agency used when making a rating decision.

- (a) Where a Credit Rating Agency rates a structured finance product, it must provide investors and/or subscribers (depending on the Credit Rating Agency's business model) with sufficient information about its loss and cash-flow analysis so that an investor allowed to invest in the product can understand the basis for the Credit Rating Agency's rating. A Credit Rating Agency must also disclose the degree to which it analyses how sensitive a rating of a structured finance product is to changes in the Credit Rating Agency's underlying rating assumptions.
- (b) A Credit Rating Agency must differentiate ratings of structured finance products from traditional corporate bond ratings, preferably through a different rating symbology. A Credit Rating Agency must also disclose how this differentiation functions. A Credit Rating Agency must clearly define a given rating symbol and apply it in a consistent manner for all types of securities to which that symbol is assigned.

- (c) A Credit Rating Agency must assist investors in developing a greater understanding of what a credit rating is, and the limits to which credit ratings can be put to use vis-à-vis a particular type of financial product that the Credit Rating Agency rates. A Credit Rating Agency must clearly indicate the attributes and limitations of each credit opinion, and the limits to which the Credit Rating Agency verifies information provided to it by the issuer or originator of a rated security.
- 9.9.6 When issuing or revising a rating, the Credit Rating Agency must explain in its press releases and reports the key elements underlying the rating opinion.
- 9.9.7 Where feasible and appropriate, prior to issuing or revising a rating, the Credit Rating Agency must inform the issuer of the critical information and principal considerations upon which a rating will be based and afford the issuer an opportunity to clarify any likely factual misperceptions or other matters that the Credit Rating Agency would wish to be made aware of in order to produce an accurate rating. A Credit Rating Agency will duly evaluate the response. Where in particular circumstances the Credit Rating Agency has not informed the issuer prior to issuing or revising a rating, the Credit Rating Agency must inform the issuer as soon as practical thereafter and explain the reason for the delay.
- 9.9.8 In order to promote transparency and to enable the market to best judge the performance of the ratings, the Credit Rating Agency, where possible, must publish sufficient information about the historical default rates of Credit Rating Agency rating categories and whether the default rates of these categories have changed over time, so that interested parties can understand the historical performance of each category and if and how rating categories have changed, and be able to draw quality comparisons among ratings given by different Credit Rating Agencies. If the nature of the rating or other circumstances make a historical default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the rating, the Credit Rating Agency must explain this. This information must include verifiable, quantifiable historical information about the performance of its rating opinions, organized and structured, and, where possible, standardized in such a way to assist investors in drawing performance comparisons between different Credit Rating Agencies.
- 9.9.9 For each rating, the Credit Rating Agency must disclose whether the issuer participated in the rating process. Each rating not initiated at the request of the issuer must be identified as such. A Credit Rating Agency must also disclose its policies and procedures regarding unsolicited ratings. As users of credit ratings rely on an existing awareness of Credit Rating Agency methodologies, practices, procedures and processes, the Credit Rating Agency must fully and publicly disclose any material modification to its methodologies and significant practices, procedures, and processes. Where feasible and appropriate, disclosure of such material modifications must be made prior to becoming effective. A Credit Rating Agency must carefully consider the various uses of credit ratings before modifying its methodologies, practices, procedures and processes.
- 9.10 **Confidential Information**
- 9.10.1 A Credit Rating Agency must adopt procedures and mechanisms to protect the confidential nature of information shared with them by issuers under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially. Unless otherwise permitted by the confidentiality agreement and consistent with applicable laws or regulations, the Credit Rating Agency and its employees must not disclose confidential information in press releases, through research conferences, to future employers, or in conversations with investors, other issuers, other persons, or otherwise.
- 9.10.2 A Credit Rating Agency must use confidential information only for purposes related to its rating activities or otherwise in accordance with any confidentiality agreements with the issuer.

- 9.10.3 Credit Rating Agency employees must take all reasonable measures to protect all property and records belonging to or in possession of the Credit Rating Agency from fraud, theft or misuse.
- 9.10.4 Credit Rating Agency employees must be prohibited from engaging in transactions in securities when they possess confidential information concerning the issuer of such security.
- 9.10.5 In preservation of confidential information, Credit Rating Agency employees must familiarise themselves with the internal securities trading policies maintained by their employer, and periodically certify their compliance as required by such policies.
- 9.10.6 Credit Rating Agency employees must not selectively disclose any non-public information about rating Credit Rating Agencies or possible future rating actions of the Credit Rating Agency, except to the issuer or its designated agents.
- 9.10.7 Credit Rating Agency employees must not share confidential information entrusted to the Credit Rating Agency with employees of any affiliated entities that are not Credit Rating Agencies. Credit Rating Agency employees must not share confidential information within the Credit Rating Agency except on an "as needed" basis.
- 9.10.8 Credit Rating Agency employees must not use or share confidential information for the purpose of trading securities, or for any other purpose, except the conduct of the Credit Rating Agency's business.

**9.11 Communication with Market Participants**

- 9.11.1 A Credit Rating Agency must disclose to the public its code of conduct. A Credit Rating Agency must also describe generally how it intends to enforce its code of conduct and must disclose on a timely basis any changes to its code of conduct or how it is implemented and enforced.
- 9.11.2 A Credit Rating Agency must establish a function within its organisation charged with communicating with market participants and the public about any questions, concerns or complaints that the Credit Rating Agency may receive. The objective of this function must be to help ensure that the Credit Rating Agency's officers and management are informed of those issues that the Credit Rating Agency's officers and management would want to be made aware of when setting the organisation's policies.
- 9.11.3 A Credit Rating Agency must publish in a prominent position on its home webpage links to (a) its code of conduct; (b) a description of the methodologies it uses; and (c) information about the its historic performance data.

**9.12 Provision of consultancy and ancillary services**

- 9.12.1 A Credit Rating Agency must not provide to a Rating Subject or a Related Party of a Rating Subject consultancy or advisory services relating to the corporate or legal structure, assets, liabilities or activities of such Rating Subject or Related Party. This prohibition includes, for example, making proposals or recommendations regarding the design or structure of Rating Subjects, including suggestions as to how a desired rating could be achieved. Some of the activities which are prohibited may constitute carrying on a Regulated Activity other than Operating a Credit Rating Agency. Even if a Credit Rating Agency has an authorisation to carry on such a Regulated Activity, it is prevented from providing such services to a Rating Subject or a Related Party.
- 9.12.2 For the purposes of this prohibition, a Related Party of a Rating Subject is:
  - (a) an undertaking which is in the same Group as the Rating Subject;

- (b) any Person who interacts with the Credit Rating Agency in respect of the Credit Rating;  
or
  - (c) any Person who has a significant business or other relationship with the Rating Subject or any Person referred to above.
- 9.12.3 A Credit Rating Agency may carry out activities which are ancillary to its Credit Rating Activities to a Rating Subject or a Related Party of the Rating Subject where it:
- (a) has a clear definition of what services it considers as ancillary activities;
  - (b) documents why the carrying on of such activities are considered not to raise any conflicts of interest with its Credit Rating Activities; and
  - (c) has in place adequate mechanisms to minimise the potential for any conflicts of interest arising.
- 9.12.4 Ancillary activities include, for example, market forecasts, estimates of economic trends, pricing analysis and other general data analysis, as well as related distribution services. These ancillary activities can be carried out for the benefit of Rating Subjects and their Related Parties where the requirements in this provision are met. These activities are also unlikely to constitute Regulated Activities.
- 9.12.5 A Credit Rating Agency must separate operationally its Credit Rating Activities from any ancillary services it provides. For example, Rating Analysts and other key individuals involved in Credit Rating Activities must not also be involved in the provision of such services. Where a Group member provides to a Rating Subject of a Credit Rating Agency any ancillary services, the Credit Rating Agency and the Group member must not share Employees or premises to ensure operational separation.
- 9.12.6 If a member of the Group, in which the Credit Rating Agency is also a member, provides services of the kind referred to in Rule 9.12.1 to a Rating Subject of the Credit Rating Agency or a Related Party of such a Rating Subject, such services must be operationally and functionally separated from the business of the Credit Rating Agency.
- 9.13 **Credit Rating Agency fees**
- A Credit Rating Agency must not enter into fee arrangements for providing Credit Ratings where the fee depends on the rating outcome or on any other result or outcome of the Credit Rating Activities.
- 9.14 **Remuneration and reporting lines**
- 9.14.1 A Credit Rating Agency must have remuneration structures and strategies which, amongst other things, are consistent with the business objectives and identified risk parameters within which the Authorised Person operates, and provide for effective alignment of risk outcomes and the roles and functions of the relevant Employees. The requirements set out in this section are designed to augment those remuneration requirements set out in GEN (in particular, Appendix 1.2 of GEN).
- 9.14.2 A Credit Rating Agency must ensure that Employees involved in the provision of Credit Ratings have reporting lines and remuneration arrangements that are designed to eliminate, or effectively manage, actual and potential conflicts of interest.

9.14.3 A Credit Rating Agency must ensure that its Employees are not remunerated, or their performance evaluated, based on the amount of revenue generated or expected from the Credit Ratings in which the Employee was involved.

9.14.4 The Employees intended to be covered by this Rule are Rating Analysts and other Employees who are directly involved in producing or reviewing a Credit Rating, or who are able to influence the credit rating process (such as the senior management).

9.14.5 A Credit Rating Agency must conduct formal and periodic reviews of its remuneration policies and practices relating to Employees who participate in, or who might otherwise have an effect on, the rating process to ensure that those policies and practices do not compromise the objectivity of the Credit Rating Activities.

**9.15 Record keeping**

9.15.1 A Credit Rating Agency must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Credit Rating Agency and, where appropriate, audit trails of its Credit Rating Activities. These must include, where applicable, the following:

- (a) for each Credit Rating:
  - (i) the identity of the Rating Analysts participating in the determination of the Credit Rating;
  - (ii) the identity of the individuals who have approved the Credit Rating;
  - (iii) information as to whether the Credit Rating was solicited or unsolicited;
  - (iv) information to support the Credit Rating;
  - (v) the Accounting Records relating to fees and charges received from or in respect of the Rating Subject;
  - (vi) the internal records and files, including non-public information and working papers, used to form the basis of any Credit Rating; and
  - (vii) credit analysis and credit assessment reports including any internal records and non-public information and working papers used to form the basis of the opinions expressed in such reports;
- (b) the Accounting Records relating to fees received from any person in relation to services provided by the Credit Rating Agency;
- (c) the Accounting Records for each subscriber to the Credit Rating Agency's services;
- (d) the records documenting the established procedures, methodologies, models and assumptions used by the Credit Rating Agency to determine Credit Ratings; and
- (e) copies of internal and external communications, including electronic communications, received and sent by the Credit Rating Agency and its Employees that relate to Credit Rating Activities.

9.15.2 For the purposes of Rule 9.15.1(a), the six-year period commences from the date the Credit Rating is disclosed to the public or distributed by subscription.

9.15.3 Information to support a Credit Rating includes information received from the Rating Subject or information obtained through publicly available sources or third parties and verification procedures adopted in relation to information such as those obtained from public sources or third parties. In accordance with GEN 3.3.34-3.3.37, records must be kept in such a manner as to be readily accessible.

9.15.4 Where a Credit Rating is subject to on-going surveillance and review, the Credit Rating Agency must retain records required under Rule 9.15.1 in relation to the initial Credit Rating as well as subsequent updates where such records are required to support the latest Credit Rating.

## 10. **CORE RULES – OPERATING A CENTRAL SECURITIES DEPOSITORY**

### 10.1 **Application and interpretation**

10.1.1 This chapter applies to an Authorised Person which operates a Central Securities Depository ("CSD").

10.1.2 Such an Authorised Person is referred to in this chapter as a CSD.

10.1.3 An Authorised Person that is permitted to carry on the Regulated Activity of Providing Custody may apply in addition for permission to perform the activity of operating a CSD.

### 10.2 **Rules applicable to CSDs**

10.2.1 A CSD must comply with, and is subject to, the general requirements applicable to Authorised Persons in COBS, GEN and elsewhere in the Rules, except for the following:

- (a) Rule 14.2.14 (*Segregation and portability*);
- (b) Rules 14.2.15(b)(i)(B), (c) and (d) (*Statutory Trust*);
- (c) Rules 13.4.3 (b), (e) and (h)-(n) (*Pooling and Distribution*);
- (d) Rule 14.4.6 (*Failure of third parties: pooling and distribution*); and
- (e) Rule 14.4.7 (*Client Money received after the Failure of a third party*).

### 10.3 **Additional requirements for CSDs**

10.3.1 A CSD must have rules and procedures, including robust accounting practices and controls that:

- (a) ensure the integrity of the securities issues;
- (b) ensure it has a definitive record of title to relevant securities at all times; and
- (c) minimise and manage risks associated with the safekeeping and transfer of securities.

10.3.2 A CSD must ensure that securities are recorded in book-entry form prior to the trade date.

10.3.3 A CSD's systems and controls must ensure that:

- (a) the unauthorised creation or deletion of records relating to securities is prevented;
- (b) appropriate intraday reconciliation is conducted to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal

to the sum of securities recorded on the securities accounts of the Members and other participants of the CSD;

- (c) where entities other than the CSD are involved in the reconciliation process for a securities issue, such as the issuer, registrars, issuance agents, transfer agents or other CSDs, the CSD has adequate arrangements for cooperation and information exchange between all involved parties so that the integrity of the issue is maintained; and
- (d) there are no securities overdrafts or debit balances in securities accounts.

#### 10.4 **CSD links**

10.4.1 A CSD must not establish any link with another CSD (a "CSD link") unless it:

- (a) has, prior to establishing the CSD link, identified and assessed potential risks, for itself and its members and other participants using its facilities, arising from establishing such a link;
- (b) has adequate systems and controls effectively to monitor and manage, on an on-going basis, the following risks:
  - (i) the link arrangement between the CSD and all linked CSDs adequately mitigates against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;
  - (ii) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;
  - (iii) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the risks arising from the use of the intermediary;
  - (iv) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs and, where such settlement is not practicable or feasible, reasons for non-DVP settlement are notified to the Regulator; and
  - (v) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are times specified for the entry, irrevocability, finality and settlement of transfer orders into the system; and
- (c) is able to demonstrate to the Regulator, prior to the establishment of the CSD link, that the CSD link satisfies the requirements referred to in Rule 10.4.1(b).

10.4.2 A CSD must include in its notification to the Regulator relating to the establishment of CSD links the results of due diligence undertaken in respect of the matters specified in Rule 10.4.1(b) to demonstrate that those requirements are met. Where a CSD changes any existing CSD arrangements, a further notification relating to such changes, along with details of its due diligence relating to the new CSD link, must be provided to the Regulator in advance of the proposed change.

## **11. RECORDS OF ORDERS AND TRANSACTIONS**

### **11.1 Minimum Contents of Transaction Records**

#### **11.1.1 Receipt of Client Order or Discretionary Decision to Transact**

An Authorised Person must, pursuant to Rule 6.8.2(a), make a record of the following in respect of each Client order:

- (a) the identity and account number of the Client;
- (b) the date and time where the instructions were received or the decision was taken by the Authorised Person to deal;
- (c) the identity of the Employee who received the instructions or made the decision to deal;
- (d) the Investment, including the number of Instruments or their value and any price limit; and
- (e) whether the instruction relates to a purchase or sale, long, short, buyer, seller or other relevant position.

#### **11.1.2 Executing a Transaction**

An Authorised Person must, pursuant to Rule 6.8.2(b), make a record of the following in respect of each Transaction:

- (a) the identity and account number of the Client for whom the Transaction was Executed, or an indication that the Transaction was an Own Account Transaction;
- (b) the name of the counterparty;
- (c) the date and time where the Transaction was Executed;
- (d) the identity of the Employee executing the Transaction;
- (e) the Investment, including the number of instruments or their value and price; and
- (f) whether the Transaction was a purchase or a sale, long, short, buyer, seller or other relevant position.

#### **11.1.3 Passing a Client Order to another Person for Execution**

An Authorised Person must, pursuant to Rule 6.8.2(c), make a record of the following:

- (a) the identity of the Person instructed;
- (b) the terms of the instruction; and
- (c) the date and time that the instruction was given.

#### **11.1.4 Sending Confirmation Notes**

An Authorised Person must include the following information in its confirmation notes:



- (a) the Authorised Person's name and address;
- (b) whether the Authorised Person Executed the Transaction as principal or agent;
- (c) the Client's name, account number or other identifier;
- (d) a description of the Investment or Fund, including the amount invested or number of units involved;
- (e) whether the Transaction is a sale or purchase;
- (f) the price or unit price at which the Transaction was Executed;
- (g) if applicable, a statement that the Transaction was Executed on an Execution-Only basis;
- (h) the date and time of the Transaction;
- (i) the total amount payable and the date on which it is due;
- (j) the amount the Authorised Persons charges in connection with the Transaction, including Commission charges and the amount of any Mark-up or Mark-down, Fees, taxes or duties;
- (k) the amount or basis of any charges shared with another Person or statement that this will be made available on request; and
- (l) for Collective Investment Funds, a statement that the price at which the Transaction has been Executed is on a Historic Price or Forward Price basis, as the case may be.

An Authorised Person may combine items in respect of a Transaction where the Client has requested a note showing a single price combining both of these items.

#### 11.2 **Additional Information: Derivatives**

For the purposes of Rule 6.10.2, and in relation to Transactions in Derivatives, an Authorised Person must include the following additional information:

- (a) the maturity, delivery or expiry date of the Derivative;
- (b) in the case of an Option, the date of exercise or a reference to the last exercise date;
- (c) whether the exercise creates a sale or purchase in the underlying asset;
- (d) the strike price of the Option; and
- (e) if the Transaction closes out an open Futures position, all essential details required in respect of each contract comprised in the open position and each contract by which it was closed out and the profit or loss to the Client arising out of closing out that position (a difference account).

## 12. **KEY INFORMATION AND CLIENT AGREEMENT**

### 12.1 **Key Information and Content of the Client Agreement**

#### 12.1.1 **General**

The key information which an Authorised Person is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

- (a) the information set out in:
  - (i) Rule 12.1.2(a) if it is a Retail Client; and
  - (ii) Rule 12.1.2(b) if it is a Professional Client or Market Counterparty; and
- (b) where relevant, the additional information required under Rules 12.1.3 and 12.1.4.

#### 12.1.2 **Core Information**

- (a) In the case of a Retail Client, the information for the purposes of Rule 12.1.1(a) is:
  - (i) the name and address of the Authorised Person, and if it is a Subsidiary, the name and address of the ultimate Holding Company;
  - (ii) the regulatory status of the Authorised Person;
  - (iii) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;
  - (iv) details of fees, costs and other charges and the basis upon which the Authorised Person will impose those fees, costs and other charges;
  - (v) sufficient details of the service that the Authorised Person will provide, including where relevant, information about any product or other restrictions applying to the Authorised Person in the provision of its services and how such restrictions impact on the service offered by the Authorised Person; or if there are no such restrictions, a statement to that effect;
  - (vi) details of any conflicts of interests for the purposes of disclosure under Rule 3.5;
  - (vii) details of any Soft Dollar Agreement required to be disclosed under Rule 3.6; and
  - (viii) key particulars of the Authorised Person's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN 7.2.11.
- (b) In the case of a Professional Client or Market Counterparty, the information for the purposes of Rule 12.1.1(a) is the information referred to in Rule 12.1.2(a)(i) to Rule 12.1.2(a)(iv).

#### 12.1.3 **Additional Information for Investment Business**

The additional information required under Rule 12.1.1(b) for Investment Business is:

- (a) the arrangements for giving instructions to the Authorised Person and acknowledging those instructions;
- (b) information about any agreed investment parameters;
- (c) the arrangements for notifying the Client of any Transaction Executed on his behalf;
- (d) if the Authorised Person may act as principal in a Transaction, when it will do so;
- (e) the frequency of any periodic statements and whether those statements will include some measure of performance, and if so, what the basis of that measurement will be;
- (f) when the obligation to provide best execution can be and is to be waived, a statement that the Authorised Person does not owe a duty of best execution or the circumstances in which it does not owe such a duty; and
- (g) where applicable, the basis on which assets comprised in the portfolio are to be valued.

#### 12.1.4 **Additional Information for Investment Management Activities**

The additional information required under Rule 12.1.1(b) where an Authorised Person acts as an Investment Manager is:

- (a) the initial value of the managed portfolio;
- (b) the initial composition of the managed portfolio;
- (c) the period of account for which periodic statements of the portfolio are to be provided in accordance with Rule 6.10; and
- (d) in the case of discretionary investment management activities:
  - (i) the extent of the discretion to be exercised by the Authorised Person, including any restrictions on the value of any one Investment or the proportion of the portfolio which any one Investment or any particular kind of Investment may constitute; or that there are no such restrictions;
  - (ii) whether the Authorised Person may commit the Client to supplement the funds in the portfolio, and if it may include borrowing on his behalf:
    - (A) the circumstances in which the Authorised Person may do so;
    - (B) whether there are any limits on the extent to which the Authorised Person may do so and, if so, what those limits are;
    - (C) any circumstances in which such limits may be exceeded; and
    - (D) any margin lending arrangements and terms of those arrangements;
  - (iii) that the Authorised Person may enter into Transactions for the Client, either generally or subject to specified limitation; and
  - (iv) where the Authorised Person may commit the Client to any obligation to underwrite or sub-underwrite any issue or offer for sale of Securities:

- (A) whether there are any restrictions on the categories of Securities which may be underwritten and, if so, what these restrictions are; and
- (B) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are.

### **13. PERIODIC STATEMENTS**

#### **13.1 Content of Periodic Statements: Investment Management**

##### **13.1.1 General Information**

Pursuant to Rule 6.11, a periodic statement, as at the end of the period covered, must contain the following general information:

- (a) the number, description and value of each Investment;
- (b) the amount of cash held;
- (c) the total value of the portfolio; and
- (d) a statement of the basis on which the value of each Investment has been calculated.

##### **13.1.2 Additional Information: Discretionary Investment Management Activities**

In addition to Rule 13.1.1, where an Authorised Person acts as an Investment Manager on a discretionary basis, the periodic statement must also include the following additional information:

- (a) a statement of which Investments, if any, were at the closing date loaned to any third party and which Investments, if any, were at that date charged to secure borrowings made on behalf of the portfolio;
- (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period;
- (c) details of each Transaction which has been entered into for the portfolio during the period;
- (d) the aggregate of Money and details of all Investments transferred into and out of the portfolio during the period;
- (e) the aggregate of any interest payments, including the dates of their application and dividends or other benefits received by the Authorised Person for the portfolio during that period;
- (f) a statement of the aggregate Charges of the Authorised Person and its Associates; and
- (g) a statement of the amount of any Remuneration received by the Authorised Person or its Associates or both from a third party.

##### **13.1.3 Additional Information: Contingent Liability Investments**

In the case where Contingent Liability Investments are involved, an Authorised Person must include the following additional information:

- (a) the aggregate of Money transferred into and out of the portfolio during the valuation period;
- (b) in relation to each open position in the account at the end of the account period, the unrealised profit or loss to the Client (before deducting or adding any Commission which would be payable on closing out);
- (c) in relation to each Transaction Executed during the account period to close out a Client's position, the resulting profit or loss to the Client after deducting or adding any Commission;
- (d) the aggregate of each of the following in, or relating to, the Client's portfolio at the close of business on the valuation date:
  - (i) cash;
  - (ii) Collateral value;
  - (iii) management fees; and
  - (iv) commissions;
- (e) Option account valuations in respect of each open Option contained in the account on the valuation date stating:
  - (i) the Share, Future, index or other Investment involved;
  - (ii) the trade price and date for the opening Transaction, unless the valuation statement follows the statement for the period in which the Option was opened;
  - (iii) the market price of the contract; and
  - (iv) the exercise price of the contract.

#### **14. CLIENT MONEY PROVISIONS**

##### **14.1 Client Assets**

###### **14.1.1 Application**

This section applies to an Authorised Person which:

- (a) holds or controls Client Assets; or
- (b) Provides Custody or Arranges Custody.

###### **14.1.2**

- (a) Principle 9 of the Principles for Authorised Persons (*Customer assets and money*) in GEN 2.2.9 requires an Authorised Person to arrange proper protection for Clients' Assets when the Authorised Person is responsible for them. An essential part of that protection is that an Authorised Person must properly safeguard Client Assets held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the Abu Dhabi Global Market.

- (b) An Authorised Person must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets, or of rights in connection with Client Assets, as a result of, for example, the Authorised Person's or a third party's insolvency, fraud, poor administration, inadequate recordkeeping or negligence.

#### 14.1.3 **General Requirements**

- (a) An Authorised Person which holds or controls Client Money must comply with the provisions of Rule 14.2 (the "Client Money Rules") in relation to that Client Money and have systems and controls in place to be able to evidence compliance with the Client Money Rules.
- (b) An Authorised Person which holds or controls Client Investments, Provides Custody or Arranges Custody must comply with Chapter 15.
- (c) An Authorised Person must have systems and controls to ensure that Client Assets are identifiable and secure at all times.
- (d) Where the Authorised Person holds a mandate, or similar authority over an account with a third party, in the Client's own name, its systems and controls must:
  - (i) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Person on the use of the mandate;
  - (ii) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and
  - (iii) ensure that all Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Person entering into such Transactions.

#### 14.1.4 **Holding or Controlling Client Assets**

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

- (a) directly held by the Authorised Person;
- (b) held in an account in the name of the Authorised Person; or
- (c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Person.

#### **Guidance**

- (d) The Regulator would consider a Person to be controlled by an Authorised Person if that Person is inclined to act in accordance with the instructions of the Authorised Person.
- (e) The Regulator would consider an account to be controlled by an Authorised Person if that account is operated in accordance with the instructions of the Authorised Person.

#### 14.2 **Client Money Rules**

14.2.1 All Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business in or from the Abu Dhabi Global Market is Client Money, except Money which is:

- (a) held by the Authorised Person acting as Banks as a deposit on its own books, provided the Authorised Person notifies the Client in writing that the Client Money is held by it as a Bank and not as Client Money;
  - (b) due and payable by the Client to the Authorised Person;
  - (c) in an account in the Client's name over which the Authorised Person has a mandate or similar authority and who is in compliance with these Rules;
  - (d) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Person, provided the cheque or other payable order is intended to be forwarded to the third party within one business day of receipt; or
  - (e) Fund Property of a Fund.
- 14.2.2 (a) The exemption in Rule 14.2.1(a) does not apply to Money which is held in a Client account with a third party i.e. not held in an account with the Authorised Person itself.
- (b) Pursuant to Rule 14.2.1(b), examples of Money which is immediately due and payable to an Authorised Person include Money which is:
- (i) paid by the way of brokerage, fees and other charges to the Authorised Person or where the Authorised Person is entitled to deduct such remuneration from the Client Money held or controlled;
  - (ii) paid by the Authorised Person in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or
  - (iii) owed by the Client to the Authorised Person in respect of unpaid purchases by or for the Client if delivery of Investments has been made to the Client or credited to his account.
- (c) The Fund Rules contain specific provisions relating to the handing of Fund Property and also provisions relating to a Fund Administrator holding or controlling monies or assets belonging to third parties.

#### 14.2.3 **Client Money**

- (a) An Authorised Person in Category 4 must not hold Client Money.
- (b) An Authorised Person which holds or controls Client Money for a Client must comply with these Client Money Rules.
- (c) Where the Client is a Market Counterparty, an Authorised Person may exclude the application of the Client Money Rules but only where it has obtained the prior written consent of the Market Counterparty to do so.
- (d) An Authorised Person which holds or controls Client Money must arrange for a Client Money Auditor's Report to be submitted to the Regulator on an annual basis.

#### 14.2.4 **Payment of Client Money into Client Accounts**

- (a) Where an Authorised Person holds or controls Client Money it must ensure, except where otherwise provided in these Rules that the Client Money is paid into one or more Client Accounts within one day of receipt.
- (b) An Authorised Person must not hold or deposit its own Money into a Client Account, except where:
  - (i) it is a minimum sum required to open the account, or to keep it open;
  - (ii) the Money is received by way of mixed remittance, provided the Authorised Person transfers out that part of the payment which is not Client Money within one day of the day on which the Authorised Person would normally expect the remittance to be cleared;
  - (iii) interest credited to the account exceeds the amount payable to Clients, provided that the Money is removed within twenty-five days; or
  - (iv) it is to meet a shortfall in Client Money.
- (c) Where an Authorised Person deposits any Money into a Client Account, such Money is Client Money until such time as the Money is withdrawn from the Client Account in accordance with the Client Money Rules.
- (d) An Authorised Person must maintain systems and controls for identifying Money which must not be in a Client Account and for transferring it out of the Client Account without delay.
- (e) Where an Authorised Person is aware that a Person may make a payment of Client Money to the Authorised Person, it must take reasonable steps:
  - (i) to ensure that the Person has sufficient information of the relevant account details to be able to transfer Client Money directly to a Client Account, or otherwise to enable the Authorised Person to identify the Client Money; and
  - (ii) to ensure that the Authorised Person is notified by that Person of such payment as soon as reasonably practicable.
- (f) An Authorised Person must have procedures for identifying Client Money received by the Authorised Person, and for promptly recording the receipt of the Money either in the books of account or a register for later posting to and recording in the Client Account. The procedures must cover Client Money received by the Authorised Person through the mail, electronically or via agents of the Authorised Person or through any other means.

#### 14.2.5 **Client Accounts**

- (a) A Client Account in relation to Client Money is an account which:
  - (i) is held with a Third-Party Agent as banker, pursuant to Rules 14.2.7-14.2.8;
  - (ii) is established to hold Client Money;
  - (iii) is maintained in the name of:



- (A) if an Abu Dhabi Global Market Firm, the Authorised Person; or
  - (B) if a non-Abu Dhabi Global Market Firm, a Nominee Company controlled by the Authorised Person; and
- (iv) includes the words "Client Account" in its title.
- (b) An Authorised Person can hold Client Money in a Client Account, a Designated Client Account or a Designated Client Fund Account. Rule 14.2.5 applies to each type of Client Account.
- (c) An Authorised Person must maintain a master list of all Client Accounts. The master list must detail:
- (i) the name of the account;
  - (ii) the account number;
  - (iii) the location of the account;
  - (iv) the banker or custodian, its address and contact information;
  - (v) the account terms and conditions;
  - (vi) whether the account is currently open or closed; and
  - (vii) the date of opening or closure.
- (d) The details of the master list must be documented and maintained for at least six years following the closure of an account.

### **Guidance**

- (e) An Authorised Person holds all Client Money in Client Accounts for its Clients as part of a common pool of money so those particular Clients do not have a claim against a specific sum in a specific account; they only have a pro rata claim to the Client Money in general to which a particular Statutory Trust relates, as one of the beneficiaries of such Statutory Trust. The purpose of controlling or holding Client Money in a Client Account is to ensure that Money belonging to Clients is segregated and readily identifiable from Money belonging to the Authorised Person, such that, following a Pooling Event, Clients will have a joint property interest in the Client Money in proportion to each Client's entitlement in the Statutory Trust.
- (f) Alternatively, an Authorised Person may hold or control Client Money belonging to a Client in a Client Account constituting a Statutory Trust solely for that Client i.e. a Designated Client Account or Designated Client Fund Account. An Authorised Person holds Client Money in Designated Client Accounts or Designated Client Fund Accounts for those Clients that requested their Client Money be part of a specific pool of money, so those particular Clients have a property interest in relation to a specific sum in a specific account constituting a Statutory Trust; they do not have a claim to the Client Money even if a Primary Pooling Event occurs (as described in Rule 14.4.2).
- (g) A Designated Client Fund Account may be used for a Client only where that Client has consented to the use of that account and all other Designated Client Fund accounts which may be pooled with it. For example, a Client who consents to the use of bank A

and bank B should have Client Money related to it held in a different Designated Client Fund account at bank B from a Client who has consented to the use of banks B and C.

- (h) A Primary Pooling Event triggers a notional pooling of all the Client Money related to each Statutory Trust. The obligation to distribute Client Money following a Pooling Event is described in the Client Money Distribution Rules.

#### **14.2.6 Exceptions to Holding Client Money in Client Accounts**

- (a) The requirement for an Authorised Person to hold Client Money in a Client Account does not, subject to Rule 14.2.6(b), apply with respect to such Client Money:
  - (i) received in the form of cheque, or other payable order, until the Authorised Person, or a Person or account controlled by the Authorised Person, is in receipt of the proceeds of that cheque;
  - (ii) temporarily held by an Authorised Person before forwarding to a Person nominated by the Client; or
  - (iii) in connection with a Delivery Versus Payment Transaction where:
    - (A) in respect of a Client purchase, Client Money from the Client will be due to the Authorised Person within one day upon the fulfilment of a delivery obligation; or
    - (B) in respect of a Client sale, Client Money will be due to the Client within one day following the Client's fulfilment of a delivery obligation.
- (b) An Authorised Person must pay Client Money received by it of the type described in Rule 14.2.6(a)(ii) or Rule 14.2.6(a)(iii) into a Client Account where it has not fulfilled its delivery or payment obligation within three days of receipt of the Money or Investments, unless in the case of the type of Client Money referred to in Rule 14.2.6(a)(iii)(B), it instead safeguards Client Investments at least equal to the value of such Client Money.
- (c) An Authorised Person must maintain adequate records of all cheques and payment orders received in accordance with Rule 14.2.6(a)(i) including, in respect of each payment, the:
  - (i) date of receipt;
  - (ii) name of the Client for whom payment is to be credited; and
  - (iii) date when the cheque or payment order was presented to the Authorised Person's Third-Party Agent.
- (d) The records must be kept for a minimum of six years.
- (e) Cash held by an Authorised Firm that is a bank as a deposit in its capacity as a bank is not Client Money.
- (f) Cash received under a title transfer collateral arrangement from a Market Counterparty or Professional Client is not Client Money.

#### **14.2.7 Appointment of a Third-Party Agent**

- (a) An Authorised Person may pay, or permit to be paid, Client Money to a Third-Party Agent in accordance with Rule 14.2.8(a) only where it has undertaken a prior assessment of the suitability of that Third-Party agent and concluded on reasonable grounds that the Third-Party Agent is suitable to hold that Client Money in a Client Account.
  - (i) When assessing the suitability of the Third-Party Agent, the Authorised Person must ensure that the Third-Party Agent will provide protections equivalent to the protections conferred by this section.
  - (ii) An Authorised Person must have systems and controls in place to ensure that the Third-Party Agent remains suitable.
- (b) An Authorised Person must be able to demonstrate to the Regulator's satisfaction the grounds upon which the Authorised Person considers the Third-Party Agent to be suitable to hold that Client Money.
- (c) When assessing the suitability of a Third-Party Agent, an Authorised Person must have regard to:
  - (i) its credit rating;
  - (ii) its capital and financial resources in relation to the amount of Client Money held;
  - (iii) the insolvency regime of the jurisdiction in which it is located;
  - (iv) its regulatory status and history;
  - (v) its Group structure; and
  - (vi) its use of agents and service providers.

#### **14.2.8 Payment of Client Money to a Third-Party Agent**

- (a) Subject to Rule 14.2.8(e), an Authorised Person may pass, or permit to be passed, a Segregated Client's Money to a Third-Party Agent only if:
  - (i) the Client Money is to be used in respect of a Transaction or series of Transactions for that Client;
  - (ii) the Client Money is to be used to meet an obligation of that Client; or
  - (iii) the Third-Party Agent is a Bank or an Authorised Person which is authorised to accept or take Deposits.
- (b) In respect of Rule 14.2.8(a)(i) and Rule 14.2.8(a)(ii), an Authorised Person must not hold any excess Client Money with the Third-Party Agent longer than necessary to effect a Transaction or satisfy the Client's obligation.
- (c) When an Authorised Person opens a Client Account with a Third-Party Agent it must obtain, within a thirty day period, a written acknowledgement from the Third-Party Agent stating that:

- (i) all Money standing to the credit of the account is held by the Authorised Person as agent and that the Third-Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, security, lien, right of set-off or combination or counterclaim against Money in that account in respect of any sum owed to it on any other account of the Authorised Person; and
- (ii) the title of the account includes the words "Client Account" as required under Rule 14.2.5(a)(iv).

**Guidance**

- (d) The Regulator would consider twenty days as being a reasonable period for an Authorised Person to receive a written acknowledgement from the Third-Party Agent.
- (e) If the Third-Party Agent does not provide the acknowledgement referred to in Rule 14.2.8(c) within a 30-day period, the Authorised Person must refrain from making further deposits of Client Money with that Third-Party Agent and withdraw any Client Money standing to the credit of that Client Account.

**14.2.9 Payment of Client Money from Client Accounts**

- (a) An Authorised Person must have procedures for ensuring all withdrawals from a Client Account are authorised.
- (b) Subject to Rule 14.2.9(c), a Segregated Client's Client Money must remain in a Client Account until it is:
  - (i) due and payable to the Authorised Person;
  - (ii) paid to the Client on whose behalf the Client Money is held;
  - (iii) paid in accordance with a Client instruction on whose behalf the Client Money is held;
  - (iv) required to meet the payment obligations of the Client on whose behalf the Client Money is held;
  - (v) becomes held by the Authorised Person pursuant to a title transfer collateral arrangement;
  - (vi) becomes held by the Authorised Person in its capacity as a banker as a deposit; or
  - (vii) paid out in circumstances that are otherwise authorised by the Regulator.
- (c) Money paid out by way of cheque or other payable order under Rule 14.2.9(c) must remain in a Client Account until the cheque or payable order is presented to the Client's bank and cleared by the paying agent.
- (d) An Authorised Person must not use Client Money belonging of one Client to satisfy an obligation of another Client.

**Guidance**

- (e) The effect of Rule 14.2.9(d) is that an Authorised Person would be required to deposit its own Money into a Client Account to remedy a shortfall arising from a Client debit balance.
- (f) An Authorised Person must have a system for ensuring no off-setting or debit balances occur on Client Accounts.

**14.2.10 Client Disclosure**

- (a) Before, or as soon as reasonably practicable after, an Authorised Person receives Client Money belonging to a Client, it must disclose to the Client on whose behalf the Client Money is held:
  - (i) the basis and any terms governing the way in which the Client Money will be held;
  - (ii) as required under Rule 14.2.14(e), the nature of any particular Client Money Statutory Trust in which the Client is interested, or if there is only one Statutory Trust, that fact;
  - (iii) that the Client is subject to the protection conferred by the Client Money Rules and as a consequence:
    - (A) this Money will be held separate from Money belonging to the Authorised Person; and
    - (B) in the event of the Authorised Person's insolvency, winding up or other Pooling Event stipulated by the Regulator, the Client's Money will be subject to the Client Money Distribution Rules;
  - (iv) whether interest is payable to the Client and, if so, on what terms;
  - (v) if applicable, that the Client Money may be held in a jurisdiction outside the Abu Dhabi Global Market and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the Abu Dhabi Global Market;
  - (vi) if applicable, details about how any Client Money arising out of Islamic Financial Business is to be held;
  - (vii) if applicable, that the Authorised Person holds or intends to hold the Client Money in a Client Account with a Third-Party Agent which is in the same Group as the Authorised Person; and
  - (viii) details of any rights which the Authorised Person may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise, and of any rights which the Authorised Person may have to close out or liquidate contracts or positions in respect of any of the Client's Investments.

#### 14.2.11 Client Reporting

- (a) In relation to a Client to whom the Client Money Rules are applicable, an Authorised Person must send a statement to a Retail Client at least monthly or in the case of a Professional Client or Market Counterparty, at other intervals as agreed in writing with the Professional Client or Market Counterparty.
- (b) The statement must include:
  - (i) the Client's total Client Money balances held by the Authorised Person reported in the currency in which the Client Money is held, or the relevant exchange rate if not reported in the currency in which the Money is held;
  - (ii) the amount, date and value of each credit and debit paid into and out of the account since the previous statement; and
  - (iii) any interest earned or charged on the Client Account since the previous statement.
- (c) The statement sent to the Client must be prepared within twenty five days of the statement date.

#### 14.2.12 Reconciliation

- (a) An Authorised Person must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out at least every twenty five days.
- (b) The reconciliation must include:
  - (i) a full list of individual Segregated Client credit ledger balances, as recorded by the Authorised Person;
  - (ii) a full list of individual Segregated Client debit ledger balances, as recorded by the Authorised Person;
  - (iii) a full list of unrepresented cheques and outstanding lodgements;
  - (iv) a full list of Client Account cash book balances; and
  - (v) formal statements from Third-Party Agents showing account balances as at the date of reconciliation.
- (c) An Authorised Person must:
  - (i) reconcile the individual credit ledger balances, Client Account cash book balances, and the Third-Party Agent Client Account balances;
  - (ii) check that the balance in the Client Accounts as at the close of business on the previous day was at least equal to the aggregate balance of individual credit ledger balances as at the close of business on the previous day; and
  - (iii) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the Third-Party Agent and the Authorised Person, are

investigated and, where applicable, corrective action is taken as soon as possible.

- (d) An Authorised Person must perform the reconciliations in Rule 14.2.12(c) within ten days of the date to which the reconciliation relates.
- (e) When performing the reconciliations, an Authorised Person must:
  - (i) include in the credit ledger balances:
    - (A) unallocated Client Money;
    - (B) dividends received and interest earned and allocated;
    - (C) sale proceeds which have been received by the Authorised Person and the Client has delivered the Investments or the Authorised Person holds or controls the Investment; and
    - (D) Money paid by the Client in respect of a purchase where the Authorised Person has not remitted the Money to the counterparty or delivered the Investment to the Client; and
  - (ii) deduct from the credit ledger balances:
    - (A) Money owed by the Client in respect of unpaid purchases by or for the Client if delivery of those Investments has been made to the Client; and
    - (B) Money remitted to the Client in respect of sales transactions by or for the Client if the Client has not delivered the Investments.
- (f) When performing reconciliations, an Authorised Person must maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has the authority to make payments, does not perform the reconciliations under Rules 14.2.12(a) to 14.2.12(d).
- (g) Reconciliation performed in accordance with Rules 14.2.12(a) to 14.2.12(d) must be reviewed by a member of the Authorised Person who has adequate seniority.
- (h) The individual referred to in Rule 14.2.9(b)(i) and 14.2.9(b)(ii) must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.
- (i) The Authorised Person must notify the Regulator where there has been a material discrepancy with the reconciliation which has not been rectified.
- (j) A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

#### **14.2.13 Auditor's Reporting Requirements**

An Authorised Person which holds Client Money for Segregated Clients must arrange for a Client Money Auditor's Report to be submitted to the Regulator on an annual basis.

#### **14.2.14 Segregation and portability**

- (a) Pursuant to s 4 of FSMR, an Authorised Person acts as trustee for all Client Money received or held by it for the benefit of the Clients for whom that Client Money is held, according to their respective interests in the relevant Statutory Trust.
- (b) In line with MIR 4.12, an Authorised Person that is also a Clearing Member of a Recognised Clearing House, shall offer Clients whose Client Money or Safe Custody Assets are rehypothecated or re-used to fund margin at a Recognised Clearing House in relation to Client transactions, the choice to clear their positions through an Omnibus Client Account ("Omnibus Client Segregation") or an individually segregated Client Account ("Individual Client Segregation") maintained by the Authorised Person with that Recognised Clearing House.
- (c) When a Client chooses Individual Client Segregation, any margin in excess of the Client's requirement shall also be transferred to the Recognised Clearing House and distinguished from the margins of other Clients of the Authorised Person and shall not be exposed to losses connected to positions recorded in another account.
- (d) To segregate Client Money (that would otherwise be held in a single Statutory Trust as the general pool of Client Money held for all Clients of the Authorised Person) for a specific Client or group of Clients clearing positions through a particular Client account at a Recognised Clearing House, a Clearing Member firm may, in accordance with these rules, create a separate Statutory Trust for Client Money receivables relating to a particular Client Account at that Recognised Clearing House (as in Rule 14.2.15 below).
- (e) An Authorised Person which creates a separate Statutory Trust as in Rule 13.2.14(d), must notify all its Clients that it operates more than one Statutory Trust and must inform each Client of which Statutory Trust their Client Money forms part of and how it is identified.
- (f) The principles of this Rule 14.2.14 will apply equally to any positions or margin at a Non-Abu Dhabi Global Market Clearing House subject to such derogations and waivers as the Regulator may prescribe.

#### **14.2.15 Statutory Trusts**

- (a) An Authorised Person receives and holds Client Money as trustee in accordance with the following requirements in Rule 14.2.15.
- (b) The requirements in (a) are:
  - (i) for the purposes of and on the terms of the Client Money rules and the Client Money Distribution Rules;
    - (A) where an Authorised Person maintains only a single Statutory Trust as a general pool of Client Money, subject to (ii), for the Clients for whom that money is held, according to their respective interests in it;
    - (B) where an Authorised Person has established one or more separate Statutory Trusts of Client Money, subject to (ii), each separate Statutory Trust is held for the Clients of the Authorised Person who are beneficiaries of that specific Statutory Trust according to their respective interests in it;



- (ii) for the payment of the costs properly attributable to the distribution of the Client Money in accordance with (i), if such distribution takes place following the Failure of the Authorised Person; and
  - (iii) after all valid claims and costs under (i) to (ii) have been met, for the Authorised Person itself.
- (c) The beneficiaries of each separate Statutory Trust are those Clients:
- (i) from whom the Authorised Person has received a signed Statutory Trust disclosure document under Rule 14.2.14(e);
  - (ii) for whom the Authorised Person maintains, previously maintained or is in the process of establishing a margined transaction(s) in the relevant Client Account at the relevant Recognised Clearing House;
  - (iii) who are interested in a Designated Client Fund Account or Designated Client Account; or
  - (iv) to whom any Client Equity Balance or other Client Money is required to be segregated for the Client by the Authorised Person in respect of the margined transactions under (ii) from that separate Statutory Trust.
- (d) An Authorised Firm which is subject to the Client Money Rules receives and holds Client Money as trustee on the terms in Rule 14.2.14(d), subject to its obligations to hold Client Money as trustee under the relevant instrument of trust.

#### **14.2.16 Primary Pooling Event**

Following a Primary Pooling Event, an Authorised Person must comply with the Rules in Rule 14.3.7 and all Client Money will be subject to such Rules.

#### **14.2.17 Client Disclosure**

- (a) If an Authorised Person holds or controls money for a Market Counterparty which is not subject to these Client Money Rules, it must disclose to that Market Counterparty in writing that:
- (i) the protections conferred by the Client Money Rules do not apply to such money;
  - (ii) such money may be mixed with money belonging to the Authorised Person, and may be used by the Authorised Person in the course of the Authorised Person's business; and
  - (iii) following a Pooling Event, it will be an unsecured creditor.
- (b) The Authorised Person must obtain that Market Counterparty's written acknowledgement of the disclosures made prior to holding or controlling Client Money for that Market Counterparty.

#### **14.2.18 Record Keeping**

- (a) An Authorised Person must maintain records:

- (i) which enable the Authorised Person to demonstrate compliance with these Rules;
  - (ii) which enable the Authorised Person to demonstrate and explain all entries of Client Money held or controlled in accordance with these Rules; and
  - (iii) of all cheques relating to Client Money received and forwarded.
- (b) Records must be kept for a minimum of six years.
- (c) An Authorised Person must maintain proper books and accounts based on the double-entry booking principle. They must be legible, up to date and contain narratives with the entries which identify and provide adequate information about each transaction. Entries must be made in chronological order and the current balance must be shown on each of the Authorised Person's ledgers.

#### **14.2.19 Notification of Failure to Comply**

An Authorised Person must inform the Regulator in writing without delay if it has not complied with, or is unable, in any material respect, to comply with the requirements in this Rule 14.2.

### **14.3 Client Investments**

#### **14.3.1 Application**

- (a) An Authorised Person must treat all Investments held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business as Client Investments.
- (b) An Authorised Person which holds or controls Client Investments must have systems and controls in place to ensure the proper safeguarding of Client Investments.
- (c) Instead of safeguarding Client Investments, an Authorised Person may choose to safeguard Client Money equal to the value of the Client Investments.
- (d) An Authorised Person:
  - (i) holding or controlling Client Investments;
  - (ii) Providing Custody; or
  - (iii) Arranging Custody

in or from the Abu Dhabi Global Market must do so in accordance with the Safe Custody Provisions in Chapter 15, except in relation to Client Investments held as Collateral (unless stated otherwise).

#### **14.3.2 Holding Collateral**

Before an Authorised Person holds Collateral from a Client it must disclose to that Client:

- (a) the basis and any terms governing the way in which the Collateral will be held, including any rights which the Authorised Person may have to realise the Collateral;
- (b) if applicable, that the Collateral will not be registered in that Client's own name;

- (c) if applicable, that the Authorised Person proposes to return to the Client Collateral other than the original Collateral or original type of Collateral; and
- (d) that in the event of the Authorised Firm's Failure:
  - (i) of an Abu Dhabi Global Market Firm, any excess Collateral will be sold and the resulting Client Money shall be distributed in accordance with the Client Money Distribution Rules; or
  - (ii) of a non-Abu Dhabi Global Market Firm, that Collateral will be subject to a regime which may differ from the regime applicable in the Abu Dhabi Global Market.
- (e) Before an Authorised Person deposits Client's Collateral with a third party it must notify and obtain the agreement of the third party that:
  - (i) the Collateral does not belong to the Authorised Person and must therefore be held by the third party in a segregated Client Account in a name that clearly identifies it as belonging to the Authorised Person's Clients; and
  - (ii) the third party is not entitled to claim any lien or right of retention or sale over the Collateral except to cover the obligations owed to the third party arising on the segregated Client Account and no other account.
- (f) An Authorised Person may permit Client's Collateral to be held by a third party only where it has reasonable grounds to believe that the third party is, and remains, suitable to hold that Collateral.
- (g) An Authorised Person must be able to demonstrate to the Regulator's satisfaction the grounds upon which it considers the third party to be suitable to hold Client's Collateral.
- (h) An Authorised Person must take reasonable steps to ensure that the Collateral is properly safeguarded.
- (i) An Authorised Person must withdraw the Collateral from the third party where the Collateral is not being properly safeguarded unless the Client has indicated otherwise in writing.
- (j) An Authorised Person holding Client's Collateral must send a statement every six months to the Client.
- (k) An Authorised Person must reconcile the Client's Collateral in accordance with Rule 15.9.

#### **14.3.3 Information to prime brokerage Clients**

- (a) An Authorised Person must make available to each of its Clients to whom it provides prime brokerage services a statement in a durable medium:
  - (i) showing the value at the close of each business day of the items in Rule 14.3.4 above; and
  - (ii) detailing any other matters which that Authorised Person considers are necessary to ensure that a Client has up-to-date and accurate information about

the amount of Client Money and the value of Safe Custody Assets held by that Authorised Person for it.

- (b) The statement must be made available to those Clients not later than the close of the next business day to which it relates.

14.3.4 The statement must include:

- (a) the total value of Safe Custody Assets and the total amount of Client Money held by that prime brokerage firm for a Client;
- (b) the cash value of each of the following:
  - (i) cash loans made to that Client and accrued interest;
  - (ii) securities to be redelivered by that Client under open short positions entered into on behalf of that Client;
  - (iii) current settlement amount to be paid by that Client under any futures contracts;
  - (iv) short sale cash proceeds held by the Authorised Person in respect of short positions entered into on behalf of that Client;
  - (v) cash margin held by the Authorised Person in respect of open futures contracts entered into on behalf of that Client;
  - (vi) mark-to-market close-out exposure of any OTC transaction entered into on behalf of that Client secured by Safe Custody Assets or Client Money;
  - (vii) total secured obligations of that Client against the prime brokerage firm; and
  - (viii) all other Safe Custody Assets held for that Client.
- (c) total collateral held by the Authorised Person in respect of secured transactions entered into under a prime brokerage agreement, including where the Authorised Person has exercised a right of use in respect of that Client's Safe Custody Assets;
- (d) the location of all of a Client's Safe Custody Assets, including assets held with a sub-custodian; and
- (e) a list of all the institutions at which the Authorised Person holds or may hold Client Money, including money held in Client Accounts.

14.3.5 The reports under Rule 15.8 below must also be provided to each Client, to the extent that this is required under this section.

#### 14.3.6 **Record Keeping**

- (a) An Authorised Person must maintain records which enable the Authorised Person to demonstrate compliance with this section; and which enable the Authorised Person to

demonstrate and explain all entries of Client Investments and Collateral held or controlled in accordance with this chapter.

- (b) Records must be kept for a minimum of six years.

#### **14.3.7 Notification of Failure to Comply**

An Authorised Person must inform the Regulator in writing without delay if it has not complied with, or is unable, in any material respect, to comply with the requirements in this Rule 14.3.

### **14.4 Client Money Distribution Rules**

#### **14.4.1 Application**

- (a) To the extent that the rules in this section ("the Client Money Distribution Rules") are inconsistent with section 233 of the Insolvency Regulations, these Rules will prevail.
- (b) This chapter applies to an Authorised Person that holds Client Money which is subject to the Client Money rules when a Pooling Event occurs.

#### **Guidance**

- (c) This chapter seeks to facilitate the timely return of Client Money to a Client in the event of the Failure of an Authorised Person or third party at which the Authorised Person holds Client Money.
- (d) Following a Pooling Event, an Authorised Person must sell all non-cash assets representing the proceeds of, or directly traceable from, Client Money and use the proceeds of the sale to satisfy claims of Statutory Trust beneficiaries made in accordance with this chapter.

#### **14.4.2 Primary Pooling Events**

- (a) If the Authorised Person becomes insolvent, and there is (for whatever reason) a shortfall in Client Money in a particular Statutory Trust, the available funds will be distributed in accordance with the Client Money Distribution Rules.
- (b) A Primary Pooling Event occurs:
  - (i) on the Failure of an Authorised Person;
  - (ii) on the vesting of assets in a trustee in accordance with an Assets Requirement imposed under s 38 of FSMR;
  - (iii) if the Regulator makes an order or decision to this effect under FSMR;
  - (iv) when the Authorised Person notifies, or is in breach of its duty to notify, the Regulator, in accordance with Rules 14.2.12(i), 14.2.19, 14.3.7, 15.9.5 and 16.2.15 that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a Secondary Pooling Event.
- (c) Rule (b)(iv) does not apply so long as:
  - (i) the Authorised Person is taking steps, in consultation with the Regulator, to establish those records; and

- (ii) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

**Guidance**

- (d) A Primary Pooling Event triggers a notional pooling of all the Client Money, in every type of Client Money account, and the obligation to distribute it.

**14.4.3 Pooling and distribution**

- (a) If a Primary Pooling Event occurs, an Authorised Person must comply with (b)-(h) below.
- (b) The following Client Money is included in a separate Statutory Trust under Rule 14.2.14(d):
  - (i) the Authorised Person's receivables in respect of any Client Money held in a Client Account of the Authorised Person relating to that separate Statutory Trust; and
  - (ii) the Authorised Person's receivables in respect of any Client Money held in a Client Account of the Authorised Person relating to that separate Statutory Trust, except in respect of Client Money held in a Client Account at a Recognised Clearing House or a Clearing Member which is, in either case, held as part of a Clearing Member Client Contract under FSMR;
- (c) In respect of the general Statutory Trust (i.e., the Statutory Trust in respect of the general pool of Client Money held for all Clients of the Authorised Person or held for residual Clients not interested in a Designated Client Account, Designated Client Fund Account or specific Statutory Trust under Rule 14.2.14), the following is treated as a single notional pool of Client Money for the beneficiaries of the general pool:
  - (i) the Authorised Person's receivables in respect of any Client Money held in any Client Account of the Authorised Person;
  - (ii) the Authorised Person's receivables in respect of any Client Money held in a Client Account of the Authorised Person, except for Client Money held in a Client Account at a Recognised Clearing House, or a Clearing House which is, in either case, held as part of a Clearing Member Client Contract under FSMR; and
  - (iii) the Authorised Person's receivables in respect of any Client Money identifiable in any other account held by the Authorised Person into which Client Money has been received;except, in each case, for Client Money relating to a separate Statutory Trust which falls under (b)(i) or (ii).
- (d) The Authorised Person must:
  - (i) distribute Client Money in accordance with Rule 14.2.15, so that each Client who is a beneficiary of each separate Statutory Trust receives a sum which is rateable to the Client Money entitlement and calculated in accordance with Rule 13.4.3(n) relating to each Client's Client Equity Balance; or

- (ii) (where applicable) transfer Client Money held at a Recognised Clearing House or Non-ADGM Clearing House to effect or facilitate porting of positions held for the Clients who are beneficiaries of that separate Statutory Trust; and
- (e) If, in connection with a Clearing Member Client Contract, Client Money is remitted directly to the Authorised Person either from a Recognised Clearing House or from a Clearing Member thereof, then:
  - (i) any such remittance in respect of a Client Account constituting a separate Statutory Trust under Rule 13.2.14 must be distributed to the relevant Client interested in such Client Account subject to Rule 14.2.15(d); and
  - (ii) subject to (e)(i), any such remittance in respect of any other Client Account must form part of the relevant Statutory Trust under (b) and be subject to distribution accordingly.
- (f) Where any Asset is valued by a Recognised Clearing House, the close-out price or valuation of the Recognised Clearing House shall apply on a Pooling Event, regardless of the actual time of close-out, provided that the Recognised Clearing House has acted in accordance with its Default Rules.
- (g) For the avoidance of doubt, 'relevant Clients' in the case of (e) includes any entitlement of a Client held by it for a Person who is an indirect client.
- (h) Where an Authorised Person that is a Clearing Member of a Recognised Clearing House defaults, the Recognised Clearing House may:
  - (i) port Client positions and related collateral (including proceeds of Client Money or Safe Custody Assets) where possible; and
  - (ii) after the completion of the default management process:
    - (A) return any balance due directly to those Clients for whom the positions are held, if they are known to the Recognised Clearing House; or
    - (B) remit any balance to the Authorised Person for the account of its Clients if the Clients are not known to the Recognised Clearing House.
- (i) Where an Authorised Person acting in connection with a Clearing Member Client Contract for a Client (who is also an indirect Client) defaults, the Clearing Member with whom the Authorised Person has placed Client Money of the indirect Client, may:
  - (i) transfer the positions and assets either to another Clearing Member of the relevant Recognised Clearing House or to another Authorised Person willing to act for the indirect Client; or
  - (ii) liquidate the Assets and positions of the indirect Clients and remit all monies due to the indirect Clients.
- (j) Where any balance remitted from a Recognised Clearing House (or in the case of the Authorised Person being an indirect Client, a Clearing Member) to an Authorised Person is Client Money, Rule 13.4.3(k) provides for the distribution of remittances from either an Individual Client Account or an Omnibus Client Account.

- (k) Remittances received by the Authorised Person falling within Rules 13.4.3(e)(i) and (ii) should not be pooled with Client Money held in any Client Account operated by the Authorised Person at the time of the Primary Pooling Event. Those remittances should be segregated and promptly distributed to each Client on whose behalf the remittance was received.
- (l) For the avoidance of doubt, in respect of a Clearing Member Client Contract, any Client Money remitted by the Recognised Clearing House (or in the case of the Authorised Person being an indirect Client, a Clearing Member) to the Authorised Person pursuant to Rule 13.4.3(e) should not be treated as Client Money received after the Failure of the Authorised Person under Rule 14.4.4.
- (m) The Authorised Person's obligation to its Client in respect of Client Money relating to a particular Statutory Trust is discharged where the Authorised Person, to facilitate porting transfers or the transfer of that Client Money to a Clearing Member in connection with a Clearing Member Client Contract and the Clearing Member, remits payment to another Authorised Person or to another Clearing Member where the Client Money is paid to the Client or a duly authorised representative of the Client.
- (n) Each Client's Client Equity Balance must be reduced by:
  - (i) any amount paid by:
    - (A) a Clearing House to a Clearing Member other than the Authorised Person in connection with a porting arrangement where Client Money is ported by the Recognised Clearing House as part of the default management process of that Recognised Clearing House;
    - (B) a Clearing Member to another Clearing Member or Authorised Person (other than the Authorised Person) in connection with a Clearing Member Client Contract where Client Money is paid to the Client or a duly authorised representative of the Client;
  - (ii) any amount paid by:
    - (A) a Recognised Clearing House directly to that Client, where the amount comprises the balance owed by the Recognised Clearing House after the completion of the Clearing Member's default management process by the Recognised Clearing House; and
    - (B) a Clearing Member directly to an indirect Client in accordance with default management procedures adopted by the Clearing Member.
  - (iii) any amount that must be distributed to that Client by the Authorised Person in accordance with Rule 13.4.3(e)(i) and (ii).
- (o) When, in respect of a Client who is a beneficiary of a Statutory Trust, there is a positive individual Client balance and a negative Client Equity Balance in relation to that Statutory Trust, the credit for that Statutory Trust must be offset against the debit reducing the individual Client balance for that Client.
- (p) When, in respect of a Client who is a beneficiary of a Statutory Trust, there is a negative individual Client Equity Balance and a positive Client Equity Balance in relation to that Statutory Trust, the credit for that Statutory Trust must be offset against the debit for that Statutory Trust reducing the Client Equity Balance for that Client.



#### **14.4.4 Client money received after the Failure of the Authorised Person**

- (a) Subject to Rule 14.4.3, Client Money received by the Authorised Person after a Primary Pooling Event in respect of a Statutory Trust must not be pooled with Client Money held in any Client Account operated by the Authorised Person either in respect of that Statutory Trust or any other Statutory Trust at the time of the Primary Pooling Event. Such Client Money must instead be placed in a Client Account that has been opened after that event and must be handled in accordance with the requirements in Rule 14.2, and returned to the relevant Client(s) without delay, except to the extent that:
  - (i) it is Client Money relating to a transaction that has not settled at the time of the Primary Pooling Event; or
  - (ii) it is Client Money relating to a Client, for whom the Client Equity Balance, calculated in accordance with Rules 14.4.3(n), 14.4.3(o) and 14.4.3(p), shows that Money is due from the Client to the Authorised Person at the time of the Primary Pooling Event.
- (b) Client Money received after the Primary Pooling Event relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:
  - (i) an equity transaction with a trade date before the date of the Primary Pooling Event and a settlement date after the date of the Primary Pooling Event; or
  - (ii) a contingent liability investment that is 'open' at the time of the Primary Pooling Event and is due to settle after the Primary Pooling Event.
- (c) If an Authorised Person receives a mixed remittance after a Primary Pooling Event, it must:
  - (i) pay the full sum into the separate Client Account opened in accordance with (a); and
  - (ii) pay the money that is not Client Money out of that Client Account into an Authorised Person's own account within one business day of the day on which the Authorised Person would normally expect the remittance to be cleared.
- (d) Whenever possible the Authorised Person should seek to split a mixed remittance before the relevant accounts are credited.
- (e) If both a Primary Pooling Event and a Secondary Pooling Event occur, the provisions of this section relating to a Primary Pooling Event apply.

#### **14.4.5 Secondary Pooling Events**

- (a) A Secondary Pooling Event occurs on Failure of a third party to which Client Money held by the Authorised Person has been transferred under Rule 14.2.5(a) or Rule 14.2.9 and the Authorised Person has not repaid to its Clients or paid into a Client Account at an unaffected bank, an amount equivalent to the shortfall in the amount of Client Money held by the third party.
- (b) The Authorised Person would be expected to reflect the shortfall in (a) in its records of the entitlement of Clients and of Client Money held with third parties under Rules 14.2.18, 14.3.6, and 14.3.7.

**Guidance**

- (c) These rules in relation to Secondary Pooling Events seek to ensure that Clients who have previously specified that their Client Money be placed in a Designated Client Account at a different bank, should not suffer the loss of a different bank that has Failed.
- (d) When Client Money is transferred to a third party, an Authorised Person continues to owe fiduciary duties to the Client. Whether an Authorised Person is liable for a shortfall in Client Money caused by the Failure of a third party will depend on whether it has complied with its duty of care as agent or trustee.

**14.4.6 Failure of third parties: pooling and distribution**

- (a) This section applies to third parties, which includes:
  - (i) a bank (where one or more general Client Accounts are held under one or more Statutory Trusts or separate Statutory Trusts); and
  - (ii) an intermediate broker, settlement agent or OTC counterparty.
- (b) If a Secondary Pooling Event occurs as a result of the Failure of such a third party where one or more Client Accounts are held under different Statutory Trusts, then:
  - (i) in relation to every Client Account of the Authorised Person maintained in respect of a particular Statutory Trust, Rule 14.4.7 will apply.
- (c) Money held in each general Client Account of the Authorised Person under a Statutory Trust or separate Statutory Trusts must be treated as pooled into a single Statutory Trust ("the relevant pool") and:
  - (i) any shortfall in Client Money held, or which should have been held in the general Client Accounts for the relevant pool, that has arisen as a result of the Failure of the third party, must be borne by all the Clients of that relevant pool, rateably in accordance with their entitlements;
  - (ii) a new Client Money entitlement must be calculated for each Client of the relevant pool to reflect the requirements in (i), and the Authorised Person's records must be amended to reflect the reduced Client Money entitlement;
  - (iii) the Authorised Person must make and retain a record of each Client's share of the Client Money shortfall at the Failed third party until the Client is repaid; and
  - (iv) the Authorised Person must use the new Client Money entitlements, calculated in accordance with (ii), for the purposes of reconciliations pursuant to Rules 14.2.12(a) to 14.2.12(d) for the relevant Clients in (ii).
- (d) The term "which should have been held" is a reference to the Failed third party's Failure to hold the Client Money at the time of the Pooling Event.
- (e) Any Client Money held under a particular Statutory Trust, in relation to a Designated Client Account at a third party (other than the Failed third party) is not pooled with any other Client Money held in that particular Statutory Trust or any other Statutory Trusts.

- (f) Any Client Money held under a Statutory Trust, no part of which is at the Failed third party,
- (g) is not pooled with any Client Money of other affected Statutory Trusts.
- (h) Any shortfall in Client Money held under a particular Statutory Trust affected by a Secondary Pooling Event must be borne by all the Clients whose Client Money is held in such a Statutory Trust, rateably in accordance with their Client Money entitlements.
- (i) A new Client Money entitlement must be accordingly and the Authorised Person's records must be amended to reflect each Client's new Client Money entitlement.
- (j) the Authorised Person must make and retain a record of each Client's share of the Client Money shortfall at the Failed third party until the Client is repaid; and
- (k) the Authorised Person must use the new Client Money entitlements, calculated in accordance with (i), for the purposes of reconciliations pursuant to Rules 14.2.12(a) to 14.2.12(d) for the relevant Statutory Trust(s).
- (l) A Client whose Money was held, or which should have been held, in a Designated Client Account or Designated Client Fund with a Failed third party is not entitled to claim in respect of that Money against any other Client Account of the Authorised Person;

#### **14.4.7 Client Money received after the Failure of a third party**

- (a) Client Money received by the Authorised Person after the Failure of a third party, that would otherwise have been paid into a Client Account at that Failed third party
  - (i) must not be transferred to the Failed third party unless specifically instructed by the Client in order to settle an obligation of that Client to the Failed third party; and
  - (ii) must be, subject to (i), placed in a separate Client Account relevant affected Statutory Trust(s):
    - (A) on the written instruction of the Client, transferred to a third party other than the one that has Failed; or
    - (B) returned to the Client as soon as possible.
- (b) If an Authorised Person receives a mixed remittance after the Secondary Pooling Event which consists of Client Money that would have been paid into a Client Account, a Designated Client Account or a Designated Client Fund Account maintained at the third party that has Failed, it must:
  - (i) pay the full sum into a Client Account other than one operated at the Failed third party; and
  - (ii) pay the money that is not Client Money out of that Client Account within one business day of the day on which the Authorised Person would normally expect the remittance to be cleared.
- (c) Whenever possible the Authorised Person should seek to split a mixed remittance before the relevant accounts are credited.

**14.4.8 Notification to the Regulator**

- (a) On the Failure of a Third Party with which Client Money is held, the Authorised Person must notify the Regulator:
  - (i) as soon as it becomes aware of the Failure of any bank, intermediate broker, settlement agent, OTC counterparty or other entity with which it has placed, or to which it has passed, Client Money; and
  - (ii) as soon as reasonably practical, whether it intends to make good any shortfall that has arisen or may arise and of the amounts involved.

**15. SAFE CUSTODY PROVISIONS**

**15.1 Application**

15.1.1 Subject to Rule 15.1.2, this chapter applies to an Authorised Person in accordance with Rule 14.3.1(d).

15.1.2 This chapter does not apply to Fund Managers, who are subject to the provisions of Chapter 15.3 of the Fund Rules.

**15.2 General Requirements**

15.2.1 The provisions of this appendix are referred to as the Safe Custody Provisions.

15.2.2 An Authorised Person must:

- (a) comply with the Safe Custody Provisions; and
- (b) have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.

**15.3 Recording, Registration and Holding Requirements**

15.3.1 An Authorised Person which Provides Custody or holds or controls Client Investments must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property.

15.3.2 Subject to Rule 15.4.1, an Authorised Person which Provides Custody or holds or controls Client Investments must record, register and hold Safe Custody Investments separately from its own Investments.

**15.4 Client Accounts in relation to Client Investments**

15.4.1 An Authorised Person which Provides Custody or holds or controls Client Investments must register or record all Safe Custody Investments in an account that is:

- (a) a Client Account in relation to Client Investments; or
- (b) an account in the name of the Authorised Person where, due to the nature of the law or market practice, it is not feasible to do otherwise, also labelled as a Client Account where legally possible.

- 15.4.2 A Client Account in relation to Client Investments is an account which:
- (a) is held with a Third-Party Agent or by an Authorised Person which is authorised under its Licence to Provide Custody;
  - (b) is established to hold Client Assets;
  - (c) when held by a Third-Party Agent, is maintained in the name of:
    - (i) if an Abu Dhabi Global Market Firm, the Authorised Person; or
    - (ii) if not an Abu Dhabi Global Market Firm, a Nominee Company controlled by the Authorised Person; and
  - (d) includes the words "Client Account" in its title.
- 15.4.3 (a) An Authorised Person must maintain a master list of all Client Accounts and accounts referred to in Rules 15.4.1—15.4.2.
- (b) The master list must detail:
- (i) the name of the account;
  - (ii) the account number;
  - (iii) the custodian, sub-custodian or depository (if not the Authorised Person itself);
  - (iv) the banker of the account;
  - (v) whether the account is currently open or closed; and
  - (vi) the date of opening or closure.
- (c) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.
- 15.4.4 An Authorised Person must not use a Client's Safe Custody Investment for its own purpose or that of another Person without that Client's prior written permission.
- 15.4.5 An Authorised Person which intends to use a Client's Safe Custody Investments for its own purpose or that of another Person, must have systems and controls in place to ensure that:
- (a) it obtains that Client's prior written permission;
  - (b) adequate records are maintained to protect Safe Custody Investments which are applied as collateral or used for stock lending activities;
  - (c) the equivalent assets are returned to the Client Account of the Client; and
  - (d) the Client is not disadvantaged by the use of his Safe Custody Investments.

**Guidance**

- (e) An Authorised Person may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Person may choose to pool

that Client's Investment in a Client Account containing Investments of more than one Client.

- (f) The purpose of recording, registering or holding Investments in a Client Account is to ensure that Investments belonging to Clients are readily identifiable from Investments belonging to the Authorised Person such that, following a Pooling Event, any subsequent distribution of Investments may be made in proportion to each Client's valid claim over those Investments.
- (g) Following a Pooling Event, a Client may not have a valid claim over Investments registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments for that Client or a pool of Clients of which that Client was a part.

### **15.5 Holding or Arranging Custody with Third-Party Agents**

15.5.1 (a) Before an Authorised Person holds a Safe Custody Investment with a Third-Party Agent or Arranges Custody through a Third-Party Agent, it must undertake an assessment of that Third-Party Agent and have concluded on reasonable grounds that the Third-Party Agent is suitable to hold those Safe Custody Investments.

(b) An Authorised Person must have systems and controls in place to ensure that the Third-Party Agent remains suitable.

(c) When assessing the suitability of the Third-Party Agent, the Authorised Person must ensure that the Third-Party Agent will provide protections equivalent to the protections conferred in this appendix.

15.5.2 An Authorised Person must be able to demonstrate to the Regulator's satisfaction the grounds upon which the Authorised Person considers the Third-Party Agent to be suitable to hold Safe Custody Investments.

15.5.3 When assessing the suitability of a Third-Party Agent, an Authorised Person must have regard to:

- (a) its credit rating;
- (b) its capital and financial resources in relation to the amount of Safe Custody Investments held;
- (c) the insolvency regime of the jurisdiction in which it is located;
- (d) its arrangements for holding the Investments;
- (e) its regulatory status, expertise, reputation and history;
- (f) its Group structure;
- (g) its use of agents and service providers; and
- (h) any other activities of the agent.

**15.6 Safe Custody Agreements with Third-Party Agents**

15.6.1 Before an Authorised Person passes, or permits to be passed, Safe Custody Investments to a Third-Party Agent it must have procured a written acknowledgement from the Third-Party Agent stating:

- (a) that the title of the account sufficiently distinguishes that account from any account containing Investments belonging to the Authorised Person, and is in the form requested by the Authorised Person;
- (b) that the Client Investment will only be credited and withdrawn in accordance with the instructions of the Authorised Person;
- (c) that the Third-Party Agent will hold Client Investments separately from assets belonging to the Third-Party Agent;
- (d) the arrangements for recording and registering Client Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
- (e) that the Third-Party Agent will deliver a statement to the Authorised Person (including the frequency of such statement), which details the Client Investments deposited to the account;
- (f) that all Investments standing to the credit of the account are held by the Authorised Person as agent and that the Third-Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to it on any other account of the Authorised Person; and
- (g) the extent of liability of the Third-Party Agent in the event of default.

15.6.2 An Authorised Person must maintain for at least six years, records of all Safe Custody Agreements and any instructions given by the Authorised Person to the Third-Party Agent under the terms of the agreement.

**15.7 Client Disclosure**

15.7.1 Before an Authorised Person Arranges Custody for a Client, it must disclose to that Client, if applicable, that the Client's Safe Custody Investments may be held in a jurisdiction outside the Abu Dhabi Global Market and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the Abu Dhabi Global Market.

15.7.2 Before an Authorised Person provides Custody for a Client it must disclose to the Client on whose behalf the Safe Custody Investments will be held:

- (a) a statement that the Client is subject to the protections conferred by the Safe Custody Provisions;
- (b) the arrangements for recording and registering Safe Custody Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody Investments;
- (c) the obligations the Authorised Person will have to the Client in relation to exercising rights on behalf of the Client;

- (d) the basis and any terms governing the way in which Safe Custody Investments will be held, including any rights which the Authorised Person may have to realise Safe Custody Investments held on behalf of the Client in satisfaction of a default by the Client;
- (e) the method and frequency upon which the Authorised Person will report to the Client in relation to his Safe Custody Investments;
- (f) if applicable, a statement that the Authorised Person intends to mix Safe Custody Investments with those of other Clients;
- (g) if applicable, a statement that the Client's Safe Custody Investments may be held in a jurisdiction outside the Abu Dhabi Global Market and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the Abu Dhabi Global Market;
- (h) if applicable, a statement that the Authorised Person holds or intends to hold Safe Custody Investments in a Client Account with a Third-Party Agent which is in the same Group as the Authorised Person; and
- (i) the extent of the Authorised Person's liability in the event of default by a Third-Party Agent.

## **15.8 Client Reporting**

15.8.1 An Authorised Person which provides Custody or which otherwise holds or controls any Safe Custody Investments for a Client must send a regular statement to its Client:

- (a) if it is a Retail Client at least every six months; or
- (b) if it is a Professional Client or Market Counterparty at other intervals as agreed in writing with the Professional Client or Market Counterparty.

15.8.2 The statement must include:

- (a) a list of that Client's Safe Custody Investments as at the date of reporting;
- (b) a list of that Client's Collateral and the market value of that Collateral as at the date of reporting; and
- (c) details of any Client Money held by the Authorised Person as at the date of reporting.

15.8.3 The statement sent to the Client must be prepared within twenty-five business days of the statement date.

## **15.9 Reconciliation**

15.9.1 An Authorised Person must:

- (a) at least every twenty-five business days, reconcile its records of Client Accounts held with Third-Party Agents with monthly statements received from those Third-Party Agents;



- (b) at least every six months, count all Safe Custody Investments physically held by the Authorised Person, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Person; and
  - (c) at least every six months, reconcile individual Client ledger balances with the Authorised Person's records of Safe Custody Investment balances held in Client Accounts.
- 15.9.2 An Authorised Person must ensure that the process of reconciliation does not give rise to a conflict of interest.
- 15.9.3 An Authorised Person must maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has authority over Safe Custody Investments, must not perform the reconciliations under Rule 15.9.1.
- 15.9.4 (a) Reconciliation performed in accordance with Rule 15.9.1 must be reviewed by a member of the Authorised Person who has adequate seniority.
- (b) The individual referred to in Rule 15.9.4(a) must provide a written statement confirming that the reconciliation has been undertaken in accordance with the requirements of this section.
- 15.9.5 The Authorised Person must notify the Regulator where there have been material discrepancies with the reconciliation which have not been rectified.
- 15.9.6 A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

#### 15.10 **Auditor's Reporting Requirements**

In accordance with GEN 6.6.7, an Authorised Person to which this chapter applies must arrange for a Safe Custody Auditor's Report to be submitted to the Regulator on an annual basis.

### 16. **RECOVERY AND RESOLUTION PLANNING FOR CLIENT MONEY AND SAFE CUSTODY ASSETS**

#### 16.1 **Application and purpose**

- 16.1.1 This chapter contains rules which ensure that an Authorised Person maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of Client Money and Safe Custody Assets (Chapters 14 and 15) held by the Authorised Person to Clients.
- 16.1.2 This chapter applies to an Authorised Person when it:
- (a) holds, safeguards or administers Financial Instruments, acts as trustee or depository or manager of an Alternative Investment Fund or is acting as trustee or depository of a Collective Investment Fund; and
  - (b) holds Client Money in accordance with Chapter 15.

**16.2 General provisions**

- 16.2.1 An Authorised Person falling within Rule 16.1.2 must maintain at all times and be able to retrieve, in the manner described in this chapter, the documents and records specified in Rule 16.3.1 and Rule 16.4.1 ("Resolution Pack").
- 16.2.2 An Authorised Person falling within Rule 16.1.2 should maintain the component documents of the Resolution Pack in order for them to be retrieved in accordance with Rule 16.2.6, and should not use the retrieval period to start producing these documents.
- 16.2.3 The contents of the documents that constitute the Resolution Pack are likely to change from time to time (for example, because regular reconciliations must be included in the pack).
- 16.2.4 An Authorised Person is required to retrieve the Resolution Pack only in the circumstances prescribed in Rule 16.2.6.
- 16.2.5 For the purpose of this chapter, an Authorised Person will be treated as satisfying Rule 16.2.1 in this chapter requiring it to include a document in its Resolution Pack if a member of that Authorised Person's Group includes that document in its own Resolution Pack, provided that:
- (a) that Group member is also subject to Rule 16.2.6; and
  - (b) the Authorised Person is still able to comply with Rule 16.2.6.
- 16.2.6 In relation to each document in an Authorised Person's Resolution Pack an Authorised Person must:
- (a) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
  - (b) ensure that it is able to retrieve each document as soon as practicable, and in any event within forty-eight hours, where it has taken a decision to do so or as a result of a request by the Regulator.
- 16.2.7 Where documents are held by members of an Authorised Person's Group in accordance with Rule 16.2.5, the Authorised Person must have adequate arrangements in place with its Group members which allow for delivery of the documents within the timeframe referred to in Rule 16.2.6.
- 16.2.8 For the purpose of Rule 16.2.6, the following documents and records should be retrievable immediately:
- (a) the document identifying the institutions referred to in Rule 16.3.1(b);
  - (b) the document identifying individuals pursuant to Rule 16.3.1(d); and
  - (c) the most recent internal and external reconciliations relating to Safe Custody Assets and Client Money referred to in Rule 15.9.1(a) and Rules 15.9.1(b)-15.9.1(c) respectively.
- 16.2.9 Where an Authorised Person is reliant on the continued operation of certain systems for the provision of component documents in its Resolution Pack, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.

- 16.2.10 Contravention of either Rules 16.2.8 or 16.2.9 may be relied upon as tending to establish contravention of Rule 16.2.6.
- 16.2.11 Where an Authorised Person anticipates that it might be the subject of an insolvency order, it is likely to have sought advice from an external adviser. The Authorised Person should make the Resolution Pack available promptly, on request, to such an adviser.
- 16.2.12 An Authorised Person must ensure that it reviews the content of its Resolution Pack on an ongoing basis to ensure that it remains accurate. In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in Rule 16.2.1, an Authorised Person must ensure that any inaccuracy is corrected promptly and in any event no more than five business days after the change of circumstances arose.
- 16.2.13 For the purpose of Rule 16.2.12, an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to Rule 16.3.1(b).
- 16.2.14 An Authorised Person may hold in electronic form any document in its Resolution Pack provided that it continues to be able to comply with Rule 16.2.6 and Rule 16.2.11 in respect of that document.
- 16.2.15 An Authorised Person must notify the Regulator in writing immediately if it has not complied with or is unable to comply with Rule 16.2.1.

### **16.3 Core Content Requirements**

16.3.1 An Authorised Person must include within its Resolution Pack:

- (a) a master document containing information sufficient to retrieve each document in the Authorised Person's Resolution Pack;
- (b) a document which identifies the institutions the Authorised Person has appointed (including through a tied agent, field representative or other agent):
  - (i) in the case of Client Money, for the placement of money in accordance with Rule 14.2.3 or to hold or control Client Money in accordance with Rule 14.2.5; and
  - (ii) in the case of Safe Custody Assets, for the deposit of those assets in accordance with Rule 15.5.1;
- (c) a document which identifies each tied agent, field representative or other agent of the Authorised Person which receives Client Money or Safe Custody Assets in its capacity as the Authorised Person's agent in accordance with Rule 15.5.1 and Rule 15.6;
- (d) a document which identifies each senior manager, director and any other individual, and the nature of their responsibility within the Authorised Person, who is critical or important to the performance of operational functions related to any of the obligations imposed on the Authorised Person by this chapter;
- (e) for each institution identified in Rule 14.3.1(b) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the Authorised Person that relates to the holding of Client Money or Safe Custody Assets;

- (f) a document which:
  - (i) identifies each member of the Authorised Person's Group involved in operational functions related to any obligations imposed on the Authorised Person under this chapter, including, in the case of a member that is a nominee company, identification as such; and
  - (ii) identifies each third party which the Authorised Person uses for the performance of operational functions related to any of the obligations imposed on the Authorised Person by this chapter;
- (g) for each Group member identified in Rule 14.3.1(f)(i), the type of entity (such as branch, subsidiary and/or nominee company) the Group member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
- (h) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the Authorised Person and each third party identified in Rule 14.3.1(f)(ii);
- (i) where the Authorised Person relies on a third party identified in Rule 14.3.1(f)(i), a document which describes how to:
  - (i) gain access to relevant information held by that third party; and
  - (ii) effect a transfer of any of the Client Money or Safe Custody Assets held by the Authorised Person, but controlled by that third party; and
- (j) a copy of the Authorised Person's manual which records its procedures for the management, recording and transfer of the Client Money and Safe Custody Assets that it holds.

16.3.2 For the purpose of Rule 16.3.1(d), examples of individuals within the Authorised Person who are critical or important to the performance of operational functions include:

- (a) those necessary to carry out both internal and external Client Money and Safe Custody asset reconciliations; and
- (b) those in charge of client documentation for business involving Client Money and Safe Custody Assets.

16.3.3 For the purpose of Rule 16.3.1(b) the document must record:

- (a) the full name of the individual institution in question;
- (b) the postal and email address and telephone number of that institution; and
- (c) the numbers of all accounts opened by that Authorised Person with that institution.

#### 16.4 **Existing records to be included in the Resolution Pack**

16.4.1 The following records must be included in the Resolution Pack:

- (a) Rules 2.7.1 and 3.7.1(d) (*records of Client classification and Client agreements*);
- (b) Rule 15.4.3 (*master list of all Client Accounts*);

- (c) Rule 15.4.4 and Rule 15.4.5 (*adequate records and Client's written permission*);
- (d) Rules 15.4.5(b) and 15.4.5(e)-15.4.5(f) (*records and register of a Client's Investments*);
- (e) Rule 15.5.1(a) (*assessment of appropriateness of Third-Party Agent*); and
- (f) Rule 15.9.1 (*reconciliation*).

16.4.2 Rule 16.4.1 does not change the record keeping requirements of the Rules referred to therein.